

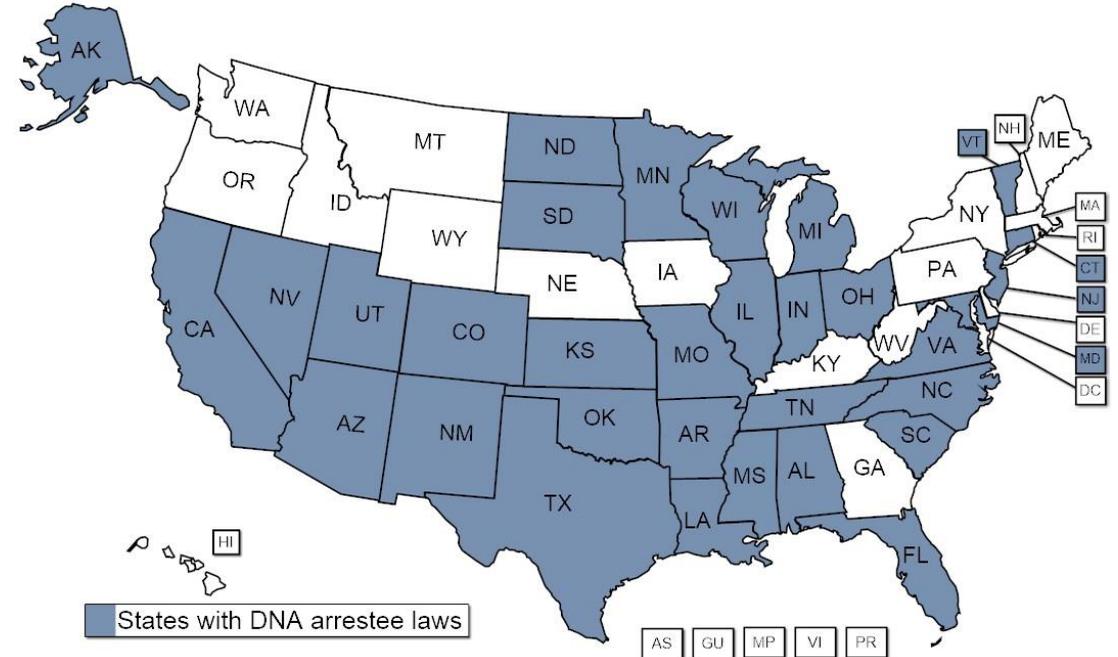
National Conference of State Legislatures

~ DNA Arrestee Laws ~

Updated 2018

State DNA Collection from Arrestees —DNA arrestee laws authorize the analysis of DNA samples collected from individuals arrested or charged, but not convicted, of certain crimes. Currently 31 states and the federal government have such laws.

Arrestee law provisions include: which crimes qualify for sample collection, whether probable cause hearings are required prior to testing, whether the sample can be analyzed upon charge or arrest, expungement procedures and whether or not juveniles are subject to testing.



Points of View on Arrestee Laws

Proponents of taking DNA samples from arrestees assert that the practice has many benefits for solving and preventing crimes, exonerating the innocent and objectively identifying suspects. They also contend that the principal method of DNA sample collection, a buccal cell swab—wiping the inside of the mouth with a cotton swab—is no more intrusive than taking an arrestees' fingerprints or other standard booking procedures.

Those opposed to arrestee laws are concerned that they infringe on the civil liberties and privacy of those who give their DNA. They also believe the samples contain too much genetic information to be surrendered without a criminal conviction.

Cost is a consideration for both sides of the DNA arrestee debate. Expanding the classifications of arrests that qualify for DNA collection can exceed capacity at forensic laboratories, creating a backlog of unanalyzed samples. Communicating with state crimes labs can reveal how many samples they are currently processing, whether or not they have a present backlog and how expansions, based on crime statistics, would impact their ability to process future samples in a time-effective manner. Combining these statistics with the number of resulting database hits and court convictions can also reveal the cost-effectiveness of different measures.

Supreme Court - *Maryland v. King*

The United States Supreme Court considered DNA arrestee issues when it made its ruling in [Maryland v. King \(June 2013\)](#). In its decision, the Court weighed the government's interest in public safety against an individual's privacy interest in their DNA. The Court found that DNA sample collection for violent crime arrests supported by probable cause is a legitimate police booking procedure - like fingerprinting or photographing - and does not violate the Fourth Amendment.

