DNA SAMPLING OF PRISONERS

Date of Initial Issue 16/07/2004
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Replaces PSI 15/2003 – Prisoner DNA sampling programme
PSI Amendments should be read in conjunction with PSO

Date of Further Amendments
EXECUTIVE SUMMARY

STATEMENT OF PURPOSE

This Prison Service Order replaces PSI 15/2003 DNA Testing : Prisoner DNA Sampling Programme.

It contains information and procedures for dealing with the DNA sampling of prisoners following the completion of the DNA Sampling Programme.

DESIRED OUTCOME

Prison staff will be aware of the legal basis for the DNA sampling of prisoners and the procedures to be followed where an individual needing to be sampled is located at his/her prison.

MANDATORY ACTIONS

The PSO restates the following mandatory actions which were already published in PSI 15/2003 DNA Testing : Prisoner DNA Sampling Programme:

1. Governing Governors and Directors of contracted-out prisons must ensure that a copy of this PSO is made available to all officers who may be involved in the DNA testing process.

2. Once notified that there are individuals who need to be sampled at his/her prison, the Governor must:
   - Make arrangements for a suitable location for holding the prisoner and taking samples
   - Negotiate arrangements with the sampling officers which are manageable and involve the minimum possible disruption for the establishment
   - Ensure that suitable officers are available to escort prisoners and assist police officers if necessary
   - Ensure that individual prisoners have received notification from the sampling officers before being called for sampling (copies being placed in the prisoner’s record)

3. Officers assigned to escort prisoners and to be present when samples are taken:
   - will remain responsible for the custody of the prisoner throughout
   - must confirm to the police officers the identity of each prisoner presented for sampling
   - will, when necessary, use reasonable and proportionate force (the minimum level in the circumstances) to escort a resistant prisoner to the sampling location and/or temporarily to restrain a violent prisoner resisting the taking of a sample and/or to protect police officers whilst the sample is being taken.
   - must take particular care, if it is necessary to use force on a female prisoner known or thought to be pregnant. Such prisoners should never be placed in the prone position (face down).

There are no new mandatory actions.
RESOURCES IMPLICATIONS

This PSO updates information contained in an existing Prison Service Instruction, which must be revised as the DNA Sampling Programme has been completed. This instruction provides advice for those situations where a prisoner is identified who was either missed in the exercise just completed or has been missed by the police. With the completion of the DNA Sampling Programme, there should infrequent demands on staff.

IMPLEMENTATION DATE:

(signed)

Peter Wrench
Director

Area/Operational Manager

Further advice or information on this PSO or the systems contained within it can be sought from:

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PRISON SERVICE ORDER ON DNA SAMPLING OF PRISONERS

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Chapter One: PRISONER DNA SAMPLING

The Prisoner DNA Sampling Programme

1.1 The programme formally ended on the 30th September 2003.

1.2 The programme has sampled, analysed and loaded onto the database, 3,772 prisoner/patient DNA samples.

1.3 The completion of the programme does not mean that all prisoners now have a DNA sample on the database. Unfortunately some individuals will have avoided being sampled during the programme. Others will be missed during their arrest and will arrive at Prison without being sampled. This PSO covers DNA sampling for prisoners in these cases and where for whatever reason the sample held is found to be unsafe, incomplete or damaged.

Identifying the need to take a sample

1.4 Ideally a prisoner who does not have a DNA sample recorded on the DNA database will be identified during the reception/first night/induction process. Exactly when this happens will depend upon where in the prison the PNC terminal is located. Where Reception staff have access to PNC, they will be able to check at the same time as other checks are made. In other cases staff in the Discipline Office (or other PNC location) will be able to make the checks. The prisoner’s DNA status should be recorded in their prison record. PNC will either show no sample or one of three stages indicated – DNA taken, DNA Profiled or DNA Confirmed, the last of these indicates that there is a valid sample held for that prisoner, the other two show the process is as yet incomplete. The Police Liaison Officer at the prison will be responsible for contacting the local police to arrange for a sample to be taken. It is not the responsibility of Prison Officers to take DNA samples.

