

JUSTICE NEWS

Department of Justice

Office of Public Affairs

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Department of Justice to Publish Notice of Proposed Rulemaking to Comply Fully with DNA Fingerprint Act of 2005

The Department of Justice today issued a notice of proposed rulemaking (NPRM) that would restore to the Attorney General the authority vested in him by the bipartisan DNA Fingerprint Act of 2005 to authorize and direct the Department of Homeland Security (DHS) to collect DNA samples from the non-United States persons it detains. Once implemented, this rule will facilitate federal, state, and local crime reduction and investigation efforts.

“The proposed rule change would help to save lives and bring criminals to justice by restoring the authority of the Attorney General to authorize and direct the collection of DNA from non-United States persons detained at the border and the interior by DHS, with the ultimate goal of reducing victimization of innocent citizens,” said Deputy Attorney General Jeffrey A. Rosen. “Today’s proposed rule change is a lawful exercise of the Attorney General’s authority, provided by Congress, to collect DNA samples from non-United States persons who are properly detained under the authority of the United States.”

As a result of this rule change, the Department of Justice will ensure that all federal agencies—including DHS—are in full compliance with the bipartisan DNA Fingerprint Act, which was a component of a larger legislative package that passed the House of Representatives by an overwhelming vote of 415 to four and the Senate by Unanimous Consent. The DNA Fingerprint Act provided the Attorney General with the exclusive authority to draft regulations to authorize and direct any federal agency to “collect DNA samples from individuals who are arrested, facing charges, or convicted or from non-United States persons who are detained under the authority of the United States.” 24 U.S.C. § 40702(a)(1)(A).

On Dec. 10, 2008, the Department of Justice published in the Federal Register a final rule implementing the collection of DNA samples under the DNA Fingerprint Act. That rule included a provision at 28 C.F.R. § 28.12(b)(4) that permitted DHS to exempt itself from collecting DNA samples from its non-United States citizen detainees by consulting with the Attorney General. Today’s proposed rule change would eliminate that exception, and restore to the Attorney General the plenary authority to authorize and direct federal agencies’ DNA collection efforts that Congress vested in him on an overwhelmingly bipartisan basis in the DNA Fingerprint Act.

Since Congress’ passage of the bipartisan DNA Fingerprint Act, the Federal Bureau of Investigation (FBI) has built a high-throughput DNA sample processing infrastructure through its Combined DNA Index System (CODIS). The CODIS database is a vital tool for federal, state, and local law enforcement investigations. All fifty states, the District of Columbia, Puerto Rico, and federal law enforcement participate in the national sharing of DNA profiles through CODIS. The FBI also has consistently reduced the operational burden for individual federal agencies to collect DNA through technological enhancements.

In advance of this rule change, the Department of Justice and DHS have been working collaboratively to initiate a pilot program for the collection of DNA from non-U.S. persons detained by DHS. As with all other DNA samples that federal agencies collect under the authority of the bipartisan DNA Fingerprint Act, the DNA samples that DHS collects from its non-United States person detainees will be entered into the Federal Bureau of Investigation’s Combined DNA Index System (CODIS). The FBI’s laboratory has the capacity to handle the increased input from DHS, and its capabilities can be scaled up to meet additional capacity. The FBI will provide DHS with the DNA collection kits, analyze the samples, and ensure that law enforcement agencies use the results in accordance with the FBI’s stringent CODIS privacy requirements.

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