

DNA Forensic Testing Policy

Essential Summary

[Redacted text]

- This policy contains content covering:
- What a forensic procedure is
- Who can be DNA tested?
- [Redacted text]
- The presence of an interview friend or legal representative

Youth Justice NSW (YJNSW) employees should understand how the DNA forensic testing procedures operate so they can explain the procedure to young people and ensure they are aware of their rights under the legislation

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Table of Contents

| | | |
|-----------|---|----------|
| 1 | Scope | 3 |
| 2 | Purpose | 3 |
| 3 | Definitions | 3 |
| 4 | What is a forensic procedure? | 4 |
| | 4.1 Non- inmate forensic procedure | 4 |
| | 4.2 Intimate forensic procedures | 4 |
| 5 | Who can be DNA tested? | 4 |
| 6 | Giving informed consent | 5 |
| | 6.1 Informed consent- young people who are suspects | 5 |
| | 6.2 Informed consent- serious indictable offenders | 5 |
| | 6.3 Informed consent- volunteers | 6 |
| | 6.4 Refusal to consent | 6 |
| 7 | Presence of interview friend or legal representative | 6 |
| 8 | Role and Responsibility of Youth Justice NSW | 7 |
| 9 | [REDACTED] | 8 |
| 10 | References | 8 |
| | 10.1 Legislation | 8 |
| | 10.2 Forms | 8 |
| 11 | Document information | 9 |
| 12 | Document history | 9 |

1 Scope

[REDACTED]

It will only cover forensic procedures and their application to young people in the care of Youth Justice NSW (YJNSW).

2 Purpose

The purpose of this policy is to provide YJNSW employees with the information to:

- [REDACTED]
- understand the rights afforded to young people under the Act
- explain the forensic procedure to young people
- explain to young people their rights under the Act.

3 Definitions

Buccal swab- an elongated cotton bud that can be scraped gently inside the mouth to collect samples of the mouth lining.

DNA- deoxyribonucleic acid is the molecule inside cells that contains genetic information responsible for the development and function of an organism.

Forensic material- samples, hair, handprints, fingerprints, footprints, toe prints, photographs, casts or impressions taken from, or of, a person's body.

Incapable person- a person who is incapable of understanding the general nature and effect of a forensic procedure or indicating whether he or she consents to a forensic procedure being carried out.

Interview friend- a parent or guardian or other person chosen by the young person, who is there to support the person during the forensic procedure. Their legal representative can also act as an interview friend.

[REDACTED].

Legal representative- an Australian legal practitioner acting for the young person.

Must- indicates a mandatory action to be complied with.

Prescribed offences- an indictable offence or any other offence under a law of the State prescribed by the regulations.

Private parts- a person's genital area, anal area or buttocks, and, in the case of a female or transgender person who identifies as a female, includes the person's breasts.

Should- indicates a recommended action to be complied with unless there are sound reasons for taking a different course of action.

Suspect- a person who is suspected by a police officer on reasonable grounds of committing an offence. It can also mean a person who is currently charged with an offence or a person who has been summoned to appear before court in relation to an offence they are alleged to have committed.

Young person- any person under the supervision of Youth Justice NSW. Ages range from 10 to 21 years of age.

4 What is a forensic procedure?

There are two types of forensic procedures: intimate or non-intimate.

4.1 Non- inmate forensic procedure

Examples of non-intimate forensic procedures include:

- an examination of a person's body parts, other than their private parts,
- a self-administered buccal swab
- a hair sample
- a nail sample
- a hand, finger, foot or toe print
- a photograph of a part of a person's body, other than their private parts
- an impression or cast from a wound from a person's body, other than their private parts
- a measurement of any part of a person's body, other than their private parts.

4.2 Intimate forensic procedures

Examples of intimate forensic procedures include:

- an examination of a person's private parts
- the use of buccal swab administered by someone else
- a blood sample
- a pubic hair sample
- a dental impression
- a photograph of a person's private parts
- an impression or cast of a wound from a person's private parts

Intimate forensic procedures can only be used during the investigation of prescribed offences.

5 Who can be DNA tested?

Young people aged 18 or over can undergo forensic procedures when informed consent is provided.

Section 23WE of the Crimes Act 1914 states that a young person under the age of 18 years and in incapable person cannot consent to forensic procedures. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

6.3 Informed consent- volunteers

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

6.4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 Presence of interview friend or legal representative

Under section 54 of the Act, if the Young Person is between 10-18 years of age, they must be permitted to have an interview friend or legal representative present during the forensic procedure. This right cannot be waived.

Under section 4 of the Act, the following people may act as interview friends for young people under 18 years of age:

- a parent, guardian or other person chosen by or acceptable to the young person,
- a legal representative,
- if the Young Person is an Aboriginal or Torres Strait Islander and none of the above are available, a representative of an Aboriginal legal aid organization who is chosen by or acceptable to the Young Person; or
- if none of the above people are available, a person who is not a police officer or in anyway involved with the investigation of matters pertaining to the forensic procedure.

If the young person is over 18 years of age and is an Aboriginal person or Torres Strait Islander, s4 of the Act states that the following people may act as interview friends:

- a relative or other person
- chosen by the detainee
- a legal practitioner acting for the detainee
- if none of the above are available, a representative of an Aboriginal legal aid organization.

It is the young person's responsibility to nominate an interview friend to be present during the forensic procedure. An interview friend cannot be another young person in custody, but it can be an employee who has a good relationship and rapport with the young person and is available at the time. If the young person requests an interview friend who is external to the YJC, the young person or the YJC must meet all costs associated with this request.

Young people under 18 years of age or incapable persons cannot waive the right to have an interview friend present.

[REDACTED]

8 Role and responsibility of Youth Justice NSW

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

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10 References

10.1 Legislation

Crimes (Forensic Procedures) Act 2000

10.2 Forms

[Redacted text block]

11 Document information

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|----------------------------|---|
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12 Document history

| Version | Date | Reason for Amendment |
|----------------|-------------|---|
| 1 | 24/10/18 | New Policy |
| 2 | 10/01/22 | Update format and organisation name and removed repeated section. No responsibility or role changes have been made. |
