

FDDU Procedures for the Expungement and/or Removal of a Sample

1 Scope

These procedures apply to Federal DNA Database Unit (FDDU) personnel who determine whether an expungement or removal is required and who remove the DNA profile and destroy the DNA sample in response to a proper request for expungement/removal.

2 Background

The *DNA Fingerprint Act of 2005* (42 U.S.C. 13701) amended section 210304 of the *DNA Identification Act of 1994* (42 U.S.C 14132) to include the following:

The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) the DNA analysis of a person included in the index –

- (i) on the basis of conviction for a qualifying Federal offense¹ or a qualifying District of Columbia offense (as determined under sections 3 and 4 of the *DNA Backlog Elimination Act of 2000* (42 U.S.C 14135a, 14135b),² respectively, if the Director receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned; or
- (ii) on the basis of an arrest under the authority of the United States, if the Attorney General receives, for each charge against the person on the basis of which analysis was or could have been included in the index, a certified copy of a final court order³ establishing that such charge has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable time period.

There are three categories of removals: Legal Expungement, Administrative Removal, and Quantity Not Sufficient (QNS) Removal.

Legal: A Legal Expungement is a complete removal of a DNA profile from Sample Tracking and Control Software (STACS) and COmbined DNA Index System (CODIS) due to an overturned conviction, or for arrests, if charges have been dismissed or have resulted in an acquittal or that no charge(s) was filed. The sample(s) submitted to the FDDU (e.g., liquid blood, bloodstain cards, buccal cards) and any extracted/amplified DNA (if applicable) must be

¹ A qualifying Federal offense is defined in section 3(d) of the DNA Analysis Backlog Elimination Act of 2000; section 503 of the USA Patriot Act of 2001; section 203(b) of the Justice For All Act of 2004; section 1004(a) of the DNA Fingerprint Act of 2005; section 155 of the Adam Walsh Child Protection and Safety Act of 2006.

² For a qualifying District of Columbia offense, also refer to District of Columbia Act 14-77.

³ A court order is not considered "final" if time remains for an appeal or application for discretionary review with respect to the order.

destroyed. Also, the information obtained from the FD-936 *Request for National DNA Database Entry* must be deleted from STACS.

Administrative Removal: An Administrative Removal is generally warranted under one or more of the following circumstances:

- It is determined that the DNA collection was not pursuant to the current Federal legislation which requires that DNA samples are collected by agencies of the United States from individuals who are arrested, facing charges, or convicted (Federal, Military, or District of Columbia offense), and from non-U.S. persons who are detained under the authority of the United States, or
- The collection agency or other appropriate authority provides written notification that such a removal is warranted, or
- A procedural issue arises regarding the validity of a sample.

Quantity Not Sufficient (QNS) Removal: A QNS Removal is performed when a sample fails to yield a successful DNA profile following exhaustive testing or a sample is determined to be inadequate for DNA testing. A QNS Removal must be performed in order to remove the sample from the processing work lists in STACS.

3 Equipment/ Materials/ Reagents

CODIS Software (FBI Laboratory)

Laserfiche Software (Laserfiche Inc.)

Sample Tracking and Control System (STACS) Software (STACS DNA Inc.)

4 Procedures

4.1 Logging a New Expungement/Removal into STACS

4.1.1 All requests for expungement/removal must be logged into the Sample Expungement module of STACS, if a sample has been received by the FDDU.

4.1.2 Samples can be removed from processing in STACS and made available for expungement/removal at any point in the analytical process. Alternatively, a sample may be designated for expungement/removal by creating an alert for the submission in the STACS *BOLO* module (see FDDU 302).

4.1.3 A new sample expungement record is initiated in the Sample Expungement module of STACS. The user must ensure that the following items are appropriately selected:

- Type of expungement/removal: Legal, Admin (Administrative Removal), or QNS.

- Recipient of expungement/removal correspondence
- Subject of expungement/removal
 - If no submission is found, notify the individual requesting the expungement/removal that a sample has not been received by the FDDU (see Appendix A for example language and format).
- Status of expungement/removal
 - **Pending:** A status of *Pending* is the default status that is given to all expungement/removal requests, and indicates that the sample is in the process of being expunged/removed.
 - **Confirmed:** A status of *Confirmed* is given to an expungement/removal that has been confirmed as a valid request and the appropriate steps have been completed. See Section 4.5.
 - **Invalid:** A status of *Invalid* is given to an expungement/removal request that is determined to be invalid (e.g., invalid request for removal, additional qualifying offenses). See Section 4.4.

4.2 Legal Expungement

4.2.1 Requests for Legal Expungements must be submitted as a written or electronic request. Requests relating to expungement of qualifying state or Department of Defense convictions or arrests shall be referred to the appropriate state or the Department of Defense.

