

## FREQUENTLY ASKED QUESTIONS

Q1: What protocols does the NDDB have in place to ensure that the privacy issue is respected when it comes to DNA samples from convicted offenders?

A: The DNA Data Bank is an investigative resource for law enforcement agencies as a tightly controlled, restricted access, library of DNA typing information for law enforcement purposes. The Data Bank collects and stores information from crime scenes and convicted offenders in a process that makes the identity of the person whose DNA information is in the Data Bank anonymous to the staff of the Data Bank. In the case of convicted offenders, a DNA profile can only be developed from a DNA sample collected pursuant to the Criminal Code, and the development of a DNA profile is done in the Data Bank with no knowledge of the identity of the donor of the biological sample at the time it is analyzed and subsequently stored<sup>1</sup>. This profile is represented by a series of numbers not unlike the common bar code that is universally used in consumer product packaging.

The Data Bank has two separate indices: the Crime Scene Index ( CSI ) and the Convicted Offender Index ( COI ). In accordance with the DNA Identification Act, the Data Bank receives DNA information and DNA samples in two ways. In the case of the former, evidence gathered by investigators from crime scenes and submitted to local forensic laboratories is analyzed and the DNA profiles generated are submitted to the Data Bank for inclusion into the CSI. The Data Bank receives the profile data and its unique identifying number. No information is collected by the National DNA Data Bank on the details of the offence or crime scene for a specific sample.

In the case of the convicted offenders index, samples of bodily substances collected pursuant to sections 487.051, 487.052, 487.055 and 487.091 of the Criminal Code are sent directly to the Data Bank in Ottawa<sup>2</sup>. The National DNA Data Bank Kit Reception checks all samples coming in for the kits conformance with the requirements of the DNA identification Regulations criteria for acceptance in the Data Bank. Only those samples that are contained in kits with a judicial order or authorization, the required identification forms, and are contained on acceptable sample collection media are allowed into the Data Bank.

These qualifying samples are assigned an internal tracking number, which is only used for inventory and chronological purposes. All data reference attached to this sample is by means of the Sample Unique Number (SUN) that is assigned originally during the construction of the kit. This SUN is used for our tracking and identification purposes. Upon verification of the sample kit, all

personal information along with the DNA Data Bank identifier is sent to RCMP Information and Identification Services <sup>3</sup>.

No personal information regarding the identity of the donor or the specific detailed information contained in a case file is retained by the Data Bank. No one in the Data Bank could identify an individual to whom a profile relates because that information does not exist in the data bank facility.

<sup>1</sup> The original biological sample card is retained and stored in the event that current technology is advanced and a new profile needs to be generated within that new technology. The sample itself is identified by the DNA Data Bank reference number, rather than any information about the donor.

<sup>2</sup> An approved DNA Data Bank sample collection kit is provided for this purpose. The kit is designed to ensure the preservation of the bodily substances collected (blood, hair or buccal swab - see s.487.056 (1)). The bodily substances that have been taken are prepared for transmission to the Data Bank along with a separate form containing the name of the offender and his or her fingerprints and a copy of the court order authorizing the collection of the samples and describing the designated offence(s) for which the person was convicted.

<sup>3</sup> The original sample, containing the identifier number and the donor fingerprints, is placed in a secure location. The only link to this sample is through the unique identifier number. The fingerprint on the card is only used to confirm the original donor of the sample upon receipt of the submitted collection kit. This sample cannot be released for any other form of forensic casework.

Q2: Will there be additional copies of the 3801 (Fingerprint Identification Form) in the kits?

A: No. If the fingerprints are not of good quality, a copy of the 3801 can be printed from the Web site. This form is available in a pdf format in the "Training" section of the Web site under "Fingerprint Form (3801)".

Since there are no barcodes on the printed copy of the 3801, attach a small note to it advising the technicians at the kit reception of the NDDB that a barcode will have to be generated for this form. Once the technicians have verified that the index prints on the sample card match the prints on the form 3801, a barcode will be generate to match the existing barcode on the sample card.

A new kit should never be opened to obtain another 3801 to avoid mixing up barcodes between kits.

Q3: Can you put fingerprints on the back of the 3801 (Fingerprint Identification Form)?

A: No, if this is done the kit will be rejected by the National DNA Data Bank.

