

INTERNAL DOCUMENT

The Vermont Department of Corrections (DOC) shall collect DNA samples from offenders who have been convicted of statutorily designated crimes. This guidance document shall:

1. Inform staff of the designated crimes that require the collection of a DNA sample from an individual;
2. Provide step-by-step instruction to staff on the proper method of DNA sample collection; and
3. Establish responsibilities in updating the Offender Management System (OMS).

Qualifying Offenses

The following list of offenses are designated crimes that conviction of will result in a statutory requirement for the DOC to collect a DNA Sample:

1. Any felony offense;
2. Domestic Assault (13 V.S.A § 1042);
3. Any crime for which a person is required to register as a sex offender pursuant to 13 V.S.A. chapter 167, subchapter 3;
4. Stalking (13 V.S.A. § 1062);
5. Reckless Endangerment (13 V.S.A. § 1025);
6. A violation of an abuse prevention order as defined in 13 V.S.A. §1030; and
 - a. This excludes violations of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief).
7. A misdemeanor violation of 13 V.S.A. chapter 28 relating to abuse, neglect, and exploitation of vulnerable adults;
8. Any other offense, if, as part of a plea agreement in an action in which the original charge was a crime listed in this subdivision and probable cause was found by the court, there is a requirement that the defendant submit a DNA sample to the DNA data bank.

Notification of Collection

Offenders shall be informed by either Facility or Field staff that they are required to submit for a DNA Sample collection. The notification shall inform the offender of where and when to report to have the sample taken.

Proper DNA Sample Collection

The staff member taking the DNA sample shall:

1. Open OMS and bring up the record of the offender.

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- a. Open each individual charge to determine if there are “Alerts Available.” If so, click on “Alerts Available” to see if DNA is required. All designated crimes shall have a “DNA Required” alert shown within the individual charge in OMS.
2. Prior to taking the DNA sample, all required information on the DNA sample card shall be provided:
 - a. Offender Last Name;
 - b. Offender First Name;
 - c. Offender Middle Name;
 - d. The Date the sample is being taken;
 - e. Offender’s Date of Birth;
 - f. Offender’s Race;
 - g. Offender’s Gender;
 - i. This shall be the offender’s birth sex.
 - h. DOC #;
 - i. This is the offender’s Jacket Number.
 - i. Offender’s Status;
 - i. Incarcerated;
 - ii. Probation; or
 - iii. Other;
 1. If ‘Other’ is selected, indicate the offender’s status.
 - j. Offense;
 - i. If an offender has convictions for multiple designated crimes at the time of DNA sample collection, DOC shall take one sample and list all qualifying offenses on the sample card.
 - ii. Offenses shall be listed by the offense name (example – robbery, domestic assault).
 1. Do not list offenses using Docket Numbers.
 2. It is permissible to abbreviate the offense name (example: burg for burglary).
 - iii. If an offender has multiple convictions for the same designated crime, it is permissible to indicate the charge and then the number of individual charges (example – Burg 5x).
 - iv. If necessary, staff may list additional designated crimes that do not fit in the specified area on the form on the back of the sample card in the “Comments” box.
 - k. The identifying information of the staff member taking the sample, including:
 - i. DOC Staff Last Name;
 - ii. DOC Staff First Name;
 - iii. DOC Staff Title;
 - iv. Staff Member’s Phone Number;

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- v. Location where sample is being collected; and
 - vi. DOC Staff Signature.
3. Take the offender's left and right index fingerprints.
 - a. The individual's hands should be cleaned prior to printing.
 - i. If hands are moist, wipe each finger with rubbing alcohol. If hands are dry or flaky use a small amount of hand lotion and wipe off any residue.
 - b. Roll the finger on the inking plate or pad so the entire fingerprint pattern area is evenly covered with ink.
 - i. The ink should cover from one edge of the nail to the other and from the crease of the first joint to the tip of the finger.
 - c. Place the side of the finger bulb upon the card.
 - d. Roll the finger to the other side until it faces the opposite direction.
 - i. Care should be exercised so the bulb of each finger, from tip to below the first joint, is rolled evenly.
 - ii. Generally, the weight of the finger is the maximum pressure needed to clearly record a fingerprint.
 - iii. In order to take advantage of the natural movement of the forearm, the hand should be rotated from the more difficult position to the easiest position.
 - iv. Roll each finger from nail to nail in the appropriate space, taking care to lift each finger up after rolling to avoid smudging.
 4. DOC staff member shall wear protective gloves during the collection of the sample.
 5. Check to make sure the offender's mouth is clear and free from food, tobacco, and gum. If the offender has a dry mouth, provide them with water to drink.
 6. Taking care not to touch the foam tip, remove the sterile applicator from the packaging.
 7. Staff may choose to take the DNA sample themselves, or they may choose to allow the offender to collect the sample and return the swab to the staff member.
 - a. If staff chooses to allow an offender to take their own sample, the staff member shall ensure the offender is correctly collecting the sample; if an offender cannot effectively administer their own mouth swab, staff shall collect the sample.
 - b. The individual taking the sample shall grasp the handle, place the foam tip into the offender's mouth and vigorously rub the inside surface of the left or right cheek for one minute.
 - c. Focus should be put on rubbing the foam tip between the gum-line and the fold of the cheek and below the tongue as to soak up as much saliva as possible.
 8. Remove the applicator from the offender's mouth or have the offender remove the applicator from his or her own mouth and hand it to the staff member.
 9. Carefully lift the protective tab on the sample card to expose the pink collection paper and press the foam applicator head within one of the circles.

