



**SOUTH COAST BRITISH COLUMBIA
TRANSPORTATION AUTHORITY
POLICE SERVICE**

DNA COLLECTION AND DATA BANK

Effective Date: July 14, 2008

POLICY

1. South Coast British Columbia Transportation Authority Police Service (SCBCTAPS) personnel will collect, handle and submit Deoxyribonucleic Acid (DNA) samples in accordance with the *DNA Identification Act*, National DNA Data Bank (NDDDB) policy, Criminal Code of Canada (CCC), Court Orders, and SCBCTAPS policy.
2. Only qualified SCBCTAPS personnel are authorized to take samples of bodily substances for forensic DNA analysis.
3. SCBCTAPS personnel will ensure timely processing and submission of DNA Court Orders.
4. As SCBCTAPS does not maintain an in-house Forensic Identification Section (FIS) function, when required, SCBCTAPS will request FIS services from the Jurisdictional Police Department (JPD) in accordance with any protocols established.
5. SCBCTAPS seized property that is wet or bloodied and requires DNA testing will be transferred to the appropriate JPD in accordance with any protocols established.

REASON FOR POLICY

6. To inform SCBCTAPS Members of allowable CCC offences for which a NDDDB Order can be made, and that a Warrant can be issued for the arrest of a person who fails to appear for DNA sampling.
7. To inform SCBCTAPS personnel of forensic laboratory and NDDDB requirements related to DNA samples from designated offences.
8. To ensure that the SCBCTAPS has in place the appropriate processes for:
 1. the collection, handling and submission of DNA samples from crime scenes, DNA Warrants executed in support of a criminal investigation, DNA Orders Post Conviction, and DNA Orders for Prospective and Retrospective DNA, and DNA Warrants for Failing To Appear for DNA sampling,
 2. internal file management regarding DNA Order tracking, and
 3. issuance of arrest Warrants for Failing To Attend For DNA Sample Collection.
9. The SCBCTAPS exhibit room is very limited and does not include capacity for DNA drying lockers and related DNA storage, therefore, until a new police facility is built or

there is major renovation to the current exhibit room, SCBCTAPS will need to seek assistance from JPDs to handle exhibits for DNA testing.

PROCEDURES

OVERVIEW

Definitions

Convicted Offender Index (COI) – The COI contains DNA profiles collected under strict legislative guidelines from offenders convicted of specific designated offences.

Crime Scene Index (CSI) – The CSI contains DNA profiles collected from designated offence crime scenes.

Conviction Match – The crime scene profile matches the post-conviction DNA profile from the suspect (CSI to Court Ordered DNA profile).

DNA Match – The Questioned and Known DNA profiles match with the same case (pre-conviction).

Exhibit – Forensic evidence seized during investigation (Parent), and the resulting DNA extraction tubes (Child) and DNA tubes (Grandchild):

1. DNA tubes contain the DNA obtained from the Child exhibit, and must be kept frozen.
 - a. DNA tubes (Grandchild) are sent by the RCMP Forensic Laboratory Services (FLS) to the RCMP “E” Division Headquarters Exhibit Facility (EDIV HQEF) for storage.
2. A DNA extraction tube (Child) may contain:
 - a. a cutting,
 - b. a swab tip head; or,
 - c. nothing, in cases where the exhibit was consumed in the analysis to obtain the DNA (i.e., a hair sample).
3. Extraction tubes (Child) accompany the original forensic evidence (Parent) and are sent to the originating unit to retain.

Forensic Hit – Profiles match between cases (CSI to CSI).

Local Investigative Index (LII) – RCMP “E” Division Forensic Laboratory maintains a Local Investigative Index data bank for DNA samples taken that do not meet the criteria for entry into the NDDDB – CSI or NDDDB – COI. Partial or mixed DNA profiles are not sent to the NDDDB, they are kept by the Forensic Laboratory in the LII for investigative purposes.

Offender Hit – A CSI sample matches a person in the COI.

Unknown Offender (Questioned) DNA Profile – A DNA profile that has not been linked to any known sample in the COI or LII. The profile has been searched in the CSI and may or may not have triggered a Forensic Hit.

10. Forensic DNA Warrant provisions of the CCC have been incrementally implemented since 1995: Investigative DNA Warrants, 1995; National DNA Data Bank, 2000; and an increase from 59 to 211 Designated Offences, 2008 (including specific Controlled Drugs and Substances Act and Firearms Offences). Forensic DNA Legislation is contained within the “Part XV: Special Procedure and Powers” section of the CCC, encompassing ss. 487.04 - 487.09.
11. The DNA Identification Act established the NDDDB to assist law enforcement agencies in solving crimes. Forensic DNA analysis is used to determine whether a link exists between a DNA profile obtained from a crime scene sample and that of a known comparison collected from a victim, complainant or suspect. Comparison samples may be obtained with consent or under the authority of a DNA Warrant (an Order or Authorization) or by collecting discard samples.
12. The NDDDB is comprised of two databases, the COI and the CSI. In the event of a “Forensic Hit” from the NDDDB - COI, police will be provided with the identity of the person from whose bodily substance the profile was derived. When a “Forensic Hit” is obtained from the CSI, police will be provided with a case number of the investigation associated with a bodily substance from which the profile was derived.

