

DNA testing by police



This information is only about DNA samples and identifying information gathered from people involved in criminal investigations. It is not about DNA testing in family law or child support cases.

What is DNA?

DNA is a substance that is part of every human body. It is different for everyone, except identical twins. Scientists can analyse your DNA to create a DNA profile that is specific to you. Your DNA profile can sometimes be used in court to identify you, like your fingerprint. Your DNA profile can also sometimes be used to show that you did not commit a particular crime.

How can a DNA sample be taken from me?

Scientists can get a DNA profile from a sample of your mouth cells, hair, or blood. The methods that are used to obtain these samples are:

- mouth cell sample – a sample is taken by buccal swab, which means the inside of your mouth is wiped with a swab similar to a cotton bud, to collect cells and saliva
- hair sample – hairs may be pulled from your head or pubic area, however only a doctor or nurse may take a sample of pubic hair, or
- blood sample – this is commonly obtained by pricking your finger and collecting a drop of blood.

Police must use the least painful method available when taking a DNA sample.

Do I have to give a DNA sample?

The law says that you may be requested to give a DNA sample in certain circumstances. If a DNA sample is requested from you, you can agree

(consent) to the request. If you do not consent, you can be **required** to provide a sample if you:

- are suspected of, but have not been charged with, committing a serious offence and a senior officer orders you to give a mouth cell sample or a sample of hair from your head, or a warrant is obtained for a blood sample or a sample of pubic hair to be taken
- are charged with a serious offence, or
- have been convicted of a serious offence within the last six months (mouth cell sample or hair sample only).

If you are charged with an offence that is not a serious offence then you are not required to give a sample of your DNA. However, you can be required to provide other identifying information like fingerprints and photographs.

If police have asked you for a DNA sample and you are not sure if you have to give a sample, you should get legal advice.

What is a serious offence?

A serious offence is any offence that has a maximum penalty of 12 months imprisonment or more. This includes offences such as assaults, sexual offences, robbery, burglary, most drug offences, fraud, dangerous driving causing death or injury and many others.

I am under 18 years old, do I have to give a DNA sample?

If you are under 18 you can be requested to provide a DNA sample. A responsible adult may consent for you to a sample being taken. If a

responsible adult does not consent, you can be **required** to provide a sample if you are:

- suspected of, but have not been charged with, committing a serious offence and a warrant is obtained for the sample to be taken, or
- charged with a serious offence.

If you are charged with an offence that is not a serious offence then you are not required to give a sample of your DNA. However, you can be required to provide other identifying information like fingerprints and photographs.

Where a responsible adult cannot be found, police can apply to a magistrate for a warrant authorising them to take a DNA sample or other identifying information.

Do I have to provide a DNA sample if I am a victim or a witness?

If you are a victim or witness to an offence, you may be asked to provide a DNA sample in the form of a mouth swab or hair from your head.

You can consent to providing a sample but if you are an adult and you do not wish to provide a sample, you cannot be required to give one. If you are child and a responsible person refuses to give consent for you, a warrant may be obtained to authorise a sample to be taken.

What happens if I refuse to give a sample?

If you refuse to give a sample when you are required to by law, the police are allowed to use **any force that is reasonably necessary** to overcome any resistance that they encounter from you or that they reasonably suspect might occur.

If you have been charged with a serious offence but you are not in custody, you may be arrested without a warrant and detained for a reasonable time for the sample to be taken.

You should get legal advice if you are concerned about the amount of force used.

Do I have to give more than one DNA sample?

You may have to give more than one sample if the first sample was not taken successfully. If you have given a sample while a suspect for an offence, you may have to give another sample if you are then charged with a serious offence.

What happens to my sample after it has been taken?

The sample will be analysed in a private laboratory to get your DNA profile. This profile will be stored in a computer database. The computer database may later be available to police around Australia.

The profiles in the computer database will be compared to DNA profiles found at crime scenes. You could be charged with an offence if your DNA matches the DNA found at a crime scene. Your profile can also be compared with profiles of missing persons or people suspected of committing other crimes.

Other uses of a DNA profile are very limited. It is an offence for anyone who has access to the database to use it for any purpose that is not allowed by law.

How long will my DNA profile be kept?

In certain circumstances you can ask to have your DNA profile destroyed, but otherwise it will be kept forever.

If you are found not guilty, or have your conviction quashed, you can ask for your identifying sample, which includes your DNA profile, to be destroyed. If you were a suspect but you were never charged or you were a victim or witness, you can ask for your identifying sample to be destroyed after any proceedings are finished or if there were no proceedings, then after two years.

You can ask to have your DNA profile destroyed by writing a letter to the Commissioner of Police. If approved, all details that link you to that information must also then be removed from the computer database.

Can the police take other identifying information?

Yes, police can always also take:

- a print of your hands, feet or ears, and
- a photograph.

In some circumstances, police may also be able to take one or more of the following:

- a measurement of any identifying feature,
- an impression of any identifying feature including a dental impression, or
- a sample of your hair for purposes other than to obtain your DNA.

If the police ask you to provide any of this information you can consent to do so. If you do not consent, you can be required to provide the information if:

- you have been convicted of a serious offence within the last six months
- you are charged with a serious offence, or
- you are suspected of, but have not been charged with, committing a serious offence and a senior officer orders you to give the information.

Where can I get more information?

See the following web pages on the **Legal Aid WA website** www.legalaid.wa.gov.au:

- **Police powers to arrest and detain**
- **Answering questions from police**
- **Police powers to search**
- **DNA samples and identifying information**
- **Complaints about the police.**

See the following **information sheets**, available from any Legal Aid WA office (locations on back page) or by contacting the **Legal Aid WA Infoline** on **1300 650 579**:

- **Police powers to arrest and detain**
- **Answering questions from police**
- **Police powers to search**
- **Complaints about the police.**

Legal Aid WA Infoline on **1300 650 579** for further information and referral.



Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)
Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

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1300 650 579
(08) 9261 6222

Southwest Regional Office

7th Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230
(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430
(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530
(08) 9921 0200

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722
(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725
(08) 9195 5888

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743
(08) 9166 5800

Indian Ocean Office

Administration Building, 20 Jalan Pantai
Christmas Island, Indian Ocean, WA 6798
(08) 9164 7529

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