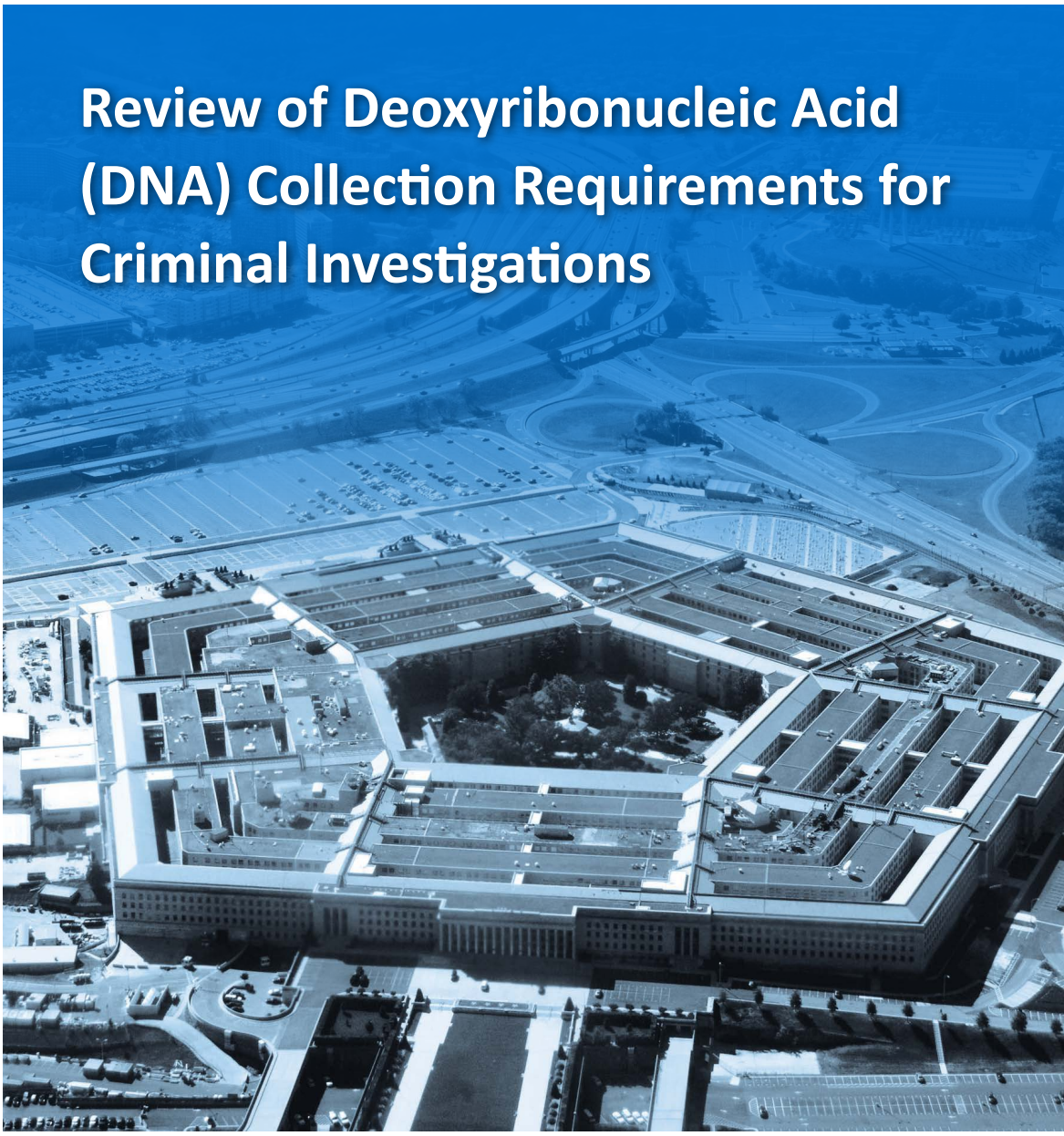
Report No. DODIG 2014-029

INSPECTOR GENERAL

U.S. Department of Defense

FEBRUARY 27, 2014

Review of Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations



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Results in Brief

Review of Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations

February 27, 2014

Objective

We evaluated whether Department of Defense (DoD) and U.S. Coast Guard (USCG) authorities collected Deoxyribonucleic Acid (DNA) samples from service members convicted of certain offenses and submitted them to the United States Army Criminal Investigation Laboratory (USACIL) for analysis and subsequent inclusion in the Combined DNA Index System (CODIS) as federal law and DoD Instruction (DoDI) mandate.

Findings

DoD and USCG authorities did not submit 282 of the 3,536 required DNA samples to USACIL for inclusion in CODIS during our evaluation sample period of June 1, 2010, through October 31, 2012. The evaluated agencies had an overall 92 percent compliance rate.

Recommendations

- We recommend the Secretaries of the Military Departments and Commandant of the Coast Guard take prompt action to submit the missing 282 DNA samples required to be in CODIS.

- We recommend the Secretaries of the Military Departments and Commandant of the Coast Guard take prompt action to ensure DNA sample collections for future arrestees and convicted offenders conform to DoDI 5505.14.

Management Comments

Overall, the Secretaries of the Military Departments and the Commandant of the Coast Guard concurred with our report and recommendations. They agreed with our recommendations to promptly submit any missing DNA samples to CODIS but expressed concern regarding their jurisdictional and legal authority to collect samples from individuals no longer subject to the Uniform Code of Military Justice (UCMJ). We recognize there may be hindrances in attempting to collect the missing samples. However, we believe the Services should pursue all possible avenues in their efforts to collect and submit the required samples to CODIS.

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Recommendations Table

Management	Recommendations Requiring Comment	Management Comments
Secretary of the United States Army	2	Concur with comment
Secretary of the Navy	2	Concur with comment
Secretary of the United States Air Force	2	Concur with comment
Commandant of the United States Coast Guard	2	Concur with comment

INSPECTOR GENERAL
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February 27, 2014

MEMORANDUM FOR ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
NAVAL INSPECTOR GENERAL
AUDITOR GENERAL, DEPARTMENT OF THE ARMY
DEPARTMENT OF HOMELAND SECURITY INSPECTOR GENERAL

SUBJECT: Review of Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations (Report No. DODIG 2014-029)

This final report is provided for information and use. We evaluated whether DoD and U.S. Coast Guard authorities collected DNA samples from service members convicted of certain offenses and submitted them to the U.S. Army Criminal Investigation Laboratory (USACIL) for analysis and subsequent inclusion in the Combined DNA Index System (CODIS) as federal law and DoD policy mandate.

We found that DoD and Coast Guard authorities did not submit 282 of 3536 required DNA samples to USACIL for inclusion in CODIS during our evaluation sample period of June 1, 2010, through October 31, 2012. The evaluated agencies had an overall 92 percent compliance rate.

We considered management comments on a draft of this report when preparing the final report. The Secretaries of the Military Services and Commander of the Coast Guard concurred with our recommendations to take prompt action to submit the missing 282 DNA samples required to be in CODIS, and ensure DNA sample collections for future arrestees and convicted offenders conform to DoDI 5505.14.

Management's comments were responsive to the draft and conformed to the requirements of DoD Directive 7650.3; therefore, additional comments are not required.

We appreciate the courtesies extended to the review staff. For additional information on this report, please contact Mr. John Perryman, Director of Oversight, (703) 604-8765.

Randolph R. Stone
Deputy Inspector General
Policy and Oversight

Contents

Introduction

Objective

Our objective was to evaluate compliance with DNA collection requirements in Department of Defense Instruction (DoDI) 5505.14, *"Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations,"* May 27, 2010, (Incorporating Change 1, April 24, 2012).