NOTE: *DNA profiles contained in the NDDDB are not used directly in prosecutions. The NDDDB will contain the DNA profiles of analyzed biological samples from convicted offenders or crime scenes. When a direct association has been established between the donor and the crime, police are required to obtain an additional DNA sample from the suspect by Warrant. Only DNA data from the new sample will be used as evidence in Court.*

13. Bodily substances obtained voluntarily are not included in the NDDDB – COI.
14. DNA Warrants can only be obtained for DNA Designated Offences and cannot be issued in the investigation of a non-designated offence.

DNA Designated Offences

15. “Designated Offences” are those offences identified in s. 487.04 CCC, (see Designated Offences Master List posted at collection sites) and permit:
 1. an investigator to obtain a DNA Warrant to acquire a biological substance from a suspect in the investigation of a Designated Offence, and
 2. upon conviction, allows the Court to issue an Order/Authorization requiring the convicted offender to provide a biological sample for entry into the NDDDB - COI.
16. DNA Designated Offences are classified as **primary designated offences** or **secondary designated offences**. If a subject is convicted of a *primary designated offence*, it is MANDATORY that the convicted offender provides a biological sample for the NDDDB. If convicted of a *secondary designated offence*, the Court has discretion as to whether to issue a DNA Order/Authorization.

1. Primary designated offences are predominantly violent and sexual offences, many of which might involve the loss or exchange of bodily substances that could be used to identify the offender through DNA analysis. Secondary offences are less likely to result in the loss or exchange of bodily substances, those offenders are less likely to produce useful evidence.
17. Crown and Court Services in British Columbia utilize four sub-categories to indicate how the Court handles the DNA order process:

1. Primary Mandatory DNA Offence – The Sentencing Judge must make the DNA Order – there are no exceptions, and an application by the Crown is not required.
2. Primary Presumptive DNA Offence – The Sentencing Judge must make the DNA Order, unless the offender applies for an exception and the Court grants the application.
3. Secondary Discretionary DNA Offence – The Crown must make application, which satisfies the Court that the DNA Order is appropriate.
4. Secondary Hybrid DNA Offence – When the Crown elects to proceed by indictment, the offence becomes a DNA Secondary offence and it is treated the same as a Discretionary DNA Offence. If the Crown proceeds by summary conviction, the offence is not classified as a DNA Offence and DNA Order is not possible.

NOTE: *Attempts, Conspiracies, and Counseling to Commit Offences acquire the same designation as the complete offence they relate to. See the DNA Designated Offences Master List for classifications into the four sub-categories.*

18. Members may refer to Figure 1 below for identification of the appropriate forms used in collection of samples for DNA analysis.

Figure 1

Criminal Code Section and Forms Pertaining to the Collection of Samples for Forensic DNA Analysis				
	<i>Criminal Code Section</i>	<i>Form (Judge)</i>	<i>Form (Police)</i>	<i>Report to a Judge</i>
Primary	487.051(1)(a)	5.03	N/a	5.07
Secondary	487.051(1)(b)	5.04	N/a	5.07
Non custodial offender	487.051(4) and 487.055(3.11)	5.041	N/a	N/A
Arrest Warrant to obtain sample—Non custodial offender	487.0551(1)	5.062	CPIC entry	N/A

Criminal Code Section and Forms Pertaining to the Collection of Samples for Forensic DNA Analysis				
Retroactive				
Still serving sentence (locally)	487.055	5.06	5.05	5.07
On parole (locally)	487.055	5.06	5.05 and Summons	5.07
Still serving sentence (another province)	487.055	5.06	5.05	5.07
On parole (another province)	487.055	5.06	5.05 and Summons	5.07
Arrest Warrant to appear for hearing	487.053 (2)(c)	Warrant for arrest	CPIC entry	N/A
Sample is rejected by NDDB	487.091	5.09	5.08	5.07
Sample is rejected by NDDB & On parole (locally)	487.091	5.09	5.08 and Summons	5.07
Sample is rejected by NDDB & On parole (another province)	487.091	5.09	5.08 and Summons	5.07

CRIME SCENE INDEX

CSI Exhibit Collection and Submission

19. FIPPA s. 15 - Harm to Law Enforcement



20. DNA from crime scenes may only be entered into the NDDB- CSI where no “viable” suspect is identified.

21. Members will exercise the utmost care when handling crime scene exhibits that will be submitted for forensic DNA analysis (to retain exhibit integrity), including: wearing of proper protective equipment (e.g., disposable gloves and mask, to prevent contamination of the evidence).

