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SEXUAL ASSAULT KIT INITIATIVE
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Key Considerations for Creating a Lawfully Owed DNA Census

One of the requirements for the Bureau of Justice Assistance (BJA) National Sexual Assault Kit Initiative (SAKI) under BJA SAKI Purpose Area 3: Expansion of DNA Databases to Assist with Sexual Assault Investigations and Prosecutions: Collection of Lawfully Owed DNA from Convicted Offenders and Arrestee DNA Collections[1] is the creation of a census. The census involves identifying individuals convicted of qualifying offenses, and where applicable, individuals arrested for qualifying offenses, who should have a DNA sample in the Combined DNA Index System (CODIS) but from whom DNA samples have never been collected or the DNA samples were collected but never submitted to a crime laboratory for testing. These individuals therefore lawfully owe a DNA sample for upload into CODIS. The creation of a census of individuals who lawfully owe DNA is the first step to expanding existing DNA databases and is a critical part of the comprehensive approach to addressing sexual assault. To guide agencies with the creation of a lawfully owed DNA (LODNA) census, SAKI Training and Technical Assistance (TTA) has provided this guidance document that identifies the key steps and considerations for creating a comprehensive LODNA Census.

Key Steps to Support the Creation of a LODNA Census

It may take considerable brainstorming by the LODNA multidisciplinary team (MDT) to identify ways in which the current methods of collecting DNA from individuals who owe a sample are lacking. For example, individuals who do not serve a term of confinement after a conviction may be missed if there is no uniform procedure for collecting DNA samples from this population. Some jurisdictions collect DNA samples in the courtroom and some direct the individual to report to a specific location to provide a DNA sample using an honor system.[2] Often, there is no mechanism to verify the individual provided the sample as ordered by the court. The LODNA census should address this population and determine how to include these individuals on the census.

Another key population easily overlooked during the LODNA census are those individuals who went to prison before the DNA law took effect. Many state DNA laws include retroactivity that includes this critical population that could be easily forgotten. Several states have gone back to collect DNA samples from this population and as a result, have resolved cold cases going back to the 1970s.[3]

The steps below are suggestions for the creation of a robust census and should be reviewed with the LODNA MDT to help create an effective strategy for addressing LODNA.

1. Form the LODNA census MDT

An MDT approach offers a coordinated and systematic response to LODNA by incorporating ideas and input from professionals with different but relevant backgrounds. An MDT is a working group that meets regularly, has members from several relevant disciplines, and is empowered to create improved strategies and implement policy (*see Key Considerations for a Multidisciplinary Team Approach to Creating a Lawfully Owed DNA Census*).

2. Identify a point of contact and person in charge

This responsibility varies for different jurisdictions. This agency may be the state-level department of corrections or bureau of prisons; a crime laboratory; a state or local criminal justice agency; or another entity with the appropriate authority, expertise, and data access. The agency in charge should work closely with other members of the LODNA census MDT.

3. Develop a list of qualifying offenses

An important first step to compiling a LODNA census is to identify a comprehensive list of conviction types or arrest offenses that require a DNA sample submission, as well as the effective date of each qualifying offense. This can be complicated but will help narrow down the search parameters and manage the data. This list can be provided as a reference to each agency whose database will be queried.

[1] Bureau of Justice Assistance (BJA) (2022). *National Sexual Assault Kit Initiative (SAKI): Overview*. Office of Justice Programs, U.S. Department of Justice. https://bja.ojp.gov/program/saki/overview

[2] Schuppe, J. (2020). 'A national disgrace': Holes in DNA databases leave crimes unsolved for decades. *NBC News*. https://www.nbcnews.com/news/us-news/national-disgrace-holes-dna-databases-leave-crimes-unsolved-decades-n1236748

[3] Crosby, R. (2018). Nevada inmate's DNA links him to Colorado killings, authorities say. *Las Vegas Review-Journal*. https://www.reviewjournal.com/crime/homicides/nevada-inmates-dna-links-him-to-colorado-killings-authorities-say/

4. Determine the data elements

When comparing information from multiple data sources it can be helpful to have a uniform set of data to help identify redundancies and discrepancies. The following specific data elements are recommended for each individual on the LODNA census:

- Full Name
- Date of Birth
- Sex
- State ID Number (SID)
- Federal Bureau of Investigation (FBI) Number
- Department of Corrections (DOC) Number
- Current Status: This will allow you to sort the list by who is in custody, jail, medical facility, released, deceased, probation, etc.
- Most Serious Qualifying Offense: This will help to reduce the likelihood of the same individual appearing multiple times due to multiple qualifying convictions.
- Conviction/Offense Date
- County/Jurisdiction of Most Serious Conviction/Offense
- Case #/Cause #

