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## Procedure for Expungement of Arrestee and Convicted Offender Samples

- 1.0 Purpose** – To provide a method to expunge convicted offender samples and arrestee samples and associated DNA profiles.
- 2.0 Scope** – This document applies to all expungement related functions performed by the State Crime Laboratory regarding samples collected according to Article 13 of Chapter 15A of the North Carolina General Statutes.
- 3.0 Definitions** – See Section Definitions List
- 4.0 Equipment, Materials and Reagents** - N/A
- 5.0 Procedures**

- 5.1 Arrestee Expungements**

- 5.1.1 General**

- 5.1.1.1** The procedure for expungement and destruction of an arrestee sample shall be used when the State Crime Laboratory receives a verification form as described in Article 13 of Chapter 15A.
    - 5.1.1.2** A DNA sample collected from an arrestee shall be expunged and destroyed if:
      - 5.1.1.2.1** The charge has been dismissed; or
      - 5.1.1.2.2** The person has been acquitted of the charge; or
      - 5.1.1.2.3** The defendant is convicted of a lesser-included misdemeanor offense that is not an offense included in G.S. 15A-266.3A (f) or (g); or
      - 5.1.1.2.4** No charge was filed within the statute of limitations, if any; or
      - 5.1.1.2.5** No conviction has occurred, at least three years has passed since the date of arrest, and no active prosecution is occurring; and
      - 5.1.1.2.6** The person's DNA record is not required to be in the State DNA Database under some other provision of law, or is not required to be in the State DNA Database based upon an offense from a different transaction or occurrence from the one which was the basis for the person's arrest.
      - 5.1.1.2.7** For states uploading the DNA data of arrestees, amendments made by the DNA Fingerprint Act of 2005 (P.L. 109-162) require expungements in the event the charge is dismissed or results in an acquittal or no charge was filed within the applicable time period. NDIS participating states are required to expunge from NDIS the DNA analysis of a person included in NDIS by that State if "the person has not been convicted of an offense on the basis of which

that analysis was or could have been included in the index, and the responsible agency or official of that State receives, for each charge against the person on the basis of which the analysis was or could have been included in the index, a certified copy of a final court order establishing that such charge has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable time period.” See 42 U.S.C § 14132(d)(2)(A)(ii).

## **5.1.2 Initial Arrestee Expungement Processing**

**5.1.2.1** The CODIS Administrator, Assistant CODIS Administrator, Forensic Scientist Manager or designee receives verification forms submitted by the District Attorneys’ Offices for arrestee expungements. Assignments to Criminal Justice Specialists (CJS) for expungement completion and peer review of expungements shall be based on a monthly rotation schedule.

NOTE: Only a trained CJS or designated DNA Database employee with access to law enforcement databases (e.g., AOC, CCH, DPS) can initially evaluate an expungement request for approval or denial and conduct peer reviews. If an evaluation and/or review cannot be completed due to an employee’s prolonged absence, the request shall be reassigned to another qualified employee.

**5.1.2.1.1** The CODIS Administrator, Assistant CODIS Administrator, Forensic Scientist Manager, or designee shall:

**5.1.2.1.1.1** Scan the verification form(s) and save them as a .pdf file.

**5.1.2.1.1.2** Create a new expungement request.

**5.1.2.1.1.3** Populate the mandatory fields within the expungement request record using the supplied information on the verification form, save the record, and change the status to “Received.”

**5.1.2.1.1.4** Save/attach the .pdf verification form to the notes of the expungement request and assign the request to a CJS.

## **5.1.3 Evaluating Arrestee Expungement Requests**

**5.1.3.1** Upon assignment, the CJS shall select and open the expungement request.

**5.1.3.1.1** The additional information fields within the expungement request record shall be populated by the CJS with information from the verification form.

**5.1.3.1.2** If no information is missing from the verification form, the CJS shall change the status to “In Evaluation.”

