

Sixth District Department of Correctional Services POLICY	Issue Date 01/16/09	Effective Date 4/10/17	Policy Number 163-17
Subject <b>DNA TESTING</b>		Review Month September	Author 0402 (TRO)
Rescinds 163-16	References – Iowa Code 81.; Iowa Code 229A; 321J.2(2)(b), 321.189A(4)(c), 321.71A, 321.215(2), 321.261(3), 321.279(2), 321.560, 716B.2, 716B.3, 716B.4, 717A.2(2),717A.3(1)(a, c), 725.7(2)(a-b), Iowa Administrative Code 661-156, Attorney General Rules 61.8		

**POLICY:**

It is the policy of the Sixth Judicial District Department of Correctional Services to require offenders to submit a DNA sample for DNA profiling if convicted of an offense under Iowa Code Chapter 81. Offenders are required to provide DNA samples identified in this policy prior to release from correctional supervision. Effective July 1, 2014 DNA samples are collected on Aggravated Misdemeanor offenses with the exception of the code sections noted under Definitions and those receiving a deferred judgement. This change only applies to the offenses committed on or after July 1, 2014. All other procedures of this policy apply.

**DEFINITION:**

- A. Attorney General Rules – offenses identified by the Iowa Attorney General in Iowa Administrative Code 61.8.
- B. DNA – a pattern of genetic code found in the nuclei of cells, which is the basic building block of life.
- C. DNA Profiling – A procedure in which trained personnel obtain an authorized sample from the offender sufficient to allow DNA profiling tests.
- D. Aggravated Misdemeanors not included in the DNA database:
  - A. Any offense designated an aggravated misdemeanor in Iowa Code Chapter 321 including:
    - 1) **Section 321.189A(4)(c)** - Display or use by an officer of a license issued pursuant to this section in any manner which is not a public offense but which is not authorized under this section or who knowingly fails or refuses to surrender the license upon demand by the Department.
    - 2) **Section 321.71A** - Installation, distribution, or sale of non-operable air bags.
    - 3) **Section 321.261(3)** - Failing to stop at an accident resulting in serious injury.

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**DEFINITION:** (continued)

- 4) **Section 321.279(2)** - Willfully eluding or attempting to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual and audible signal as provided in this section and in doing so exceeds the speed limit by twenty-five miles per hour or more.
  - 5) **Section 321.560** - Operating a motor vehicle while precluded as a habitual offender (except for a habitual offender who has been granted a temporary restricted license pursuant to section 321.215, subsection 2).
- B. Any offense designated an aggravated misdemeanor in Iowa Code Chapter 716B including:
- 1) **Section 716B.2** - Unlawful disposal of hazardous waste (first offense).
  - 2) **Section 716B.3** - Unlawful transportation of hazardous waste (first offense).
  - 3) **Section 716B.4** - Unlawful storage of hazardous waste (first offense).
- C. Any offense designated a misdemeanor under Iowa Code Chapter 717A including:
- 1) **Section 717A.2(2)** - exercising control, entering or remaining, disrupting an animal control facility or killing or injuring an animal at such facility where the damage exceeds \$100 but does not exceed \$1000.
  - 2) **Section 717A.3(1)(a)** - Willfully destroys or damages a crop on a crop facility operation and damages exceeds \$500 but does not exceed \$1000.
  - 3) **Section 717A.3(1)(c)** - enter onto or remain on a crop facility with the intent to disrupt, destroy, or damage a crop maintained on a crop operation facility.
- D. Any offense designated as an aggravated misdemeanor in Iowa Code section 725.7 including:
- 1) **Iowa Code section 725.7(2)(a)** - Illegal gaming in the fourth degree.
    - a. Participate in a game for any sum of money or other property of any value;
    - b. Make any bet;
    - c. For a fee, directly or indirectly, give or accept anything of value to be wagered or to be transmitted or delivered for a wager to be placed within or without the State of Iowa;
    - d. For a fee, deliver anything of value which has been received outside the enclosure of a racetrack licensed under chapter 99D to be placed as wagers in the pari-mutuel pool or other authorized systems of wagering;

