

DNA Sampling

Table of Contents

Table of Contents	2
Policy statement and principles	5
What	5
Why	5
How	5
Overview	6
Purpose of the chapter	6
References to legislation	6
NZ Bill of Rights Act responsibilities apply	6
Definitions	6
Adult	6
Bodily sample	6
Child	6
DNA	6
DNA profile	6
Imprisonable offence	6
Independent adult	6
Parent	7
Relevant offence	7
Suitably qualified person	7
Young person	7
Related information	7
DNA databanks and sampling categories	8
DNA databanks	8
Sampling categories	8
Intelligence (databank) sampling considerations	8
Evidential (casework) sampling considerations	8
Sample category summary	9
Sampling methods	10
Buccal or blood samples	10
Who can take the samples?	10
Limitations on who can be present during sampling	10
Equal recognition of blood and buccal samples	10
Buccal sampling	11
Definition of buccal sampling	11
Who takes the sample?	11
Training criteria for Police involved with buccal sampling	12
Using the buccal sample kit	12
Contents checklist	12
Before you start sampling	12
Buccal sampling procedure	12
Contamination (important note)	13
Sample for the donor's own analysis	13
Blood sampling	15
Types of blood sample	15
Who can take the sample?	15
Medical kits	15
Additional forms	15
Intention to charge (Part 2B) - temporary DNA profile databank samples	16
Power to take Part 2B samples	16
Purpose of obtaining samples	16
DNA profiles not retained permanently	16
Admissibility of Part 2B bodily samples in any criminal proceedings	16
Intention to charge (Part 2B) - deciding whether to take samples	17
Discretion to obtain a temporary databank sample	17

Approval to submit a temporary databank sample	17
Risks if powers used inappropriately	17
Relevant factors when deciding whether or not to take a sample	17
Do the legislative criteria exist?	17
Are there reasons not to take a sample?	17
Is a DNA profile already held for this individual?	18
Does the current offence indicate reasonable grounds to suspect other offending where DNA would be important evidence?	18
Are there personal characteristics that indicate reasonable grounds to suspect other offending where DNA would be relevant evidence?	18
Factors not relevant to a decision to take DNA	19
Decision Making Tree - Part 2B (Intention to Charge) DNA Sampling	19
Intention to charge sampling procedures - Adults	21
Preparation	21
Requesting and taking the sample	21
Submission to ESR	22
Summary of Process - Flowchart	22
Intention to charge sampling procedures - Youth	23
Preparation	23
Requesting and taking the sample	23
Submitting the sample	24
Notices requiring the youth's attendance to give a bodily sample	25
Youth may be arrested if they fail to attend	25
Summary of Process - Flowchart	25
Voluntary and suspect samples	25
Use of force when a Part 2B sample is refused	26
Power to use force on refusal to provide a sample	26
Reporting after use of force	26
DNA Databank samples (Part 3)	27
Introduction	27
DNA databank	27
How ESR processes the samples	27
Voluntary DNA Databank samples (Part 3)	28
Databank voluntary requests	28
Databank samples from persons under 18 years	28
Who you should consider requesting a voluntary sample from	28
Databank Compulsion Notices (DCN)	29
Taking samples by compulsion based on qualifying conviction	29
Qualifying convictions	29
Service of Notices	29
Flowchart	29
Databank Compulsion Notices (DCN) for Returning Offenders	29
Suspect DNA samples (Part 2 samples)	31
Introduction	31
Who is a 'suspect'	31
Requesting samples	31
Samples from persons under 14 years	31
Taking samples by compulsion	31
How suspect samples are used	31
Samples are exhibits	32
Retention periods for suspect profiles	32
Dual DNA samples from adults	33
What is a dual sample?	33
How the sample is used	33
Dual sampling requests	33
Procedures for dual requests	33
Suspect samples by consent (adults and young persons)	34
Taking suspect samples	34
When can samples be obtained from suspects?	34

When you can request consent	34
Children	34
Carry out checks before requesting consent	34
Inform the suspect of the required matters	34
Give written notice	35
Dual requests - applies only to adults	35
Lawyers	36
Validity of consent	36
When consent is recorded on video	36
Dual requests	36
Withdrawing consent	36
Dual requests	37
Refusing consent	37
Service of Orders	37
Taking the sample	37
Flowcharts	38
Suspect samples from children (Part 2 and Part 2A)	39
Child defined	39
Restrictions on consent	39
Power to obtain a buccal sample	39
Requesting a buccal sample	39
Preparing to take samples	39
Sampling request procedures (Part 2A)	40
Validity of consent	41
Withdrawing consent	41
Refusing consent	41
Taking the sample	42
Flowchart	42
Elimination samples (Casework)	43
Missing person identification samples (not DVI)	44
Disaster Victim Identification (DVI) family DNA reference samples	45
Criminal Investigators Elimination Database (CIED)	46
Recording and submitting samples for analysis	47
Recording the sampling in NIA/BioTrak	47
Submitting the sample to ESR for analysis	47
Management of DNA samples and profiles	48
Introduction	48
Retention periods	48
Who manages profile destruction?	48
Destruction of suspect samples	48
Who manages sample destruction?	49
Destruction/removal of temporary databank samples/profiles	49
NIA/ BioTrak DNA sampling management system	49

Policy statement and principles

What

Key functions of Police are maintaining public safety, law enforcement and crime prevention. Solving crimes, particularly serious crimes, is a major component of this.

Forensic science plays a significant role in criminal investigations, past, present and future, by providing valuable evidence that can be pivotal for solving crime. The collection and analysis of DNA from certain persons also enables comparisons to be made against unsolved crime scene samples.

The [Criminal Investigations \(Bodily Samples\) Act 1995](#) (also referred to in this chapter as the Act) governs DNA sampling, profiling and profile retention in New Zealand and establishes two regimes:

- a suspect regime (for evidential purposes), and
- a databank regime (for DNA comparison against unsolved crime).

This is explained in the '[DNA databanks and sampling categories](#)' section of this chapter.

Why

Compliance with the law and procedures applying to taking bodily samples for DNA comparison will ensure that DNA sampling, recording and profile management are conducted in a legal and consistent manner while sustaining the integrity of the National DNA databank. It will also ensure that investigators have access to crucial information that may assist them in their investigations and increase the chance of successful prosecutions.

How

When investigating serious crime and requesting or seeking DNA samples, Police will:

- ensure that the legislative criteria is met in every case a sample is requested or compelled
- use appropriate discretion in each case on an individual basis to determine when to take a bodily (blood or buccal) sample - e.g. the Act does not require police to take samples from every adult or youth they intend to charge
- comply with their obligations under the NZ Bill of Rights Act 1990 to treat persons fairly during any detention under the Criminal Investigations (Bodily Samples) Act
- allow persons to choose the sampling method and the person to take the sample - police are not permitted to take samples themselves
- use suitably qualified persons to take blood samples, and when requested, buccal samples
- obtain samples in accordance with the procedures in this chapter and the buccal sampling kits and medical kits - this will ensure the requirements of the Act are met
- only allow persons related to the sampling process to be present when samples are taken
- ensure that where consent to the taking of bodily samples is given, it is given freely and willingly, without inducements
- ensure that when obtaining suspect samples from children, both the suspect and their parent consent
- when the donor is less than 18 years old, ensure they have another person present when they give a sample.

Overview

Purpose of the chapter

This chapter:

- details the law and procedures applying to taking [bodily samples](#) for [DNA](#) comparison
- provides general, legislative and operational information on DNA sampling to ensure that DNA sampling, recording and profile management are conducted in a legal and consistent manner while sustaining the integrity of the National DNA databank.

References to legislation

All references to legislation in this chapter are to the [Criminal Investigations \(Bodily Samples\) Act 1995](#), unless specified.

NZ Bill of Rights Act responsibilities apply

Police obligations to treat suspects fairly, particularly those rights under sections [21](#), [22](#) and [23](#) of the New Zealand Bill of Rights Act 1990, are relevant during any detention under the Criminal Investigations (Bodily Samples) Act. This includes:

- informing the person fairly of the reason for their detention
- treating them with dignity and respect
- advising them of their right to consult a lawyer, and to refrain from making a statement
- using appropriate discretion to determine when to take a bodily sample.

See the '[New Zealand Bill of Rights](#)' chapter.

Definitions

These terms, defined in section [2](#) of the Act, unless otherwise stated, are used throughout the chapter:

Term	Meaning
Adult	Person aged 18 years and over.
Bodily sample	A blood or buccal sample.
Child	Person aged 10 or over but under 14 years.
DNA	Deoxyribonucleic acid
DNA profile	DNA profile means information derived from a sample of genetic material obtained from a person that: <ul style="list-style-type: none">- is clearly identifiable as relating to that person, and- can be compared with information obtained (by the same technique) from another sample of genetic material for the purpose of determining whether the other sample is from that person).
Imprisonable offence	An imprisonable offence means: <ul style="list-style-type: none">- any offence punishable by a term of imprisonment, and- includes an offence punishable by imprisonment for life.
Independent adult	'Independent adult', means: <ul style="list-style-type: none">- a parent or caregiver who is present when the sample is taken, or- if a parent or caregiver is not present, a lawyer or other person chosen to be present, or- if none of the above are present, any person 18 years or over, who must not be a Police employee:<ul style="list-style-type: none">- chosen by the suspect, or- if the suspect fails or refuses to choose, chosen by a Police employee. <p>(s2A)</p>

Term	Meaning
Parent	<p>‘Parent’, in relation to a person who is under the age of 18 years:</p> <ul style="list-style-type: none">- means a parent or guardian of that person, and- includes a step-parent of that person, and <p>if no parent or guardian of that person can be found with reasonable diligence or is capable of consenting to the taking of a bodily sample from that person under this Act, includes a person in New Zealand who is acting in the place of a parent of that person.</p>
Relevant offence	<p>A relevant offence means:</p> <ul style="list-style-type: none">- an offence against any of the provisions listed in Part 1, Part 2 or Part 3 of Schedule 1 of the Act, or an attempt to commit, or conspiring to commit, such an offence, or- an offence punishable by seven years’ imprisonment or more, or an attempt to commit, or conspiring to commit, such an offence.
Suitably qualified person	<p>A ‘suitably qualified person’ means in relation to a:</p> <ul style="list-style-type: none">- fingerprick sample:<ul style="list-style-type: none">- a medical practitioner, nurse, medical technologist or person trained in phlebotomy- buccal sample:<ul style="list-style-type: none">- a medical practitioner or a registered nurse who has undergone training in taking and dealing with buccal samples in accordance with the training criteria determined by the approved agency (ESR)- a qualified medical technologist, however they must have a degree in medical laboratory science and have undergone the same training as above- a person trained in phlebotomy in accordance with the national standard for training phlebotomists adopted by the Association of Community Laboratories and who has undergone the same training as above. <p>Note: Police have no authority to physically take buccal samples.</p>
Young person	<p>A person aged of or over 14 years and under 18 years.</p>

Related information

Refer to these related Police Manual chapters for more information:

- [Forensic evidence](#)
- [Identification of offenders](#)

DNA databanks and sampling categories

DNA databanks

A DNA profile databank is a collection of [DNA profiles](#) from persons who have consented or were compelled to give [bodily samples](#) (samples). DNA profiles are derived from these samples.

