

## NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the Nebraska State Patrol will hold the following rulemaking hearing. The purpose of this hearing is to take testimony and evidence concerning adoption of changes to Title 272, Chapter 20 of the Nebraska Administrative Code, entitled Procedures for the Collection, Transportation, Storage, and Analysis of Samples for the Purpose of the DNA Database, which will be heard on January 21, 2022 from 10:00 a.m. to 11:00 a.m. in the Public Hearing Room at the Nebraska State Patrol Headquarters, 4600 Innovation Drive, Lincoln, Nebraska.

The purpose of the proposal is to update and clarify the regulations related to samples for the Crime Lab DNA Database. There is no expected fiscal impact on state agencies, political subdivisions, or persons being regulated. Copies of the proposed regulations and the Fiscal Impact Statements shall be available for public inspection at the Office of the Secretary of State and on their website at: <https://sos.nebraska.gov/regulations/rules-and-regulations-division>

Interested persons may provide written comments by mail or email no later than the day of the hearing to: NSP Legal Office, PO Box 94907, Lincoln, NE 68509 or [nsp.regulations@nebraska.gov](mailto:nsp.regulations@nebraska.gov). Any written comments will be part of the record and will be considered.

Reasonable accommodations, including auxiliary aids, will be provided to persons with disabilities by contacting Jessica Forch at 402-479-3506 by January 18, 2022.

## FISCAL IMPACT STATEMENT

Agency: Nebraska State Patrol	
Title: 272	Prepared by: Jessica Forch
Chapter: 20	Date prepared: November 29, 2021
Subject: Procedures for the Collection, Transportation, Storage, and Analysis of Samples for the Purpose of the DNA Database	Telephone: (402) 479-3506

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & Description of Impact:

State Agency: **None**

Political Subdivision: **None**

Regulated Public: **No change.**

If indeterminable, explain why:

~~NEBRASKA ADMINISTRATIVE CODE~~

~~Title 272—Nebraska State Patrol~~

~~DNA DATA BASE~~

Title 272 — NEBRASKA STATE PATROL  
CHAPTER 20 — REGULATIONS AND PROCEDURES FOR THE DNA DATA BASE

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## NEBRASKA ADMINISTRATIVE CODE

### Title 272 – Nebraska State Patrol

#### CHAPTER 20 - PROCEDURES FOR THE COLLECTION, TRANSPORTATION, STORAGE, AND ANALYSIS OF SAMPLES FOR THE PURPOSE OF THE DNA DATABASE

##### 000 Definitions and abbreviations

000.01 “NSP” as used in this chapter means Nebraska State Patrol

000.02 “NSPCL” as used in this chapter means Nebraska State Patrol Crime Lab

##### 001 Availability of DNA Collection Kits

001.01 Authorized collection agencies may contact the NSPCL to obtain DNA collection kits free of charge.

##### 002 Person Subject to DNA Sample Collection; Payment of Costs.

002.01 Persons who are subject to DNA sample collection for the State DNA Sample Bank are defined in Neb. Rev. Stat. §29-4106.

002.02 The cost associated with the collection of a DNA sample is set by the NSP.

002.03 Costs collected will be remitted to the NSP Accounting Division for credit to the State DNA Sample and Data Base Fund.

##### 003 Procedure for the eCollection of Database DNA samples.

003.01 DNA samples will be accepted by the NSPCL for inclusion in the DNA Database. The samples will be collected pursuant to Neb. Rev. Stat. §29-4106.01 and §29-4107.

003.02 To ensure the integrity of the DNA samples collected, the following collection procedures will be followed:

003.02A Only one offender will be permitted into the collection area at any one time.

003.02B Open the collection kit and follow the instructions provided for proper DNA sample collection.