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- 5.1.3.2.2.1** If the requested information supplied is adequate, the information shall be added to the expungement request record. The documentation shall be saved as a .pdf file and attached to the notes section of the expungement request record. The CJS shall then update the status to “In Evaluation.”
- 5.1.3.2.2.2** If the requested information is inadequate or not provided in the response from the District Attorney’s office, the CJS shall call to obtain the information. The CJS shall add the information obtained from the call to the expungement request record. Once the requested information is received, the status shall be changed to “In Evaluation.”
- 5.1.3.2.3** If after several attempts to obtain the information, the CJS is unable to obtain clarification in a timely manner, the CJS shall transition the status of the record from “Received – Awaiting Missing Response” to “Received,” followed by “In Evaluation.”
- 5.1.3.3** For forms with complete information, the CJS shall change the status to “In Evaluation.”
- 5.1.3.4** The CJS shall determine whether or not the subject’s DNA record is required to be in the State DNA Database under some other provision of law or based upon an offense from a different transaction or occurrence from the one which was the basis for the subject’s arrest.
- 5.1.3.4.1** The individual’s criminal history shall be viewed (i.e. CCH, AOC, CJLEADS, or DPS reports) as well as the “Person-Donor Duplicate Report.” Other law enforcement database resources may be accessed as needed. The most relevant report(s) to the evaluation shall be attached to the notes in the expungement request record. In lieu of traditional criminal history reports, comprehensive reports from CJLEADS may be used for the evaluation and a portion of the report added to the record.
- 5.1.3.4.2** If the sample is a duplicate that has been or will be destroyed, duplicate processing steps as outlined in the Procedure for Sample Processing shall be followed. If the sample has been or will be rejected and destroyed, rejection processing steps as outlined in the Procedure for Sample Processing shall be followed.
- 5.1.3.4.2.1** Once the sample has been destroyed, the CJS shall update the status of the expunction record to “Pending Peer Review” as described later in this section.
- 5.1.3.4.2.2** After the peer review process is complete for the expunction request record linked to the destroyed
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specimen, the status of the expunction request record will be changed to “Pending Denial Notification.” Proceed to the “Pending Denial Notification” section of this document.

- 5.1.3.4.3** The eligibility of the sample shall be determined and the CJS shall select the approval/denial reasons in the expunction request record. If the sample was in a processing status on the date that expunction request was received, update the status of the specimen record to the appropriate status. Generate an additional “Person-Donor Duplicate Report” and attach it as a .pdf to the expunction request record.

NOTE: The “Person-Donor Duplicate Report” shall be generated after the status of any relevant potential duplicates to the specimen being evaluated has also been updated to the appropriate status.

- 5.1.3.4.4** Any duplicate specimens linked to the same arrest listed on the verification form shall be linked at the specimen level to the original specimen.

- 5.1.3.4.5** Any duplicate specimens eligible for expunction shall be expunged with the original specimen. Duplicate samples for the same individual but linked to a different arrest from the one listed on the verification form shall be evaluated in the same manner as the original specimen.

**5.1.3.4.5.1** If the duplicate specimen(s) qualifies for expungement, the original CJS employee will link all duplicate specimens to the original request record or create a separate request record using the original verification request form.

**5.1.3.4.5.2** If a separate record(s) was created, a note shall be added to the duplicate expunction record indicating that this is a duplicate specimen linked to a different arrest. A separate approval letter will not be required.

**5.1.3.4.5.3** The status of the record(s) shall be changed to “In Evaluation.” After evaluating the individual’s criminal history, the “Person-Donor Duplicate Report,” and any other attached documents, the status will be changed to “Pending Peer Review” as described later in this procedure.

**5.1.3.4.5.4** If a separate record(s) was created, after the peer review process is completed for the duplicate record, and after the peer review, second peer review, or legal review process is complete for the original record, the status of the duplicate expunction request record will

be changed to “Approved – Pending Expunction.”  
Proceed to the “Approved – Pending Expunction”  
section of this document.

- 5.1.3.4.6** All subsequent duplicate expunction request records created for the same individual and arrest event shall be deleted by the Forensic Scientist Manager/designee once the duplicate request is added to the previously processed expunction request record.
- 5.1.3.5** The CJS shall update the status to “Pending Peer Review,” save the record, and assign to a second CJS (peer reviewer) or designee approved by the DNA Database Manager or Supervisor. If it is a duplicate expunction request that requires a notification letter(s), the status is updated to “Duplicate-Pending Peer Review.”
- 5.1.3.6** The second CJS shall perform a peer review to include a complete review of the determination of eligibility and all supporting documentation.
  - 5.1.3.6.1** The criminal history report(s), “Person-Donor Duplicate Report,” and any other documentation cited shall be reviewed.
  - 5.1.3.6.2** The approval/denial reasons shall be reviewed.
- 5.1.3.7** If the peer reviewer *agrees* with the originating CJS’s eligibility determination, the status shall be changed to “Peer Review Complete” and the record assigned to the originating CJS. If a duplicate, the peer reviewer changes the status to “Duplicate-Peer Review Complete” and assigns the record to the originating CJS.
- 5.1.3.8** If the peer reviewer *disagrees*, or there is a question concerning documentation and/or the eligibility determination, the peer reviewer shall change the status to “Peer Review Returned,” add the reason to the notes, include his/her initials and date, and assign to the originating CJS. If a duplicate, the peer reviewer updates the status to “Duplicate-Peer Review Returned.”
  - 5.1.3.8.1** If the originating CJS agrees with the peer reviewer after the peer review is returned, the suggested changes shall be made by the CJS who shall change the status to “Pending Peer Review” and assign to the peer reviewer. If a duplicate request, the CJS changes the status to “Duplicate-Pending Peer Review” and assigns to the peer reviewer.
  - 5.1.3.8.2** The peer reviewer shall verify the changes, update the status to “Peer Review Complete” and assign to the originating CJS. If a duplicate, the status is updated to “Duplicate-Peer Review Complete.”
    - 5.1.3.8.2.1** For any expungement processed as a linked duplicate request, once the original expunction request (unless a “Completed-No Specimen”) is peer reviewed, the