The [Criminal Investigations \(Bodily Samples\) Act 1995](#) governs the two regimes:

- the **suspect regime** (for evidential purposes), and
- the **national databank regime** (for DNA comparison against unsolved crime).

The Act governs the taking and retention of DNA samples and the subsequent profiles from persons. The authority to sample and retain profiles depends on the sample category.

Sampling categories

Before starting any DNA sampling you must:

- identify what category of sample you may need
- establish that you have the authority to take that sample category, and
- ascertain whether a DNA sample is required.

Consider...	Category...
Who are you taking the sample off?	Age and identity of donor
Why are you taking DNA?	Intelligence (databank) or Evidential (casework) (see these terms below)

Intelligence (databank) sampling considerations

For intelligence sampling purposes, consider if:

- the donor already has a databank sample/profile? If yes, check if it is after the year 2000, and if so, don't take or submit another.
- the Police intend to charge with an:
 - [imprisonable offence](#) or offence against any of the provisions listed in [Part 3](#) of Schedule 1 for adults, or
 - relevant offence or offence against any of the provisions listed in [Part 3](#) of Schedule 1 for youth that qualifies for sampling under [Part 2B](#).
- the donor has volunteered to give a Part 3 databank sample. Note that **youth cannot consent** to a voluntary databank sample.
- the donor has been convicted of an offence ([imprisonable offence](#) or offence against any of the provisions listed in [Part 3](#) of Schedule 1) that qualifies for DCN post-conviction sampling under [Part 3 of the Act](#) (Criminal Investigations (Bodily Samples) Act 1995).

Evidential (casework) sampling considerations

For evidential sampling purposes, consider:

- If an evidential sample is needed for casework comparison.
- If the offence qualifies for suspect sampling under [Part 2](#), i.e.:
 - an [imprisonable offence](#) for adults and youth (14-17 years)
 - an offence of murder or manslaughter where the suspect may lawfully be prosecuted for that offence (alleged to have been committed when the suspect was aged 10-11 years)
 - an offence of murder or manslaughter, or an offence (other than murder or manslaughter) alleged to have been committed when the suspect was aged 12 or 13 years, and for which the maximum penalty available is (or includes) imprisonment for life or for at least 14 years, or
 - an offence (other than murder or manslaughter) that is alleged to have been committed when the suspect was aged 12 or 13 years and was, for the purposes of section [272\(1\)\(c\)](#) of the Oranga Tamariki Act 1989, a previous offender under section [272\(1A\)](#) or (1B) of that Act, and for which the maximum penalty available is or includes imprisonment for at least 10 years

but less than 14 years

- where an offence is alleged to have been committed when the suspect was a child and the child may not be lawfully prosecuted, Part 2A procedures apply.

The Part 2 sampling rules present three suspect categories each with a set of rules for:

- adults (18 years and over)
- youth (14-17 and 12-13 years), and
- children (10-13 years).

Adults (18 years and over) **and youth** of or over 14 years and under 18 years can consent to providing a [Part 2](#) suspect sample.

Children aged 10-13 years cannot consent to suspect sampling if they can be prosecuted for the offence (In these cases follow the [Juvenile Compelled Process](#)).

Adults (18 years and over) **and youth** of or over 14 years and under 18 years **and children** aged 10-13 years **who can be prosecuted for the offence** can be compelled (by Court order) to give a Part 2 suspect sample.

Sample category summary

These are the categories of DNA samples (Part 2, 2A, 2B and Part 3) governed by the Criminal Investigations (Bodily Samples) Act 1995:

- [Temporary DNA Databank samples \(Part 2B samples\)](#)
- [DNA Databank samples \(Part 3 samples\)](#)
- [Suspect samples \(Part 2 samples\)](#)
- [Elimination samples](#)
- [Dual samples \(Part 2 and Part 3\)](#)
- [Suspect samples for children where the child cannot be lawfully prosecuted \(Part 2A samples\)](#)

Sampling methods

Buccal or blood samples

Samples may be:

- buccal samples (also referred to as a buccal swab or a mouth swab), or
- blood samples - these may be **venous** samples or **fingerprick** samples.

Different procedures apply for [buccal sampling](#) and [blood sampling](#).

Who can take the samples?

The donor can request that a [suitably qualified person](#) conducts the [buccal sampling](#) but in the majority of incidents it is self-administered by the donor.

Blood samples **must** be taken by a [suitably qualified person](#).

Limitations on who can be present during sampling

Section [52](#) of the Criminal Investigations (Bodily Samples) Act 1995 stipulates who can be present when a DNA sample is taken. Other than the exceptions provided by the Act, no-one unrelated to the sampling process can be present. For example, persons from media companies involved in the filming of Police activity/processes cannot be present for any part of the process of taking a DNA sample, even with the donor's consent.

A bodily sample 'shall be taken in circumstances affording reasonable privacy to that person'. This applies to **all DNA sampling categories**. ([s53](#))

Equal recognition of blood and buccal samples

Substantial amendments to the Act in 2004 provided equal recognition for DNA taken from buccal samples and blood. This enables Police to store [DNA profiles](#) in the [DNA profile databank](#) if obtained from a buccal sample. Prior to these amendments, the DNA profile databank stored blood samples only.

Buccal sampling

Definition of buccal sampling

Buccal sampling means a sample of epithelial cells from inside the mouth taken by a device, or provided by other means, approved for the purpose under section [4B\(1\)\(b\)](#). A buccal sample is also known as a buccal swab, buccal scrape or mouth swab.

Who takes the sample?

This table outlines who can take buccal samples ([s49A](#)).

If the person is ...	and it is ...	then ...
an adult (of or over the age of 18 years)	a voluntary databank request, or a suspect request sample	they must take the sample themselves.
an adult	pursuant to a compulsion order, databank compulsion notice, or a Part 2B sample ('intend to charge' with a imprisonable offence)	they can choose to: <ul style="list-style-type: none"> - take it themselves, or - have a suitably qualified person take it.
aged 14 or over but under 18	a suspect request sample or pursuant to a compulsion order or databank compulsion notice	they can choose to: <ul style="list-style-type: none"> - take it themselves, or - have a suitably qualified person take it.
aged 10 or over but under 14	a buccal sample from a child suspected of an offence whether the suspect can be lawfully prosecuted or not (Part 2 or Part 2A)	they can choose to: <ul style="list-style-type: none"> - take it themselves, or - have a suitably qualified person take it, or - have a parent/guardian/caregiver take it.
aged 10 or over but under 14, and unable to take the sample due to injury or disability	a buccal sample for a child suspected of an offence whether the child can be lawfully prosecuted or not (Part 2 or Part 2A)	they can choose to: <ul style="list-style-type: none"> - have a parent/guardian/caregiver take it, or - have a suitably qualified person take it.
aged 14 or over, and unable to take the sample due to injury or disability	a buccal sample for a child suspected of an offence committed when aged between 10 and 14, but the child is now aged 14 to under 18	a suitably qualified person must take the sample.

Note: Police have **no** authority to physically take buccal samples.

Training criteria for Police involved with buccal sampling

By notice in the Gazette (see SR 2003/334), [ESR](#) is the approved agency in relation to buccal sampling. ESR has determined the training criteria for police taking, supervising the taking of, or dealing with buccal samples to be:

- complete the Probationary Constable reference module 'Standard 6: DNA; Databank Consent', and
- complete the Police DNA sampling training (in Recruit training>Forensics>FR04 DNA Sampling, including watching the DNA sampling video).

Using the buccal sample kit

If a buccal swab is chosen or the donor does not specify a preference, a buccal swab is the Police preferred method.

When taking a DNA buccal sample, always use a DNA Buccal Sample Kit (Stores Reference Number PL900952). Note that each kit (and the kit contents) has a unique barcode which is referred to throughout the sampling, recording and [ESR](#) processing.

Important: Never mix two kits, either because part of a kit is missing or because you made a mistake on a form. Each kit has a barcode attached to sampling cards and the envelope. If you mix a kit, the barcodes will not match and the sample will not be able to be used. The sampling forms generated by NIA also have the barcodes on. If forms are generated via WORD Police Forms, the sampling officer must write the barcodes on the sampling forms.

Contents checklist

A kit consists of these items:

- 1 x pair of disposable gloves
- 1 x [FTA](#) collection card in an envelope
- 1 x foam tipped swab in a sealed package
- 4 x [ESR](#) labels
- 1 x self-sealing plastic bag
- 1 x [POL](#) 730 Ethnicity Questionnaire (barcoded)
- 1 x security seal bag envelope
- 1 x clear plastic envelope (with window) for paperwork.

Note: Always check the contents before sampling.

Before you start sampling

Remember that the donor can choose the sampling [method](#) and [person taking](#) the sample.

Before starting sampling you must:

- check the [NIA](#) (person dossier) DNA history record. If a DNA databank sample/profile exists and was taken since the year 2000, there is no need to take another databank sample
- generate the sampling form set for the specific sampling category and the BioTrak DNA sample entry sheet ([POL](#) 801) via [NIA](#) from the person dossier view or from Police Word forms
- ensure the pre-generated details on the forms are correct
- check the person has not had anything to eat or drink (other than water) for 20 minutes. If possible, immediately beforehand, give the person a drink of water. This increases the chances of obtaining a quality DNA profile from the buccal sample
- ensure that only persons related to the sampling process are present.

Buccal sampling procedure

Follow these steps to take a buccal sample.

Step Action	
1	Open the sampling kit, put on the disposable gloves, and ensure it is complete by checking off each item against the checklist . If the kit is incomplete, dispose of it and start again - including the generation of sampling forms.
2	Check that the barcodes on the FTA card and the paper envelope match those on the POL 730 (enclosed in the kit) and POL 801 (generated by NIA).
3	Complete the Police forms using block capitals and write the donor's name on the paper envelope.
4	Wearing the disposable gloves provided and using the inner surface of this kit as your work surface, lay out the FTA card, paper envelope and unopened swab.
5	<p>To begin:</p> <ul style="list-style-type: none"> - at the handle end of the swab, peel and open the wrapper - allow the donor to remove the swab by the plastic handle - instruct the donor to place the foam tip of the swab into their mouth and vigorously rub the insides of both cheeks, around the gums and under the tongue using both sides of the swab. <p>This has to be done for at least a minute to ensure enough cellular material is transferred to the swab. This is the swabbing/scrape process. See Contamination note below.</p>
6	Take the foam tipped swab from the donor, handling only the plastic handle. Do not touch the foam tip. Firmly press one side of the foam swab onto the circle on the FTA card for at least 30 seconds. The coloured circle will change colour to white. (If this does not happen there was not enough saliva absorbed by the swab and you will need to discard the kit and paperwork and use a new Buccal Sample Kit to obtain a new sample).
7	Place the foam tipped swab into the self-sealing plastic bag and seal.
8	<p>Place:</p> <ul style="list-style-type: none"> - the sampled FTA card into the paper envelope (but do not blow on or wave it in the air), seal it and then remove and discard the disposable gloves - the paper envelope and the plastic bag containing the used swab into the security seal bag in the donor's presence, and then seal and sign it - the Ethnicity Questionnaire (POL 730) in the window of the sealed bag. Do not seal the paperwork window! - the security seal bag containing the sample in secure storage while data entry and submission form processes are completed. <p>The sampling process is now complete.</p>

Note: If the donor has been arrested, record on the fingerprint form that DNA has been taken. This helps the National DNA Administrator link identities in duplicate or other identity queries.

