NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

# DNA IDENTIFICATION ACT
# SAMPLING ORDERS AND AUTHORIZATIONS

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**NOTE:**

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

# DNA IDENTIFICATION ACT: AUTHORIZATIONS and ORDERS re SAMPLING

## INTRODUCTION

DNA Data Bank legislation has created a valuable tool for law enforcement. A properly and fully subscribed National DNA Data Bank promises to assist police in the identification of persons who have committed crimes, both local and cross-jurisdictional. In this way, its reputation for success might serve as a deterrent to offenders to re-offend. As importantly, this databank should aid law enforcement to narrow the focus of investigation by excluding as suspects persons who have been wrongly accused. Crown Attorneys play an integral role in the successful utilization of this legislated scheme.

This policy document provides guidance to prosecutors in the exercise of discretion available under the *DNA Identification Act*, and the rationale for many aspects of the policy is set out. This document also suggests “best practices” to be utilized in the practical application of the policies.

The policy and practice guidance contained in this document may be amended as courts interpret the DNA legislation.

## 1. DNA WORKING GROUP

**The PPS shall maintain, as a standing committee, a DNA Working Group. The mandate of such body shall include, but not be limited to, developing and recommending for approval of Public Prosecution Service (PPS) Executive Committee policy, practice and procedure protocols intended to promote uniformity and consistency within the Service in seeking authorizations/orders for DNA sampling of offenders convicted, discharged or found guilty of designated offences.**

In anticipation of the then proposed DNA legislation, the PPS established a DNA Working Group. It consisted of a Chief Crown, five Crowns from Halifax Region and one Crown from each of Central, Western, and Cape Breton Regions.

The group liaised with Federal Department of Justice officials, Police, and Crown Counsel from other jurisdictions in an effort to encourage uniformity and consistency of practice across jurisdictions. The group has continued to function since the coming into force of the *DNA Identification Act*. It maintains a free flow of information with counterparts throughout the country. The established network allows for ready access to research papers and

scholarly articles on the effectiveness of the National DNA Data Bank and the timely release of judicial interpretation of DNA legislation. The DNA Working Group has proven to be a valuable asset to the PPS in providing practice memoranda and guidance to Crown Attorneys throughout the Service. The memoranda and suggested practices have been developed as a result of reviewing information about the experiences of Crown Attorneys in the courts of other jurisdictions. These communications have been designed or intended to promote uniformity and consistency of practice in relation to the DNA legislation.

A DNA Working Group, as a standing committee, provides the PPS with a valuable asset. Such body is able to keep abreast of policy and practice developments in other jurisdictions. The group is able to access the latest development in judicial interpretation of DNA legislation. As a consequence, therefore, the DNA Working Group is ideally suited to develop and recommend to the PPS Executive Committee policy, practice and procedure protocols in relation to seeking authorizations and/or orders for DNA sampling of offenders convicted, discharged or found guilty of designated offences.

The continued existence of a DNA Working Group, will allow the Service to keep abreast of the evolving body of decided cases in relation to this legislation and the developing literature on the effectiveness of similar legislative schemes in other jurisdictions.

## 2. RETROACTIVE AUTHORIZATIONS

**The DNA Working Group, in addition to the other responsibilities, shall process on behalf of the police, applications for authorizations for sampling from those persons identified as retroactive offenders. In all such cases, the Police and Crown Attorneys shall seek DNA sampling authorizations for retroactive offenders. In rare and exceptional circumstances, the DNA Working Group, through consensus, may in its discretion decide not to proceed with such an application if the circumstances of the offences or offender do not require such an authorization.**

The following offenders are covered retroactively:

- dangerous offenders (per Part XXIV of the *Criminal Code*)
- murderers, and
- those offenders convicted of attempted murder, or conspiracy to commit murder or to cause another person to be murdered, or manslaughter, or certain sex offences, who are serving a sentence of imprisonment for the offence at the time of the Crown's application.

Given public safety concerns, the serious nature of the offences in question, and the potential usefulness of DNA testing to solve “cold cases”, current cases and future cases, it would be extremely rare to decide not to proceed with a retroactive DNA Data Bank application. There must remain, however, a discretion not to proceed with such an application if the circumstance of the offence or offender do not require such an authorization. It is difficult to predict the unique circumstances which might lead the Crown not to seek such an authorization, but any such decision should be the subject of consultation and should be reported centrally to ensure consistency. The DNA Working Group responsible for making such applications, shall exercise discretion not to proceed with such applications only through consensus and shall keep a record of the reasons for exercising such discretion in each case.

