



**POLICY STATEMENT**  
Commonwealth of Pennsylvania • Department of Corrections

<b>Policy Subject:</b> <b>Act 57 DNA Data and Testing</b>		<b>Policy Number:</b> <b>11.6.2</b>
<b>Date of Issue:</b> <b>February 1, 2010</b>	<b>Authority:</b> <b>Signature on File</b> <b>Jeffrey A. Beard, Ph.D.</b>	<b>Effective Date:</b> <b>February 1, 2010</b>

**I. AUTHORITY**

The Authority of the Secretary of Corrections to direct the operation of the Department of Corrections is established by Sections 201, 206, 506, and 901-B of the Administrative Code of 1929, 71 P.S. §§61, 66, 186, and 310-1, Act of April 9, 1929, P.L. 177, No. 175, as amended.

**II. APPLICABILITY**

This policy is applicable to all facilities operated under the jurisdiction of, or conducting business with the Department of Corrections.

**III. POLICY**

It is the policy of the Department to ensure that inmates who have been convicted of any of the offenses defined in the DNA Act provide a DNA sample as required.

**IV. PROCEDURES**

All applicable procedures are contained in the procedures manual that accompanies this policy document.

## **V. SUSPENSION DURING AN EMERGENCY**

In an emergency or extended disruption of normal facility operation, the Secretary/designee may suspend any provision or section of this policy for a specific period.

## **VI. RIGHTS UNDER THIS POLICY**

This policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual. This policy should be interpreted to have sufficient flexibility to be consistent with law and to permit the accomplishment of the purpose(s) of the policies of the Department of Corrections.

## **VII. RELEASE OF INFORMATION AND DISSEMINATION OF POLICY**

### **A. Release of Information**

#### **1. Policy**

This policy document is public information and may be released upon request.

#### **2. Confidential Procedures (if applicable)**

Confidential procedures for this document, if any, are not public information and may not be released in its entirety or in part, without the approval of the Secretary of Corrections/designee. Confidential procedures may be released to any Department of Corrections employee on an as needed basis.

### **B. Distribution of Policy**

#### **1. General Distribution**

The Department of Corrections' policy and procedures shall be distributed to the members of the Central Office Executive Staff, all Facility Managers, and Community Corrections Regional Directors on a routine basis. Distribution of confidential procedures to other individuals and/or agencies is subject to the approval of the Secretary of Corrections/designee.

#### **2. Distribution to Staff**

It is the responsibility of those individuals receiving policies and procedures, as indicated in the "General Distribution" section above, to ensure that each employee expected or required to perform the necessary procedures/duties is issued a copy of the policy and procedures either in hard copy or via email, whichever is most appropriate.

## VIII. SUPERSEDED POLICY AND CROSS REFERENCE

### A. Superseded Policy

#### 1. Department Policy

11.6.2, Act 57 DNA Data and Testing, issued September 8, 2006 by Secretary Jeffrey A. Beard, Ph.D.

#### 2. Facility Policy and Procedures

This document supersedes all facility policy and procedures on this subject.

### B. Cross Reference(s)

#### 1. Administrative Manuals

- a. DC-ADM 201, Use of Force
- b. DC-ADM 801, Inmate Discipline
- c. DC-ADM 819, Religious Activities
- d. 6.3.1, Facility Security

#### 2. ACA Standards

- a. Administration of Correctional Agencies: None
- b. Adult Correctional Institutions: None
- c. Adult Community Residential Services: None
- d. Correctional Training Academies: None



**PROCEDURES MANUAL**  
Commonwealth of Pennsylvania • Department of Corrections

**Policy Subject:**

**Act 57 DNA Data and Testing**

**Policy Number:**

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**Signature on File  
Jeffrey A. Beard, Ph.D.**

**Effective Date:**

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Release of Information:

**Policy Document:** This policy document is public information and may be released upon request.

**Procedures Manual:** The procedures manual for this policy may be released in its entirety or in part, with the prior approval of the Secretary/designee. Unless prior approval of the Secretary/designee has been obtained, this manual or parts thereof may be released to any Department employee on an as needed basis only.