Contamination (important note)

If the foam tip is touched or comes into contact with a surface other than the inside of the person's mouth or the [FTA](#) card, the sample is contaminated and cannot be used. If this happens, repeat the procedure using a new kit and generate a new set of DNA paperwork with the new kit barcode.

Sample for the donor's own analysis

After taking the sample, ask the donor if they wish to take a second sample for their own analysis. If they do, follow these steps.

DNA Sampling
Proactively released by New Zealand Police

Step	Action
1	Provide them with a new DNA sampling kit.
2	Repeat the sampling procedure .
3	Allow the donor to take the FTA card with them.
4	Note the second kit's barcode number on the file and the BioTrak data entry sheet.

Blood sampling

Types of blood sample

This table shows blood sample definitions under section [2](#) of the Act.

Type	Definition
Blood sample	'Blood sample' means a fingerprick or a venous sample.
Venous sample	'Venous sample' means a sample of venous blood taken in accordance with normal medical procedures.
Fingerprick sample	'Fingerprick sample' means a sample of capillary blood taken, in accordance with normal medical procedures, from the tip of a finger or thumb.

Who can take the sample?

A blood sample can be taken only by a [suitably qualified person](#). A list with contact details for such people will usually be available in the watchhouse.

Note that only those persons related to the sampling process may be present when the sample is taken.

Medical kits

The appropriate medical kits for blood samples and respective sampling procedure forms are:

- DNA fingerprick blood kit (MED 190) and Police Forms> DNA> POL750 - DNA Fingerprick Blood Sampling Kit.
- DNA venous blood kit (MED 185) and Police Forms> DNA> POL740 - DNA Blood Sampling Kit.

Note: The sampling procedures are given on the procedure form downloaded from Word Police Forms.

Additional forms

When a blood sample is taken, these additional forms are required:

- A statement from the person taking the sample (PoliceForms> DNA> POL 833 - Statement of Registered Medical practitioner or Nurse).
- A medical expenses form ([POL 175](#)) - (ordered through the [SAP](#) system from Lockheed Martin).

Intention to charge (Part 2B) - temporary DNA profile databank samples

Power to take Part 2B samples

Police can obtain a temporary DNA Databank sample from:

- an adult they 'intend to charge' with an [imprisonable offence](#) or offence against any of the provisions listed in [Part 3](#) of Schedule 1, or
- a youth they 'intend to charge' with a [relevant offence](#) or offence against any of the provisions listed in [Part 3](#) of Schedule 1. (Special protections apply for youths - see [Youth procedures](#))

Note for Customs operations:

- Police can take DNA samples under [Part 2B](#) section 24J(1)(a) where the person is transferred to Police custody following arrest for an imprisonable offence, or an offence against any of the specified offences in Part 3 of schedule 1.
- For Customs operations, section [24J\(1\)\(b\)](#) applies **only** if it is a joint operation and Police intend to file charges.

These samples must be requested by a constable. **Police have no authority to physically take buccal samples.** However, they may supervise the taking of such a sample by the donor themselves or a suitably qualified person (s49A).

Purpose of obtaining samples

The aim of obtaining samples for the Temporary DNA Databank profile at the time Police intend to charge a person is to increase the chances of identifying suspects. This is achieved by linking the databank profile with profiles derived from DNA samples taken from historic (unsolved) crime scenes.

DNA profiles not retained permanently

DNA profiles placed on the **Temporary (Part 2B) Databank** are not retained permanently but are removed from it after the outcome of the case has been decided. If the donor is convicted the profile is transferred to the National DNA Databank - otherwise the sample is destroyed.

Admissibility of Part 2B bodily samples in any criminal proceedings

DNA profiles derived from a bodily sample taken under [Part 2B](#) are not admissible against any person in any criminal proceedings. A District Court Judge or Youth Court Judge may, on application made in accordance of section [71A](#), consent to a bodily sample taken under Part 2B being retained and used by Police as an evidential sample (Form DNA 104).

Intention to charge (Part 2B) - deciding whether to take samples

Discretion to obtain a temporary databank sample

[Part 2B](#) of the Act does not require police to take temporary databank samples from every adult or youth they intend to charge. Police officers have discretion whether to use this power or not. The discretion must be exercised appropriately with consideration given to each case on an individual basis which must be justifiable.

A number of [factors](#) are relevant when deciding whether or not to take a bodily sample from a person under the Part 2B provisions.

Approval to submit a temporary databank sample

A **supervisor** must approve the [submission](#) of the sample to [ESR](#) to obtain the temporary databank profile. This is to assist in maintaining the integrity of the DNA process and to confirm appropriate use of the statutory discretion (see [relevant factors](#) below).

A DNA sampling qualifying charge must be filed prior to submission for analysis.

Risks if powers used inappropriately

There are legal risks to Police if the powers in [Part 2B](#) of the Act are not used appropriately.

if...	then...
Police discretion is not appropriately used	the Courts may decide that the suspect was subjected to an unreasonable search and seizure.
the power of detention is abused or is used in a way that breaches the NZ Bill of Rights Act	claims of unlawful detention against Police may result.
Police operate outside of what is legislatively acceptable	it may result in costs being awarded against Police and/or the dismissal of serious charges.

Relevant factors when deciding whether or not to take a sample

These factors (or questions) must be considered when deciding whether or not to take a sample.

Do the legislative criteria exist?

The legislation sets the qualifying offence which allows constables to compel a person:

- aged 18 years or over to provide a DNA sample for the temporary DNA databank only if they 'intend to charge' them with an 'imprisonable offence' or offence against any of the provisions listed in [Part 3](#) of Schedule 1
- who is under 18 years of age, but only if they intend to charge them with a 'relevant offence'.

Note: A DNA profile for the temporary DNA databank cannot be derived from a sample until after a charge for the appropriate qualifying offence is filed. It is unlawful to take a DNA sample under Part 2B from a person you do not intend to charge as such a sample cannot be used.

Are there reasons not to take a sample?

In each case when considering whether or not to take a [Part 2B](#) DNA sample, ask yourself:

- Can I obtain a valid sample under the circumstances? (e.g. is an appropriate kit available)
- Will obtaining a sample pose any risks to the health of the alleged offender?
- Will taking a sample compromise the safety of anyone else?

- Is the taking of the sample permitted by law?

It is not possible to anticipate all the situations when it will not be appropriate to take a Part 2B sample (although they are likely to be rare).

Is a DNA profile already held for this individual?

If a DNA sample has been taken from a person since 2000 and their DNA profile is already held on the national [DNA profile databank](#) or on the temporary databank, it will already have been searched against unsolved crime scene profiles and is not needed again for this purpose.

You should **not** take a bodily sample from a person you 'intend to charge' if a DNA databank profile is already held for the person.

Are there particular circumstances relating to the offence or suspect to support taking a DNA sample?

If the [legislative criteria exist](#) and there are [no reasons against](#) taking the sample, you may take a Part 2B DNA sample if:

- the particular circumstances, or
- nature of the current offence, or
- the particular suspect,

give you reasonable grounds to suspect that:

- the individual has committed other offending, and
- the other suspected offending is the type of offending where DNA evidence would be relevant.

Does the current offence indicate reasonable grounds to suspect other offending where DNA would be important evidence?

If a person has been apprehended for a DNA qualifying offence, in particular a serious offence or an offence for which DNA is often a factor, it is more **likely** that their DNA profile will link to a DNA profile derived from an unsolved crime scene.

These offences are generally also those that society has a greater interest in solving and include:

- serious violent offences
- sexual crime
- firearms offences
- burglary
- class A drugs offences.

You should take a [Part 2B](#) DNA sample when you intend to charge with one of these offences, unless there is a reason not to.

Are there personal characteristics that indicate reasonable grounds to suspect other offending where DNA would be relevant evidence?

Constables usually take a Part 2B DNA sample from persons who they intend to charge with:

- a [relevant offence](#) and who have **one or more** of the characteristics below, unless there is a reason not to do so;
- an [imprisonable offence](#) that is not a relevant offence, and who have **two or more** of the characteristics below, unless there is a reason not to do so.

Characteristics	Relevant offence	Imprisonable offence that is not a relevant offence
aged	under 20 years	under 20 years
with previous convictions of	6 or more	2 or more
where persons have been apprehended for	<ul style="list-style-type: none"> - threatening to kill or do grievous bodily harm - receiving or theft - fraud, or - peeping and peering 	or are on active charges for: <ul style="list-style-type: none"> - theft from car/person/dwelling - possessing knife in a public place - failure to answer District Court bail
with past prosecutions of	a medium-high frequency. That is, approximately one prosecution per year if their criminal career is 3 years or more, or more than 2 prosecutions per year if their criminal career 2 years or less.	
for taking samples	constables usually take a Part 2B DNA sample from certain persons <ul style="list-style-type: none"> - who they intend to charge, and - who have one or more of these characteristics above, unless there is a reason not to do so. 	constables should usually take a Part 2B DNA sample from certain persons <ul style="list-style-type: none"> - who they intend to charge, and - who have two or more of these characteristics above, unless there is a reason not to do so.

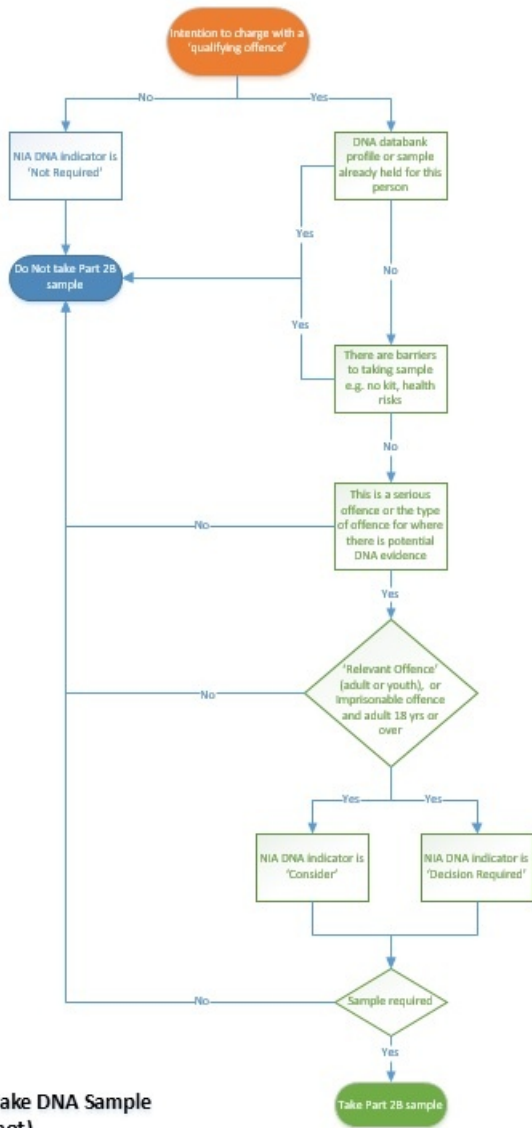
Factors not relevant to a decision to take DNA

Some factors are, by themselves, not legitimate or relevant when deciding whether or not to take a DNA sample under Part 2B. You must **never** be solely influenced by:

- the person's race, ethnic or national origins
- the person's sexual orientation or marital status
- the person's ethical, religious or political beliefs
- your own personal views (positive or negative) concerning the person
- the possible effect that taking a sample may have on the personal or professional reputation of the person or of the officer.