Q4: Can you put re-tabs on the 3800 or 3801 in case of smudging?

A: No, avoid any tampering with the documents sent to the National DNA Data Bank.

Q5: If there's blood on a buccal sample will it be rejected ?

A: No. The sample will be accepted since the blood and buccal will have the same DNA profile if they come from the same individual.

Q6: If the person is on medication, will this affect the DNA profile?

A: No, it will not.

Q7: a) Is it possible for a police officer to verify if an offender's profile is already in the databank before taking a sample for a court order?

b) Once an Offender has been sampled for the purposes of this Act, and that the profile is in the databank, will another sample be required if the person is convicted again?

A: a) Yes this is possible and it should be the first step done by a police officer before sampling a convicted offender. This verification is done by a criminal name index (CNI) query in the Canadian Police Information Centre (CPIC).

Upon successful completion of the DNA profiling process a "flag" (which states "DNA on known offender Data Bank ") is placed on the offender's CPIC record to indicate that the offender has a valid and reliable DNA profile entered into the COI. It should be noted the CPIC flag only provides a yes or no to the presence of a sample in the National DNA Data Bank and no genetic information or other data base data. This is primarily provided as an easy reference check so that police officers or prosecutors may, under s.487.053 of the Criminal Code, advise the court there is already a DNA profile belonging to the offender in the DNA Data Bank.

b) No.

Q8: What will happen with appeals with a one or two year waiting period?

A: The sample WILL be taken, and if the appeal is won, then the sample and all documentation related to this offender will be destroyed by the National DNA Data Bank.

Q9: Who has the responsibility to take samples from offenders in the retroactive category?

A: This will be up to each Police agency/department to decide within their jurisdictions.

Q10: If an offender has had a blood transfusion or a bone marrow transplant how will this affect a blood sample and the subsequent DNA profile?

A: When a person has a blood transfusion it will take, in some cases, a few weeks for this person to completely replace all of the transfused blood cells. There may be a mixture of both the donor and the recipient's blood present. In order to be sure that the sample is not a mixture, wait one month before taking a blood sample. Another solution is to take a buccal swab from the offender instead.

Also, in cases of bone marrow transplants, there may be a mixture of both the donor and the recipient's blood; and if the transplant is a complete success, the recipient will have the donor's blood type. In these rare cases, we would recommend taking a buccal swab from the offender.

Q11: Should we videotape the sampling procedure?

A: Unlike warrant samples videotaping is not a requirement for National DNA Data Bank samples. If some police officers videotape the procedure while others do not, a confusing precedent could occur leading to uncertainty in the courts.

Q12: Will pepper-spray affect the FTA paper or sample card?

A: If the offender had to be controlled with pepper spray and some of it went on the FTA card, it would NOT affect the quality of the paper, as long as it's not sprayed directly on the sample card.

Q13: Is there any chance of transferring DNA from the back of the protective cover to the FTA paper on the card itself?

A: If you don't fold the cover all the way back behind the card, and if you always keep a barrier (ex. paper towel) between the card & the table, it should avoid any cross-contamination of the sample.

Q14: Will drinking coffee (or juice, pop, etc.) before giving a buccal sample affect this sample?

A: No, as long as the person has had a few minutes to swallow the liquid before giving the buccal sample, it should not be a problem.

Q15: Will a bit of ink left from the fingerprints affect the blood sample?

A: No. The person will be washing his/her hands after fingerprinting and also, the finger will be cleaned off with an alcohol swab before pricking, so even if there was a bit of ink left on the finger, it will not affect the sample.

Q16: Can we have some sort of "written-out format" for the grounds (R.P.G) for the warrant after there's a match between the Crime Scene Index and profile from an offender? (Ex: similar to what we already have for a breathalyzer warrant). Are these the only grounds for obtaining that second warrant to verify the match?