22. When the JPD assumes responsibility from SCBCTAPS for a crime scene, SCBCTAPS Members will assist the JPD as requested, including preservation of scene evidence.
23. Members will collect, handle and package exhibits separately. Supervisors will request the assistance of trained identification personnel from the JPD where appropriate.
24. All exhibits seized by the investigating Members will be tagged and logged with the Exhibit Custodian in accordance with Policy Chapter OF020 – Exhibit / Property Control.
25. The investigating Members will consult with their supervisor, or other assigned Member, to determine the viability and appropriateness of DNA analysis, having regard to all circumstances of the case, including, but not limited to:
 1. seriousness of the case,
 2. availability of other evidence such as fingerprints, statements, eyewitnesses, etc.,
 3. time constraints, and
 4. availability of DNA exemplars.
26. If, after consideration of all circumstances, a DNA analysis is warranted, Members will coordinate with the Exhibit Custodian / Court Liaison to obtain pre-authorization from the FLS on the exhibits to be sent.
27. Members will need to fax to the FLS the completed Request For Analysis, Form C-414, including:
 1. full outline of the circumstances,
 2. contemplated charge under the CCC,
 3. nature of the examination of analysis required,
 4. location of the exhibit,
 5. the full names and dates of birth of the victim and suspect(s) involved,
 6. the investigator(s) name, section, contact number and email address, and
 7. the General Occurrence (GO) number on Police Records Information Management Environment (PRIME).
28. Cases that are accepted will receive an authorization number from the FLS, along with the optimum number of exhibits that the FLS is prepared to accept. Once the authorization number is received, the Members will need to record it on Form C-414.
29. The Member will personally transport the accepted number of exhibits to the FLS, or alternately, arrange with the Exhibit Custodian to arrange transportation.
30. Members will create a separate text page in the related GO report, outlining the analysis required, with the page heading, " Forensic Examination Requested."
31. When there is a decision to not submit exhibits, or the FLS declines to accept the case or limits the number of acceptable exhibits, the Members will submit a GO

report, with a copy to the Exhibit Custodian, indicating disposition of the used exhibits.

Comparative NDDB

32. Once it is confirmed that the crime scene contains DNA, a comparison with known samples is made. The FLS will automatically check all samples from the designated offence crimes scenes against the NDDB - COI. The FLS will advise the Members of any linkages to other crime scene samples.
33. A DNA Warrant is recommended in cases where grounds exist to obtain a DNA sample from a known suspect.
34. If a link is made between a crime scene sample and a known offender profile from the NDDB - COI, this information will form part of the investigator's reasonable grounds to obtain a DNA Warrant. As information from the NDDB will not be used in Court, a new sample to confirm the link from the crime scene to the offender is necessary.
35. For cases where there is a suspect, Canadian Police Information Centre – Central Name Index (CPIC – CNI) must be queried to determine if the suspect's DNA profile is contained in the COI. If there is no profile for the suspect in the COI, comparative samples must be obtained.

NOTE: *A person is not necessarily eliminated as a suspect if their DNA does not match a profile in the NDDB - COI. The person may be a party to the offence.*

DNA Warrant

36. When informed that a suspect has been identified through the NDDB – COI, the Member will obtain a DNA Warrant using the information provided by the NDDB as part of the reasonable grounds.
37. A Warrant To Obtain Bodily Substances For Forensic DNA Analysis will be used only for the designated offences listed in s 487.04 CCC. This includes an attempt to commit a designated offence.
38. An *ex parte* application, Form 5.01, taken before a Provincial Court Judge, is used for an Information To Obtain (ITO) a Warrant to take bodily substances under s. 487.05 CCC.
39. One Warrant may be obtained for all designated offences that result from the same occurrence. For a serial offender case, a separate Warrant should be obtained for each occurrence, and in such cases, Members will consult with Crown.
40. The Warrant must contain the terms and conditions that the Provincial Court Judge has imposed under s. 487.06(2) CCC.
41. A Warrant issued in one province under s. 487.05 CCC may be endorsed in Form 28.1 and executed in another province (see s. 487.03 CCC).

