

NATIONAL DNA DATA BANK SAMPLE COLLECTION HANDBOOK

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Preface

The Canadian police community had, for some time, called for the creation of a DNA data bank to assist police investigations. The government responded by assenting to the DNA Identification Act on December 10, 1998. The legislation became official on June 30, 2000. This legislation allowed a DNA data bank to be created and amended the Criminal Code to provide a mechanism for a judge to order persons convicted of designated offences to provide blood, hair or buccal swab samples from which DNA profiles will be derived. These profiles are stored in the national DNA data bank.

The potential of such an investigative tool is as revolutionary as the fingerprint data base was in the 1960s. Fingerprinting allowed police to accurately identify criminals from crime scene analysis. DNA identification is the next generation in the science of police investigations and in enhancing the safety of Canadians.

The following pages outline three processes that are used for DNA sample collection. The processes were developed by representatives from Correctional Service Canada, the RCMP, Department of Justice, provincial attorneys general, and the police community.

The first process is for those convicted of designated offences after June 30, 2000 and is referred to as the prospective process. The second process is for those convicted of designated offences

after June 30, 2000, but for offences committed before June 30, 2000. The third is for persons convicted of designated offences prior to June 30, 2000 and who were:

1. Declared a dangerous offender,
OR
2. Convicted of more than one murder committed at different times,
OR
3. Convicted of more than one sexual offence (as defined in 487.055(3) of CC) and are serving a sentence of imprisonment of at least two years for one or more of the sexual offences, section 487.055 applies. This is referred to as the retroactive process. There are approximately 2,100 federal offenders in custody or under community supervision who meet the statutory criteria of the retroactive plan. This will place a significant administrative burden on federal and provincial law enforcement officials (RCMP, Correctional Service of Canada, provincial prosecutors and local police forces) as they must assess each individual who falls within this category. However, the task is finite and should be complete within three years.

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Introduction

This handbook has been designed to help police officers and members of partner agencies understand and implement DNA collection processes. Generic models for DNA sample collections for both prospective and retrospective cases were developed by representatives from the Ottawa Crown Attorney's Office, Correctional Service Canada, Department of Justice, the Canadian Police College, Toronto Metro Police Service and the RCMP.

The process models will provide a common framework for communication, consultation and training on all aspects of collection operations. The models illustrate operational processes which agencies can use to develop their own approaches to collection operations which reflect unique circumstances while maintaining common standards and practices.

This handbook points out which documentation and system entries must be completed at given points in the processes as well as the risk factors inherent at various junctures along the way.

A [flow chart](#) has also been included to help you visualize the processes.

For more information or to address a specific topic, please contact Insp Al Misner, RCMP Ident Branch, (613) 993-1180 or by fax (613) 957-9156.

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Prospective Process

All persons who are convicted of a designated offence after June 30th, 2000 will be subject to the prospective DNA sample collection process. There are a number of risk points which will be outlined following the description of this process.

Partners involved in this process are: crown prosecutors, judges, police officers or trained personnel, and corrections officials.

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Primary and secondary offences

Step #1 Authorization

In the case of primary offences (defined in s.487.04) a judge will determine whether an order will be issued to authorize a DNA sample be taken from a convicted offender.

In the case of a secondary offence (defined in s.487.04), the crown prosecutor will apply to the court for an order to collect a DNA sample.

If authority is given (s.487.051 (1)(a) {primary offences}, (1)(b) {secondary offences} or s.487.052 {retrospective: covering both primary and secondary offences}):

- The judge must complete forms 5.03 (primary offences) or 5.04 (secondary and retrospective offences).
- Collection will be done as soon as feasible (s.487.056(1)).
- Investigating police determine whether the offender is in custody or not.

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Step #2 Processing offender

If the offender is not in custody:

- Police determine where the sample will be collected.
- Offender to be detained for sampling (s.487.07 (2)).

If the offender is in custody and the sample is taken at court house:

- Collection orders should be prioritized based on departure times of offenders to other facilities.

If the offender is in custody and the sample is not taken at court house:

- Offender should be transported to detention centre with committal warrant (form 8), (form 14 for youth under Y.O.A) and forms 5.03 (primary offence) or 5.04 (secondary offence).
- Collection orders should be prioritized based on departure times of offenders to other facilities.
- Determine jurisdiction where offender will be held.

- If not in provincial jurisdiction, police who made application must request assistance from police who have jurisdiction over offender. Police with jurisdiction request provincial court judge to endorse authorization (s.487.03(2), form 28.1).
- Arrange with corrections institution to collect sample.