We evaluated whether the Military Services (Services) and U.S. Coast Guard (USCG) law enforcement and confinement authorities collected DNA samples from service members convicted of certain qualifying offenses[1] between June 1, 2010 and October 31, 2012, and submitted those samples to USACIL for analysis and inclusion into the Combined DNA Index System (CODIS). See Appendix B for a detailed list of qualifying offenses.

Background

Federal Law

Federal law authorizes the collection of DNA samples from individuals arrested, facing charges, or convicted of crimes and from non-United States citizens detained under the authority of the United States.[2] The law requires processing DNA samples for indexing in national databases and defines a selective process for removing individual samples from the databases.[3] The Federal Bureau of Investigation (FBI) is authorized to operate and maintain a national database where DNA profiles[4] can be compared to generate leads in criminal investigations.[5]

Department of Defense Instruction

In May 2010, DoD issued DoDI 5505.14, which implemented federal law and established requirements and responsibilities for DNA collection within DoD.[6] The instruction

[1] Offenses generally include any Uniform Code of Military Justice (UCMJ) offense for which confinement exceeding 1 year may be imposed at sentencing. In the civilian justice system, these are often referred to as felonies.

[2] 42 U.S.C. § 14135a (a)(1). *See* Appendix A for additional references; *see also* Congressional Research Service, *"DNA Testing in Criminal Justice: Background, Current Law, Grants, and Issues,"* Nathan James, December 7, 2011, Page 20, para. 1, lines 1-3.

[3] When arrest does not result in conviction, federal law mandates DNA samples be expunged upon an arrestee's showing of discharge or acquittal. 42 U.S.C. § 14132(d). No provision requires expungement upon a convict's completion of his/her sentence.

[4] Once a DNA sample is processed and put into CODIS, it is technically referred to as a DNA profile. For purposes of clarity, we will use the term DNA sample for the majority of this report.

[5] 42 U.S.C. § 14132(a).

[6] A Directive Type Memorandum issued April 18, 2005, by the Undersecretary of Defense for Personnel and Readiness, guided the DNA collection process until the publication of formal DoD guidance in 2010.

applies to defense criminal investigative organizations (DCIOs), other DoD law enforcement organizations, confinement facilities, and the U.S. Coast Guard Investigative Service (USCGIS).[7]

The instruction requires DoD law enforcement organizations, corrections authorities, and the USCGIS to collect DNA samples and forward them to USACIL for inclusion in CODIS. The policy generally requires collecting and submitting DNA samples on any service member accused or convicted of a qualifying offense. See Appendix B for a list of offenses.

United States Army Criminal Investigative Laboratory (USACIL)

USACIL, the only full-service forensic laboratory in DoD, provides forensic support to DCIOs and the USCGIS. It is the DoD executive agent for DNA analysis of samples collected from military arrestees and convicted offenders. USACIL provides a collection kit to law enforcement organizations to collect samples. Its DNA Database Section receives and processes the kits. DNA profiles developed from convicted offender and arrestee DNA samples are then entered into CODIS.

The Combined DNA Index System (CODIS)

In addition to identifying the Combined DNA Index System, the acronym CODIS is used generically to describe the FBI program for supporting criminal justice DNA databases and the software used to operate the databases. CODIS contains DNA profiles on arrestees, convicted offenders, unsolved crime scene evidence, and missing persons.

The National DNA Index System or NDIS is considered one part of CODIS and contains DNA profiles contributed by federal, state, and local participating forensic laboratories. Currently, laboratories in all 50 states, the District of Columbia, the federal government, and Puerto Rico, along with USACIL, participate in CODIS. The system enables state, local, and federal law enforcement crime laboratories to compare DNA profiles electronically.[8]

Scope and Methodology

Our review assessed the Services' and USCG's compliance with DoDI 5505.14 since its promulgation in May 2010. We focused on whether the DCIOs, other law enforcement and corrections organizations, and the USCGIS complied with requirements for DNA collection and submission.

[7] The instruction applies to the USCGIS by agreement with the Department of Homeland Security.

[8] CODIS and NDIS Fact Sheet, http://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet.

Specifically, we sought to determine if DNA samples for service members convicted of certain qualifying offenses between June 1, 2010 and October 31, 2012, were collected and submitted to USACIL for inclusion in CODIS. People arrested, but not convicted, may apply to have their DNA sample expunged from CODIS. Therefore, we focused our review on persons required to be in CODIS after disposition of their criminal case for offenses identified in Appendix B.

We asked the Services' Judge Advocate Generals (JAG), the Staff Judge Advocate to the Commandant of the Marine Corps, and the USCG's JAG for information on service members convicted of a qualifying offense between June 1, 2010 and October 31, 2012. They identified 3,536 individuals convicted during our sample period. We then attempted to match those names to entries in the CODIS database.

We developed a list of required convicted offender names that were not found in CODIS and forwarded those names back to the Service representatives for further research and validation. We asked Service representatives to submit supporting documentation and/or justification for missing names. Finally, we re-checked the updated information the Service representatives sent us against the CODIS database.

Finding

DNA samples for 282 convicted offenders were not in CODIS.

From June 1, 2010, to October 31, 2012, there were a total of 3,536 convicted service members who were required to have a DNA sample in CODIS. There were 3,254 samples in CODIS, leaving a total of 282 samples (8 percent) not in CODIS.

Discussion

DoD and USCG Law Enforcement and Corrections Organizations Did Not Submit 282 of the 3,536 Required DNA Samples of Qualifying Offenders Within Our Sample Period

The JAGs provided names for 3,536 service members who were convicted of qualifying offenses requiring a DNA sample in CODIS. We attempted to match each name in the CODIS database. We then developed lists of "unmatched" names of convicted service members we did not find in CODIS. We sent those names to the JAGs and military criminal investigative organizations (MCIO) representatives for further research and validation. Additionally, we asked the JAGs and MCIOs to submit supporting documentation (e.g., log entries, emails, memos, etc.) and justification for unmatched names they believed to be in error.

After validating our findings with JAG, MCIO, and USACIL representatives, we determined 282 names (8 percent) of convicted offenders were not in CODIS. The overall compliance rate for DNA sample collection and submission was 92 percent. Our analysis did not determine the reason why samples that should have been included in CODIS were not.

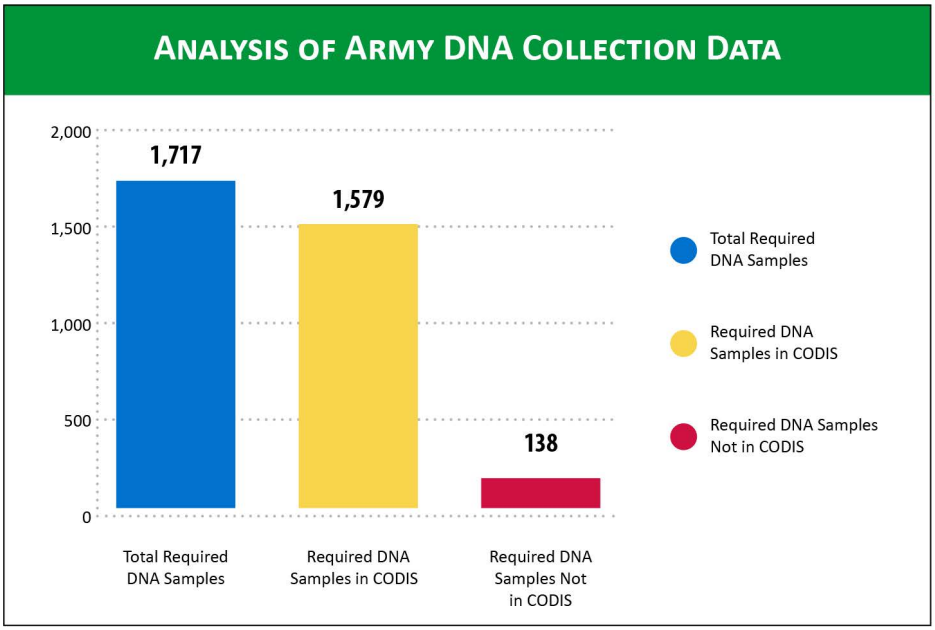
A breakout of the individual Services and USCGIS DNA sample collection data and compliance rates is shown in the figures below.[9]

Army DNA Collection Analysis

The Army reported 1,717 qualifying convictions within the evaluation sample period. There were 1,579 matching CODIS entries. Of the 1,717 reported convictions, DNA samples for 138 qualifying members were not in CODIS. The Army had a 92 percent compliance rate.