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**DEFINITION:** (continued)

- e. Engage in bookmaking where the value of the property involved does not exceed \$100 (second offense).
- 2) **Iowa Code section 725.7(2)(b)** - Illegal gaming in the third degree (same as above but a second offense where the amount of value involved exceeds \$100 but does not exceed \$500).
- 3) **Iowa Code section 321J.2(2)(b)** - A second offense violation of section 321J.2, unless the person has more than one previous revocation as determined pursuant to section 321J.2, subsection 8, within the twelve-year period immediately preceding the commission of the offense in question. The Department of Transportation submits revocation information to the Iowa NCIC (National Crime Information Center) Database. Before staff collects a DNA sample from an offender with the qualifying offense of 321J.2(2)(b) they need to check the Iowa NCIC database to determine if they have a prior revocation.

**PROCEDURE:**

- 1. Persons required to submit a DNA sample:
  - A. A person who receives a deferred judgment for a felony or against whom a judgment or conviction for a felony has been entered is required to submit a DNA sample for DNA profiling pursuant to Code of Iowa section 81.4.
  - B. A person determined to be a sexually violent predator pursuant to Code of Iowa chapter 229A is required to submit a DNA sample for DNA profiling pursuant to section 81.4 prior to discharge or placement in a transitional release program.
  - C. An offender placed on probation immediately reports to the Judicial District Department of Correctional Services after sentencing so it can be determined if the offender has been convicted of an offense requiring DNA profiling. If it is determined by the Judicial District that DNA profiling is required, the offender immediately submits a DNA sample.
  - D. A person required to register as a sex offender.
  - E. Any Interstate Compact or Federal offender meeting the required criteria.
- 2. DNA Collection Procedures:
  - A. Only trained personnel are designated to collect DNA samples. Staff completes the process by following the instructions included in the testing kit provided by the Department of Public Safety.

**PROCEDURE: (continued)**

- B. Training to collect DNA Samples is through the Iowa Department on Public Safety and Department of Criminal Investigation website. The following link [http://www.dps.state.ia.us/DCI/lab/dna/training\\_video.shtml](http://www.dps.state.ia.us/DCI/lab/dna/training_video.shtml) provides the required training.
- C. During the initial face-to-face contact the offender is asked to submit a DNA sample. If an offender with an ICON number has a DNA sample taken from another entity, such as a County Jail, juvenile authorities, etc., DCI staff has the authority to add the information into ICON and another sample does not need to be taken by Department of Correctional Services' staff. DCI staff chooses a Region and Work Unit of Central Office on the DNA record in ICON and also makes a note in the "Comment" box as to whom the sample was received from.
- D. If the offender refuses to provide the sample, advise the offender that the sample is mandated by Iowa Code Section 81.
- E. The offender is given a second appointment to provide a sample. At that appointment inform the offender that if they refuse a second time or fail to appear for the second appointment, a Civil Contempt Affidavit will be filed with the County Attorney.
- F. In the event the offender reports for the second time and refused to submit a sample OR fails to appear for the second appointment, staff proceeds in filing with the County Attorney a Civil Contempt Affidavit, OR, after consulting with a District Supervisor a Report of Violation may be filed with the County Attorney.
- 1) When filing a Civil Contempt Affidavit include the following forms:
- DNA Refusal Letter to County Attorney/Civil Contempt Affidavit (163B)
  - Court Order
- G. A record is kept of all DNA samples taken recording in ICON on the DNA screen. All DNA kits are appropriately labeled to ensure accuracy.
- H. A complete chain of custody of the DNA sample is maintained for submittal to the Department of Public Safety, Division of Criminal Investigation Criminalistics Laboratory.
- I. The refusal dates are entered into ICON on the DNA screen with a more detailed explanation documented in Generic Notes.

BY ORDER OF:

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Bruce Vander Sanden, Director