

Biological Samples

333.1 PURPOSE AND SCOPE

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

333.2 POLICY

The University of Maryland, Baltimore Police Department will assist the Baltimore Police Department (BPD) with the collection of required biological samples from arrestees during booking in accordance with the laws of this state and with as little reliance on force as practicable (COMAR 29.05.01.04(B)).

333.3 ARRESTEES AND OFFENDERS SUBJECT TO BIOLOGICAL SAMPLE COLLECTION

A biological sample shall be collected from an individual who is charged with a crime of violence or an attempt to commit a crime of violence, or burglary or an attempt to commit burglary (Md. Code PS § 2-504(a)(3)).

An individual convicted of a felony or a violation of Md. Code CR § 6-205 or Md. Code CR § 6-206 shall have a biological sample collected at the time of sentence, or on intake to a correctional facility, or as a condition of probation (Md. Code PS § 2-504(a)(1)). These samples are generally collected by correctional staff.

333.4 PROCEDURE

BPD has primary law enforcement jurisdiction in the municipality of Baltimore, and UMBPD will only assist BPD, upon request, with collecting the biological sample from the respective arrestees. The primary UMBPD officer providing the assistance will be responsible for completing and submitting an Incident Report (Assist other Law Enforcement Agency) to capture this incident. At the time of collection of the biological sample, BPD will notify the individual that the biological record may be expunged and the biological sample destroyed in accordance with Md. Code PS § 2-511 (Md. Code PS § 2-504(a)(3)(ii)).

When an arrestee or offender is required to provide a biological sample, BPD will be responsible for obtaining the sample in accordance with this policy (Md. Code PS § 2-504(c)).

A second biological sample shall be taken if needed to obtain sufficient biological data for the statewide DNA data base system or if ordered by a court (Md. Code PS § 2-504(e)).

333.4.1 COLLECTION

The following steps should be taken to collect a sample:

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- (a) Verify the identity of the arrestee or offender and that the individual is required to provide a sample pursuant to state law (COMAR 29.05.01.04(K)).
- (b) Verify that a biological sample has not been previously collected from the arrestee or offender by querying the statewide DNA database. There is no need to obtain a biological sample if one has been previously obtained (COMAR 29.05.01.04(B)(4)).
- (c) Use the designated collection kit to perform the collection, following directions and taking steps to avoid cross contamination (COMAR 29.05.01.04(J)).

333.5 USE OF FORCE TO OBTAIN SAMPLES

If an arrestee or offender refuses to cooperate with the sample collection process, BPD should attempt to identify the reason for refusal and seek voluntary compliance. Reasonable force may be used in the collection of samples as authorized by court order or approval of legal counsel and only with the approval of a supervisor (COMAR 29.05.01.04(C)).

Methods to consider when seeking voluntary compliance include contacting:

- (a) The individual's parole or probation officer, when applicable.
- (b) The prosecuting attorney to seek additional charges against the individual for failure to comply or to otherwise bring the refusal before a judge.
- (c) The judge at the individual's next court appearance.
- (d) The individual's attorney.
- (e) A chaplain.
- (f) Another custody facility with additional resources, where the individual 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.
- (h) The supervisor shall review and approve any plan to use reasonable force and be present to document the process

333.5.1 VIDEO RECORDING

A video recording should be made any time force is used to obtain a biological sample. The recording should document all persons participating in the process, in addition to the methods and all force used during the collection. The recording shall be part of the Incident Report (Assist Other Law Enforcement Agency) and any Use of Force Report, if use of force is used, and retained in accordance with the established records retention schedule.

333.6 LEGAL MANDATES AND RELEVANT LAWS

Immediately after a biological sample is obtained, BPD will place it in the kit provided, seal it, and within 24 hours, transport or mail it to the Forensic Sciences Division of the Department of State Police Crime Laboratory (COMAR 29.05.01.04(M)).

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Possession of, or access to, individually identifiable biological information contained in the statewide DNA data base system or statewide DNA repository is confidential and may not be willfully disclosed in any manner to a person or agency not entitled to receive the information.

A member may not, without authorization, willfully obtain individually identifiable biological information from the statewide DNA data base system or statewide DNA repository (Md. Code PS § 2-512).