

GENERAL ORDER

PORT WASHINGTON POLICE DEPARTMENT

SUBJECT:	BIOLOGICAL SPECIMEN (DNA) COLLECTION AT ARREST	NUMBER:	1.7.7
		ISSUED:	4/1/15
SCOPE:	All Sworn Personnel	EFFECTIVE:	4/1/15
DISTRIBUTION:	Policy & Procedure Manual	<input type="checkbox"/> RESCINDS	
		<input type="checkbox"/> AMENDS	
REFERENCE:	20.455 (2) (Lm), 165.76, 165.77, 165.78, 165.84, 946.52	WILEAG 5th EDITION STANDARDS: 1.7.4	

INDEX AS: Arrest Specimen Collection DNA
 Biological Specimen (DNA)
 Conviction Specimen Collection of DNA
 DNA (Deoxyribonucleic acid)

PURPOSE: The purpose of this Policy and Procedure is to provide guidance to Port Washington Police Officers in following the Wisconsin Statutes as they pertain to obtaining a DNA (Deoxyribonucleic acid) biological specimens at the time of arrest for specific crimes, as described in Wisconsin State Statutes, or to facilitate the collection of those biological specimens required for various convictions as required by the Wisconsin State Crime Lab.

The purpose of these statutes is to expand the scope of individuals who are required to provide a DNA biological specimen, to provide law enforcement with more flexibility in procuring the specimen, and to minimize the possibility that an individual required to produce a specimen fails to do so.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. PROCEDURES

I. POLICY

- A. It is the policy of the Port Washington Police Department to follow the requirements of the Wisconsin State Statutes regarding the collection of Deoxyribonucleic acid (DNA) biological specimens from individuals arrested for specific crimes or those persons who have been convicted of specific crimes and where no specimen was previously obtained.

II. DEFINITIONS


- A. DNA: Deoxyribonucleic acid
- B. BIOLOGICAL SPECIMEN KIT: A collection kit specifically provided by the Wisconsin State Crime Lab for collecting any DNA specimens.

III. PROCEDURES

- A. Wisconsin law requires law enforcement agencies to obtain a DNA specimen at arrest from an adult or any juvenile taken into custody for specific violent crimes. Please refer to the Appendix for the current list of these crimes.
- B. Wisconsin law requires any adult who is convicted of any felony to produce a DNA specimen. Any juvenile, who is convicted of a juvenile offense, if the offense would be a felony if committed by an adult, must also produce a DNA specimen. In addition, certain misdemeanor convictions by an adult or juvenile require submission of a DNA specimen. Please refer to the Appendix for the current list of these convictions.
- C. Wisconsin law also makes it a crime for any person to intentionally refuse to produce a DNA specimen when required (at arrest or post-conviction). This is a separate misdemeanor offense and provides law enforcement with flexibility when dealing with a subject who is refusing to produce a specimen. Please refer to the Appendix for further information.
- D. Wisconsin law allows law enforcement to use reasonable force to obtain a DNA specimen from a person who is required to produce a DNA specimen and who intentionally refuses to provide the specimen.
- E. Any official who is authorized as described in section "D." above is immune from civil or criminal liability for collecting a specimen, if the collection is in compliance with state statutes, performed in good faith, and in a reasonable manner.

- F. Required "Arrest" DNA specimens are to be collected at booking by the Ozaukee County Sheriff's Department jail personnel.
- G. Required "Post-Conviction" specimens are to be taken at the Ozaukee County Sheriff's Department by jail personnel, if the subject or offender is not going to be charged with a new offense that would require a specimen.
- H. If a subject or offender refuses to provide a specimen as required, the Ozaukee County Sheriff's Department personnel will arrest the subject or offender for failure to submit a biological specimen under WI State Statute 946.52.
 - 1. If a subject or offender refuses to provide a specimen, the Ozaukee County Sheriff's Department may commence a course of action through the Ozaukee County District Attorney's Office and the Circuit Court seeking to compel the subject or offender to provide the required biological specimen (DNA).

APPROVED:



Chief Kevin Hingiss

DATE:

4/3/19

Revised 4/3/19
Revised 6/13/16

DNA COLLECTION AT TIME OF ARREST FLOW CHART

A. BACKGROUND:

Currently, DNA is collected from offenders who have been convicted of certain felonies and from convicted sex offenders. This DNA is kept in two lists:

- 1) Convicted Offenders Records
- 2) Sex Offender Records.

Effective April 1, 2015, law enforcement must begin collecting DNA from adults and juveniles who are arrested for qualifying violent offenses under Wisconsin State Statutes 165.76, 938.34 (15), 973.047, 165.85 (7)(ab) and various other offenses. This will create three records in CODIS (Combined DNA Index System):

- 1) Convicted Offender Records
- 2) Sex Offender Records
- 3) **Arrestee Records**

B. WHEN TO COLLECT DNA:

Arrest by Officer → Offense ON list → **BOOK** and **COLLECT DNA at Ozaukee County Sheriff's Department**, and release on charge.

