



OPERATIONAL INSTRUCTION

Operational Instruction CSS-2004-02

Effective: May 3, 2004

Approved: Thomas H. Williams

Thomas H. Williams
Associate Director,
Community Supervision Services

Procedures for Offenders Who Refuse DNA Sample Collections

I. PURPOSE

This instruction is intended to provide continued guidance to Community Supervision Services staff on procedures to be followed when an offender refuses to submit to DNA testing. This instruction provides further direction for DNA sample collection procedures issued to staff on October 2, 2003 and November 14, 2003.

II. GUIDANCE

Federal law requires offenders who are under the Agency's supervision on probation, parole or supervised release, and who are or have been convicted of a qualifying District of Columbia offense, to submit a DNA sample. A list of the qualifying offenses is attached to this guidance for information and resource. The following procedures are to be followed in the event that an offender refuses to submit a DNA sample.

Note: All procedures established below must be documented in the SMART running record.

- A. Immediately upon learning of the offender's refusal to comply with testing, the assigned Community Supervision Officer ("CSO") is to confirm that the offender's charge is a qualifying offense.
- B. The assigned CSO must then notify the offender that failure to submit to DNA sample collection is illegal and will result in the imposition of administrative sanctions in accordance with the Offender DNA Sample Collection Policy Statement and that continued refusal will result in notification of the offender's refusal to the United States Attorney's Office ("USAO") for possible prosecution¹.
- C. The CSO must then reschedule the offender for a second appointment to occur within five business days.

¹ Failing to submit to DNA sample collection is a Class A misdemeanor. [42 U.S.C. § 14135b(a)(5)]

- D. Upon the offender's second refusal to submit to testing, the CSO is to notify his/her supervisor..
- E. The SCSO is then to submit to the Office of the General Counsel (via inner-office mail to 633 Indiana Ave., N.W., Room 1232) the following information within 5 business days:
1. A copy of the offender's DNA Sample Collection Forms to provide evidence that the offender was directed to report on at least two (2) occasions to one of the sites for DNA sample collection.
- Note: If the offender refused to sign the form(s), a printed copy of the SMART running record entry, indicating that the offender refused to sign the form(s), must be submitted in addition to the DNA Sample Collection Form(s).**
2. A printed copy of the offender's SMART Basic Profile to include the offender's name, DCDC# or PDID#, and qualifying offense.
- F. Once the Office of the General Counsel has received the necessary documentation from the SCSO, within 5 business days, that information will be forwarded with a standard cover letter to the USAO, Major Crimes/Transnational Section for possible prosecution.
- G. The USAO will be instructed to contact the CSO directly if additional information is needed regarding the offender's refusal to submit to DNA sample collection.
- H. The Office of the General Counsel shall maintain a log of all offenders referred to the USAO for prosecution to include the offender's name, PDID#, qualifying offense, date referred, assigned CSO, assigned Assistant U.S. Attorney ("AUSA"), referral status and disposition.
- I. The Office of the General Counsel will be responsible for follow-up with the USAO every thirty (30) days until a determination is reached by that office on whether or not to prosecute, and if so, until a verdict is reached. If the decision is made to prosecute, the Office of the General Counsel will provide notice to the assigned CSO.²
- J. At the discretion of the AUSA, the assigned CSO will be called as a government witness to testify at the offender's trial.³
- K. The assigned CSO will maintain supervision responsibilities in the offender's case until a verdict is reached.

² If the offender will be prosecuted, the CSO is required to follow agency policy with regards to notifying the releasing authority of the offender's new charge.

³ If convicted of the offense, the CSO is required to follow agency policy with regards to notifying the releasing authority of the offender's conviction.

Note: Only if an offender has been ordered to submit to DNA sample collection as a special condition by the USPC or the sentencing judge will the CSO need to prepare and submit an Alleged Violations Report (AVR) to the releasing authority indicating the offender refused to comply with the special condition as well as forward the information via OGC to the AUSA for prosecution.