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 from the SpecMan Program, DNA Database, DNA Databank and CODIS.

2.0   **Scope –** The procedures in this document apply 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**

- **Arrestee Sample** - A cheek swab or blood sample collected from an individual arrested for an offense specified by State law.
- **CODIS** – The Combined DNA Index System, the FBI's national DNA identification system that allows for storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories.
- **CODIS Match** - A match occurs when the DNA profile of a convicted offender/arrestee is searched in CODIS and that profile is determined to be the same as a forensic DNA profile entered from a case.
- **Contract Laboratory** – A commercial laboratory that has been reviewed and approved by the SBI to perform analysis on DNA database samples based on a written contract.
- **DNA Databank** – The State repository for the physical DNA samples.
- **DNA Database** – The State repository for the DNA profiles.
- **DNA Record** – DNA identification information stored in the DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results, the result obtained from the DNA analysis, also referred to as the DNA profile.
- **Expungement** – Removal of the DNA profile from the DNA Database, destruction of the convicted offender or arrestee sample from the DNA Databank, and deletion of the DNA profile in CODIS.
- **CODIS Message Center** – The CODIS program used to gain access to records of transactions that have occurred at the National level of CODIS.
- **NDIS Specimen Manager Module**– The CODIS program used to gain access to samples that have been uploaded to CODIS.
- **Offender Sample** – A blood or cheek swab collected from an individual convicted of an offense specified in 15A-266.4(b) or found not guilty of any of these offenses by reason of insanity and committed to a mental health facility in accordance with G.S. 15A-1321.
- **Order of Expungement** – An order entered by the court upon the issuance of a pardon of innocence or after the issuance of a final order by an appellate court reversing and dismissing a conviction of an offense for which a DNA analysis was done in accordance with Article 13 of Chapter 15A. The order shall include the name and address of the defendant and the defendant's attorney. The order must be must accompanied by 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. In addition, this includes an order issued by the court when the charges are dismissed or there are findings of not guilty pursuant to State law.
- **Qualifying Offense** – As described in Article 13 of Chapter 15A.
- **SBI DNA Collection Card** – The card submitted with the DNA sample that contains identifying information and the qualifying offense.
- **SpecMan Program** – The State Crime Laboratory identification data management system for convicted offenders and arrestees; used for tracking and automating the processing of DNA specimens up to the point that they are uploaded to CODIS; contains no DNA profiles.

- **Verification Form** – A form promulgated by the Administrative Office of the Courts that verifies and indicates the facts of the qualifying offense that is transmitted to the State Crime Laboratory to initiate the expungement procedures for an arrestee.

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 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 (d) or (e); 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).

5.1.1.3 The CODIS Administrator, Assistant CODIS Administrator (Assistant), or Database Manager or designee receives verification forms submitted by the District Attorneys' Offices for arrestee expungements. Assignments to Information Processing Technicians (IPT) for expungement completion and peer review of expungements shall be based on a monthly rotation schedule.

Note: Only a trained IPT or designated DNA Database employee with access to law enforcement databases (e.g., AOC, CCH, DOC) 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.

5.1.1.3.1 The CODIS Administrator, Assistant, or Database Manager shall scan the verification form(s) and save them as a .pdf file.

5.1.1.3.2 The CODIS Administrator, Assistant or Database Manager shall create a new expungement request.

5.1.1.3.3 The CODIS Administrator, Assistant, or Database Manager shall 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."

5.1.1.3.4 The CODIS Administrator, Assistant, or Database Manager shall save/attach the .pdf verification form to the notes of the expungement request and assign the request to an IPT.

5.1.1.4 Upon assignment, the IPT shall select and open the expungement request.

5.1.1.4.1 The additional information fields within the expungement request record shall be populated by the IPT with information from the verification form.

5.1.1.4.2 If no information is missing from the verification form, the IPT shall change the status to "In Evaluation."

5.1.1.4.2.1 If no specimen record exists for the donor in SpecMan, the IPT shall determine the eligibility, and shall change the status to "Pending-No Specimen Notification."

