

Custodial Operations Policy and Procedures

13.14 Mandatory disease testing

Policy summary

The *Mandatory Disease Testing Act 2021* (Act) establishes a scheme to require the mandatory blood testing of a third party (whether an inmate, a visitor, or any other person) in circumstances where the third party's bodily fluid, through deliberate action, has made contact with any worker (including correctional officers or other staff) and the worker has been placed at risk of contracting a blood borne disease. The result of the blood test is then made known to the worker. This is referred to as a Mandatory testing Order.

To obtain a Mandatory Testing Order, there are various complex and time sensitive steps which must be completed. A failure to complete these steps correctly and within the timeframe, may bar the worker from obtaining a Mandatory Testing Order. Accordingly, it is necessary to pay close attention to the details of this policy.

Corrective Services New South Wales (CSNSW) workers may make an application for a Mandatory Testing Order which will be decided by the Deputy Commissioner of their sub-division (Senior Officer). A worker or the third party may request the Chief Health Officer to review the decision of the Senior Officer.

It an offence for a person not to comply with a Mandatory Testing Order.

Management of Public Correctional Centres Service Specifications

Service specification	Safety and security
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Scope

This section applies to all correctional centres and other facilities administered by CSNSW, and all CSNSW employees.

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1 Mandatory Testing Order (MTO)

1.1 Immediate action after potential exposure incident

Procedures in COPP section 15.1 *Safe work practices* and 6.5 *Infectious and communicable diseases* must be completed by the affected officer and correctional centre workers (staff) after an incident where there is a chance of exposure to communicable diseases.

Following any incident where bodily fluid may have been transferred, workers (including correctional officers or other staff) are strongly encouraged to seek immediate medical attention. When receiving medical attention, to avoid potential disqualification from having an MTO granted, it is strongly recommended that workers carry a *Medical practitioner advice and information form* to their medical appointment and request the medical practitioner completes the form **within 24 hours of the contact occurring**.

1.2 Mandatory disease testing information video

It is strongly recommended that all frontline workers watch the [Mandatory Disease Testing Order Information Video](#) which explains the risk of contracting a Blood Borne Disease (BBD) in a correctional centre environment and the process of applying for an MTO.

1.3 Justice Health & Forensic Mental Health Network (JH&FMHN) Early Detection Program blood tests (non-MTO)

If the worker believes they are at risk of contracting a BBD, and they can identify the relevant inmate, they may submit a request for JH&FMHN to seek consent from the inmate to be blood tested for BBDs and for results to be shared with the worker's medical practitioner. Unlike Mandatory Disease Testing, this option is also available if the inmate did not deliberately cause bodily fluids to be transferred, or the incident otherwise would not meet the criteria for an MTO.

The request:

- must be made in consultation with and be initiated by the Governor, General Manager (GM), or Assigned Officer
- may be made whether or not the circumstances meet the criteria for an MTO to be granted.

To submit the request, the worker must complete the form, *Request for JH&FMHN to seek consent for BBD testing*, and the form must be signed by the Governor, GM or Assigned Officer. JH&FMHN will seek the consent of the third party (if an inmate) to have bloods taken for BBD testing via the JH&FMHN Early Detection Program. The blood test results may be shared with the worker via the worker's medical practitioner if the third-party consents. This option is separate from the Mandatory Disease Testing pathway, and does not impact on a staff member's ability to apply for an MTO.

A staff member can make a request using the *Request for JH&FMHN to seek consent via the Early Detection Program* form and make an application for an MTO at the same time.

Whether blood test results are received as a result of an MTO application or via the Early Detection Program, the inmate's blood test results must not be shared with anyone.