4.2.2 A request for a Legal Expungement must be received from the person seeking the expungement or his/her legal representative. A valid request for a Legal Expungement must include sufficient identifying information (e.g., Full Name, FBI#, Social Security Number, Date of Birth) to determine if the person is included in the FDDU DNA database.

4.2.3 The request for a Legal Expungement must be accompanied by a certified copy of the final court order dismissing the arrest or conviction of the subject. The copy of the final court order must contain a certification that it is a true and accurate copy of the original court order and be signed and dated by an appropriate court official such as a court clerk. The court order itself shall be signed by a judge, dated, and include sufficient identifying information (e.g., full name, FBI#, social security number, date of birth) to determine the identity of the person.

4.2.4 If the request for a Legal Expungement does not include a copy of the final court order, the sender may be contacted to provide additional records. If additional records cannot be provided, the requestor will be notified in writing as to the reason the Legal Expungement cannot be processed. Change the status of the Legal Expungement to *Invalid*, see Section 4.4.

4.3 Administrative Removal

4.3.1 FDDU personnel are responsible for ensuring the accuracy and integrity of the DNA data in the FDDU DNA database.

4.3.2 In the event of an administrative error during sample collection (e.g., collection of a DNA sample from an individual without a qualifying status), written or electronic notification may be provided to the FDDU stating the subject involved and why the sample should not be included in the FDDU DNA database. If necessary, FDDU will contact the submitting agency or other appropriate authority to clarify or confirm the reason why the sample should not have been submitted. In addition, proper identifying information (e.g., BOP #, FBI #, SSN, Alien #, collection kit barcode) must be provided in order to identify the offender sample in question.

When it is determined through other FDDU processes (see FDDU 302 and 311) that a sample was collected from the incorrect person, the administrative removal of the sample can be initiated by FDDU personnel. Records must be available to justify the administrative removal.

4.3.3 If FDDU personnel determine that the DNA sample cannot be included in the FDDU DNA database, the Administrative Removal process will continue. If it is determined that the request is invalid, the requestor may be contacted to provide additional supporting records. If additional records cannot be provided, the requestor will be notified in writing as to the reason for such determination and the status of the Administrative Removal will be changed to *Invalid*, see Section 4.4.

4.4 Invalid Requests for Legal Expungements/Administrative Removals

4.4.1 The reason for the invalid status must be recorded in the expungement record. Change the status of the expungement record from *Pending* to *Invalid*.

4.4.2 A *Rejection Letter* detailing why the sample cannot be expunged/removed must be generated and sent to the requestor.

4.5 Valid Requests for Legal Expungements and Administrative Removals

4.5.1 Complete and record all applicable items on the *Expungement/Removal Checklist* in STACS as follows:

- a. Required for Legal Expungements only: Review the criminal history of the subject to corroborate that the person was included in the FDDU DNA Database for an offense that was overturned or the charges were dismissed pursuant to court order, and that the individual has no other qualifying status.
 - i. If the offender has an additional qualifying status, then the request for expungement shall be returned to the requestor with a notation that the person is included in the FDDU DNA database for a separate qualifying status.
Change status to *Invalid*, and continue as in Section 4.4 above.
- b. Ensure all DNA profiles, records and identifiable information in the CODIS database pertaining to the subject have been deleted at the Local and State DNA Index Systems (LDIS, SDIS).
 - i. Ensure removal of the person's DNA profile from the National DNA Index System (NDIS), by executing a data upload for NDIS.

- c. Retrieve the sample(s) from the appropriate storage location. With a witness present, destroy the sample(s) by placing in the appropriate biohazard trash receptacle. Both individuals must record the destruction of the sample
 - i. If any extracted and/or amplified DNA exists, it must also be destroyed.
- d. Retrieve the FD-936 (if available) and mark "EXPUNGED" at the top of the form.
 - i. In the event that the FD-936 has been destroyed prior to the request for expungement/removal, the destruction will be noted in the checklist.
 - ii. If the FD-936 is unavailable due to preparation for large-scale destruction, the location of the FD-936 will be noted (e.g., pallet and/or box number), and the Expungement/Removal may continue without the retrieval of the FD-936. Subsequent records regarding the FD-936 destruction will be maintained in STACS and/or Laserfiche.
- e. Remove the FD-936 image from STACS and/or Laserfiche (as applicable).
- f. If the FD-936 or associated fingerprints have been submitted to CJIS, a representative of the CJIS group must be notified to have all associated identifying information purged from Next Generation Identification (NGI) criminal history database. Records of this notification and response from CJIS will be maintained.
- g. Electronic copies of supporting records will be maintained in STACS and/or Laserfiche.

4.5.2 The *Confirmation Letter* recording the completion of the expungement/removal process must be generated and sent to the appropriate person (e.g., collector, requestor).

NOTE: The subject information in STACS must not be deleted until the *Confirmation Letter* has been generated.

4.5.3 Once the checklist has been properly completed in STACS and the *Confirmation Letter* has been generated, change the status of the expungement record from *Pending* to *Confirmed*.