5.1.1.4.2.2 The IPT shall generate No-Specimen letters.

5.1.1.4.2.3 The originating IPT shall assign a peer review (based on the pre-existing rotation schedule) to a second IPT and change the status to "Pending Peer Review."

5.1.1.4.2.4 After review, the peer reviewer or designee shall update the status to "Peer Review Complete" and assign to the originating technician.

5.1.1.4.2.5 The originating IPT shall print the "No-Specimen" letter. The hard copy of the letter and a copy of the verification form shall be mailed to the subject. Additionally, hard copies of the letter and verification form shall be mailed to the subject's attorney and the submitting District Attorney's office.

5.1.1.4.2.6 The originating IPT shall update the status in SpecMan to "Completed-No Specimen."

5.1.1.4.2.7 If an arrestee sample is received subsequent to or during the processing of a "Completed-No Specimen" expunction and that arrestee sample is found to be for the same arrest event, the DNA Database Manager or designee shall be notified.

5.1.1.4.2.8 The Database Manager or designee shall evaluate the new sample in comparison to the original expunction request and if related, change the status from "Completed-No Specimen" to "Reprocess-Existing Expunction Request and assign to the original IPT.

5.1.1.4.2.9 The IPT will follow step **5.1.1.4** through the remainder of the document as applicable to complete the expungement request.

5.1.1.5 While "In Evaluation" if any fields other than DOB, SSN and signature dates are missing from the verification form, clarification shall be obtained by the IPT from the District Attorney's Office that submitted the verification form.

5.1.1.5.1 The IPT shall select a clarification reason and update the status to "Awaiting Missing Information Response."

5.1.1.5.2 The IPT shall contact the submitting District Attorney's office by fax, email, or by telephone. If requesting information via fax, the IPT shall use SpecMan to create a fax request form, or create an outside fax form. Any fax form or email shall be sent to the submitting District Attorney's office no later than the next business day. The original fax or email as well as any response received shall be saved as a .pdf to SpecMan. All telephone communication shall be documented in the notes section of the expunction request. Once the requested information is received, the status shall be changed to "Received."

5.1.1.5.2.1 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 IPT shall then update the status to "In Evaluation**.**"

5.1.1.5.2.2 If the requested information is inadequate or not provided in the response from the District Attorney's office, the IPT shall call to obtain the information. The IPT 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."

5.1.1.5.3 If after several attempts to obtain the information, the IPT is unable to obtain clarification in a timely manner, the IPT shall transition the status of the record from "Received – Awaiting Missing Response" to "Received," followed by "In Evaluation."

5.1.1.5.3.1 Eligibility will be determined based on the available information on the request form. No specimen record will be linked to the expunction request record. The IPT will select the appropriate denial reason and change the status of the record to "Pending-No Specimen Notification."

Note: Refer to sections 5.1.1.4.2.2 through 5.1.1.4.2.6 for instructions on how to generate the No-Specimen Letters and reach the status of "Completed-No Specimen."

5.1.1.6 For forms with no missing information, the IPT shall change the status to "In Evaluation."

5.1.1.7 The IPT 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.

5.1.1.7.1 The individual's criminal history shall be viewed using the CCH/AOC/DOC reports as well as the "Person-Donor Duplicate Report." Other law enforcement database resources may be accessed as needed. All records generated during the evaluation shall be attached to the notes in the expungement request record.

5.1.1.7.2 Determine if there is a rejection reason(s) noted in the specimen record for the sample. If the sample is to be rejected, designated database employees shall proceed with rejection processing.

5.1.1.7.3 The eligibility of the sample shall be determined and the IPT shall select the approval/denial reasons in SpecMan.

5.1.1.7.4 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.

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

5.1.1.7.6 All subsequent duplicate expunction request records created for the same individual and arrest event shall be linked at the expunction request record level to the original expunction request record. To evaluate and link duplicate expunction request records, the following shall be completed:

5.1.1.7.6.1 The IPT selects the "Person Donor Duplicate Report," a system generated and attached .pdf in the notes tab of the Expunction Request record.

5.1.1.7.6.2 The IPT selects a potential expunction request name and searches the name within the expunction request portion of SpecMan.