Tairi v NZ Police, HC Hamilton, 2006-419-1175, is leading case law around the use of discretion by Police when applying for a databank compulsion notice. In that decision Justice Stevens noted that in deciding whether a bodily sample should be taken "*some considerations will never be legitimate or relevant, for example sampling on the basis of race*".

Decision Making Tree - Part 2B (Intention to Charge) DNA Sampling



Decision Tree – Take DNA Sample (or not)

Intention to charge sampling procedures - Adults

These procedures apply to **adults - persons aged 18 years and over** - who Police 'intend to charge' with an [imprisonable offence](#) or offence against any of the provisions listed in [Part 3 of Schedule 1](#) whether they are arrested and charged, or summonsed.

The procedures are **summarised on POL 805** (in Police Forms>DNA>Sampling Forms).

Preparation

Follow these steps when preparing to take DNA 'intention to charge' samples **from adults**. (**Note:** Different procedures apply for persons over 14 years and under 18 years - See [Intention to charge sampling procedures - Youth](#) or for a summary of youth 'intention to charge' procedures, POL 806 in Police Forms>DNA>Sampling Forms).

Step	Action
1	Establish donor's full identity. This should be recorded and confirmed with fingerprints, using either LiveScan or a thumb impression on the Notice of Request. Confirm that the donor is aged of or over 18 years of age (an adult) at the time of the offence. Note: Different procedures apply for persons of 14 years and under 18 years (a youth) - Refer to POL 806.
2	Establish that the offence is an imprisonable offence or offence against any of the provisions listed in Part 3 of Schedule 1 . (This is also referred to as the 'triggering offence').
3	Consider factors relevant to the decision making process, to determine whether or not to take a DNA sample. The decision to take a DNA sample must be justified.

Requesting and taking the sample

Requests for [Part 2B](#) DNA samples **must** be made by a constable.

Follow these steps when a decision is made to request a DNA sample from **an adult**. (**Different request and sample procedure rules apply** if the donor is of 14 years and under 18 years (or the donor was of 14 years and under 18 years at the time of the triggering offence).

	StepAction (Requesting constable)
1	<p>If the donor consents to provide a DNA sample, they choose the sampling method (buccal swab or fingerprick) to be used.</p> <p>If the buccal swab method is chosen, the donor usually self administers the sampling procedure. If they do not wish to do so, or they choose the fingerprick method, the procedure must be conducted by a suitably qualified person.</p>
2	<p>If the donor refuses to provide a sample, the fingerprick method must be used and must be conducted by a suitably qualified person.</p> <p>You may use reasonable force to assist the qualified person to take a fingerprick sample. (See Use of force when a Part 2B sample is refused).</p>
3	<p>Take the DNA sampling kit for the method chosen by the donor, (or in the case of refusals, a fingerprick kit) and generate the sampling form set from NIA:</p> <ul style="list-style-type: none"> - a BioTrak DNA Sample Entry Sheet part 2B intention to charge (POL 801F) - a Notice of Request for Part 2B Intention to Charge Person to give a Bodily Sample (POL 810) - a Record of service of POL 810 form (POL 800A) - a Part 2B Intention to Charge Sampling Procedures form (POL 805). <p>Note: If NIA is unavailable or the donor does not yet have a record on NIA, these forms are available via Police Forms> DNA.</p>
4	<p>Ensure the details of the imprisonable offence (the triggering offence) are entered on the Notice of Request (POL 810) and that these documents are completed and copies provided to the donor:</p> <ul style="list-style-type: none"> - Notice of Request for Part 2B Intention to Charge Person to give a Bodily Sample (POL 810). - Record of service of POL 810 form (POL 800A).
5	<p>When handing the written notice (POL 810) to the person, go through the form with them, and explain all the matters covered there in a manner and language that they are likely to understand.</p> <p>(The sampling information provided on POL 810 is prescribed in ss 24M and 24N).</p>
6	<p>Consult and comply with:</p> <ul style="list-style-type: none"> - Form POL 743 for DNA Buccal Sample kit sampling procedure, or - Form POL 750 for DNA Fingerprick Blood kit sampling procedure. <p>The sampling procedure must be conducted according to the sampling method chosen.</p>
7	<p>Ensure that you:</p> <ul style="list-style-type: none"> - seal the tamper-proof bag containing the DNA specimen collection card (in the envelope) and DNA swab (in the self sealing plastic bag) in the presence of the donor - place the voluntary Ethnicity Questionnaire (POL 730) in the paperwork window (do not seal the window).
8	<p>Complete the sampling details (taking officer and time/date of sampling) on the BioTrak DNA Sample entry sheet (POL 801F) and place the sample and all the DNA forms in secure storage for the District DNA Data Entry/Coordinator.</p> <p>The sampling process is now complete.</p>
9	<p>The District DNA Data Entry / Coordinator creates the DNA 5N file and Biotrak records in NIA, manages the paperwork, links the triggering and related offences to the Bio Trak record once charges have been filed at court, and then generates the ESR submission authorisation sheet (POL735A) prior to the sample submission to ESR.</p> <p>(The sample cannot be submitted to ESR until charges have been filed at court.)</p>

Submission to ESR

DNA Sampling

Proactively released by New Zealand Police

ESR is **not** permitted to accept DNA samples for analysis that are not accompanied by the POL 735A form. The bodily sample must **not** be forwarded to the forensic provider (ESR) until a charge is filed.

The constable requesting sampling must consult with their District DNA Co-ordinator to arrange for the submission of the DNA sample for ESR analysis and ensure district protocols are adhered to.

Databank samples, (DATABANK VOLUNTARY, DATABANK COMPULSION NOTICE (post conviction) and INTENTION TO CHARGE,) must be forwarded to the Mt Albert facility while casework ELIMINATION, SUSPECT, and SUSPECT DUAL samples should be forwarded to the ESR laboratory (Auckland, Wellington or Christchurch Service Centre) working on the investigation samples.

Summary of Process - Flowchart

Download the summary or process flowchart for Intention to charge Adult:

-

[☒ Intention to charge - adults](#)

283.53 KB

Intention to charge sampling procedures - Youth

This section applies to persons aged **of or over 14 years and under 18 years**. The procedures are **summarised on POL 806** (available in Police Forms>DNA>Sampling Forms).

Note: Different procedures apply for adults - see '[Intention to charge sampling procedures - Adults](#)' in this chapter, or for a summary, refer to [POL 805](#).

Preparation

Follow these steps when preparing to take DNA samples under [Part 2B](#) from persons aged **of or over 14 years and under 18 years**, whom Police 'intend to charge' with a [relevant offence](#) whether they are arrested and charged or summonsed.

Step	Action
1	Establish donor's full identity. This should be recorded and confirmed with fingerprints, using either LiveScan or a thumb impression on the Notice of Request.
2	Establish that the offence is a relevant offence .
3	Consider factors relevant to the decision making process to determine whether or not to take a DNA sample. Ensure the decision to take a sample is justified.
4	Confirm that the donor is aged of or over 14 and under 18 years of age (a youth) at the time of the offence.
5	Establish if the matter is to proceed to court on arrest or be referred to Youth Aid (do not charge simply to obtain a sample as the charge may be withdrawn or you may end up losing the case).
6	Establish that Youth Justice have completed the FGC process and a charge will be filed in the court.

Requesting and taking the sample

Follow these steps when a DNA sample is requested from a youth:

	Step Action (Requesting constable)
1	<p>Request the Part 2B sample - requests must be made by the constable to whom the donor is to provide the sample.</p> <p>If the donor:</p> <ul style="list-style-type: none"> - Consents, ask them to choose a DNA sampling method - a buccal swab or fingerprick blood sample - Refuses consent, the fingerprick method must be used. You may use reasonable force to assist the qualified person to take a fingerprick sample. (See Use of force when a Part 2B sample is refused).
2	<p>Ensure another person is present.</p> <p>Under section 50A another person must be present when a donor who is 14 years or over but less than 18 years old, gives a sample. This can be a lawyer or another person of their choice, and a parent or other person who has the care of that person. No other person unrelated to the process may be present.</p>
3	<p>If a parent or caregiver is not readily available to witness the taking of a sample (see step 2), consider using a POL 803 Notice of future time, intention to charge with a relevant offence (see below this table) requiring the youth's attendance to give a bodily sample at a later time, date and place.</p>
4	<p>Under Section 50B(7), if the constable believes on reasonable grounds that any person chosen by the young person cannot with reasonable diligence be located or available within a period of time that is reasonable in the circumstances, then the constable may choose a person who is not a Police employee to be present at the time of sampling.</p> <p>If the young person chooses to waive their right to have a parent or other person who has the care of that person present, then under section 50A(5c) another person may be chosen by the constable. That person must not be a Police employee, as defined in the Policing Act 2008, Part 4.</p>
5	<p>Take the DNA sampling kit for the method chosen by the donor.</p> <p>Samples using the fingerprick method can only be taken by 'suitably qualified persons'.</p>
6	<p>Generate a DNA sampling form set from NIA. The set includes:</p> <ul style="list-style-type: none"> - a BioTrak DNA Sample Data Entry Sheet (POL 801F) - a Notice of Request for Part 2B Intention to Charge Person to give a Bodily Sample (POL 811) - a Record of service of POL 811 Notice (POL 800B) - a Part 2B Intention to Charge Sampling Procedures form (POL 806). <p>Note: If NIA is unavailable or the donor does not yet have a NIA record, these forms are available via WORD>Police Forms>DNA.</p>
7	<p>Ensure the details of the relevant offence (the triggering offence) are entered on the Notice of Request (POL 811) and that the:</p> <ul style="list-style-type: none"> - Notice of Request for Part 2B Intention to Charge Person to give a Bodily Sample (POL 811) - Record of service of POL 811 Notice (POL 800B) <p>are completed and copies are provided to the donor.</p>
8	<p>When handing the written Notice of Request (POL 811) to the youth, explain to them in a manner and language that they are likely to understand, the information contained in the notice.</p>
9	<p>Carry out the procedure according to the instructions for the sampling method chosen:</p> <ul style="list-style-type: none"> - Form POL 743 for DNA Buccal scrape kit sampling procedure, or - Form POL 750 for DNA Fingerprick Blood kit sampling procedure.
10	<p>Complete all the details on the BioTrak DNA sample entry sheet (POL801F).</p> <p>Place the DNA sample contained in the sealed security bag, and the completed DNA form set into secure storage.</p>

Submitting the sample

The District DNA Coordinator follows these steps to submit the DNA sample.

Step	Action
1	Create the NIA and BioTrak records. Once charges have been filed at court, link the charges to the Biotrak record and generate the DNA Submission Cover Sheet (POL 735A).
2	The POL 735A is generated from BioTrak and MUST be placed in the plastic window envelope prior to submission to ESR . Important: ESR is not permitted to accept DNA samples for analysis that are not accompanied by the POL 735A form.
3	Arrange the delivery of the DNA sample to ESR . The method of delivery will depend on district procedures.
4	Ensure you comply with your district protocols. Databank samples, (DATABANK VOLUNTARY, DATABANK POST CONVICTION (DCN) and INTENTION TO CHARGE) must be forwarded to the Mt Albert facility while casework SUSPECT samples should be forwarded to the ESR laboratory working on the investigation samples.

