



**PROBATION AND PAROLE BUREAU  
STANDARD OPERATING PROCEDURES**

Procedure No.: P&P 60-13	Subject: <b>DNA TESTING/COLLECTION OF BIOLOGICAL SAMPLES</b>
Reference: P&P 60-1; P&P 60-12; P&P 100-1; P&P 140-1; P&P 140-2; DOC 1.5.13; 44-5-103, MCA; 44-6-101 through 108, MCA; 46-18-202, MCA; 46-23-215, MCA; 46-23-502, MCA; 46-23-504, MCA	Page 1 of 4
Effective Date: 06/01/00	Revision Dates: 11/01/01; 06/17/02; 03/14/03; 08/01/05; 10/01/13
Signature / Title: /s/ Ron Alsbury, Probation & Parole Bureau Chief	

**I. BUREAU DIRECTIVE:**

Probation & Parole Bureau employees will follow established procedures to ensure offenders are notified of, and fulfill, the requirement to give a biological sample for DNA testing in accordance with Montana statutes.

**II. DEFINITIONS:**

ACCD-Adult Community Corrections Division Program/Facility – The Division includes the Adult Interstate Bureau, Missoula Assessment and Sanction Center (MASC), Treasure State Correctional Training Center (TSCTC), and the Probation and Parole Bureau which provides the following programs: Day Reporting Program (DRP), Intensive Supervision Program (ISP), and Enhanced Supervision Program (ESP). Contract facilities include Prerelease Centers (PRC), Sanction Treatment Assessment Revocation & Transition (START), Warm Springs Addiction Treatment & Change Program (WATCh), Connections Corrections Program (CCP), Passages Alcohol and Drug Treatment (Passages ADT), Passages Assessment, Sanction & Revocation Center (Passages ASRC), Nexus Correctional Treatment Center (Nexus), and Elkhorn Treatment Center (Elkhorn).

Biological Sample – Cheek cells removed by using a buccal swab of a type authorized by the Department of Justice, Forensic Science Division, or a vial or other container of blood.

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

Department – The Montana Department of Corrections.

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.

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 (1) year.

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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 (1) 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.

### III. PROCEDURES:

Pursuant to §44-6-108, MCA, DNA records are considered confidential criminal justice information and subject to dissemination provisions of Title 44, Chapter 5, MCA.

#### A. Applicability

The following offenders are required to provide a DNA biological sample:

1. Adult or youthful offenders convicted of a sexual or violent offense and sentenced to the custody or supervision of the Department on or after March 27, 1995.
2. Youthful offenders found under §41-5-1502, MCA, to have committed a sexual or violent offense.
3. Offenders ordered by the court under §46-18-202, MCA.
4. Adult felony offenders sentenced between October 1, 2001 and April 7, 2005. Additional felony offenses requiring these offenders to provide a biological sample were added to §44-6-103, MCA, effective October 1, 2001. (See *P&P 60-13(A) DNA Sample-Felony Guide for Offenders Sentenced Prior to April 7, 2005.*) The statute is not retroactive for the additional offenses listed if committed prior to October 1, 2001.
5. Adult felony offenders sentenced or revoked on or after April 7, 2005.
6. Adult interstate offenders being supervised in Montana who were convicted in another state and sentenced to death or life imprisonment for more than one (1) year.
7. Effective October 1, 2013, offenders required to register as a sexual or violent offender under §46-23-504, MCA (see *P&P 60-12 Registration of Sexual and Violent Offenders*).

#### B. Offenders Placed in ACCD Facilities

1. It is the responsibility of the Department to collect biological samples from applicable offenders in ACCD facilities. The facility's staff typically completes this function upon admission; however, pursuant to *P&P 60-1 Initial Sign-Up to Probation, Parole and Conditional Release Supervision*, upon discharge to probation, parole, or conditional release from the facility, the Institutional Probation & Parole Officers (IPPO) or Prerelease Liaison will verify that a DNA sample has been collected. If the DNA registration is required, but has not been completed, IPPO/Prerelease Liaison will collect the DNA sample or make arrangements for collection prior to the offender's release from the facility. Collection kits can be obtained by contacting the Department of Justice. Procedures for obtaining a biological sample are as follows:

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- a. Request offender to provide a buccal swab. If offender is cooperative, sample will be obtained:
  - i. Collect a clear and clean thumbprint from the offender on the card provided in the Buccal Swab Collection Kit;
  - ii. Complete all information required on the information card. Enter DOC ID and SID (State Identification) number if available. If SID number is not available, a Social Security number may be used;
  - iii. Collect buccal swab;
  - iv. Place the buccal swab sample, information card, and thumbprint in the shipping envelope provided;
  - v. Send the envelope “certified mail” to the Montana DNA Laboratory, Forensic Science Division. Alternative delivery methods such bulk package mailing and personal delivery may be used so long as the proper chain of evidence is observed;
  - vi. In offender’s OMIS DNA Test profile, record the date, time and location 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 sample was taken. IPPO/Prerelease Liaison collecting the sample will complete *P&P 60-13(C) Documentation of DNA Test Collection*. Original is filed in offender’s field file with copy given to offender.
- b. If the offender is not cooperative, the IPPO/Prerelease Liaison or staff shall give a direct order to provide the buccal swab. This is not a medical treatment procedure; therefore, the offender may not disobey the order on the grounds that he/she may refuse medical treatment. If the offender refuses the direct order, the following may occur:
  - i. IPPO/Prerelease Liaison or facility staff will complete a severe disciplinary infraction report on the offender in accordance with facility disciplinary policy;
  - ii. If the refusing offender is discharging to a probationary sentence, the IPPO/Prerelease Liaison will immediately begin procedures to have the suspended or deferred sentence revoked pursuant to §44-6-103(5) MCA; or
  - iii. If the refusing offender is discharging their sentence without further supervision, the IPPO/Prerelease Liaison shall refer the case immediately to the Department’s Legal Services Unit to pursue legal remedies.
2. If a person is not incarcerated in a facility administered by the Department, the County Sheriff is responsible for collection of all DNA samples.

### **C. Offenders Under Probation & Parole Bureau Supervision**

1. Offenders under supervision of the Probation & Parole (P&P) Bureau who are subject to DNA testing will provide a biological sample to the County Sheriff or designee in the sentencing jurisdiction or the jurisdiction in which the offender resides. Supervising P&P Officers will confirm with the IPPO or Prerelease Liaison that an offender being paroled or conditionally released has complied with the statute prior to release.
2. Pursuant to *P&P 60-1 Initial Sign-Up to Probation, Parole and Conditional Release Supervision*, the supervising P&P Officer will inform the offender at sign-up of the requirement in writing using *P&P 60-13(B) Requirement to Provide Biological Sample*, which is generated by OMIS. The offender must provide a sample to the County Sheriff’s office in the appropriate jurisdiction within ten (10) days.

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All felony offenders sentenced or revoked after April 7, 2005, will be required to complete DNA testing. Refer to *P&P 60-13(A) DNA Sample-Felony Guide for Offenders Sentenced Prior to April 7, 2005* to determine which offenders sentenced prior to April 7, 2005 must provide a sample.

3. Proof that offender has given the sample is required; therefore, supervising P&P Officer will also provide *P&P 60-13(C) Documentation of DNA Test Collection* to offender at sign-up to return as proof. When returned, Officer will record in offender's OMIS DNA Test profile the date, time and location sample was taken, name of the person taking the sample and name of witness. *P&P 60-13(C) Documentation of DNA Test Collection* is filed in offender's field file with a copy given to offender. The Resolved Date in the OMIS record is the date the *Documentation* was returned to Officer.
4. Failure to provide the biological sample or required proof within ten (10) days is grounds for a disciplinary hearing and/or revocation. [See *P&P 100-1 Report of Violation*, *P&P 140-1 Adult Offender Discipline and Disciplinary Hearings*, and/or *P&P 140-2 Preliminary (On-Site) Hearing*.]

#### V. CLOSING:

Questions concerning this procedure shall be directed to the Regional Administrator or designee.

#### Forms

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| P&P 60-13 (A) | DNA Sample-Felony Guide for Offenders Sentenced Prior to April 7, 2005 |
| P&P 60-13 (B) | Requirement to Provide Biological Sample Letter - OMIS                 |
| P&P 60-13 (C) | Documentation of DNA Test Collection                                   |