5.1.1.7.6.3 The system will display any potential matching expungement requests.

5.1.1.7.6.4 The IPT evaluates and analyzes any potential matching expungement requests to determine if the returned results indicate a duplicate expungement request.

5.1.1.7.6.5 The IPT compares the arrest date, docket numbers provided, and personal identifiers from the newly received request to any potential existing matching expungement request returned in the system.

5.1.1.7.6.6 The IPT enters any pertinent notes and information into the notes tab of the original request, save and close the record.

5.1.1.7.6.7 Upon identifying the matching duplicate expungement request, the IPT opens the newly received duplicate expungement request and select the "Research and Decisions" tab.

5.1.1.7.6.8 The IPT links the original expungement request by selecting the original expungement request via the "Duplicate Of" field in the "Research and Decisions" tab. The IPT saves the record which links the two expungement requests.

5.1.1.7.6.8.1 The IPT shares all notes and attachments in the original record with the duplicate request record.

5.1.1.7.6.9 If the original expungement request is NOT in a status of "Completed," "Denial Completed," or "Completed-No Specimen," the IPT leaves the duplicate expungement request in a status of "In Evaluation."

5.1.1.7.6.10 The IPT monitors the incomplete duplicate expungement requests from the view in SpecMan titled "Duplicates In Evaluation Whose Original Has Completed Processing" until the original expungement has reached a status of "Completed," "Denial Completed," or "Completed-No Specimen."

5.1.1.7.6.11 Upon completion or denial of the original request, the IPT selects the request from the view "Duplicates In Evaluation Whose Original Has Completed Processing."

5.1.1.7.6.12 The IPT updates the status of the expungement request record to "Duplicate-Pending Peer Review" and assigns the request for peer review.

5.1.1.8 The IPT shall update the status to "Pending Peer Review," save the record, and assign to a second IPT (peer reviewer). If a duplicate expunction request, the status is updated to "Duplicate-Pending Peer Review."

5.1.1.9 The second IPT shall perform a peer review to include a complete review of the determination of eligibility and all supporting documentation.

5.1.1.9.1 The criminal history reports from CCH/AOC/DOC, the "Person-Donor Duplicate Report," and any other documentation cited shall be reviewed.

5.1.1.9.2 The approval/denial reasons shall be reviewed.

5.1.1.10 If the peer reviewer *agrees* with the originating IPT's eligibility determination, the status shall be changed to "Peer Review Complete" and assigned to the originating technician. If a duplicate, the peer reviewer changes the status to "Duplicate-Peer Review Complete."

5.1.1.10.1 The originating technician shall then change the status to "Pending Denial Legal Review" or "Pending Approval Legal Review" and assign to legal counsel.

5.1.1.11 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 IPT. If a duplicate, the peer reviewer updates the status to "Duplicate-Peer Review Returned."

5.1.1.11.1 If the originating IPT agrees with the peer reviewer after the peer review is returned, the suggested changes shall be made by the IPT who shall change the status to "Pending Peer Review" and assign to the peer reviewer. If a duplicate request, the IPT changes the status to "Duplicate-Pending Peer Review" and assigns to the peer reviewer.

5.1.1.11.2 The peer reviewer shall verify the changes, update the status to "Peer Review Complete" and assign to the originating technician. If a duplicate, the status is updated to "Duplicate-Peer Review Complete."

5.1.1.11.2.1 For any expungement processed as a linked duplicate request, the original expunction request (unless a "Completed-No Specimen") is legally reviewed; therefore, the linked duplicate request does not receive a second legal review.

5.1.1.11.3 Once the status of the linked duplicate request is updated to "Duplicate-Peer Review Complete," and the letter is printed, the status is updated to "Completed-Duplicate." Duplicate letters may also be printed as part of a batch. See the Batch Expunction Letter workflow in 5.1.2.

5.1.1.11.4 The originating technician shall then change the status to "Pending Denial Legal Review" or "Pending Approval Legal Review."

5.1.1.12 If the originating IPT 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 IPT shall change the status to "Pending Denial Legal Review" or "Pending Approval Legal Review" and assign to Crime Laboratory legal counsel.

