



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
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OPNAVINST 5800.9
N13
14 Dec 06

OPNAV INSTRUCTION 5800.9

From: Chief of Naval Operations

Subj: COLLECTION OF DEOXYRIBONUCLEIC ACID (DNA) SAMPLES FROM
MILITARY OFFENDERS CONVICTED OF QUALIFYING MILITARY
OFFENSES (QMO)

Ref: (a) 10 U.S.C. 1565
(b) USD (P&R) Memorandum of 18 Apr 05 (NOTAL)
(c) DOD Instruction 1325.7 of 17 Jul 01

Encl: (1) Qualifying Military Offenses Under 10 U.S.C. 1565
(2) Definition of Terms

1. Purpose. To establish a DNA Sample Collection Program for military offenders convicted by General Court-Martial (GCM) or Special Court-Martial (SPCM) of a QMO per references (a) and (b). The term "confinement facility" used herein refers to Navy shore brigs, including pretrial confinement facilities.

2. Background

a. This instruction provides policy for implementing references (a) and (b). Reference (b) provides interim Department of Defense (DOD) policy to implement requirements of reference (a) and shall be incorporated into future revision of reference (c).

b. Pursuant to reference (a), each Uniform Code of Military Justice (UCMJ) offense listed in enclosure (1) is designated as a Qualifying Military Offense (QMO). The Navy is required to collect DNA samples from Navy offenders who have been convicted by GCM or SPCM of a QMO, unless that member is in custody of the Federal Bureau of Prisons (FBOP) or under supervision of a Federal probation office. The requirement to collect DNA samples does not apply to the findings of a Summary Court-Martial (SCM) or a proceeding under UCMJ, article 15 (non-judicial punishment). Samples must be analyzed and results sent to Federal Bureau of Investigation (FBI) for inclusion into the Combined DNA Index System (CODIS).

c. Definitions of terms used within this instruction are provided in enclosure (2).

3. Applicability. This instruction applies to all Navy personnel convicted of a QMO. Although this instruction authorizes collection of DNA samples at any time after a GCM or SPCM sentence is adjudged for one or more QMOs, it is the court-martial convening authority's action under UCMJ, article 60, that determines whether the conviction constitutes a QMO.

4. Policy

a. Navy Commanding Officer (COs) and Officers in Charge (OICs) shall take steps necessary to identify and collect DNA samples from all its prisoners who have a QMO conviction, regardless of Service affiliation, and Navy offenders who have a QMO conviction but are not confined, or are no longer in confinement. Collection of DNA samples per this instruction is effective immediately.

b. Confinement facilities or command representatives are authorized to collect DNA samples at any time after a QMO sentence is adjudged when based on a court-martial's finding of guilt of one or more QMOs, even if the convening authority has not taken action on the sentence. Each Navy confinement facility shall identify and collect DNA samples from all of its prisoners who have a QMO conviction, regardless of Service affiliation. Furthermore, COs and OICs shall identify and collect DNA samples from those members under their jurisdiction who have a QMO conviction but are not confined. Samples normally shall be collected as part of confinement facility in-processing or, in the case of members with QMOs but no sentence to confinement, as soon as possible after trial and prior to the member's separation from active duty. COs and OICs may authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of a sample.

c. Offenders who have a QMO conviction with a sentence that includes an unsuspended and unremitted dismissal or punitive discharge **shall not** begin appellate leave prior to collection of a DNA sample.

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5. Limitation. No limitations are placed on the lawful prerogatives of the Navy or its officials.

6. Responsibility

a. Chief of Naval Operations (CNO), Corrections and Programs (N1353), as DNA Sample Collection Program Component Responsible Official (CRO) for military offenders convicted of a QMO, shall:

(1) Ensure implementation and monitoring of the DNA Sample Collection Program for military offenders convicted of a QMO.

(2) Serve as the centralized point of contact to the U.S. Army Criminal Investigation Laboratory (USACIL) and provide USACIL with addresses of confinement facilities and other designated locations where collection kits shall be mailed. USACIL address is U.S. Army Criminal Investigation Laboratory, Attn: CODIS Lab, 4553 N. 2nd Street, Forest Park, GA 30297-5122.

(3) Serve as a centralized point of contact for USACIL for program users, to include any discrepancies not explained by normal processing time.

