

Custodial Operations Policy and Procedures

18.3 DNA testing of inmates

Policy summary

Corrective Services NSW (CSNSW) is committed to the safe and effective management of inmates and the administration of justice processes.

This procedure provides guidance on managing requests or orders for a DNA test of an inmate. Inmates may be asked to provide a DNA sample for testing based on a court order, a request from police, or another party. Inmates may also request a DNA test themselves.

This section outlines the policies and procedures to be followed when a request or court order for DNA testing is made.

This policy does not address forensic procedure which may need to be followed when an offence or other serious incident has occurred within a correctional centre. For relevant information around forensic procedures in response to an incident see ***COPP sections 13.8 Crime scene preservation, 13.4 Assaults, and 13.3 Death in custody.***

Management of Public Correctional Centres Service Specifications

Service specification	Decency and respect Professionalism and accountability
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Scope

This section applies to all correctional centres and other facilities administered by or on behalf of CSNSW.

It also applies to all CSNSW employees, and where relevant to other personnel such as NSWPF, JH&FMHN, contractors, subcontractors, and visitors.

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1 Policy

1.1 When DNA testing of an inmate may be done

DNA testing of an inmate may be done when:

- the inmate is serving a sentence of imprisonment for a Serious Indictable Offence and a DNA sample is requested by NSWPF
- there is an order from a magistrate or other authorised person for the DNA test
- there is a court order for a parentage test
- the inmate or their legal representative has requested a DNA test
- a third party has requested a DNA test and the inmate has consented
- in other circumstances where the test is legally required.

1.2 General conditions on DNA testing of inmates

All DNA testing must be carried out in a way which provides reasonable privacy to the inmate.

Unless an exception applies under this policy a DNA testing procedure must not:

- be done in the presence of anyone who is not necessary to the procedure
- require the inmate to remove any more clothing than is necessary
- involve a visual inspection of the inmate other than what is necessary for the procedure
- occur while the inmate is being questioned
- be conducted on someone under the age of 18 or who is incapable of offering informed consent to the procedure.

In most cases a DNA sample will be collected through a buccal swab, which is a swab of the mouth to collect saliva.

Where relevant, CSNSW staff should follow appropriate procedures under **COPP section 6.5 Infectious and communicable diseases** when a DNA sample is being collected from an inmate.

1.3 Administering the buccal swab

Inmates should be asked to do the buccal swab themselves where possible.

If the buccal swab is taken by someone other than the inmate, it must be done by an appropriately qualified person:

- medical practitioner
- dentist
- nurse
- appropriately qualified Police Officer
- someone authorised by the Commissioner of Police to carry out the procedure; or
- other person with suitable professional qualifications or experience to carry out the procedure.

1.4 Suitable testing area

Wherever possible, the DNA sampling procedure should be conducted at the correctional centre where the inmate is located rather than at an external site. A police officer or other qualified person can attend the correctional centre for the purpose of collecting a DNA sample from the inmate.

A suitable area in the correctional centre must be chosen for the procedure. An area may be suitable if it:

- restricts unnecessary inmate and staff movement through the area
- has a suitable holding area close to the testing area for inmates to be held while they wait to be escorted into the testing room
- allows the inmate to rinse their mouth immediately prior to giving a buccal swab or, if a different type of sample will be taken, has appropriate facilities for the safe and effective collection of the sample
- has a table and chairs and is big enough for a camera with tripod to be set up and record the testing area
- provides privacy and reduced noise to allow the procedure to be electronically recorded
- has appropriate security measures to protect the safety of the qualified person collecting the DNA sample.

The Governor/OIC may request the use of a JH&FMHN clinic as a clean and private place for the testing to be done.

Where the inmate must be escorted to an external facility for a DNA testing procedure, all relevant policies and procedures must be followed including **COPP sections 19.1 General escort procedures** and **19.2 Movement orders and permits**.

2 Police DNA testing

2.1 Operational agreement with police for DNA testing

CSNSW and NSWPF have an operational agreement to allow NSWPF to obtain DNA samples from inmates serving a sentence of imprisonment for a Serious Indictable Offence.