5.1.1.13 **Laboratory Legal Review**

5.1.1.13.1 Upon assignment, legal shall select and open the expungement request.

5.1.1.13.2 The criminal history reports from CCH/AOC/DOC, the "Person Donor Duplicate Report" and any other documentation cited shall be reviewed.

5.1.1.13.3 The approval or denial reasons shall be reviewed.

5.1.1.13.4 Legal counsel shall provide a recommendation by changing the status to either "Approval Recommended" or "Denial Recommended."

5.1.1.13.5 If the legal review recommendation changes the expungement approval or denial determination, legal counsel shall select the appropriate recommendation status in SpecMan (approval or

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denial reason), delete the old approval or denial reasons, and assign to the originating IPT.

5.1.1.13.5.1 Legal counsel may provide documentation from another legal source or secondary legal counsel to support the recommended approval or denial.

5.1.1.13.5.2 Legal counsel shall add notes (if applicable) to the expungement request record and update the status to "Denial Recommended" or "Approval Recommended."

5.1.1.13.6 If the legal review recommendation does not change the expungement approval or denial determination, legal counsel shall change the status to "Approval Recommended" or "Denial Recommended" and assign to the originating IPT.

5.1.1.14 The originating IPT 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 laboratory legal review will be performed. If the status is changed to "Pending-No Specimen Notification," no additional laboratory legal review will be required.

5.1.1.15 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."

5.1.1.16 **"Pending Denial Notification"**

5.1.1.16.1 Upon assignment, the originating IPT shall generate denial letters. Denial letters may also be printed as part of a batch. See the Batch Expunction Letter workflow in Section 5.1.2.

5.1.1.16.2 The originating IPT shall print the denial letter notifying the subject that the sample will not be expunged. The hard copy of the denial letter as well as a copy of the verification form shall be mailed to the subject. Additionally, hard copies of the letter and verification form shall be mailed to the subject's attorney. If the subject's attorney is unknown, hard copies of the letter and verification form shall be mailed to the submitting District Attorney's office.

5.1.1.16.3 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."

5.1.1.16.4 The DNA sample associated with the request shall remain unchanged.

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5.1.1.17 **"Approved Pending Expunction"**

5.1.1.17.1 The Database Manager/designee shall assign the expungement request record to a DNA Database Forensic Scientist/Database Analyst to proceed with the expungement process.

5.1.1.17.2 If the sample qualifies for expungement:

5.1.1.17.2.1 The DNA Database Forensic Scientist/Database Analyst shall delete all DNA profiles that require expungement from the CODIS computers; remove the data from the server and personal computers; and make the required changes to the hard copy data. The physical DNA sample and SBI DNA collection card shall be removed from the DNA Databank. The specimen expungement checklist shall be completed, and the status shall be updated to "Pending Databank Verification."

5.1.1.17.2.2 The DNA Database Forensic Scientist/Database Analyst 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.

5.1.1.17.2.3 A DNA Database Sample Destruction Form shall be printed for the sample.

5.1.1.17.2.4 The form, sample, and SBI DNA Collection Card shall be taken to the Database Manager/ designee who shall witness the sample and SBI DNA Collection Card being placed in the biohazard waste to be incinerated.

5.1.1.17.2.5 The Database Manager/designee and DNA Database Forensic Scientist/Database Analyst shall sign the DNA Database Sample Destruction Form, verifying the destruction has been completed.

5.1.1.17.3 Record Destruction by the Contract Laboratory

5.1.1.17.3.1 The Database Manager/ designee or SpecMan system shall notify the Contract Laboratory in writing of samples to be expunged when the sample status has been updated to "Approved Pending Expunction."

5.1.1.17.3.2 The Contract Laboratory must expunge the DNA sample and record as defined by N.C.G.S §15A-266.2 within 14 days of a written request by the State Crime Laboratory.

5.1.1.17.3.3 The Database Manager/ designee shall attach the written notification to the vendor and the vendor reply documenting the expungement of the DNA sample and DNA record to the expungement request record for the specimen in SpecMan.