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## Section 1 – General Procedures

### A. General

1. DNA samples shall be collected from an inmate who has been convicted of an offense as specified in the DNA Act. A DNA sample shall be delivered to the Pennsylvania State Police (PSP) DNA Database Unit along with **the required** identifying information.
2. **A sample shall be collected from all newly committed inmates at the time of reception into the Diagnostic and Classification Centers (CDCC and MDCC).**
3. **In conjunction with their annual review, DNA shall be collected from all inmates already incarcerated for covered offenses as defined in the DNA Act who have not yet provided a DNA sample. This process shall ensure that DNA collection for all inmates will be completed by March 1, 2011.**
4. An inmate sentenced to death and an inmate serving a life sentence shall be included in the sample collection process even if the inmate is not expected to gain release.
5. An individual who is returned to the Department as a Parole Violator (PV) who was originally convicted of a covered offense is subject to these procedures.
6. Under no circumstances shall a person who is currently convicted or adjudicated delinquent for an offense covered by the DNA Act be released in any manner (including pre-release, transfer to Quehanna Boot Camp, promotional transfer, outside clearance, **furlough, sentence complete, or transfer to a county prison or out-of-state prison for housing, etc.**) unless and until a DNA sample has been **collected**.

### B. Sample Collection Criteria

A DNA sample shall be obtained from an inmate who is currently serving a sentence for any felony sex offense or any attempt, conspiracy, or solicitation to commit any felony sex offense. A DNA sample shall be obtained from an inmate who is currently serving a sentence for any other specified offense or any attempt to commit any other specified offense. Convictions for solicitation or conspiracy to commit another specified offense are covered only if the solicitation or conspiracy is graded as a felony.

#### 1. Felony Sex Offense

A felony sex offense is an attempt, conspiracy, or solicitation to commit a felony offense under any of the following:

- a. 18 Pa.C.S. Ch.31 (relating to sexual offense);
- b. 18 Pa.C.S. §4302 (relating to incest);
- c. 18 Pa.C.S. §5902(c)(I)(iii) and (iv) (relating to prostitution and related offenses);

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- d. 18 Pa.C.S. §5903(a) (relating to obscene and other sexual materials and performances) where the offense constitutes a felony);
- e. 18 Pa.C.S. §6312 (relating to sexual abuse of children);
- f. 18 Pa.C.S. §6318 (relating to unlawful contact with minor) where the most serious underlying offense for which the defendant contacted the minor is graded as a felony); and/or
- g. 18 Pa.C.S. §6320 (relating to sexual exploitation of children).

2. Other Specified Offense

A felony offense, attempt to commit a felony offense, or an offense under 18 Pa.C.S. §2910 (relating to luring a child into a motor vehicle) or 18 Pa.C.S. §3126 (relating to indecent assault) or an attempt to commit such an offense. A conspiracy or solicitation to commit a felony offense is an “other specified offense” only if the conspiracy or solicitation is graded as a felony. Highlighted offenses on the **Pennsylvania Felonies Listing (Attachment 1-A)** are those which can be graded as either a felony or misdemeanor depending upon the facts of the crime. The circumstances set forth in the **Pennsylvania Felonies Listing** are the situations where the offense is a felony.

- 3. Staff shall explain the **DNA Act Advisory Form (Attachment 1-B)** to the inmate.
- 4. In accordance with the DNA Act, if an inmate who was convicted or adjudicated delinquent for an offense listed in **Subsection B.1.a.-g. above** refuses to have the sample drawn, the Department is authorized to use the amount of force reasonably necessary to procure the sample.
- 5. Although corrections personnel may use force in this case, force shall not be used unless the inmate has had the opportunity to read and sign the **DNA Act Advisory Form**. If the inmate refuses to sign, two staff members shall sign as witnesses.