As part of this agreement the Correctional Centre Liaison Officer, or an officer authorised by the Governor/OIC to perform the role (the Authorised officer) will assist NSWPF to arrange access to the relevant inmates for the forensic sampling process. The Authorised officer will help to prepare the inmate for the DNA test and will arrange a suitable location in the correctional centre for testing to be done.

2.2 Identifying inmates for testing

The NSWPF Inmate Testing Team (ITT) is responsible for identifying eligible inmates for DNA testing. Where the ITT is unable to access OIMS the Authorised Officer may provide them with copies of the following OIMS reports to help them identify appropriate inmates:

- Conviction, Sentencing and Appeal Report
- Inmate Profile Document
- Serious Indictable Offender Report
- All Jail Report

These reports must be provided securely to protect the confidentiality of the information they contain.

The ITT will provide a designated executive officer with a list of identified inmates at least one week prior to the sampling procedure.

2.3 Information given to inmates before consent

The Authorised officer should inform inmates of the request received from ITT, show the inmate written documentation of the request provided by ITT, and ask the inmate to consent to testing.

To provide informed consent the inmate must be given a copy of the Forensic Procedures Information for Inmates fact sheet provided by ITT.

The inmate should read the factsheet before providing informed consent to the procedure. If the inmate cannot read the factsheet themselves, they must be supported to understand the information. If the inmate needs an interpreter see **COPP section 11.1 Language services**. If the inmate has a cognitive disability, or mental illness, or otherwise cannot provide informed consent, this should be communicated to the ITT (under the MOU, CSNSW staff are able to share this information with NSW Police for the purposes of DNA testing). The final decision about whether an inmate is capable of giving informed consent lies with Police. If the inmate cannot provide informed consent the procedure cannot be done without a legal order. If there is a legal order, a senior police officer may still order the carrying out of the forensic procedure without the inmate's consent.

The inmate should be advised to speak to a legal representative if they have any concerns or want help understanding the procedure they are being asked to consent to. The Legal Aid NSW Prisoners Legal Service can provide advice on this procedure.

Once the inmate has read the factsheet and had an opportunity to seek legal advice, the Authorised Officer should complete the *Inmate DNA Forensic Procedure Prep-Sheet* with the inmate. The inmate must sign the Prep-Sheet and the signature should be witnessed by a Corrective Services Officer.

2.4 Consent from Aboriginal or Torres Strait Islander inmates

The Authorised officer should check the list of inmates identified for testing by the ITT to confirm if any of the inmates identify as Aboriginal or Torres Strait Islander.

Inmates who are Aboriginal persons and Torres Strait Islanders are entitled to have an interview friend present. They cannot provide informed consent to the DNA testing procedure unless an interview friend is present, or the inmate has expressly and voluntarily waived their right to have an interview friend present.

Where DNA testing of an Aboriginal or Torres Strait Islander inmate is to be completed a representative of an Aboriginal legal aid organisation must be notified that the inmate is to be asked to consent to a forensic procedure. An Aboriginal legal aid organisation does not need to be contacted if the inmate:

- has arranged for a legal representative to be present, or
- has expressly and voluntarily waived his or her right to have a legal representative present.

After the information outlined in subsection 2.3 is provided the inmate must be given a chance to communicate with the interview friend (if any), and with their legal representative (if any) in private. The Authorised officer should then complete the *Inmate DNA Forensic Procedure Prep-Sheet* with the inmate.

2.5 Ensuring inmates are available for testing

The Authorised officer must try to ensure that inmates identified by ITT and provided with the relevant information are available for testing on the agreed day and time.

The Corrective Services NSW Testing Coordinator is also included in the ITT email and supplied a copy of the list of inmates to be tested. The Testing Coordinator applies movement holds via OIMS to the eligible inmates, which are approved/not approved by Inmate Classification & Placement. In the event an inmate is required to be relocated or absent for the day of testing, the Testing Coordinator is notified and in turn the movement hold will be removed. The Testing Coordinator notifies ITT, so their testing list can be amended.

2.6 Recording the procedure

A video and audio recording of the DNA sampling procedures must be made where possible, unless the inmate objects to the recording. The ITT will provide recording equipment.

Before the forensic procedure is carried out, the inmate must be informed that the procedure is being recorded, the reason it is being recorded (including the protection that the recording provides for the inmate).