5.1.1.17.4 The DNA Database Forensic Scientist/Database Analyst shall attach the destruction form to the expungement request record notes, update the check list in SpecMan, and change the status to "Pending CODIS Deletion."

Note: If the sample was not entered into CODIS, the analyst shall change the status to "Pending Final Verification" for Database Manager/designee review and shall not use the statuses of "Pending CODIS Deletion" or "Pending CODIS Verification" (5.1.1.17.6).

5.1.1.17.5 The DNA profile shall be deleted from CODIS using the NDIS Specimen Manager Module. The reason for the deletion of the profile shall be noted, the DNA Database Forensic Scientist/Database Analyst's initials shall be noted in the comments section of the SDIS Specimen Delete Report, and the check list in SpecMan shall be updated.

5.1.1.17.6 The DNA Database Forensic Scientist/Database Analyst shall update the status of the specimen in SpecMan to "Pending CODIS Verification."

5.1.1.17.7 The CODIS Administrator or Assistant 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 deleted from CODIS. The CODIS Administrator or Assistant shall update the status to "Pending Final Verification."

5.1.1.17.8 The Database Manager/ designee shall monitor the "Pending Final Verification" queue and confirm that the physical DNA sample, DNA record, and SBI DNA Collection Card have been destroyed by reviewing the attached DNA Database Sample Destruction Form that is maintained in SpecMan.

5.1.1.17.9 The status shall be changed to "Pending Completion" and assigned back to the originating IPT.

5.1.1.17.10 The originating IPT 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 Batch Expunction Letter workflow in Section 5.1.2

5.1.1.17.11 The hard copy of the letter as well as a copy of the verification form shall be mailed to the subject. Additionally, hard copies of the letter and verification form shall be mailed to the subject's attorney. If the subject's attorney is unknown, hard copies of the letter and verification form shall be mailed to the submitting District Attorney's office.

5.1.1.17.12 A signed copy of the 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 IPT. The originating IPT 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.

5.1.1.18 As required by State Law, the State Crime Laboratory shall complete the expungement procedure within 30 days of receiving the verification form.

5.1.2 Expunction Letter Batch Printing

5.1.2.1 For batch expunction letter printing, the IPT or designated Database employee initiates a new batch by the "mail on" date for the expunction requests.

5.1.2.2 The IPT or designated Database employee selects "Expunction Print Batches" and creates a new expunction print batch.

5.1.2.2.1 The IPT or designee selects the "Assigned IPT" field and populates the field with their name.

5.1.2.2.2 The IPT or designee selects a "mail on" date and saves the expunction print batch. The user then saves this batch record.

5.1.2.2.3 The user may view the assigned expunction requests by selecting the expunction requests from the "Expunction Print Batch" screen. The IPT or designee shall select "Expunction Letters Batch" from the Reports (dropdown box).

5.1.2.2.4 The IPT or designee validates the letters and prints the letters for mailing.

5.1.2.2.5 After mailing, the IPT 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."

5.1.3 **Manual Processing of Arrestee Expungement Requests**

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

5.1.3.2 The request shall be scanned as a .pdf file and the steps as cited in **5.1.1.3** through the remainder of the document (as applicable) shall be followed. The following shall be attached to the notes section of the specimen record in SpecMan.

5.1.3.2.1 Expungement request.

5.1.3.2.2 CCH/AOC/DOC reports.

5.1.3.2.3 Person-Donor Duplicate report (if applicable).

5.1.3.2.4 Information from other law enforcement database queries.

5.1.3.2.5 Notes from and identification of the peer and legal reviewer.

5.1.3.2.6 The approval or denial of the request.

5.1.3.2.7 A copy of the signed approval/denial letter.

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

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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).

5.2.1.4 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, Database Manager or designee.

5.2.1.5 The CODIS Administrator, Assistant CODIS Administrator, Database Manager or designee shall receive the court order for convicted offender expungement, scan the documentation, and save as a .pdf file.

5.2.1.6 Whether or not the specimen record exists in SpecMan, the CODIS Administrator, Assistant CODIS Administrator, Database 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.