## 3. PREVIOUS RETROSPECTIVE MATTERS

Prior to the passage of amendments to the DNA Data Bank legislation on January 1, 2008, a distinction was drawn between designated offences committed prior to June 30, 2000 (the date of passage of the original DNA Data Bank legislation) and those committed on or after that date. With the passage of these amendments, however, this distinction was eliminated. No special consideration is now given to offences committed either prior to June 30, 2000, or prior to January 1, 2008.

## 4. DESIGNATED OFFENCES

Under the DNA legislation, designated offences are categorized as either primary or secondary. There are also sub-categories within the lists of primary and secondary offences. These distinctions impact significantly on the Crown burden in obtaining orders for DNA sampling of offenders convicted of designated offences. As a result, Crown policy considerations and practices must reflect this legislative differentiation.

### (1) Primary Designated Offences

#### (a) Mandatory:

**The Crown Attorney shall remind the court of its obligation to issue a DNA sampling order, at the time of sentencing, in all cases involving primary mandatory designated offences.**

Primary mandatory offences are listed in paragraph (a) of the definition of "primary designated offence" in s. 487.04 of the *Criminal Code*. There is no discretion in the court to decline to make a DNA sampling order for offenders convicted, discharged, or found guilty as a young person of these offences. However, for offenders found not criminally responsible for one or more of these offences on account of a mental disorder, there is discretion in the court as will be discussed below.

**(b) Presumptive:**

**The Crown Attorney shall remind the court of its obligation to issue a DNA sampling order, at the time of sentencing, in all cases involving primary presumptive offences. The defence may, however, apply to oppose the issuing of the order. In all such cases, the Crown Attorney shall not join in the defence application.**

Primary presumptive offences are listed in paragraphs (a.1), (b), ( c), (c.1) and (d) of the definition of "primary designated offence" in s. 487.04 of the *Criminal Code*. The court is required to make the order for DNA sampling for all offenders convicted, discharged, or found guilty as a young person of a primary presumptive offence unless the offender meets the burden established in paragraph 487.052 of the *Criminal Code*. The Crown does not need to apply for an order in such case. The Crown Attorney should, however, be prepared to bring the requirement for a DNA sampling order to the court's attention, if necessary. Again, for offenders found not criminally responsible for one or more of these offences on account of a mental disorder, there is a greater discretion in the court to decline to make an order, as will be discussed below.

Given the very serious nature of primary presumptive offences, it is accepted that the best interest of the administration of justice requires a DNA sampling order for these offences, absent exceptional circumstances. It is difficult to define in absolute terms what would be exceptional circumstances. The Crown Attorney should be prepared to argue that the court's decision to not issue an order in such case must be limited to circumstances where public safety, including that of specific victims, or the overall public interest is demonstrably better served by not seeking a DNA sampling order. This is especially so where the intrusion on the offender's physical being is so minor in the actual sampling process. The Crown Attorney should not join in the defence argument that such sampling should not be ordered.

## (2) Secondary Designated Offences

### (a) Discretionary:

**The court has a discretion to order DNA sampling in cases of secondary discretionary offences. The Crown Attorney should argue in favour of the granting of an order where, in the opinion of the Crown Attorney, the circumstances of the offence or offender disclose a reasonable possibility that the offender poses a risk to others in the community to re-offend, or that the offender has committed serious offences in the past for which he or she has not been charged. Whether or not an order is granted, the court must give reasons for its decision. The Crown Attorney should remind the court of this obligation.**

Secondary discretionary offences are listed in paragraphs (b), ( c), (d) and (e) of the definition of "secondary designated offence" in s. 487.04 of the *Criminal Code*. The court may make a DNA sampling order for such an offence upon application by the Crown Attorney following conviction, discharge, or a finding of guilt as a young person where it is "in the best interests of the administration of justice" (s. 487.051(3) of the *Criminal Code*).

In determining whether to seek an order, the Crown Attorney should assess what risk, if any, the offender poses to others in the community to re-offend. The Crown Attorney should also assess any apparently reliable information that suggests the offender has committed serious offences in the past for which he or she has not been charged. In making such an assessment.

Presence of one or more of the following factors (the list is not exhaustive) will tend to cause the Crown Attorney to seek a DNA sampling order:

- offender appears to take pleasure in suffering of people or animals
- gratuitous violence
- offender enlists others in criminal behaviour
- inability to control sexual impulses
- hate crime
- sexual motive
- home invasion motive
- use of weapons

- prior convictions for violent or designated offences
- high degree or frequency of violent or aggressive behaviour
- transient lifestyle as reflected in criminal record
- psychological, pre-sentence, or other reports indicating risk of recidivism
- pattern of escalating violence or other criminality
- offender habitually targets one particular victim or class of victim
- stalking behaviour
- physical/psychological harm caused to victim
- offender has or had access to a vulnerable victim
- deliberate targeting of the vulnerable
- offender's actions reflect an indifference to others
- deliberate, violent intent
- violent/criminal behaviour caused by unresolved addiction
- prior acts of violence/criminality which are not reflected on criminal record
- membership in a criminal organization as defined by the *Criminal Code*.