5. Determine which agency databases should be queried

Multiple sources of data will be used to compile a LODNA census. The databases leveraged may depend on the jurisdiction and scope of the project. Listed below are some data sources that may contain valuable information relevant to the LODNA project, as well as suggestions on how the data should be queried. SAKI TTA recommends requesting a historical list of individuals with a qualifying offense or conviction from each applicable database as this will ensure individuals convicted prior to the DNA law taking effect are evaluated to determine whether retroactivity in the law indicates they qualify for inclusion in the DNA database.

- **Department of Corrections or Local Jail/ Corrections:** The request should include data on:
  - Current incarcerated individuals
  - Individuals on probation/parole
  - Inmates who died in custody
  - Inmates who were released
- **State Bureau of Identification/State Criminal History Section:** May be able to provide conviction/ arrest records.
- **Prosecutor's/District Attorney's/Attorney General's Office:** May be able to provide conviction/arrest records.
- **Administrative Courts Office:** May be able to provide conviction data for qualifying individuals who did not serve a prison sentence. This includes convicted individuals who may have gotten credit for time served in jail, served their sentence in jail, or were given probation.
- **Sex Offense Registry:** May be able to provide a list of individuals required to register for a sex offense conviction. This list can be cross-checked against criminal history or CODIS lab records to identify which individuals still owe DNA. It is not uncommon to find instances where DNA was never collected or had been collected but was never tested.
- **Civil Commitment Facilities:** Twenty states, plus the District of Columbia and the federal government, have enacted sexually violent predator laws.[4] Sexually violent predators are often civilly committed to a secure state facility after release from prison. This population could easily slip through the cracks,[5] especially if they were detained prior to the state's DNA law taking effect. These facilities may be able to provide a list of current and former sexually violent predators for the purposes of cross-checking this list with criminal history or CODIS laboratory records to identify which individuals still owe DNA.
- **State CODIS Laboratory:** Personnel may be able to confirm which individuals on your list owe DNA at the State CODIS level.
- **Other Local/Internal Databases:** These could include Report Management Systems or other internal databases.

[4] Hoppe, T., Meyer, I. H., De Orio, S., Vogler, S., & Armstrong, M. (2020). *Civil commitment of people convicted of sex offenses in the United States.* The Williams Institute, University of California Los Angeles (UCLA) School of Law. https://williamsinstitute.law.ucla.edu/publications/civil-commitment-us/

[5] Sullivan, J. (2014). Sex offender linked by DNA to 1980 slaying pleads guilty. Seattle Times. https://www.seattletimes.com/seattle-news/sex-offender-linked-by-dna-to-1980-slaying-pleads-guilty/

6. Verification of the census

Once the names of individuals from each queried database are compiled, it will be necessary to verify qualifying convictions or offenses for individuals listed on the LODNA census to confirm which individuals the LODNA MDT will collect a DNA sample from. This could include running criminal history analyses and, in some cases, pulling the judgment and sentence documentation to verify the conviction data. Once the census is complete, the LODNA Collection Coordinator will work with the regional SAKI TTA liaison to have the census certified by BJA (see *SAKI Site Lawfully Owed DNA Census Certification Form*).

Conclusion

The creation of a census of individuals who lawfully owe a DNA sample is an enormous undertaking. Considerable thought must go into determining how to complete the census and which members of the LODNA MDT should be responsible for certain tasks. The LODNA MDT should brainstorm loopholes in the system that allow individuals to slip through the cracks of the criminal justice system and ensure those populations are evaluated during the creation of the census. SAKI TTA created this resource brief to provide practitioners with practical steps, examples, and resources to build a comprehensive census using the LODNA MDT model.

Authors:

Lindsey Wade is a retired police detective from Washington State. She spent more than two decades in law enforcement, focusing primarily on sexual assault, child abduction, missing persons, and homicide investigations. Lindsey currently works as a Senior Law Enforcement Specialist at RTI International.

Hope Zagaria, MSFS, has spent her career as a forensic DNA expert in both the public and private forensic sector supporting national efforts to eliminate and prevent DNA backlogs and provide effective strategies for forensic testing of cold case sexual assaults, homicides, and post-conviction cases. She currently works as a Research Forensic Social Scientist at RTI and has previously served as an Alternate State CODIS Administrator and senior DNA analyst.

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