



**STATE OF VERMONT  
AGENCY OF HUMAN SERVICES  
DEPARTMENT OF CORRECTIONS**

**Directive: 409.03**

**Subject:** **DNA Sample Collection**

**Effective Date:** 10/20/04 **Review and Re-Issue Date:**

**Supersedes:** 409.03 dated 04/05/1999 **APA Rule Number:**  
And 01/16/03

<b>Recommended for approval by:</b> <b>Janice Ryan, Deputy Commissioner</b> 	<b>Authorized by:</b> <b>Steven M. Gold, Commissioner</b> 
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<p style="text-align: right; margin-right: 50px;">Date</p>	<p style="text-align: right; margin-right: 50px;">Date</p>

- 1. Authority:**
  - 1.1. This directive is authorized by V.S.A. Title 20, Chapter 113, subchapter 4§1934 (a).
- 2. Purpose:**
  - 2.1. The purpose of this directive is to delineate the responsibility of the Vermont Department of Corrections pertaining to the collection of biological specimens by utilizing Vermont Forensic Laboratory supplied “Cheek Swab” kits, to collect DNA from identified offenders under supervision.
- 3. Applicability/Accessibility:**
  - 3.1. This directive applies to selected inmates and all staff of the Vermont Department of Corrections. Anyone may have access to this directive.
- 4. Directive:**
  - 4.1. **COLLECTION OF BIOLOGICAL SPECIMENS:**
    - 4.1.1. The Vermont Department of Corrections shall be responsible for the collection of biological specimens from those individuals identified in Title 20 V.S.A., Chapter 113, subchapter 4, §1933. (see Appendix 3)
    - 4.1.2. These specimens shall be provided to the Vermont Department of Public Safety Forensic Laboratory for the establishment and maintenance of “DNA Database and Databank”.
    - 4.1.3. Each work site manager shall be responsible to promulgate procedures to implement this directive. These procedures should include, but not are limited to, location of testing, frequency of testing, safe method of swab disposal, method of testing, method used to identify the population to be tested, methods used to notify

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the Department of Public Safety of those who refuse testing and those employees who are responsible for the implementation of this Directive.

### **4.2 OFFENDER ELIGIBILITY:**

- 4.2.1. Each work site shall identify those offenders sentenced in Vermont and under their supervision and control that require DNA testing according to statute pursuant to V.S.A. Title 20, Chapter 113, Subchapter 4, §1932. (see appendix 3)
- 4.2.2. Each work site manager or designee shall ensure that those identified as requiring DNA testing will have their records entered into the Vermont DOC DNA Testing Registry data base. These entries will include their identification of eligibility, compliance and or refusal. .
- 4.2.3. Each work site will be responsible for notification and documentation of notification, of those offenders listed for DNA testing. A case note entry shall be made when testing is ordered, and when testing is completed. Refusal to submit to the testing is addressed in 4.2.4.2.
- 4.2.4. Notification:
  - 4.2.4.1 Offenders will be informed they are to be DNA tested. Eligible offenders supervised in the community will be advised to report to a pre-determined location for testing. A representative of the Department of Corrections will be available to provide absolute identification of the offender.
  - 4.2.4.2 The Department of Corrections will insure that offenders who refuse to be tested sign a "Refusal Form". The Department of Corrections staff witnessing the refusal will fill out an affidavit documenting the offender's refusal. If the offender also refuses to sign the "Refusal Form" such refusal will also be noted in the affidavit. The affidavit and the "Refusal Form" will then be sent to the State's Attorney's Office whose prosecution resulted in the conviction that requires the offender to registry his/her DNA pursuant to 20 V.S.A. 1935. In the event the court orders compliance, the order shall specify the manner by which a sample shall be obtained. The court may authorize the use of reasonable force in obtaining the sample.
  - 4.2.4.3 The Department of Corrections staff will not use force on any offender to insure testing is accomplished, unless so authorized by court order.

### **4.3 OFFENDERS UNDER SUPERVISION OUTSIDE CORRECTIONAL FACILITIES:**

- 4.3.1 Offenders sentenced in Vermont under supervision of the Vermont Department of Corrections will be informed they are to be DNA tested. The notification will be documented.

