



## DBS 12.5 Arrestee Expungements

- A. Purpose** – Arrestee samples may undergo expungement per CRS 16-23-105 if the arrestee submits a written request for expungement and the enumerated requirements are met.
- B. Scope** – This procedure applies to arrestee samples that have received an expungement request
- C. Quality Requirements**
1. All correspondence is administratively reviewed
  2. Legal expungement requests must be received in writing
  3. Documentation of submission removal is maintained in a secure location either in hardcopy or electronic format
  4. Sample destruction is verified and witnessed by a second laboratory staff member
- D. Procedure**
1. Open the request for arrestee legal expungement
  2. Stamp the letter, envelope and any other documents with the date the correspondence was received
  3. Create a file for the documentation and attach an Expungement Worksheet for Arrestee form to the front of the file
    - a. Notate on the bottom left front of the file if a defense attorney letter is needed in order to complete the expungement request
    - b. Enter the appropriate information on the Expungement Worksheet for the various steps of the expungement process
    - c. Query the individual using the Offender Dynamic Search module and, if desired, print the results
    - d. Note all duplicate arrestee and/or convicted offender samples in the STACS™ database
  4. Query the submission in the Submission Edit module
    - a. Note that an expungement request was received, including the date of receipt, in the comments field
    - b. Print the Submission Detail Report
    - c. Print a Submission Audit History, if available

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5. In the Sample Removal module start a new entry for removing a sample
  - a. The Legal Expungement type should be selected
  - b. The option to keep the identifying information in STACS™ should be selected for tracking purposes
  - c. The removal status should be set to 'Pending'
6. If a STACS™ Barcode number has been issued and the status is 'CODIS Uploaded' or 'CODIS Confirmed', notify the CODIS Administrator or designee to change the specimen category, disabling the profile from future CODIS searches
  - a. The CODIS Administrator or designee must note the change in the comments field of the Submission module and respond that the change has been made
  - b. The notification and the acknowledgement from the CODIS Administrator or designee may be printed and placed in the file
  - c. A status of 'In Process', 'Arrestee Pending Processing' or 'Arrestee Pending' does not require a notification to the CODIS Administrator or designee
7. Research the subject's criminal history and determine if they qualify for an expungement pursuant to 16-23-105(1)(a)(I)(II)
8. Print the subject's criminal history and all applicable court cases
9. If the submission does not qualify for expungement, notify the subject and/or their attorney in writing that the sample is not eligible for DNA expungement pursuant to CRS 16-23-105(7)
  - a. The District Attorney's (DA) Office may also need to be notified in some cases
  - b. Use an appropriate letter template for the notification(s)
  - c. Forward the letter(s) for administrative review
  - d. Mail the letter(s) to the requestor and/or their attorney and the DA, if needed
  - e. Place a copy of the completed letter(s) in the file ensuring that it is noted as a copy
  - f. Update the Expungement Request worksheet and spreadsheet
  - g. Set the removal status to 'Invalid' in the Sample Removal module
  - h. Notify the CODIS Administrator or designee of all denied expungement requests if the profile is in CODIS
    - i. The CODIS Administrator must change the specimen category back to 'Arrestee', enabling the profile for future CODIS searches

