



## POLICY DIRECTIVE

Policy:	<b>DOC 1.5.13 DNA SAMPLES</b>
Effective Date:	11/08/1999 <span style="float: right;">Page 1 of 3</span>
Revision Date(s):	07/25/2016; 04/24/2026
Signature/Title:	/s/ Eric Strauss, Director

### I. POLICY

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

### II. APPLICABILITY

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

### III. DEFINITIONS (see Glossary)

### IV. REQUIREMENTS

#### 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 Case Specialist or employee designated by the facility administrator will ensure a biological sample has been obtained before the offender discharges.
4. Process for Obtaining Biological Samples:
  - a. Employee will request that the offender provide the buccal swab sample.
    - 1) If the offender is cooperative, the employee will proceed with obtaining the buccal swab according to IV.D below.
  - b. If the offender refuses, the employee will order the offender to provide the sample.
    - 1) The offender may not disobey the order on the grounds that the offender may refuse medical treatment, as this is not medical treatment.
    - 2) 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 3.4.1 Offender Disciplinary System* and local operational requirements and submit the report for processing.
    - 3) If the refusing adult offender is:

- a) discharging to a probation sentence, the Case Specialist or other employee must immediately begin processes to have the suspended or deferred sentence revoked pursuant to 44-6-103, MCA; or
- b) discharging without further Department supervision:
  - (1) a Case Specialist or Case Manager will immediately refer the case to Department legal staff who will pursue legal remedies; or
  - (2) 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 in the sentencing jurisdiction or in the jurisdiction in which the offender resides.
2. The supervising P&P Officer will inform the offender at sign-up of the requirement in writing using the *P&P Requirement for DNA Testing* form generated by the offender management system.
  - a. The offender must provide a sample to the county sheriff's office in the appropriate jurisdiction within 10 days.
  - b. Proof that the offender has given the sample is required; therefore, the supervising P&P 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.
    - 1) The form must be kept in the offender's file, and a copy will be given to the offender.
  - c. The officer will record in the offender's offender management system DNA Test profile the date, time, and location the sample was taken, name of the person taking the sample, and name of the witness.
    - 1) The resolved date in the offender management system record is the date the documentation was returned.
  - d. Failure to provide the biological sample or required proof within 10 days is grounds for a disciplinary hearing and/or revocation.

### **D. Collection Process**

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 enter the offender's DOC I.D. number and the offender's State Identification (SID) 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 delivery methods such a bulk package mailing and personal delivery may be used as long as the proper chain of evidence is observed); and
  - f. 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 about this policy should be directed to the immediate supervisor.

**VI. REFERENCES**

- A. *Title 44, Chapter 5 Part 1, MCA; §§ 44-6-101-103; 44-6-107-108; 46-18-202; 46-23-215, MCA*
- B. *PFB 6.2.424 Disciplinary Process in Contract Facilities; PPD 6.4.206 Probation and Parole Field Hearings*
- C. *DOC 3.4.1 Offender Disciplinary System*

**VII. FORMS**

- P&P Documentation of DNA Collection*
- P&P Requirement for DNA Testing*