Notices requiring the youth's attendance to give a bodily sample

A constable may **require** the young person's attendance on a specified date, time and place to give a bodily sample, by giving them and a parent/care giver, notice in writing. Use a POL 803 form, Notice of future time, intention to charge with a relevant offence for this purpose.

The service of a notice is recommended when:

- without reasonable excuse, the parent/caregiver is not readily available to witness the taking of the bodily sample, or
- a young donor/parent/caregiver is unlikely to attend at a specified place/date/time to give a bodily sample when requested without a notice being served.

Youth may be arrested if they fail to attend

On a constable's application, a judge of the appropriate court may issue a warrant to arrest and detain a young person until a bodily sample is taken if the judge is satisfied that the notice was given to the young person and they failed to attend as required to give a bodily sample.

Summary of Process - Flowchart

Download the summary of process flowchart for Intention to charge Youth:

-

[Manage Intention to Charge Youth 14 to under 18 years \(July 2019\)](#)

505.9 KB

Voluntary and suspect samples

Nothing in Part 2B of the Act negates the ability of a constable to gain:

- **Voluntary databank sample** from a person (adult only) with the appropriate informed and valid consent, at any other time under Part 3 of the Act - see [DNA Databank samples \(Part 3\)](#). (BioTrak provides the ability to print a specific sampling form set, and the linkage of donor to sample to triggering offence to court outcome to profile retention status).
- **Suspect sample** to prove or disprove an individual's involvement in a specific offence

Use of force when a Part 2B sample is refused

Power to use force on refusal to provide a sample

If the person (an adult or a youth) refuses to give the sample when requested, section [54A](#) authorises you to use reasonable force to assist a [suitably qualified person](#) to take a fingerprick sample.

Caution: Use only enough force to:

- control the person
- allow the sample to be taken efficiently
- ensure the safety of everyone involved.

See the '[Use of force](#)' chapter in relation to excessive force.

Before taking a sample by force you should:

- warn the person that they commit an offence under section [77\(1\)\(b\)](#) of the Act by refusing to allow a bodily sample to be taken; and
- if the refusal is maintained, include the section [77\(1\)\(b\)](#) offence in charges laid against the person.

The s315 Crimes Act 1961' power of arrest **must not** be exercised to obtain a bodily sample. A sample may be obtained following conviction by [databank compulsion notice](#).

Reporting after use of force

After using force, submit:

- a written report to the Commissioner within three days, marking it for the attention of the Manager: National Forensic Services. This can be by email, stating details of the donor, time, date and place, sampling officer and brief circumstances
- a Tactical Options Report to your supervisor, using a [TOR](#) Notification through MS Outlook
- an update on the BioTrak record and notes section to that effect.

DNA Databank samples (Part 3)

Introduction

DNA Databank samples are taken so that a DNA profile can be derived and stored on the National DNA Profile Databank. This increases the chances of identifying suspects by linking these databank profiles with DNA samples taken from:

- future crime scenes, or
- historic (unsolved) crime scenes.

There are two ways in which a [Part 3](#) sample can be obtained for the DNA databank:

- the sample can be provided **voluntarily** by any adult aged 18 years or over, or
- a person (adult or youth) who has a qualifying conviction for an imprisonable offence can be compelled to provide a sample after a Police Inspector issues a [Databank Compulsion Notice](#) to them.

Part 2 (Suspect) profiles are transferred from casework to the DNA Databank on conviction of the offence for which the sample was taken, providing that the profile was obtained prior to the date of conviction and the suspect does not have an existing DNA databank profile.

Part 2B (Intention to Charge) profiles are transferred from the Temporary Databank to the DNA Databank on conviction of the triggering qualifying offence or a related offence.

DNA databank

A DNA profile databank is a collection of profiles from people who have [consented](#) ([Part 3](#)), or were compelled ([Part 3](#)), to give samples. It also includes the Part 2 and Part 2B convicted profiles as described above.

When an offence is committed, samples are taken from the crime scene and DNA profiles developed from them. These profiles are then compared with those on the databank to see if any can be matched.

Links to profiles stored in the databank cannot be used as evidence in a trial. Person to Crime Scene and Crime Scene to Crime Scene DNA links are reported through the DNA Mailbox. Districts investigate the link and if appropriate a further sample (suspect sample) is obtained.

How ESR processes the samples

All DNA databank processes are carried out by Environmental and Scientific Research Ltd (ESR) at the Mt Albert Science Centre in Auckland. ESR manages the databank on behalf of Police. This table outlines the process.

Stage	Description
1	ESR receives all the databank DNA sample packs at its clearing centre.
2	ESR registers receipt before forwarding them to the laboratory for processing.
3	ESR notifies Police of the samples it has received.
4	PNHQ National DNA staff update BioTrak records.
5	If the sample has been given in response to both a suspect request and a databank request (i.e. a dual sample), ESR : <ul style="list-style-type: none">- develops the profile for the suspect sample first- checks it against evidence from the crime scene- forwards the profile information to the databank for inclusion. Suspect profiles are transferred to the Databank on conviction (ESR are notified of convictions qualifying for DNA retention electronically by the National DNA Co-ordinator (BioTrak)).

Voluntary DNA Databank samples (Part 3)

Databank voluntary requests

A constable can request a bodily sample from **an adult** under section [30](#) to obtain a DNA profile for storage on the databank. This is called a 'databank voluntary request'. **Note: Consent must be given freely and willingly.**

If an adult is subsequently convicted of an imprisonable offence, their voluntary databank profile can be converted to a voluntary convicted profile on BioTrak (making the profile permanent).

Databank samples from persons under 18 years

You **cannot** request a voluntary databank sample from any person aged under 18 years ([s32](#)).

A databank profile can only be obtained from someone aged under 18 years if they have been convicted of:

- a [relevant offence](#), by transferring a Part 2B (Intention to Charge) profile taken during the investigation of that offence or a related relevant offence, to the National DNA Databank, or
- an [imprisonable offence](#), by transferring a Part 2 (suspect) profile taken during the investigation of that offence, to the National DNA Databank.

A databank compulsion notice can also be issued against a person aged under 18 years if they are convicted of an **imprisonable** offence.

Who you should consider requesting a voluntary sample from

Exercise discretion before requesting a voluntary sample to ensure that:

- the right type of active criminal or potential offender is targeted
- quality intelligence is gathered for the databank, and
- the sample can subsequently be used to obtain admissible evidence to resolve crime.

The general criteria are that the person does not already have a profile on the databank and:

- is an active criminal or recidivist offender, or is specially targeted
- has been arrested for or has committed an [imprisonable offence](#) or offence against any of the provisions listed in [Part 3](#) of Schedule 1
- as committed an imprisonable offence or offence against any of the provisions listed in Part 3 of Schedule 1) in the past, not previously provided a sample, and shows positive signs of future offending
- a suspect for an imprisonable offence or offence against any of the provisions listed in Part 3 of Schedule 1 and agrees to [dual sample](#) being taken (Note that dual sample donors must be of or over 18 years)
- Police do not intend to charge the individual with an imprisonable or offence against any of the provisions listed in [Part 3](#) of Schedule 1) (**adult**) or a [relevant offence](#) (**youth**).

Databank Compulsion Notices (DCN)

Taking samples by compulsion based on qualifying conviction

A constable may demand a DNA profile from a person for the databank if the person has a qualifying conviction for an imprisonable offence ([s39](#)). Do this by issuing a databank compulsion notice, which requires the person to provide a bodily sample for the databank.

A databank compulsion notice must be authorised by a Police Inspector or higher ranked position.

Qualifying convictions

You can only issue a databank compulsion notice if the person has been convicted of an imprisonable offence or offence against any of the provisions listed in [Part 3](#) of Schedule 1. A 'conviction' includes:

- a finding, by a Youth Court, that a charge against a young person is proved (DCNs cannot be obtained from youth who have received a s282 order only)
- an acquittal on account of insanity
- the dismissal of a charge on account of insanity
- a finding that the person is unfit to stand trial.

Note: A person under 18 can be compelled to provide a sample if they are convicted of an imprisonable offence or offence against any of the provisions listed in [Part 3](#) of Schedule 1.

The databank compulsion notice must be served ([s39](#)):

- As soon as is reasonably practicable after the date of conviction and within six months of that date where the person has not been sentenced to a term of imprisonment;
- If the person is detained under a sentence of imprisonment the notice must be served on a date that allows for the taking of the bodily sample in accordance with section [39C\(4\)](#), and prior to their release.

The time and date of sampling that is specified on the notice (POL790 or 791) must be **later than** the 14th day after the date on which the notice is served ([s39C](#)).

The date, time and place of sampling may be varied by agreement between the Constable and the donor, in which case a POL839 ((or POL 839J for a young person Variation of Databank Compulsion Notice form) must be completed by the Constable and signed by the donor.

Service of Notices

Databank compulsion notices must be served by delivering the notice to the person or putting it down in the person's presence and bringing it to the person's attention.

Alternative ways of serving notices are given in the Criminal Investigations Bodily Samples Regulations (2004), Regulation [5](#).

Flowchart

Download the Data Compulsion Notice (DCN) flowchart for more detail:

-

 [Databank compulsion notice procedure - July 2019](#)

109.63 KB

Databank Compulsion Notices (DCN) for Returning Offenders

Under section 14 of the [Returning Offenders \(Management and Information\) Act 2015](#) a bodily sample can be obtained from a returning offender, by a databank compulsion notice.

DNA Sampling

Proactively released by New Zealand Police

Refer to the [Returning Offenders - Management and Information Regime](#) chapter.

Suspect DNA samples (Part 2 samples)

Introduction

Suspect samples may be taken from a person who is suspected of having committed an [imprisonable offence](#) or offence against any of the provisions listed in [Part 3](#) of Schedule 1. The suspect can volunteer a sample, but a court order is required before a suspect sample can be compelled.

On conviction, these profiles are also transferred to the DNA Databank if a [dual DNA sample](#) was not taken.

DNA profiles derived from suspect samples may be used in evidence. See '[How suspect samples are used](#)'.

For Customs operations, [Part 2](#) samples can be taken **only** if it is a joint operation and Police intend to file charges.

Who is a 'suspect'

A 'suspect' is any person who is believed to have or may have committed an [imprisonable offence](#) or an offence against any of the provisions listed in [Part 3](#) of Schedule 1 (Criminal Investigations (Bodily Samples) Act 1995), whether or not:

- that person has been charged with that offence, or
- there is good cause to suspect that person of having committed that offence.

Requesting samples

You can request a bodily sample from a person who is 14 years or over and is a [suspect](#) in an investigation into an imprisonable offence or offence against any of the provisions listed in [Part 3](#) of Schedule 1. This is called a '[suspect request](#)'.

Note: You can only take a suspect sample for the purpose of confirming or disproving the suspect's involvement in the offence. ([s6](#))

Samples from persons under 14 years

A suspect sample by consent request cannot be made of a person who is under 14, or was at the time of the offence, if the donor can be lawfully prosecuted. If:

- the suspect is aged 10 or over but under 14, **and** the donor CAN be lawfully prosecuted, a juvenile compulsion order must be sought [[1](#)]
- the suspect is aged 10 or over but under 14, **and** an offence is alleged to have been committed when the suspect was a child **and** the child CAN NOT be lawfully prosecuted, [Part 2A procedures](#) apply and both the suspect and their parent must consent. ([Part 2A](#))

See 'Suspect samples from children' below for the process and procedures in respect of samples from children (including those who cannot be lawfully prosecuted).