1.4 Procedure for JH&FMHN Early Detection Program blood tests (non-MTO)

If an incident with the potential for blood borne disease transfer has occurred:

	Procedure	Responsibility
1.	Liaise with the worker, encourage them to immediately seek medical advice, and ask if they would like to pursue seeking blood test results from the third party. If yes, ask the worker to complete a <i>Request for JH&FMHN to seek consent form</i> then complete the following steps in the procedure.	Governor/ GM/ OIC or Assigned officer
2.	Inform Nurse Unit Manager (NUM) or JH&FMHN OIC about the nature of the incident, the involved inmate and worker and that the worker seeks blood test results.	Governor/ GM/ OIC or Assigned officer
3.	Present the <i>Request for JH&FMHN to seek consent</i> to the NUM/OIC.	Governor/ GM/ OIC or Assigned officer
4.	Facilitate JH&FMHN staff access to the inmate to seek consent, for a blood test and the result shared with the worker (if consent is provided).	Governor/ GM/ OIC or Assigned officer
5.	Update the IRM report with the outcome of the JH&FMHN request i.e. whether consent was provided and whether bloods were taken.	Governor/ GM/ OIC or Assigned officer
6.	Email the completed <i>Request for JH&FMHN to seek consent</i> to [REDACTED]	Governor/ GM/ OIC or Assigned officer
7.	If bloods were taken, inform the worker that they must not share the blood test results with anyone, ask the worker to confirm with the Governor/ GM/ OIC or Assigned officer when blood results are received, and report any delay to JH&FMHN.	Governor/ GM/ OIC or Assigned officer

1.5 Mandatory disease testing policy

Step 1 – Consultation with Medical Practitioner

Under the Act, a worker (which includes any CSNSW staff member) may apply for a MTO in relation to a third party if:

- the worker has come into contact with the bodily fluid of the third party;
- the contact occurred:
 - in the execution of the worker's duty;
 - as a result of a deliberate action of the third party;
 - without the consent of the worker;
- the third party is not under 14 years old;

- the worker has consulted a relevant medical practitioner; and
- the worker applies within five business days after the contact.

In the context of CSNSW, the third party will usually be an inmate.

Under the Act, the worker's application is decided by a Senior Officer. For CSNSW workers, the Senior Officer is the Commissioner, who has delegated this function.

If continuing with a Mandatory Testing Order, the worker must consult with a relevant medical practitioner (see subsection 1.1 *Immediate action after potential exposure incident*).

The Act requires the worker to consult with the relevant medical practitioner as soon as reasonably practicable but no later than 24 hours after the contact occurred. The Act permits a worker to consult up to 72 hours after the contact occurred 'if reasonable in the circumstances'. The Act does not clarify what 'circumstances' would be 'reasonable'. Accordingly, to avoid any issue of the worker failing to consult with the medical practitioner within the timeframe, CSNSW encourages all workers who wish to obtain an MTO to consult the medical practitioner immediately after contact.

A relevant medical practitioner is a medical practitioner with qualifications or experience in BBD or, if a medical practitioner is not available with qualifications or experience in BBD is not available at the time the worker requires a consultation, another medical practitioner.

Medical practitioners with expertise in BBD, known as S-100 prescribers, for Hepatitis A, Hepatitis B and HIV can be found at this website: <https://www.ashm.org.au/prescriber-maps/>

If the medical practitioner does not have qualifications or experience in the diagnosis, management and treatment of BBDs, they should seek advice from another medical practitioner who does.

When a worker attends a relevant medical practitioner, they must bring with them the *Medical practitioner advice and information form*, which can be found under *Forms and annexures* on the COPP website. This form should be completed by the medical practitioner. It provides information about the scheme and prompts the medical practitioner to provide advice that is required to enable an application for an MTO.

The *Medical practitioner advice and information form* prompts the relevant medical practitioner to provide the required written advice on the following:

- the risk to the worker of contracting a BBD from the third party as a result of the contact
- the appropriate actions to be taken by the worker to mitigate the risks of contracting a BBD from the third party as a result of the contact, and of transmitting a contracted BBD to another person
- the extent to which testing the third party's blood for BBDs may assist in assessing the risk of the worker contracting a BBD.

If this form is not completed, or written advice providing comment on the three points above is not supplied, the application may not be able to be progressed.

It is recommended that the worker notify their nominated medical practitioner of impending results they may receive from an MTO/EDP application. Notification should

include the third party's name and date of birth along with the worker's name and date of birth.