003.02C Blood samples should be refrigerated until they are transported to

the NSPCL. If the blood samples are not hand delivered to the NSPCL, it is recommended that an overnight mail service be used. Buccal cell samples may be stored at room temperature. Because the NSPCL is not staffed on weekends or state holidays, careful planning on when DNA samples are collected is necessary to ensure timely deliveries pursuant to Neb. Rev. Stat. §29-4107(2).

~~Human blood or buccal swab specimens will be accepted by Nebraska State Patrol's Crime Laboratory for inclusion in the DNA Database. The person required to submit a DNA sample must be given a choice of having the sample collected by a blood draw or buccal cell swab. If the person does not specify, either method may be used.~~

~~001.01 The collection of blood from any offender pursuant to the DNA Identification Information Act must be accomplished in an EDTA blood tube using accepted medical practice.~~

~~001.01(A) (1) Only individuals (a) who are physicians or registered nurses, (b) who are trained to withdraw human blood for scientific or medical purposes and are obtaining blood specimens while working under orders of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens, or (c) who are both employed by a licensed institution or facility and have been trained to withdraw human blood for scientific or medical purposes shall withdraw blood for a DNA blood sample under the DNA Identification Information Act. Withdrawal of blood shall be performed in a medically approved manner using a collection kit provided or accepted by the Nebraska State Patrol.~~

~~001.02 The collection of buccal samples from any offender pursuant to the DNA Identification Information Act shall be accomplished by persons who successfully complete instruction in Buccal Sample DNA Collection provided or approved by the Nebraska State Patrol or otherwise demonstrate proficiency. The collection of buccal samples will be performed using a collection kit provided or accepted by the Nebraska State Patrol.~~

~~001.03 To ensure the integrity of the DNA samples collected, the following collection procedures shall be followed.~~

~~001.03(A) The collection of DNA samples shall be witnessed by a third person whenever possible. In addition to the DNA sample, one thumb print or fingerprint shall be taken from the person from whom the DNA sample is being collected for the exclusive purpose of verifying the identity of such person.~~

~~001.03(B) Only one offender shall be permitted into the collection area at any one time.~~

~~001.03(C) Kit instructions should be followed except when inconsistent with these regulations. Check the expiration date on the outside of the collection kit. If the kit has expired, return it to the Nebraska State Patrol's Crime Laboratory. If the EDTA blood tube is expired it may be replaced with one that is not expired.~~

~~001.03(D) To ensure the viability of the DNA sample, it must be delivered to the Nebraska State Patrol's Crime Laboratory within five working days of its collection, unless the DNA sample was collected from buccal cell samples, in which case the DNA sample shall be delivered within ten working days after collecting the sample. The blood samples should be refrigerated until they are transported to the laboratory. Buccal swabs samples may be stored at room temperature. Because the laboratory is not staffed on week ends or on state holidays, careful planning relative to the dates DNA samples are collected in order that they can be delivered to the laboratory within the specified time frame above will be necessary. If the blood samples are not hand delivered to the laboratory, it is recommended that an overnight mail service be used.~~

0042 *DNA Database Sample Handling Procedures.*

0042.01 ~~The NSPCL is~~ A laboratory employee designated by the DNA Supervisor, shall be \_\_\_\_\_ responsible for receiving, logging, handling, and tracking all DNA \_\_\_\_\_ samples and related records intended for the DNA Database.

0042.01(A) ~~The I~~information from the DNA Database Collection Card shall will be logged in to the Laboratory Information Management System (LIMS) and each sample will be given a unique identifier.

0042.01(B) Buccal swab samples will shall be stored at room temperature in \_\_\_\_\_ a secure location indefinitely. Blood samples shall will be stored in the refrigerator until they are spotted on FTA paper. Once the blood samples have been spotted, the FTA paper shall be stored at room temperature in a secure

location ~~indefinitely~~ and the liquid blood sample destroyed.