C. WHEN NOT TO COLLECT DNA:

Normal arrest by Officer → Offense charged **NOT** on list → Book and release

Arrest by Officer → Offense charged **ON** list → Hold for Court → Ozaukee County Sheriff to collect DNA

D. PROCESS FOR COLLECTION:

- 1) Bring suspect back to PD
- 2) Investigate and determine charge
- 3) Check charge to see if it is on the list
- 4) Check to see if suspect has a DNA sample on file (always run suspect through e-Time)
 - a) If a Convicted Offender or Sex Offender DNA Sample is currently on file, **DO NOT COLLECT** a sample (The Convicted Offender and Sex Offender DNA data file never expires)
 - b) If an Arrestee Record DNA Sample is on file, transport arrestee to Ozaukee County Sheriff's Department. Jail personnel will **COLLECT AND SUBMIT THE NEW SAMPLE** (The Arrestee Record DNA sample on file expires 12 months after it is collected)

E. QUALIFYING VIOLENT OFFENSES:

Adults: The new law allows law enforcement to procure a DNA sample from any adult arrested or any juvenile taken into custody for a felony violent crime. The following are the qualifying felony violent crimes:

940.01 - First-degree intentional homicide*

940.02 - First-degree reckless homicide

940.03 - Felony murder

940.05 - Second-degree intentional homicide*

940.06 - Second-degree reckless homicide

940.07 - Homicide resulting from negligent control of vicious animal

940.08 - Homicide by negligent handling of a dangerous weapon, explosives, or fire

940.09 (1c) - Homicide by intoxicated use of vehicle

940.10 - Homicide by negligent operation of vehicle

940.19 (2) - Battery causing substantial bodily harm with intent to cause harm

940.19 (4) - Battery causing great bodily harm with intent to cause harm

940.19 (5) - Battery causing great bodily harm with intent to cause great harm

940.19 (6) - Battery causing bodily harm

940.195 (2) - Battery to unborn child causing substantial bodily harm with intent to cause harm

940.195 (4) - Battery to unborn child causing great bodily harm with intent to cause harm

940.195 (5) - Battery to unborn child causing great bodily harm with intent to cause great harm

940.195 (6) - Battery to unborn child causing harm

940.20 - Battery by prisoners, to certain public employees

940.201 (2) - Battery or threat of battery to witness or family of witness

940.203 (2) - Battery or threat of battery to judge or family of judge

940.205 (2) - Battery or threat of battery to DOR employee or family of DOR employee

940.207 (2) - Battery or threat of battery to DSPS or DWD employee or family of DSPS or DWD employee

940.208 - Battery to certain municipal employees

940.21 – Mayhem*

940.225 (1) - First-degree sexual assault*

940.225 (2) - Second-degree sexual assault*

940.225 (3) - Third-degree sexual assault*

940.23 - Reckless injury

940.235 - Strangulation and suffocation*

940.30 - False imprisonment*

940.302 (2) - Human trafficking*

940.305 - Taking hostages*

940.31 - Kidnapping*

940.32 (2) – Stalking*

940.32 (2e) - Stalking*

940.32 (2m) – Stalking*

940.43 - Intimidation of witness*

940.45 - Intimidation of victim*

941.20 (2) & (3) - Endanger safety by use of a dangerous weapon*

941.21 - Disarming a police officer*

941.30 - Recklessly endangering safety

941.327 - Tampering with household products*

943.02 - Arson of buildings*

943.06 - Molotov cocktail*

943.10 – Burglary*

943.23 (1g) - Operating vehicle without consent with dangerous weapon*

943.23 (2) - Operation vehicle without consent*

943.32 - Robbery*

948.02 (1) - First degree sexual assault of a child*

948.02 (2) - Second degree sexual assault of a child*

948.025 - Repeated acts of sexual assault of same child*

948.03 (2) (a) - Physical Abuse of a child: Intentionally cause great bodily harm to child*

948.03 (2) (c) - Physical Abuse of a child: intentionally cause bodily harm by conduct with probability to cause harm*

948.03 (3) - Physical Abuse of a child: recklessly cause harm to child

948.05 - Sexual exploitation of child*

948.051 - Trafficking a child*

948.055 - Cause child to view or listen to sexual activity*

948.07 - Child enticement*

948.08 - Soliciting child for prostitution*

948.085 - Sexual assault of child in substitute care*

948.095 - Sexual assault of child by person who works with children*

948.30 (2) - Abduction of another's child*

*Solicitation, conspiracy, or attempt, under s. 939.30, 939.31, or 939.32, to commit the offense. Solicitation, conspiracy, or attempt, under 939.30, 939.31, or 939.32, to commit the offense do not apply for any crime listed above without the *.

A felony, if a penalty enhancer specified in s.939.621 could be imposed. This involves an arrest of a person who commits domestic abuse during the 72 hours immediately following an arrest for a domestic abuse incident. This 72-hour period applies whether or not there has been a waiver by the victim.

JUVENILES: The new law permits law enforcement to procure a DNA sample from juveniles taken into custody for committing a juvenile offense, which would be one of the above enumerated violent felony crimes if committed by an adult.

F. DNA SAMPLES UPON CONVICTION:

The following must produce a DNA sample upon conviction: any adult who is convicted of any felony, any juvenile who is convicted of a juvenile offense, if the offense would be a felony if committed by an adult, any adult who is convicted of any misdemeanor crime, any juvenile who is convicted of any of the following juvenile offenses that would be misdemeanors, if committed by an adult.

- 1) Fourth degree sexual assault. (940.225(3m))
- 2) Endangering safety by the use of a dangerous weapon. (941.20(1))
- 3) Lewd and lascivious behavior. (944.20)
- 4) Prostitution. (944.30)
- 5) Patronizing prostitutes. (944.31)
- 6) Pandering. (944.33(1))
- 7) Exposing genitals or pubic area. (948.10(1) (b))
- 8) Failure to submit a biological specimen. (946.52)

G. NEW CRIME OF FAILURE TO PRODUCE A BIOLOGICAL SPECIMEN:

This new law makes it a crime for any person to intentionally fail to produce a DNA sample when required. The crime is codified in 946.52, and is a Class "A" misdemeanor. This will provide law enforcement with extra flexibility when dealing with a subject who is refusing to provide a sample.