Step 2 – Application for a Mandatory Testing Order

An application for an MTO to the Senior Officer must be made within **five** business days after the contact. Section 10 of the Act requires that the application must be made in writing and contain the following:

- a detailed description of the contact, including the date, time, place and surrounding circumstances
- the nature of the worker's contact with the third party's bodily fluid
- the correctional centre or location that the third party is housed (if applicable) or the address of the third party
- a statement that the worker did not consent to the contact
- a statement that, in the opinion of the worker's, the contact with the third party's bodily fluid was as a result of a deliberate action of the third party
- a statement that the worker consulted a relevant medical practitioner.

Providing false or misleading information in an application for an MTO is an offence under the Act.

The following information can be provided in a separate section of the *Application for a Mandatory Testing Order form*:

- the name and contact details of the relevant medical practitioner
- the name and contact details of a medical practitioner authorised by the worker to receive, on the worker's behalf, the results of the testing of the third party's blood.

The following should be attached to the email with the application form:

- a copy of the completed *Medical practitioner advice and information* form or written advice received from the relevant medical practitioner.

To make the application, workers must use the *Application for a Mandatory Testing Order* which can be found under *Forms and annexures* on the COPP website. A completed *Medical practitioner advice and information* form should be attached to the application email. Applications without this form completed by the Medical Practitioner may be unable to progress.

Applications must be forwarded to [REDACTED]

Step 3 – CSNSW to Assess Vulnerability of the Third Party

Once the MTO application has been received, it is the responsibility of the delegated officer to assess whether the third party is a vulnerable third party and they should make that determination by applying the following test:

A vulnerable third party is defined in the *Mandatory Disease Testing Act 2021* as a third party who:

- a) is at least 14 years of age but under 18 years of age, or
- b) has a mental health impairment or cognitive impairment, within the meaning of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, that

significantly affects the vulnerable third party's capacity to consent to voluntarily provide blood to be tested for blood-borne diseases.

The relevant definitions can be found at section 4 Mental health impairment and section 5 Cognitive impairment of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

Having a relevant mental illness or cognitive impairment does not automatically exclude the third party's capacity to consent to a blood test for BBD's. Consideration must be given the level of capacity to consent to voluntarily provide blood to be test for BBD's.

The above test must be determined in consideration of all available information, including:

1. the completed medical practitioner advice form.
2. The application for a Mandatory Testing Order.
3. The advice, reasons and any other information provided by Justice Health.
4. Any other available information

Step 4 – CSNSW to determine the MTO Application

If the delegated officer, has assessed the third party and it appears that they are a vulnerable third party, the Senior Officer must provide the third party and the third party's parent or guardian, if any, with an opportunity to make submissions, and consider the submissions. The Senior Officer must then, within 3 days of receiving the MTO application, either:

1. Decide to apply to the Local Court for the MTO; or,
2. Refuse the application.

If the Senior Officer, has assessed the third party and it appears that they are not a vulnerable third party, the Senior Officer must seek the third party's consent to voluntarily provide blood to be tested for BBDs and provide the third party with an opportunity to make submissions and consider the submissions received. The Senior Officer must then, within 3 days of receiving the MTO application, either:

1. Make the MTO; or,
2. Refuse the application.

In determining any application, the Senior Officer is to consider:

1. the MTO application
2. the completed medical practitioner advice form
3. this policy,
4. the Chief Health Officer's guidelines,
5. the incident report,
6. any eyewitness reports,
7. any footage,
8. any submission from the third party.
9. any other matters the Senior Officer considers relevant.

The Senior Officer may only make the MTO if they are satisfied that the third party will not voluntarily provide blood to be tested for BBDs, and testing the third party's blood for BBDs is justified in all the circumstances.

If an MTO is made, an assigned officer must present the third party with a copy of the order, and a notice of determination of application mandatory testing order. If the third party is in the community, the authorised officer may be a representative of the Office of the Sheriff. The officer must fully explain the content of the order and the notice, using interpreter services if required. The third party must comply with the order and be present at the specified place to be tested for BBDs. Failure to comply with the mandatory testing order is an offence.

