

Victoria Police Manual

The Victoria Police Manual is issued under the authority of the Chief Commissioner of Police in s.60, Victoria Police Act 2013. Non-compliance with or a departure from the Victoria Police Manual may be subject to management or disciplinary action. Employees must use VPM Professional and ethical standards to inform the decisions they make to support compliance.

Forensic procedures

Context

Conducting forensic procedures can assist in the investigation of a crime, confirm or disprove a person's involvement in the commission of an offence, and obtain impartial scientific evidence for use in the courts.

A forensic procedure includes taking intimate/non-intimate samples and conducting physical examinations or other procedures to obtain a sample from a person's body. Obtaining these samples (such as DNA, gunshot residue, flammable liquid, explosive residues and samples of other forms of trace evidence from a person's body) is governed by legislation.

The legislative power and procedure for conducting a forensic procedure is covered by s.464, *Crimes Act 1958*. This policy is designed to support members' compliance with these legislative requirements.

Contents

Context	1
Contents	1
Definitions.....	2
Scope and application.....	2
Policy	2
Responsibilities and procedures	3
1. When a forensic procedure may be conducted	3
2. Who may conduct a forensic procedure.....	3
3. Taking a forensic sample	4
4. Forensic procedures – suspects or persons charged (adult).....	6
5. Forensic procedures – suspects or persons charged (child)	10
6. Forensic procedures – convicted offenders.....	12
7. Forensic procedures – person not guilty of an indictable offence due to mental impairment 15	
8. Forensic procedures – volunteers	16
9. Obtaining urgent samples from suspects.....	17
10. Managing forensic samples	18
11. Retention and destruction of forensic samples	18
12. DNA Database.....	19
13. DNA matching.....	20
14. Familial DNA searching	21
Related documents	23
Further advice and information.....	23
Update history	23

Definitions

The following definitions are from s.464(2), *Crimes Act*:

Forensic procedure – means the taking of a sample from any part of the body, whether an intimate or non-intimate sample or any other type of sample, or the conduct of any procedure on or physical examination of the body, but does not include the taking of a fingerprint or a DNA profile sample.

Non-intimate sample means:

- a sample of hair, other than pubic hair, including the root if required
- a sample of matter taken from under a fingernail or toenail
- a swab, washing or sample taken from any external part of the body other than the genital or anal region of a male or female or the breast of a female.

Intimate sample means:

- a sample of saliva
- a mouth scraping
- a sample of blood
- a dental impression
- a sample of pubic hair, including the root if required
- a body swab or sample from external genital/anal region and female breast area.

Compulsory procedure means the taking of an intimate or non-intimate sample or the conduct of a physical examination.

DNA profile sample means a sample taken for the purpose of deriving a DNA profile that is:

- a blood sample
- a sample of hair, other than pubic hair, including the root if required
- a sample of saliva
- a scraping taken from the mouth.

Refer to **VPM DNA profile samples** for policy and procedures on taking DNA profile samples

Scope and application

- This policy applies to conducting forensic procedures; for policy and procedures on taking DNA profile samples see **VPM DNA profile samples**.
- This policy does not apply to the taking of blood or urine samples taken in accordance with the *Marine Act 1988*, *Road Safety Act 1986*, or the *Transport (Compliance and Miscellaneous) Act 1983*.

Policy

As stated in **VPMP Briefs of evidence**, DNA evidence must only be used where there is additional corroborating evidence, unless exceptional circumstances exist.

Responsibilities and procedures

1. When a forensic procedure may be conducted

- Police may obtain the person's DNA profile sample from someone suspected or charged and/or convicted of certain offences. The processes in **VPM DNA profile samples** should be used in the first instance where charges have been filed on or after 1 July 2019.
- If charges for the applicable offence were filed prior to 1 July 2019, a DNA sample must be obtained using the forensic procedure provisions detailed in this instruction. However, if the person is found guilty (or not guilty by mental impairment) of the offence from 1 July 2019 and a sample has not previously been taken; see **VPM DNA profile samples** for relevant Senior Police Officer Authorisation instructions.
- Members should consult with the Forensic Services Department (FSD) where further advice is required.
- In accordance with legislation, a forensic procedure may be conducted on:
 - suspects or persons charged (adults and children who are 12 years of age or over but under 18 years of age)
 - offenders (i.e. persons who have attended court)
 - volunteers.

The forensic procedure may be conducted with consent (s.464R), senior police officer authorisation (s.464SA), or court order (ss.464T, 464U and 464V).

2. Who may conduct a forensic procedure

If the sample is...	It may be conducted by...
Intimate sample	• Medical practitioner of the same sex as the person, if practicable • Nurse of the same sex as the person if practicable • Dentist, for dental impression • A person may take their own mouth scraping under the supervision of an authorised police member; see Instrument of Authorisation FP 1.3.
Non-intimate sample	• Medical practitioner • Nurse • Person authorised by the Chief Commissioner under Instrument of Authorisation FP 1.2.
Physical examination of a non-intimate part of the body	• Any person listed under intimate or non-intimate samples • Any police member

Any sample	A person undergoing a forensic procedure can request a medical practitioner or dentist of their choice to be present or conduct the procedure: • If the nominated practitioner/dentist conducts the procedure, police must also nominate a practitioner to be present. • The person subject of the forensic procedure is responsible for any costs involved in obtaining the services of their practitioner of choice.
------------	--

3. Taking a forensic sample

3.1 General requirements

The conduct of a forensic procedure will vary depending on the purpose, type of procedure, and under what authority the procedure is being conducted.