0042.01(C) In the event of a Combined DNA Index System (CODIS) ~~match~~~~hit~~, the fingerprint provided with the DNA sample will be verified.~~DNA samples shall be verified as having been obtained from the person named and fingerprinted on the DNA Database collection card by the Nebraska State Patrol's Criminal Identification Division (CID) or Latent Print section. If it is not possible to verify the fingerprint on the DNA Database Collection Card, this shall be documented on the card by CID or the Latent Print section. If a fingerprint was not obtained at the time the sample was collected a good faith effort will be made to get the sample re-collected. If a sample is not able to be re-collected this would not preclude the release of any match information.~~

0042.01(D) ~~If it is necessary to request a re-collection of either a blood or buccal cell sample, this information will be documented. the DNA sample collected is not of sufficient quality to allow DNA analysis, a re-sample will be necessary. The Nebraska State Patrol will document this information to the collecting agency. However, it~~ It ~~is not the responsibility of the Nebraska State Patrol to insure that re-sampling collection is accomplished. When re-samples are received, the appropriate information shall be entered into the laboratory information system~~

~~003 Availability of DNA Collection Kits. DNA collection kits will be provided by the Nebraska State Patrol and distributed by the Patrol's Crime Laboratory. Correctional facilities and other agencies requesting collection kits shall contact the Crime Laboratory. A laboratory employee designated by the DNA Supervisor will coordinate the shipping of the DNA collection kits.~~

0054 Sample Analysis by the Nebraska State Patrol Crime Laboratory

004.01 The Nebraska State Patrol Crime Laboratory ~~shall~~will analyze the samples in accordance with the Federal DNA Identification Act of 1994, the FBI approved Quality Assurance Standards for ~~Forensic~~DNA Databasing Laboratories, -and Convicted Offender DNA Databasing Laboratories and the NDIS Operational Procedures, and the current NSPCL policies and procedures. ~~Standards for Acceptance of DNA Data for a minimum of the National DNA Index System (NDIS) 13 core STR loci using NDIS approved PCR amplification kit(s).~~

004.02 ~~Remaining blood or buccal swab samples, as well as the DNA profiles obtained from the samples shall be stored in~~



~~a secure location indefinitely.~~

~~004.03 Data analysis results shall be technically reviewed by a second qualified DNA analyst.~~

~~004.03(A) Any sample that does not meet the technical review guidelines shall be re-analyzed with the appropriate kit.~~

~~004.04 Import/Enter the data for all samples that meet the technical review guidelines into CODIS.~~

~~004.05 Store the data results in a secure location indefinitely.~~

~~0065~~ Sample Analysis by a Contract Laboratory.

~~006.01 DNA samples may be analyzed by a Contract Laboratory in accordance with the DNA Identification Act of 1994, the FBI approved Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories, and the NDIS-Operational Procedures, and current NSPCL policies and procedures. Standards for Acceptance of DNA Data. The analysis parameters shall be written into the contract with the Contract Laboratory.~~

~~006~~ Quality Assurance Guidelines for Laboratories Which Submit DNA Profiles to the Nebraska State DNA Database.

~~006.01 All Nebraska convicted offender DNA profiles, as well as all other DNA profiles offered to the NE State Patrol Crime Lab for inclusion in the Nebraska State DNA Index System (SDIS) and/or National DNA Index System (NDIS), must be produced in accordance with the DNA Identification Act of 1994, the FBI approved Quality Assurance Standards for Forensic DNA and Convicted Offender DNA Databasing Laboratories and the NDIS Standards for Acceptance of DNA Data.~~

~~006.01(A) DNA profiles produced by laboratories that are accredited by organizations such as, but not limited to, the American Society of Crime Laboratory Directors, Laboratory Accreditation Board (ASCLD/LAB) Legacy or International, or Forensic Quality Services (FQS) are considered to meet the standards set forth in the Assurance Standards for Forensic DNA and Convicted Offender DNA Databasing Laboratories.~~

~~007~~ Confidentiality of DNA samples and DNA records; ~~confidentiality.~~

~~007.01 DNA samples and/or records contained in the Nebraska State DNA Database will be confidential except as otherwise specified in the DNA Identification Act of 1994, the NDIS Operational Procedures, and current NSPCL policies and procedures.~~