Under the MTO scheme, the worker's nominated medical practitioner will be advised of the results of the test and will in turn advise the worker of the results. Under most circumstances, it is an offence under the Act for the worker to disclose the results of the test to any other person.

1.6 Risk of infection by blood-borne viruses

Hepatitis B is preventable by vaccination. The Australian Immunisation Handbook recommends Hepatitis B vaccination for people whose occupation increases their risk.

The Chief Health Officer (CHO) Guidelines for the *Mandatory Disease Testing Act 2021* provides information about the level of BBD transmission risk in various scenarios. Many incidents, assuming a third party has a blood borne disease, carry no, very low or low (<0.1%) BBD transmission risk, for example:

- where a third-party spits bloody saliva onto the arm of a worker
- where a third party throws faeces onto the face of a worker
- a punch from the bloodied fist of a third party that impacts an area covered in clothing
- a bite from a third party that marked the workers skin but does not break or cut the skin

Given their low risk, these types of incidents are very unlikely to be considered eligible for mandatory testing orders. Nevertheless, workers should seek medical advice following these incidents.

Many of the injuries, assuming a third party has a blood borne disease, that break the skin or where the eyes or mouth have come into contact with blood or visibly bloody bodily fluid would be classified as moderate (0.1%-1% chance of transmission). However, certain injuries such as a cut by a blade that recently cut an infected person, or a needle-stick injury from a needle recently used by an infected person may carry a much higher risk. For these types of injuries, the risk of infection is:

- 6% - 30% risk of contracting Hepatitis B
- 1.8 – 3% of contracting Hepatitis C
- 0.2% chance of contracting HIV.

The following injuries carry a moderate risk of contracting Hepatitis B, a low risk of contracting Hepatitis C and a less than 0.1% chance of contracting HIV:

- punch from bleeding person to body causing break in skin
- large blood splash e.g. bleeding artery
- blood contact to mouth from giving mouth-to-mouth resuscitation if no protective equipment used

The following exposures would generally warrant Post Exposure Prophylaxis (PEP), which is a short course of HIV medicines taken very soon after possible exposure to HIV to prevent the virus:

- a deliberate needlestick or sharps (stabbing) injury where the worker's skin is punctured or broken
- bloody saliva spat into the eye of a worker
- a punch from the bloodied fist of a third party that broke the worker's skin, or landed on the eye or mouth
- a bite from a third party that broke the workers skin, where there is blood in the mouth of the third party

Workers should always seek medical advice after such exposures.

1.7 Costs incurred by MTO applications

CSNSW pays for any costs incurred in an application for an MTO by a worker, including:

- the cost to the worker of the consultation with a relevant medical practitioner
- the reasonable travel costs and expenses incurred by the worker in attending the consultation
- the cost to the third party of complying with the order
- the reasonable travel costs and expenses incurred by the third party in complying with the order
- the cost of testing a third party's blood for blood-borne diseases in a pathology laboratory accredited by the National Association of Testing Authorities (NATA),
- other costs prescribed by the regulations.

Workers are to retain any receipts associated with costs and contact [REDACTED] [REDACTED] for details on how to claim reimbursement.

2 When the third party is an inmate held by CSNSW

2.1 Procedure for Governor/OIC on notification of MTO application

If the third party is an inmate in a CSNSW correctional centre or otherwise in CSNSW custody, the Office of the Deputy Commissioner Security & Custody will provide a copy of the worker's application for an MTO to the Governor/GM/OIC and the following procedures must be completed:

	Procedure	Responsibility
1.	Discuss with the worker if they will consider contacting JH&FMHN staff to see if the inmate is willing to consent to have blood tested via the Early Detection Program with the results shared with the worker.	Governor/ GM/ OIC or Assigned officer
2.	Assist the Office of the Deputy Commissioner Security & Custody as required. Ensure evidence (e.g. video footage/reports) is collated and make it available via evidence.com.	Governor/ GM/ OIC or Authorised officer
3.	<p>If the inmate <u>is</u> assessed as vulnerable and when instructed by the Office of the DC:</p> <ul style="list-style-type: none"> • Ensure the third party is provided access to a support person and legal representation • When the support person and/or legal representative has been arranged, provide the third party with (the Office of the DC will supply these): <ul style="list-style-type: none"> ○ a copy of the <i>Application for MDT order</i> (only sections of the application which can be issued to the inmate – <u>must not include personal information of the worker</u>) ○ the <i>Factsheet: Information for third parties</i> (also available in Arabic, Simplified Chinese, Traditional Chinese and Vietnamese) ○ A copy of the <i>Third party submission to Senior Officer</i> form to complete. A support person or legal representative may choose to write their own submission to the Senior Officer without using the form. • If a submission is completed by the third party (or their representative), scan the form and send it to [REDACTED] • Await further communication from [REDACTED]. 	Governor/ GM/ OIC or Assigned officer
4.	<p>If the inmate is <u>not</u> assessed as vulnerable, the Office of the Deputy Commissioner Security & Custody will request that the inmate is informed that an <i>Application for MDT order</i> has been made and to request voluntary consent to have their blood tested and results provided to the worker.</p> <p>Provide the inmate with the following forms (the Office of the DC will supply these):</p> <ul style="list-style-type: none"> • a copy of the <i>Application for MDT order</i> (note: sections of the application which can be issued to the inmate – <u>must not include personal information of the worker</u>) 	Governor/ GM/ OIC or Assigned officer

	Procedure	Responsibility
	<ul style="list-style-type: none"> the <i>Factsheet: Information for third parties</i> (also available in Arabic, Simplified Chinese, Traditional Chinese and Vietnamese) <p>If the inmate wishes to seek legal representation, they should be directed to contact their own legal representative or dial 11 of the Offender Telephone System (OTS) Common Auto Dial List (CADL).</p>	
5.	<p>If the inmate provides consent, inform the Office of the Deputy Commissioner who will contact JH&FMHN as soon as practicable to request the taking of blood. Provide the <i>Consent and nomination of medical practitioner</i> form to [REDACTED] and provide a copy to JH&FMHN staff. Provide the pre-filled <i>Pathology request form</i> to JH&FMHN (available on the COPP website under forms and annexures). If the inmate is a fresh custody inmate who has not yet entered a correctional centre, prioritise their progression to a correctional centre to facilitate blood testing.</p>	Governor/ GM/ OIC or Assigned officer
6.	<p>If the inmate does not consent to the taking of blood, and they intend to make a submission to the Senior Officer provide them with the <i>Mandatory disease testing order: Third party submission to Senior Officer</i> form and necessary stationery (if appropriate). Once completed, scan and email it to [REDACTED]. If the inmate subsequently declines to make a submission, report this via email.</p>	Governor/ GM/ OIC or Assigned officer

2.2 Processing applications by the Office of the Deputy Commissioner Security and Custody staff

Applications for an MTO will initially be assessed by staff of the Office of the Deputy Commissioner Security & Custody. Staff are responsible to:

- receive and initially review applications for MTO
- liaise with JH&FMHN to request/receive a current HPNF regarding vulnerability status
- prepare vulnerability assessment for the Senior Officer
- Inform the nominated medical practitioner that they have been nominated to receive the blood test results by completing and sending the practice the *Notification of nominated medical practitioner* form
- provide the Governor/OIC with any forms and/or information required to seek consent to voluntarily supply a sample if required
- provide Governor/GM/OIC/worker with advice on the MTO scheme as required
- ensure the Governor/GM/OIC provides the outcome of the request for consent and evidence including incident reports and footage as soon as practicable
- if consent is granted, liaise with JH&FMHN to take sample
- if consent not granted, assess the application and available evidence and provide a package to the Senior Officer with sufficient time for the Senior Officer to review and make a decision within three business days of application

- liaise with Governor/OIC when orders are made/refused to serve copies to the third party
- issue and distribute to relevant parties orders and determinations and maintain communication with the worker about the status of applications and support services
- instruct DCJ Legal/CSO for court applications for MTO if third party is vulnerable
- provide evidence packages and liaise with NSW Police for prosecution if required
- check and confirm with the worker that blood results have been received by the nominated GP
- maintain records of all stages of MTO applications, and produce reports and statistics as requested.

