# Biological Samples

## 334.1 PURPOSE AND SCOPE

This policy provides guidelines for the collection of biological samples from those individuals required to provide samples upon conviction and or arrest for certain offenses. This policy does not apply to biological samples collected at a crime scene or taken from a person in conjunction with a criminal investigation. Nor does it apply to biological samples collected from those required to register, for example, as sex offenders.

## 334.2 POLICY

The Fargo Police Department will assist in the expeditious collection of required biological samples from arrestees and offenders in accordance with the laws of this state through voluntary consent or with a court order and with as little reliance on force as practicable (N.D.A.C. § 10-17-01-03(3)).

## 334.3 PERSONS SUBJECT TO BIOLOGICAL SAMPLE COLLECTION

Those who must submit a biological sample include (N.D.C.C. § 31-13-03; N.D.A.C. § 10-17-01-03):

(a) A qualifying offender who has not previously had a sample collected for inclusion in the law enforcement DNA database.

(b) A qualifying offender 18 years of age or older who has been arrested and booked for the commission of a felony offense.

## 334.4 PROCEDURE

When an individual is required to provide a biological sample, an officer shall attempt to obtain the sample in accordance with this policy and approved sampling techniques (N.D.C.C. § 31-13-04; N.D.A.C. § 10-17-01-04).

### 334.4.1 COLLECTION

The following steps should be taken to collect a sample:

(a) Confirm the individual's identity, before the samples are collected, by one or more of the following: a driver's license, fingerprints, department database, or any other reasonable means within the Department's discretion (N.D.A.C. § 10-17-01-04(3)).

1. The crime lab will only accept samples when index fingerprints have been taken.

(b) Verify that the individual is required to provide a sample pursuant to law (N.D.C.C. § 31-13-03; N.D.A.C. § 10-17-01-03).

(c) Verify that a biological sample has not been previously collected from the offender by querying the state database. There is no need to obtain a biological sample if one has been previously obtained.

(d) Use and complete the designated buccal swab collection kit to perform the collection and take steps to avoid cross contamination (N.D.A.C. § 10-17-01-04(1)).

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(e) Submit the completed collection kit in accordance with crime lab rules (N.D.C.C. § 31-13-04).

## 334.5 USE OF FORCE TO OBTAIN SAMPLES

If a person refuses to cooperate with the sample collection process, officers should attempt to identify the reason for refusal and seek voluntary compliance without resorting to using force. Force will not be used in the collection of samples except as authorized by court order and only with the approval of a supervisor. The supervisor shall review and approve any plan to use force and be present to document the process (N.D.A.C. § 10-17-01-03(2)).

Methods to consider when seeking voluntary compliance include contacting:

(a) The person’s parole or probation officer when applicable.

(b) The prosecuting attorney to seek additional charges against the person for failure to comply or to otherwise bring the refusal before a judge.

(c) The judge at the person’s next court appearance.

(d) The person’s attorney.

(e) A chaplain.

(f) Another custody facility with additional resources, where an arrestee can be transferred to better facilitate sample collection.

(g) A supervisor who may be able to authorize custodial disciplinary actions to compel compliance, if any are available.

### 334.5.1 VIDEO RECORDING

A video recording should be made any time force is used to obtain a biological sample. The recording should document all staff participating in the process, in addition to the methods and all force used during the collection. The recording should be part of the investigation file, if any, or otherwise retained in accordance with established records retention schedules.

## 334.6 REVISION DATE 02/07/2024

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