If the procedure is not electronically recorded, it must be done in the presence of an independent person who is not a police officer.

2.7 Procedures for police DNA testing

	Procedure	Responsibility
1.	Prepare a testing schedule for the Inmate Testing Team and distribute this to all Correctional Centres in NSW.	NSWPF ITT

	Procedure	Responsibility
2.	Identify eligible inmates. Provide a list of inmates for testing at least seven (7) days before the scheduled testing day.	NSWPF ITT
3.	Confirm receipt of testing list email	Authorised officer
4.	Provide the inmate with a <i>Forensic Procedure Information Sheet</i> and a copy of the CFP Act (if requested).	Authorised officer
5.	Ensure inmates have an opportunity to access legal advice on the forensic procedure.	Authorised officer
6.	Ensure Aboriginal or Torres Strait Islander inmates have the opportunity to arrange for an interview friend to be present.	Authorised officer
7.	Complete the <i>Inmate DNA Forensic Procedure Prep-Sheet</i> with the inmate, ask the inmate to sign it, witness the signature, and attach the inmate's photograph.	Authorised officer
8.	Arrange a suitable place for the procedure to be done. See subsection 1.4 <i>Suitable testing area</i> for information on identifying a suitable space.	Authorised officer
9.	Arrange for access and an escort for the ITT on the day of testing.	Authorised officer
10.	Arrange for relevant inmates to be escorted to the testing area.	Authorised officer
11.	Administer DNA sample procedure.	NSWPF ITT
12.	Email the Inmate Testing Team result sheet to the CSNSW Testing Coordinator.	Authorised officer
13.	File the consent forms supplied by the Inmate Testing Team along with the <i>Forensic Testing Pre-Test Interview</i> forms of inmates tested in the Alerts section of the CMF.	Authorised officer
14.	Retain completed Prep-Sheets of inmates not tested on the day. If the inmate may be transferred to another correctional location the Prep-Sheet is to be filed in their Case Management File in the Alerts section.	Authorised officer
15.	Notify the CSNSW Testing Coordinator of any inmate who refused to supply a forensic sample.	Authorised officer

2.8 Non-compliance and use of force

Where there is an order from a magistrate or other authorised person for the DNA test, CSNSW officers may use reasonable force to take a non-compliant inmate to the testing area. If an inmate does not comply to self-administer a buccal swab, a senior police officer may order the taking of a hair sample. CSNSW officers may use reasonable force to restrain an inmate while a hair sample is taken.

3 DNA testing ordered by a Magistrate

3.1 When Magistrate ordered DNA testing can be done

Forensic procedures such as DNA testing may be ordered by a Magistrate or other persons authorised under the Crimes (Forensic Procedures) Act 2000.

DNA testing of an inmate under the age 18 or an inmate incapable of consenting can be done when it is ordered by a Magistrate or other authorised persons. The inmate does not need to consent to the procedure when there is order from a magistrate for DNA testing to be done.

CSNSW should facilitate DNA testing of an inmate when there is an order for this testing to occur. CSNSW should receive evidence of the order from a magistrate for a DNA test to be done before a DNA sample is taken.

JH&FMHN does not need to provide support or endorsement for the testing.

3.2 Responsibility for testing arrangements

The court or a relevant legal representative is responsible for making all arrangements and liaising with the correctional centre to arrange testing.

The inmate must be allowed to attend an appointment for DNA testing. The inmate is not required to meet any costs of the testing.

3.3 Recording the procedure

A video and audio recording of the DNA testing procedures must be made unless the inmate objects to the recording or electronic recording is not possible.

Before the procedure is carried out, the inmate must be informed that the procedure is being recorded, the reason it is being recorded (including the protection that the recording provides for the inmate) and that the inmate may object to the recording.

If the procedure is not electronically recorded, it must be done in the presence of an independent person who is not a police officer.

The person who attends the correctional centre to take the DNA sample can bring in equipment to electronically record the procedure if approved by the correctional centre. Otherwise, CSNSW must either arrange recording equipment for the procedure or an independent person to be present to witness the procedure.