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- a. Without removing the applicator from the sample card, roll the handle of the applicator to the right and hold for a few seconds. Roll the applicator to the left and hold again for a few seconds.
 - b. Continue rolling and pressing the foam applicator tip on the exposed circle until the area within the circle is saturated and turns from pink to white.
10. Discard used swab into the medical waste receptacle.
 11. Using the second swab, repeat steps 5-10 with the offender's other cheek and the second pink circle on the sample card.
 12. Allow both sample circles to dry.
 13. Ensure that the offender signs the sample card in the appropriate place indicated on Side 1 of the card.
 14. The DOC staff member who has taken the sample shall sign the sample card in the appropriate place on Side 2 of the card.
 15. Ensure that sample card has been filled out completely before removing the carbon insert labeled "Keep this copy in Department of Corrections' records".
 16. Place the collection card into the self-addressed mailing envelope provided with the sample card.
 17. Seal envelope and deposit in the appropriate place in field office or facility for mailing to the Department of Public Safety.

Note: Each field office and facility shall promulgate local procedures concerning where DNA samples shall be taken, mailing procedures, as well as safe disposal of used DNA collection materials.

Recording DNA Sample Collection in OMS

1. All designated crimes shall have a "DNA Required" alert shown within the individual charge in OMS.
2. The staff member who takes, or attempts to take, the DNA Sample shall:
 - a. Click the "DNA Collected (If Required for Charge) check box once the sample has been taken;
 - b. Input the date on which the sample was taken or attempted in the comment box;
 - c. If the offender refuses to have their DNA Sample taken, indicate the refusal and date attempted to collect the sample in the "Comments" box within the specific charge.
3. If the sample was successfully taken, upload a copy of the carbon insert receipt labeled "Keep this copy in Department of Corrections' records" into the "Documents" tab within the charge in OMS using the document name of "DNA Receipt" and document category "Outside Legal Information".
 - a. Once correctly uploaded in OMS, the paper receipt may be shredded and disposed of.

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Refusal to Submit a DNA Sample

If a person who is required to provide a DNA sample refuses to do so, the staff member who attempted to take the sample shall:

1. Indicate the refusal and date of refusal in OMS by noting in the ‘Comments’ box within the specific charge.
2. A DNA Testing Refusal Form shall be available in the ‘Forms’ tab of OMS. Complete this form using the relevant offender information.
3. Using the electronic signature pad, have the offender sign the completed form.
 - a. If the offender refuses to sign the Refusal Form the staff member shall indicate this on the form.
 - b. The refusal and subsequent signatures shall be witnessed by a second DOC employee and indicated by their signature on the Refusal Form.
4. Electronically sign and date the DNA Testing Refusal Form.
5. Fill out an affidavit documenting the attempt to take a DNA sample and the offender’s refusal to submit.
 - a. Print and sign the completed affidavit.
4. Scan the completed and signed affidavit into OMS and save it the “Documents” tab within the charge in OMS using the document name of “DNA Refusal Affidavit” and document category “Outside Legal Information”.
6. Submit the affidavit and DNA Testing Refusal Form to the State’s Attorney’s Office whose prosecution resulted in the conviction that triggered the DNA sample collection.
 - a. The court may return an order of compliance which shall indicate the specific manner in which the sample shall be obtained:
 - i. Serve the offender with a copy of the Motion of Compliance ordered by the court.
 - ii. The offender may request a hearing before the court in which the motion has been filed.
7. In the event the court orders compliance, the order may authorize a reasonable use of force to obtain the sample; in such circumstances, the functional director (either Field or Facility depending on the supervision status of the individual refusing to provide the sample) shall be contacted.
 - a. The Director shall review the case and make a determination as to how to proceed.