The presence of one or more of the following factors will tend to cause a Crown Attorney to decline to seek such an order:

- first offender
- youthful offender
- psychological/psychiatric or pre-sentence report indicating a low risk of recidivism
- relatively minor instance of the offence in question
- no other indicators that the offender is at risk of re-offending.

After deciding to bring an application in the case of secondary discretionary offences, Crown Attorneys should argue that the court must balance the public interests in safety and in preventing and detecting crime, together with the offender's privacy and security interests. Points to raise are: the sampling process constitutes a minimal physical intrusion; the offender has a reduced expectation of privacy after being found guilty; and the legislation provides sufficient protection for informational privacy.

The offences covered as secondary discretionary offences range from the most minor assault, threat, failure to appear or breach of undertaking to very serious offences such as break and enter into a building, intimidation or arson. Arguably, in many cases it will be in the best interests of the administration of justice to have the court issue the DNA sampling order. The Crown Attorney should be able to articulate a reasonable basis upon which he or she can argue for such an order. Risk to others in the community to re-offend and knowledge the offender has committed serious offences in the past for which he or she has not been charged, may provide such justification. In determining such risk, the Crown Attorney should have regard to the list of factors set out above. The list is not exhaustive. Whether an order is granted in such case, the court must give reasons for its decision. The Crown Attorney should remind the court of its obligation to do so.

**(b) Hybrid:**

**The court has a discretion to order DNA sampling in cases of secondary hybrid offences. The Crown Attorney should argue in favour of the granting of an order where, in the opinion of the Crown Attorney, the circumstances of the offence or offender disclose a reasonable possibility that the offender poses a risk to others in the community to re-offend, or that the offender has committed serious offences in the past for which he or she has not been charged. Whether or not an order is granted, the court must give reasons for its decision. The Crown Attorney should remind the court of this obligation.**

Secondary hybrid offences are specified in paragraph (a) of the definition of "secondary designated offence" in s. 487.04 of the *Criminal Code*. They consist of all *Criminal Code* offences other than those identified as "primary designated offences" for which the maximum punishment is imprisonment for five years or more and which are prosecuted by indictment. The court may make a DNA sampling order for such an offence upon application by the Crown Attorney following conviction, discharge, or a finding of guilt as a young person where it is "in the best interests of the administration of justice" (s. 487.051(3) of the *Criminal Code*).

The policy and practice considerations for secondary hybrid offences are identical to secondary discretionary offences.

### (c) Not Criminally Responsible (NCR)

**The court has a discretion to order DNA sampling in cases of all designated offences where there has been a verdict that the offender is not criminally responsible on account of a mental disorder. The Crown Attorney should argue in favour of the granting of an order where, in the opinion of the Crown Attorney, the circumstances of the offence or offender disclose a reasonable possibility that the offender poses a risk to others in the community to re-offend, or that the offender has committed serious offences in the past for which he or she has not been charged. Whether or not an order is granted, the court must give reasons for its decision. The Crown Attorney should remind the court of this obligation.**

Secondary NCR offences are specified in section 487.051(3)(a) of the *Criminal Code*. They consist of all designated offences (both primary and secondary) committed by offenders found to be not criminally responsible on account of a mental disorder. The court may make a DNA sampling order for such an offence upon application by the Crown Attorney following conviction, discharge, or a finding of guilt as a young person where it is "in the best interests of the administration of justice" (s. 487.051(3) of the *Criminal Code*).

The policy and practice considerations for secondary NCR offences are identical to secondary discretionary and secondary hybrid offences.

## 5. EXISTING DNA PROFILES

**The Crown Attorney with carriage of a case shall seek a DNA sampling order even if the Crown Attorney is aware that the offender's DNA profile is already in the convicted offender's index of the National DNA Data Bank. The Crown Attorney should be prepared to argue the utility of the National DNA Data Bank maintaining multiple orders for offenders.**

Prior to January 1, 2008 the DNA legislation prohibited Crown Attorneys from seeking DNA sampling orders when it was known that a DNA profile for an offender was already on file with the National DNA Data Bank. With the amendments of that date, the administrative task of determining whether an offender's profile is already on file becomes a police function following the issuance of a DNA order, rather than a Crown Attorney function prior to an order being sought.