A DNA Profile identifies the position of DNA sequences at 13 specific locations. Each person (except identical twins) has a unique DNA profile.

Maryland's statute, at issue in *King*, requires that DNA samples be collected from individuals charged with burglary or a crime of violence and provides that the sample cannot be uploaded into a DNA database until a judicial officer determines that there was probable cause for the arrest. For expungement, the law provides for the automatic destruction of the sample if the charges brought do not ultimately lead to a conviction. The Court also took notice of additional protections offered by Maryland's code, specifically their prohibition against accessing information from the arrestee's DNA for a purpose other than identification.

Additional issues that may be addressed by the judiciary include: statutes that collect arrestee DNA for misdemeanor and non-violent crimes, statutes that have no hearing to ensure probable cause for the arrest, and states that place more responsibility on the arrestee to initiate expungement.

State Law

Qualifying Arrests - Each state DNA arrestee law specifies certain crimes for collection. Twenty-nine states collect DNA for at least some state felonies, while eight states have laws that collect DNA from arrestees for certain misdemeanors. Oklahoma only collects DNA from arrestees who are unauthorized immigrants under federal immigration law. Eight states apply their arrestee laws to juveniles.

Probable Cause Hearings - Thirteen states require a hearing to determine whether probable cause existed for an arrest that qualifies for DNA sample collection and analysis. The hearings required by these laws are intended to be a safeguard against law enforcement targeting an individual for DNA collection without proper justification. Four of the states that require probable cause hearings—Nevada, New Mexico, North Carolina and Wisconsin— provide an exception if the arrestee was arrested pursuant to a warrant which required probable cause to obtain.

Expungement - When an arrestee is not charged, has his or her charges reduced to a crime that does not qualify for DNA collection, is found not guilty or otherwise acquitted of criminal activity, the DNA profile and sample can be expunged. Expungement is the process of removing their profile from a database and destroying their sample. Sixteen states provide for the expungement of a DNA record upon the request of the individual. Thirteen states provide for automatic expungement, with no action required by the individual. Proponents of expungement upon request say that automatic expungement puts an increased burden on the justice system. Those who favor automatic expungement argue that an individual should not be compelled to remove their profile when they have done nothing wrong. They also contend that fewer expungements occur in states that require the individual to initiate the process.

State and Local Government Studies on Collecting DNA from Arrestees

Several state and local government research projects have examined the effectiveness of DNA sample collection from arrestees as tool for law enforcement. For example, [Maryland's study on preventable crimes](#) detailed how 20 crimes committed by three offenders would have been prevented if arrestee collection had been in place. [Indiana](#), [Denver](#) and [Chicago](#) created similar reports.

Recent Legislative Action

In 2013, Nevada (SB 243) and Wisconsin (AB 40) enacted laws that enabled sample collection from all felony arrestees once a determination of probable cause had been made. Both laws also provide for automatic expungement if no probable cause existed for the arrest. In Utah, lawmakers (HB 170) expanded DNA arrestee collection to include certain felonies like the sale of a child, human trafficking and the sale or use of body parts.

In 2014, Mississippi (SB 2430) and Rhode Island (HB 7304/SB 2101) enacted laws enabling DNA samples from those arrested for certain violent crimes. Under Rhode Island's law, DNA samples will be collected from arrestees of "crimes of violence," which include murder, manslaughter, robbery, sexual assault, and child molestation. Mississippi's law similarly collects DNA from anyone arrested for "crimes of violence" including, driving under the influence, murder, aggravated assault, human trafficking and poisoning. Mississippi's law will take effect upon sufficient funds being provided, as certified by the Joint Legislative Budget Committee.

*Idaho enacted a law in 2014 (SB 1240) requiring that absent consent or a warrant authorizing DNA collection based upon probable cause, no person shall be required to provide a DNA sample unless the person has been convicted of a felony.