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- ii. A comment regarding the change is entered into the Submission Edit comments field
10. If the submission qualifies for expungement, notify the applicable District Attorney's (DA) Office
  - a. Use an appropriate letter template for the notification
  - b. Forward the letter for administrative review
  - c. Mail the letter to the DA's office
  - d. Place a copy of the completed letter in the file ensuring that it is noted as a copy
  - e. Update the Expungement Request worksheet and spreadsheet
  - f. Place the file in the bin designated for awaiting a response from the DA
    - i. Files are maintained in order of the DA's response due date
    - ii. The file is checked daily for DA responses due on that date
11. If a response with objection is received from the District Attorney's Office, notify the subject and/or their attorney in writing stating the DA has objected to the expungement
  - a. Stamp the letter from the DA with the date received
  - b. Use an appropriate letter template for the notification(s)
  - c. State the specific reason for the objection
  - d. Forward the letter for administrative review
  - e. Mail the letter to the requestor and/or their attorney
  - f. Place a copy of the completed letter in the file ensuring that it is noted as a copy
  - g. Update the Expungement Request worksheet and spreadsheet
  - h. Set the removal status to 'Invalid' in the Sample Removal module
  - i. Notify the CODIS Administrator or designee of all denied expungement requests
    - i. The CODIS Administrator must change the specimen category back to 'Arrestee', enabling the profile for future CODIS searches
    - ii. A comment regarding the change is entered into the Submission Edit comments field
12. If a response without objection is received from the District Attorney's Office OR if 30 days have passed since the letter was mailed to the DA, notify the subject and/or their attorney in writing that the sample is eligible for DNA expungement
  - a. Stamp the letter from the DA with the date received (if applicable)

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- b. Use an appropriate letter template for the notification(s)
  - c. Forward the letter(s) for administrative review
  - d. Mail the letter(s) to the requestor and/or their attorney
  - e. Place a copy of the completed letter(s) in the file ensuring that it is noted as a copy
  - f. Update the Expungement Request worksheet and spreadsheet
  - g. Forward the file to the CODIS Administrator or designee for review and completion of the expungement
    - i. The profile is deleted from CODIS and either a CODIS Delete Report or a Delete Summary Report is printed
    - ii. The Submission module's comments field is updated to note the CODIS profile deletion
    - iii. The removal status is set to 'Confirmed' in the Sample Removal module
    - iv. The file is forwarded to a DNA Database Technician for sample destruction
13. Destroy the DNA sample, if applicable
- a. Pull the appropriate DNA sample
  - b. Verify the name and STACS™ Barcode on the DNA sample is consistent with the information on the Submission Detail Report and the Expungement Worksheet
    - i. A secondary reviewer must verify the name and STACS™ Barcode on the DNA sample is consistent with the information on the Submission Detail Report and Expungement Worksheet
  - c. Remove the DNA portion of the sample card and place it in the biohazard waste
  - d. Tape the remaining portion of the DNA sample card to the expungement documentation
14. Scan the expungement file for archiving
- a. The scanned file should be attached to the STACS™ Submission record
  - b. The scanned file should be copied to the shared folder on the STACS™ server
  - c. The expungement paperwork may be shredded after scanning

**E. References Used**

1. C.R.S. 16-23-105
2. DOM DBS Court-ordered Expungements and Administrative Removals



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### 3. DOM DBS STACS™ Recording

#### F. Additional Factors

The specific type of removal that is selected in the Sample Removal module will affect the information in the STACS™ SQL database differently. The two types that are used by the Colorado Bureau of Investigation DNA Database Laboratory are:

1. Legal Expungement – gives the option to leave or remove the subject’s identifying information and DNA profile, if applicable, from the STACS™ SQL database
2. Admin Removal - leaves the subject’s identifying information but removes the DNA profile, if applicable, from the STACS™ SQL database

Arrestee Expungements are considered a legal expungement per C.R.S. 16-23-105. They must include the removal of the DNA profile from CODIS and STACS™ and the destruction of the DNA sample. Removing the DNA profile from CODIS prevents it from being searched against other specimens. Destroying the DNA sample removes it from storage and prevents another profile from being developed.

The CBI Identification Unit (Ident) may receive requests from law enforcement to remove arrests from CCIC and may notify the CBI DNA Database laboratory. Sample removal of these submissions should follow DOM DBS Court-ordered Expungements and Administrative Removals. A comment should be entered in the Submission module’s comments field with the reason for the removal and that the request was initiated by the Identification Unit. If a removal is requested for an arrest that has a duplicate submission for the same arrest event, and only the requested submission has been processed, the PCN numbers may be switched between the two submissions to keep the DNA profile and match the CCIC record.