## Section 2 – Process, Collection & Documentation

### A. Process for Obtaining DNA Samples

1. Staff shall meet with and explain to the inmate the requirement to provide a DNA sample and explain that, if he/she refuses, a misconduct will be issued for refusing to obey an order in accordance with Department policy **DC-ADM 801**, “**Inmate Discipline**,” and that a sample will be obtained by force if necessary, and have the inmate sign the **DNA Act Advisory Form** (refer to **Section 1, Attachment 1-B** of this procedures manual).
2. If the inmate is willing to voluntarily provide the sample, the fingerprinting and collection of the sample should be completed at this time.
3. If the inmate refuses, he/she will be given 24 hours to change his/her mind, unless the inmate is due to be released before the expiration of the 24 hour period, in which case authority to use force should be sought immediately. The inmate will not be held in the RHU during this 24 hour period.
4. At the end of the 24 hours, the inmate is to be asked again to provide the DNA sample and will be given another **DNA Act Advisory Form** to sign.
5. If the inmate is willing to voluntarily provide the sample, the fingerprinting and collection of the sample should be completed at this time.
6. If the inmate refuses, a direct order to provide a sample is to be given to the inmate. If the inmate refuses again, a misconduct is to be issued in accordance with Department policy **DC-ADM 801**. If found guilty, the inmate will be held in the RHU for 30 days, or 48 hours prior to his/her release, whichever is sooner. If the inmate is due to be released within 48 hours, approval to use force to obtain the DNA sample should be sought immediately.
7. During the counselor’s weekly RHU visit, the counselor should discuss the need for the inmate to voluntarily provide the DNA sample. The counselor should have the inmate sign a **DNA Act Advisory Form** whenever the inmate is counseled regarding the matter.
8. If at any time during the inmate’s confinement in the RHU the inmate agrees to voluntarily provide the sample, he/she will be released from the RHU after doing so. The **DC-14** will be documented accordingly.

NOTE: If an inmate is serving a significant amount of time in the RHU in AC or DC status, and refuses to provide a DNA sample, a misconduct is **not** to be issued. He/she should be given a direct order to submit the sample. The inmate is to be informed that he/she has 30 days to reconsider. During the counselor’s weekly visit, the counselor shall discuss the need for the inmate to voluntarily provide the DNA sample. The counselor shall have the inmate sign a **DNA Act Advisory Form** whenever the inmate is counseled regarding the matter. At the end of the 30-day period, the inmate should be given one final opportunity to comply, after which force will be used to take the sample.



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9. If at the end of 28 days in the RHU the inmate continues to refuse to provide a sample, the Regional Deputy Secretary is to be contacted with a request for use of force to obtain the sample.
10. When force is used to obtain a DNA sample, it shall be in accordance with Department policy **DC-ADM 201** and it shall be video recorded as a planned use of force. The Facility Manager/designee shall ensure that a **DC-121, Part 2, Extraordinary Occurrence Report**, is completed in accordance with Department policy **6.3.1, “Facility Security,” Section 17, Reporting of Extraordinary Occurrences**.

**B. Collection**

1. A DNA sample will be collected **during the reception process at CDCC or MDCC** for each newly committed inmate who is required to provide a sample when a sample has not already been collected.
2. The collection of DNA from an inmate **who has not yet provided a sample** shall be collected **as soon as his/her release date is known, no later than** two weeks prior to release.
3. Staff will not initiate processing of an inmate for **any type of transfer**, pre-release, work release, furlough, commutation, or outside clearance status, etc. unless the inmate has provided the DNA sample.
4. Collection of DNA samples from inmates **who have not already provided a sample**:
  - a. shall be **scheduled** by the counselor at the inmate’s annual review;
  - b. the Records Supervisor, Corrections Records Supervisor, Records Specialist, or Corrections Records Specialist will review the commitments, RAP sheet and PSI of an inmate who has not already provided a DNA sample to determine if one is required. If one is required, they are to schedule the inmate to provide the DNA sample;
  - c. if collection of a DNA sample is not required, an annotation shall be made on the **DC-14** stating that a review was conducted and no DNA sample was required. It shall be dated, signed, and filed under the Legal section of the **DC-15, Inmate Records Jacket**.
5. The PSP DNA Lab has advised that a DNA sample may have been provided prior to reception at the Department, but it **may not be** indicated on the Master Name Index (MN) of the PA RAP Sheet, Records Office staff are to contact the DNA Lab and the DNA Lab will verify whether or not a DNA sample was provided. PSP will only release this information to Department personnel.
6. The **DNA Sample Collection Tracking Sheet (Attachment 2-A)** will be completed at the time the DNA sample is collected. The form will be placed in the Legal Section of the inmate’s **DC-15**.