(4) Maintain a sufficient number of USACIL collection kits to support individual command requests.

b. Area Commanders. Assist and support subordinate commands and activities, as necessary, in the implementation and monitoring of DNA Sample Collection Program for military offenders convicted of a QMO.

c. Staff Judge Advocates (SJAs) or Legal Officers (LOs)

(1) Effective immediately, the cognizant commander, SJA, or LO shall annotate the top of all post-trial DD 2707, Confinement Orders, or Service-equivalents, and the top of the first page of all initial promulgating orders, in bold with "**DNA processing required. 10 U.S.C. 1565.**" The cognizant SJA/LO shall ensure a copy of each annotated promulgating order is provided to USACIL, the current confinement facility where offender is confined (for cases in which the offender is

currently confined), and the member's immediate commander. Periodically, USACIL shall reconcile promulgating orders received with DNA samples received.

(2) Cognizant SJA/LO shall notify and brief immediate COs and OICs about their responsibilities on individual cases. SJA/LO are not required to notify the immediate commander if a member convicted of a QMO is currently in confinement. The confinement facility where the offender is confined shall, upon receipt of initial promulgating order containing the annotation that DNA processing is required, ensure a DNA sample is collected from the offender and sent to USACIL.

d. Confinement Facilities

(1) Identify and collect DNA samples from all of its offenders who have a QMO conviction, regardless of Service affiliation.

(2) Ensure all DNA samples are collected by qualified medical personnel using kits provided by USACIL and applicable instructions. Confinement facilities shall ensure the member's confinement record reflects a DNA sample has been collected and ensure data entry into the Corrections Management Information System (CORMIS) database. Confinement facilities shall complete or forward, as appropriate, an administrative entry (NAVPERS 1070/613, Administrative Remarks), to appropriate unit commanders for potential inclusion into the member's service record. The administrative entry shall read as follows: **"DNA blood sample drawn this date per 10 U.S.C. 1565 and forwarded to U.S. Army Criminal Investigation Laboratory (USACIL) on (date)."** Where members of other Services are involved, a letter or email indicating the blood draw shall be forwarded to the appropriate Service corrections headquarters. E-mail addresses are available from CNO (N1353). Addresses and phone numbers are as follows:

- (a) Department of the Army (Attn: DAPM-MPD-CI)
Office of the Provost Marshal General
Operations Division
Corrections and Internment Branch
2800 Army Pentagon, Washington, DC 20310-2800
(703) 695-8872/DSN 225

- (b) Department of the Navy
Chief of Naval Operations (N135)
5720 Integrity Drive
Millington, TN 38055-6800
(901) 874-4445/DSN 882
- (c) Commandant of the Marine Corps
Headquarters, U.S. Marine Corps (PSL Corrections)
2 Navy Annex
Washington, DC 20380-1775
(703) 692-4251/DSN 222
- (d) Headquarters
Air Force Security Forces Center (AFSFC/SFCI)
1720 Patrick Street
Lackland Air Force Base, TX 78236-5226
(210) 671-0889/DSN 473
- (e) Commandant of the Coast Guard
Office of Military Personnel (CG-1221)
2100 Second St. SW
Washington, DC 20593-0001
(202) 267-1385

(3) Process and mail the packaged sample to USACIL and notify USACIL by email that the sample has been mailed. Notification shall include the name and social security number of the individual from whom the sample was taken, and the confinement facility from which the sample is mailed. USACIL shall confirm receipt of the sample by e-mail and notify the sender if problems are encountered that require a DNA sample to be redrawn. Confinement facilities shall maintain a centralized account of disposition (e.g., offender's name, adjudged date, QMO, date sample taken, date sample mailed, USACIL confirmation receipt, expungement activity, etc.) associated with DNA Sample Collection Program. CORMIS shall be used to document disposition activity. USACIL point of contact information follows:

U.S. Army Criminal Investigation Laboratory
Attn: CODIS Lab
4553 N. 2nd Street
Forest Park, GA 30297-5122
(404) 469-7023/DSN 797
codis_lab@usacil.army.mil

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(4) Ensure a member with a QMO conviction, from whom a DNA sample has been collected, is provided a card informing the member that if the conviction for each QMO is reversed during appellate review, the member may request USACIL expunge the DNA results of analysis from CODIS. USACIL provides preprinted cards as part of the collection kit.

