

COLLECTION OF LAWFULLY OWED DNA

BACKGROUND

Alaska law requires the collection of a DNA sample from a person arrested for or convicted of a qualifying offense for inclusion in the state's DNA identification registration system. The Department of Public Safety (DPS) recognizes that the collection of lawfully owed DNA has not been occurring consistently across the state.

In late 2019, DPS formed an ad hoc working group to review Alaska's DNA collection process in an effort to determine the scope of the problem and offer recommendations to improve the consistency of DNA collection statewide.

The working group was comprised of stakeholder representatives from DPS, the Department of Law, the Department of Corrections (DOC), the Department of Health and Social Services, and the Anchorage Police Department.

ALASKA LAWS ON DNA COLLECTION

In 1995, the Alaska Legislature passed HB 27 establishing within DPS a DNA identification registration system under AS 44.41.035 and authorizing the collection of DNA from individuals convicted of a crime against a person for inclusion in the system (ch 10 SLA 1995). This statute has been amended eight times as of this writing.¹

- In 2000, HB 249 clarified that juvenile or adult correctional, probation, or parole officers and peace officers have the authority to collect DNA from required persons, and that destruction of a DNA sample requires a court order.
- In 2001, SB 99 added burglary to the list of qualifying offenses for which DNA must be collected upon conviction (ch 49 SLA 2001).
- In 2003, HB 49 further expanded the list of qualifying offenses to include all felony convictions under AS 11 and AS 28.35, as well as requiring DNA collection from persons required to register as a sex offender or child kidnapper under AS 12.63 (ch 88 SLA 03).

DNA collection was retroactive for persons incarcerated or under supervised probation or parole for a qualifying offense and for persons required to register as a sex offender or child kidnapper.

- In 2005, HB 124 added convictions of municipal laws or ordinances with elements similar to a crime against a person or a felony under AS 11 or AS 28.35 and provided for use of reasonable force to collect DNA (ch 12 SLA 2005).

¹ Legislative Research Services (LRS) Report 13.418 was used as a resource in compiling the legislative history of Alaska laws on DNA collection. <http://archives2.legis.state.ak.us/PublicImageServer.cgi?lra/2013/13-418m.pdf>.

COLLECTION OF LAWFULLY OWED DNA

- In 2007, HB 90 added the requirement to collect DNA from persons *arrested* for the same offenses that require collection upon conviction and addressed the destruction of DNA from individuals arrested but not charged (ch 24 SLA 2007).
- In 2009, HB 152 made minor corrective amendments as part of a revisor's bill (ch 41 SLA 09).
- In 2010, SB 110 addressed the preservation of evidence and post-conviction DNA procedures (ch 20 SLA 2010).
- In 2018, HB 307 added the requirement to collect DNA from persons arrested or convicted of an offense under AS 26.05, the Code of Military Justice (ch 85 SLA 18).

Specific to persons arrested or convicted of certain crimes, AS 44.41.035 currently requires DNA collection from:

- ✓ A person convicted in this state of a crime against a person or a felony under AS 11, AS 26.05, or AS 28.35, or a law or ordinance with elements similar to a crime against a person or a felony under AS 11, AS 26.05, or AS 28.35;
- ✓ A minor adjudicated as a delinquent in this state for an act committed when the minor was 16 years of age or older that would be a crime against a person or a felony under AS 11, AS 26.05, or AS 28.35 if committed by an adult, or for an act that would violate a law or ordinance with elements similar to a crime against a person or a felony under AS 11, AS 26.05, or AS 28.35 if committed by an adult;
- ✓ A person required to register as a sex offender or child kidnapper under AS 12.63; and
- ✓ A person arrested for a crime against a person or a felony under AS 11, AS 26.05, or AS 28.35, or a law or ordinance with elements similar to a crime against a person or a felony under AS 11, AS 26.05, or AS 28.35.