Taking a DNA Sample

1.5 The sampling will be carried out at the establishment by trained police officers. It will normally consist of taking two mouth swabs. An alternative method, which may occasionally need to be used, is to take at least 10 hairs with roots.

1.6 If a prisoner seeks to delay sampling by asking to consult a legal adviser or to have a legal adviser present during sampling, the request should be denied. Firstly the prisoner will have been provided with sufficient time in which to consult his solicitor prior to sampling taking place by the serving of a letter in advance of the sampling officer’s visit to the establishment. However, neither the Police and Criminal Evidence Act 1984 nor The Criminal Evidence (Amendment ) Act 1997 make provision for consultation, and the powers of the police under the Acts are quite clear.

1.7 The DNA Sampling Programme has shown that some prisoners seek to avoid giving a DNA sample by behaviour intended to result in their being moved to another prison for reasons of GOOD. Where staff suspect this to be the case, the prisoner should not be transferred unless absolutely necessary. If they must be moved, they should be informed that police officers will visit them at their new establishment for the purpose of taking a sample.

1.8 Another strategy employed by prisoners is to shave off body hair to avoid the taking of a hair sample. A hair sample cannot be taken from pubic or other intimate body hair. Where a prisoner deliberately shaves or depilates to avoid giving a sample, it is reasonable to confiscate razors etc until such time as the hair has regrown to permit the taking of a sample. Prisoners can be charged with refusing a lawful order if they deliberately seek to avoid giving a DNA sample.
1.9 Prisoners from whom samples are to be taken will normally need to be escorted by prison officers to a room where sampling can be carried out. However, where the Governor feels it appropriate or necessary in individual cases, the police sampling team can be escorted to where the prisoner is held in order to take the sample. Prisoners will need to be kept separate from other prisoners for approximately 20 minutes before the sample is taken to ensure that there is no cross contamination. A prisoner who refuses to go may be ordered to do so and, if necessary, may be charged with refusing a lawful order.
Chapter Two: USE OF FORCE

2.1 **PSO 1600 gives the policy regarding the use of force, and details when force may be used.** Staff using force to restrain a prisoner must follow the guidance in this Prison Service Order (including the completion of Use of Force Report Forms).

2.2 **PSO 1600 states that force must only be used when it is:**
- Reasonable in the circumstances
- Necessary
- No more force than is necessary
- Proportionate to the seriousness of the circumstances

For further guidance on the policy concerning use of force see PSO 1600.

2.3 **Gaining the attendance of a prisoner at the sampling location**
- Prison officers have a legitimate and lawful right to demand, and secure, the attendance of any prisoner in any part of a prison, if it is deemed necessary in pursuit of lawful duties. This applies in the context of DNA testing activity.
- The legal authority for DNA sampling is provided at annex A.
- Whilst prisoners may be charged with refusing a lawful order where they refuse to co-operate, the adjudication process should not be allowed to delay the sampling exercise.
- It is for the supervising officer in charge of re-locating a prisoner to the testing area to determine when and if force (ie. planned C&R removal) becomes necessary to take the prisoner to the testing area.
- *The relevant Use of Force forms (see PSO 1600) must be completed in full by all staff involved in the use of force.*

2.4 **The use of force in order to obtain a DNA Sample**
- The police have the power to use reasonable force in situations where individuals resist their efforts to take samples. However, the police are not trained to use force in prison conditions.
- Prison officers involved in supervising this process and assisting the police have a duty to ensure that the police are protected from assault and that they are given reasonable assistance to carry out their legal duties.
- It is not necessary for the police officers to actually verbally request the assistance of prison officers to enable them to take a DNA sample. Nor is it always necessary for the prisoner to offer violence to resist the taking of a sample before force may justifiably be used. It is for the supervising officer of the C&R team to use their own judgment and to decide when and if the use of force becomes necessary (as per PSO 1600). *The supervising officer must fully explain the decision to use force on the Use of Force Report form.*
- *The relevant Use of Force forms (see PSO 1600) must be completed in full by all staff involved in the use of force.*
Chapter Three: CONTRACTED OUT PRISONS