[9] Data was collected using a June 1, 2010 through October 31, 2012, evaluation sample period. Because CODIS is a fluid and dynamic database system, this data reflects a "snap-shot" in time and information.

Figure 1. Analysis of Army DNA Sample Collection Data

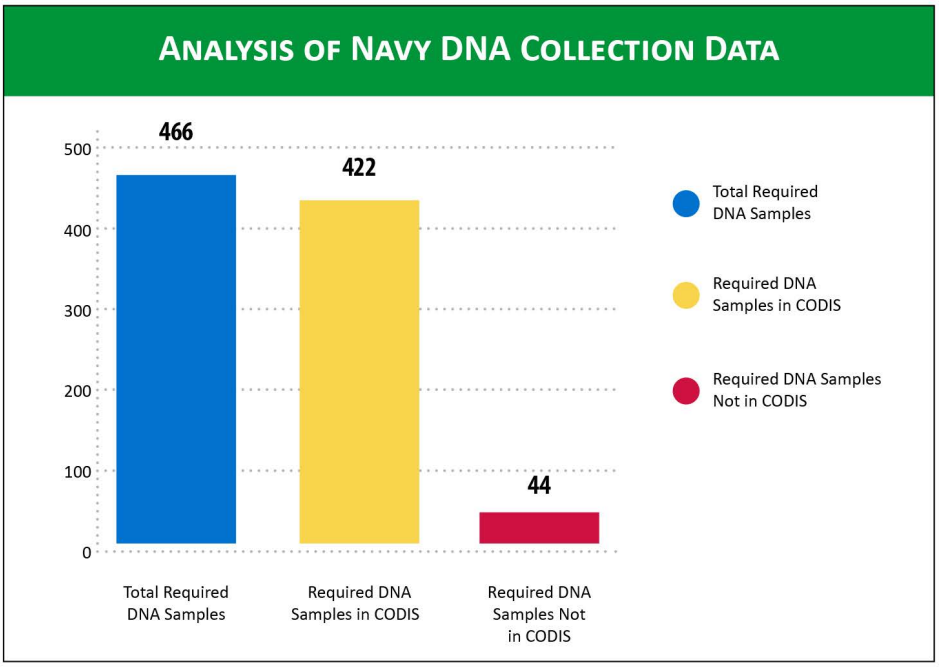


Source: Office of The Judge Advocate General of the U.S. Army and USACIL CODIS database.

Navy DNA Collection Analysis

The Navy reported 466 qualifying convictions within the evaluation sample period. There were 422 matching CODIS entries. Of the 466 reported convictions, DNA samples for 44 qualifying members were not in CODIS. The Navy had a 91 percent compliance rate.

Figure 2. Analysis of Navy DNA Collection Data

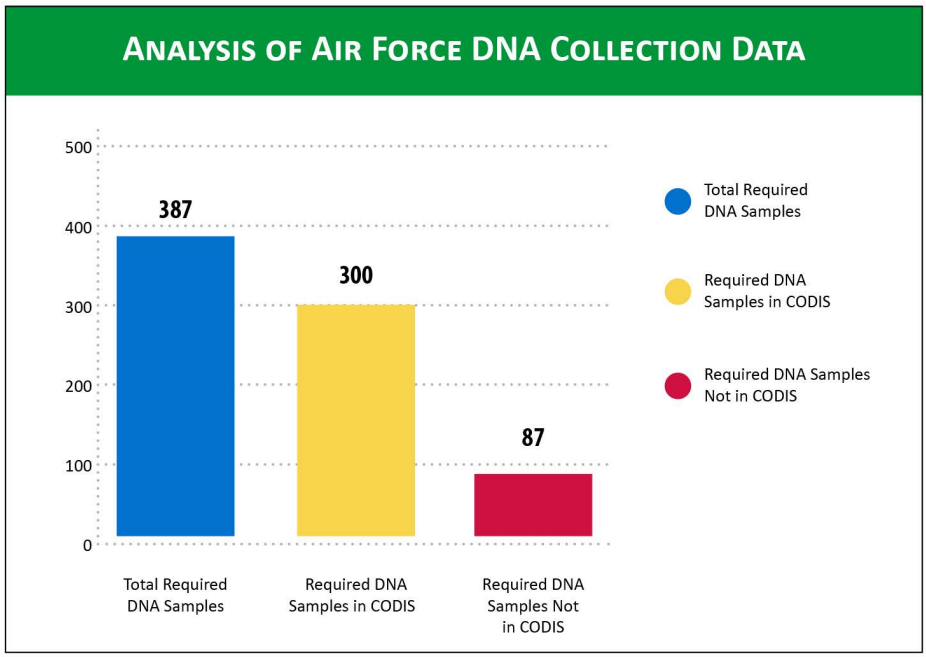


Source: United States Navy Office of the Judge Advocate General and USACIL CODIS database.

Air Force DNA Collection Analysis

The Air Force reported 387 qualifying convictions within the evaluation sample period. There were 300 matching CODIS entries. Of the 387 reported convictions, DNA samples for 87 qualifying members were not in CODIS. The Air Force had a 78 percent compliance rate.

Figure 3. Analysis of Air Force DNA Collection Data

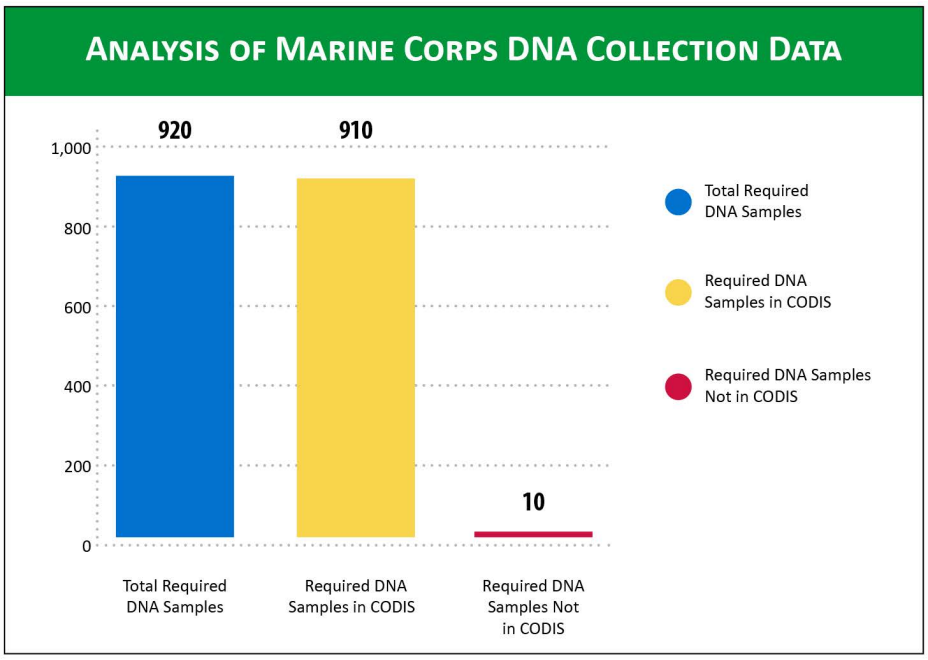


Source: The Judge Advocate General of the Air Force and USACIL CODIS database.