In all circumstances the following applies:

- establish the identity of the person
- if the forensic procedure is conducted at a police station and the person subject of the order is not in custody for any other matters, enter them in the Attendance Module
- for an intimate sample, a mouth scraping should generally be obtained; if the use of force is required (and a court order, if applicable, permits) then a blood sample is the preferred option
- during the conduct of a compulsory procedure, if the person is a child (who is 12 years of age or over but under 18 years of age), a parent or guardian of the child or, if a parent or guardian cannot be located, an independent person of the same sex as the child (if practicable) must be present
- before the conduct of any forensic procedure, the person must be cautioned in accordance with s.464Y; use Caution before Forensic Procedure [Form F9]
- a sample must be taken or a physical examination must be conducted:
 - in a manner consistent with appropriate medical, dental or forensic procedure standards
 - in the presence of a police member who is of the same sex as the person, if practicable, from whom the sample is to be taken or who is to be examined. This does not apply for a self-administered mouth scraping
 - in circumstances affording reasonable privacy. Work unit managers should specify a location within their station for the conduct of forensic procedures which should take into consideration the legislative requirements for audio visual recording, safety and welfare of police and others involved
 - in the presence only of persons required to be present, i.e. police member, persons assisting in the use of force, medical practitioner, dentist or nurse requested by the person, or parent, guardian or independent person for a child.

3.2 *Further instruction for supervising a mouth scraping as a forensic procedure*

- The authorised member must consider a mouth scraping to be appropriate in the circumstances and that it is appropriate for the person to take the sample.
- The person must consent to taking the mouth scraping and that consent must be recorded either by audio–recording, audio visual recording or in writing signed by the person. The Consent to provide a supervised mouth scraping [Form F14] must be used.
- The person must be given a copy of the recording (within seven days) or signed document (as soon as practicable).
- The person may conduct the procedure themselves, under the supervision of an authorised police member, not necessarily the same sex as the person providing the sample. Refer to Instrument of Authorisation FP 1.3 for authorisation requirements.

3.3 *Further instructions for the use of force*

- Where the court has made an order or a senior police officer's authority has been granted, a police member, with assistance as they consider necessary, may use reasonable force to assist a medical practitioner, nurse, dentist, or other authorised person to conduct the procedure.
- However:
 - there is no power to detain the person unless they are under arrest by virtue of other legislation or warrant
 - force cannot be used to obtain a supervised mouth scraping
 - for operational reasons only a blood sample may be sought under 'use of force' conditions for intimate samples.
- When it is apparent that use of force will be required, the requesting member must notify an independent sub-Officer. The sub-Officer must attend and investigate why the person will not provide a sample. If it is for a reason that can be reasonably facilitated, such as speaking to a legal practitioner or the person is ignorant of their rights or obligations, the sub-Officer must attempt to facilitate the reasonable request.
- If the person still refuses to comply, the sub-Officer must:
 - conduct a risk assessment of the circumstances, including: the person's age, size, strength, demeanour, nature of the sample required
 - contact the Custodial Health Advice Line for advice and to determine whether the Custodial Health Nurse (CHN) can attend to conduct the procedure
 - be present when the sample is taken if force is required.
- If practicable, police officers facilitating the sample being taken must:
 - be of the same sex as the person giving the sample; and
 - not be involved in the investigation for which the sample is being collected.

3.4 *Interstate samples*

Any member intending to obtain an interstate DNA sample must contact the DNA Management Unit (DNAMU) for advice prior to obtaining a sample due to the restrictions of different state legislation and policy requirements.

4. Forensic procedures – suspects or persons charged (adult)

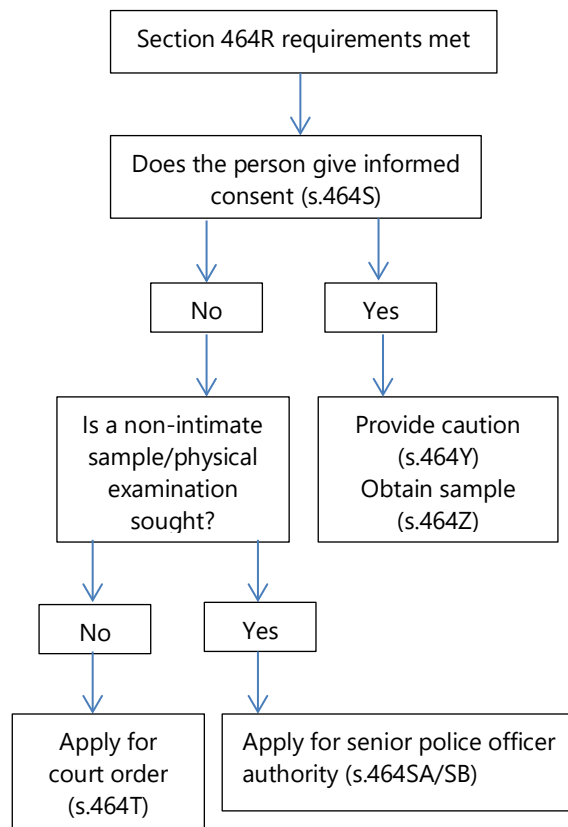
4.1 Application of legislation

Depending on the procedure/evidence that is required, it may be necessary for a suspect to undergo a forensic procedure. A forensic procedure does not include the taking of either of the below:

- fingerprints – see **VPM Fingerprints** for relevant procedures
- DNA profile samples – see **VPM DNA profile samples** for relevant procedures.
- In accordance with s.464R, a member may request a suspect to undergo a forensic procedure only if there are reasonable grounds to believe that the procedure would tend to confirm or disprove the involvement of the suspect in the commission of an indictable offence and any of the below applies, the suspect:
 - is suspected on reasonable grounds of having committed the indictable offence
 - has been charged with the indictable offence
 - has been summonsed to answer to a charge for the indictable offence.
- A forensic procedure may be conducted on a suspect if any of the below applies:
 - the suspect gives his or her informed consent
 - the Magistrates' Court makes an order under ss. 464T(3) or 464V(5)
 - a senior police officer gives an authorisation for a non-intimate compulsory procedure (s.464SA).

A senior police officer is a senior sergeant or above.