Notwithstanding an offender's DNA profile being on file at the National DNA Data Bank, Crown Attorneys are to seek new DNA sampling orders and forward these orders on to the police. Before executing such orders, police are required to enquire whether the offender's profile is already on file. If the profile is on file, police are not to take fresh bodily substances from the offender, but instead are to take only the offender's fingerprints and forward them together with the DNA sampling order to the National DNA Data Bank. The Data Bank will store all such orders, in order to preserve the original profile in the event that previously obtained DNA sampling orders are removed from the Data Bank as a result of an appeal, discharge, pardon or other reason for the removal of a profile.

## 6. MISSED APPLICATIONS AND THE 90-DAY WINDOW

**Upon discovering or learning within 90 days following the imposition of sentence for a designated offence that the court did not give consideration to the issue of a DNA sampling order, the Crown Attorney who had carriage of the file at the time of sentencing shall consider whether to bring an application for a DNA order. In the case of a primary offence, the Crown Attorney shall make an application for such an order.**

Given the number and variety of offences now subject to DNA sampling order considerations, there may be occasions when the court and counsel will overlook the need for a DNA sampling order at the time of sentencing. In the case of secondary designated offences, or any offences in which there is an NCR verdict, the court can only consider the issue of DNA sampling upon Crown application. In the case of primary designated offences, the Crown Attorney need not formally apply for a DNA sampling order, but it will often fall upon the Crown to remind the court to consider the issue. Accordingly, it is the responsibility of the Crown Attorney with carriage of a sentencing to bring any applications under s. 487.053(2) of the *Criminal Code* for missed orders.

The Crown Attorney, upon discovering or learning within 90 days following the imposition of a sentence for a designated offence that the court did not consider the issue of a DNA sampling order, shall consider whether an order should be sought. If the offence for which the offender was sentenced is a primary designated offence (either mandatory or presumptive), the Crown Attorney shall make application within the 90-day period for a hearing of the issue. If the offence is a secondary designated offence, the Crown Attorney may make such application. If feasible, applications should be made to the original sentencing judge.

The first appearance before the sentencing judge in the application must be within the 90-day window of time. Time constraints may necessitate the first appearance occurring

without the offender or defence counsel present.

If needed, a summons in the public interest under s. 512 of the *Criminal Code* can be sought for the attendance of the offender, or a pick-up/transfer order in the case of incarcerated offenders. In the event that the missed application is with respect to a primary mandatory offence, in which the court has no discretion to decline to make the order, consideration could be given for an *ex parte* hearing. If the offender does not respond to a summons, a warrant in the public interest under s. 512 can be sought, or a request can be made to proceed in the absence of the offender.

## 7. FACILITATING THE EXECUTION OF DNA SAMPLING ORDERS

In 2011, a province-wide protocol was established which provides for Sheriff Services to execute DNA Sampling Orders made by the court at the courthouse on the day the Order is made before the offender is transported to a correctional facility or otherwise at his liberty. The protocol is depicted in the flow chart appended to this policy.

In circumstances where it is not possible to facilitate execution by the Sheriffs in accordance with the protocol (such as in the case of a missed application described in Section 6), the Crown Attorney shall send the original DNA sampling order to the police agency involved together with details of the offender's whereabouts, in order to assist the police in contacting the offender for purposes of execution of the order. The following is suggested as a matter of best practice:

- If an offender is to be incarcerated following sentencing, any known details of the place and period of incarceration should be provided to the police; and

- If an offender is to reside in the community following sentencing, the Crown Attorney should provide any known details to the police of the offender's address and whether the offender is required to report to a probation or parole officer, and/or is required to abide by conditions of house arrest or curfew.

In cases where it appears to be impracticable for the Sheriffs to execute the Order at the time the Order is made and in circumstances in which an offender will be released into the community following sentencing, strong consideration should be given by the Crown Attorney to request the court to order the offender to report to the police agency involved at a date and time certain. The Crown Attorney shall ensure that the original DNA sampling order and the Order to Report, in Form 5.041, be received by the police agency prior to the date and time chosen for the offender to report.

## 8. COLLECTION OF ADDITIONAL SAMPLES

**Upon discovering or learning that additional samples of bodily substances need to be collected, the Crown Attorney who had carriage of the file at the time of sentencing shall bring an application for additional samples.**

If a DNA profile is unable to be obtained from bodily substances collected pursuant to a DNA sampling order, an *ex parte* application can be made to a provincial court judge under s. 487.091 of the *Criminal Code* for an authorization for additional bodily samples to be collected from the offender. If the bodily substances are not accepted by the National DNA Data Bank because either they or the information required to be transmitted to the Data Bank along with the substances were not properly transmitted, a similar application can be made. If feasible, such an application should be made to the sentencing judge by the Crown Attorney who had carriage of the file at the time of sentencing.