Marine Corps DNA Collection Analysis

The Marine Corps reported 920 qualifying convictions within the evaluation sample period. Of the 920 reported convictions, DNA samples for 910 qualifying members were matched in CODIS, with 10 samples not found in the database. The Marine Corps had a 99 percent compliance rate.

Figure 4. Analysis of Marine Corps DNA Collection Data

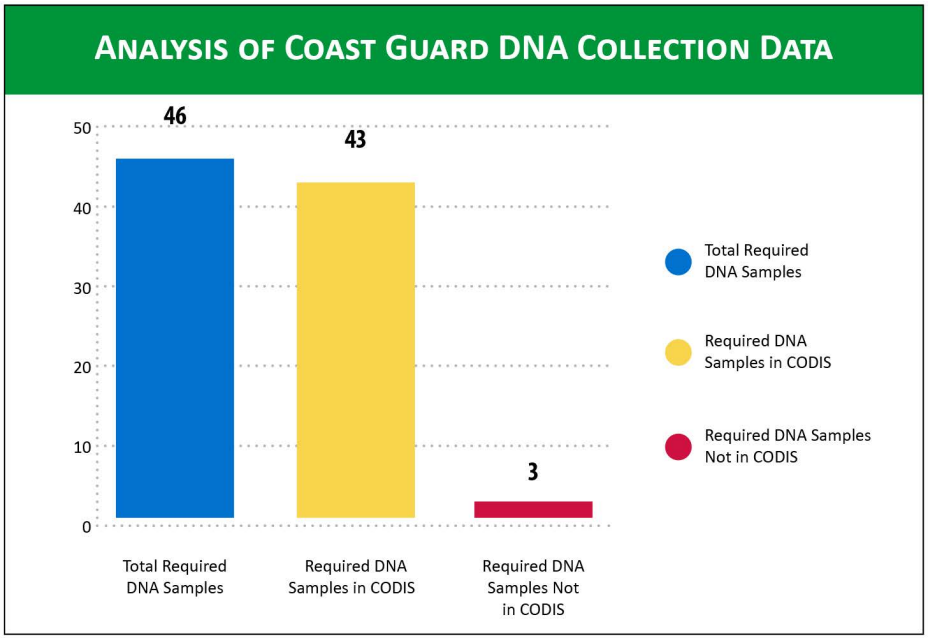


Source: Judge Advocate Division, Headquarters Marine Corps and USACIL CODIS database.

Coast Guard DNA Collection Analysis

The Coast Guard reported 46 qualifying convictions within the evaluation sample period. There were 43 matching CODIS entries. Of the 46 reported convictions, DNA samples for 3 qualifying members were not in CODIS. The Coast Guard had a 93 percent compliance rate.

Figure 5. Analysis of Coast Guard DNA Collection Data



Source: Office of the Judge Advocate General of the Coast Guard and USACIL CODIS database.

Figure 6. Summary of DNA Sample Collection Data

Description	Army	Navy	Air Force	USMC	Coast Guard	Total
Total Required DNA Samples	1717	466	387	920	46	3536
Required DNA Samples in CODIS	1579	422	300	910	43	3254
Required DNA Samples Not in CODIS	138	44	87	10	3	282
Compliance Rate (%)	92	91	78	99	93	92

Source: The Offices of the Judge Advocates General of the Army, Navy, Air Force, and Coast Guard; Judge Advocate Division, Headquarters Marine Corps; and USACIL CODIS database.

Conclusion

We conclude the Services' and USCG's DNA sample collection process collected and submitted 92 percent of the required convicted offender DNA samples.

Recommendations, Management Comments and Our Response

Overall, the Military Departments and USCG agreed with our report and recommendations. We received management comments on a draft of this report. The comments addressed our initial assessment numbers of samples we reported as not in CODIS. We based our original numbers on information the Services' JAGs provided us for individuals who met the requirement to have DNA samples in CODIS. The management comments are summarized and addressed below, and included verbatim as Appendix C.

1. **We recommend the Secretaries of the Military Services and Commandant of the Coast Guard take prompt action to submit the missing 282 DNA samples required to be in CODIS.**

Army Comments

The Army responded that since receiving the draft report and working with our staff they believed the total number of required Army DNA samples not in CODIS should be reduced from 155 to 153. They also recommended an additional 10 individuals be removed for various reasons. Regarding our recommendation to take prompt action to submit the missing DNA samples, the Army recommended we modify our recommendation to require submitting missing samples only from individuals still subject to their jurisdiction. The Army advised:

> *"We believe that the recommendation for the Services to take action to submit the missing DNA samples needs to be modified. As noted in your*

report, you obtained the names of Service Members who were convicted of qualifying offenses. The vast majority of those people have since been discharged from the Services, and they are no longer subject to the Uniform Code of Military Justice nor within the legal or investigative jurisdiction of any of the Services' law enforcement agencies. Given this lack of jurisdiction and absent any authority to compel submission of a DNA sample we do not see how this can legally be accomplished. Recommend page 8 of the draft report be re-worded to "We recommend the Secretaries of the Military Services and Commandant of the Coast Guard take prompt action, for persons still subject to their jurisdiction, to submit the missing DNA samples required to be in the CODIS."

Our Response

We reduced the Army's missing CODIS entries from 155 to 153 after they provided updated information indicating criminal charges on two individuals were dismissed. The Army recommended we remove 10 names from the list of individuals required to have a DNA sample in CODIS. We agreed with removing six of those individuals after reviewing the Army's updated information.

The Army reasoned that criminal investigative case files for those four service members reflected criminal charges that did not require DNA collection. However, conviction data provided by the Army JAG indicated the individuals were convicted of crimes requiring DNA collection and submission to CODIS. We subsequently identified nine additional individuals for removal. The total number of required DNA samples not in CODIS is 138. The Army had a 92 percent compliance rate.

We did not modify our recommendation to take prompt action to submit the missing DNA samples required to be in CODIS. Army officials opined they lacked jurisdictional and legal authority to collect and submit the missing samples. They said most of the individuals we identified as not having DNA samples in CODIS had been discharged from the Service. However, we found there are several options available to collect DNA samples from individuals whose samples were not collected in accordance with federal law and DoD guidance. If the individual is no longer a member of the armed forces and subject to the Uniform Code of Military Justice (UCMJ), the Army can attempt to locate the individual and obtain consent to provide a sample.

The Army may also attempt to obtain a sample under the authority of 42 U.S.C. §14135(a)[10] which describes several processes that could enable the collection once the convicted person leaves UCMJ jurisdiction. For example, if the individual is on supervised

[10] 42 U.S.C. § 14135(a), "Collection and Use of DNA Identification Information from Certain Federal Offenders." "Authorizes the collection of DNA from individuals in custody who are arrested, facing charges, or convicted, and from non-U.S. person who are detained under the authority of the U.S."

release, parole, or probation for a federal offense, the probation office responsible for the supervision could collect the sample in accordance with 42 U.S.C. §14135(a). The Army could investigate whether this is true for any of the individuals and coordinate with that probation office. Therefore, we believe the Army should pursue all possible avenues in its efforts to collect and submit the required samples to CODIS.

Navy/Marine Corps Comments

The Navy responded that after researching the original 58 missing samples we included in the draft report, they were able to lower the number to 44.

With respect to our recommendation to submit the missing DNA samples required to be in CODIS, the Navy said it plans to have NCIS collect samples of those still subject to Navy jurisdiction.

The Marine Corps stated the research by the SJA to CMC determined that 5 members had not been convicted of qualifying offenses but that 10 DNA samples could not be confirmed to be in CODIS.