42. A DNA Warrant, when executed, is subject to the terms and conditions set by the Court.
43. A person who is the subject of a DNA Warrant has the right to retain, consult and instruct legal counsel, and is to be given reasonable opportunity to do so. Before taking the samples, Members must inform the person of their rights.
44. A person who is the subject of a DNA Warrant may be detained until such time as the bodily substances are obtained, and may be required to accompany the Member (a peace officer) for that purpose (see s. 487.07(2) CCC).
45. While DNA legislation provides Members the authority to detain a subject for the purpose of obtaining a DNA sample, there is no authority for Members to arrest a subject for DNA sampling unless a Warrant has been issued.

Duty to Inform

46. There are a number of procedural requirements placed on Members when executing a DNA Warrant For The Taking Of Bodily Substances (see s. 487.07 CCC). Members must inform the person from whom the samples are to be taken of:
 1. the contents of the Warrant, Order or Authorization,
 2. the investigative procedures by means of which the samples are to be taken,
 3. the purpose of taking the samples,
 4. the authority of the peace officer, and any other person under the direction of the peace officer, to use as much force as is necessary to take the samples, and
 5. in the case of samples of bodily substances taken in execution of a Warrant,
 - a. the possibility that results of forensic DNA analysis may be used in evidence in a criminal process, and
 - b. if the sample is to be taken from a young person, the rights of a young person under subsection 487.07(4) CCC (see ss. 44 and 45).
47. A young person against whom a Warrant is executed has, in addition to any other rights arising from their detention under the Warrant: the right to a reasonable opportunity to consult with, and the right to have the Warrant executed in the presence of counsel and parent or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person.
48. A young person may waive their rights (see s. 47), but any such waiver must:
 1. be recorded on audio tape or video tape or otherwise, or
 2. be made in writing and contain a statement signed by the young person that he/she has been informed of the right being waived.

Warrant Sample Collection and Submission

49. Members will follow the investigative procedures outlined in s. 487.06 CCC when taking samples of bodily substances under the authority of a Warrant.

50. DNA Court Orders pursuant to the CCC authorize the taking of, for the purpose of forensic DNA Analysis, any number of samples of one or more bodily substances that are reasonably required for that purpose (see s. 487.06(1) CCC).
51. Police decide the type of sample unless the terms and conditions of the Order specifies. If the Court imposes no terms or conditions, the recommended sample is blood.
 1. Blood is preferable as it is an ideal source of high quality DNA, gives the best results and is the easiest to obtain. Buccal and hair samples should only be collected in exceptional circumstances (e.g., the suspect has a medical condition).
52. A peace officer, or another person acting under the direction of the peace officer, whom is trained or experienced to take them, must take samples of bodily substances.
 1. If a person, acting under the direction of a peace officer, collects the DNA sample, the peace officer must witness the process.
53. SCBCTAPS personnel trained (to the required designated National Course Training Standard for the DNA identification Act) in DNA sample collection will be utilized for collecting DNA.
 1. The Training Officer will maintain a list of personnel qualified in DNA sample collection and such lists will be posted as appropriate.
54. There are two types of DNA sample kits available from Court Liaison: NDDB Convicted Offender DNA Collection Kit (clear bag), and Consent and Warrant Sample Collection Kit (blue bag). These kits contain all the necessary supplies for the collection of the bodily substances.
55. Members will follow the instructions and complete the checklist provided in the Collection Kit. Members will retain the completed checklist (hardcopy) in the operational file.
56. Members will take all necessary health precautions to avoid health hazards, such as wearing of a disposable mask and gloves.
57. Members will ensure the person's privacy is respected when collecting the samples (use private room or location).
58. Members will handle and package samples separately and accordingly to the instructions in the sample collection kit.
59. Following the taking of the sample, Members will:
 1. submit only one type of sample, either blood, buccal or hair for forensic DNA analysis, and

2. complete Form 5751 Submission Receipt Form and submit it along with the sample, and
 3. report to the issuing Provincial Court Judge, Form 5.07, including an explanation of the disposition of samples.
60. If the samples collected fail to provide a satisfactory DNA profile, SCBCTAPS will be notified by the FLS. In such instances, it may be necessary to obtain another Warrant.

Limitations On Use of DNA Samples Obtained By Warrant

61. Bodily substances obtained for comparative purposes are not included in the NDDDB - COI.
62. It is a summary conviction offence to use bodily substances obtained by a Warrant under s. 487.05 CCC, or the DNA analysis results of those bodily substances, in any other way than prescribed in s. 487.08 CCC.
63. Bodily substances seized under s. 487.05 CCC can be used only in the investigation of a designated offence contained in the ITO for the Warrant (see s. 487.08(1) CCC).
64. The results of DNA analysis obtained in the execution of a Warrant can only be used in the course of:
1. an investigation of the designated offence,
 2. an investigation of any other designated offence in respect of which a Warrant was issued,
 3. an investigation of any other designated offence in respect of which a bodily substance was found in the circumstances described in s. 487.05(1)(b) CCC; or
 4. any proceeding for such a designated offence.