## 9. OTHER BEST PRACTICE CONSIDERATIONS

(a) There is no requirement under the DNA legislation for the Crown to give notice of an intention to make an application for an order for DNA sampling. There has been judicial comment, however, favouring a Crown practice of providing an intimation of an intention to seek DNA sampling in a given case. The best practice is to have the Crown Attorney, at the time of scheduling the sentencing hearing, state on the record in court that a DNA sample will be sought.

(b) In seeking DNA sampling orders, as a best practice, Crown Attorneys should argue that the method of sampling be left to the discretion of the peace officer taking the samples. Blood sampling is the preferred method. The blood sampling process approved under the DNA legislation involves a minimal physical intrusion and has a success rate far superior to any alternative methods.

## 10. PLEA NEGOTIATIONS

**The Crown Attorney's decision as to whether or not to seek DNA sampling shall not become part of the plea negotiation process. It is not inappropriate, however, for the Crown and defence to jointly submit that a DNA order should issue.**

The issue of whether the Crown will advocate for DNA sampling for an offender should be determined independently of any plea resolution agreement. In particular, counsel should never undertake to forego DNA sampling as a "bargaining chip". Given the importance of DNA sampling to the resolution of crime and protection of the public, it is inappropriate to agree to forego databanking where the offender is otherwise an appropriate candidate.

Additionally, counsel need to be aware of the consequence of accepting a guilty plea to a

secondary designated offence when a primary designated offence was originally charged. The Crown need not apply for a DNA sampling order for a primary designated offence; rather, in the case of a primary mandatory offence, there is no discretion in the court to decline to make the order, and in the case of primary presumptive offence, the offender must demonstrate that such an order would be "grossly disproportionate". In the case of a secondary designated offence, the Crown Attorney must argue, and the Judge must be satisfied that such an order is "in the best interests of the administration of justice". Thus the process, the onus and burden of proof, and the legal test for obtaining an order are all affected by the decision to accept a plea to a secondary designated offence rather than a primary designated offence.

This is not to say that it is inappropriate to accept such a plea. The Crown Attorney should refer to the Policy on Resolution Discussions and Agreements for further guidance on this issue. In weighing the public interest components of such a proposed resolution, however, the Crown Attorney should consider the impact the resolution will have on providing samples for inclusion in the National DNA Data Bank.

## 11. FLAGGING FILES

**The PPS shall maintain a system to ensure that files involving potential National DNA Data Bank candidates are flagged as such. There shall be an explicit flag on newly created files to indicate the potential for DNA sampling. Crown Attorneys with carriage of files shall review each file for the purpose of identifying potential DNA Data Bank candidates and flag files appropriately.**

Each Chief Crown Attorney should set up and maintain a system in his/her region that will ensure that files involving potential National DNA Data Bank candidates are properly flagged. There should be an explicit flag on newly created files to indicate the potential for a DNA sampling order. This flag would ensure that counsel who have ultimate carriage of a file will be alerted to the DNA sampling issue. Where possible, pre-existing files should be similarly flagged. Any such flagging system should permit the Crown Attorney to indicate by simply checking off whether the file involves either a primary or a secondary designated offence or no designated offence. It should allow the Crown Attorney to indicate, if it is a

primary designated offence, whether it is mandatory or presumptive. There should also be an indication of whether an application is made for a DNA sampling order and whether such order is granted. Such flagging will permit easy review and audit of Crown files for statistical purposes.