A: We expect that some precedents will emerge once crime scene index and convicted offender index matches occur but we would not think it prudent to try and develop one universal warrant affidavit for such cases at this stage. Section 487.05 of the Criminal Code sets out what the DNA warrant information must contain. The Crown Prosecutors already have developed applications which have been used in their jurisdictions to successfully obtain warrants. Attacking the basis of any warrant application is a key defence strategy. As DNA evidence is overwhelming scientific evidence in any case, the law is bound to be challenged as well as the basis for the warrant affidavit. Section 487.05(1) sets out four elements that a provincial court judge must be satisfied that there are RPG to believe. A DNA Data Bank match will only be useful to expand on paragraph 487.05(1)(c) "that a person was a party to the offence". The rest of the affidavit will need to be customized to the case including other evidence that links the person to the offence. Given the seriousness of the offences where DNA warrants will be sought we would advise the police to seek the advice of their Crown's at the time they have the evidence to obtain a warrant for the Crown's advice about what must be in the warrant based on the law at that time.

Q17: Will NDDDB personnel be expected to testify in court?

A: Anything is possible however we think this would be highly unlikely. The National DNA Data Bank is an investigative aid and not the primary source of evidence in a police investigation. All matches made by the National DNA Data Bank and the crime scene index are verified when a second sample is collected under a warrant and this evidence is specifically used for court. The convicted offender DNA profile developed by the data bank cannot be used by the prosecution and therefore the NDDDB personnel should not be called for that purpose (see section 487.08). We would expect the defence to be cautious about leading further evidence that confirms the DNA warrant and crime scene match by calling NDDDB personnel to testify.

Q18: Can police officers ask to check a suspect on other offences (besides primary/secondary) from profiles in the Crime Scene Index?

No - subsection 6(6) of the *DNA Identification Act* prohibits any person who receives a DNA profile for entry in the DNA Data Bank (including the profiles in the Crime Scene Index) from using it or allowing it to be used for purposes other than the administration of

A: the Act. Section 3 of the Act sets out the purpose of the Act as to establish a national DNA data bank to help law enforcement agencies identify persons alleged to have committed designated offences, including those committed before the coming into force of this Act.

Q19: When an offender dies, are the DNA profile and the original sample collection card removed from the Data Bank and if so, how long after the death is this done?

It is important to remember that a DNA profile developed from a deceased convicted offender may provide important information on older investigations. If this profile is taken out of the convicted offender index the potential to match or even the lack of match may have significant implications on yet unsolved criminal cases or in old investigations when new biological evidence becomes available. This type of information could link cases, provide conclusive evidence to complete a case or even lead to potential

A: exonerations. Subsection 9(1) of the *DNA Identification Act* requires information contained in the convicted offenders index to be kept indefinitely subject to the Criminal Records Act and access removal requirements in subsection 9 (2). There is no requirement to destroy deceased offenders profiles. Their bodily substances may be destroyed when the Commissioner considers them no longer required. The DNA profiles will remain indefinitely unless destroyed or rendered inaccessible in accordance with the Act.

Q20: If an offender is served a summons, and fails to appear for DNA sampling, but his/her parole expires in the meantime, can an arrest warrant be issued for the sampling even though his/her parole has expired?

Yes- as long as the original DNA collection authorization and summons was issued before the expiration of the parole in the case of retroactive offenders. In re-sampling cases, the

A: authorization may be issued after the expiration of sentence and the summons and warrant apply to such persons who are not in custody for whatever reason and has no bearing on whether the sentence is expired.

Q21: Concerning the forms (Order/Authorization), who keeps the original copy? In case of an appeal, if the court keeps the original, and it's needed for the appeal. what happens? Also. which conv is

sent to the NDDDB with the kit?

When this was discussed at the mapping process, it was suggested that two originals should be signed by the judge one to be kept by the court clerk the other issued to the police/prosecutor. We do not know if this suggestion has been followed up so that the appropriate forms will be printed and made available to the courts. For the purpose of the kits, a photocopy is sufficient. If the order/authorization requires endorsement in another province a faxed copy of the order/authorization should be sufficient. For police purposes a copy of the order should be sufficient if the court only issues one original. Ideally two originals should be issued.

A:

Q22: Is there any possibility that amendments to the Act may permit the taking of samples upon arrest in the next 5-10 years?

A: There will be a five year review of the Act (s.13 *DNA Identification Act*) at which time it is likely that collection at the time of arrest will be revisited if raised by the police community.

Q23: Is the warrant issued for verifying a match between the Crime Scene Index and the Convicted Offenders Index the same form as Form 5.02?

A: Yes it is.

Q24: How long can we detain an offender if he/she refuses to give a blood sample for DNA Order/Authorization? Could we charge the person with "Obstruction" under sect.129 of *Criminal Code*?