7. DNA Sample Collection Using the Buccal Swab Kit:

- a. DNA samples will be collected by using the PSP supplied Buccal Swab Kit. Each kit includes two buccal collectors, instructions, DNA Database Collection Card (see **Sample PSP Database Collection Card, Attachment 2-B**), gloves, transport pouch, desiccant packet, and a pre-paid shipping envelope.
- b. Label the buccal collectors with the inmate's first name, last name, and social security number (if the inmate does not have a social security number, use the inmate's SID number) before collecting the sample.
- c. Use gloves to remove the Buccal DNA Collector from the pouch. Hold the thick portion of the handle at the base of the blue cap. Remove and SAVE the blue cap.
- d. Instruct the inmate to hold the Buccal DNA Collector with the thumb on the area marked "thumb" on the back of the collector.
- e. Instruct the inmate to open his/her mouth and to place the collecting paper side against the inside of his/her cheek. To avoid damaging the collecting paper, the Buccal DNA Collector is to be dragged in one direction. Instruct the inmate to press the collecting paper against the inside of the cheek and drag it firmly toward his/her lips and out of his/her mouth. This should be repeated seven more times.

Note: It is important that the staff member collecting the sample observes that the Buccal DNA Collector is being pressed against the inside of the inmate's cheek and that it is being dragged against the inside of the cheek.

- f. When the inmate has completed steps in **Subsection D.7.c. & d. above**, the inmate shall return the Buccal DNA Collector to the staff member and the staff member shall replace the blue cap back on the collector. The staff member shall ensure that the collecting paper is covered. To avoid sample contamination, the collecting paper is not to be touched by the staff member's hand. The staff member shall place the Buccal DNA Collector into the transport pouch along with the desiccant packet.
- g. The second Buccal DNA Collector shall be used on the other side of the inmate's mouth using steps c. through f. above. Both collectors must be used on the same inmate. The staff member shall place the second Buccal DNA Collector into the transport pouch containing the first collector.
- h. At the time the DNA sample is collected, an imprint of the inmate's left and right thumbs shall be taken, by means of an inked impression in the spaces indicated on the DNA Database Collection Card. In addition, the Corrections Officer or Records Office staff must complete a **PSP Full Fingerprint Card (Attachment 2-C)** with inked impressions taken at the time the DNA sample is collected. Both forms shall be placed in the postage paid return envelope.

NOTE: In order for the PSP Full Fingerprint Card to fit in the envelope, it is necessary to fold the card on the line below the SID number and date of birth. DO NOT FOLD

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THE CARD ON THE PRINTS, this could make the prints unreadable and could necessitate retaking the prints.

- i. Complete the **SP 4-241, DNA Database Sample Inventory and Receipt Form (Attachment 2-D)**. This form is the facility's record that the sample(s) were mailed. This form is to be completed for single shipment or bulk mailing of DNA samples. Upon receipt of the DNA sample(s) the laboratory will sign this form and a signed copy will be sent to the facility. The **SP 4-241** is to be completed and sent as follows:
  - (1) if only one DNA sample is mailed, place this form, along with the **PSP Full Fingerprint Card** in the post paid return envelope along with the DNA sample;
  - (2) if sending several DNA samples, place this form in the container used to ship the DNA samples; and/or
  - (3) if sending DNA samples by courier, give this form to the courier to be signed by the laboratory as a receipt of the DNA sample(s).
- j. Complete the **DNA Database Sample Inventory and Receipt Tracking Form**. This form must be used to avoid duplicate samples. Retain the form in the Legal Section of the inmate's **DC-15**. If the inmate is transferred to another facility, a copy of this form must accompany the inmate to the new facility to avoid a duplicate collection.
- k. Seal the envelope and sign and date the seal printed on the flap. Be sure the return address is on the envelope.
- l. Mail the completed kit, including the DNA sample, **DNA Database Collection Card, PSP Full Fingerprint Card**, and the **DNA Database Sample and Inventory Form** to the PSP DNA laboratory within 48 hours of collecting the sample.