- The following provides an overview of this process:



- The following table provides the procedure where a member wants to:
 - conduct a physical examination; or
 - obtain an intimate or non-intimate sample, that does not fall within the definition of a DNA profile sample.

Step	Action
1	Where the requirements of s.464R are met, the investigating member must: • request informed consent by reading from Request for Forensic Procedure from a Suspect Aged 18 years or more [Form F1] • record the giving of this information and the person's responses via DEC or in writing and provide the DEC copy within seven days (via registered post) or a written copy as soon as practicable (s.464S(2)).
2	Informed consent given: • Type of sample: – A person ordered under s. 464SA to provide a non-intimate sample may elect to undertake a supervised mouth scraping (see section 3.2 of this policy); this decision is to be recorded on Consent to Give a Supervised Mouth Scraping or Blood Sample [Form F14] – If a non-intimate sample, other than a mouth scraping, is ordered/authorised (e.g. hair) organise a doctor, nurse or authorised person (refer authorisation FP 3) to take the sample and ensure information is recorded and witnessed by an independent person (464Z). • Prior to obtaining the sample: – Use Caution before Forensic Procedure [Form F9] to provide the caution – Go to step 3. Informed consent refused: Apply for a: • Senior police officer authority using Application for order directing an adult to undergo a compulsory procedure [Form F2]; or • Court order using Form F21A (see section 4.5 of this policy for further instruction).
3	• Conduct forensic procedure as required. • Distribute copies of Form 9 and Form 14 as required and retain originals as contemporaneous notes. • Enter sample details in PALM and convey sample to FSD.

4.2 Senior police officer's authority

In line with s.464SA, a senior police officer (senior sergeant or above) not involved in the investigation may authorise a non-intimate compulsory procedure or physical examination of a non-intimate part of the body to be conducted, if satisfied that the:

- person is a relevant suspect who is:
 - under arrest by warrant; or
 - under arrest by ss.458- 459 or other Act; or
 - in custody in accordance with s.464B order
- person is not under 18
- person is not incapable of giving informed consent by reason of mental impairment

- person has refused to give consent under s.464R
- reasonable grounds to believe person has committed the offence
- requirements of s.464T(3)(9)(c)-(f) are met
- in all the circumstances giving the authorisation is justified.

To obtain a DNA profile sample using a senior police officer authority in accordance with s.464SE, refer to the process in **VPM DNA profile samples**.

4.3 *Applying for a senior police officer's authority*

- The investigating member must complete an Application for a senior police officer's authorisation directing an adult to undergo a compulsory procedure [Form F21A], requesting a senior sergeant or above determine whether to authorise the procedure.
- If authorisation is not granted, the senior sergeant or above is to complete Form F21A (Part B). Scan and email a copy of Form 21A to VPFSC-DNA-SNRAUTHFORMS-MGR.
- If the senior police officer's authority (SPO Authority) is granted the investigating member must complete/prepare the following forms:
 - Record of advice for samples given under 464SA Authority [Form F21]
 - Endorsement for court/interim orders for forensic procedures [Form F10]
 - Form F9
 - Form F14.

4.4 *Executing the authority and obtaining the sample*

- A person subject to a SPO Authority under s. 464SA to provide a non-intimate sample, may elect to undertake a supervised mouth scraping (see s. 3.2 of this policy); this decision is to be recorded on Forms F21 and F14. If an alternative non-intimate is authorised (e.g. blood), organise a doctor, nurse or authorised person (refer authorisation FP 1) to take the sample and ensure information is taped and witnessed by an independent person (s.464Z).
- The investigating member must:
 - execute the authorisation and complete Form F21, Form F21A, Form F10, and F14
 - provide the caution using Form F9 and take the sample
 - give a copy of the documents to the donor and retain all original documents as contemporaneous notes. Scan and email Form F21, F21A Parts A & B to VPFSC-DNA-SNRAUTHFORMS-MGR
 - enter the sample details in PALM and convey it to VPFSC
 - provide copy of the recording to the person within seven days where copies of the hardcopy forms have not already been provided.

4.5 *Court Order - Adult suspect*

- A member of the police force may apply to a Magistrates' Court for an order directing a person to undergo a compulsory procedure if (ss.464T(1)-(4)) all of the below apply:
 - the person refuses to undergo a forensic procedure after being requested to do so or is incapable of giving informed consent by reason of mental impairment

- the sample or examination sought may be obtained by compulsory procedure
 - the person is a relevant suspect
 - a police member believes on reasonable grounds that the person has committed the offence.
- Complete Form F2 and Affidavit for court/interim order [Form F19].
 - The person must be present for the court order to be granted.
 - If the person is not in custody or detained or protected or held under warrant, there is no power to hold them to enable the sample to be taken, i.e. they can walk out of court after order is granted.
 - The following table details the process:

If the offender...	The investigating member must...
Attends court and court order is issued	• Execute the court order and complete Forms F9, F10 and F14 • Administer the Caution using Form F9 • Obtain the sample • Provide copies of records as required and retain original documents as contemporaneous notes • Enter sample details in PALM and convey sample to FSD.
Does not attend court	• Apply for a warrant using: – Application for warrant to undergo compulsory procedure [Form F6] – Warrant to undergo compulsory procedure [Form F7] – Affidavit for court/interim order [Form F19]. • If the warrant is issued, arrest person and take them before the court for the hearing of the application for a court order under s.464T.
Is detained in custody or a protected person, and has been previously interviewed and refused to undergo a forensic procedure	• Apply for a warrant using Warrant to transfer custody of a detained/protected person for a compulsory procedure order [Form F4] • Execute the warrant and bring the person before the court for the hearing of a court order to conduct a forensic procedure (s.464T) • Arrange for the warrant to be in the name of Corrections Victoria and executed in the same manner as a Gaol Order where the person is held in a Government Prison (gaol orders must not be used) • Ensure the person is returned to the officer in charge of the place where the person was held after the hearing of the application, or, if the application is granted, within such a period as reasonably permits the conduct of the procedure on the person.