-

[Suspect sample process for persons aged under 14 years - July 2019](#)

82.72 KB

Taking samples by compulsion

If a person refuses to give a sample in response to a suspect request, you can apply to the District Court for a compulsion order. This order requires the person to provide the sample.

Note: You must have good cause to suspect the person has committed an [imprisonable offence](#) or offence against any of the provisions listed in [Part 3](#) of Schedule 1, and can take suspect samples under compulsion only if the person has refused to give you a sample voluntarily.

How suspect samples are used

The DNA profile derived from the [suspect](#) sample is compared with DNA forensic evidence associated with the crime scene.

The profile can be compared to prove or disprove the donor's involvement in the specific case for which the person is giving it. It **cannot** be checked against the DNA profile databank to see whether the person has committed any other offences.

Samples are exhibits

Suspect samples are exhibits and must be handled appropriately to preserve their integrity.

Retention periods for suspect profiles

Suspect profiles can be retained for 24 months without a charge being filed. An extension may be granted under this section by a District Court Judge where certain criteria are met. Section [61](#) refers.

Dual DNA samples from adults

Dual samples are taken for both [suspect](#) and [voluntary databank request](#) purposes (s33). Note that the donor must be 18 years of age or over before a dual sample can be taken.

What is a dual sample?

A dual sample is one bodily sample given in response to a combined [suspect request](#) and a [voluntary databank request](#).

How the sample is used

The DNA profile from the dual sample is checked against evidence from the crime scene and then stored on the databank and compared against all the profiles on the databank for unsolved crimes.

Dual sampling requests

Before starting the suspect sampling process the requesting constable must establish if the donor will give a dual sample for:

- comparison with a specific case to prove or disprove the donor's involvement, and
- inclusion on the DNA Databank (only if no DNA databank profile exists for the suspect).

The dual sample procedure follows a combination of both the suspect and the Part 3 [Voluntary Databank procedures](#). When the Suspect/Dual DNA sampling procedure is selected from the DNA module in the Person Dossier of NIA the correct sampling forms for a dual sample will be generated.

If NIA is not available, the form set can be generated from the Police Forms> DNA in MS Word.

Procedures for dual requests

See [Dual requests](#) in 'Suspect samples by consent (adults and young persons)'.

Suspect samples by consent (adults and young persons)

Taking suspect samples

The main provisions for taking suspect samples by consent are contained in sections [5](#), [6](#), [7](#), [8](#), [9](#), [10](#), [11](#) and [12](#).

[Part 2A](#) (sections 24C - 24I) apply to the taking of a buccal sample from suspect who is child or was child when offence for which suspect may not be lawfully prosecuted committed. For more information see '[Suspect samples from children \(Part 2 and Part 2A\)](#)'.

When can samples be obtained from suspects?

Under section [5](#), in any criminal investigation into an [imprisonable offence](#) or an offence against any of the provisions listed in [Part 3](#) of Schedule 1 (Criminal Investigations (Bodily samples) Act 1995), committed or believed to have been committed, you can obtain a bodily sample from a suspect if:

- the suspect is aged 18 or over and consents, or
- the suspect is aged 14 or over but under 18, and both the suspect and their parent consent, or
- the sample is taken pursuant to a suspect compulsion order or juvenile compulsion order.

If:

- the suspect is aged 10 or over but under 14, and the donor CAN be lawfully prosecuted, a juvenile compulsion order must be sought^[2]
- the suspect is aged 10 or over but under 14, and an offence is alleged to have been committed when the suspect was a child and the child may **not** be lawfully prosecuted [Part 2A procedures](#) apply and both the suspect and their parent need to consent. ([Part 2A](#))

Note: The sample must be taken in accordance with the procedures set out in [Part 4](#) of the Act.

When you can request consent

Under section [6\(1\)](#), you can ask a suspect to provide a bodily sample if you:

- are requesting it for the purpose of investigating an imprisonable offence or offence against any of the provisions listed in [Part 3](#) of Schedule 1, and
- have reasonable grounds to believe that a DNA profile of the sample would tend to confirm or disprove the suspect's involvement in the offence.

Note: Consent must be given freely and willingly.

Note: If no forensic evidence is located at the scene, on or from the victim or on any person or thing associated with the offence, you cannot request a sample, because there is nothing to compare the profile with to establish involvement ([s6](#)).

Children

Section [6](#) does not apply to children (10 -13 years) who CANNOT be lawfully prosecuted for that offence. In these circumstances, you can obtain a buccal sample from a child under [Part 2A](#) of the Act. See information on '[Powers in respect of samples from children](#)'.

Carry out checks before requesting consent

Before requesting consent:

- confirm the suspect's identity and age
- check on NIA whether the suspect has previously provided a sample for a databank profile. If not and the suspect is 18 or over, make a dual request.

If a person's profile is already on the databank, investigators can use the intelligence link information (i.e. in interviews). However, they cannot use it in court as evidence. Therefore, if a person is identified as a suspect from a databank 'hit', you still need to obtain a suspect sample. The suspect sample can be used as evidence.

Inform the suspect of the required matters

Inform the suspect, in a manner and in language they are likely to understand:

- of the offence in respect of which the request is made (if possible, state the exact offence and its time, date and location)
- that Police have reasonable grounds to believe that analysis of a bodily sample would tend to confirm or disprove the suspect's involvement in the offence
- that the suspect is under no obligation to give the sample
- that if the suspect consents to the sample being taken, they may, at any time before it is taken, withdraw that consent
- that the suspect may wish to consult a lawyer before deciding whether or not to consent
- that the sample will be analysed and may provide evidence that may be used in criminal proceedings
- that if the suspect refuses to consent and there is good cause to suspect that they committed the offence or a related offence, and that offence is a relevant one, an application may be made to a District Court judge for an order requiring the suspect to give a bodily sample.

For **young persons, also** inform them that:

- the sample cannot be taken unless both they and a parent consent
- the parent is not obliged to consent.

This satisfies the requirements of section 6(2)(b) or in the case of young persons, 8(2)(b). If you wish, refer to the Police checklist form POL 827 (or POL 828 for young persons) for the suspect consent procedures.

Give written notice

Follow these steps.

Step Action

- 1 Give the suspect the 'Notice of request for suspect sample' - POL 755 for adults, POL 771 for young persons. The offence information that the person is believed to have committed must be completed on the Notice of request form.

This satisfies the legal requirement under the Act to give the suspect a written notice in the prescribed form and informs them of the matters of which they must be informed.

- 2 Write on the accompanying Record of Service form (POL 820 for adults or POL 821 for young persons) the offence the suspect is believed to have committed. If you do not do this, consent may be invalid. Complete all the other fields in the Record of Service form, including the date and time the Notice was served.
- 3 If the suspect is a young person, take all reasonable steps to give a copy of the Notice to the suspect's parent.
- 4 If the person does not speak English, use an interpreter and record consent on video.

Dual requests - applies only to adults

For a dual request, use these forms:

- Notice of request for suspect sample (POL 755).
- Notice of request for databank sample (POL 788).
- Notice of request for dual request (POL 804).
- BioTrak DNA sample entry sheet suspect consent (POL 801E).
- Record of Service of POL 804 Notice of Dual Requests (POL 824).

The request for dual consent form also informs the person that:

- they may consent to both requests or to only one of them, or may refuse both
- if they consent to only one, the information from the sample may be used for the purposes of that request only.

If you wish, use the two checklists POL 827 and POL 829.

Lawyers

If the suspect wishes to consult a lawyer, follow these steps.

Step Action

- 1 Give them access to a telephone and ensure they have privacy while making the call.
- 2 Ensure they know the lawyer or another person can be present when the sample is taken.
- 3 Ask whether they want to exercise that right. If they do, then find out the details of the person chosen and take all reasonable steps to ensure that person is notified of the request and the date, time and place at which the sample is to be taken.

Note: The person requested to attend is not compelled to do so.

Note also that **a young person must have another person present**- This can be a lawyer or another person of their choice **and** a parent or other person who has the care of that person. For young person Suspect Consent sampling requests, the bodily sample cannot be taken from the suspect unless both the suspect and a parent of the suspect consent to the taking of the sample

Validity of consent

For consent to be valid, it must be either:

- in writing and signed by the person giving the consent, or
- given orally and recorded on a video.

(s9)

If it is given in writing, it is signified on the written notice given to the person when the request is made -

- for **adults**, on the POL 755 for a suspect requestor a POL 788 for a dual request and cover sheet POL 820.
- for **young persons**, on the POL 771 Notice and Record of Service POL 821.

It can also be made on a copy of the notice. The person must write "yes" or "no" in the space provided, then sign and date the form. You should also have the donor initial the front page to show that they have read or acknowledged the paragraph relating to a voluntary sample.

Note: A notebook entry of consent is insufficient to meet the requirements of the Act.

When consent is recorded on video

When consent is recorded on video, the video must show the:

- request being made to the suspect
- suspect being handed the written notice
- suspect giving consent to the taking of the sample.

If the suspect is a **young person**, the video must **also show the parent**:

- being given a copy of the required written notice, or an acknowledgement from the parent that they have received a copy of the notice
- consenting to the taking of the sample.

Consent must be given freely and willingly. It will not be valid if it is obtained using inducements (e.g. waiving an infringement notice).

Dual requests

In the case of dual requests, the video must record the suspect being given all the relevant notices and consenting to both procedures.

Withdrawing consent

Under section 10, a person who has consented to the taking of a bodily sample in response to a suspect request may, at any time before the sample is taken, withdraw that consent, either orally or in writing. The suspect is then deemed to have refused to consent.

If a withdrawal is made orally, you must record it in writing as soon as practicable. This can be done by making an endorsement on the Record of Service (POL 820; or POL 821 for youth). Words such as “consent withdrawn” will be sufficient.

Dual requests

If the person to whom a dual request has been made consents to both requests and then withdraws consent to the use of the sample for the databank, then the sample and any information derived from its analysis may continue to be dealt with in accordance with the consent to the suspect request.

(s36(3))

Refusing consent

If, after 48 hours, the suspect has not consented to the request to take the bodily sample, the suspect is deemed to have refused the request (s11).

If the suspect refuses, follow these steps.

Step Action

- 1 Accurately record the request for a sample and the subsequent failure to consent on the relevant notice(s) of request (adult POL 755/POL 788 and POL820 or youth POL771 and POL821).
- 2 Ask yourself - is the offence the person is suspected of an imprisonable offence?

If... then...

NO take no further action to obtain a suspect sample. However, if you have made a dual request, try to obtain a sample for the databank.

YES apply to the District or High Court for an order requiring the person to provide a compulsory sample.

Follow your district procedure. Usually, a form is completed advising the appropriate person that an order is required.

Service of Orders

Where the District or High Court Registrar requests Police to serve the suspect compulsion order, it must be served by delivering the notice to the person or putting it down in the person's presence and bringing it to the person's attention.

Alternative ways of serving orders are given in the **Criminal Investigations Bodily Samples Regulations (2004), Regulation 6**

Taking the sample

When taking the sample, follow these steps.

StepAction

1 Ask the person which of these methods they prefer:

- buccal sample
- venous
- fingerprick.

Note: State that Police prefer the buccal sample and if no preference is expressed, use that method.