3.4 Procedures for ordering DNA testing by order of a Magistrate

	Procedure	Responsibility
1.	Read any Magistrate's or authorised person's order received and seek legal advice if needed.	Governor/OIC

	Procedure	Responsibility
2.	Prepare for test: <ul style="list-style-type: none"> organise an appropriate date/time for DNA testing to be completed - this should be within any timeframes specified on the order arrange a suitable place for the procedure to be done (refer subsection 1.4 <i>Suitable testing area</i>) arrange access for the qualified person taking the sample on the agreed date/time provide approval for electronic recording equipment to be brought into the centre, or arrange equipment to be used to record the procedure ensure inmate is available and staff member is available to escort the inmate to testing ensure a staff member is available to escort the tester to the nominated testing space ensure only persons necessary to the procedure are in the room while the procedure is being conducted 	Authorised officer
3.	Conduct test: <ul style="list-style-type: none"> allow the inmate to complete the swab themselves where it is safe to do so, or complete the swab on the inmate's behalf if they can't or won't do the swab themselves ensure the procedure is electronically recorded or witnessed by an independent person. 	Qualified person
4.	Securely transfer DNA sample to an appropriate laboratory for testing.	Qualified person

4 Family Court ordered DNA tests

4.1 Parentage testing orders

If the parentage of a child is in question the Federal Circuit and Family Court may make a parentage testing order as part of proceedings under the *Family Law Act 1975*.

If there is a court order made for a DNA test, the inmate must be permitted to attend an appointment for the DNA test to be done.

The court may place terms and conditions on a parentage testing order including how the procedure should be carried out and who is responsible for the cost of the procedure.

If a parentage test requires a sample to be taken from someone under the age of 18 this can only be done with the consent of their parent, guardian, or other person responsible for their care under a parenting order.

4.2 Meeting the terms of a parentage testing order

Where a parentage testing order has been made, a copy of the order should be provided to the Governor/OIC or other authorised person. The recipient should read the order to understand the terms and conditions on the order to ensure CSNSW can comply. The Governor/OIC can seek legal advice if the terms of the order are unclear or cannot be met.

If the court order requires that the test be completed at an external facility, then appropriate arrangements for the inmate movement should be made in line with **COPP section 19.1 General escort procedures and section 19.2 Movement orders and permits.**

Wherever possible, the DNA sample should be collected at the correctional centre where the inmate is located, rather than at an external testing site or laboratory. The procedure must be done by an appropriately qualified person who will then transfer the sample to an authorised laboratory for the DNA test. The test will not be administered by JH&FMHN.

An appropriately qualified professional must be allowed to enter the correctional centre to conduct the test with appropriate security measures in place. When a DNA sample is being collected in a correctional centre a suitable place should be identified for the procedure to be done. See section 1.4 *Suitable testing area* for information on identifying a suitable space for testing.

4.3 Procedures for DNA sampling under a parentage testing order

	Procedure	Responsibility
1.	Read any Magistrate's or authorised person's order received and seek legal advice if needed.	Governor/OIC
2.	Consider the order and any security implications and if necessary, obtain local intelligence holdings from the FM Intelligence and/or submit a request for information to the CIG. If a full CIG assessment is required, submit a request through the Assistant Commissioner, Security and Intelligence.	Governor/OIC or Authorised officer

4.4 Preparing for DNA tests to be done externally

	Procedure	Responsibility
1.	<p>Arrange for Security Operations Group (SOG) staff or custodial staff for the centre to inspect the external facility, if necessary. A security assessment is to be provided and used by the escorting officer.</p> <p>If a security assessment by SOG is necessary, submit a request through the Assistant Commissioner, Security Intelligence. SOG will journal the cost of the assessment.</p>	Governor/OIC or Authorised officer
2.	Determine whether the attendance of the inmate at the nominated facility poses any threat to security and/or the community.	Governor/OIC or Authorised officer
3.	If the inmate can safely attend the external facility to provide a DNA sample, then issue an order under the <i>Crimes (Administration of Sentences) Act 1999</i> for the inmate to attend the external testing facility (refer to COPP section 19.2 Movement orders and permits).	Governor/OIC or Authorised officer
4.	Prepare for the escort according to the policies and procedure in COPP section 19.1 General escort procedures .	Authorised officer and Escorting officer
5.	Arrange for the inmate to be escorted to the appointment at the nominated time and date.	Authorised officer
6.	<p>Ensure inmate is not provided with details of the date and time of their appointment.</p> <p>Advise CSNSW Staff not to tell the inmate of the date and time of their appointment in advance.</p> <p>Tell the external facility not to provide any details of the inmate's appointment, if they receive enquiries from friends or relatives.</p>	Authorised officer