linked duplicate request does not receive a second review.

**5.1.3.8.3** Once the status of the original request is updated to “Peer Review Complete,” the originating CJS will change the status to “Pending Denial Notification” or “Approved – Pending Expunction.”

**5.1.3.8.4** Once the status of the linked duplicate request is updated to “Duplicate-Peer Review Complete” and the appropriate letter is printed, the status is updated to “Completed-Duplicate.” Duplicate letters may also be printed as part of a batch. See the “Expunction Letter Batch Printing” section of this procedure.

**5.1.3.9** If the originating CJS and the peer reviewer cannot resolve an eligibility question, the peer reviewer shall add a comment in the notes section and include his/her initials and date. The originating CJS and the peer reviewer will bring the matter to the Forensic Scientist Manager/Supervisor to resolve the issue. Once the matter is resolved, the peer reviewer shall change the status to “Peer Review Complete.” If a duplicate, change the status to “Duplicate – Peer Review Complete.”

**5.1.3.10** Once the status is updated to “Peer Review Complete,” the originating CJS will change the status to “Pending Denial Notification” or “Approved – Pending Expunction.”

**5.1.3.11** If the matter is not resolved after consulting with the Forensic Scientist Manager/Supervisor, Crime Laboratory legal counsel may be consulted. The originating CJS shall change the status of the record to “Pending Denial Legal Review” or “Pending Approval Legal Review.” The originating CJS may then assign the record or send a notification to Crime Laboratory legal counsel so that a review may be performed

#### **5.1.4 Laboratory Legal Review of Arrestee Expungements**

**5.1.4.1** Upon assignment, legal counsel, the Forensic Scientist Manager/Supervisor or designee shall select and open the expungement request. If a notification was sent to legal counsel, in lieu of assigning the expunction request record, open the documentation attached to the notification.

**5.1.4.2** The criminal history reports, the “Person Donor Duplicate Report,” and any other documentation cited shall be reviewed.

**5.1.4.3** The approval or denial reasons in the record or attached to the notification shall be reviewed.

**5.1.4.4** Legal counsel, the Forensic Scientist Manager/Supervisor or designee shall provide a recommendation by changing the status to either “Approval Recommended” or “Denial Recommended.” If a notification was sent, legal counsel shall respond to the notification with their recommendation.

NOTE: If the Forensic Scientist Manager/Supervisor or designee changes the status to “Approval Recommended” or “Denial Recommended,” a note will be added to the record indicating that the review was performed by a second peer reviewer in lieu of legal counsel. If the Forensic Scientist Manager/Supervisor or designee needs input from Laboratory legal counsel to provide a recommendation, the review shall be assigned to legal counsel or a notification shall be sent requesting their input.

**5.1.4.5** If the review recommendation changes the expungement approval or denial determination, legal counsel or the designee shall select the appropriate recommendation status in SpecMan (approval or denial reason), delete the old approval or denial reasons, and SpecMan assigns to the originating CJS. Alternatively, if legal counsel provides a recommendation that changes the approval or denial determination, a designee will delete the old approval or denial reasons.

**5.1.4.5.1** Legal counsel or the designee may provide documentation from another legal source or secondary legal counsel to support the recommended approval or denial. This documentation shall be attached to the specimen record, either by counsel or the originating CJS.

**5.1.4.5.2** Legal counsel or the designee shall add notes (if applicable) to the expungement request record and update the status to “Denial Recommended” or “Approval Recommended.” If legal counsel instead provides the recommendation, a designee shall change the status to “Denial Recommended” or “Approval Recommended.”