2 Ensure that the appropriate people are present. If the suspect chose to have a lawyer or other person present, that person should be present by now. The police officer involved in the investigation can also be present. If practical, they should be the same sex as the suspect.

Note that **in addition**, if a young person is taking a buccal sample themselves:

- an **independent adult must** be present when the sample is taken, and
- before taking the sample, the suspect must confirm in that adult's presence that they have elected to take the sample themselves.

(s52A)

3 Ensure that the suspect has reasonable privacy while the sample is being taken.

4 Take the sample. For:

- buccal samples, see '[Procedures for taking buccal sample](#)'
- blood samples, see '[Blood samples](#)' for procedures.

5 The suspect can request a second sample to arrange for their own analysis. This should be taken using the same sampling method as the first; the second barcode noted on the POL801D or E, Biotrak DNA sample entry sheet; and then provide the second DNA sample (on the FTA card inside the sealed envelope) to the suspect or the suspect's representative.

Flowcharts

Refer to the flowchart of the suspect process for adults:

-

[Suspect sample process for persons aged 18 years and over - July 2019](#)

155.64 KB

or suspect process for young persons:

-

[Suspect sample process for persons aged 14 to under 18 years - July 2019](#)

157.97 KB

Suspect samples from children (Part 2 and Part 2A)

Child defined

A 'Child' - means a person of or over the age of 10 years but under the age of 14 years (s2)

Restrictions on consent

If the offence is one for which the child cannot be prosecuted, the child may consent to the taking of a buccal sample (s8(1A)). Requests are made under [Part 2A](#) of the Act.

If the suspect is aged 10 or over but under 14, and:

- the donor CAN be lawfully prosecuted, a juvenile compulsion order under section 18(1)(b) must be sought. ([Part 2 Suspect sampling](#)) [3]
- an offence is alleged to have been committed when the suspect was a child and the child may NOT be lawfully prosecuted, [Part 2A procedures](#) apply and both the suspect and their [parent](#) need to consent.

Power to obtain a buccal sample

In any criminal investigation into an offence committed or believed to have been committed, you can obtain a buccal sample from a suspect who is a child, or was a child at the time of the offence, if the suspect **and** a parent of the suspect have consented, and the sample is taken in accordance with the procedures in [Part 4](#) of the Act.

(s24C(1))

Requesting a buccal sample

You may ask a suspect to give a buccal sample if:

- there is good cause to suspect that the suspect has committed or may have committed an offence for which, being a child at the time, they may not be prosecuted, and
- the suspect:
 - is under the age of 18, and
 - is a person in relation to whom an application for a declaration for care or protection may be made under section 14(1)(e) of the Oranga Tamariki Act 1989 if their involvement in the offence tends to be confirmed by the analysis of a buccal sample, and
 - you have reasonable grounds to believe that the analysis of a buccal sample from the suspect would tend to confirm or disprove their involvement in the offence.

(s24D)

Note: If no potential DNA evidence is located at the scene, on or from the victim or on any person or thing associated with the offence, you **cannot** request a DNA sample, because there is nothing to compare the profile with to establish involvement (s6).

Preparing to take samples

Follow these steps when preparing to take suspect samples from children:

StepAction

1 Establish donor's full identity and that they were aged of or over 10 and less than 14 years of age (**child**) at the time of the offence.

2 Sampling rules (Part 2A)

A buccal sample may be taken for the purpose of an investigation from a suspect who is a child or was a child at the time an offence was committed or believed to have been committed, and for which that suspect may **not** be lawfully prosecuted, only if:

- both the suspect and a parent of the suspect have consented to the taking of a buccal sample under section 24G; and
- the sample is taken in accordance with the procedures set out in Part 4.

(s72)

Sampling rules (Part 2)

Sampling must be 'suspect compelled' (s18) if the donor is a 'child' suspect and may be lawfully prosecuted for that offence. This includes:

- an offence of murder or manslaughter; or
- an offence (other than murder or manslaughter):
 - that is alleged to have been committed when the suspect was aged 12 or 13 years; and
 - for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
- an offence (other than murder or manslaughter):
 - that is alleged to have been committed when the suspect was aged 12 or 13 years, and was for the purposes of section 272(1)(c) of the Oranga Tamariki Act 1989 a previous offender under section 272(1A) or (1B) of that Act; and
 - for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years.

3 Different procedures apply for persons aged of 14 years and under 18 years (**youth**) - refer to POL 828. If the donor is less than 18 years old they **must** have another person present when they give a sample. This can be a lawyer or another person of their choice and a parent or other person who has the care of that person. Find out the details of the person chosen and take all reasonable steps to ensure they are notified of the request and the date, time and place at which the sample is to be taken.

Note: The person requested to attend is not compelled to do so.

4 If the child, parent or caregiver wishes to consult a lawyer, give them access to a telephone and ensure they have privacy while making the call.

5 Generate the respective sampling form set from NIA:

Part 2A: POL 772 (notice of request for suspect sample), Pol 801E (BioTrak DNA sample entry sheet, suspect consent), POL 822 Record of Service of POL 772 Notice, Suspect aged over 10 years and under 14 years and POL 143A Exhibits for laboratory examination (ESR).

Part 2: POL 796 (Juvenile Compulsion Order), POL 801D BioTrak DNA sample entry sheet, suspect compulsion order, POL 826 Certificate of Service of Suspect Compulsion Order or Notice, and POL 143A Exhibits for laboratory examination (ESR).

Sampling request procedures (Part 2A)

Follow these steps.

StepAction

- 1 Inform the suspect, in a manner and in language they are likely to understand:
 - the details of the offence in respect of which the request is being made
 - that Police have reasonable grounds to believe that the analysis of a buccal sample would tend to confirm or disprove the suspect's involvement in the offence
 - that the sample may not be taken unless both the suspect and the suspect's parent consent
 - that the suspect is under no obligation to give the sample
 - that no parent is under any obligation to consent
 - that if the suspect or parent consents to the taking of the sample, they may, at any time before it is taken, withdraw their consent
 - that the suspect and parent may wish to consult a lawyer before deciding whether to consent
 - that the suspect or parent can consult with any person (not being a Police employee) they wish before deciding whether to consent
 - that the sample will be analysed and may, if it tends to confirm the suspect's involvement in the offence, be used to make an application for a care or protection order under section 14(1)(e) of the Oranga Tamariki Act 1989, but may not be used to prosecute the suspect for any offence.
- 2 Give the suspect a POL 772 (Notice of request for suspect sample). This satisfies the legal requirement under section 24E(a) to give the suspect a written notice in the prescribed form.
- 3 Ensure that:
 - the correct offence details which the suspect is believed to have committed are endorsed on the form
 - you give a copy of the notice (POL 772) and the Record of Service (POL 822) to the suspect's parent
 - if the person does not speak English, use an interpreter and record consent on video.
- 4 Give the suspect access to a telephone if they wish to consult a lawyer and ensure they have privacy while making the call.
- 5 Ensure the suspect knows their lawyer or another person can be present when the sample is taken. If they do wish a person to be present, find out the details of the person chosen and take all reasonable steps to ensure the person is notified of the request and the date, time and place at which the sample is to be taken.

Note: The person requested to attend is not compelled to do so.

A suspect checklist (POL 828) is available from NIA.

Validity of consent

Under section 24G, the same procedures apply as for young persons to [ensure consent given is valid](#), except that if given in writing, it is signified on the written notice (POL 772). The same procedures as for young persons apply when consent is [recorded on video](#).

Consent must be given freely and willingly, without inducements.

Withdrawing consent

Under section 24H, a suspect or a suspect's parent who has consented to the taking of a buccal sample may, at any time before the sample is taken, withdraw that consent orally or in writing.

If a withdrawal is made orally, you must record it in writing as soon as is practicable. This can be done by making an endorsement on the cover sheet (POL 822). Words such as "consent withdrawn" will be sufficient.

Refusing consent

If the suspect or a parent does not consent, you have no power to compel the suspect to submit to the procedure.

By using [Part 2](#) legislation you can compel a child suspect to give a bodily sample only if the triggering offence is:

- an offence of murder or manslaughter; or
- an offence (other than murder or manslaughter):
 - that is alleged to have been committed when the suspect was aged 12 or 13 years; and
 - for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
- an offence (other than murder or manslaughter):
 - that is alleged to have been committed when the suspect was aged 12 or 13 years, and was for the purposes of section 272(1)(c) of the Oranga Tamariki Act 1989 a previous offender under section 272(1A) or (1B) of that Act; and

for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years.

For procedures on obtaining suspect samples by compulsion, see [‘Taking samples by compulsion’](#).

Taking the sample

The sample must be a buccal sample (mouth swab). When obtaining the sample, follow these steps.

Step Action

- 1 Ask the child to choose between:
 - taking the sample themselves under Police supervision
 - having the sample taken by a [suitably qualified person](#)
 - having the sample taken by a [parent](#) under Police supervision.
- 2 Ensure that these people are present:
 - lawyer or other person, if the suspect chose to have one present
 - independent adult, if the suspect is taking the buccal swab themselves - In this situation, before taking the sample, the suspect must confirm in that adult's presence that they have elected to take the sample themselves (s52A).

Note: The constable involved in the investigation can also be present.
- 3 Ensure that the suspect has reasonable privacy while the sample is being taken.
- 4 Take the sample - see [‘Procedures for taking buccal samples’](#).
- 5 Ask the suspect if they require a second sample, which they can have analysed for their own use.

Flowchart

Refer to the flowchart of the suspect process for children:

-

[Suspect sample process for persons aged under 14 years - July 2019](#)

82.72 KB

Elimination samples (Casework)

Elimination samples must only be taken from people who are in no way suspected of the offence.

They are not governed by Criminal Investigations (Bodily Samples) Act 1995.

Elimination samples are always casework related and taken and submitted to ESR when:

- casework relating to an imprisonable offence(s) or offence against any of the provisions listed in [Part 3 of Schedule 1](#) has:
 - a potential DNA casework related profile, and
 - there is a need to separate the donor's DNA from other DNA in a crime sample,
- there is a possibility of inadvertent cross-contamination.

Elimination (NOT [Criminal Investigators Elimination Database \(CIED\)](#) samples) are recorded and managed through BioTrak and treated as case exhibits.

For elimination samples four forms are required:

- DNA 300 DNA Elimination Sample Consent Form
- POL 801G - Biotrak DNA Sample Data Entry Sheet Elimination
- POL 143A - Exhibits for laboratory examination (ESR). Clearly indicate that the sample is for elimination purposes only, and
- POL 735A ESR Submission Cover Sheet (generated from NIA BioTrak).

The sampling forms are in Police Forms> DNA>Elimination-DNA sampling>Elimination-Case related; or can be generated in NIA from the Person [Dossier view], Forms>DNA Sampling Forms>Elimination.

Note: Samples taken purely for elimination or identification purposes ([Missing Person](#) and [DVI](#)) cannot be converted to suspect samples or to obtain a sample for databank purposes. They can only be used for the particular investigation for which they were taken and are not taken to obtain a DNA profile for inclusion on the National DNA Databank.

Missing person identification samples (not DVI)

For missing persons' identification these four forms are required:

- DNA 300 DNA Elimination Sample Consent Form
- POL 801G - Biotrak DNA Sample Entry Form Elimination
- POL 143A - Exhibits for laboratory examination (ESR). Clearly indicate that the sample is for elimination purposes only, and
- POL 735A ESR Submission Cover Sheet (generated in NIA BioTrak).

