



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-041100 Offender/Inmate DNA Collection	Issued: 06/11/99 Effective: 06/28/99	Reviewed: 07/31/23 Revised: 03/05/15
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:

- A. NMSA 1978, Section 33-1-6, as amended.
- B. NMSA 1978, Sections 29-16-1 through 29-16-13, as amended.
- C. NMAC 10.14.200.1; NMAC 10.14.200.16.

REFERENCES:

Policy *CD-024500*

PURPOSE:

To provide the authority and guidelines to ensure cooperation by the Corrections Department with the DNA Identification Act.

APPLICABILITY:

All inmates convicted of a felony, and prison and Probation and Parole staff trained in sample collection.

FORMS:

DNA Collection Record form (*CD-041101.1*)

ATTACHMENTS:

DNA Identification Act Attachment (*CD-041101.A*)

DEFINITIONS:

- A. Administrative Center: The law enforcement agency or unit that administers and operates the DNA identification system and is governed by the DNA Oversight Committee.
- B. Buccal Cell: Cells from the interior linings of the cheek and gum.
- C. Covered Offender: Any person convicted of a felony offense as an adult under the Criminal Code, the Motor Vehicle Code, or the constitution of New Mexico or convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code.

- D. DNA: Deoxyribonucleic acid as the basis of human heredity.
- E. DNA Identification Act: Sections 29-16-1 through 29-16-13 NMSA 1978, the law that authorizes the DNA Identification System and the DNA Oversight Committee.
- F. DNA Oversight Committee: The DNA Identification System Oversight Committee.
- G. DNA Sample Collection Kit (Collection Kit): Materials designed for the collection of DNA samples.
- H. Sample: A sample of biological material sufficient for DNA testing.

POLICY:

The New Mexico Corrections Department (NMCD) shall comply with the direction and intent of the DNA Identification Act by collecting samples for DNA testing, providing such samples to the Department of Public Safety and collecting applicable fees from the offenders.



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AUTHORITY:

Policy *CD-041100*

PROCEDURES:

A. GENERAL GUIDELINES:

1. DNA sample collection kits and information on the collection, storage and transfer of samples, shall be provided to the New Mexico Corrections Department (NMCD) at no cost by the Administrative Center.
2. Designated NMCD employees will be trained to collect samples by the Administrative Center, using the collection protocol approved by the Oversight Committee.
3. Trained employees of the NMCD, using the collection protocol approved by the Oversight Committee, shall collect samples from covered offenders. Upon collection of a DNA sample, the Correctional Facility, Correctional Center, or PPO Office or District shall be responsible for ensuring that the DNA collection information (i.e. whether the offender complied or refused to provide a sample, etc.), is properly entered into the Criminal Management Information System (CMIS) immediately.
4. Employees of the NMCD, pursuant to the DNA Identification Act, specifically 29-16-11 "Assessment of Fee," and NMCD Policy *CD-024500*, shall collect and deposit assessed fees from covered offenders.
5. The collection of samples from covered offenders who are already incarcerated shall occur upon request or as soon as practicable, at the respective NMCD Facility or Probation/Parole Office (PPO).
6. The collection of samples from covered offenders newly committed or returned to the NMCD shall occur at the NMCD Reception and Diagnostic Center (RDC) upon processing.
7. The Probation/Parole Division (PPO) shall, as soon as practicable, conduct the collection of samples from covered offenders who are sentenced only to probation or who are on probation or parole and did not provide a sample when previously incarcerated.

B. ADVISEMENT AND COLLECTION:

1. Prior to collecting a DNA sample, the NMCD employee shall verify through the New Mexico DNA collection website (<http://nmdis.cabq.gov>) that a sample has not already been collected. If the sample has not been collected, steps 2 through 6 of this procedure will apply. If a sample has been previously collected, the employee will verify that the collection information is reflected in the CMIS database and no sample will be collected.
2. The covered offender shall be ordered to submit to the collection of a DNA sample.
3. The covered offender shall be advised of the routine method of sample collection being the Buccal Cell Swabbing and the transfer of the sample to a collection card using the standardized sample collection kit as supplied by the Administration Center.
4. Trained NMCD employees shall collect samples in a medically approved manner in accordance with rules, regulations and procedures adopted by the DNA Oversight Committee.
5. The storage of samples shall be in accordance with rules, regulations, and procedures adopted by the Administrative Center.
6. The employee collecting the sample shall complete in full the **DNA Collection Record** form (*CD-041101.1*), provided by the Administration Center. The DNA Collection Record shall be placed into the offender's appropriate institutional file or Probation/Parole file.

C. OFFENDER REFUSAL:

1. After ensuring that the Adversment and Collection Procedures have been followed as described in Section B, 1 through 3, of this procedure, and if the offender refuses to comply with the collection procedure, the collecting employee shall give the offender a second opportunity to comply with the collection procedure.
2. If the offender continues to refuse to comply with the collection procedure, the offender shall be given written notice that his/her refusal will be subject to enforcement procedures of the **DNA Identification Act** Attachment (*CD-041101.A*). The written notice shall include the following New Mexico State Statutes governing the collection and enforcement of DNA samples as contained within the DNA Identification Act:
 - a. The New Mexico State Statute 29-16-2 "Purpose of the act";
 - b. The New Mexico State Statute 29-16-6 "Covered offenders subject to collection of samples";
 - c. The New Mexico State Statute 29-16-9, "Enforcement"; and a section where the offender acknowledges receipt of the written notice and acknowledges his or her refusal to provide a DNA sample.
3. If the offender continues to refuse to comply with the collection procedures and refuses to provide a DNA sample as requested, the offender will be advised to sign

the receipt and refusal portion of the written notice.