4.5 Taking an inmate to an external facility for DNA test

	Procedure	Responsibility
1.	Ensure that an order for the inmate movement has been issued under the <i>Crimes (Administration of Sentences) Act 1999</i> by the Governor/OIC. Confirm all information contained in a security assessment report (if provided) is noted.	Governor/OIC or Authorised officer
2.	Ensure inmate is not provided with details of the date and time of their appointment.	Escorting officer
3.	Follow the escort procedures in COPP section 19.1 General escort procedures .	Escorting officer

4.	The escorting officer must enter the external testing facility to review the area prior to escorting the inmate into the premises.	Escorting officer
5.	Provide a written report to the Governor/OIC if an incident occurs during the escort.	Escorting officer

4.6 DNA tests done in correctional centre

	Procedure	Responsibility
1.	Prepare for testing: <ul style="list-style-type: none"> organise an appropriate date/time for testing to be completed. This should be within any timeframes specified on a parentage testing order arrange a suitable place for the procedure to be done (see subsection 1.4 <i>Suitable Testing Area</i>) arrange access for the tester on the day of testing ensure the inmate is available and staff member is available to escort the inmate to testing ensure a staff member is available to escort the qualified person collecting the sample to the nominated testing space. 	Authorised officer
2.	Conduct test: <ul style="list-style-type: none"> ensure only persons necessary to the procedure are in the room while the procedure is being conducted allow the inmate to complete the swab themselves where it is safe to do so. Complete the swab on the inmate's behalf if they can't or won't do the swab themselves. 	Qualified persons
3.	Ensure OIMS case note is made of the DNA test having been conducted.	Governor/OIC or delegate
4.	The qualified person who collected the sample will transfer the sample to an authorised laboratory for testing.	Qualified persons

5 DNA tests requested by an inmate or third party

An inmate, their representative, or a third party may request a sample be taken from an inmate for a DNA test to be done through a private provider. This request can be made without a court order. This is most likely to be done for the purposes of determining parentage but may also be done in other circumstances. This type of DNA testing may be approved by the Governor/OIC only after the inmate has provided written consent.

The requester is responsible for all costs associated with the DNA test. The requester must be informed that the qualified person conducting the taking of the sample is to attend the correctional centre, and to contact the Governor/OIC to arrange the visit.

Requests of this type should be made in writing. The request should explain why the test is being requested, include evidence that the inmate consents to the procedure and state that the requester understands that they are responsible for covering all costs associated with the testing procedure. The request should also specify that the DNA sample is to be collected at the correctional centre where the inmate is located.

All requests must be considered along with all security implications before a recommendation or approval is made by the Governor/OIC or authorised officer in the first instance. Requests should be referred for assessment by the Intelligence Officer or Corrections Intelligence Group (CIG), where required.

The qualified person who collects the sample is responsible for ensuring the sample is transferred to an authorised laboratory for the DNA test to be done. The qualified person must be allowed to enter the correctional centre to collect the DNA sample with appropriate security measures in place. The test will not be administered by JH&FMHN.

If approval is given for the inmate to attend an external facility for the sample to be taken, the Governor/OIC must ensure the necessary local leave permit is in place.

5.1 Procedures for DNA sampling without a court order

The procedure for arranging a DNA test on request is the same as the procedure to arrange a DNA test when a parentage testing order has been made (see subsections 4.4 *Preparing for DNA tests to be done externally*, 4.5 *Taking an inmate to an external facility for DNA test* and 4.6 *DNA tests done in correctional centre*). However, because there is no order specifying how the test must be done the Governor/OIC has discretion when considering the request and identifying a suitable arrangement.

If there is no court order for the DNA test, then CSNSW can decline to facilitate a particular DNA testing arrangement if it creates an excessive burden on the correctional centre or creates a risk to the security of the centre.