## 12. ATTACHMENTS

1. Sheriffs Execution Protocol Flow Chart

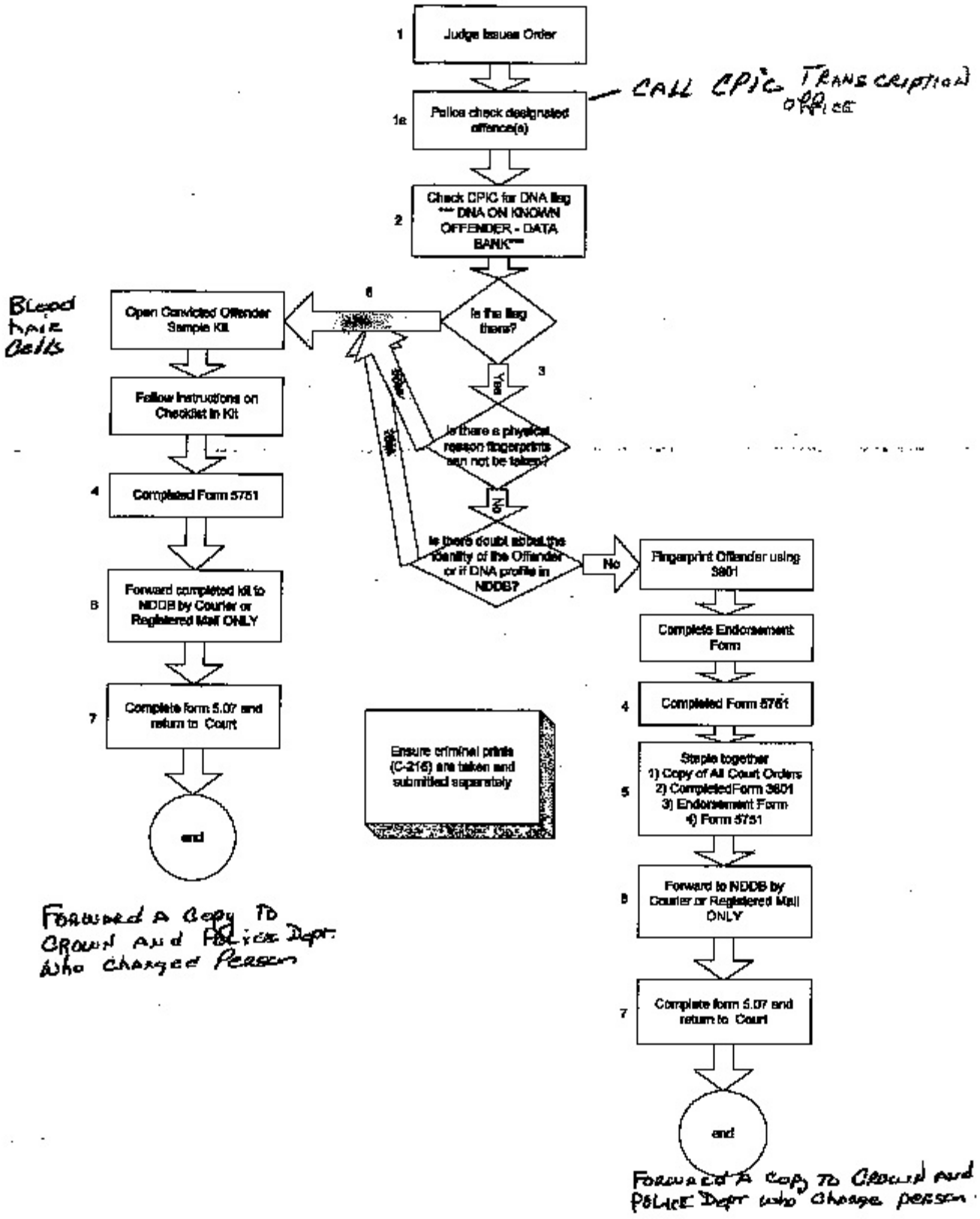
2. Sample Primary DNA Order in Form. 5.03

3. Sample Secondary DNA Order in Form 5.04

4. Sample Order to Report in Form 5.041

**ATTACHMENT No.1**

Sheriffs Execution Protocol Flow Chart


1
Judge Issues Order
CALL CPIC TRANSCRIPTION OFFICE
1a
Police check designated offence(s)
2
Check CPIC for DNA flag *** DNA ON KNOWN OFFENDER - DATA BANK***
Is the flag there?
6
3
Yes
No
Is there a physical reason fingerprints can not be taken?
Is there doubt as to the identity of the Offender or if DNA profile in NDDB?
No
Open Convicted Offender Sample Kit
Bleed hair Cells
Follow Instructions on Checklist in Kit
4
Completed Form 5751
8
Forward completed kit to NDDB by Courier or Registered Mail ONLY
7
Complete form 5.07 and return to Court
end
Fingerprint Offender using 3801
Complete Endorsement Form
4
Completed Form 5751
5
Staple together
1) Copy of All Court Orders
2) CompletedForm 3801
3) Endorsement Form
4) Form 5751
8
Forward to NDDB by Courier or Registered Mail ONLY
7
Complete form 5.07 and return to Court
end
Ensure criminal prints (C-216) are taken and submitted separately
Forward a Copy To Crown and Police Dept who charged Person
Forward a Copy To Crown and Police Dept who charge person

# ATTACHMENT No. 2

## Sample Primary DNA Order in Form. 5.03

C A N A D A
Province of Nova Scotia
County of Halifax

FORM 5.03 - Primary
Police File No. _____
Crown File No._____
Court File No. _____

**IN THE _____ COURT OF NOVA SCOTIA**

**ORDER AUTHORIZING THE TAKING OF BODILY SUBSTANCES FOR FORENSIC DNA ANALYSIS**
(Paragraphs 487.051(1) and (2) C.C.)

TO ALL PEACE OFFICERS IN THE PROVINCE OF NOVA SCOTIA:

**Whereas** _____**(DOB)**_____ (the "offender") has been convicted, discharged under section 730 of the *Criminal Code*, or, in the case of a young person, found guilty under the *Young Offenders Act*, Chapter Y-1 of the Revised Statutes of Canada, 1985, or convicted under the *Youth Criminal Justice Act*, of the following offence(s), an offence/offences which is/are a primary designated offence(s) within the meaning of section 487.04 of the *Criminal Code*:

| Section | Description |
|---|---|
| _____ | _____ |

**Therefore** you are authorized to take from _____ (the "offender"), or cause to be taken by a person acting under your direction, the number of samples of bodily substances that are reasonably required for forensic DNA analysis, provided that the person taking the samples is able by virtue of training or experience to take them by means of the investigative procedures described in subsection 487.06(1) of the *Criminal Code* and provided that, if the person taking the samples is not a peace officer, he or she take the samples under the direction of a peace officer.

This order is subject to the following terms and conditions that I consider advisable to ensure that the taking of the samples is reasonable in the circumstances:

(i) **That** the offender will be detained for the purpose of the execution of this authorization for a period that is reasonable in the circumstances;

(ii) **That** the offender will be required to accompany a peace officer for that purpose;

(iii) **That** the privacy of the offender is to be respected in a manner that is reasonable in the circumstances;

(iv) **That** such force may be used as is reasonably necessary for the purpose of executing this authorization;

(v) **That** the offender will provide samples of blood in accordance with the provisions of section 487.06(1)(c) of the *Criminal Code* unless in the opinion of the sample taker this method proves unreasonable or impracticable in all of the circumstances, in which case samples may be taken by one or other of the investigative procedures set out in section 487.06(1)(a) and (b) of the *Criminal Code*.

(vi) **That** the offender will be informed of the contents of this authorization, the nature of the investigative procedure by means of which the samples are to be taken including the taking of fingerprints, the purpose of taking the samples, and the authority of the peace officer and any other person under the direction of the peace officer to use as much force as is necessary for the purpose of taking the samples before taking the samples of bodily substances from the offender or causing samples of bodily substances to be taken from the offender under the direction of the peace officer;

(vii) **That** the offender will be advised of his/her right to consult counsel prior to the investigative procedure being performed.

Dated at _____, Nova Scotia, this _____ day of _____, A.D., 20____

_____
Judge of the Court

## ATTACHMENT No. 3

## Sample Secondary DNA Order in Form 5.04

C A N A D A
Province of Nova Scotia
.....
County of Halifax
.....

FORM 5.04 - Secondary
P o l i c e F i l e N o .

C r o w n F i l e N o .

Court File No. .....

**IN THE ..... COURT OF NOVA SCOTIA**

**ORDER AUTHORIZING THE TAKING OF BODILY SUBSTANCES FOR FORENSIC DNA ANALYSIS**
(Paragraphs 487.051(3) C.C.)

TO ALL PEACE OFFICERS IN THE PROVINCE OF NOVA SCOTIA:

**Whereas ..... .(DOB).....** (the "offender") *(check applicable box)*

□ has been found not criminally responsible on account of mental disorder, which on the day of which the find was made, was a primary designated offence within the meaning of section 487.04 of the Criminal Code, for following offence(s):

□ has been convicted, under the Criminal Code, discharged under section 730 of that Act or, in the case of a young person, found guilty under the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985, or the Youth Criminal Justice Act, of, or has been found not criminally responsible on account of mental disorder for the following offence(s):

| Section | Offence Description |
|---|---|
| ..... | ..... |

which, on the day on which the offender was sentenced or discharged or the finding was made, was one of the following secondary designated offences within the meaning of section 487.04 of the Criminal Code (check applicable box):

□ (i) an offence under the Criminal Code for which the maximum punishment is imprisonment for five years or more and that was prosecuted by indictment;

□ (ii) an offence under any of sections 5 to 7 of the Controlled Drugs and Substances Act for which the maximum punishment is imprisonment for five years or more and that was prosecuted by indictment;

□ (iii) an offence under any of sections 145 to 148, subsection 160(3), sections 170, 173, 252, 264, 264.1, 266 and 270, paragraph 348(1)(e) and sections 349 and 423 of the Criminal Code;

□ (iv) an offence under section 433 or 434 of the Criminal Code as that section read from time to time before July 1, 1990;

□ (v) an attempt or a conspiracy to commit an offence referred to in subparagraph (i) or (ii) that was prosecuted by indictment (or, if applicable, an attempt or a conspiracy to commit an offence referred to in subparagraph (iii) or (iv));

**And whereas** I have considered the criminal record of the offender or young person, the nature of the offence, the circumstances surrounding its commission, whether the offender or young person

was previously found not criminally responsible on account of mental disorder for a designated offence, and the impact that this order would have on the offender's or young person's privacy and security of the person;

**And whereas** I am satisfied that it is in the best interests of the administration of justice to make this order;

**Therefore**, you are authorized to take or cause to be taken from ..... (the "offender") the number of samples of bodily substances that is reasonably required for forensic DNA analysis, provided that the person taking the samples is able, by virtue of training or experience, to take them by means of the investigative procedures described in subsection 487.06(1) of the Criminal Code and that, if the person taking the samples is not a peace officer, they take them under the direction of a peace officer.