COLLECTION OF LAWFULLY OWED DNA

DATA SYSTEMS

CODIS is the acronym for the *Combined DNA Index System* and is the general term used to describe the FBI's program of support for criminal justice DNA databases and the software used to run these databases. The National DNA Index System or NDIS is considered one part of CODIS, the national level, containing the DNA profiles contributed by federal, state, and local participating forensic laboratories.²

DPS tracks DNA collection through two systems: The Alaska Public Safety Information Network (APSIN) and the Laboratory Information Management System (LIMS).

APSIN is the state's central repository of criminal record history (i.e., arrests and convictions). The DPS Scientific Crime Detection Laboratory (crime lab) uses LIMS to manage and track samples (including DNA) and associated data.

Once a DNA sample is collected, it is submitted to the crime lab and the profile is uploaded into CODIS. APSIN is then manually updated with an indicator on an individual's record that a DNA sample, if required, was collected.

APSIN and LIMS are constantly being updated as arrests are made, judgments are processed, and DNA samples are received and processed.

The information in this report is accurate as of June 14, 2021, the date the data was pulled.

DATA TERMS

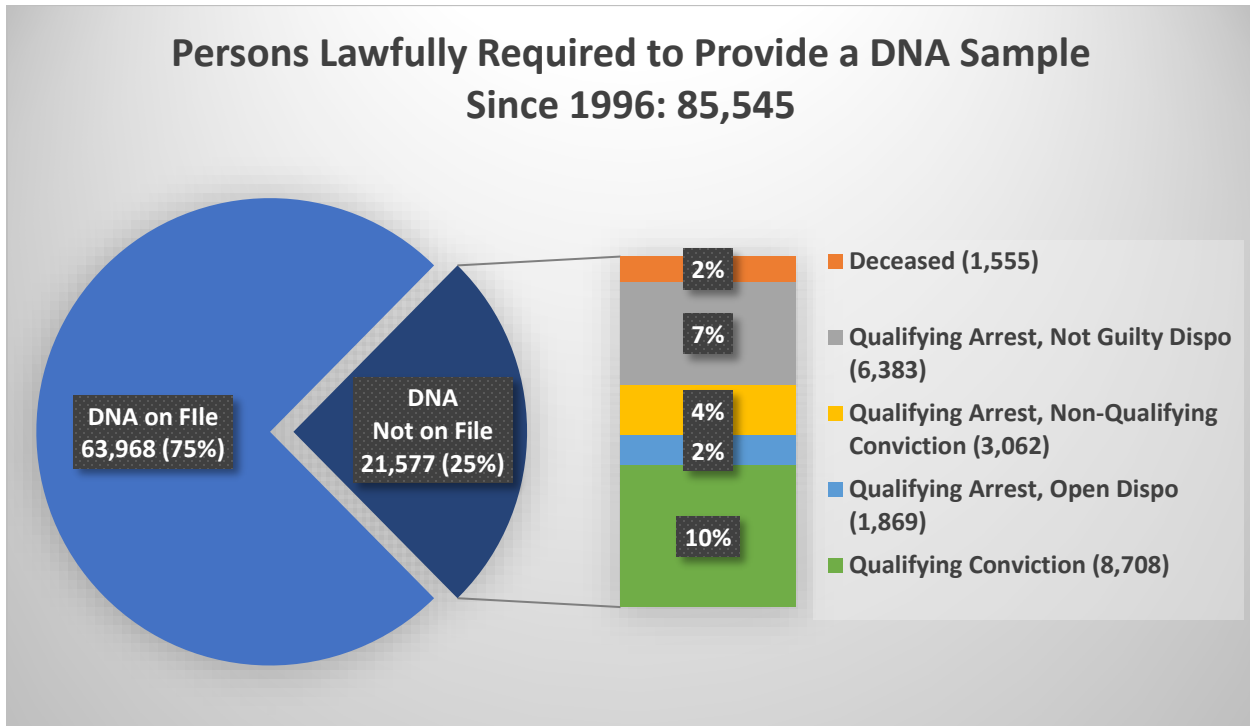
- **Arrested** – the actual restraint of a person or a person's submission to the custody of the person making the arrest. *See AS 12.25.050*
- **Convicted** – a person with a disposition code in APSIN of guilty, nolo contendere, set aside, suspended imposition of sentence, etc.
- **Open disposition** – a person with a qualifying arrest that the court has not yet adjudicated.
- **Adjudicated not guilty** – a person with no qualifying convictions and whose qualifying arrest was adjudicated as "not guilty" (acquitted, dismissed, not prosecuted, no complaint filed, or no true bill).