State ⁱ	Statute and Legislation	Qualifying Offenses (All Felonies, Some Felonies, Misdemeanors)	Is Probable Cause Hearing Required?	Who Presides Over Hearing?	When is Sample Taken?	When can Analysis/Upload be Done?	Is Expungement Automatic or Upon Request?	Does it Apply to Juveniles?	Administrative Authorizations
Alabama	Ala. Code § 36-18-25 (2013), SB 362 (2013), HB146 (2009)	All felonies and sexual offenses, including some misdemeanors			At booking. Offender must consent in writing		Upon circuit court order	Yes	
Alaska	Alaska Stat. § 44.41.035 (2013), HB 152 (2009), HB 90 (2007)	All felonies and crimes against a person			At booking		Upon request		Dept. of Public Safety shall adopt procedures for collection, analysis, storage, expungement, and use of DNA identification registration system
Arizona	Ariz. Rev. Stat. § 13-610 (2013) SB 1367 (2011), HB 2207 (2008)	Enumerated dangerous, violent and serious offenses (murder, sex crimes, burglary), enumerated misdemeanors (indecent exposure, public sexual indecency, employment in prostitution, etc.)			At booking		Upon request	Yes, upon charging	
Arkansas	Ark. Code Ann. §§ 12-12-1006, 1019, 1105 (West 2012) HB 1563 (2011), HB 1473 (2009)	Capital murder, First Degree Murder, Kidnapping, Rape, First and Second Degree Sexual Assault			At booking		Upon request	No, unless charged as an adult	
California	Cal. Penal Code §§ 296, 296.1, 299 (West 2013) California Proposition 69 Also see People v Buza (2018)	All felonies			At booking		Upon request		

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Colorado	Colo. Rev. Stat. §§ 16-23-103, 104, 105 (2013), SB241 (2009)	All felonies	Yes, but sample can be taken before hearing		At booking	When offender is charged with felony	Upon request		
Connecticut	Conn. Gen. Stat. §§ 54-102g, 102h, 102i (2013), HB 6489 (2011)	Serious felonies and has been arrested for a felony before			Prior to release from custody		Automatic		
Florida	Fla. Stat. Ann. § 943.325 (West 2013), SB 2276 (2009)	Progressively more felony offenses until all felonies by Jan. 1, 2019			At booking		Upon request	Yes	Dept. of Law Enforcement shall adopt rules specifying procedure
Illinois	Ill. Comp. Stat. Ann. tit. 730 § 5/5-4-3 (West 2013), HB 3238 (2011)	First degree murder, home invasion, predatory criminal sexual assault of a child, aggravated criminal sexual assault or criminal sexual assault	Yes	Judge	After probable cause hearing		Automatic		
Indiana	2017 SB 322	All felonies	No		At booking	If offender was arrested pursuant to a felony warrant or after a court has found probable cause for the arrest.	Upon Request		
Kansas	Kan. Stat. Ann. § 21-2511 (West 2012), SB 262 (2009)	All felonies and enumerated misdemeanors	No, but if court later finds lack of probable cause for arrest, individual may request expungement		At booking		Upon request	Yes	

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Louisiana	La. Rev. Stat. Ann. §§ 15:609, 603, 614 (West 2012), SB 678 (2010), HB 346 (2009), SB 346 (2003), HB 1377 (1997)	All felonies, enumerated misdemeanors including simple battery, simple assault, etc.			At booking		Upon request	Yes	
Maryland	Md. Public Safety Code Ann. §§ 2-504, 511 (West 2013), HB 292 (2013), SB 211 (2008)	A crime of violence or an attempt to commit a crime of violence or burglary or an attempt to commit burglary	Yes		Upon charging	Not prior to first scheduled arraignment date	Automatically		
Michigan	Mich. Comp. Laws § 750.520m (2013), HB 4092 (2008)	Any Felony			At booking		Upon request		
Minnesota	Minn. Stat. § 299C.105 (2013), H.F. No. 1 (2005)	Enumerated felonies including murder, manslaughter, assault, sex crimes, etc., enumerated misdemeanors including false imprisonment-unreasonable restraint of children	Yes		After probable cause determination		Upon request the biological specimen is destroyed and records are returned to the individual	Yes	
Mississippi	Miss. Code. Ann. § 45-47-1 (West)	Enumerated felonies including defined crimes of violence.			At booking		Upon request or sua sponte by the court		Mississippi Forensics Lab or other entity designated by the Department of Public Safety
Missouri	Mo. Rev. Stat. § 650.055 (2013), SB 789 (2012),	Enumerated offenses including murder, burglary, sexually violent acts, etc.	Yes, but sample can be taken before hearing		At booking		Upon request	No	