- a. The offender shall be required to affix his/her signature, date and time to the first two (2) lines only.
 - b. If the offender refuses to affix his/her signature to the written notice, the person attempting collection of the sample shall check the box provided on the form for such refusal.
 - c. The person attempting collection of the sample, and another staff witness who witnesses the refusal by the offender, shall complete the rest of the form in full.
 - d. The refusal shall contain the name and signature of the person attempting the collection of the sample and shall contain the name and signature of the staff member witnessing the refusal by the offender.
 - e. The written notice shall be placed into the offender's appropriate institutional file or PPO file.
4. If the covered offender who refuses to provide a sample is an inmate, the collecting/advising employee shall issue the offender a misconduct report for refusing to comply with New Mexico State Statutes established NMCD policies and procedures or both.

If the covered offender who refuses to provide a sample is on probation or parole, a probation violation report and/or parole violation report, as applicable, shall be submitted by the supervising Probation/Parole Officer.

5. The collecting employee shall prepare brief Statement of Facts (report) containing information regarding the offender's refusal to comply with the DNA Collection Procedures.
6. The collecting employee shall then forward the offender's completed Written Notice on the **DNA Identification Act** Attachment (*CD-041101.A*) and the completed **DNA Collection Record** form (*CD-041101.1*) to the NMCD Inspector General or designee assigned to oversee enforcement procedures for further action.

D. ENFORCEMENT:

1. The designated NMCD official shall review the statement of facts report, the notice on the **DNA Identification Act** and the **DNA Collection Record** for accuracy and completeness to ensure proper collection procedures have been followed.
2. The designated NMCD official shall then prepare and submit a memorandum with all attachments to the appropriate District Attorney's Office regarding the offender's refusal, along with a request to petition the court for an order to obtain a DNA sample from the refusing offender.
3. Upon receipt of the court order, the designated NMCD official shall refer the court order to the Administrative Center for coordination of collection procedures, pursuant to the DNA Identification Act.
4. The collection of the DNA sample shall be coordinated by trained persons designated by the Administrative Center pursuant to NMSA 1978, Sections 29-16-3(K) and 29-16-9.

NEW MEXICO CORRECTIONS DEPARTMENT
DNA Collection Record

Date: _____

Name: _____

Date of Birth: _____

Offender#: _____

SS#: _____

Collected by: _____

Facility: _____

Witness: _____

Date Collected: _____

Include this page in the New Mexico Corrections Department file for this individual.

This form must be forwarded as part of the individual's file to the Probation and Parole Division upon their release from incarceration.

DNA Identification Act

This shall serve as written notice to the offender regarding the New Mexico State Statutes governing the DNS Identification Act and the enforcement of the act.

29-16-2. **Purpose of the act:** The purpose of the DNA Identification Act [29-16-1 to 29-16-13 NMSA 1978} is to:

- A. establish a DNA identification system for covered offenders; and
- B. Facilitate the use of DNA records by local, state and federal law enforcement agencies in the identification, detection or exclusion of persons in connection with criminal investigations.

29-16-6. **Covered offenders subject to collection of samples:** Each offender shall provide one or more samples to the administrative center as follows:

- A. Covered offenders convicted on or after the effective date of the DNA Identification Act [29-16-1 to 29-16-13 NMSA 1978] shall provide a sample at any time before release from any correctional facility or, if the covered offender is not sentenced to incarceration, before the end of any period of probation or other supervised probation.
- B. Covered offenders incarcerated on the effective date of the DNA Identification Act shall provide a sample at any time before release from any correctional facility; and
- C. Covered offenders on probation or other supervised release on the effective date of the DNA Identification Act shall provide a sample before the end of any period of probation or other supervised release.

29-16-9 **Enforcement:** The attorney general of a district attorney may petition a district court for an order requiring a covered offender to:

- A. Provide a sample; or
- B. Provide a sample by alternative means if the covered offender will not cooperate.

ORDER TO OFFENDER: You are notified that you are hereby ordered to provide a DNA Sample. Failure to comply will result in a misconduct report being issued, and an enforcement action being filed in District Court.

Acknowledgement of receipt of notice and refusal to provide a DNA Sample by offender:

I (offender signature) _____ have received a copy of this notice and refuse to provide a DNA Sample as requested on (Date) _____ at (Time) _____.

Offender Name: (Print or type) _____ Offender#: _____

Date of Birth: _____ Social Security Number: _____

Offender refused to sign for receipt of this notice (CD-041101.A).

Acknowledgement of service to offender:

I, _____, certify that a copy of this notice, (CD-041101.A) was given to the (Print or type name) Above-named offender on (Date) _____ at (Time) _____ and offender refused to submit a DNA Sample.

Signature: _____

Witness Name: (Print or type) _____ Signature: _____