Note: Avoid collecting samples prior to a holiday weekend, due to delays in mail delivery.

8. DNA Sample Collection Using a Forced Blood Draw

- a. DNA samples collected using a forced blood draw shall be collected using the PSP approved Database Kit. The kit will include a EDTA (lavender top) blood tube, seals, packing material, **DNA Database Collection Card (Attachment 2-E)**, and a self-addressed (postage paid) mailing carton.
- b. Only those individuals qualified to draw DNA samples in a medically approved manner shall draw a DNA sample to be submitted for DNA analysis.
- c. The inmate shall be secured in a restraint chair, if available, in accordance with Department policy **6.3.1, "Facility Security," Section 33, Restraints**, and the DNA blood sample shall be drawn using the EDTA blood tube.

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- d. Each form inside the kit shall be completed in full and properly sealed. At the time the DNA sample is drawn, the imprinting of the inmate's left and right thumbs, by means of an inked impression in the spaces indicated on the **DNA Database Collection Card** shall also be completed. In addition, the intake officer of Records Office staff must complete a **PSP Full Fingerprint Card** with inked impressions taken at the time the DNA sample is drawn.
  - e. The sample shall be sent to the PSP DNA Database Unit in accordance with **Subsection B.7.i.-l. above.**
9. Cases involving an inmate who claims he/she cannot submit to DNA sample collection because of religious reasons must complete a **DC-52, Inmate Religious Accommodation Request Form** in accordance with Department policy **DC-ADM 819, "Religious Activities."** No misconduct will be issued until the validity of the claim is established except as provided in **Section 1** of this procedures manual.

**C. Documentation**

1. Upon receipt of the DNA sample, the PSP will mark a field in the CLEAN system record associated with the inmate, indicating that a DNA sample has been taken.
2. The **DNA Sample Collection Tracking Sheet** which was completed at the time of commitment or when the DNA sample was collected/drawn and placed into the **DC-15**, will be attached to the **DC-13A, Reclassification Summary** along with the staff recommendation for parole, and forwarded to the PBPP prior to the Parole Board's review. The same process will apply for county parole cases.
3. The Records Office will track DNA information on an Excel Spreadsheet. They will note the inmate number, name, date it was requested, the date the sample was collected/drawn, whether or not force was used, and any special comments.
4. Documentation of the review of the **DC-15** of an inmate who was not initially required to provide a DNA sample is to be annotated on an **DC-14** stating that a review was conducted and no sample was required. It shall be dated, signed, and filed under the Legal Section of the **DC-15**. This status is reviewed annually at the date of counselor's annual review.
5. A separate section shall be added to the **DC-13A**, entitled **DNA Act Notification**. For an inmate who is covered by this policy, the statement, "DNA sample material has been taken; please see **DNA Sample Collection Tracking Sheet** attachment," shall be included. If the inmate is not required to provide a DNA sample, the statement shall read, "inmate not subject to DNA Act requirements."
6. If the inmate is processed for parole without a **DC-13A**, such as may occur when parole processing occurs when the inmate is in the DCC, the statements noted in **Subsection C.5. above** shall be included in the letter of recommendation to the PBPP.

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**Glossary of Terms**

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**Department** – The Pennsylvania Department of Corrections.

**Deoxyribonucleic Acid (DNA)** – DNA is located in the cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

**DNA Act** – The current DNA Act is the Act of November 30, 2004, P.L. 1428, No. 185 (44 Pa.C.S. Chapter 23). The current DNA Act repealed the DNA Detection of Sexual Offenders and Other Offenders Act (42 Pa.C.S. §4701, et seq.) which amended and continued the DNA Detection of Sexual and Violent Offenders Act (35 P.S. §§7651.101-7651.1102). Portions of the current DNA Act became effective on November 30, 2004 and other portions became effective January 29, 2005.

**DNA Sample** – A blood or tissue sample provided by any person with respect to offenses covered by the current DNA Act or any prior version of the current DNA Act.

**Reasonable Force** – The amount of force needed to obtain a DNA sample from those individuals who refuse to submit to DNA testing. Reasonable force shall be used in accordance with Department policy **DC-ADM 201, "Use of Force."**