Voluntary/Consent Samples

65. Voluntary/consent samples may be collected as elimination samples.
66. While investigating any offence, a Member may ask a suspect to voluntarily provide a comparison sample for DNA analysis. If the person agrees, a waiver must be completed, signed and a copy given to the person from whom the sample was taken. A waiver form is provided with the Consent and Warrant Sample Collection Kit.
67. It is important that the person understands the waiver and the possible consequences of providing a bodily substance for forensic analysis.
68. There is no restriction on the type, method, amount or disposition of biological samples provided voluntarily by a person (see also s. 79).
69. Voluntary/consent samples may be accepted from anyone, but should only be accepted from a suspect when obtaining a Warrant would be impractical or would impede effective law enforcement.

1. Before taking a voluntary/consent DNA sample from a possible suspect, Members should consult with Crown, as Crown's preference is for the police officer to obtain a Warrant.
70. Where possible, Members will make a videotape of the voluntary sample collection.
71. If the sample is to be used in an investigation other than the one for which the sample was obtained, the person providing the sample must be fully informed by the Member and a second waiver completed.
72. For voluntary sample collection and submission, Members will follow ss. 51 to 60.

FIPPA s.15 - Harm to Law Enforcement

Disposition of Bodily Substances

77. Bodily substances obtained by Warrant and the results of the DNA analysis must be destroyed when:
1. the DNA profile of the seized sample does not match that of the biological sample found at the scene,
 2. the person is discharged after a preliminary hearing,
 3. the charge has been dismissed,
 4. the information has been withdrawn, or
 5. the proceedings have been stayed, unless a new Information laid within one year.

EXCEPTION: A Provincial Court Judge may issue an Order that the bodily substances obtained by a Warrant under s. 487.05 CCC and the results of the DNA analysis not be destroyed, if they are reasonably required in an investigation or prosecution of the person for another designated offence or of another person for the designated offence or any other offence in respect to the same transaction (see s. 487.09(2) CCC).

78. The conditions of the Court Order must be complied with, for the period of time that the Provincial Court Judge considers appropriate, before samples of bodily substances that were retained are destroyed.

79. Voluntary samples of bodily substances and the resulting DNA information will be destroyed without delay if the results of the analysis establish that the bodily substance does not match the DNA of the offending person (s. 487.09(3) CCC).
80. It is the responsibility of the SCBCTAPS Member to request destruction of the DNA analysis results by the forensic laboratory when required by law.

CSI – Investigation/Exhibit Retention For An Unknown Offender (Questioned) DNA Profile

81. Members will not conclude an investigation that has yielded an unknown offender (questioned) DNA profile in the CSI and/or LII, other than those investigations that follow the criteria listed in s. 83 of this Policy Chapter. An unknown offender (questioned) DNA profile is an investigational avenue that remains open to Members.
82. The investigative file must remain active in order to preserve the exhibits obtained from the crime scene, as they may be required in the future. The exhibits must be available for Court scrutiny/defense examination in cases where an Offender Hit and subsequent DNA match occurs and a suspect charged.
83. When the only investigative avenue remaining is an unknown offender (questioned) DNA profile in the CSI or LII, Readers will change the diary date, with a two-year diary date for review. The Member will:
1. ensure there is a notation on file concerning the unknown DNA offender profile, and direction to keep the file open for a period mirroring the “Purge Date” timeframe,

Exception: if a person has been convicted of the offence, and:

 - a. a Conviction Match has been made between the crime scene and the accused, and,
 - b. there is no evidence of other potential suspects, and,
 - c. the investigation is not a homicide,
 2. then the investigation may be concluded upon expiration of the appeal period, and exhibits destroyed in accordance with this Policy Chapter.
84. Investigations, other than homicides, that fall under this category may be concluded, upon file review and upon reaching a period mirroring the “Purge Date” timeframe. Once concluded, the normal purge date for the file is in effect.

NOTE: *Example: A robbery investigation would remain “open” and be reviewed every two years. Eight years after the offence date (the period mirroring the “Purge Date”), the file reviewer would have the option of closing the investigation. The exhibits would be disposed, the file concluded and then purged in another eight years.*

This procedure preserves the exhibits for eight years, in case of future Conviction Match or Forensic Hit, as well as retaining the investigative information for a further eight years, should it be required for a future investigation.

85. Where SCBCTAPS assumes responsibility from the JPD for an investigative file related to a strictly indictable offence and there are crime scene samples related to a serious crime, the file reviewer will, before closing the investigative file and disposing of the exhibits, consult with the JPD regarding the exhibit retention period. There may be occasion where exhibit retention periods differ and the JPD may recommend preserving of the exhibit for a longer period.