~~DNA records contained in the State DNA Database shall be made~~

~~available~~

~~007.01(A) To law enforcement agencies and participating CODIS laboratories which serve such agencies; and~~

~~007.01(B) Upon written or electronic request and in furtherance of an official investigation of a criminal offense or offender or suspected offender.~~

007.02 ~~The identity of the requestor will be verified prior to the release of database samples, records, and/or information. Recipients of DNA records and/or samples shall enter into a written agreement with the Nebraska State Patrol averring to comply with the procedures governing the expungement of DNA records and samples.~~

007.03 ~~Recipients of DNA samples and/or records will enter into a written agreement with the NSPCL averring to comply with the procedures governing the expungement of DNA records and samples. Procedures for the verification of the identity and authority of the person requesting information from the State DNA Database.;~~

~~007.03(A) Requests for DNA records from the State DNA Database shall be submitted to the DNA laboratory on agency letterhead or through NDIS.~~

~~007.03(B) The identity of the person requesting DNA records shall be verified prior to release of DNA Database information by personal knowledge of the individual, requests made through NDIS, requests made on agency letterhead, or personal contact with the agency.~~

~~007.04 If a CODIS match is found, this information can be provided to the person requesting such information.~~

~~007.04(A) The preliminary CODIS match must be confirmed by obtaining and analyzing a suitable reference sample from the offender or suspected offender, which can then be compared to evidentiary samples for the purposes of inclusion or exclusion.~~

008 *Expungement of DNA Records from the Combined DNA Index System.*

008.01 Upon receipt of a written request for expungement pursuant to Article 41, Neb. Rev. Stat. § 21-4109 and a certified copy of the final court order reversing and dismissing the conviction, or other documentation from individuals authorized to direct such expungement, the NSPCL will Nebraska State Patrol (NSP) shall purge all DNA records and identifiable

~~information in the State DNA Database in CODIS pertaining to the person and destroy all DNA samples from the person in accordance with the Nebraska State Patrol Crime Laboratory Standard Operating Procedures and the National DNA Index System (NDIS) Operational Procedures.~~

008.02 ~~The State CODIS Administrator or their designee, will perform the expungement process and submit the proper notifications pursuant to Neb. Rev. Stat. §29-4109, the NDIS Operational Procedures, and current NSPCL policies and procedures.~~

~~Upon receipt of expungement confirmation from NDIS, a letter shall be prepared by the Nebraska State Patrol certifying the expungement to the person who requested or was granted expungement.~~

~~008.03 The Nebraska State Patrol shall provide written notification of expungement to any person to whom the DNA records or samples were made available within 10 calendar days~~

~~008.034 Upon receipt of NSPCL notification of expungement: from the Nebraska State Patrol:~~

008.04(A) Recipients of DNA records and samples ~~will shall~~ comply with the expungement provisions within 10 calendar days of receipt of such notice that expungement has been granted. Recipients will certify in writing to NSPCL that such compliance has been effectuated.

~~008.04(B) Recipients of DNA records and samples shall certify in writing to the Nebraska State Patrol that compliance with the expungement provisions has been effectuated.~~

## ~~009 Definitions~~

~~009.01 "Combined DNA Index System" means the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories;~~

~~009.02 DNA means deoxyribonucleic acid which is located in the cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification;~~

~~009.03 DNA record means the DNA identification information stored in the State DNA Data Base or the Combined DNA Index System which is derived from DNA typing test results;~~

~~009.04~~ DNA sample means a blood, tissue, or bodily fluid sample provided by any person covered by the DNA Identification Information Act for analysis or storage, or both;

~~009.05~~ DNA typing tests means the laboratory procedures which evaluate the characteristics of a DNA sample which are of value in establishing the identity of an individual;