Our Response

We reduced the Navy's missing CODIS entries from 58 to 44 after they provided updated information regarding the original 58 samples we reported as not in CODIS. The Navy had a final compliance rate of 91 percent. Additionally, we agreed with the Navy's actions in attempting to obtain samples not in CODIS. However, as we discussed in our response to the Army, there are additional options available to collect the missing samples, and we believe the Navy should pursue all possible avenues in its efforts to collect and submit the required samples to CODIS.

We reduced the Marine Corps missing CODIS entries from 29 to 10. Marine Corps officials provided updated information indicating 5 individuals were not convicted of qualifying offenses. They also provided DNA collection kit numbers and collection dates for 14 individuals the USACIL CODIS Branch reported as not having DNA samples in CODIS. A subsequent check with USACIL confirmed samples for those 14 individuals were erroneously reported as missing and were indeed in CODIS. The Marine Corps had a final compliance rate of 99 percent.

Air Force Comments

The Air Force recommended we reduce their total number of required DNA samples not in CODIS to 64 instead of the 87 we originally reported. They said the Air Force is only responsible to collect and submit DNA samples on individuals when AFOSI or Security Forces conducts the criminal investigation. The Air Force advised:

> *"Our understanding of Department of Defense Instruction (DoDI) 5505.14, Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, dated May 27, 2010, Incorporating Change 1, dated April 24, 2012, is that this publication only applies to criminal investigations conducted within the Air Force by AFOSI and AF Security Forces Investigators. It is not applicable to incidents relating from commanders executing their inherent responsibility for administering nonjudicial discipline within their units, which were included in the Air Force numbers for non-compliance. Additionally, criminal investigations (state and local) conducted outside AFOSI and Air Force Security Forces purview should also be removed from this listing as these are not governed by DoDI 5505.14."*

> *"Based upon our review of our investigative data management systems, and our independent review of AMJAMS, we concluded that AFOSI is responsible for 30 of the non-compliant investigations and Air Force Security Forces Squadrons were responsible for 34 non-compliant investigations. Further, we believe that 23 of the non-compliant investigations were either actions taken by command officials or off-base authorities without AFOSI or Security Forces involvement, and should be removed because DoDI 5505.14 does not apply. We therefore recommend that the DoD IG reduce the AF non-compliant case number to 64."*

With respect to our recommendation to take prompt action to submit the missing DNA samples required to be in CODIS, the Air Force said they would locate and attempt to obtain consent to collect and submit the missing samples advising:

> *"AFOSI will take immediate action on our 30 non-compliant investigations by locating and attempting to obtain consent to collect the DNA samples. If we obtain consent to take the DNA samples, our agents will immediately send them to CODIS and document the action in I2MS. If we do not obtain consent, we will document this action in I2MS and close the line item. Our opinion is that probable cause would be required to seize DNA samples from the subjects of these previous investigations. Since the investigations have been closed with judicial resolution, we would be unable to establish probable cause for a warrant at this late a date. Therefore, without a subject's consent, we would be unable to legally obtain the directed samples.*

> *"Security Forces will direct (through all MAJCOMS) an effort to collect through voluntary consent the 34 DNA samples for inclusion into CODIS. However, parameters concerning probable cause could prevent the collection if an individual refuses to consent or if the individual is no longer under military (UCMJ) control. It is the AFSFC opinion that without a subject's consent, we would be unable to legally obtain the directed samples."*

Our Response

We did not modify the original number of 87 DNA samples we reported as not in CODIS. The Air Force had a final compliance rate of 78 percent. The Air Force reasoned that if AFOSI or Security Forces did not conduct the investigation for these criminal offenders then DoDI 5505.14 does not apply. We disagree. Because Air Force law enforcement did not conduct an investigation does not negate the Service's requirement to collect and submit a DNA sample to CODIS.

DoDI 5505.14, Enclosure 3, section 3(b) states "DNA will be collected when court-martial charges are preferred in accordance with Rule for Court-Martial 307, Reference (k), if a DNA sample has not already been submitted." The Instruction further requires in Enclosure 2, section 2(c)(1) that "Commanders coordinate with the appropriate law enforcement organization to ensure DNA samples are taken and processed as required by section 3 of Enclosure 3."

The 23 individuals the Air Force recommended removing were convicted of qualifying offenses by special or general court-martial. Additionally, the absence of a criminal investigation does not eliminate other legal or policy requirements to provide DNA or other criminal history data. In this instance, federal law requires DNA be collected and submitted to CODIS for anyone convicted of a qualifying offense regardless of the type of investigation.

The Air Force concurred with our recommendation to take prompt action to submit the missing DNA samples required to be in CODIS. They advised they would take immediate action to locate individuals and obtain consent to take the DNA sample. We agreed with their efforts to obtain voluntary consent. The Air Force, like the Army, similarly reasoned that without voluntary consent they lacked legal authority to collect the samples. As noted in addressing the Army comments, we think the Air Force should attempt to determine if a collection is possible in accordance with 42 U.S.C. §14135(a).

Coast Guard Comments

The Coast Guard responded that they concurred with the findings of 3 DNA samples not in CODIS. With respect to our recommendation to take prompt action to submit the missing DNA samples required to be in CODIS, the Coast Guard said they would locate and attempt to obtain consent to collect and submit the missing samples advising:

> *"We propose the following course of action with respect to the three qualifying subjects: as the three qualifying subjects are no longer under the control of the Coast Guard, the Coast Guard will seek voluntary DNA sample submissions from these individuals."*

Our Response

The Coast Guard had a final compliance rate of 93 percent. We agreed with the Coast Guard's actions in attempting to obtain samples not in CODIS. However, as we discussed in our response to the Army, there are additional options available to collect the missing samples, and we believe the Coast Guard should pursue all possible avenues in its efforts to collect and submit the required samples to CODIS.

2. **We recommend the Secretaries of the Military Departments and Commandant of the Coast Guard take prompt action to ensure DNA sample collections for future arrestees and convicted offenders conform to DoDI 5505.14.**

Army Comments

The Army concurred with our recommendation advising that CID has issued guidance emphasizing the requirements and importance of collecting DNA samples from arrestees and convicted offenders.

Our Response

The management comments are responsive.

Navy Comments

The Navy concurred with our recommendation advising:

> *"The NCIS implemented the policy for NCIS investigations on February 6, 2012. Since that time, NCIS has worked to ensure full compliance with DODI 5505.14, to include documenting the DNA submission to the Consolidated Law Enforcement Operations Center (CLEOC) case reporting system."*

Our Response

The management comments are responsive.

Air Force Comments

The Air Force concurred with our recommendation advising they are redesigning investigative databases to track DNA collections and submissions.

Our Response

The management comments are responsive.

Marine Corps Comments

See Navy management comments.

Coast Guard Comments

The Coast Guard did not provide management comments.

Appendix A

References

Federal Law

10 U.S.C. § 1565, "DNA Identification Information: Collection from Certain Offenders." Requires the Military Departments and the Department of Homeland Security to collect a DNA sample from each member of the armed forces, under their jurisdiction, who has been convicted of a "qualifying offense."

28 CFR 28.12 (b), "Collection of DNA Samples." Requires any agency of the United States that arrests or detains individuals or supervises individuals facing charges to collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States.

42 U.S.C. § 14132, "Index to Facilitate Law Enforcement Exchange of DNA Identification Information." Authorizes the FBI Director to establish and maintain a national index of DNA identification records on persons for law enforcement purposes.

42 U.S.C. § 14135a, "Collection and Use of DNA Identification Information from Certain Federal Offenders." Authorizes the collection of DNA from individuals who are arrested, facing charges, or convicted and from non-United States persons who are detained under the authority of the United States.