**5.1.4.5.3** A notification shall be sent to both the originating CJS and the peer reviewer. Both shall review the record to view the changes.

**5.1.4.5.4** If requested, the originating CJS shall make corrections in the record then assign the record back to legal counsel or the designee. Legal counsel or the designee shall ensure that the corrections were made and assign the record back to the originating CJS.

**5.1.4.6** If the review recommendation does not change the expungement approval or denial determination, legal counsel or a designated reviewer shall change the status to “Approval Recommended” or “Denial Recommended” and SpecMan assigns to the originating CJS.

**5.1.4.7** The originating CJS shall change the status to “Pending Denial Notification” or “Approved Pending Expunction.”

NOTE: If the status has been changed to either “Pending Denial Notification” or “Approved Pending Expunction,” and results in a change in the approval/denial reason, a new peer review and a subsequent review will be performed. If the status is changed to “Pending-No Specimen Notification,” no additional review will be required.



- 5.1.4.8** The SpecMan system notifies the Database Manager or designee when samples qualify for expungement and that the status has been changed to “Approved Pending Expunction.”

#### **5.1.5 “Pending Denial Notification” of Arrestee Expungements**

- 5.1.5.1** Upon assignment, the originating CJS shall generate denial letters. Denial letters may also be printed as part of a batch. See the Expungement Letter Batch Printing section of this document.
- 5.1.5.2** The hard copy of the letter, as well as a copy of the verification form, shall be mailed to the subject. If the subject’s address is unknown, or the subject is deceased, the copy of the letter and verification form shall be mailed to the submitting District Attorney’s office.
- 5.1.5.3** A copy of the denial letter shall be attached to the expungement request record notes in SpecMan and the status shall be updated to “Denial Complete.”
- 5.1.5.4** The DNA sample associated with the request shall remain unchanged.

#### **5.1.6 “Approved Pending Expunction” of Arrestee Expungements**

- 5.1.6.1** The Forensic Scientist Manager or designee shall assign the expungement request record to a DNA Database Forensic Scientist to proceed with the expungement process.
- 5.1.6.2** The DNA Database Forensic Scientist shall remove the DNA profile from CODIS (if applicable) using the NDIS Specimen Manager Module. The reason for the removal of the profile shall be noted and the DNA Database Forensic Scientist’s initials shall be noted in the comments section of the SDIS Specimen Delete Report.
- 5.1.6.3** The specimen record shall be updated to record the expungement.
  - 5.1.6.3.1** If the DNA profile was removed from CODIS, update the SpecMan “Date Removed” field with the date the profile was removed from CODIS and change the specimen status to “Stored – Removed from CODIS.”
  - 5.1.6.3.2** If the DNA profile was not entered in CODIS, the specimen status shall be changed to “Stored – Not Entered in CODIS.”
- 5.1.6.4** A DNA Database Sample Destruction Form shall be printed for the sample.
- 5.1.6.5** The physical DNA sample and DNA Database collection card shall be removed from the DNA Databank.
- 5.1.6.6** The DNA Database Forensic Scientist shall ensure that a final scanned image of the DNA collection card is attached and saved as a .pdf in the notes portion of the specimen record in SpecMan. The form, sample, and DNA Database Collection Card shall be reviewed to ensure the same sample is represented by

all three items. The Forensic Scientist Manager or designee shall sign the form verifying the concordance of the items. The sample shall be placed in the biohazard waste to be destroyed. The DNA Database Collection Card shall be destroyed.

