

## CHAPTER 66 ENFORCEMENT PROCEDURES

### Subchapter 664 Arrest/Fugitive

#### 6641.6 DNA COLLECTION

**6641.61 GENERAL.** The collection of deoxyribonucleic acid (DNA) from individuals implicated in unlawful activities provides a powerful tool for law enforcement identification and the solution and prevention of crimes. This subsection delineates DEA policy governing the collection and processing of DNA samples.

#### 6641.62 Authority

1. Pursuant to 42 United States Code (U.S.C.) § 14135a(a)(1)(A) and 28 Code of Federal Regulation (CFR) § 28.12, DEA and other federal law enforcement agencies are authorized and directed to collect DNA samples from individuals who are arrested, facing charges, or convicted and from non-United States persons who are detained under federal authority. In light of this requirement, DEA will normally collect DNA samples from individuals whom DEA arrests.
2. Unless otherwise directed by the Attorney General, an agency is only required to collect DNA samples from individuals in the classes described in paragraph 1 from whom the agency collects fingerprints. DEA personnel, including Special Agents and Task Force Officers, accordingly will only collect DNA samples from such individuals whom DEA fingerprints. Both adults and juveniles who are fingerprinted are subject to DNA sample collection.
3. In rare cases, DEA may detain an individual without making an arrest. When this occurs, the requirement to collect a DNA sample applies only if:
  - a. the individual is a non-United States person (i.e., not a U.S. citizen and not an alien lawfully admitted for permanent residence); and
  - b. the individual is fingerprinted.
4. In addition to the required collection of DNA samples pursuant to 28 CFR § 28.12, DNA samples may be collected by DEA personnel from confidential sources and submitted to the FBI for analysis.

#### 6641.63 Exceptions to the DNA Sample Collection Requirement.

Pursuant to 28 CFR § 28.12(e), DEA may, but need not, collect a DNA sample from an individual if:

1. another federal agency, a state or local agency, or a private entity has collected or will collect a DNA sample from that individual pursuant to an agreement or arrangement with DEA; or

2. the Combined DNA Index System (CODIS) already contains a DNA profile of that individual.

6641.64 DNA Collection Process.

1. DEA will collect samples using DNA sample collection kits provided by the FBI, and will follow the procedures specified by the FBI in collecting the samples, completing the kits, and sending the completed kits to the FBI for analysis. The FBI's instructions for ordering and using the DNA sample collection kits are included as an Appendix to this policy, and may be found online at [www.fbi.gov/hq/lab/html/dnau1.htm](http://www.fbi.gov/hq/lab/html/dnau1.htm).
2. Upon submission of a DNA sample to the FBI by DEA, the FBI Laboratory will normally analyze the sample and enter the resulting profile into CODIS without further notice to DEA concerning the receipt or processing of the sample. However, the FBI may notify DEA if the sample collection process was not properly carried out or did not yield a satisfactory result. DEA will repeat DNA sample collection from an individual who remains or becomes again subject to DEA's jurisdiction or control if DEA is informed that a sample collected from the individual does not satisfy the requirements for analysis or for entry of the results of the analysis into CODIS.
3. It is a federal offense for an individual from whom DNA sample collection is authorized to refuse to cooperate in the collection of a sample, and cooperation in such collection is a mandatory condition of pretrial release. (See 42 U.S.C. § 14135a(a)(5); 18 U.S.C. § 3142(b), (c)(1)(A).) An individual who resists DNA sample collection may be advised of these legal consequences as a means of inducing cooperation. The use of such other means as are reasonably necessary to detain, restrain and collect a DNA sample from an individual who refuses to cooperate in DNA sample collection is also authorized. (See 28 CFR § 28.12(d).)