3.1 Custody Officers in contracted out prisons do not have the powers of a constable, as do Prison Officers in prisons in the public sector (see Annex A). Their powers and responsibilities are covered by the provisions of the Criminal Justice Act 1991, Sections 80 to 92 and Schedule 10. Para 86, subsection 4 specifically mentions the power to use reasonable force where necessary.

3.2 As it is not intended that Custody Officers (or Prison Officers) be involved in actually taking DNA samples from prisoners, the difference will not affect Custody Officers’ ability to assist the police in taking samples from prisoners held in contracted out prisons.

3.3 Rules on use of force are those applicable under the guidelines set out in the establishment and should be followed by staff.
Annex A

Legal Authority

Compulsory powers to take non intimate samples from those detained in prisons etc.

This Annex sets out the powers contained in the Police and Criminal Evidence Act 1984 (“PACE”) (as amended) and elsewhere to take non intimate samples from those detained in prisons and other places.

Non-intimate samples

A non-intimate sample is defined, by section 65 of PACE, as:

- a sample of hair, other than pubic hair, which includes hair plucked with the root;
- a sample taken from a nail or from under a nail;
- a swab taken from any part of a person’s body including the mouth but not any other body orifice;
- saliva;
- a skin impression (which means any record, other than a fingerprint, which is a record, in any form and produced by any method, of the skin pattern and other physical characteristics or features of the whole, or any part of, a person’s foot or of any other part of their body).

A non-intimate sample can be taken from a prisoner with their written consent at any time. A non-intimate sample may only be taken from a prisoner without their consent in specified circumstances:

a) under section 63(3B) of PACE, from a person convicted of a recordable offence on or after 10th April 1995 (see section 63(9A) of PACE). If the prisoner was convicted prior to 10th April 1995 there is no power to take a non-intimate sample unless he is a person to whom section 1 of the Criminal Evidence (Amendment) Act 1997 applies.

The effect of section 1 of the Criminal Evidence (Amendment) Act 1997 is to enable non-intimate samples to be taken from those prisoners serving sentences for specified offences for which they were convicted before 10th April 1995. See Annex B for full list of offences.

b) Under section 63 (3C) of PACE from a person to whom section 2 of the Criminal Evidence (Amendment) Act 1997 applies (persons detained following acquittal on the grounds of insanity or finding of unfitness to plead).

Reasonable force may be used, if necessary, to take a non-intimate sample from a person without their consent under the above powers (section 117 of PACE). The person should be told the reason why a sample has been taken and that reason should be recorded as soon as practicable after the sample is taken (section 63(8A) of PACE). The powers to take non-intimate samples are exercisable by a constable in a prison or other institution to which the Prison Act 1952 applies (section 63A(3) of PACE).

Where the power to take the non-intimate sample under (a) above is exercisable in relation to any person who is detained under Part III of the Mental Health Act 1983 in pursuance of either a hospital order (or interim hospital order) made following his conviction for the recordable offence in question or a transfer direction given at a time when he was detained in pursuance of any
sentence or order imposed following that conviction, the sample may be taken in the hospital in which he is detained (section 63A(3A) of PACE).

Where the power to take the non-intimate sample under (b) above is exercisable in relation to any person, the sample may be taken in the hospital in which he is detained (section 63A(3A) of PACE).

Where the power to take the non-intimate sample under (a) above is exercisable in relation to any person who is detained pursuant to directions of the Secretary of State under section 92 of the Powers of Criminal Courts (Sentencing) Act 2000, the sample may be taken in the place in which he is detained (section 63A(3B) of PACE).