5.2 Considering a request for DNA tests without a court order

	Procedure	Responsibility
1.	<p>Provide the Governor/OIC a written request for a DNA test to be completed that:</p> <ul style="list-style-type: none"> • provides the reason for the request • confirms the inmates consents to the procedure • confirms the requester will cover the cost of the procedure • specifies that they are requesting a DNA sample be collected at the correctional centre. 	Requester

	Procedure	Responsibility
2.	Confirm the inmate has provided written consent to the procedure.	Governor/ OIC or Authorised officer
3.	Consider request including any security considerations and if necessary, obtain local intelligence holdings from the Intelligence Officer or CIG. If a full CIG assessment is required, submit a request through the Assistant Commissioner, Security and Intelligence.	Governor/ OIC or Authorised officer
4.	Respond to requester outlining if the request has initial approval.	Governor/ OIC or Authorised officer

6 Quick links

- [Related COPP](#)
- [Forms and annexures](#)
- [Related Documents](#)

7 Definitions

Authorised laboratory	a laboratory that is accredited by the National Association of Testing Authorities (NATA) for the purpose of carrying out parentage testing.
Authorised officer	The Correctional Centre Liaison Officer, or the officer authorised by the Governor/OIC to perform the functions set out in this part of the Custodial Operations Policy and Procedures.
Authorised person	A person authorised under the Crimes (Forensic Procedures) Act 2000 to make an interim order for a forensic procedure to be conducted.
Buccal swab	Refers to a forensic procedure where a swab of saliva taken from a person's mouth.
CFP Act 2000	Crimes (Forensic Procedures) Act 2000
CIG	Corrections Intelligence Group
COPP	Custodial Operations Policy and Procedures
CSNSW	Corrective Services New South Wales
CSNSW staff	Staff employed by, or providing services on behalf of, CSNSW. Any reference to CSNSW staff includes staff at privately managed centres. References to a particular position include the equivalent position at a privately managed centre.
DNA	deoxyribonucleic acid (DNA) is used for genetic testing.
FM	Functional Manager
Forensic procedures	Refers to a procedure conducted under the Crimes (Forensic Procedures) Act 2000 for the purpose of collecting samples or other forensic material from a person's body.
Forensic testing	Refers to collecting samples or other evidence through either intimate or non-intimate forensic procedures under the Crimes (Forensic Procedures) Act 2000
Governor	Governor of a correctional centre (includes a Manager of Security in charge of a small correctional centre)
Interview friend	Different people may act as interview friends for an inmate under different provisions of the Crimes (Forensic Procedures) Act 2000. This may include a relative or other person chosen by the inmate,

	an Australian legal practitioner, or a representative of an Aboriginal legal aid organisation.
ITT	Inmate Testing Team which team in the NSW Police Force which actively identifies and obtains DNA Forensic Samples from Inmates within New South Wales Correctional Centres who meet the criteria under Part 7 of the Crimes (Forensic Procedures) Act 2000
JH&FMHN	Justice Health & Forensic Mental Health Network
NSWPF	New South Wales Police Force
OIMS	Offender Integrated Management System
Parentage testing order	An order made under section 69W(1) of the Family Law Act 1975 (Cth)
Parentage testing procedure	Court ordered a medical procedure for the purpose of determining whether someone is the parent of a child.
Qualified person	Someone with suitable professional qualifications or experience to carry out the forensic procedure as determined by the Crimes (Forensic Procedures) Act 2000
SIO	Serious Indictable Offence
SOG	Security Operations Group
Testing Coordinator	The Unit within the CSNSW Security and Intelligence division established within the Department of Corrective Services to assist and liaise between Authorised Officer and NSWPF DNA Management Unit in obtaining forensic samples from inmates charged with a serious indictable offence.

8 Document information

Business centre:	Custodial Operations	
Approver:	Anne Marie Martin	
Date of effect:	23/01/23	
EDRMS container:	22/20339	
Version	Date	Reason for amendment
1.0	24/01/23	Initial publication. Refer to Deputy Commissioner Memo 2023/01 <i>New COPP policy 18.3 DNA testing of inmates.</i>