

NEW YORK STATE ASSOCIATION OF CHIEFS OF POLICE, INC.  
EXECUTIVE OFFICES: 2697 HAMBURG STREET  
SCHENECTADY, NEW YORK 12303

# DNA COLLECTION PLAN

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## SAMPLE POLICY

This project was supported by a grant administered by the New York State Division of Criminal Justice Services. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the Division of Criminal Justice Services.

The contents of this sample policy are provided for agencies to consider in the development of their own protocol. As with any policy, it is recommended that you consult with your own policy making body and legal counsel before implementing the same.

Std. 50.9

Distribution:

**I. PURPOSE:** To establish procedures for collection of DNA samples pursuant to New York State law. Further, to establish guidelines for enforcement mechanisms for offenders who fail to comply with the provisions of the New York State Executive Law mandating the collection of DNA specimens.

**II. POLICY:** The Department will assist in the expeditious collection of DNA samples from convicted persons, consistent with state law and the procedures detailed herein. Further, for situations in which offenders fail or refuse to provide a mandated specimen, the Department will take enforcement action against such offenders.

### III. DEFINITIONS

DCJS - The New York State Division of Criminal Justice Services.

Department - The \_\_\_\_\_ Police Department.

### IV. BACKGROUND; PROCEDURES:

**A. SURVEILLANCE** Members will scrutinize criminal histories (rap sheets) for offenders to determine whether DNA is on file or if a DNA sample needs to be collected.

**B. INSTRUCTIONS TO OFFENDERS** An offender who is required to provide a DNA sample should be provided with the following from the court in which the offender was convicted:

1. An order specifying the date, time and place he/she should appear to provide a DNA sample;
2. The order will be executed by the Judge and countersigned by the defendant indicating that he/she has reviewed and understands that he/she must provide a DNA sample at the specific time and location.
3. The order will also inform the defendant that failure to provide a DNA sample within the specified time frame may result in further legal proceedings against the defendant (samples of orders attached).
4. Orders from \_\_\_\_\_ (names of court/s) Court(s) should include one copy for police, one copy to defendant, and one copy on file at the court.

### C. GENERAL PROTOCOLS

1. In cases where the offender is sentenced to **probation**, the [probation department] will generally collect the DNA sample.
2. In cases where the sentence is a **jail term**, the [county jail] will generally collect the DNA sample.
3. In cases where the sentence is a **split sentence** of jail and probation, the [county jail] will generally collect the DNA sample.

4. In cases where the sentence is "**time served**", or a **conditional discharge**, or an **unconditional discharge** or a **fine** or **any sentence that does not involve a sentence of supervision**, [this Department] will generally collect the DNA sample. [Members will adopt a new (case/DR/call for service/incident no./etc.) number with call type: **DNA COLLECTION - CONVICTED OFFENDER**, and refer all correspondence, orders, copies, refusals, enforcement to such number.]
5. When a person is arrested and the criminal history (rap sheet) indicates **DNA Owed**, [this Department] will generally collect a DNA sample. Members will adopt a new (case/DR/call for service/incident no./etc.) number and refer all correspondence, orders, copies, refusals, enforcement to such number.
- [6. When not covered by subsections 4 or 5 above, "**gap**" cases which have been pending since the June 2006 legislation which requires sampling of convicted persons for certain new crimes, this Department will generally collect the DNA sample. Gap cases are those cases (i.e. assault third degree and petit larceny convictions) which did not previously require DNA sampling and which have since created a need for DNA sampling on a larger scale than prior to the June 2006 legislation. Members will adopt a new (case/DR/call for service/incident no./etc.) number and refer all correspondence, orders, copies, refusals, enforcement to such number.]

### D. FAILURES AND REFUSALS TO COMPLY

1. In cases where an offender fails to or refuses to comply with an order directing him/her to provide a DNA sample, notify the issuing court by indicating at the bottom portion of the court order that the offender failed to provide a specimen. Maintain a copy of the order with the police department file.
2. In the event of noncompliance by an offender, enforcement action may be taken (upon consultation with appropriate legal authority i.e. departmental counsel, city/county attorney, district attorney, etc.) (i.e. criminal contempt, obstructing governmental administration)
3. For purposes of DNA collection within the framework of this policy, members will not use force in the collection of any such sample absent a court order which specifically authorizes the use of force. Any such order should be first reviewed by the (a ranking police supervisor) and the (legal counsel) prior to its execution.

### E. DNA COLLECTION PROCESS

1. Members will collect DNA specimens from convicted offenders under the following circumstances:
  - a. upon receipt of a court order which directs the offender to appear to submit for a mandatory DNA specimen (Appendix A and B - samples of a typical DNA order)
  - b. upon review of a criminal history report (rap sheet) indicating that an offender owes a DNA specimen.

2. DNA collections for the State DNA Databank will be performed using the kits provided by DCJS and following the instructions provided with the specimen kits. (Appendix D)

3. Members of the Department collecting DNA specimens shall first complete [an in-service training module] instructed by [a General Topics Instructor.]

4. Upon collection of a DNA sample (procedure detailed in subsection 4, below), the member performing the sampling will complete all applicable paperwork including the submission form and an endorsement of the bottom portion of the court order indicating that the specimen was collected. The court order will be endorsed by the member collecting the specimen and forwarded to the issuing court. A copy of the endorsed order will remain with the \_\_\_\_\_ Police Department case file. In the event a subject fails to comply, the member will indicate the noncompliance at the bottom of the court order and return it to the issuing court. (also see subsection "D" above, *Failures and Refusals to Comply*).