5.2.1.7 The expungement request record shall be assigned in SpecMan to an IPT. Assignments to IPTs for expungement completion and peer review of expungements are based on a monthly rotation schedule.

5.2.1.7.1 The IPT shall query and view the individual's relevant criminal history using CCH/AOC/DOC and other law enforcement database resources as needed. All records generated shall be attached to the notes in the expungement request record.

5.2.1.7.2 The IPT shall assign the expungement request record to Laboratory legal counsel and update the status to "Pending Legal Review."

5.2.1.8 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/DOC queries and any other queries from law enforcement databases.

5.2.1.8.1 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.

5.2.1.8.2 Legal counsel shall update the status to "Notification Complete" after appropriately notifying the court.

5.2.1.8.3 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."

5.2.1.9 SpecMan notifies the CODIS Administrator and DNA Database Manager that the request is "Approved Pending Expunction."

5.2.1.10 The DNA Database Manager/ designee shall assign the expungement order to a DNA Database Forensic Scientist/Database Analyst.

5.2.1.11 The DNA Database Forensic Scientist/Database Analyst shall delete the DNA profile that requires expungement from the CODIS computers; remove the data from the server, personal computers and shipment CDs (if applicable); and make the required changes to the hard copy data. The physical DNA sample and SBI DNA Collection Card shall be removed from the DNA Databank. The specimen expungement checklist shall be completed and the status shall be updated to "Pending Databank Verification."

5.2.1.11.1 A DNA Destruction Form shall be printed for the sample.

5.2.1.11.2 The form, sample, and SBI DNA Collection Card shall be taken to the Database Manager/ designee who shall witness the sample and SBI DNA Collection Card being placed in the biohazard waste to be incinerated.

5.2.1.12 The Database Manager/designee and DNA Database Forensic Scientist/Database Analyst shall sign, verifying that this process has been completed.

5.2.1.13 Record Destruction by Contract Laboratory

5.2.1.13.1 The Database Manager shall notify the Contract Laboratory in writing of samples to be expunged when the sample status has been updated to "Approved Pending Expunction."

5.2.1.13.2 The Contract Laboratory must expunge the DNA sample and DNA record as defined by N.C.G.S§15A-266.2 within 14 days of a written request by the State Crime Laboratory.

5.2.1.13.3 The Database Manager or designee shall attach to the expungement request record for the specimen in SpecMan the written request to the vendor and vendor reply documenting the expungement of the DNA sample and DNA record.

5.2.1.14 The DNA Database Forensic Scientist/Database Analyst shall attach to the destruction form to the expungement request record notes in SpecMan and change the status to "Pending CODIS Deletion."

5.2.1.15 The DNA profile shall be deleted from CODIS using the NDIS Specimen Manager Module. The reason for the deletion of the profile shall be entered and the DNA Database Forensic Scientist/Database Analyst's initials shall be placed in the comments section.

5.2.1.16   The DNA Database Forensic Scientist/Database Analyst shall update the status of the sample in SpecMan to "Pending CODIS Verification."

5.2.1.17   The CODIS Administrator or Assistant 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 deleted from CODIS. The status shall be updated to "Pending Final Verification."

5.2.1.18   The Database Manager shall monitor the "Pending Final Verification" work queue and confirm that the physical DNA sample, DNA record and SBI DNA Collection card have been destroyed by reviewing the attached DNA Database Sample Destruction Form maintained in SpecMan.

    5.2.1.18.1 The status shall be changed to "Completed" and Laboratory legal counsel shall be notified of the completed expungement.

5.2.1.19   A notice of compliance with the court order shall be sent by legal counsel to the court, convicted offender, and his/her attorney.

    5.2.1.19.1 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.

5.2.1.20   SpecMan updates the specimen record to "Expunged" if the court order does not indicate complete removal of information from SpecMan.

5.2.1.21   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."

    5.2.1.21.1 The Database Manager shall manually delete the expunction record from SpecMan.

5.2.1.22   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.

    5.2.1.22.1 Upon receiving notification from the court on the motion, legal counsel shall update the notes to the expungement request record and;

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

    5.2.1.22.3 If inadequate information is received, legal counsel shall notify the court and the status shall remain as "Pending Litigation."