5. Forensic procedures – suspects or persons charged (child)

5.1 *Obtaining an intimate sample from a child*

A police member may obtain a DNA profile sample from a child aged 15-17 without seeking a court order in certain circumstances; see **VPM DNA profile samples**. This is applicable if the child:

- is suspected of having committed or attempted to commit a DNA sample offence (see schedule 9, *Crimes Act*); or
- has been charged with a DNA sample offence;
- has been summonsed to answer to a charge for a DNA sample offence;

In all other cases a forensic sample is required, including obtaining a DNA sample from a child aged 12-14 years, and s.464U and the procedures below apply.

5.2 *Applying for a forensic procedure*

- In accordance with s.464U, a police member may apply for a court order for a child to undergo a compulsory forensic procedure if:
 - the child is aged 12 years of age or over but under 18 years of age; and
 - suspected on reasonable grounds of having committed or attempted to commit or are charged with:
 - an indictable offence against the person at common law; or
 - an indictable offence under Division 1 or Part 1 or under ss. 75, 75A, 76, 77, 197 (in circumstances where the offence charged is arson), 197A, 249, 250, 251, 317, 317A or 318; or
 - an indictable offence under ss. 71, 71AA, 72 or 72A of the *Drugs, Poisons and Controlled Substances Act 1981* (DPCS Act); or
 - an indictable offence under ss. 71, 72 (1)(ab) or 72(1)(b) of the DPCS Act as in force immediately before commencement of *Drugs, Poisons and Controlled Substances (Amendment) Act 2001*.
- The child must be present at court (except in respect of an interim order) for the court to make the order.
- A person under 12 years of age and not being a victim cannot undergo a forensic procedure.

5.3 *Process*

The following table sets out the process and requirements for conducting a forensic procedure on a child. It must be read in conjunction with the legislation.

Step	Action
1	Where the requirements of s.464U are met, the investigating member must complete the: • Application for order directing a child to undergo a compulsory procedure [Form F3]; and • Affidavit for court/interim order [Form F19].
2	If the child is in the custody of the investigating member, the member must: • serve notice (using Form F3) of the hearing date for the application on the child and their parent/guardian. • take the child before the Children's Court for the hearing of the application; go to step 4. If the child is not in the custody of the investigating member go to step 3.
3	If the child is not in the custody of the investigating member, the member must comply with the following where the child is a: • detained/protected person: – serve notice (using Form F3) of the hearing date for the application on the child and their parent/guardian; and – to ensure appearance at the court hearing, apply for a Form F4 • not a detained/protected person: – serve notice (using Form F3) of the hearing date for the application on the child and their parent/guardian.
4	• If the child does not attend court – Apply for warrant using Application for warrant to undergo forensic procedure [Form F6]. • If the child attends the hearing, the court may consider the application and; – grant the order - the investigating member must: ▪ ensure that Form F14 is completed and the caution is provided using Form F9. Distribute as required and retain originals as contemporaneous notes ▪ arrange for the sample to be taken in accordance with s.464Z and ensure a parent/guardian of the child (or if they cannot be located, an independent person of the same sex, if practicable as the child) is present during the procedure. Reasonable force may be used as necessary (s.464ZA) ▪ enter sample details in PALM and convey sample to FSD ▪ complete Endorsement of forensic procedure following senior police officer's authority or order [Form F10] If the order is granted there is no power to hold the child to enable the sample to be taken unless the child is in custody, a detained/protected person or held under warrant. – not grant the order – ▪ the investigating member must attach three copies of Application for court order directing a forensic procedure [Form F11] to the brief for consideration at court if the child is subsequently found guilty of an indictable offence.

6. Forensic procedures – convicted offenders

6.1 Application

- If an adult has been found guilty of an indictable offence or an offence specified in Schedule 8, *Crimes Act* (or any offence of conspiracy/incitement/attempt to commit), from 1 July 2019 a police member may apply to a senior sergeant or above to authorise the taking of DNA profile sample. See **VPM DNA profile samples** for details of the requirements and process.
- In accordance with s.464ZF, if a person has been found guilty of an indictable offence or an offence specified in Schedule 8, *Crime Act* (or conspiracy/incitement/attempt to commit) prior to 1 July 2019 a police member at any time after the finding:
 - within 6 months after the appeal period (s.464ZF (2))
 - within 12 months after the appeal period for some drug offences (s.464ZF(2AA))
 - finding of guilt was before July 1997 (commencement of s.25, *Crimes (Amendment) Act* 1997) and at any time on or after that date the person is serving a term of imprisonment or a period of detention in a prison, police gaol or YTC or as a security patient in an approved mental health service for any offence s.464ZF(3)

may apply to the court for an order directing that person to undergo a forensic procedure.

- The person must be present at court for court to grant the order, except for pre-existing s.464ZF(3) orders.
- If the person is a child (aged 12 years of age or over but under 18 years of age), a notice of application must be served on child and parent or guardian; use Form F3.
- Post-conviction samples are for intelligence purposes only and cannot be used for evidentiary purposes.
- Post-conviction orders must not be executed until the appeal period has expired (all courts 30 days).

6.2 Informant responsibilities

- Conduct LEAP checks and attach a printout to the rear of the brief of evidence.
- If a DNA profile exists it is not necessary to make application for a further sample.
- If LEAP indicates there is an unexecuted s.464ZF order, attempt to execute court order or contact DNAMU to ascertain if a further court order is required.
- If a profile does not exist and there are no outstanding orders, complete and attach Form F11 to the brief of evidence.
- Complete the relevant sections on the Brief Head and Summary of Charges.