(5) Examine all post-trial Confinement Orders, DD 2707, or Service-equivalents, and the top of the first page of all initial promulgating orders for each offender to ascertain the existence of convictions for a QMO and, if necessary, coordinate with the SJA/LO to obtain review and annotation of the **"DNA processing required. 10 U.S.C. 1565."** stamp prior to DNA processing for each offender with such QMO conviction.

e. Convening Authorities

(1) Identify and coordinate with COs and OICs under their cognizance for collection of DNA samples from those Navy offenders who have a QMO conviction, but are not, or no longer confined.

(2) Where each QMO conviction has been reversed, initiate an expungement process by USACIL independent of any request from the affected member or former member.

f. Commanding Officers and Officers in Charge

(1) Process all DNA samples, consistent with collection procedures contained within this instruction, from those applicable offenders who have a QMO conviction, but are not, or no longer, confined.

(2) Ensure an administrative entry reflecting collection of DNA sample for QMO conviction per 10 U.S.C. 1565 is completed or forwarded, as applicable. This may be accomplished electronically or by completing an administrative entry (NAVPERS 1070/613) for inclusion into the member's service record. The administrative entry shall read as follows: **"DNA blood sample drawn this date per 10 U.S.C. 1565 and forwarded to U.S. Army Criminal Investigation Laboratory (USACIL) on (date)."**

g. Navy and Marine Corps Appellate Leave Activity (NAMALA) shall make every reasonable effort to:

(1) Identify those naval members on appellate leave who have a QMO conviction, but whose DNA sample has not been collected.

(2) Contact and notify the member of the collection requirement. When notified, request the member provide a sample, as required by law, while remaining in an appellate leave status. Arrangements shall be coordinated for DNA processing at a military installation closest to the member's appellate leave address to minimize expense.

(3) Coordinate processing of all DNA samples consistent with collection requirements contained within this instruction.

(4) Ensure an administrative entry reflecting collection of DNA sample for QMO conviction per 10 U.S.C. 1565 is documented per Service directives.

(5) Notify and request guidance from CNO (N1353) in cases where members on appellate leave have a QMO conviction, but fail to provide or respond to DNA collection requirements.

h. Judge Advocate General (JAG) of the Navy shall provide advice, instruction, guidance, and assistance regarding legal aspects of the DNA Sample Collection Program.

i. Naval Inspector General (NAVINSGEN) shall ensure favorable consideration, upon request, to the inclusion of the DNA Sample Collection Program in the DON Inspection Program.

j. Bureau of Medicine and Surgery (BUMED) shall, upon request, provide qualified medical personnel to collect DNA samples from offenders with a QMO conviction using kits provided by USACIL and per accompanying instructions.

k. U.S. Army Criminal Investigation Laboratory (USACIL), under authority of references (a) and (b):

(1) Analyzes all DNA samples in DOD and submit results to FBI.

(2) Provides collection kits to all confinement facilities and other locations designated by CNO (N1353).

(3) Upon receipt of an expungement request, Service-designated points of contact shall provide to USACIL a certified copy of a final order establishing that conviction of all QMO offenses were disapproved or overturned. USACIL shall then determine whether the requester has a conviction for a qualifying Federal offense (42 U.S.C. 14135a) or qualifying District of Columbia offense (42 U.S.C. 14135b) before taking action to expunge the record based on a QMO. Only in those cases where USACIL has verified that the requester has no other qualifying military, Federal, or District of Columbia conviction will USACIL expunge the results of DNA analysis from CODIS. When USACIL expunges a result of DNA analysis, USACIL shall destroy the DNA sample and report back to the Service-designated point of contact. The Service-designated point of contact shall notify the requester of the result of each expungement request.

1. U.S. Disciplinary Barracks (USDB) is designated the point of contact to answer all questions from FBOP facilities. Navy confinement facilities releasing prisoners on supervised release (e.g., parole and mandatory supervisory release (MSR)) shall be responsible for answering questions pertaining to prisoners still under supervision with QMOs.

7. Changes. Recommended changes should be forwarded via the chain of command to CNO (N1353).

8. Forms and Reports

a. In Navy confinement facilities, some forms have been replaced by reports generated by CORMIS and provides information electronically via the Defense Data Network.