~~009.06~~ Law enforcement agency includes a police department, a town marshal, a county sheriff, and the Nebraska State Patrol;

~~009.07~~ Other specified offense means misdemeanor stalking pursuant to sections 28-311.02 to 28-311.05 or false imprisonment in the second degree pursuant to section 28-315 or an attempt, conspiracy, or solicitation to commit stalking pursuant to sections 28-311.02 to 28-311.05, false imprisonment in the first degree pursuant to section 28-314, false imprisonment in the second degree pursuant to section 28-315, knowing and intentional sexual abuse of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386, or a violation of the Sex Offender Registration Act pursuant to section 29-4011; and

~~009.08~~ Released means any release, parole, furlough, work release, prerelease, or release in any other manner from a prison, a jail, or any other detention facility or institution.

~~010~~ *Person subject to DNA sample; payment of costs.*

~~010.01~~ A person who is convicted of a felony offense or other specified offense on or after July 15, 2010, who does not have a DNA sample available for use in the State DNA Sample Bank, shall, at his or her own expense, have a DNA sample collected:

~~010.01(A)~~ Upon intake to a prison, jail, or other detention facility or institution to which such person is sentenced. If the person is already confined at the time of sentencing, the person shall have a DNA sample collected immediately after the sentencing. Such DNA samples shall be collected at the place of incarceration or confinement. Such person shall not be released unless and until a DNA sample has been collected; or

~~010.01(B)~~ As a condition for any sentence which will not involve an intake into a prison, jail, or other detention facility or institution. Such DNA samples shall be

~~collected at a detention facility or institution as specified by the court. Such person shall not be released unless and until a DNA sample has been collected as follows:~~

~~(i) In any county containing a city of the metropolitan class, a person placed on probation or who received a penalty of a fine or time served shall have such DNA sample collected by a probation officer at a probation office. Such person shall not be released unless and until a DNA sample has been collected; and~~

~~(ii) In all other counties, a person placed on probation shall have such DNA sample collected by a probation officer at a probation office, and a person not placed on probation who receives a penalty of a fine or time served shall have such DNA sample collected by the county sheriff. Such person shall not be released unless and until a DNA sample has been collected.~~  
~~010.01(C) A person who has been convicted of a felony offense or other specified offense before July 15, 2010, for use in the State DNA Sample Bank, and who is still serving a term of confinement or probation for such felony offense or other specified offense on July 15, 2010, shall not be released prior to the expiration of his or her maximum term of confinement or revocation or discharge from his or her probation unless and until a DNA sample has been collected.~~

~~010.01(D) A person who is serving a term of probation and has a DNA sample collected pursuant to this section shall pay all costs associated with the collection of the DNA sample.~~

~~010.02 The cost associated with the collection of a DNA sample is \$25.00 (twenty five dollars).~~

~~010.03 Costs collected shall be remitted to the State Treasurer for credit to the State DNA Sample and Data Base Fund.~~

~~These regulations shall become effective on or after July 19, 2012, when approved by the Attorney General and Governor, and filed with the Secretary of State.~~

# NEBRASKA ADMINISTRATIVE CODE

## Title 272 - Nebraska State Patrol

### CHAPTER 20 - PROCEDURES FOR THE COLLECTION, TRANSPORTATION, STORAGE, AND ANALYSIS OF SAMPLES FOR THE PURPOSE OF THE DNA DATABASE

#### 000 *Definitions and abbreviations*

000.01 “NSP” as used in this chapter means Nebraska State Patrol

000.02 “NSPCL” as used in this chapter means Nebraska State Patrol Crime Lab

#### 001 *Availability of DNA Collection Kits*

001.01 Authorized collection agencies may contact the NSPCL to obtain DNA collection kits free of charge.

#### 002 *Person Subject to DNA Sample Collection; Payment of Costs.*

002.01 Persons who are subject to DNA sample collection for the State DNA Sample Bank are defined in Neb. Rev. Stat. §29-4106.