6.3 *Prosecutor responsibilities*

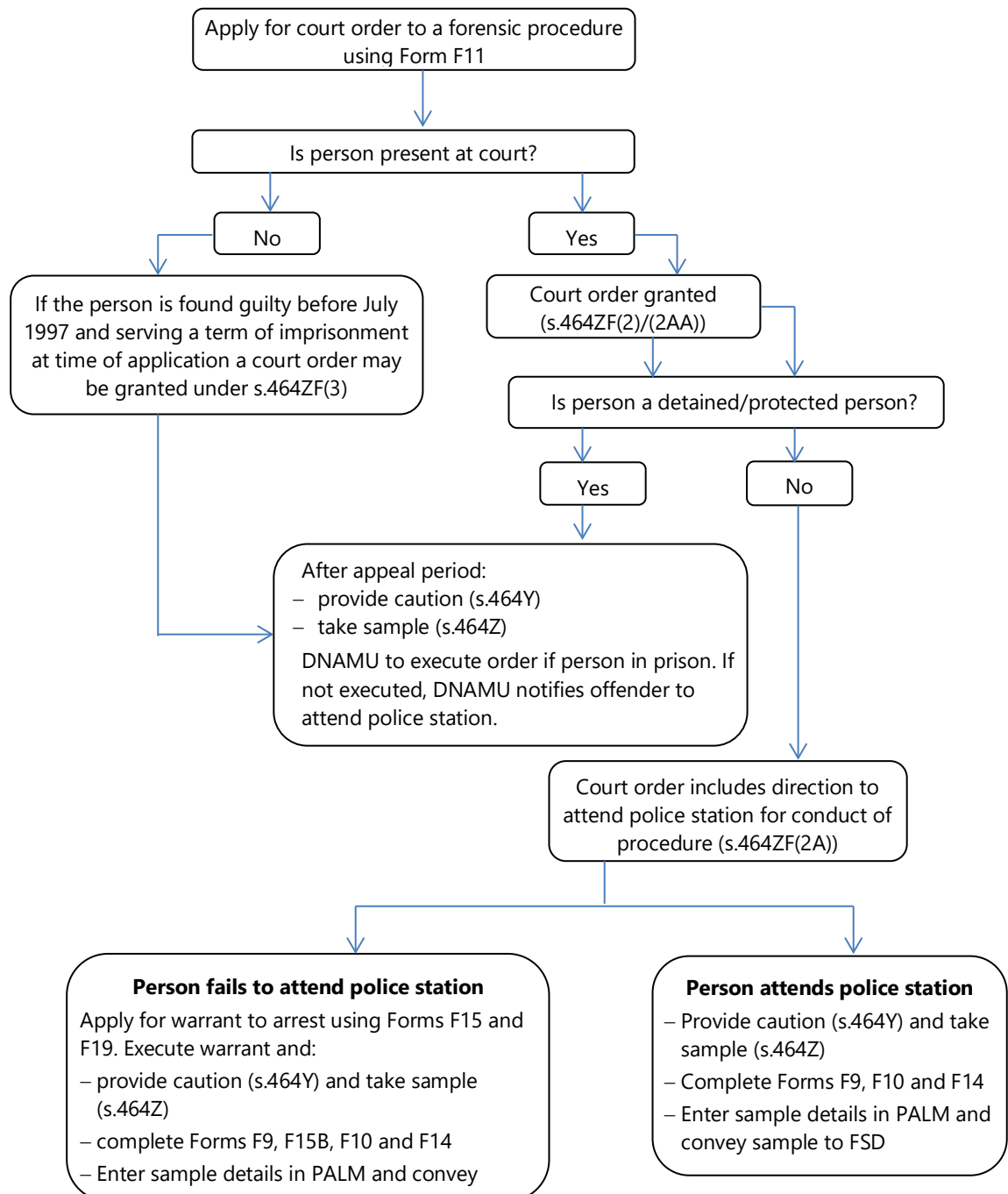
- Make application under s.464ZF(2) or (2A) or s.464ZFAAA as per the Form F11.
- Seek an intimate sample.
- If an order is made, attach court order to DNA Order Movement Cover Sheet [Form F20].
- Forward Form F20 to the DNAMU.

6.4 *Workplace manager responsibilities*

- Record outstanding files and orders received for execution from the DNAMU.
- Ensure completion of relevant sections of Form F20.
- Allocate a supervisor to monitor DNA files.
- Record any movement of the file, including completing sections of Form F20.
- Ensure the forensic procedure is conducted or a warrant obtained.

6.5 Process

The following table sets out the process and requirements for the conduct of a forensic procedure on a person found guilty of an indictable offence (or conspiracy/incitement/attempt to commit). It must be read in conjunction with the legislation.



