

NIAGARA FALLS POLICE DEPARTMENT

General Order

DATE: 09/27/2013	SUBJECT: DNA Collection	NUMBER: 332.00 (NYSLEAP 0-50-9)
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I. Purpose:

- A. The purpose of this policy is to establish guidelines for the lawful collection of DNA samples and to establish protocol for effective management of offenders failing to comply with the provisions of the New York State Executive Law mandating the collection of DNA specimens.

II. Policy:

- A. The Niagara Falls Police Dept. will conduct the expeditious collection of DNA samples from convicted persons, consistent with New York State law and the procedures detailed herein. Additionally, this agency will take prompt and effective enforcement measures against offenders failing to comply with these standards.

III. Procedures:

A. General Protocol:

- 1. DNA collection shall be performed by the originating law enforcement agency unless specifically requested by the court or other law enforcement agency.

B. Maintenance:

- 1. CSU Officers will scrutinize all resources (e-justice) regarding convicted persons required to provide samples and work in conjunction with local, county and state courts to determine DNA compliance or if a sample needs to be collected.

C. Court Orders for DNA Collection:

1. The majority of DNA collection by the Niagara Falls Police Dept. will be conducted by court order as part of sentencing or a compulsion to comply; such as a search warrant.
 - a. An offender who is required to provide DNA should be provided with the following from the court in which they were convicted:
 1. An order specifying the date, time and place they should appear to provide the sample.
 2. The order will be executed by the Judge and countersigned by the defendant indicating they have reviewed and understand the order and will comply on the specified date and time.
 3. The order will also inform the defendant that failure to provide a DNA sample within the specified time frame may result in further legal proceedings against the defendant.
 4. One copy shall be provided to the court, one to defendant, and one copy shall be kept on file by this agency.
2. Voluntary DNA Collection:
 - a. During the course of certain investigations, as an investigatory tool, individuals may be requested by detectives to voluntarily provide a DNA sample. CSU officers, under the direction of the Chief of Detectives, are to collect the samples under the same protocol as court ordered collection.

D. Failure and Refusal to Comply:

1. If an instance occurs where an offender fails or refuses to comply with a lawful order to provide a DNA sample:
 - a. The CSU Officer will notify the lead Detective on the case. The Detective will lay appropriate charges (NYS PL 215- Criminal Contempt) or direct the notifying officer to complete the necessary accusatory instruments.

- b. The issuing court shall be notified by this agency by indicating "Refusal to Comply" at the bottom portion of the court order and returning it to the Court Clerk. Copies of all paperwork shall be maintained by this agency.
2. In the event an offender is not present or an arrest cannot be made, the charging officer shall apply for a warrant according to NFPD protocol.
3. For purposes of DNA collection within the framework of this policy, members will not use force in the collection of any such sample absent a court order specifically authorizing an application of force. Any such order should be first reviewed by a Lieutenant, Captain or Chief of Detectives prior to its execution.

E. DNA Collection Process:

1. Members will collect DNA specimens from convicted offenders under the following circumstances:
 - a. Upon receipt of a court order which directs the offender to appear to submit for a mandatory DNA specimen.
 - b. Upon review of a criminal history report indicating that an offender owes a DNA specimen.
2. CSU Officers are the primary collectors of DNA samples; when CSU Officers are unavailable, the Desk Lieutenant will request a CID detective to respond to ensure the collection.
 - a. Every effort is to be made to collect DNA samples while the subject is compliant and available. In instances where no CSU Officer or CID Detective is available, the collection will be performed by another officer.
3. DNA collections for the New York State DNA Databank will be performed using specimen kits provided by NYS DCJS and in accordance with the instructions provided therein.

4. Members of the NFPD assigned to collect DNA specimens shall be trained in accordance with NYS DCJS protocol.
5. Upon collection of a DNA sample, the member performing the collection will complete all applicable paperwork, including the submission form and an endorsement of the bottom portion of the court order indicating collection. The order will be forwarded to the issuing court and a copy of the endorsed order will be retained by this agency.