4.5.4 If not automatically performed by the STACS software, all identifying information and the FD-936 image must be deleted from the submission record.

4.6 Quantity Not Sufficient (QNS) Removal

4.6.1 In the Sample Expungement module, open appropriate sample record on the work list, and select/verify the individual/agency to receive notification.

4.6.2 Change the status from *Pending* to *Confirmed*. A *Re-submission Letter* must be generated and sent to the collector or other appropriate person.

4.7 Special Case: Expunging/Removing a Matched DNA Profile

If it is determined that a DNA profile and the data relating to a candidate match must be expunged/removed, FDDU personnel must notify the other laboratory in writing that an expungement/removal is being performed. A copy of this notification will be maintained with the expungement record. Proceed with appropriate expungement and/or removal procedures (see Section 4.5).

4.7.1 A copy of the records requesting expungement or removal (i.e., verification of no qualifying offense), the *Expungement/Removal Checklist* and the expungement letter should be maintained with the appropriate Match Confirmation File.

4.7.2 When a valid Legal Expungement request is received and a Match Confirmation Letter has already been issued, the other laboratory(ies) involved in the candidate match(es) will be notified by the FDDU that an expungement is being performed. In addition, the NDIS Custodian must be contacted (e.g., via e-mail, phone) to remove all candidate matches associated with the DNA record. The State CODIS Administrator may also be notified.

5 Limitations

5.1 A legal expungement cannot be performed without a certified court order signed by a Judge.

5.2 An administrative removal cannot be performed without written or electronic records stating the reason for removal.

6 Safety

6.1 All FDDU samples are considered potentially infectious regardless of the perceived status of the source individual or the age of the material. All FDDU personnel who work with such material will follow the “Bloodborne Pathogen Exposure Control Plan” found in the most current version of the *FBI Laboratory Safety Manual*.

6.2 Refer to the “Safe Work Practices and Procedures”, “Bloodborne Pathogen Exposure Control Plan”, “Personal Protective Equipment”, and “Chemical Hygiene Plan” sections of the *FBI Laboratory Safety Manual* for important personal safety information prior to conducting these procedures.

6.3 Refer to the “Hazardous Waste Disposal” section of the *FBI Laboratory Safety Manual* for important information concerning proper disposal of the chemicals used in these procedures as well as the biohazardous wastes generated.

7 References

Federal Bureau of Investigation. Quality Assurance Standards for DNA Databasing Laboratories, current version.

FDDU Quality Assurance Manual

FBI Laboratory Quality Assurance Manual

FBI Laboratory Safety Manual

National DNA Index System Procedures

STACS DNA Inc. *Sample Tracking and Control System (STACS) User's Guide*.

DNA Identification Act of 1994 (42 U.S.C. 14132)

DNA Backlog Elimination Act of 2000 (42 U.S.C. 14135, P.L. 106-546, H.R. 4640)

USA Patriot Act of 2001 (P.L. 107-56, H.R. 3162)

Justice for All Act of 2004 (P.L. 108-405, H.R. 5107)

DNA Fingerprint Act of 2005 (P.L. 109-162, H.R. 3402)

Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901, P.L. 109-248, H.R. 4472)

District of Columbia Act 14-77. *DNA Sample Collection Emergency Act of 2001*. [Bill 14-231], Title 48 District of Columbia Regulations (DCR) Section 5938

District of Columbia DC Code 22-4151

Title 28 Code of Federal Regulations (CFR), Section 28.2

Rev. #	Issue Date	History
3	06/26/2014	Clarified Administrative Removals in section 2 so that one or more of the circumstances are needed. In section 7.4.3.2, deleted paragraph regarding procedure for when a notification is received that a sample should not be included in the database. Updated procedure for administrative removals in section 7.4.3.2. Added examples of biographical information to section 7.4.5.5(g). Updated procedure for QNS removals in section 7.4.6.1 Deleted section 10.2. Edited section 11.1 so that all FDDU samples are considered potentially infectious. Deleted Appendices A-D and all associated references throughout entire document, and renamed Appendix E as Appendix A to reflect this change.
4	05/03/2017	Streamlined and updated document to reflect changes due to implementation of electronic checklist and upgraded expungement module in STACS. Removed FDDU Chief or designee as appropriate FDDU personnel can perform most tasks. Changed document to record throughout.
5	01/15/2020	Updated the scope to apply to personnel. Updated equipment list 4.2.2 Removed and qualifying offense Reworded 4.2.4 Edited section 4.5.1 to update for destruction of FD-936 prior to request or palletization for large-scale destruction, and removal from Laserfiche. 4.7 Simplified to other laboratory 4.7.1 Revised to Match Confirmation File

Approval

Redacted - Signatures on File

FDDU Chief

Date: 01/14/2020

DNA Technical Leader

Date: 01/14/2020

Appendix A: *Example Letter for Sample Removal Request - No Sample Received*

Redacted - Form on File