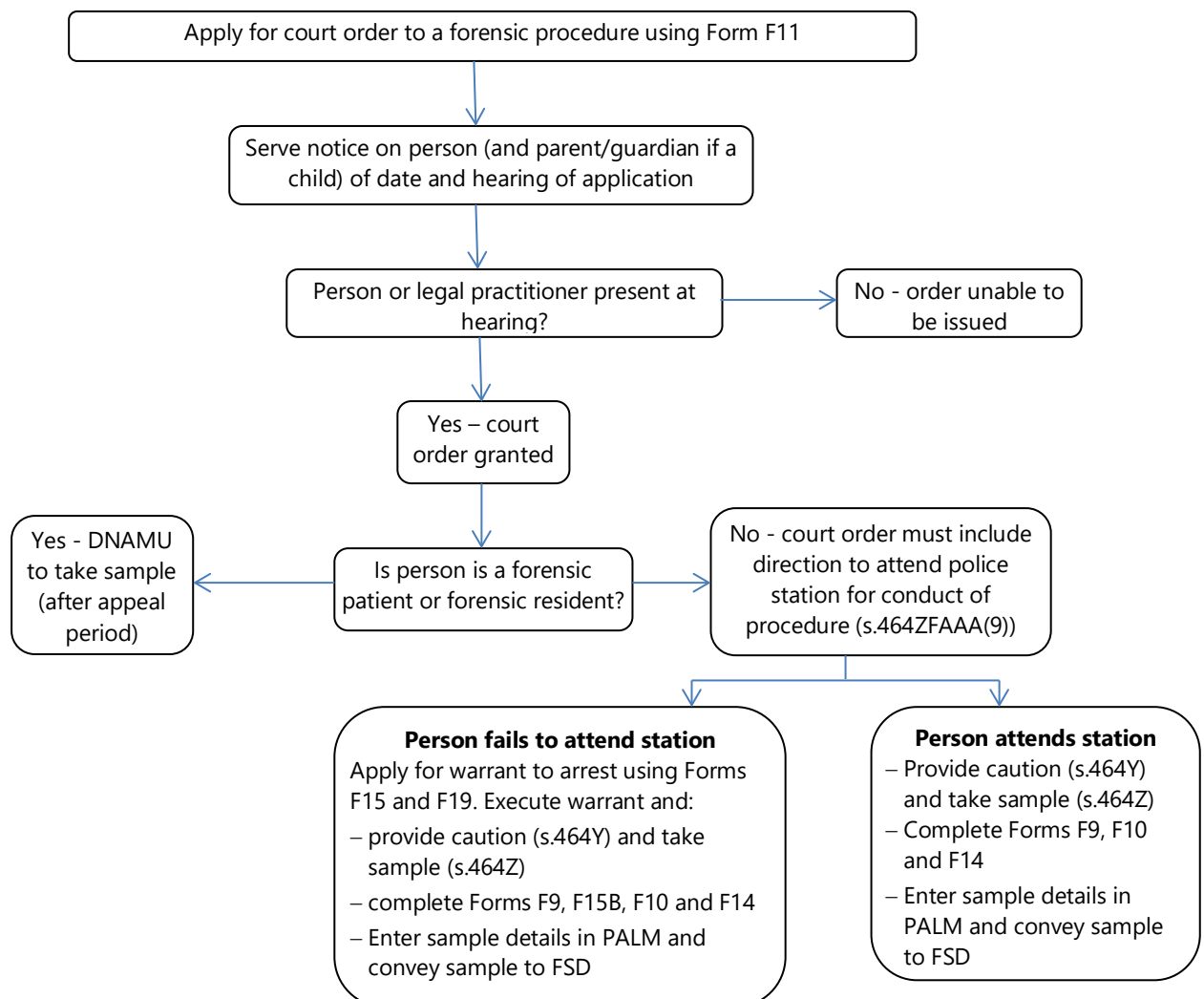
7. Forensic procedures – person not guilty of an indictable offence due to mental impairment

7.1 Application

- If a person has been found not guilty of an Indictable offence (or conspiracy/incitement/attempt to commit) due to mental impairment a police member, at any time after a finding of 'not guilty', but within 6 months after the appeal period, may apply to the court for an order directing the person to undergo a forensic procedure (see s.464ZFAAA).
- Notice of application must be served on the person and if the person is a child (aged 12 years of age or over but under 18 years of age), on a parent or guardian of the child.
- The person or their legal practitioner must be present for the court order to be granted.

7.2 Process

The following table sets out the processes and requirements for conducting a forensic procedure on a person found not guilty of an indictable offence (or conspiracy/incitement/attempt to commit) due to mental impairment. It must be read in conjunction with the legislation.



8. Forensic procedures – volunteers

8.1 *Criteria*

- A person of or above the age of 18 years may volunteer to give a sample (whether an intimate or non-intimate sample) to a member of the police force or registered persons (see s464ZGB).
- Voluntary samples are not to be used instead of post-conviction or relevant suspect samples.

8.2 *Process*

- The person is to give their consent in the presence of an independent person. They may withdraw their consent at any time before giving the sample.
- The person may choose whether the information obtained from analysis of the sample may be used for:
 - a limited purpose e.g. used for this investigation only and then destroyed
 - the purpose of a criminal investigation
 - any other purpose for which the DNA database may be used or under a corresponding law of a participating jurisdiction.
- The person is to be given certain information (including the options above) in a language they are likely to understand. This information is on the Record of Advice for Samples Given Voluntarily [Form F13].
- The giving of consent, receiving of certain information and any responses, and any directions as to the use of the information gained from the sample given by the person, are to be recorded:
 - in writing on the Form F13 signed by both the person and independent person witnessing the giving of consent
 - by audio visual recording, if practicable, or otherwise by audio recording.
- The conduct of the procedure is to be recorded by audio visual recording, if practicable, and if the person consents.
- Attach a copy of the Form F13 to the sample upon lodgement at FSD.

8.3 *Information to be provided to the volunteer*

- Provide the following documentation or items to the volunteer:
 - a copy of the Form F13, and the recording of them giving consent
 - if the taking of the sample is recorded by audio visual recording, a copy of the audio visual recording.
- The items are to be given or sent by registered post to the person or their legal representative without charge as soon as practicable, but not more than seven days after the information is given.

9. Obtaining urgent samples from suspects

9.1 *Applying for interim orders*

- Any police member can apply for an interim order if they believe on reasonable grounds that a forensic procedure is necessary and that the sample or evidence sought may be lost if the application is delayed.
- The application must meet the criteria set out in s.464T(3) (adult) or s.464U(3)&(7a-g) (child).
- Seek advice from a sub-Officer as to the suitability of making an application.
- An interim order cannot be made for the taking of a sample of blood (s. 464V). Interim orders should primarily be sought for intimate samples. If only a non-intimate sample is required use a senior police officer's authority.

