



**STATE OF MONTANA  
DEPARTMENT OF CORRECTIONS  
POLICY DIRECTIVE**

Policy No. DOC 1.5.13	Subject: <b>DNA TESTING/COLLECTION OF BIOLOGICAL SAMPLES</b>
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 4 and attachments
Section 5: Case Records Management	Effective Date: Nov. 8, 1999
Signature: /s/ Mike Batista, Director	Revised: 07/25/2016

## **I. POLICY**

The Department of Corrections, in accordance with state law, will collect biological samples in the form of buccal swabs from felony offenders committed to facilities or supervised in programs administered by the Department.

## **II. APPLICABILITY**

All divisions, facilities, and programs Department-owned and contracted, as specified in contract.

## **III. DEFINITIONS**

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility or program operation and management.

Biological Sample – The removal of cheek cells by using a buccal swab of a type authorized by the Department of Justice or a vial or other container of blood.

Buccal Swab – The removal of cheek cells by means of a sterile swab.

DNA – Deoxyribonucleic Acid.

DNA Record – DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

DNA Testing – DNA analysis of materials derived from the human body for the purposes of identification.

Facility/Program – Refers to any division, prison, secure care correctional facility, correctional or training program, or community-based program under Department jurisdiction or contract. This term includes the facility building or residence, including property and land owned or leased and operated by the Department.

Felony Offense – Any offense under the Montana Code Annotated for which the maximum potential sentence under statute is death or imprisonment in a state prison for a term exceeding one year.

Offender – Any individual in the custody or under the supervision of the Department of Corrections or its contracted service providers. The term includes former offenders for whom less than one year has elapsed since discharge from Department custody or supervision.

Sexual Offense – The offenses contained in the definition of that term in *46-23-502, MCA*.

Violent Offense – The offenses contained in the definition of that term in *46-23-502, MCA*.

#### **IV. DEPARTMENT DIRECTIVES**

##### **A. Offenders Required to Provide Biological Samples**

1. All adult offenders convicted of any felony offense who are in custody or under supervision of the Department are required to submit biological samples for DNA testing.
2. Youth who are found to have committed a sexual or violent offense and who are in custody or under supervision of the Department are required to submit biological samples for DNA testing.

##### **B. Offenders in Facilities**

1. Upon admission of an offender to a facility, the reception unit or designated employee will obtain any required biological sample using the Buccal Swab Collection Kit provided by the Department of Justice.
2. If a biological sample is already documented in the offender's record and/or with the Department of Justice, a sample does not need to be re-collected.
3. The Institutional Probation and Parole Officer (IPPO), or employee designated by the facility administrator, will ensure a biological sample has been obtained before the offender discharges.
4. Procedures for Obtaining Biological Samples:
  - a. employee will request that the offender provide the buccal swab sample. If the offender is cooperative, the employee will proceed with obtaining the buccal swab according to Section F below;
  - b. if the offender refuses, the employee will order the offender to provide the sample. The offender may not disobey the order on the grounds that he or she may refuse medical treatment, as this is not a medical treatment procedure;
  - c. if the offender refuses to obey this direct order, the employee will prepare a severe disciplinary infraction report or major rule violation in accordance with *DOC Policy 3.4.1 Offender Disciplinary System* and local operational procedure and submit the report for processing;
  - d. if the refusing adult offender is discharging to a probation sentence, the IPPO or other employee must immediately begin procedures to have the suspended or deferred sentence revoked pursuant to *44-6-103, MCA*; or
  - e. if the refusing offender is discharging without further DOC supervision,
    - i. an IPPO or case manager will immediately refer the case to Department legal staff who will pursue legal remedies; or

- ii. contract facility staff will contact the contract manager to pursue legal remedies through Department legal staff.

### **C. Offenders on Probation, Parole or Conditional Release**

1. Probation, parole or conditional release offenders subject to sampling must provide a biological sample to the sheriff, or designee, in the sentencing jurisdiction or in the jurisdiction in which the offender resides.
2. The supervising probation and parole officer will inform the offender at sign-up of the requirement in writing using the [P&P Requirement for DNA Testing](#) form which is generated by OMIS. The offender must provide a sample to the county sheriff's office in the appropriate jurisdiction within 10 days.
3. Proof that the offender has given the sample is required; therefore, the supervising probation and parole officer will provide the [P&P Documentation of DNA Collection](#) form to the offender at sign-up to return to the officer as proof that the sample was collected. The documentation form must be kept in the offender's file and a copy will be given to the offender.
4. The officer will record in the offender's OMIS DNA Test profile the date, time and location the sample was taken, name of the person taking the sample and name of witness. The resolved date in the OMIS record is the date the documentation was returned.
5. Failure to provide the biological sample or required proof within 10 days is grounds for a disciplinary hearing and/or revocation.

### **D. Collection Procedures**

1. Employee will:
  - a. collect a clear and clean thumbprint from the offender on the card provided in the Buccal Swab Collection Kit;
  - b. complete all information required on the information card and will enter the offender's DOC I.D. number and the offender's SID (State Identification) number. If an offender's SID number is unavailable, the offender's Social Security number may be used;
  - c. collect the buccal swab sample;
  - d. place the offender's thumbprint, the offender's information card and the offender's buccal swab sample in the envelope provided for shipping to the Montana DNA Laboratory;
  - e. mail the envelope to the Montana DNA Laboratory, Forensic Science Division; and
  - f. delivery methods such a bulk package mailing and personal delivery may be used as long as the proper chain of evidence is observed.; and
  - g. maintain records in the offender's file that the biological sample was obtained, along with the date and name of the person taking the sample.

### **E. Confidential Criminal Justice Information**

1. DNA records are to be considered confidential criminal justice information as per 44-6-

*108, MCA.*

## **V. CLOSING**

Questions concerning this policy should be directed to the immediate supervisor.

## **VI. REFERENCES**

- A. *Title 44, Chapter 5 Part 1; 44-6-101; 44-6-102; 44-6-103; 44-6-107; 44-6-108; 46-18-202; 46-23-215, MCA*
- B. *P&P 140-1, Probation and Parole Adult Offender Discipline*
- C. *DOC Policy 3.4.1 Offender Disciplinary System*

## **VII. ATTACHMENTS**

[P&P Documentation of DNA Collection](#)

[P&P Requirement for DNA Testing](#)