

Minnesota's Criminal DNA Collection and Preservation Laws

Who must submit a DNA sample?

Minnesota law requires those convicted of a felony, those released from prison after serving a felony sentence, those felons whom the state accepts through an interstate compact, and those charged with certain predatory felonies to submit a DNA sample. All people (both juvenile and adult) charged with committing or attempting to commit a felony, who are subsequently convicted of the felony *or any offense arising out of the same set of circumstances*, provide a sample upon sentencing, if they have not already done so. [Minn. Stat. § 609.117](#), subd. 1(1), (2). People meeting these criteria, but who were convicted prior to enactment of this requirement or who otherwise avoided submitting a sample, must furnish a sample prior to their release from incarceration. [Minn. Stat. § 609.117](#), subd. 2.

Offenders serving a prison term in Minnesota under a reciprocal agreement, who were convicted in another state of committing or attempting to commit a felony offense or of any offense arising out of the same set of circumstances, also must submit a biological sample before being released. [Minn. Stat. § 609.117](#), subd. 2(2). Offenders received from another state through an interstate compact who were charged with a felony and were subsequently convicted of the felony or any offense arising out of the same set of circumstances are accepted only if they submit a biological sample.

As of July 1, 2005, both adults and juveniles charged with committing certain violent predatory felonies must submit DNA samples if a judge has concluded that the charge is based on probable cause. [Minn. Stat. § 299C.105](#), subd. 1(a)(1), (3).

Who collects the DNA sample?

Sheriffs, peace officers, and community corrections agencies operating secure juvenile detention facilities are required to collect samples from people who have been charged with certain predatory felonies if a judge has concluded the charges are supported by probable cause. [Minn. Stat. § 299C.105](#), subd. 1(a).

Those ordered to provide a sample upon sentencing must submit a sample to the Bureau of Criminal Apprehension (BCA), where it will be collected and maintained. [Minn. Stat. § 609.117](#), subd. 1. Specimens obtained before release, including offenders' samples from other states, are collected by the commissioner of corrections or local corrections authorities. [Minn. Stat. § 609.117](#), subd. 2. Similarly, any offenders accepted from other states are collected by the Department of Corrections or a county probation agency.

When is the sample collected?

Those charged with a predatory felony must submit the sample within 72 hours of a probable cause hearing, unless the superintendent of the BCA requires a shorter period. [Minn. Stat. § 299C.105](#), subd. 1(c). All other persons must furnish a sample either upon sentencing or prior to release, depending upon the situation. If the person charged is a juvenile, the law enforcement officer who seeks to obtain a sample from the individual must notify the juvenile's parent or guardian prior to collecting the biological specimen. [Minn. Stat. § 299C.105](#), subd. 2(b).

Where does the sample go?

After submission, each sample collected under these provisions is forwarded to the BCA, where it is processed and maintained in the BCA's DNA database.

What are the rights and protections of the person whose sample is collected?

There are more protections provided to those who submit DNA based on a criminal charge than to those who submit DNA based on a felony conviction. The additional protections apply to those who have been charged, but not convicted of a crime that requires submission of a biological specimen.

The BCA is required by statute to destroy any biological specimen and return all records to people who submitted a specimen if, although they were charged with perpetrating an enumerated offense and received a probable cause determination, they are subsequently found not guilty. Similarly, if a person submits a sample and the charges against the person are later dismissed, upon the individual's request, the BCA must destroy the sample, remove the information from the BCA's DNA index system, and return all records. [Minn. Stat. § 299C.105](#), subd. 3(a), (b).

People convicted of crimes do not have similar protection. Even upon expungement of the offense for which the specimen was collected, those convicted of a crime requiring a biological specimen may not move to seal their DNA records or to have the sample returned or destroyed. [Minn. Stat. § 609A.03](#), subd.7(a).

What other duties must government agencies and law enforcement officials perform?

All government agencies must retain and preserve any biological evidence relating to identification of a defendant that is used to secure a conviction in a criminal case *until expiration of the individual's sentence*, unless earlier disposition is authorized by court order. However, the agencies need only retain the portion of the specimen that was used to obtain an accurate biological sample used to obtain a conviction. Failure to retain the evidence may result in sanctions to the appropriate party. [Minn. Stat. § 590.10](#).

Law enforcement officials charged with collecting the specimens must be trained to BCA-established standards in the proper method of collecting and transmitting the sample. [Minn. Stat. § 299C.105](#), subd. 2(a).

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