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Step #3

Processing sample

- As offenders are processed, they will be moved to a collection area and protocol observed.
- Protocols are outlined in Appendix.
- Police officers must have forms 5.03, 5.04, or 5.09 (as applicable), a DNA sample collection kit, charter warning and notebook for collection process.

If offender does not exercise right to counsel

- Proceed with collection then move out of the collection area.

If offender exercises right to counsel

- Offender may contact counsel before providing a sample.
- Note: DNA sample shall be collected even if counsel advises that an appeal has been made (s.487.056(1)).
- Ensure quality of fingerprints and DNA sample are suitable before releasing offender.
- Re-fingerprint or resample if necessary.

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Step #4

Processing sample to NDDB:

- After sample is obtained, required kit documents must be completed.
- The integrity of the sample must be guaranteed, so note-taking is crucial to the process.
- Send sample (in sealed kit envelope) to NDDB with Exhibit Report (C414 or equivalent), Form 5.03, 5.04 or 5.09 and fingerprint identification form (3801).
- Send confirmation form 5.07 to issuing Court with a copy to OIC of jurisdiction where crime occurred.
- Sample envelope can be sent to NDDB via registered mail, courier, or personal delivery.
- NDDB confirms receipt of sample by sending back Exhibit Report receipt.

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Step #5 (as necessary)

Re-sampling process

If DNA sample is rejected by NDDB:

- If sample is rejected, NDDB sends letter to OIC of investigating police department to request re-take.
- The officer in charge must send letter to prosecutor where the crime took place along with Form 5.08 to request re-take.
- Provincial Court will issue form 5.09 to order authorization of sample.
- If the offender is in custody and in the same province in which the authorization was issued, coordinate collection with corrections and local police if required.
- If offender is in custody but is not in the same province in which the authorization was issued, the police who made the application will request assistance from police who currently have jurisdiction over offender. Police executing the authorization (form 5.09) must have it endorsed (form 5.09 and form 28.1) by a provincial court judge where offender is currently located for it to be valid.
- Arrange with correction institution to collect sample. [Follow step 3.](#)

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Step 5.1

If offender is not in custody:

- If offender is not in the same province in which the authorization was issued, the police who made the application will request assistance from police who currently have jurisdiction over offender.
- Police in that jurisdiction must obtain summons from justice of the peace and get authorization to obtain DNA sample endorsed (Form 28.1) by a local provincial court justice.
- S.487.055 (7) sets out the content for the summons. Refer to form 6 of the CC for basic form format.
- If offender is in the same province in which the authorization was issued, police will contact parole or probation officer to obtain address of parolee.
- Police arrange to serve summons on offender (as per 487.055 (5)).
- If offender appears, proceed to collection of DNA sample. [Follow steps 3.](#)

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Step #5.2

Offender does not appear at required time:

- Police notify probation or correctional authorities. Corrections may issue a suspension warrant.
- Police obtain an arrest warrant (Form 7) and Feeney warrant, if necessary, (form 7.1) from a justice of the peace.
- To obtain warrant: Swear affidavit of service with copy of summons. (Note s. 487.055 (6). Service affidavit may be oral).
- Post warrant information to CPIC.

Offender is arrested and taken into custody in jurisdiction:

- Remove CPIC notice.
- Notify corrections for instruction about parole suspension warrant.

If offender is arrested and taken into custody outside jurisdiction of original authorization:

- If offender is not in the same province in which the authorization was issued, the police who arrest offender will request copy of authorization (form 5.09) from the police who obtained warrant.
- Police executing the authorization (form 5.09) must have it endorsed (Form 5.09 and form 28.1) by a provincial court judge where offender is currently located for it to be valid.
- Collect DNA sample. [Follow step 3.](#)

Risk Factors

As with any process, there are a number of risk points. These occur at intervals when, due to a variety of factors, an activity does not take place. Some of these are:

1. Judge is not asked or does not issue order to obtain DNA sample.
2. Order is not pursued or is lost during transportation of offender.
3. A sample is rejected.
4. Protocol is not observed or recorded.
5. Confirmation form 5.07 is not completed or sample is lost during transportation.
6. Failure of NDDDB to notify police officer that a sample has been rejected; failure of crown to request order for re-take.

Please note: In issuing an order to collect, pursuant to s. 487.051 (1) :

- In the case of a primary offence, an accused person must demonstrate to the court that providing a DNA sample would result in a personal impact that is grossly disproportionate to the public interest to avoid the issuance of an order by the court (s. 487.05 (2)).
- In the case of a secondary offence, the crown must provide evidence to support its request to obtain a DNA sample that satisfies the court that it is in the best interests of the administration of justice to do so (s.487.05(3)).