CONVICTED OFFENDER INDEX

Definitions

Prospective DNA Sample – A DNA sample from a person convicted of designated offence after 2000-06-03.

Retrospective DNA Sample – A DNA sample from a person convicted after 2000-06-30 of a designated offence committed before 2000-06-30.

Retroactive DNA Sample – A DNA sample from a person who, before 2000-06-30, had either been declared a dangerous offender, convicted of more than one murder committed at different times, or convicted of more than one sexual offence as defined in s. 487.055(3) CCC and is serving a sentence of two years or more for one or more of those offences (s. 487.055 CCC).

DNA Resampling – A sample collection from a person after it is determined that a sample collected previously from that person under Order or Authorization failed to provide a satisfactory DNA profile.

Order to Take Prospective or Retrospective DNA Samples

86. On the Report to Crown Counsel (RTCC), Members are NOT required to indicate that a DNA Designated Offence is involved or request the Crown to ask the Court to order the taking of a DNA sample upon conviction. Unless otherwise notified, Crown will, upon processing the RTCC via JUSTIN, automatically request the Court to issue an Order to collect DNA for DNA Designated Offences.

NOTE: For DNA Designated Offences where the Crown is responsible for requesting an Order to collect DNA, case law supports granting this request in most cases: **Regina v. Briggs**, [2001 Ont.C.A. No.C34813 (Ontario Court of Appeal, August 23, 2001)]; **Regina v. Hendry**, [2001 Ont.C.A. Nos.C34770, C34801, C34802, C34917, C34512 (Ontario Court of Appeal, December 27, 2001)]; and *Regina v. Ku*, 2002 BCCA 559 (British Columbia Court of Appeal, October 16, 2002).

87. At sentencing, the Court has the option of:

1. ordering a sample forthwith (usually for instances where the offender is in custody), Form 5.03 or 5.04, or,

2. issuing an Order To A Person To Have Bodily Substances Taken For Forensic DNA Analysis, Form 5.041 (for instances where the offender is non-custodial).

NOTE: *An Order Authorizing The Taking Of Bodily Substances For Forensic Analysis, Form 5.03 or 5.04, is issued whether the offender is custodial or non custodial.*

88. Upon a conviction of a DNA Designated Offence, Court Liaison will confirm via JUSTIN that the Court issued a DNA Court Order.

1. If a DNA Court Order was not issued, Court Liaison will contact Crown to obtain reasons for non-issuance. If Crown forgot to request an Order, Court Liaison will submit a request (in writing) for a 90 Day Hearing to address the subject of issuing a DNA Court Order.

89. Prospective samples and retrospective samples may be collected by an Order from a Judge even if an appeal has been taken (see s. 487.056(1) CCC).

Application for Authorization To Take Retroactive DNA Samples

90. An application for Authorization is required to obtain bodily substances for DNA analysis from a person who, before 2006-06-30, had either been:

1. declared a dangerous offender,
2. convicted of more than one murder committed at different times, or
3. convicted of more than one sexual offence as defined in s. 487.055(3) CCC and is serving a sentence of two years or more for one or more of those offences (see s. 487.055 CCC).

91. In British Columbia, the RCMP "E" Division DNA Coordinators have responsibility for Application for Authorization To Take Retroactive DNA Samples, and once authorization is granted, the RCMP arrange for the sample collection from the person.

DNA Court Order - Appearance Coordination

92. The designated SCBCTAPS DNA Coordinator will provide set dates and times to the Crown and Court Services for offenders (non-custodial) to appear to comply with the offender's DNA Court Order.

93. For offenders who appear, but no one is available to process the Order due to an operational emergency, S. 487.056(1)(a) CCC authorizes police to take the sample "as soon as feasible thereafter."

94. Court Liaison will track DNA Court Orders on a log (SCBCTAPS Form OZ110) to record offenders who comply or fail to comply when issued a DNA Court Order (Order To A Person To Have Bodily Substances Taken For Forensic DNA Analysis, Form 5.04).

Duty to Inform

95. There are a number of procedural requirements placed on Members when executing a DNA Warrant for the taking of bodily substances (see s. 487.07 CCC). Members will refer to ss. 46-48 for specific guidelines.