002.02 The cost associated with the collection of a DNA sample is set by the NSP.

002.03 Costs collected will be remitted to the NSP Accounting Division for credit to the State DNA Sample and Data Base Fund.

#### 003 *Collection of Database DNA Samples*

003.01 DNA samples will be accepted by the NSPCL for inclusion in the DNA Database. The samples will be collected pursuant to Neb. Rev. Stat. §29-4106.01 and §29-4107.

003.02 To ensure the integrity of the DNA samples collected, the following collection procedures will be followed:

003.02A Only one offender will be permitted into the collection area at any one time.

003.02B Open the collection kit and follow the instructions provided for proper DNA sample collection.

003.02C Blood samples should be refrigerated until they are

transported to the NSPCL. If the blood samples are not hand delivered to the NSPCL, it is recommended that an overnight mail service be used. Buccal cell samples may be stored at room temperature. Because the NSPCL is not staffed on weekends or state holidays, careful planning on when DNA samples are collected is necessary to ensure timely deliveries pursuant to Neb. Rev. Stat. §29-4107(2).

004    *DNA Database Sample Handling*

004.01    The NSPCL is responsible for receiving, logging, handling, and tracking all DNA samples and related records intended for the DNA Database.

004.01A    Information from the DNA Database collection card will be logged into the Laboratory Information Management System (LIMS) and each sample will be given a unique identifier.

004.01B    Buccal cell samples will be stored at room temperature in a secure location. Blood samples will be stored in the refrigerator until they are spotted on FTA paper. Once the blood samples have been spotted, the FTA paper will be stored at room temperature in a secure location and the liquid blood sample destroyed.

004.01C    In the event of a Combined DNA Index System (CODIS) hit, the fingerprint provided with the DNA sample will be verified.

004.01D    If it is necessary to request a re-collection of either a blood or buccal cell sample, this information will be documented. It is not the responsibility of the NSPCL to ensure that re-collection is accomplished.

005    *Sample Analysis by the NSPCL*

005.01    The NSPCL will analyze the samples in accordance with the Federal DNA Identification Act of 1994, the FBI Quality Assurance Standards for DNA Databasing Laboratories, the NDIS Operational Procedures, and current NSPCL policies and procedures.

006    *Sample Analysis by a Contract Laboratory*

006.01    DNA samples may be analyzed by a Contract Laboratory in accordance with the DNA Identification Act of 1994, the FBI Quality Assurance Standards for DNA Databasing Laboratories, NDIS Operational



Procedures, and current NSPCL policies and procedures.

007    *Confidentiality of DNA Samples and DNA Records*

007.01        DNA samples and/or records contained in the Nebraska State DNA Database will be confidential except as otherwise specified in the DNA Identification Act of 1994, the NDIS Operational Procedures, and current NSPCL policies and procedures.

007.02        The identity of the requestor will be verified prior to the release of database samples, records, and/or information.

007.03        Recipients of DNA samples and/or records will enter into a written agreement with the NSPCL averring to comply with the procedures governing the expungement of DNA records and samples.

008    *Expungement of DNA Records from the Combined DNA Index System.*

008.01        Upon receipt of a written request for expungement pursuant to Neb. Rev. Stat. §29-4109 and a certified copy of the final court order reversing and dismissing the conviction, or other documentation from individuals authorized to direct such expungement, the NSPCL will purge all DNA records in CODIS pertaining to the person and destroy all DNA samples from the person.

008.02        The State CODIS Administrator or their designee, will perform the expungement process and submit the proper notifications pursuant to Neb. Rev. Stat. §29-4109, the NDIS Operational Procedures, and current NSPCL policies and procedures.

008.03        Upon receipt of NSPCL notification of expungement:

008.03(A)      Recipients of DNA records and samples will comply with the expungement provisions with 10 calendar days of receipt of such notice that expungement has been granted. Recipients will certify in writing to NSPCL that such compliance has been effectuated.