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Retroactive Process

The retroactive process will be used for offenders who are serving a sentence of at least two years for a series of murders, sexual assaults or if they are dangerous offenders (487.055 (1) (a) (b) (c)). These are individuals who society has deemed to be dangerous or at high risk of re-offending. The process of DNA collection is not based upon whether an offence is considered to be primary or secondary.

Partners involved are: Correctional Service Canada (CSC), RCMP, local police departments, provincial agency, Crown, provincial courts, and trained personnel.

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Step #1

Identification of offenders:

- Offenders who are to provide DNA samples must be identified along with their time remaining in custody. CSC will use their Offender Management System (OMS) for this identification.
- Corrections has prepared a list of these offenders including the following information: name, expiry date of sentence, chance of parole, where offender is being held, statutory release date, security level and preventative security alert.
- If the offender is on parole, the list also includes the name and contact information of the parole officer.
- This list and any other pertinent information has been provided to the RCMP which is responsible to update the list as the status of the offender changes.
- The RCMP completes form 44 (pursuant to s.667(1)(a)) as required by s. 487.055(2).
- Once a file has been created, the RCMP DNA Coordinator breaks down the list by province and sends the list, form 44 and letters to appropriate attorneys general.

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Step#2

Recommendation to proceed:

- The provincial attorneys general will review the files.
- If decision is made to proceed with the sample collection, letters along with form 44 will be sent to local crowns and local police departments to the jurisdiction of the last relevant conviction of the offender.
- For either a yes or no decision, a letter must be sent to the RCMP DNA coordinator and to CSC to advise of status.
- If the decision is made not to proceed, CSC will notify offender and RCMP will close file.

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Step #3:

Application to the court:

- The local crown reviews the circumstances of the case with the local police.
- If the local crown decides to proceed, an application is made to provincial court (with supporting documents).
- Police and crown complete form 5.05 and send to provincial court with form 44 and supporting documentation.
- If the decision is made not to proceed, crown and police notify RCMP DNA coordinator and CSC. CSC will notify offender verbally.
- If the crown and police decide to proceed, advise RCMP DNA coordinator.

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Step #4

Authority to proceed

- The provincial court judge then decides whether to hold ex parte hearing (the Act calls for an ex parte hearing, but the judge may override this and request that the offender, counsel, parole officer, and others be present).
- If the judge does not order an ex parte hearing, a court order is required to remove the offender from the institution (and a subpoena to require parole officer's and other's presence).
- If the judge orders an ex parte hearing, a hearing is conducted.
- If the court declines authority to collect a DNA sample, the file is closed and notification is sent to RCMP DNA coordinator, attorney general and CSC.
- If the court issues authority to proceed with the collection of the DNA sample, two 5.06 forms should be completed by the court.
- One stays with the court file and one is sent to the local police with supporting documents.
- Police who made original application are then required to locate offender with the assistance of the RCMP DNA coordinator.
- Collection of sample should be done as soon as feasible (s.487.056(2)).
- If offender is in custody, go to [step 5](#).
- If offender is not in custody, skip to [step 6](#).

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Step#5

If offender is in custody:

- If the offender is in the same province in which the authorization was issued, coordinate collection with CSC and local police if required.
- If offender is not in the same province in which the authorization was issued, the police who made the application will request assistance from police who currently have jurisdiction over offender. Police executing the authorization (form 5.06 or 5.09) must have it endorsed (Form 5.06 or 5.09 and form 28.1) by a provincial court judge where offender is currently located for it to be valid.
- Arrange with correction institution to collect sample. [Follow step 7](#).

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Step #6

If offender is on parole:

- If offender is not in the same province in which the authorization was issued, the police who made the application will request assistance from police who currently have jurisdiction over offender.
- Police in that jurisdiction must obtain summons from justice of the peace and get authorization to obtain DNA sample endorsed (Form 28.1) by a local provincial court justice. C S.487.055 (7) sets out the content for the summons. Refer to form 6 of the CC for basic form format.

- If parolee is in the same province in which the authorization was issued, police will contact parole officer to obtain address of parolee.
- Police arrange to serve summons to parolee (as per 487.055 (5)).
- If parolee appears, proceed to collection of DNA sample. [Follow step 7.](#)

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Step #6.1

Parolee does not appear at required time:

- Police notify CSC. CSC may issue a parole suspension warrant.
- Police obtain an arrest warrant (Form 7) and Feeney warrant, if necessary, (form 7.1) from a justice of the peace.
- To obtain warrant: Swear affidavit of service with copy of summons. (Note S. 487.055 (6). Service affidavit may be oral).
- Post warrant information to CPIC.