COI-DNA Sample Endorsement/Verification

96. For a COI - DNA Sample Endorsement/Verification (s. 487.071 CCC), the Member will:

1. confirm the identification of the offender to ensure they are the same person named in the DNA Court Order,
2. confirm that the offence(s) listed in the DNA Court Order were made with respect to a conviction for a DNA Designated Offence,
3. before executing a DNA Court Order, Form 5.03 or 5.04, obtain a CNI query from CPIC to determine the offender's status in the NDDDB,
4. if the offender's CNI is flagged, "DNA ON KNOWN OFFENDER - DATA BANK", do not collect a sample and use the SCBCTAPS "DNA Fingerprint Only" kit,
 - a. obtain a set of fingerprints using NDDDB – Fingerprint Identification, Form 3801,
 - b. complete the signature block on DNA Court Order, Form 5.03 or 5.04,
 - c. forward the fingerprints, Form 5751 – NDDDB Submission Receipt, copy of the DNA Court Order, and NDDDB Endorsement Form to the NDDDB, and
 - d. return the original DNA Court Order to the Court Registry that issued the Order (if assisting another police agency, forward a copy of the DNA Court Order to them),
5. if the offender's CNI is not flagged to indicate DNA in the NDDDB, execute the Court Order in accordance with s. 96,
6. collect a new sample if there is any doubt as to:
 - a. the identity of the offender,
 - b. whether or not a DNA profile is in the NDDDB, and/or,
 - c. for unique physical reasons, fingerprints cannot be taken, and
7. ensure that the criminal prints taken on Form C-216 are taken and submitted separately as the Fingerprint Form 3801 does not replace the Court disposition sent to Ottawa Criminal Records,
8. for multiple DNA Orders:
 - a. for multiple counts on the one DNA Order, submit one set of fingerprints and process as set forth in s. 96. If required, only obtain one sample,
 - b. for multiple DNA Orders issued to an offender at the same hearing, submit one set of fingerprints and process as set forth in s. 96. If required, only obtain one sample, and ensure all signature blocks on all DNA Orders are completed.

COI-DNA Sample Collection and Submission

97. A person who is the subject of a DNA Order or Authorization may be detained a reasonable period of time until the DNA sample is obtained, and may be required to accompany the SCBCTAPS Member for that purpose (s. 487.05(2) CCC).

98. DNA Court Orders pursuant to the CCC authorize the taking of, for the purpose of forensic DNA Analysis, any number of samples of one or more bodily substances that are reasonably required for that purpose [see s. 487.06(1) CCC].
99. Police decide the type of sample unless terms and conditions within the order specify. If the Court imposes no terms or conditions, the recommended sample is blood.
100. Members will comply with ss. 52 and 53 regarding who is authorized to take samples of bodily substances.

Sample Kit of COI

101. Members will ensure that the “National DNA Data Bank – Convicted Offender DNA Kit (Clear Bag) is used to obtain the COI sample.
102. Instructions and a checklist are provided in the Kit. Members will retain the completed checklist (hardcopy) in the operational file.
103. Members will need to ensure that the subject is advised that they have the right to retain counsel “**in private**”, as the DNA sample kits do not state “**in private**” on the enclosed check sheets.
104. A full set of fingerprints, Form 3801, and index fingerprints on sample collection card, Form 3800, are required. The Member will:
 1. ensure a **quality** set of fingerprints is obtained. (poor fingerprint impressions will cause the sample to be rejected),
 2. if a fingerprint form or sample collection card, Form 3801 or 3800 respectively, is rendered un-useable, discard all bar-coded material and use a new kit,
 3. do not use C-216 as a substitute fingerprint form.
105. There are specific methods by which police officers may obtain biological substances from a subject pursuant to a Warrant, Order, Authorization or Consent (see s. 487.06 CCC). Unless the Order contains specific terms and conditions to the contrary, the taking of blood is the investigative procedure to be used by the Member, followed by buccal swabs or hair sampling.
106. A Member’s failure to strictly comply with the informational requirements of this Policy Chapter may result in exclusion of the DNA evidence under s. 24 of the Charter.

Submission/Processing of COI-DNA Sample

107. Members will complete a NDDDB Submission Receipt, Form 5751, and forward to Court Liaison along with:
 1. collected bodily substance,
 2. completed fingerprint form, Form 3801, and
 3. copy of the DNA Court Order(s).

NOTES: *The name of the convicted offender may form part of the caption. Form 5751 is used for receipt purposes and will be returned by NDDB.*

108. Court Liaison will be responsible for:

1. forwarding all completed NDDB submission packages, by registered mail, or courier, to the NDDB (Form 5751 is used for receipt purposes and will be returned by the NDDB),
2. returning the original DNA Court Order to the Court Registry that issued the Order, and
3. if SCBCTAPS was assisting another police agency, forwarding a copy of the DNA Court Order with Report to a Judge, Form 5.07.

[See Appendix A for a general DNA workflow diagram]

DNA Resampling

109. If the sample collected under an Order or an Authorization fails to provide a satisfactory DNA profile, SCBCTAPS will be notified by the NDDB and an application, Form 5.08, to obtain a new sample will be required. Authorization from the Judge, if granted, will be communicated in Form 5.09 (see s. 487.091(1) CCC).