(1) DD 2707 (Sep-05), Confinement Order, is available at: <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>

(2) NAVPERS 1070/613 (Rev.10-81), Administrative Remarks, is available at: <http://forms.daps.dla.mil/>

b. Reporting requirements shall be via CORMIS.

c. All other reports are exempt from reports control per
SECNAV M-5210.1.



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QUALIFYING MILITARY OFFENSES UNDER 10 U.S.C. 1565

1. The findings of guilty by a general court-martial (10 U.S.C. 818) or special court-martial (10 U.S.C. 819) after the court-martial convening authority has taken action under 10 U.S.C. 860, for any offense under the Uniform Code of Military Justice (UCMJ) punishable by a sentence of confinement for more than 1 year (regardless of the sentence imposed), and any other UCMJ offense listed below:

Offense	UCMJ Article	Title 10 Section	NIBRS Code	DIBRS Code
Prostitution Involving a Minor	134	934	40A	134-B6
Arson	126	926	200	126A-B2
Solicitation of Another To Commit a Qualifying Offense	134	934	90Z	134-U7*

* For this offense, the offense code will be the code of the offense solicited and "S=Solicit" will be reflected in Data Element 18 of the offense information field.

2. The following offenses do not have a related DIBRS code:

a. Attempt to Commit a Qualifying Offense - UCMJ, article 80, (10 U.S.C. 880)

b. Conspiracy to Commit a Qualifying Offense - UCMJ, article 81, (10 U.S.C. 881)

c. Conviction for any conduct which involves any form of sexual abuse, and any conduct of a sexual nature that involves a minor, when charged as an assimilative offense under UCMJ, article 134.

d. Conviction for any conduct which involves any form of sexual abuse, and any conduct of a sexual nature that involves a minor, when charged as conduct unbecoming an officer and a gentleman in violation of UCMJ, article 133, or conduct that is prejudicial to good order and discipline or is Service discrediting, under UCMJ, article 134.

e. Conviction for conduct described in 18 U.S.C. 2421, 2422, 2423, or 2425 when charged as UCMJ, article 133 or 134 offenses.

f. Conviction for conduct described in 18 U.S.C. 2251, 2251A, or 2252 when charged as UCMJ, article 133 or 134 offenses.

g. Peonage or Slavery: Conviction for conduct described in 18 U.S.C. chapter 77 when charged as UCMJ, article 133 or 134 offenses.

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DEFINITION OF TERMS

1. Component Responsible Official (CRO). Person designated by the Chief of Naval Operations as primarily responsible for coordinating, implementing, and managing the DNA Sample Collection Program within Navy.
2. Combined DNA Index System (CODIS). Software that enables Federal, State, and local laboratories to store and compare DNA profiles electronically and thereby link serial crimes to each other and identify suspects by matching DNA from crime scenes to convicted offenders.
3. Commanding Officer (CO). As used in the context of this instruction, commanding officer refers to the individual who has direct oversight, jurisdiction, and continued responsibility for the safety and well being of members concerned.
4. Corrections Management Information System (CORMIS). Software that provides storage and retrieval capability on information about prisoners, facilities, and other data relating to Navy corrections and Navy and Marine Corps Appellate Leave Activity (NAMALA).
5. Deoxyribonucleic Acid (DNA). The class of nucleic acids that contain deoxyribose, found chiefly in the nucleus of cells: responsible for transmitting hereditary characteristics and for the building of proteins.
6. DNA Collection. The act of accomplishing the steps associated with the U.S. Army Criminal Investigation Lab DNA Database Collection Kit Instructions.
7. Federal Bureau of Prisons (FBOP). Federal corrections agency of the Department of Justice responsible for the custody and care of Federal prisoners.
8. Federal Bureau of Investigation (FBI). Principal investigative arm of the United States Department of Justice.
9. United States Army Criminal Investigation Laboratory (USACIL). Full service forensic science laboratory serving Army, Air Force, Navy, Marine Corps, and Coast Guard criminal investigators worldwide.

10. Qualified Medical Personnel. Any medical department personnel qualified to draw blood. This includes, but is not limited to lab technicians, phlebotomists, hospital corpsmen, independent duty hospital corpsmen, nurses, nurse practitioners, and doctors.

11. Qualifying Military Offense (QMO). A QMO is any offense under the UCMJ punishable by a sentence of confinement for more than 1 year (regardless of the sentence imposed), or any other UCMJ offense identified in enclosure (1).