

# WHEN DO I HAVE TO GIVE A DNA SAMPLE TO THE POLICE?

## ➔ What is DNA?

The human body is made up of millions of cells. Each cell contains DNA and each person's DNA is slightly different. This means that your **DNA profile** can be used to identify you. For example, if the Police found a hair at a crime scene, using DNA they could work out if it belonged to you provided they have your DNA profile. This is why the Police collect DNA and store it on their DNA **database**.



## ➔ Police powers to take DNA samples

The Police can take a DNA sample in certain situations. They do this by taking a buccal test (done by swabbing the inside of the mouth) or a blood test (usually done by a fingerprick).

A blood sample can only be taken by a suitably qualified person, like a doctor or nurse. You may take a buccal sample yourself. You can choose which way the sample is taken unless a Judge orders otherwise.

The powers the Police have depend on:

- whether you're a suspect in a specified crime and they have evidence to compare a profile to; or
- if they simply wish to include your DNA profile in their DNA databank.

## ➔ If you're a suspect

When the Police are investigating an offence they may take a sample from you only if:

- you are a suspect; and
- the offence is serious enough that it will be determined by a jury (an "indictable offence"); and
- they have reasonable grounds to believe that the sample will confirm or disprove your involvement in the indictable offence.

They either need your permission to take a sample or a compulsion order from the High Court. You can speak to a lawyer about giving a sample at any time.

If the offence is a "summary offence" (for example, common assault or wilful damage), the Police can only take a sample if you give them permission.

## ➔ Police requests for a DNA sample

When the Police ask to take a sample for DNA analysis, they must give you a written notice and tell you the following things:

- the offence the sample request relates to;
- that they have reasonable grounds to believe the sample will confirm or disprove your involvement in the offence;
- you do not have to give the sample;
- you can change your mind about giving the sample at any time before it is taken;
- you are able to speak to a lawyer before deciding;
- the sample may be used as evidence;
- if you don't consent to giving the sample, and there is good cause to suspect you committed the offence they are requesting the sample for, the Police may apply to the Court for an order requiring you to give a sample.

If you allow the Police to take a sample, your consent must be written and signed or recorded on video. **At any stage before the sample is taken, you can withdraw your consent just by saying so.**

If you're between 14 and 17 years old, the Police will need both your permission and permission from one of your parents. If you're under 14, the Police may ask you to give a sample but they cannot make you give one unless the offence they are relying on is manslaughter or murder. If the offence they are investigating isn't one of those, the only way they can get a sample is if you let them. They can only take a buccal sample in this case.

## ➔ Compulsion Orders

If you refuse to give a sample, the Police will need to apply to the High Court for a compulsion order to take a DNA sample. A notice must be sent to you by the Police telling you they have applied to the Court and you are able to give evidence to the Court opposing the grant of the order.

If you are between 14 and 17, your parent must also get a copy of the notice. You, your parent, your lawyer or your parent's lawyer may appear before the Judge deciding the matter. If you do not have a lawyer, the Judge will appoint one for you.

If a compulsion order is granted by the Judge, the order will tell you where you must go to give the sample. You can take your lawyer or another person with you when you give the sample.

### ➡ The DNA databank

The Police are able to maintain a database of DNA profiles they have from bodily samples. There are strict conditions around which profiles the Police can keep on record. **They cannot keep all DNA profiles they have received.**

The Police can ask anyone over the age of 17 to give a sample simply for the purpose of obtaining a DNA profile for the databank. You do not have to give them a sample. If you are under 17 they cannot ask for a sample.

When they ask, they must give you a written notice and tell you the following things:

- that they are asking for a sample so they can store your DNA profile in the databank for use in future criminal investigations
- you do not have to give the sample
- you can change your mind about giving the sample at any time before it is taken
- you are able to speak to a lawyer before deciding
- the sample will be analysed and the information from it could be used to charge you with a criminal offence; and
- subject to some conditions, you have the right to withdraw the consent you gave that the sample be used for a DNA profile at any time.

**Consent must be written and signed or given verbally and videotaped.**

### ➡ Databank compulsion notices

If you have been convicted of certain offences listed in the back of the Criminal Investigations (Bodily Samples) Act (eg. burglary, rape, arson) the Police can issue a databank compulsion notice to take a sample.

You will be served with this notice and told you can request a hearing. There are certain grounds you can argue to oppose the requirement to provide a sample. You should contact a lawyer to discuss this. If you were convicted but not imprisoned, the Police have only six months after the date of conviction to give you a databank compulsion notice. If you are imprisoned for the offence, the Police have until your release or 6 months after conviction, whichever is later.

### ➡ Complying with compulsion notices

If you don't give a sample on the day required by a notice or order, the Police can apply for a warrant to arrest and detain you for up to 24 hours until they can take a sample. If you refuse to give a sample in this case, **the Police can use reasonable force to allow a suitably qualified person to take the sample.**

### ➡ Access to the DNA databank

Information in the databank can only be accessed by the Police if they need to compare forensic evidence they have in a criminal investigation with information in the databank. **The Police cannot keep all profiles** collected and what they will do with your profile **depends on how they got your sample (See below).**

<i>How was the sample taken?</i>	<i>Can the Police keep your DNA profile?</i>
You gave a sample as a suspect but weren't charged	The Police must destroy the sample and any information gained from it, including your DNA profile twelve months after the date it was taken.
You were a suspect and were charged with the offence	If the charges were then withdrawn or you were acquitted of that offence, the Police must destroy the sample and profile as soon as that happens.
You gave the sample as a suspect and were convicted of the offence	If the offence is listed on the back of the legislation as a "relevant" offence (eg. burglary, rape, arson) your DNA profile is kept indefinitely. If the offence is not a relevant one, your DNA profile must be destroyed as soon as possible after the appeal period for the conviction has elapsed.
If you gave a sample for the DNA databank voluntarily	At any stage you can write to the Commissioner for Police to have your profile taken off the databank. Just say that you gave a bodily sample under section 34 of the Criminal Investigations (Bodily Samples) Act 1995 and you wish to withdraw your consent to the use of that sample. The sample and your profile must be removed then.
You were issued with a databank compulsion notice	Your DNA profile will be held indefinitely by the Police.

*For more information contact your local Community Law Centre*