110. For DNA resampling, Members will follow the sample collection procedures outlined in this Policy Chapter. If the person is not in custody, a Summons is required.

COI – DNA Court Order Warrant (Fail to Appear)

111. For offenders who fail to comply with an Order To Have A Person To Have Bodily Substances Taken For Forensic DNA Analysis, the following actions will be taken by SCBCTAPS personnel:

1. Members must complete a Fail To Appear Certificate and present it before a Justice of the Peace, in order to obtain a Warrant For Arrest Of A Person For Samples To Be Taken For DNA Analysis,
2. the Arrest Warrant, Form 5.062, will be provided to a SCBCTAPS CPIC operator for entry on CPIC, and then the original Warrant will be attached to the green file jacket.

NOTE: *The Warrant jurisdiction is “Canada-Wide.” Although the DNA Court Order directing police to take samples (Form 5.03/5.04) is issued in the originating Province/Territory, s. 487.056 CCC authorizes, “A Peace Officer...[to] cause the sample to be taken anywhere in Canada.”*

112. Upon arresting the offender, the Member must obtain a copy of the Warrant and DNA Court Order prior to proceeding with the DNA Sample Verification Process (as set forth in s. 96).

Concluding Investigations

113. The investigating Member will not conclude an investigation where a COI - DNA sample has been obtained until:
1. receipt of the Request for Forensic Laboratory Analysis, Form C-414, and the NDDDB Submission Receipt, Form 5751, from the NDDDB, and
 2. filing of the Report to Judge, Form 5.07, with the Court Registry.
114. In cases, where the investigating Member has not obtained a DNA sample, the Members will not conclude the investigation until in receipt of the NDDDB Submission Receipt, Form 5751, from the NDDDB.

DNA POLICY COORDINATION

DNA Coordinator

115. SCBCTAPS Court Liaison will act as the Service's DNA Coordinator, unless otherwise determined by the Deputy Chief Officer.
116. The DNA Coordinator will be responsible for:
1. monitoring and assessing the overall DNA Court Order process at SCBCTAPS,
 2. liaison with Crown and Court Services personnel to ensure that an effective notification protocol for DNA Court Orders is in place,
 3. monitoring of Court disposition of SCBCTAPS files to ensure DNA Orders have been issued for DNA designated offences,
 4. notifying Crown, Court Services, and other JPDs as appropriate, of any changes to the dates and times that the offender may report to SCBCTAPS to fulfill the offender's DNA Court Order obligation (non-custodial),
 5. monitoring compliance of Court Order applications on DNA Designated Offences, and the 90 Day Hearing Report (available on JUSTIN-90 Day Indication Report) to ensure the appropriate application is made per s. 487.053 CCC,
 6. when the Court issues a Summons for a 90 Day Hearing, liaise with the Watch Commander to ensure the service is completed in a timely fashion,
 7. monitoring compliance of Members in execution of DNA Court Orders and submission of sample NDDDB (a monthly report is issued by the NDDDB which identifies rejected samples),
 8. providing additional assistance to Members in additional sample applications (Form 5.08/5.09) for rejected samples submitted to the NDDDB,
 9. assessing ongoing training requirements for Members in DNA sample collection and recommending training needs to the Training Section,
 10. ensuring that DNA sample collection kits, DNA process forms, and information are available in the designated DNA sample collection area.

Warrant Faxes

117. All Warrant faxes received by SCBCTAPS for DNA sample collection will be forwarded to the attention of the Watch Commander for the assigning of a trained

Member to take the DNA sample. The Watch Commander will provide a copy of the Warrant to the designated DNA Coordinator.

CPIC Coordinator

118. The CPIC Coordinator will ensure that all SCBCTAPS CPIC entries related to DNA orders will be in compliance with SCBCTAPS policy and CPIC policy.

Deputy Chief Officer

119. The Deputy Chief Officer will be responsible for ensuring that investigators, supervisors, and other applicable personnel are provided training in the proper management of DNA files.
120. The Deputy Chief Officer will cause for a “DNA” audit to be conducted at least every two years, to ensure Police Service compliance with the *DNA Identification Act*, NDDDB policy, Criminal Code of Canada (CCC), Court Orders, and this Policy Chapter. Such an audit will assist the Police Service in maintaining a high level of quality in DNA investigation and management.

[See also: AF020 Legal Process: Warrants/Subpoenas/Summons, AF090 – CPIC, OD030 – Crime Scene, OD120 – Search, OD130 – Seizure, OF020 – Exhibit/Property Control]

APPENDIX A