- 5.1.6.7** The Forensic Scientist Manager or designee and DNA Database Forensic Scientist shall sign the DNA Database Sample Destruction Form, verifying the destruction has been completed.
- 5.1.6.8** The DNA Database Forensic Scientist shall attach the destruction form to the expungement request record notes.
- 5.1.6.9** The expungement record status shall be updated to “Pending Databank Verification.”
- 5.1.6.10** For samples with profiles that were removed from CODIS, the expungement record status shall then be updated to “Pending CODIS Deletion” followed by “Pending CODIS Verification.”
- 5.1.6.11** For samples that did not have a profile in CODIS, the expungement record status shall then be updated to “Pending Final Verification” for Forensic Scientist Manager/designee review. The CODIS Administrator, Assistant CODIS Administrator, or designee shall cross-check the delete report maintained in the CODIS Message Center to the “Pending CODIS Verification” work queue to ensure that the samples in SpecMan have been removed from CODIS. The CODIS Administrator or Assistant CODIS Administrator shall update the status to “Pending Final Verification.”
- 5.1.6.12** The Forensic Scientist Manager or designee shall monitor the “Pending Final Verification” queue and confirm that the physical DNA sample, DNA record, and DNA Database Collection Card have been destroyed by reviewing the attached DNA Database Sample Destruction Form that is maintained in SpecMan.
- 5.1.6.13** The status shall be changed to “Pending Completion” and assigned back to the originating CJS.
- 5.1.6.14** The originating CJS shall monitor the “Pending Completion” queue and generate and print the approval letters notifying the subject that the sample has been expunged. The approval letters may also be printed from a batch. See the Expunction Letter Batch Printing section of this procedure.
- 5.1.6.15** The hard copy of the letter, as well as a copy of the verification form, shall be mailed to the subject. If the subject’s address is unknown, or the subject is deceased, the copy of the letter and verification form shall be mailed to the submitting District Attorney’s office.
- 5.1.6.16** An approval letter shall be attached to the expungement request record notes in SpecMan. All specimens associated with this expungement request (duplicates

for the same event and any QC sample) shall be assigned to the originating CJS. The originating CJS shall then update the status of the expungement request to “Completed” and the status of the associated sample(s) shall automatically be updated to “Expunged” in SpecMan. As required by State Law, the State Crime Laboratory shall complete the expungement procedure within 90 days of receiving the verification form.

### **5.1.7 Expunction Letter Batch Printing**

**5.1.7.1** For batch expunction letter printing, the CJS or designated Database employee initiates a new batch by the “mail on” date for the expunction requests.

**5.1.7.2** The CJS or designated Database employee selects “Expunction Print Batches” and creates a new expunction print batch.

**5.1.7.2.1** The CJS or designee selects the “Assigned CJS” field and populates the field with their name.

**5.1.7.2.2** The CJS or designee selects a “mail on” date and saves the expunction print batch.

**5.1.7.2.3** The user may view the assigned expunction requests by selecting the expunction requests from the “Expunction Print Batch” screen. The CJS or designee shall select “Expunction Letters Batch” from the Reports menu.

**5.1.7.2.4** The CJS or designee validates the letters and prints the letters and the verification forms for mailing.

**5.1.7.2.5** After mailing, the CJS or designee returns to the “Expunction Print Batch” record and selects “Yes” for the mailing complete. This causes the status of each sample in the batch to be updated to the appropriate status of “Completed,” “Denial Completed,” or “Completed-No Specimen.” The CJS assigns the completed expungement record to “Unassigned User.”

### **5.1.8 Manual Processing of Arrestee Expungement Requests**

**5.1.8.1** If the expungement request record feature of SpecMan is not operational, the arrestee expungement requests received shall be processed manually.

**5.1.8.2** The following shall be saved on the Section’s shared drive.

**5.1.8.2.1** Expungement request.

**5.1.8.2.2** CCH, AOC, DPS, or CJLEADS reports.

**5.1.8.2.3** Person-Donor Duplicate report (if applicable).

**5.1.8.2.4** Information from other law enforcement database queries.

- 5.1.8.2.5 Notes from and identification of the CJS, peer and/or legal reviewer.
        - 5.1.8.2.6 The approval or denial of the request.
        - 5.1.8.2.7 A copy of the signed destruction form.
        - 5.1.8.2.8 A copy of the approval/denial letter.
  - 5.1.8.3 If no specimen exists in SpecMan, the following documentation shall be retained on the Section's shared drive:
    - 5.1.8.3.1 Expungement request.
    - 5.1.8.3.2 CCH or CJLEADS reports.
    - 5.1.8.3.3 Person-Donor Duplicate report (if applicable).
    - 5.1.8.3.4 Information from other law enforcement databases (if any).
    - 5.1.8.3.5 Notes and identification of the CJS and the peer reviewer.