9.2 *Application by telephone*

- To apply for an interim order by telephone complete the following forms:
 - Application for order directing an adult to undergo compulsory procedure [Form F2]; or Application for order directing a child to undergo a compulsory procedure [Form F3]
 - Affidavit for court/interim order [Form F19].
- Contact the Magistrates' Court after-hours registrar.
- If the subject of the application is present with the police member making the application the court must, if practicable, hear the person on matters relevant to the criteria for granting of the application.
- If the court makes the Interim Order the member must:
 - record the terms of the order, time and date it was made, date of venue of the court for a further hearing of the application, and name of the Magistrate who issued the order
 - supply a copy of the Interim Order to the person
 - inform the subject of the terms of the order and that a police member may use reasonable force to conduct the forensic procedure
 - notify the person in writing that they are required to be present at the further hearing of the application and the time and place of that application. Record the giving of this information by audio tape, video recording or in writing signed by the person. Use Forms F2 or F3. Give a copy of the audio visual recording or written record, as required, to the person or their legal practitioner (s. 464W(9))
 - send a copy of the Form F2 or F3 to the issuing Magistrate at the address nominated by the Magistrate or the registrar within 24 hours of making the application
 - conduct the forensic procedure and complete Forms F9, F10 and F14
 - enter sample details in PALM and convey sample to FSD.
- A sample taken in accordance with an interim order must not be analysed before the final determination of the application.

9.3 *Application by fax*

The procedure is the same as if making a telephone application except that:

- Forms F2 or F3 and F19 are faxed to the registrar
- it is not necessary to record the terms of the order
- if the giving of the information is recorded in writing:
 - inform the person of the relevant matters, then sign the Form F10 and have them sign Forms F9 and F14
 - attach the signed Form to the original faxed order
 - give the person a copy of the Form F2 or F3.

10. Managing forensic samples

The investigator is responsible for:

- establishing the identity of the person providing the forensic sample on each occasion a sample is obtained
- recording details in PALM of any forensic sample taken (including specifying the grounds for taking the sample and all relevant LEAP incident numbers)
- Keeping all paperwork as contemporaneous notes
- ensuring that Senior Police Authorisation forms are scanned and emailed to VPFSC-DNA-SNRAUTHFORMS-MGR
- submitting the forensic sample to FSD as soon as possible
- ensuring the sample is stored in a dry area and not refrigerated.

11. Retention and destruction of forensic samples

11.1 *Destruction of Samples*

- Suspect samples obtained by informed consent or under court order must be destroyed if the person has not been charged with a relevant offence 12 months after the conduct of the procedure, or has been charged but the charge was not proceeded with or the person was found not guilty.
- The sample and all other information must be destroyed unless a member of the police force makes application to the court seeking an order to extend the destruction period (s.464ZG).
- If an extension of the destruction period is required make an application to the court using Application for Extension of Destruction Period [Form F12]. Application for a further 12 months is recommended, however the court may assign a shorter period. Seek further advice from DNAMU if required.
- The police member responsible for the investigation for which the forensic procedure was conducted must immediately provide accurate updates about the legislatively prescribed status, particularly the need for destruction of forensic samples to DNA Science Branch, FSD.
- Responsibility for failure to provide such information, and any issues that arise from non-legislatively authorised use of such samples, rests with the informant and/or their work unit manager.

- Untimely notification leads to a breach of legislative requirements if forensic samples are held beyond the legal limits as governed by s.464, *Crimes Act*.

11.2 Retention of samples

Adult

- If a forensic sample has been obtained under s.464R, s.464SA, s.464T(3), s.464V(5) and a court finds the person guilty of any of the below:
 - the indictable offence in respect of which the forensic procedure was conducted
 - any other indictable offence arising out of the same circumstances
 - any other indictable offence in respect of which evidence obtained as a result of the forensic procedure had probative value

the sample will be automatically retained upon a finding of guilt or a finding of 'not guilty' by reason of mental impairment.

- The informant is required to notify FSD of the court outcome to ensure the sample is retained.

Child

- If a forensic sample has been obtained under s.464U(7) or s.464V(5) and a court finds the child guilty of any of the below:
 - the offence in respect of which the forensic procedure was conducted; or
 - any other offence arising out of the same circumstances
 - any other offence in respect of which evidence obtained as a result of the forensic procedure had probative value

a member of the police force within six months of finding guilt or a finding of not guilty by reason of mental impairment, can make an application to the court to retain the sample (s.464ZFB).

- Complete Application for retention of forensic sample [Form F17].
- Once the court order has been obtained forward the order to the DNAMU.

Volunteer

- If a forensic sample has been obtained under s.464ZGB the sample must be destroyed under s.464ZGE where:
 - the volunteer withdraws their consent; or
 - limited purpose has expired.
- A member may seek an order for retention of the sample under s.464ZGF.

12. DNA Database

- The keeping of a DNA database and the retention, management and destruction of DNA profiles is covered by legislation (refer ss.464ZFD-464ZGO).
- The primary role of the DNA database is to provide intelligence support to an investigation.
- The DNA database is comprised of samples taken under different provisions: relevant suspect, post-conviction, and voluntary.
- FSD has the primary role of managing the DNA database.

13. DNA matching

13.1 *Legislation*

Section 464ZGI allows for the matching of samples against profiles stored on the DNA database, dependent on the relevant provisions as to how the sample was obtained (e.g. suspect, post-conviction or voluntary sample for a limited or unlimited purpose). This includes the National Criminal Investigation DNA Database (NCIDD).

13.2 *Match of a person sample*

- Should a DNA profile from a person match a DNA profile from a crime, FSD will:
 - investigate the details of the DNA match and create a Forensic Identification Report (FRN) within the LEAP Forensic Module
 - notify the work unit manager of the relevant CIU/SOCIT, as determined by LEAP, of the creation of the FRN in LEAP via email
 - activate the investigation on LEAP, as required.
- The work unit manager is responsible for ensuring FRNs are allocated to an investigator within seven days.