² Frequently Asked Questions on CODIS and NDIS: <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet>, accessed 06/20/2021.

COLLECTION OF LAWFULLY OWED DNA

FINDINGS

There is a significant gap between the number of persons who lawfully owe DNA and the number of DNA samples collected.



Since 1996, 85,545 unique individuals have been required to provide a DNA sample in accordance with AS 44.41.430.

Of the 85,545 individuals required to provide DNA:

- 63,968 (75%) have DNA on file; and
- 21,577 (25%) do not have DNA on file.

Of the 21,577 individuals required to have DNA on file that currently do not, 1,555 are now deceased. This leaves 20,022 individuals who lawfully “owe” DNA due to a qualifying arrest or conviction.

Of the 20,022 individuals who lawfully owe DNA:

- 6,383 (32%) have been arrested for a qualifying arrest with an “adjudicated not guilty” disposition;
- 1,869 (9%) have been arrested for a qualifying offense with an open disposition;
- 3,062 (15%) have been arrested for a qualifying offense but convicted of a non-qualifying offense; and
- 8,708 (44%) have been convicted of a qualifying offense.

COLLECTION OF LAWFULLY OWED DNA

Of the 8,708 convicted offenders who lawfully owe DNA:

- 4,797 (55%) were convicted of a misdemeanor crime against a person;
- 3,911 (45%) were convicted of a felony;
 - 118 were convicted of a felony sex offense;
 - 422 were convicted of non-sex crime against a person under 11.41;
 - 171 were convicted of burglary.

Several factors have contributed to the problem of inconsistent collection of DNA samples:

- Over the past 25 years, changes in the law created a structure of differing effective dates that triggers the DNA collection requirement depending on the specific offense and whether a person was arrested or convicted.
- There are differing interpretations of AS 44.41.035(b) with respect to who is actually responsible for collecting the DNA sample and at what point in the criminal justice process the DNA sample should be collected.
- The law requires collection of a DNA sample upon arrest for certain offenses. However, there is no criminal penalty if an arrestee refuses to provide a DNA sample as there is with a convicted offender.³
- Individuals may have been *charged* with a qualifying offense but never formally *arrested*.

The above list is not all-inclusive, and Alaska is not alone on this subject. For example, according to an April 2021 study from the National Institute of Justice, recent research and practitioner experiences have confirmed that the CODIS database is not consistently populated with DNA profiles obtained from convicted offenders and, in relevant states, arrestees.⁴

³ AS 11.56.760. Violating an order to submit to DNA testing.

⁴ Forensic Technology Center of Excellence (2021). *Perspectives on Addressing the Collection, Tracking, and Processing of Lawfully Owed DNA Samples*. U.S. Department of Justice, National Institute of Justice, Office of Investigative and Forensic Sciences. <https://forensiccoe.org/collecting-tracking-processing-lawfully-owed-dna-report/>.

COLLECTION OF LAWFULLY OWED DNA

RECOMMENDATIONS

- Focused efforts should be made to actively collect missing DNA samples from those individuals convicted of a qualifying offense, prioritizing collection from those convicted of:
 - A sex offense as defined under AS 12.63.100;
 - A felony crime against a person under AS 11.41.100 – 11.41.530; or
 - Burglary under AS 11.46.300 – 11.46.310.
- Statewide, standardized protocols for collection and submission of DNA samples should be developed and implemented.
- An interface between DPS' and DOC's systems should be built for improved tracking of DNA sample collection and submission.
- DNA sample collection should be integrated into the existing booking process for persons remanded at a DOC facility.