## **5.2 Convicted Offender Expungements**

### **5.2.1 General**

- 5.2.1.1 The procedure for expungement and destruction of a convicted offender sample shall be used when the State Crime Laboratory receives an order of expungement issued by the court as well as a certified copy of the final appellate court order reversing and dismissing the conviction or a certified copy of the instrument granting the pardon of innocence as specified in G.S 15A-148. This process shall also apply to an order by the court when charges are dismissed or there is a finding of not guilty.
- 5.2.1.2 A DNA sample collected from a convicted offender shall be expunged and destroyed if:
  - 5.2.1.2.1 The Court enters an order of expungement following the issuance of a final order by an appellate court reversing and dismissing a conviction of an offense for which a DNA analysis was performed in accordance with Article 13 of Chapter 15A of the General Statutes; or
  - 5.2.1.2.2 The Court enters an order of expungement after the receipt of a pardon of innocence with respect to an offense for which DNA analysis was performed in accordance with Article 13 of Chapter 15A of the General Statutes; or the Court enters an order of expungement after the charges are dismissed or there is a finding of not guilty with respect to an offense for which DNA analysis was performed in accordance with Article 13 of Chapter 15A of the General Statutes.

- 5.2.1.3** Federal law requires that states participating in NDIS expunge the DNA records of persons whose qualifying convictions have been overturned. An amendment to the Federal DNA Identification Act in 2001 requires that states participating in NDIS “shall promptly expunge from that index the DNA analysis (DNA profile) of a person included in the index by that state if the responsible agency or official of that state receives, for each conviction of the person of an offense on the basis of which that analysis (profile) was or could have been included in the index, a certified copy of a final court order establishing that such conviction has been overturned.” A court order is not considered “final” for these purposes if time remains for an appeal or application for discretionary review with respect to the order. See Federal DNA Identification Act at 42 U.S.C§14132 (d) (2).

## **5.2.2 Initial Convicted Offender Expungement Processing**

- 5.2.2.1** The order of expungement and a certified copy of the trial court’s order dismissing the charges shall be received by the State Crime Laboratory and forwarded to the CODIS Administrator, Assistant CODIS Administrator, Forensic Scientist Manager or designee.
- 5.2.2.2** The CODIS Administrator, Assistant CODIS Administrator, Forensic Scientist Manager or designee shall receive the court order for convicted offender expungement, scan the documentation, and save as a .pdf file.
- 5.2.2.3** Whether or not the specimen record exists in SpecMan, the CODIS Administrator, Assistant CODIS Administrator, Forensic Scientist Manager or designee shall create a new expungement request record, shall populate the mandatory fields within the expungement request record using the supplied information on the court order, and shall update the status to “Received.” The court order shall be attached to the notes section of the expungement request.

## **5.2.3 Evaluating Convicted Offender Expungement Requests**

- 5.2.3.1** The expungement request record shall be assigned in SpecMan to a CJS. Assignments to a CJS for expungement completion and peer review of expungements are based on a monthly rotation schedule.
- 5.2.3.1.1** The CJS shall query and view the individual’s relevant criminal history using CCH, AOC, DPS, CJLEADS, or any other law enforcement database resources as needed. The most relevant report(s) to the evaluation shall be attached to the notes in the expungement request record.
- 5.2.3.1.2** The CJS shall assign a peer review to a second CJS or designee. The peer review process as outlined in the Evaluating Arrestee Expungement Requests section of this procedure must be followed.

- 5.2.3.1.3 The CJS shall assign the expungement request record to Laboratory legal counsel or the designated reviewer and update the status to “Pending Legal Review.”

#### 5.2.4 Laboratory Legal Review of Convicted Offender Expungements

- 5.2.4.1 Legal counsel shall open the expungement request record and review the attached documentation to include the court order and relevant criminal history provided through the CCH/AOC/DPS queries and any other queries from law enforcement databases.

- 5.2.4.1.1 When no specimen exists for the donor in SpecMan, legal counsel shall update the status to “Pending-Court Notification” and notify the court that no sample exists for the subject in the NC DNA Databank.

- 5.2.4.1.2 Legal counsel shall update the status to “Notification Complete” after appropriately notifying the court.

- 5.2.4.1.3 When a specimen exists for the donor in SpecMan and legal counsel feels no further clarification is required, legal counsel shall update the status to “Approved Pending Expunction.”

- 5.2.4.1.4 Legal counsel may retain the notification to the court or attach the same to the expunction request record.

- 5.2.4.2 Alternatively, legal counsel may receive a notification to review the expungement request. The court order and the documentation attached to the notification shall be reviewed.

- 5.2.4.2.1 When no specimen exists for the donor in SpecMan, a designee shall update the status to “Pending-Court Notification” once legal counsel has notified the court that no sample exists for the subject in the NC DNA Databank.

- 5.2.4.2.2 When a specimen exists for the donor in SpecMan and legal counsel feels no further clarification is required, legal counsel shall send a notification to the Forensic Scientist Manager/designee who will then update the status to “Approved Pending Expunction.”