The sampling forms are in Police Forms> DNA>Elimination-DNA sampling>Elimination-Case related; or can be generated in NIA from the Person [Dossier view], Forms>DNA Sampling Forms>Elimination.

Missing person identification DNA samples are taken from family members of [missing persons](#) requiring identification.

Missing person's identification DNA samples are recorded and managed through BioTrak and treated as case exhibits.

Disaster Victim Identification (DVI) family DNA reference samples

In disaster situations potential victims can be identified by DNA comparison between recovered human remains and a biologically related family member.

For DVI purposes the following DNA forms (available through Police Forms> DNA> Elimination DNA Sampling) are required:

- DNA 300 DNA Elimination Sample Consent Form
- POL 801G - Biotrak DNA Sample Entry Form Elimination
- POL143A Exhibits for Laboratory Examination (ESR).
- POL735A ESR Submission Cover Sheet, required when submitting the sample to ESR.

The sampling forms are in Police Forms> DNA>Elimination-DNA sampling>Elimination-Case related; or can be generated in NIA from the Person [Dossier view], Forms>DNA Sampling Forms>Elimination.

These samples **must** be entered onto the NIA BioTrak system.

Criminal Investigators Elimination Database (CIED)

The introduction of the Crime Investigators Elimination Database (CIED) enables rapid elimination of 'innocent' investigator contamination during the normal course of duty against DNA profiles developed from crime scenes which are to be loaded onto the Crime Sample Database (CSD) by ESR.

Police employees and associates may voluntarily provide bodily samples and biometric information (s82 Policing Act 2008). Section 83 (2) sets out restrictions regarding the use of such information. It must be used only for matching against other information held by Police for the purpose of eliminating the donor from being considered in the investigation of crime and the information is not admissible in evidence in any proceedings against the donor even after the donor ceases to be a Police employee or Police associate.

The providing of samples for inclusion on the CIED is voluntary. Police employees and other selected forensic practitioners (e.g. Pathologists), have two options; to provide an elimination sample for a specific case or for inclusion on the CIED for comparison against future cases.

There is a right to withdraw consent. If an individual withdraws consent or leaves the Police, the DNA profile and related information will be removed from the elimination database.

For Crime Investigators (staff) Elimination this form (available through Police Forms> DNA> Elimination DNA Sampling) is required:

- POL 845 - Crime Investigators (staff) Elimination Consent Form

These samples are **not** recorded in NIA or on the NIA/BioTrak system.

Recording and submitting samples for analysis

Recording the sampling in NIA/BioTrak

All DNA sampling **must** be recorded within NIA/BioTrak. This includes DVI elimination DNA samples. The only exception is CIED samples, which are not recorded or managed within NIA/Biotrak, but are managed by the O/C case.

BioTrak is used for the recording and maintenance of DNA samples collected and held on a person. A DNA (5N) occurrence is required in all cases where a BioTrak record is created. The suspect, intention to charge and databank post-conviction DNA samples taken are held against a group of charges/clearances and can only be retained if those charges/clearances are upheld. Voluntary databank samples are not linked to **a charge group**.

The NIA/BioTrak DNA Sampling Management System:

- prints out sampling category form sets
- collects accurate and relevant DNA sampling information to support the sampling decision making process so that Police constables have accurate information to judge whether to take DNA samples from individuals
- links individuals' DNA samples to specific charges to ensure samples profiled, subsequently searched and identified against outstanding crime scene profiles are legally and accurately managed and reported
- creates 'candidates for retention' and 'candidates for destruction' reports based on court outcomes to notify ESR.

Important: Every bodily sample taken must be treated as an exhibit and its integrity maintained.

The constable must:

- complete the sampling details on the BioTrak data entry sheet (Pol 801)
- submit it to District DNA Data entry/Coordinator to record sampling on BioTrak, link related offences to the triggering offence and generate ESR Submission Cover sheet (POL 735A)
- complete a POL 143 Exhibits for Laboratory Examination (ESR) form for suspect and or elimination DNA samples and obtain district authorisation.

The District DNA co-ordinator must:

- record the DNA sampling within NIA
- link the charge group (if applicable)
- generate the POL 735A ESR Submission Cover Sheet.

The sample can now be submitted for analysis.

Submitting the sample to ESR for analysis

Follow these steps.

Step Action

- 1 The POL 735A is generated from BioTrak and **MUST** be placed in the plastic window envelope before submission to ESR. Attach the authorised POL 143 form (for suspect and elimination category samples).

Important: ESR is **not** permitted to accept DNA samples for analysis that are not accompanied by the POL 735A and POL 143 forms.

- 2 Arrange the delivery of the DNA sample to ESR. The method of delivery will depend on district procedures. Consult your district co-ordinator to ensure you comply with your district's protocols. Databank samples, (DATABANK VOLUNTARY, DATABANK POST CONVICTION (DCN) and INTENTION TO CHARGE) must be forwarded to the Mt Albert facility while casework SUSPECT samples should be forwarded to the ESR laboratory working on the investigation samples.

Management of DNA samples and profiles

Introduction

The management of DNA samples and profiles is a role conducted jointly between ESR and the National DNA Co-ordinator (Forensic Services PNHQ).

The sample status is reported to Police, as Profile Obtained, Admin Error or Insufficient DNA. The retention status is researched by Police, based on the court outcome and reported back to ESR; Profile for Retention, Profile for Destruction, or Pending (Court Outcome / Appeal). The appropriate retention period (databank expiry date) is also set by the National DNA Co-ordinator and National DNA Administrator.

Retention periods

DNA profiles are not necessarily held indefinitely on conviction.

This table sets out the retention periods based on Youth Court outcomes.

Conviction or order	Retention period(s)
Section 282 OT Act order made - charge proven	4 years:
(NOTE: There is NO authority to take DCN (Post Conviction) DNA samples for Section 282 outcome)	<ul style="list-style-type: none">- a second proven section 282 OT Act order during that initial 4 years carries a separate 4-year retention period that runs concurrently with the first period = Total 4 years;- a subsequent proven section 283 OT Act order carries a 10-year retention period that also runs concurrently with the first period = Total 10 years;- a subsequent conviction without imprisonment carries a 10-year period that also runs concurrently with the first period = Total 10 years.
Section 283(a) to (n) OT Act order made - charge proven	10 years:
	<ul style="list-style-type: none">- a subsequent proven section 282 OT Act order carries a 4-year retention period that runs concurrently with the 10-year period = Total 10 years.
Section 283(o) OT Act order made - charge proven	10 years:
	<ul style="list-style-type: none">- a subsequent proven section 282 OT Act order carries a 4-year retention period that runs concurrently with the 10-year period = Total 10 years.
Convicted by District Court but not sentenced to imprisonment	10 years:
	<ul style="list-style-type: none">- a subsequent proven section 282 OT Act order carries a 4-year retention period that runs concurrently with the 10-year period = Total 10 years.
Sentenced to imprisonment by a court	Indefinite
Others (e.g., section 283 OT Act order is made and during the 10-year retention period another section 283 OT Act order is made)	Indefinite

Who manages profile destruction?

National Forensic Services staff manages destruction of DNA profiles.

Destruction of suspect samples

Under section 60, every bodily sample taken from a suspect, and the record of analysis relating to every sample, must be destroyed 24

months after the sample has been taken unless, within the 24 months, the suspect has:

- been convicted of an [imprisonable offence](#) or offence against any of the provisions listed in [Part 3](#) of Schedule 1 related to the taking of that sample and the appeal period has expired, or
- been charged with the offence for which the sample was taken or a related offence and the matter has not yet been finalised in court, or
- not yet been charged and police have obtained an extension to retain the sample for longer than 24 months from the District Court (see section [61](#)).

Who manages sample destruction?

The National Forensic Services staff manage and inform ESR regarding destruction of suspect samples.

Destruction/removal of temporary databank samples/profiles

Every bodily sample taken from a person at the time Police 'intend to charge' them (i.e., under [Part 2B](#)), and the record of analysis relating to every sample, must be destroyed two months from the date the sample has been taken ([s60A](#)) unless:

- the person has been charged; represented by the filing of a charging document in Court; and
- that charge is for an imprisonable offence or offence against any of the provisions listed in Part 3 of Schedule 1 (Adult) or 'relevant offence' (Youth) - The triggering offence.

([s60A](#))

Every DNA profile and related information must be destroyed as soon as practicable when:

- the charge is withdrawn, or
- the person is acquitted of the offence.

If the person is convicted of the triggering offence, the profile is removed from the temporary databank and transferred to the national DNA databank.

NIA/ BioTrak DNA sampling management system

The NIA/BioTrak DNA sampling management system:

- prints out sampling category specific form sets
- collects accurate and relevant DNA sampling information to support the sampling decision making process so that Police constables have accurate information to judge whether to take DNA samples from individuals
- links individuals' DNA samples to specific charges to ensure samples profiled, subsequently searched and identified against outstanding crime scene profiles are legally and accurately managed and reported
- records and reports 'candidates for retention' and 'candidates for destruction' reports based on court outcomes to notify ESR.

Important: Every bodily sample taken must be treated as an exhibit and its integrity maintained.

If...

the bodily sample is taken by a constable at the point of arrest and a charge is filed for an appropriate offence,

a bodily sample is taken by a constable at the time they 'intend to charge' a person (summons procedure) and the charging document is not filed in the court,

by the expiration of 2 months from the day the bodily sample was taken, if the charge(s) or related charge has not been filed at court,

then...

normal procedures should be carried out with the sample, and it should be forwarded to ESR for analysis.

the bodily sample must be stored in a secure place until the charge is filed in the court.

the District DNA/BioTrak Co-ordinator must ensure that the sample is destroyed.

- [1] An offence of murder or manslaughter and the suspect may lawfully be prosecuted for that offence (alleged to have been committed when the suspect was aged 10-11years)
- An offence of murder or manslaughter; or an offence (other than murder or manslaughter) alleged to have been committed when the suspect was aged 12 or 13 years; and for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or

an offence (other than murder or manslaughter) that is alleged to have been committed when the suspect was aged 12 or 13 years, and was for the purposes of section 272(1)(c) of the Oranga Tamariki Act 1989 a previous offender under section 272(1A) or (1B) of that Act.

- [2] An offence of murder or manslaughter and the suspect may lawfully be prosecuted for that offence (alleged to have been committed when the suspect was aged 10-11years)
- An offence of murder or manslaughter; or an offence (other than murder or manslaughter) alleged to have been committed when the suspect was aged 12 or 13 years; and for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or

an offence (other than murder or manslaughter) that is alleged to have been committed when the suspect was aged 12 or 13 years, and was for the purposes of section 272(1)(c) of the Oranga Tamariki Act 1989 a previous offender under section 272(1A) or (1B) of that Act.

- [3] An offence of murder or manslaughter and the suspect may lawfully be prosecuted for that offence (alleged to have been committed when the suspect was aged 10-11 years)
- An offence of murder or manslaughter; or an offence (other than murder or manslaughter) alleged to have been committed when the suspect was aged 12 or 13 years; and for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or

- an offence (other than murder or manslaughter) that is alleged to have been committed when the suspect was aged 12 or 13 years, and was for the purposes of section 272(1)(c) of the Oranga Tamariki Act 1989 a previous offender under section 272(1A) or (1B) of that Act; and for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years).