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- 4.3.2 Offenders will be advised to report to a pre-determined location for testing. A representative of the Department of Corrections will be available to provide absolute identification of the offender.
- 4.3.3 The Department of Corrections will insure that inmates who refuse to be tested sign a "Refusal Form". The Department of Corrections staff witnessing the refusal will fill out an affidavit documenting the offender's refusal. If the offender also refuses to sign the "Refusal Form" such refusal will also be noted in the affidavit. The affidavit and the "Refusal Form" will then be sent to the State's Attorney whose prosecution resulted in the conviction that requires the offender to registry his/her DNA pursuant to 20 V.S.A. §1935. In the event the court orders compliance, the order shall specify the manner by which a sample shall be obtained. The court may authorize the Department of Corrections to use reasonable force in obtaining the sample.
- 4.3.4 The offender shall be served with a copy of any "motion of compliance". The offender may request a hearing before the court in which the motion has been filed.
- 4.3.5 A copy of the court document ordering compliance will be provided to the Department of Corrections.
- 4.3.6 In the event the court orders compliance, the order shall specify the manner by which a sample shall be obtained. The court may authorize the use of reasonable force in obtaining the sample.
- 4.3.7 The Vermont Department of Corrections staff will not use force on any offender to insure testing is accomplished unless so authorized by a court order.
- 4.3.8. The Vermont Department of Corrections will not discharge cases in the sampling group until reasonable effort has been made to insure they have provided a DNA sample.

### **5. Training Method:**

- 5.1 The Hearings Administrator in collaboration with the Human Resources Development Unit is responsible for the training of this directive.

### **6. Quality Assurance Processes:**

- 6.1 The Department of Corrections Hearings Administrator has the responsibility to monitor Department wide compliance with this Directive.

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### **7. Financial Impact:**

- 7.1 The administrative portion of this Directive is carried out by corrections staff in the normal course of their duties. The "Cheek Swab" kits are provided by the Department of Public Safety with no cost being borne by the Department of Corrections.

### **8. Responsible Director and Draft Participants:**

- 8.1 The Operational Directors are responsible for this Directive.
- 8.2 This Directive was written by John B. Murphy, Hearings Administrator after consideration of feedback solicited from the field as well as review and guidance from the Executive Management Team (EMT).

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Appendix 1

NOTIFICATION OF DNA TESTING

Title 20 V.S.A., Chapter 113, subchapter 4 requires that you submit a specimen for DNA testing and inclusion in the Vermont DNA Data Bank.

The Vermont Department of Corrections is responsible for Collection of this specimen.

You are advised to report to (location) \_\_\_\_\_  
on (date) \_\_\_\_\_ at (time) \_\_\_\_\_ for the purpose of obtaining a sample of your DNA to fulfill this requirement.

Failure to appear for this appointment will constitute a refusal.

\_\_\_\_\_  
Signature of Superintendent

\_\_\_\_\_  
Date

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Appendix 2

**DNA TESTING REFUSAL FORM**

I understand that Title 20, V.S. A., Chapter 113, subchapter 4, requires that I must provide a biological specimen for DNA testing and inclusion of the results in the Vermont DNA Data Bank. This requirement is based on the nature of the crime for which I am convicted.

I have received notification from The Vermont Department of Corrections that I am to appear for this purpose.

I refuse to submit a biological specimen.

I understand the Department of Corrections will seek a court order from the court in which I was convicted to legally take a DNA specimen without my consent. I further understand the court may order that reasonable force be used by the Department of Corrections to obtain this sample.

\_\_\_\_\_  
Signature of Offender

\_\_\_\_\_  
DOC Staff Member

\_\_\_\_ Offender Refused to Sign

**NOTE: All submissions of a "DNA REFUSAL FORM" must be accompanied by a signed affidavit documenting the refusal from the DOC staff member who witnessed the refusal.**

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### APPENDIX 3

"Violent crime" means any of the following offenses:

- (A) assault and robbery with a dangerous weapon as defined in subsection 608(b) of Title 13;
- (B) assault and robbery causing bodily injury as defined in subsection 608(c) of Title 13;
- (C) aggravated assault as defined in section 1024 of Title 13;
- (D) murder as defined in section 2301 of Title 13;
- (E) manslaughter as defined in section 2304 of Title 13;
- (F) kidnapping as defined in section 2405 of Title 13 or its predecessor as it was defined in section 2401 of Title 13;
- (G) first degree unlawful restraint as defined in section 2407 of Title 13;
- (H) maiming as defined in section 2701 of Title 13;
- (I) first degree aggravated domestic assault as defined in section 1043 of Title 13 where the defendant causes serious bodily injury to another person;
- (J) sexual assault as defined in 13 V.S.A. § § 3252(a)(1), (2) and (4), and 3252(b) or the predecessor offenses as defined in section 3201 of Title 13;
- (K) aggravated sexual assault as defined in section 3253 of Title 13;
- (L) lewd and lascivious conduct as defined in section 2601 of Title 13;
- (M) lewd or lascivious conduct with a child as defined in section 2602 of Title 13;
- (N) sexual activity by a caregiver with an elderly or disabled adult, as defined in 33 V.S.A. § 6913(d), where the sexual activity is exploitation as described in 33 V.S.A. § 6902(7)(D);
- (O) sexual exploitation of children as defined in 13 V.S.A. § § 2822, 2823 and 2824;
- (P) burglary as defined in 13 V.S.A. § 1201;
- (Q) unlawful trespass of a residence as defined in 13 V.S.A. § 3705(d);
- (R) an attempt to commit any offense listed in this subdivision; or

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(S) 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.