- 5.2.5 Legal counsel may retain the notification to the court or attach the same to the expunction request record. **“Approved Pending Expunction” of Convicted Offender Expungements**

- 5.2.5.1 The Forensic Scientist Manager or designee shall assign the expungement order to a DNA Database Forensic Scientist.

- 5.2.5.2 The DNA Database Forensic Scientist shall comply with the specifications of the court order. If required, the Scientist will delete the DNA profile that requires expungement from the CODIS computers. If required, the physical

DNA sample and DNA Database Collection Card shall be removed from the DNA Databank. The status shall be updated to “Pending Databank Verification.”

- 5.2.5.2.1** If the sample is to be destroyed, a DNA Destruction Form shall be printed for the sample.
- 5.2.5.2.2** The form, sample, and DNA Database Collection Card shall be reviewed to ensure the same sample is represented by all three items. The Forensic Scientist Manager or designee shall sign the form verifying the concordance of the items. The sample shall be placed in the biohazard waste to be destroyed. The DNA Database Collection Card shall be destroyed.
- 5.2.5.3** The Forensic Scientist Manager or designee and DNA Database Forensic Scientist shall sign, verifying that this process has been completed.
- 5.2.5.4** The DNA Database Forensic Scientist shall attach the destruction form to the expungement request record notes in SpecMan and change the status to “Pending CODIS Deletion.”
- 5.2.5.5** The DNA profile shall be removed from CODIS using the NDIS Specimen Manager Module. The reason for the removal of the profile shall be entered and the DNA Database Forensic Scientist/Database Analyst’s initials shall be placed in the comments section.
- 5.2.5.6** The DNA Database Forensic Scientist/Database Analyst shall update the status of the sample in SpecMan to “Pending CODIS Verification.”
- 5.2.5.7** The CODIS Administrator or Assistant CODIS Administrator shall cross-check the delete report maintained in the CODIS Message Center with the “Pending CODIS Verification” work queue to ensure that the samples in SpecMan have been removed from CODIS. The status shall be updated to “Pending Final Verification.”
- 5.2.5.8** The Forensic Scientist Manager or designee shall monitor the “Pending Final Verification” work queue and confirm that the physical DNA sample, DNA record and DNA Database Collection card have been destroyed by reviewing the attached DNA Database Sample Destruction Form maintained in SpecMan.
  - 5.2.5.8.1** The status shall be changed to “Completed” and Laboratory legal counsel shall be notified of the completed expungement.
- 5.2.5.9** A notice of compliance with the court order shall be sent by legal counsel to the court, convicted offender, and his/her attorney.

NOTE: If all information pertaining to the specimen is removed from SpecMan due to the specifications of the court order, legal counsel shall retain a hard copy of the court order, any documentation generated during the review of the order,

and the notice of compliance for the period of time required by the North Carolina Department of Cultural Resources records retention schedule.

**5.2.5.10** SpecMan updates the specimen record to “Expunged” if the court order does not indicate complete removal of information from SpecMan.

**5.2.5.11** If the court order indicates all information is to be removed, the SpecMan system deletes the donor data and updates the specimen status to “Expunged-Donor Info Removed.”

**5.2.5.11.1** The Forensic Scientist Manager or designee shall manually delete the expunction record from SpecMan.

## **5.2.6 “Pending Litigation”**

**5.2.6.1** When a specimen exists for the donor in SpecMan and legal counsel needs further clarification from the issuing court, legal counsel shall update the status to “Pending Litigation” and file a motion with the court.

**5.2.6.1.1** Upon receiving notification from the court on the motion, legal counsel shall update the notes to the expungement request record.

**5.2.6.1.2** If adequate information is received from the court, the expungement shall be processed accordingly.

**5.2.6.1.3** If inadequate information is received, legal counsel shall notify the court and the status shall remain as “Pending Litigation.”

**5.2.6.1.4** Upon final resolution of the court order, legal counsel shall make notification to the CODIS Administrator, Assistant CODIS Administrator, Forensic Scientist Manager or designee, convicted offender, his/her attorney and to the court. Legal counsel shall update the status to “Approved-Pending Notification” or “Litigation Complete” after the motion has been heard in court.

**5.2.6.1.5** If the status is updated to “Approved-Pending Notification,” follow the steps listed in the “‘Approved Pending Expunction’ of Convicted Offender Expungements” section of this procedure.

**5.2.6.1.6** Alternatively, legal counsel may perform this process outside of SpecMan. Once legal counsel has filed a motion with the court as described above, a designee will change the status to “Pending Litigation.”