A: The question is not how long you detain but how long before you use force to obtain the sample. This relates to how long for example the person seeks legal advice about the charter warning. In the event the offender resists, consideration could be given to laying a charge of obstruction or even assault if the facts warrant it.

Q25: Who has the responsibility to notify the Data Bank if an appeal is won? This is required to remove the offender's profile from the Data Bank and destroy all documentation.

A: This is an open issue. Our process mapping identified the police agency who is responsible for submitting the sample should be responsible for advising the Data Bank when a successful appeal has occurred and no further appeal by the Crown is made. Ideally Criminal Records would automatically be notified of the change to the criminal record which relates to the DNA order and if the DNA conviction is overturned query the matter so that the purging of the Data Bank occurs as well. This may or may not be feasible to implement with respect to the original DNA conviction. Where there is an appeal of the DNA collection order or authorization

then the police agency responsible will be solely responsible for communicating the successful appeal to the Data Bank. Each province will need to address making notification a police duty as well as making the execution of issued DNA orders or authorizations a police responsibility. Ontario has indicated that it will only monitor the situation and rely on each police service to implement the legislation. The DNA Labs will also need to advise the Data Bank to purge victim and eliminated suspects from the Crime Scene Index.

Q.26 How will the National DNA Data Bank contribute to a safer environment for all Canadians?

A: The Data Bank will help protect Canadians by providing police forces across the country with a much needed investigative tool in identifying and prosecuting repeat violent and sex offenders. It will help law enforcement agencies identify suspects where there are no other leads. It will assist in linking and solving cases across jurisdictional lines, by providing information that might otherwise not have been obtainable. It will also help focus investigations by eliminating suspects whose DNA is in the data bank in a case where there is no match with the crime scene DNA. The Data Bank will also help to exonerate innocent suspects.

Q.27 How will the DNA information in the data bank be used?

A: DNA information from the National DNA Data Bank will be used for comparative purposes. The Data Bank will have two key components.

1. The Convicted Offender Index will contain DNA profiles of offenders convicted of specific, designated offences.
2. The Crime Scene Index will contain DNA profiles from evidence left at crime scenes. Whenever new information is added to the Data Bank, the profile will be cross-referenced with DNA profiles in the Crime Scene Index and the Convicted Offenders Index.

If a match is found, police investigators will be notified. Based on this information, the police may request a warrant under the DNA warrant scheme (see s.487.05 of the Criminal Code), to obtain an additional sample to verify the original match. Only DNA information from the new sample will be used as evidence in court.

Q.28 Will convicted offenders already serving sentences be required to provide a DNA samples for inclusion in the Data Bank?

A: In some cases, yes. Convicted offenders who meet the following criteria may be required to provide DNA samples for inclusion in the National DNA Data Bank. DNA samples (retroactive) may be

collected from convicted offenders who, effective the date of proclamation have been either:

- declared a dangerous offender; or
- convicted of more than one murder committed at different times;
- or convicted of more than one sexual offence and currently serving a sentence of two or more years for one of these offences.

Q.29 Will offenders who are charged before proclamation but convicted after proclamation be required to provide DNA samples for inclusion in the Data Bank?

A: In some cases, yes. Retrospective DNA samples may be collected from convicted offenders who were charged with designated primary or secondary offences before proclamation, but convicted or sentenced after proclamation. In all retrospective cases, the Crown must decide whether the offence warrants the making of an application for a DNA sample. Before making the order, the court must be satisfied that an order to this effect is in the best interests of the administration of justice.

Q.30 Why is the Government limiting the range of offences for which DNA information can be stored?

A: When developing the legislation, our national consultations revealed a wide spectrum of views on the range of offences that should be included. Issues such as the nature of the offence, relevance in solving crimes, privacy and Charter rights as well as the cost of lab analysis and maintenance of the Data Bank were taken into consideration.

Q.31 Why not collect DNA samples at time of arrest as opposed to time of conviction?

A: Legal advice suggests that collecting samples at the time of arrest raises serious Constitutional concerns. In addition, the current DNA warrant scheme (under s.487.05 of the Criminal Code) allows police to obtain DNA samples from suspects during the course of a criminal investigation either prior to, at the time of, or after arrest. There will be a five-year review of the legislation, at which time collection at the time of arrest may be revisited.