Parolee is arrested and taken into custody in jurisdiction:

- Remove CPIC notice.
- Notify CSC for instruction about parole suspension warrant.

If parolee is arrested and taken into custody outside jurisdiction of original authorization:

- If offender is not in the same province in which the authorization was issued, the police who arrest parolee will request copy of authorization (form 5.06 or 5.09) from the police who obtained warrant.
- Police executing the authorization (form 5.06 or 5.09) must have it endorsed (Form 5.06 or 5.09 and form 28.1) by a provincial court judge where parolee is currently located for it to be valid.
- Collect DNA sample. [Follow step 7.](#)

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Step #7

Processing sample

- As offenders are processed, they will be moved to a collection area and protocol observed.
- Protocols are outlined in Appendix.
- Police officers must have forms 5.06 or 5.09 (as applicable), a DNA sample collection kit, charter warning and notebook for collection process.

If offender does not exercise right to counsel

- Proceed with collection then move out of the collection area. If offender exercises right to counsel
- Offender may contact counsel before providing a sample.
- Note: DNA sample shall be collected even if counsel advises that an appeal has been made (s.487.056(1)).
- Ensure quality of fingerprints and DNA sample are suitable before releasing offender.
- Re-fingerprint or resample if necessary.

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Step #8

Processing sample to NDDB:

- After sample is obtained, required kit documents must be completed.
- The integrity of the sample must be guaranteed, so note-taking is crucial to the process.
- Send sample (in sealed kit envelope) to NDDB with Exhibit Report (C414 or equivalent), Form 5.06 or 5.09 and fingerprint identification form (3801).
- Send confirmation form 5.07 to issuing Court with a copy to OIC of jurisdiction where crime occurred.
- Sample envelope can be sent to NDDB via registered mail, courier, or personal delivery.
- NDDB confirms receipt of sample by sending back Exhibit Report receipt. ms receipt of sample by sending back Exhibit Report receipt.

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Step #9 (as necessary)

Re-sampling process

If DNA sample is rejected by NDDB:

- If sample is rejected, NDDB sends letter to OIC of investigating police department to request re-take.
- The officer in charge must send letter to prosecutor where the crime took place along with Form 5.08 to request re-take.
- Provincial Court will issue form 5.09 to order authorization of sample.
- If the offender is in custody, coordinate with Corrections officials and arrange to have samples taken. [See step 5.](#)
- If the offender is not in custody, [See step 6.](#)

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Risk points

As with any process, there are points at which risk for the process to break down is higher. Risk factors in the retroactive process include, but are not limited to:

1. Failure to identify offenders who should provide a DNA sample. Failure to notify RCMP.
2. Failure to pass recommendation to local crown.
3. Judge refuses ex parte hearing and witnesses don't attend.
4. Judge does not issue authority.
5. Police do not follow up on order.
6. Failure to locate parolee.
7. Can't arrange resources to obtain sample.
8. Failure to obtain summons or to contact local police.
9. Failure to serve summons.
10. Failure to follow up if parolee does not appear.
11. Failure to obtain the necessary authorities for arrest.
12. Failure to execute warrant.
13. If parolee changes location, failure to get authority in new jurisdiction.
14. Failure to obtain good DNA sample.
15. Loss of sample during transportation to NDDDB.
16. Failure to re-take sample, if bad sample was obtained in the first instance.

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Appendix

Sample-taking protocol

Whether for prospective, retrospective or retroactive cases, a common protocol must be observed during the DNA sample collection process. It is as follows:

- Obtain fingerprints;
- Provide a room that is clean, secure and private;
- Assure safety of collection personnel;
- Use the NDDDB approved and required kit;
- Read charter rights;
- Make a phone available to the offender to confer with a lawyer and ensure the offender's privacy is observed. In the retroactive case, this may be the first time that an offender is aware that a DNA sample will be collected.
- Ensure restraints are available;
- Send sample to the RCMP's NDDDB via registered mail, courier or personal delivery.
- Separate facilities for youth or female offenders may be required.
- Youth may request counsel, parent or other adult be present.

The steps for obtaining a DNA sample are as follows:

1. Introduce yourself;
2. Explanation why you're here, what is happening, and what statutes are being followed;
3. Explain court order;
4. Explain offender's right to contact an attorney;

5. Finish explaining contents of warrant, why sample is being taken, authority to use force, etc.;
6. Show what will be done to obtain sample;
7. Take offender's fingerprints on card and form — wash hands before and after, if necessary;
8. Preferably take blood sample (buccal and hair are other options if necessary);
9. Document results, with signatures of witnesses;
10. Seal the sample in the required envelope.