**5.2.6.1.6.1** After the court order has been resolved counsel shall notify the parties as described above and a designee will update the status to “Approved-Pending Notification” or “Litigation Complete.”



- 5.2.6.1.7** If the status is updated to “Approved-Pending Notification,” follow the steps listed in the “‘Approved Pending Expunction’ of Convicted Offender Expungements” section of this procedure.

## **5.2.7 Manual Processing of Convicted Offender Court Orders for Expungement**

- 5.2.7.1** If the expungement request record feature of SpecMan is not operational, the court order for convicted offender expungement shall be processed manually.
- 5.2.7.2** The request shall be scanned as a .pdf file and the steps as cited from the receipt of the verification form, evaluation, peer review, legal review and removal of the sample from the Databank through the remainder of the document (as applicable) shall be followed.
- 5.2.7.3** If in accordance with the court order, the following shall be saved on the Section’s shared drive.
  - 5.2.7.3.1** Court Order.
  - 5.2.7.3.2** CCH, AOC, DPS, or CJLEADS reports (if any).
  - 5.2.7.3.3** Information from other law enforcement databases (if any).
  - 5.2.7.3.4** Notes and the identification of the CJS, peer reviewer and legal counsel.
  - 5.2.7.3.5** Notification to the court, convicted offender and his/her attorney.
- 5.2.7.4** If no specimen exists for the court order in SpecMan or the court order requires all records to be removed, the following shall be retained as a hard copy by Laboratory legal counsel:
  - 5.2.7.4.1** Information from other law enforcement databases (if any).
  - 5.2.7.4.2** Notes and identification of the CJS, peer reviewer and legal counsel.
  - 5.2.7.4.3** Notification to the court, convicted offender and his/her attorney.
  - 5.2.7.4.4** The documentation described in this section shall be saved on the Section’s shared drive.

## **5.3 Removal of Ineligible and Duplicate DNA Profiles from CODIS**

- 5.3.1** If a database sample is determined to be ineligible for collection after the profile has been entered into CODIS, the following steps shall be taken to remove the profile from CODIS:
  - 5.3.1.1** The DNA profile shall be removed by the CODIS Administrator/Assistant CODIS Administrator from CODIS using the NDIS Specimen Manager Module. The reason for the removal of the profile shall be noted by the CODIS

Administrator/Assistant CODIS Administrator and a comment made in the comments section of the SDIS Specimen Delete Report.

**5.3.1.2** The CODIS Administrator/Assistant CODIS Administrator shall update the status of the database sample in SpecMan from “Stored – Entered in CODIS” to “Stored-Removed from CODIS” and make a note in the notes portion of the specimen record in SpecMan regarding the deletion.

**5.3.1.3** A DNA Database Forensic Scientist shall either assign the sample to the appropriate batch type as described in the Analysis Batch Assignment Section in the DNA Database Section Procedure for Sample Processing or change the status to “Stored-Rejected” and process the sample as described in the Rejection Processing Section in the DNA Database Section Procedure for Sample Processing.

**5.3.2** If a routine search of CODIS indicates a potential duplicate database sample, the guidelines as outlined in the Procedure for CODIS shall be followed.

**5.3.2.1** When notified by the CODIS Administrator/Assistant CODIS Administrator of a potential duplicate sample that is unable to be resolved, the Forensic Scientist Manager shall assign the two samples to a CJS for review. The CJS may access law enforcement databases and/or resources to verify the identifiers/information located in each specimen record in SpecMan to determine if the samples are from the same individual.

**5.3.2.2** If the samples are determined to be from different individuals, the CODIS Administrator/Assistant CODIS Administrator shall be notified and the specimen category in CODIS shall remain unchanged. The CJS shall update the notes of each specimen record in SpecMan with the appropriate documentation.

## **6.0 Limitations - N/A**

## **7.0 Safety - N/A**

## **8.0 References**

DNA Database Administrative Policy and Procedure

DNA Database Section Procedure for Sample Processing

DNA Database Section Procedure for Sample Processing Quality Control

Procedure for CODIS-DNA Database

State Crime Laboratory Quality Manual

State Crime Laboratory Safety Manual

## **9.0 Records**

- SpecMan
- DNA Database Sample Destruction Form
- Specimen Expungement Request Checklist

**10.0 Attachments - N/A**

Revision History		
Effective Date	Version Number	Reason
08/09/2021	10	5.1.3.4.2 and 5.3.1.3-Updated procedure name; Updated References