

# Lawfully Owed DNA

## South Dakota

*Last Updated: March 2020*

### Arrest

Question	Answer
Does the law require a DNA sample to be collected from an individual when they are arrested for a crime?	Yes, from adults only.
What crimes require collection of a DNA sample at arrest?	Any "qualifying offense," which means (1) any felony; (2) a crime of violence (any of the following crimes or an attempt, solicitation, or conspiracy to commit them: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact, felony child abuse, or any other felony in the commission of which the perpetrator used force, was armed with a dangerous weapon, or used any explosive or destructive device); or (3) a violation of chapter 22-22 (sex offenses).
Does the law mandate when the DNA sample must be collected after arrest?	Upon booking, or as determined by the supervising agency.
What agency collects the arrest DNA sample?	The agency with custody.
What agency manages the analysis and preservation in the DNA database?	The South Dakota State Forensic Laboratory
Can the arrest DNA sample be expunged?	A person may request expungement on the grounds that the arrest that led to the collection of the DNA has not resulted in a felony charge within one year; has been resolved by a dismissal, acquittal, or misdemeanor conviction; or has not resulted in a felony conviction; or the conviction or delinquency adjudication on which the authority for including that person's DNA record or DNA profile was based has been reversed and the case dismissed.

Statutes	<p>SDCL § 23–5a–2, Establishment of State DNA Database and State DNA Databank—Purpose—Compatibility with FBI Procedures—Capabilities</p> <p>§ 23–5a–5.2, Adult Arrested for Qualifying Offense Required to Provide DNA Sample</p> <p>§ 23–5a–28, Request for Expungement—Grounds</p>
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## Conviction

Question	Answer
Does the law require a DNA sample to be collected from the defendant when they are convicted of a crime?	Yes – adults and adjudicated juveniles
What convictions require collection of a DNA sample?	<p>Any “qualifying offense,” which is (1) any felony; (2) a crime of violence (any of the following crimes or an attempt, solicitation, or conspiracy to commit them: Murder; Manslaughter; Rape; Aggravated assault; Riot; Robbery; Burglary in the first degree; Arson; Kidnapping; Felony sexual contact; Felony child abuse; or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device); or (3) a violation of chapter 22-22 (sex offenses).</p> <p>Registered sex offenders are required to provide a sample</p>

Does the law require DNA collection when a defendant is found not guilty by reason of insanity/mental defect/illness?	N/A
Does the law mandate when the DNA sample must be collected after conviction?	<p>If sentenced to incarceration: sample to be provided upon intake to a prison, jail, juvenile detention facility, mental health facility, or any other detention facility or institution</p> <p>If already confined at time of sentencing or adjudication: sample to be provided immediately after sentencing or adjudication</p> <p>If sentence does not include incarceration: providing a DNA sample shall be a condition for any sentence or adjudication; the supervising agency shall determine the time for collection</p> <p>Under no circumstances may any person who is convicted or adjudicated delinquent for a qualifying offense be released in any manner until that person has provided a DNA sample</p>
What agency collects the DNA sample after conviction?	Department of Corrections, or “supervising agency” for parole or probation
What agency manages the analysis and preservation in the DNA database?	State Forensic Laboratory
Can the conviction DNA sample be expunged?	A person may request expungement on the grounds that the conviction or delinquency adjudication on which the authority for including that person's DNA record or DNA profile was based has been reversed and the case dismissed. The request must be made in writing and be accompanied by a certified copy of the final court order reversing the conviction or delinquency adjudication and dismissing the case
Statutes	<p>SDCL § 23-5A-4. Persons required to provide DNA sample - retroactivity of requirement</p> <p>SDCL § 23-5A-5. Persons convicted or adjudicated delinquent for qualifying offense required to provide DNA sample</p> <p>SDCL § 23-5A-5.1. Registered sex offenders required to provide DNA sample</p> <p>SDCL § 23-5A-28. Request for expungement - grounds</p> <p>SDCL § 23-5A-29. Expungement of record - receipt of court order - exception</p>