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Nevada	SB 243 (2013) amends Nev. Rev. Stat. § 176.0913	All felonies	Yes	Judge or magistrate	At booking	When collected if arrested with a warrant or following a probable cause hearing if arrested without	Automatically if the court determines there was no probable cause and upon request		
New Jersey	N.J. Stat. Ann. §§ 53:1-20.20, .25 (West 2013), SB 737 (2011)	Enumerated offenses including murder, manslaughter, sexual offenses, etc.			Prior to release from custody		Upon request	Yes	
New Mexico	N.M. Stat. Ann. §§ 29-3-10, 29-16-10 (West 2013), SB 365 (2011), SB 216 (2006)	All felonies	Yes	Judge or magistrate	At booking	When collected if arrested with a warrant or following a probable cause hearing if arrested without	Upon request	No	
North Carolina	N.C. Gen. Stat. Ann. § 15A-266.3A (West 2013), HB 1403 (2010)	Enumerated felony and misdemeanor offenses including murder, manslaughter, sex offenses, assault, etc.	Yes	Magistrate	At booking, or after probable cause determination if arrested without a warrant		Automatically after June 1, 2012		
North Dakota	N.D. Cent. Code § 31-13-03, 07 (2011), HB 1389 (2011)	All felonies			At booking		Upon request	No	
Ohio	Ohio Rev. Code Ann. § 2901.07 (West 2013), SB 268 (2011), SB 77 (2010)	All felonies			During intake process	No later than 15 days after collecting the DNA	Upon request	No	

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Oklahoma	74 Okla. Stat. Ann. § 150.27a	All felonies			At booking	When collected if arrested with a warrant or following a probable cause or if defendant was released and failed to appear at initial hearing.			Oklahoma State Bureau of Investigation to make rules concerning collection, storing and expungement
Rhode Island	12 R.I. Gen. Laws Ann. § 12-1.5-8 (West)	Enumerated felonies including: murder, manslaughter, first-degree arson, kidnapping with intent to extort, larceny, first and second-degree child molestation, assault with intent to murder, robbery or rape, entering a dwelling with intent to murder.			At booking	After a court has found probable cause for the arrest or if defendant was released and failed to appear at initial hearing.	Upon Request		Department of Health makes rules concerning collection, storing.
South Carolina	S.C. Code Ann. §§ 23-3-620, 660 (West 2012)	All felonies, eavesdropping, peeping, and stalking			At booking		Automatic	No	
South Dakota	S.D. Codified Laws Ann. §§ 23-5A-5.2, 5A-1, 5A-28, 5A-16 (West 2013), SB 133 (2008)	All felonies/crimes of violence and sex offenses, including misdemeanor sex offenses			At booking		Upon request	No	Attorney General's office to make rules for collection, submission, identification, analysis, storage and disposition of samples

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Tennessee	Tenn. Code. Ann. § 40-35-321 (West 2013), SB 2667 (2011), SB 1196 (2007)	Enumerated violent felonies, including murder, aggravated assault, sexual offenses, etc.	Yes	Magistrate or grand jury	After probable cause determination		Automatic after court clerk notifies Tennessee bureau of investigation of disposition of charges		
Texas	Tex. Govt. Code Ann. § 411.1471 (Vernon 2013), HB 3000 (2011), HB 3295 (2007), HB 8 (2007), SB 638 (2001)	Varies based on prior convictions	Indictment required if collection is not based on prior convictions		At arraignment or at booking depending on prior convictions		Automatic		
Utah	Utah Code §§ 53-10-403, 404.5, 406 (2013), SB 277 (2010)	Violent felonies and other enumerated felonies	Yes, but sample can be taken before hearing	Judge or grand jury	At booking	Following probable cause determination or indictment	Automatic if criminal charged are not filed within 90 days after booking	No	Bureau of Forensic Sciences shall make rules for obtaining, transmitting, analyzing, storing and destroying DNA samples
Vermont	Vt. Stat. Ann. tit. 20 § 1932, 1933, 1940 (2013)	All felonies	Yes		Time and date set by court at arraignment		Automatic		
Virginia	Va. Code Ann. § 19.2-310.2:1 (2013), SB 579 (2006), HB 776 (2004), HB 2661 (2003), SB 535 (2002), HB 892 (2002)	Violent felonies	Yes	Magistrate or grand jury	After probable cause determination but prior to release from custody		Automatic		
Wisconsin	WI AB 40 (2013), amends Wis. Stat. § 165.76, 165.84	All felonies	Yes	Judge	At booking	When collected if arrested with a warrant or following a probable cause hearing if arrested without	Automatic	Yes	Department of Justice may make rules to implement DNA collection

Source: National Conference of State Legislature, 2018.

*Westlaw was used to conduct this research

ⁱ States that are not included have no such provisions.