73 Fed. Reg. 74932, 28 CFR Part 28, "DNA-Sample Collection and Biological Evidence Preservation in the Federal Jurisdiction." The Department of Justice (DOJ), by this publication, amended regulations relating to DNA-sample collection in the federal jurisdiction. This rule generally directed federal agencies to collect DNA samples from individuals who were arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States, subject to certain limitations and exceptions. By this rule, the DOJ also finalized, without change, two related interim rules concerning the scope of qualifying federal offenses for purposes of DNA-sample collection and a requirement to preserve biological evidence in federal criminal cases in which defendants were under sentences of imprisonment. This rule was effective January 9, 2009.

P.L. 109-162, Title X, "DNA Fingerprint Act of 2005." Established an opt-out system for expunging DNA profiles from the National DNA Index System. Authorized collecting DNA samples from persons arrested or detained under Federal authority.

DoD Issuances

DoD Instruction 5505.14, "Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations," May 27, 2010 (incorporating Change 1, April 24, 2012). Establishes policy, assigns responsibility, and sets forth instruction for collecting DNA in criminal investigations.

DoD Instruction 5505.11, "Fingerprint Card and Final Disposition Report Submission Requirements," July 9, 2010 (incorporating Change 1, May 3, 2011). Establishes policy, assigns responsibility, and sets forth instruction to report offender criminal history data to the Criminal Justice Information Services Division of the Federal Bureau of Investigation (FBI) for inclusion in the National Crime Information Center criminal history database.

Service and USCG Issuances

U.S. Army Criminal Investigative CID Regulation 195–1, "Army Criminal Investigation Program," March 22, 2010 and January 6, 2012.

U.S. Army Regulation 190-45, "Military Police Law Enforcement Reporting," March 30, 2007.

All Army Activities (ALARACT) ALARACT 131/2013.

U.S. Army CID Operational Memorandum 003-11, DNA Collection Requirements for Criminal Investigations - Issues with Arrestee Submissions, March 9, 2011.

U.S. Army CID Operational Memorandum 011-11, DNA Collection Requirements for Criminal Investigations-Arrestees, October 20, 2011.

OPNAV Instruction 5800.9, Collection of DNA Samples from Military Offenders Convicted of Qualifying Military Offenses (QMO), Dec 14, 2006.

BUPERS Notice 1640, DNA Collection Requirements for Criminal Investigations, August 16, 2010.

BUPERSINST 1640.22, Article 1640-080, page 9 of 36, DNA Sample Collection Program, March 29, 2011
Message: 275362, Procedures for Collection of DNA for Criminal Investigations, 08 Jul 2010.

Policy Memorandum 02-10, Head, Corrections Section, Security Division, Plans.

Air Force Instruction 51-201, "Administration of Military Justice," December 21, 2007 through Interim Change 1, February 3, 2010.

Air Force Office of Special Investigations Manual 71-118V4, "General Investigative Methods," Incorporating All Changes Through Change 4 (IC-4, March 1, 2013).

Air Force Office of Special Investigations Manual 71-121, "Processing and Reporting Investigative Matters," January 13, 2009, Incorporating All Changes Through Change 5 (IC-5, October 12, 2012).

Air Force Instruction 31-205, "The Air Force Corrections System," April 7, 2004, Incorporating Change 1, July 6, 2007.

United States Marine Corps, Policy Memorandum 01-10, Marine Corps Facilities DNA Collection Responsibilities, May 18, 2010.

Commandant Instruction M1600.2, "Discipline and Conduct," September 29, 2011.

Commandant Instruction M5527.1 (series), "Coast Guard Investigations Manual," current edition. Restricted USCG document. Contact US Coast Guard Freedom of Information Act Office (http://www.uscg.mil/foia/) to obtain investigated offense listing.

Supplemental Guidance

Congressional Research Service Report, DNA Testing in Criminal Justice: Background, Current Law, Grants, and Issues. December 7, 2011.

Appendix B

Description of Qualifying Offenses

DoDI 5505.11, Fingerprint Card and Final Disposition Report Submission Requirements, July 9, 2010, Incorporating Change 1, May 3, 2011, Enclosure 2 Offenses.

The following offenses are pursuant to the punitive articles of the UCMJ and require submission of offender criminal history data to the CJIS Division, FBI, by the DCIOs and all other DoD law enforcement organizations.

Article	Offense Description
78	Accessory after the fact (for crimes listed in this enclosure)
80	Attempts (for crimes listed in this enclosure)
81	Conspiracy (for crimes listed in this enclosure)
82	Solicitation
85	Desertion
90	Striking or assaulting a superior commissioned officer
91	Striking or assaulting a warrant, noncommissioned, or petty officer
94	Mutiny and sedition
95	Resistance, flight, breach of arrest, and escape
97	Unlawful detention
106	Spies
106a	Espionage
107	False Official Statements
108	Military property of the United States – sale, loss, damage, destruction, or wrongful disposition
109	Property other than military property of the United States – waste, spoilage, or destruction
111	Drunken or reckless operation of vehicle, aircraft, or vessel
112a	Wrongful use, possession, etc, of controlled substances
116	Riot or breach of peace
118	Murder
119	Manslaughter
119a	Death or injury of an unborn child
120	Rape and carnal knowledge (for offenses committed prior to October 1, 2007)

Article	Offense Description
120	Rape, sexual assault, and other sexual misconduct (for offenses committed on or after October 1, 2007)
120a	Stalking (for offenses committed on or after October 1, 2007)
121	Larceny and wrongful appropriation
122	Robbery
123	Forgery
123a	Making, drawing, or uttering check, draft, or order without sufficient funds
124	Maiming
125	Sodomy
126	Arson
127	Extortion
128	Assault
129	Burglary
130	Housebreaking
131	Perjury
132	Frauds against the United States
134	The following offenses pursuant to Article 134
a.	Assault - Indecent (for offenses committed prior to October 1, 2007)
b.	Assault – with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking
c.	Bribery and graft
d.	Burning with intent to defraud
e.	Child endangerment (for offenses committed on or after October 1, 2007)
f.	Child pornography offenses, to include possession, distribution, production, receipt, viewing, and accessing (added Change 1, May 3, 2011).
g.	Correctional custody – offense against
h.	False or unauthorized pass offenses
i.	False pretenses, obtaining services under
j.	False swearing
k.	Firearm, discharge – willfully, under such circumstances as to endanger human life
l.	Fleeing the scene of an accident
m.	Homicide, negligent
n.	Impersonating a commissioned, warrant, noncommissioned, or petty officer, or an agent or official
o.	Indecent acts or liberties with a child (for offenses committed prior to October 1, 2007)

Article	Offense Description
p.	Indecent exposure (for offenses committed prior to October 1, 2007)
q.	Indecent language
r.	Indecent acts with another (for offenses committed prior to October 1, 2007)
s.	Kidnapping
t.	Mail: taking, opening, secreting, destroying, or stealing
u.	Mail: depositing or causing to be deposited obscene matters in
v.	Misprision of serious offense
w.	Obstructing justice
x.	Wrongful interference with an adverse administrative proceeding
y.	Pandering and prostitution (having someone commit an act of prostitution is still an offense pursuant to Article 134, but if the pandering is "compelled," it becomes an Article 120 offense, on or after October 1, 2007)
z.	Perjury: subornation of
aa.	Public record: altering, concealing, removing, mutilating, obliterating, or destroying
ab.	Reckless endangerment
ac.	Seizure: destruction, removal, or disposal of property to prevent
ad.	Self-injury without intent to avoid service
ae.	Soliciting another to commit an offense (for crimes listed in this enclosure)
af.	Stolen property
ag.	Testify: Wrongful refusal
ah.	Threat or hoax designed or intended to cause panic or public fear
ai.	Threat, communicating
aj.	Weapon: concealed, carrying

Appendix C

Management Comments

Army Comments

DEPARTMENT OF THE ARMY
OFFICE OF THE PROVOST MARSHAL GENERAL
2800 ARMY PENTAGON
WASHINGTON, DC 20310-2800

DAPM-ZA 3 October 2013

MEMORANDUM FOR Department of Defense Inspector General, Attn: Ms. Melvina Coakley, 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Report of Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations (Project No. 2012C018)

1. Reference your 28 August 2013 referral of the draft subject report for comment.

2. Since receipt of the draft report and in working with your staff, we believe that the total number of required Army DNA samples not in the Combined DNA Index System (CODIS) has dropped from 155 to 153. Further review by CID staff leads us to recommend that 10 of those subjects should be discounted for the reasons outlined in the attached spreadsheet.