This order is subject to the following terms and conditions that I consider advisable to ensure that the taking of the samples is reasonable in the circumstances:

(i) **That** the offender will be detained for the purpose of the execution of this authorization for a period that is reasonable in the circumstances;

(ii) **That** the offender will be required to accompany a peace officer for that purpose;

(iii) **That** the privacy of the offender is to be respected in a manner that is reasonable in the circumstances;

(iv) **That** such force may be used as is reasonably necessary for the purpose of executing this authorization;

(v) **That** the offender will provide samples of blood in accordance with the provisions of section 487.06(1)(c) of the *Criminal Code* unless in the opinion of the sample taker this method proves unreasonable or impracticable in all of the circumstances, in which case samples may be taken by one or other of the investigative procedures set out in section 487.06(1)(a) and (b) of the *Criminal Code*;

(vi) **That** the offender will be informed of the contents of this authorization, the nature of the investigative procedure by means of which the samples are to be taken including the taking of fingerprints, the purpose of taking the samples, and the authority of the peace officer and any other person under the direction of the peace officer to use as much force as is necessary for the purpose of taking the samples before taking the samples of bodily substances from the offender or causing samples of bodily substances to be taken from the offender under the direction of the peace officer; and

(vii) **That** the offender will be advised of his/her right to consult counsel prior to the investigative procedure being performed.

Dated at ....., Nova Scotia, this ..... day of ....., A.D., 2009.

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Judge of the Court

## ATTACHMENT No. 4

## Sample Order to Report in Form 5.041

C A N A D A
Province of Nova Scotia

County of .....

FORM 5.041
Police File No.
.....
Crown File No.
.....
Court File No.

.....

**IN THE ..... COURT OF NOVA SCOTIA**

**ORDER TO A PERSON SUBJECT TO A DNA DATABANK ORDER**
(Paragraphs 487.051(4) and 487.055(3.11) C.C.)

TO **.....** (Name of Offender or Young Person)
of ..... (address):

**Whereas** an order has been made under section 487.051, or an authorization has been granted under section 487.055, of the *Criminal Code*, to take from you the number of samples of bodily substances that is reasonably required for forensic DNA analysis;

**This is therefore to command you**, in Her Majesty's name to appear on ....., the ..... day of ....., A.D.,20....., at ..... o'clock, at ..... (name of police station), .....(address), for the purpose of the taking of bodily substances by means of the investigative procedures set out in subsection 487.06(1) of the *Criminal Code*.

You are warned that failure to appear in accordance with this order may result in a warrant being issued for your arrest under subsection 487.0551(1) of the *Criminal Code*. You are also warned that failure to appear, without reasonable excuse, is an offence under subsection 487.0552(1) of that Act.

Subsection 487.0551(1) of the *Criminal Code* states as follows:

**487.0551(1)** If a person fails to appear at the place, day and time set out in an order made under subsection 487.051(4) or 487.055(3.11) or in a summons referred to in subsection 487.055(4) or 487.091(3), a justice of the peace may issue a warrant for their arrest in Form 5.062 to allow samples of bodily substances to be taken.

Subsection 487.0552(1) of the *Criminal Code* states as follows:

**487.0552(1)** Every person who, without reasonable excuse, fails to comply with an order made under subsection 487.051(4) or 487.055(3.11) of this Act or under subsection 196.14(4) or 196.24(4) of the *National Defence Act,* or with a summons referred to in subsection 487.055(4) or 487.091(3) of this Act, is guilty of
*(a) an indictable offence and liable to imprisonment for a term of not more than two years; or*
*(b) an offence punishable on summary conviction.*

Dated at ....., Nova Scotia, this ..... day of ....., A.D., 20.....

_____
Judge of the Court

**Acknowledgment of Person Subject to the Order**

I acknowledge that the order has been read by me, or to me, and a copy of the order has been given to me and that I understand the contents.

_____ _____
(Witness) (Signature of person subject to order)

Dated at ....., Nova Scotia, this ..... day of ....., A.D., 20.....