#### **4. COMPLETING A DNA DATABANK SPECIMEN SUBMISSION FORM (Appendix D): NYSID NUMBER AND BARCODE LABELS MUST BE PLACED ON THE SUBMISSION FORM (WHITE, YELLOW AND GREEN COPIES)**

**-PRIOR TO THE OFFENDER GIVING A SPECIMEN, COMPLETE THE FORM AND PLACE THE BARCODE LABELS IN THE PROPER AREAS OF THE FORMS.**

**-BE CAREFUL NOT TO CONTAMINATE THE INSIDE OF THE MICRO CARD BY TOUCHING IT, SNEEZING OR COUGHING TOWARD IT.**

**-THE GREEN COPY (MUST ALSO HAVE A BARCODE), REMAINS WITH THE FULTON PD CALL FOR SERVICE.**

**-DON THE RUBBER GLOVES FROM THE KIT**

**-PEEL OPEN THE FOAM TIPPED APPLICATOR (SWAB) AT THE HANDLE AND LET THE OFFENDER TAKE IT OUT OF THE PAPER.**

**-INSTRUCT THE OFFENDER TO PLACE THE SWAB IN THEIR MOUTH AND RUB VIGOROUSLY ON THE INSIDE OF ONE CHEEK AND THEN ON THE INSIDE OF THE OTHER CHEEK. WHEN THIS IS COMPLETE INSTRUCT THEM TO PLACE THE SWAB UNDER THEIR TONGUE FOR ABOUT TEN (10) SECONDS.**

**-TAKE THE SWAB FROM THE OFFENDER AND OPEN THE MICRO CARD (GLOVES ON) AND PLACE THE FOAM PART OF THE SWAB AGAINST THE CIRCLE INSIDE THE MICROCARD AND ROLL IT INSIDE THE CIRCLE TO SQUEEZE MOISTURE ONTO THE CARD. IF YOU HOLD THE MICROCARD UP TO THE LIGHT YOU CAN SEE THE MOISTURE THROUGH THE CARD.**

**-DISCARD THE SWAB.**

**-CLOSE THE CARD AND PUT IT IN THE SMALL (APPROX. 2" X 4") SAMPLE ENVELOPE THAT YOU PREVIOUSLY FILLED OUT.**

**-CLOSE THE ENVELOPE, INITIAL AND DATE IT. DO NOT LICK THE ENVELOPE - IT IS SELF-SEALING.**

**-ENSURE THE NYSID NO. AND BARCODE ARE IN THE PROPER PLACES ON THE ENVELOPE AND SUBMISSION FORM. THE BARCODE MUST BE ON THE MICROCARD AS WELL.**

**-INK THE OFFENDERS INDEX FINGERS AND IMPRESS THE FINGERPRINTS IN THE APPROPRIATE BOXES ON THE SUBMISSION FORM. IF THE FINGERPRINTS ARE NOT CLEAR, REPRINT UNTIL YOU OBTAIN A CLEAR IMPRESSION. THE BACK OF**

THE FORM CAN BE USED IF NECESSARY. IF AN INDEX FINGER IS MISSING, USE A DIFFERENT FINGER AND WRITE WHICH FINGER WAS USED ON THE FORM NEXT TO THE PRINT.

-PLACE THE SEALED SPECIMEN ENVELOPE ALONG WITH THE YELLOW AND WHITE COPIES OF THE SUBMISSION FORM INSIDE THE LARGE POSTAGE-PAID ENVELOPE ADDRESSED TO THE DNA DATABANK AT THE NYSP FORENSIC INVESTIGATION CENTER AND SEND IT VIA MAIL.

**COMMON ERRORS IN DNA SPECIMEN COLLECTION**

-NEED FINGERPRINTS ON SUBMISSION CARD

-NYSID NO. MISSING FROM SAMPLE ENVELOPE AND/OR SUBMISSION FORM

-BARCODE MISSING FROM SAMPLE ENVELOPE, MICROCARD AND/OR SUBMISSION FORM

**F. DNA SPECIMEN COLLECTION SUPPLIES**

1. The (law enforcement agency designee) will be responsible for monitoring the supply of the buccal swab (DNA Databank) kits for convicted offenders.
2. DNA Databank kits will be stored in the \_\_\_\_\_ in a clean, dry area, free from contamination.
3. A sample kit will be available for members to review in order to orient themselves to the contents and procedures for collecting specimens.
4. Extra kits can be ordered from the NYS Office of Forensic Services at 585-593-6645 ext. 321 or by using the order form available through eJustice.

By order of:

\_\_\_\_\_  
Chief of Police

Appendix A: DNA Court Order - sample 1

Appendix B: DNA Court Order - sample 2

Appendix C: DNA Databank legislation; qualifying crimes

Appendix D: Instruction Sheet for using the Convicted Offender DNA Collection Kit

Appendix E: DNA Databank Specimen Submission Form

Appendix F: PD Instruction Letter to Defendant (for use by court)

Appendix G: Example of a completed DNA Databank Submission form

Appendix H: Example and instructions for FTA card and sample envelope

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**[Sample letter that could be provided by the Court to an eligible offender required to submit to DNA sampling]**

**DNA COLLECTION**

The \_\_\_\_\_ Police Department will collect DNA specimens from defendants who have been convicted of a designated offense and who have a court order directing that they give a DNA sample, or who are indicated as owing a DNA sample.

You may report to the \_\_\_\_\_ Police Department located at 123 Main Street, Anytown, New York 12345 to provide a DNA sample according to the following schedule:

Weekdays:

Weekends:

Other - call first: (555) 555-5555

**REMEMBER:**

Be sure to bring the court order with you.

Be sure to bring photographic identification with you.

A police officer will instruct you on how to comply with the DNA collection process. If you refuse or fail to comply with all of the requirements, the police officer will notify the issuing court and you may face additional charges for failing to comply.

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