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5.2.1.22.4 Upon final resolution of the court order, legal counsel shall make notification to the CODIS Administrator, Assistant CODIS Administrator, DNA Database 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.

5.2.1.22.5 If the status is updated to "Approved-Pending Notification," the steps as cited in 5.2.1.10 through 5.2.1.21 (as applicable) shall be followed.

5.2.2 Manual Processing of Convicted Offender Court Orders for Expungement

5.2.2.1 If the expungement request record feature of SpecMan is not operational, the court order for convicted offender expungement shall be processed manually.

5.2.2.2 The request shall be scanned as a .pdf file and the steps as cited in **5.1.1.3** through the remainder of the document (as applicable) shall be followed.

5.2.2.3 If in accordance with the court order, the following shall be attached to the notes section of the specimen record in SpecMan:

5.2.2.3.1 Court Order.

5.2.2.3.2 CCH/AOC/DOC Reports (if any).

5.2.2.3.3 Information from other law enforcement databases (if any).

5.2.2.3.4 Notes and the identification of the IPT and legal counsel.

5.2.2.3.5 Notification to the court, convicted offender and his/her attorney.

5.2.2.4 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:

5.2.2.4.1 Information from other law enforcement databases (if any).

5.2.2.4.2 Notes and identification of the IPT and legal counsel.

5.2.2.4.3 Notification to the court, convicted offender and his/her attorney.

6.0 Limitations - N/A

7.0 Safety - N/A

8.0 References

State Crime Laboratory Safety Manual

Forensic Biology Section Procedure for DNA Database

Forensic Biology Section Procedure for DNA Database Stain Room

Forensic Biology Section Procedure for CODIS

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North Carolina Department of Cultural Resources Record Retention Schedule

9.0   Records

- SpecMan
- Forensic Advantage
- DNA Database Sample Destruction Form
- Specimen Expungement Request Checklist
- Database Stain Room Training Log

10.0   Attachments - N/A

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Revision History		
Effective Date	Version Number	Reason
09/17/2012	1	Original Document
12/07/2012	2	5.1.1.3 - added to note to state only a trained IPT can initially evaluate request; 5.1.1.13.5 – numbering correction; 9.0 - added Stain Room Training log as record.
02/01/2013	3	5.1.1.3 and note– added designated DNA database employee to be allowed to perform some IPT tasks; Added new 5.1.1.5.3 and 5.1.1.5.3.1 and note – ability to proceed with processing the request when clarification about the expunction verification form is not received in a timely manner and instructions on how to complete requests in this case; Added new 5.1.1.7.2 – requirement for IPT to check to see if rejection reason(s) exists for every specimen linked to an expunction request; Renumbered 5.1.1.7.1 thru 5.1.1.7.3; Added new 5.1.1.7.4 – requirement for IPT to update the status of all relevant specimens linked to the expunction request and generate a new "Person-Donor Duplicate Report"; Added new 5.1.1.7.5 and 5.1.1.7.6 – instructions on linking duplicate specimens and duplicate expunction request records; Added note under 5.1.1.14 – requirement for additional peer review and legal review if the status of the expunction request record is reverted from "Pending Denial Notification," "Approved Pending Expunction," or "Pending – No Specimen Notification"
03/22/2013	4	Revised 5.1.1.4.2.7 to include during processing; revised 5.1.1.4.2.8 to adjust title of status transition; revised 5.1.1.7.6 to include how to evaluate and link duplicate expunction requests; added 5.1.1.7.6.1 through 5.1.1.7.6.12 for duplicate expunction processing; revised 5.1.1.8, 5.1.1.10, 5.1.1.11, 5.1.1.11.1, to include duplicate status titles in SM; added 5.1.1.11.2 and 5.1.1.11.2.1 to include duplicate status titles in SM and to note no further legal review occurs with duplicate expunction requests; added 5.1.1.11.3 to include duplicate status titles in SM and to note ability to print letters in batches; revised 5.1.1.16.1 and 5.1.1.17.10 to explain batch printing for approval/denial letters; added 5.1.2 - expunction letter batch printing