13.3 *Match of crime scene samples*

- Should a forensic sample from a person match an unidentified sample from a crime scene, FSD will:
 - investigate the details of the match and create an FRN within the LEAP Forensic Module
 - notify the investigator and work unit manager of the relevant CIU/SOCIT, as determined by LEAP, of the creation of the FRN in LEAP via email
 - activate the investigation on LEAP, as required.
- The work unit manager is responsible for ensuring FRNs are allocated to an investigator within seven days.
- If an investigator is notified that a forensic sample matches an unidentified crime scene sample, and the investigator did not obtain the forensic sample as part of that investigation, the investigator must:
 - determine whether another forensic sample is required for use as DNA evidence
 - consider whether a DNA profile sample may be required; see **VPM DNA profile samples**.

13.4 *Match of crime scene samples – Victorian Institute of Forensic Medicine staff*

- Where it is suspected that a DNA database link between two crimes may involve examinations in both cases by Victorian Institute of Forensic Medicine (VIFM) medical staff (e.g. FMOs), DNAMU will advise the informant and VIFM at the same time that this suspected involvement has occurred
- The informant will then be responsible for initiating further investigation to ensure that the DNA match has not occurred as a result of DNA contamination of the exhibits collected.

14. Familial DNA searching

14.1 Overview

- Familial DNA searching can identify potential biological relatives of an unknown DNA profile where a direct match on the National DNA database has not been made. Familial searching looks for biologically related relatives of the contributor to the crime scene sample instead of looking for a direct match.
- A familial DNA search can be an effective tool to generate leads and aid in the investigation of serious crime. Results from the search may produce a list of candidates, in decreasing order of likelihood, who may be a close relative to the source of the crime scene sample.
- Members undertaking an investigation where DNA checks have not produced a match to a crime scene sample, may seek approval for a familial DNA search to be conducted by FSD if the case meets the criteria outlined below.
- Familial DNA searching can be conducted at both an intra and inter-jurisdictional level.
- For policy regarding coronial identification see **VPM Deceased persons** and **VPM Missing persons investigations**.

14.2 Criteria for conducting a familial DNA search

Consideration will be given to familial searching on a case by case basis by the relevant Assistant Commissioner (see section 14.3 of this policy). The following criteria, which have been developed to ensure the member making the application gives proper consideration to the human rights that are impacted, must be met for a search to be approved:

- analysis of the scene sample has yielded a DNA profile that is both suitable for familial searching and highly likely to have originated from the offender (seek advice from the Biological Sciences Group, FSD)
- previous direct match searching on the database has not resulted in a match
- the offence must fit at least one of the following criteria:
 - carry a significant custodial penalty (offences that carry a minimum term of 15 years imprisonment (level 1-4 imprisonment offences))
 - have a significant impact on the security and safety of Victoria
 - involve a significant public safety concern (e.g. serial offenders in serious crime cases).
- all reasonable and appropriate investigation has been conducted or there is a pressing investigative need
- an intra-jurisdictional search must be carried out before a request is made for an inter-jurisdictional search.

14.3 Application and approval process

- The primary investigator must submit a Familial DNA Search Application (application) for approval to the investigation manager. The application, located on the forensic procedures Intranet page, requires:
 - a summary of the investigation

- the result of previous investigations
 - information about any planned further investigations
 - how the selection criteria at section 14.2 of this policy have been met, including confirmation the profile is suitable for searching
 - confirmation that resourcing is available to fully investigate the matches
 - if an inter-jurisdictional search is required where no potential investigative value is obtained from the initial intra-jurisdictional search.
- The application must demonstrate that proper consideration has been given to the impact the DNA familial search will have on a person's human rights and that the impact is proportionate and justified in the circumstances in accordance with the *Charter of Human Rights and Responsibilities Act 2006*.
- The application, along with any supporting documents, must be uploaded into a document shell, managed on Interpose and linked to the relevant investigation shell.
- Acknowledgements of approval or any other comments can be made in the available 'comment boxes' attached to the Interpose document shell. For this reason, the document shell must not be locked down on Interpose.
- The Interpose document shell should be named FAMILIAL DNA APPLICATION 1 (subsequent applications will be identified numerically).
- The investigation manager must review the application and complete an issue cover sheet (ICS) which must be saved in the same Interpose document shell as the application, before emailing the document shell link to:
 - Regions – via chain of command to the Regional Assistant Commissioner, to be progressed to the Assistant Commissioner, Crime Command for final approval
 - Crime Command – via chain of command to the Assistant Commissioner, Crime Command for final approval.
- In determining whether to approve an application, the Assistant Commissioner must properly consider any identified limitation of human rights under the Charter, and whether this is justified in the circumstances specific to each application.
- Approved applications must be forwarded from the Assistant Commissioner, Crime Command directly to the Executive Director, FSD for allocation.
- Where there is a pressing investigative need for a familial DNA search and approval is required outside of usual business hours, the investigation manager must first consult FSD and then submit the Interpose link to the application and ICS to the Duty Assistant Commissioner for approval. The Duty Assistant Commissioner must forward the Interpose link for any approved applications to the Executive Director, FSD for allocation.
- FSD should notify the Assistant Commissioner, Crime Command of any refusal to progress an approved application.

14.4 Search results

Once the search is complete and results approved for release, the FSD case manager must prepare a report detailing the results and liaise with the investigators to:

- discuss and clarify the results
- explain the assumptions and limitations of the match

- determine if an inter-jurisdictional search is required. This may occur after investigators have evaluated and investigated the results of the intra-jurisdictional search and is dependent on approval from the Assistant Commissioner, Crime Command.

Related documents

- Instrument of Authorisation FP 1
- VPM DNA profile samples

Further advice and information

For further advice and assistance regarding this Policy, contact the Group Manager, Biological Sciences Group, Forensic Services Department.

Update history

DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
01/07/19	Review undertaken as part of the VPM Review project; new instrument combines and replaces VPMP Forensic procedures and fingerprints and VPMG Forensic procedures . Content aligned with procedural amendments introduced by VPM DNA profile samples .	FF-143085
18/10/21	Inclusion of familial DNA searching	FF-151510
30/09/25	Amendments to reflect the change of the minimum age of criminal responsibility from 10 years to 12 years of age.	FF-273062