3. We believe that the recommendation for the Services to take action to submit the missing DNA samples needs to be modified. As noted in your report, you obtained the names of Service Members who were convicted of qualifying offenses. The vast majority of those people have since been discharged from the Services, and they are no longer subject to the Uniform Code of Military Justice nor within the legal or investigative jurisdiction of any of the Services' law enforcement agencies. Given this lack of jurisdiction and absent any authority to compel submission of a DNA sample we do not see how this can legally be accomplished. Recommend page 8 of the draft report be re-worded to: "We recommend the Secretaries of the Military Services and Commandant of the Coast Guard take prompt action, for persons still subject to their jurisdiction, to submit the missing DNA samples required to be in the CODIS."

4. Since 9 March 2011, CID has issued three directives to field elements emphasizing the requirements to collect DNA samples from arrestees and convicted offenders, and the importance of such collections. In addition, AR 190-45, Law Enforcement Reporting, and AR 195-5, Evidence Procedures, outline guidance on DNA collection requirements for Army law enforcement personnel.

Army Comments (cont'd)

DAPM-ZA
SUBJECT: Report of Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations (Project No. 20112C018)

5. My point of contact for this action is Mr. Guy Surian at guy.a.surian.civ@mail.mil, (571) 305-4302 or DSN 312-240-4302.

1 Encl
as

DAVID E. QUANTOCK
Major General, USA
Provost Marshal General

Navy/USMC (NCIS) Comments

DEPARTMENT OF THE NAVY
HEADQUARTERS
NAVAL CRIMINAL INVESTIGATIVE SERVICE
27130 TELEGRAPH ROAD
QUANTICO VA 22134-2253

February 7, 2014

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL, POLICY AND OVERSIGHT, DEPARTMENT OF DEFENSE OFFICE OF INSPECTOR GENERAL

SUBJECT: NCIS Response to the Review of Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations (Project No. 2012C018)

Reference: NCIS Memorandum dated 03 December 2013

Reference (a) provided NCIS concurrence, and additional details in response to the findings provided in the DODIG draft for the Review of the Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations (Project No. 2012C018). Additional reviews of the DON DNA submissions have determined the following:

- USN members: USACIL was unable to verify receipt of seven (7) DNA kits in which were previously noted as DNA having been collected. This leaves a total of 44 DNA kits which appear have not been entered into CODIS.
- USMC members: USACIL acknowledged receipt of 14 of the 24 DNA kits involving qualifying offenses; 5 kits were received but rejected for various reasons. USACIL was unable to verify receipt of the remaining 5 kits, leaving a total of 10 DNA kits which appear have not been entered into CODIS.

If you have any comments and/or questions please contact me at 571-305-9767 or nelly.englund@navy.mil.

Nelly A. Englund
Deputy Assistant Director for Program Management
Criminal Investigation Directorate

Navy/USMC (NCIS) Comments

DEPARTMENT OF THE NAVY
HEADQUARTERS
NAVAL CRIMINAL INVESTIGATIVE SERVICE
27130 TELEGRAPH ROAD
QUANTICO VA 22134-2253

December 3, 2013

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL, POLICY AND OVERSIGHT, DEPARTMENT OF DEFENSE OFFICE OF INSPECTOR GENERAL

SUBJECT: NCIS Response to the Review of Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations (Project No. 2012C018)

Reference: DOD Inspector General Draft Report dated August 28, 2013

The Naval Criminal Investigative Service (NCIS) has reviewed Reference (a). NCIS appreciates the opportunity to provide comment on the draft DODIG report.

The report has two (2) recommendations as follows:

- Recommend the Secretaries of the Military Services and Commandant of the Coast Guard take prompt action to submit the missing 332 DNA samples required to be in CODIS.

- Recommend the Secretaries of the Military Services and the Commandant of the Coast Guard take prompt action to ensure DNA sample collections for future arrestees and convicted offenders conform to DoDI 5505.14

NCIS concurs with the recommendations. DoD Instruction (DODI) 5505.14 was published on May 27, 2010 and called for the Services to "issue guidance to implement and comply with" the DoDI. The Department of the Navy has yet to do so. The NCIS implemented the policy for NCIS investigations on February 6, 2012. Since that time, NCIS has worked to ensure full compliance with DODI 5505.14, to include documenting the DNA submission to the Consolidated Law Enforcement Operations Center (CLEOC) case reporting system.

A review of the draft report by the NCIS, the Office of the Judge Advocate General (OJAG), Criminal Law Division, and the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC), Military Justice Branch, disclosed the number of missing DNA samples is lower than currently noted in the draft report. The review disclosed the following:

Navy/USMC (NCIS) Comments (cont'd)

- The draft report identified 58 U.S. Navy (USN) members missing DNA samples in the Combined DNA Index System (CODIS); further research by NCIS and OJAG lowered that number to 37.

- 10 of the 58 USN members were not convicted of a qualifying offense, taking into account final appellate and convening authority action.

- For the remaining 48 USN members, research indicates that 11 did have DNA collected. DNA kit numbers are available for several of the kits, along with dates sent to USACIL and other confirming information. This information can be provided separately.

- The draft report identified 29 Marine Corps (USMC) members as missing DNA samples in CODIS. Research by the SJA to CMC determined that 5 members had not been convicted of qualifying offenses. The remaining 24 USMC members were found to have DNA samples. DNA kits numbers are available for all USMC members.

Respective actions for the remaining 37 USN members are currently pending review. The NCIS Staff Judge Advocate disclosed DNA samples can be collected from those personnel currently still subject to the "Secretary's jurisdiction" as provided in 10 USC 1565, if they have convicted of a "qualifying military offense". NCIS will work with OJAG to determine the status of the remaining 37 USN members, and DNA samples will be collected from those personnel still under the Secretary's jurisdiction.

If you have any comments and/or questions please contact Deputy Assistant Director Nelly A. Englund at 571-305-9767 or nelly.englund@navy.mil.

Scott Milburn
Executive Assistant Director (Acting)
Criminal Investigation Directorate

Air Force Comments

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

Office of the Secretary

26 September 2013

MEMORANDUM FOR DOD-IG/CIPO

FROM: SAF/IGX (AFOSI)
1140 Air Force Pentagon (5B919)
Washington DC 20330

SUBJECT: Air Force Response to Draft Report Review of Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations-Project 2012C018, 28 Aug 13

1. HQ Air Force Office of Special Investigations (AFOSI) and HQ Air Force Security Forces (HAF/A7S) appreciate the work of the Department of Defense Inspector General Criminal Investigations Policy and Oversight Office and thank them for the opportunity to provide comments. We have reviewed the draft report cited and compared the preliminary findings to data contained in our investigative information management systems. The following is submitted for your consideration:

a. The Automated Military Justice Analysis and Management System (AMJAMS) contains data relating to investigations, nonjudicial punishment imposed pursuant to Article 15, Uniformed Code of Military Justice (UCMJ), trials by court-martial, and related military justice activity. Thus, data extracted from this system for this analysis included AFOSI and Security Forces investigations, local command actions (independent of AFOSI or Security Forces involvement), as well as investigations prosecuted off base by state and local authorities (independent of AFOSI or Security Forces involvement). (Ref AFI 51-201, Administration of Justice, Chapter 12).

b. Our understanding of Department of Defense Instruction (DoDI) 5505.14, Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, dated May 27, 2010, Incorporating Change 1, dated April 24, 2012 is that this publication only applies to criminal investigations conducted within the Air Force by AFOSI and AF Security Forces Investigators. It is not applicable to incidents relating from commanders executing their inherent responsibility for administering nonjudicial discipline within their units, which were included in the Air Force numbers for non-compliance.

c. Additionally, criminal investigations (state and local) conducted outside AFOSI and Air Force Security Forces purview should also be removed from this listing as these are not governed by DoDI 5505.14.