The powers at (a) and (b) above can be exercised whilst the prisoner is in detention. There is no restriction on the number of samples that can be taken although clearly if excessive sampling of any particular prisoner were to take place this would be an abuse of power.

Prison officers, save those at contracted out prisons, have all the powers, authority, protection and privileges of a constable (see section 8 of the Prisons Act 1952 and section 87 of the Criminal Justice Act 1991) and so could also assist if it became necessary for them to do so.

The power to take a non-intimate sample from a prisoner who has been convicted of a recordable offence is distinct from, and additional to, powers to take samples during the course of the police investigation and on arrest or charge etc.

Recordable offences

References to ‘recordable offences’ relate to those offences for which convictions, cautions, reprimands and warnings may be recorded in national police records see section 27(4) of PACE). Recordable offences are any offences which carry a sentence of imprisonment on conviction (irrespective of the period, or the age of the offender or actual sentence passed) as well as the non-imprisonable offences under the Street Offences Act 1959, section 1 (loitering or soliciting for purposes of prostitution), the Telecommunications Act 1984, section 43 (improper use of public telecommunications systems), the Road Traffic Act 1988, section 25 (tampering with motor vehicles), the Malicious Communications Act 1988, section 1 (sending letters, etc. with intent to cause distress or anxiety) and others listed in the National Police Records (Recordable Offences) Regulations 2000 (as amended).
The specified offences are:

i. any offence under the Sexual Offences Act 1956 other than an offence under section 30, 31 or 33 to 36 of that Act;

ii. any offence under section 128 of the Mental Health Act 1959 (intercourse with mentally handicapped person by hospital staff etc.);

iii. any offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child);

iv. any offence under section 54 of the Criminal Law Act 1977 (incitement by a man of his grand-daughter, daughter or sister under the age of 16 to commit incest with him);

v. any offence under section 1 of the Protection of Children Act 1978;

vi. murder;

vii. manslaughter;

viii. false imprisonment;

ix. kidnapping;

x. any offence under section 4 (conspiring or soliciting to commit murder), 16 (threats to kill), 18 (wounding with intent to commit grievous bodily harm), 20 (causing grievous bodily harm), 21 (attempting to choke etc. in order to commit or assist in the committing of any indictable offence), 22 (using chloroform etc. to commit or assist in the committing of any indictable offence), 23 (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm), 24 (maliciously administering poison etc. with intent to injure etc.) and 47 (assault occasioning actual bodily harm) of the Offences Against the Person Act 1861;

xi. any offence under either section 2 (causing explosion likely to endanger life or property) or 3 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property) of the Explosive Substances Act 1883;

xii. any offence under section 1 of the Children and Young Persons Act 1933 (cruelty to persons under 16);

xiii. any offence under section 4(1) of the Criminal Law Act 1967 (assisting offender) committed in relation to the offence of murder;

xiv. any offence under sections 16 (possession of firearm with intent to injure), 17 (use of firearm to resist arrest) or 18 (carrying firearm with criminal intent) of the Firearms Act 1968;

xv. any offence under either section 9 (burglary) or 10 (aggravated burglary) of the Theft Act 1968;

xvi. any offence under section 12A of the Theft Act 1968 (aggravated vehicle-taking) involving an accident which caused the death of any person;

xvii. any offence under section 1 of the Criminal Damage Act 1971 (destroying or damaging property) required to be charged as arson;

xviii. any offence under section 2 of the Child Abduction Act 1984 (abduction of child by person other than parent);

xix. any offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit any of the offences mentioned in paragraphs (i) to (xviii) above;

xx. any offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit any of the offences mentioned in paragraphs (i) to (xviii) above; and

xxi. any offence of inciting another to commit any of the offences mentioned in paragraphs (i) to (xviii) above.