Air Force Comments (cont'd)

2. Based upon our review of our investigative data management systems, and our independent review of AMJAMS, we concluded that AFOSI is responsible for 30 of the non-compliant investigations and Air Force Security Forces Squadrons were responsible for 34 non-compliant investigations. Further, we believe that 23 of the non-compliant investigations were either actions taken by command officials or off-base authorities without AFOSI or Security Forces involvement, and should be removed because DoDI 5505.14 does not apply. We therefore recommend that the DoD IG reduce the AF non-compliant case number to 64.

3. We have considered your recommendations:

a. DoD IG recommendation 1: We recommend the Secretaries of the Military Services and Commandant of the Coast Guard take prompt action to submit the missing 332 samples required to be in CODIS.

b. AFOSI response: AFOSI will take immediate action on our 30 non-compliant investigations by locating and attempting to obtain consent to collect the DNA samples. If we obtain consent to take the DNA samples, our agents will immediately send them to CODIS and document the action in I2MS. If we do not obtain consent, we will document this action in I2MS and close the line item. Our opinion is that probable cause would be required to seize DNA samples from the subjects of these previous investigations. Since the investigations have been closed with judicial resolution, we would be unable to establish probable cause for a warrant at this late a date. Therefore, without a subject's consent, we would be unable to legally obtain the directed samples.

c. HAF/A7S response: Security Forces will direct (through all MAJCOMS) an effort to collect through voluntary consent the 34 DNA samples for inclusion into CODIS. However, parameters concerning probable cause could prevent the collection if an individual refuses to consent or if the individual is no longer under military (UCMJ) control. It is the AFSFC opinion that without a subject's consent, we would be unable to legally obtain the directed samples.

d. DoD IG recommendation 2: We recommend the Secretaries of the Military Services and Commandant of the Coast Guard take prompt action to ensure DNA sample collections for future arrestees and convicted offenders conform to DoDI 5505.14.

e. AFOSI response: We agree and have examined our processes. We are redesigning our investigative database to expand our fingerprinting activity to a booking activity to add and track DNA collections and submissions. This should make it easier for AFOSI to locate this information and ensure the activity is completed prior to case closure. We also developed a visual aid identifying the decision points and submission requirements for DNA and fingerprints. This visual aid also lists the UCMJ offenses for which both collections are required. Our intent is to post these for ready reference within the booking areas of our field units. Lastly, we are revising our existing publication governing DNA collection with a focus on clear, concise language to adhere to this mandatory activity.

Air Force Comments (cont'd)

f. HAF/A7S response: We agree and have examined our processes. Security Forces will direct (through all MAJCOMs) a mandatory training requirement to reinforce DNA collection IAW DODI 5505.14, May 27, 2010, Incorporating Change 1, April 24, 2012 on subjects convicted of certain offenses and the subsequently submitted to USACIL for analysis and inclusion in CODIS as federal law and DoDI mandate.

4. We appreciate the opportunity to respond to the draft report. The Air Force POC for this issue is SA Lee Porter, Chief of Agency Policy, lee.porter@us.af.mil, DSN 240-8812.

KEITH M. GIVENS, Colonel, USAF
Director, Special Investigations

cc:
AFOSI/XR
AF/A7S

U.S. Coast Guard Comments

U.S. Department of Homeland Security
United States Coast Guard

Commandant
United States Coast Guard
Office of Military Justice

2100 Second St. S.W. Stop 7121
Washington, DC 20593-7121
Staff Symbol: CG-0946
Phone: (202) 372-3806
Vasilios.Tasikas@uscg.mil

5810
October 16, 2013

MEMORANDUM

From: V. Tasikas, CDR
CG-0946

To: R. R. Stone, Deputy Inspector General
Inspector General, Department of Defense

Subj: **U.S. COAST GUARD RESPONSE TO DRAFT REVIEW OF DEOXYRIBONUCLEIC ACID (DNA) COLLECTION REQUIREMENTS FOR CRIMINAL INVESTIGATIONS-PROJECT 2012C018**

Ref: (a) Review of Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Draft Report of the Inspector General, Department of Defense, dated August 28, 2013

1. This letter is in response to your email of August 30, 2012 asking to review and comment on the Draft Report on Review of Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations.

2. In May 2010, DoD issued DoDI 5505.14, implementing federal law[1] that requires the collection of DNA samples from individuals arrested, facing charges, or convicted of crimes under the authority of the United States. This instruction applies to all DoD criminal investigative services and the Coast Guard Investigative Service (CGIS).

2. We have reviewed Ref (a) and compared the preliminary findings to data contained in our files. The report concludes that the Coast Guard reported 32 qualifying convictions within the sample evaluation period.[2] Of the 32 reported convictions, DNA samples for three qualifying subjects are not in the CODIS database.

3. Subject to the factual circumstances of each case, the Coast Guard concurs with the findings of Ref (a) and has identified the three subjects that qualified for DNA processing.

4. Charges were preferred against Subject No. 1 on July 12, 2010 for charges involving fraud and larceny. Following the conviction, the military judge sentenced Subject No. 1 to confinement or the payment of a fine. Subject No. 1 paid a fine in lieu of confinement. Subject No. 1 is no longer a member of the Coast Guard.

[1] 42 U.S.C. 14135(a)(1).
[2] The evaluation period covers arrests and convictions between June 1, 2010 and October 31, 2012.

U.S. Coast Guard Comments (cont'd)

5810
October 16, 2013

5. Charges were preferred against Subject No. 2 on July 16, 2010 for charges involving assault, indecent exposure and a false official statement. The military judge sentenced Subject No. 2 to be confined for five months and to be discharged from the Coast Guard with a bad conduct discharge. Subject No. 2 is no longer a member of the Coast Guard.

6. Charges were preferred against Subject No. 3 on July 23, 2010 for charges involving larceny and wrongful appropriation. Following the conviction, the military judge did not sentence Subject No. 3 to any period of confinement. Subject No. 3 is no longer a member of the Coast Guard.

7. We propose the following course of action with respect to the three qualifying subjects: as the three qualifying subjects are no longer under the control of the Coast Guard, the Coast Guard will seek voluntary DNA sample submissions from these individuals.

8. We appreciate the opportunity to respond to the draft report.

#

2

Acronyms and Abbreviations

CODIS	Combined DNA Index System
DCIO	Defense Criminal Investigative Organizations
DNA	Deoxyribonucleic Acid
JAG	Judge Advocate General
MCIO	Military Criminal Investigative Organizations
USACIL	U.S. Army Criminal Investigation Laboratory
U.S.C.	United States Code


INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

Whistleblower Protection
U.S. Department of Defense

The Whistleblower Protection Enhancement Act of 2012 requires the Inspector General to designate a Whistleblower Protection Ombudsman to educate agency employees about prohibitions on retaliation, and rights and remedies against retaliation for protected disclosures. The designated ombudsman is the DoD IG Director for Whistleblowing & Transparency. For more information on your rights and remedies against retaliation, go to the Whistleblower webpage at www.dodig.mil/programs/whistleblower.

For more information about DoD IG reports or activities, please contact us:

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