2.3 Senior Officer determination

Before determining an application, the Senior Officer must be satisfied that the incident occurred:

- in the execution of the worker's duty, and
- as a result of a deliberate action of the inmate, and
- without the consent of the worker.

An MTO can only be made by the Senior Officer if is satisfied that:

- the inmate is not a vulnerable person (as defined in the Act)
- the Governor (or assigned officer) explained the mandatory disease testing scheme to the inmate, using an interpreter if necessary
- the inmate was given a copy of (in their language if applicable):
 - the completed *Application for an MTO*
 - the *Factsheet: Mandatory disease testing*
 - the *Consent to voluntarily provide blood sample to be tested and results disclosed to the medical practitioner for the worker form*
- the inmate refused to give consent to be voluntarily blood tested
- the inmate was given an opportunity to make a submission
- the bodily fluid type meets the definition as defined in the Act
- the bodily fluid contact occurred in the execution of the worker's duty
- the contact with bodily fluid was as a result of a deliberate action by the Third Party
- the worker did not consent to the contact with the bodily fluid of the Third Party
- the worker's medical practitioner has provided advice that testing the third party's blood for blood-borne diseases will assist in assessing the risk to the worker of contracting a blood-borne disease
- there is a risk to the Worker on review of the Chief Health Officer Guidelines
- the third party could be located after making reasonable enquiries
- testing the inmate's blood for BBDs is justified in all circumstances.

An application for an MTO must be determined within 3 business days of receiving the application unless a longer period is necessary in the circumstances.

In determining an MTO application, the Senior Officer is to consider the Act, the Chief Health Officer (CHO) guidelines, the application of the worker, any incident or eyewitness reports or video footage, the submission of the inmate (if any) and any other matters considered relevant.

As soon as practicable once a determination is made, the Senior Officer must provide the *Notice of determination of application mandatory testing order* and the *Mandatory testing order* (if applicable) to:

- the CSNSW worker
- the third party (via the Governor/GM/OIC for inmates in custody, or using the services of the Office of the Sheriff if not in custody)
- the Ombudsman

2.4 Chief Health Officer’s guidelines

The Chief Health Officer (CHO) has developed guidelines to assist:

- senior officers exercising functions under the Act
- relevant medical practitioners who may consult with workers for the purposes of the Act
- persons taking blood from third parties under a mandatory testing order.

The guidelines also contain information about how BBDs are transmitted and how to minimise risk of infection and onward transmission, and information about the prevention, diagnosis and treatment of BBDs.

The CHO guidelines can be found under *Related documents* in the COPP.

2.5 Procedure for MTO order applications

	Procedure	Responsibility
1.	If exposed to an inmate’s body fluids, seek medical advice from a relevant medical practitioner with 24 hours after the contact, or 72 hours if reasonable in the circumstances.	Worker
2.	If you believe the inmate’s action was deliberate and you want them to be tested for BBD, ask the medical practitioner to supply information in writing about the risk of contracting BBD (see subsection 1.3 above). Ensure you bring the <i>Medical practitioners advice and information</i> form to the appointment and present it to the medical practitioner for completion. Note: The medical practitioner may be unable to provide the required advice to progress the application without the <i>Medical practitioners advice and information</i> form.	Worker
3.	Complete the <i>Application for Mandatory Testing Order</i> and email it to the DC via [redacted] with attachments (see subsection 1.4 Applying for MTO above)	Worker
4.	When the application is received, notify the local Governor/GM/OIC. Undertake a vulnerability assessment based on all available information. Provide advice and resources as necessary.	Staff member in the Office of the Deputy Commissioner S&C

	Procedure	Responsibility
5.	Complete the procedure at <i>Subsection 2.1 Procedure for Governor on notification of MTO application.</i>	Governor/GM/ OIC/Assigned officer
6.	Assess the application, request further evidence if necessary, and provide the package and a recommendation to the relevant DC.	Staff member in the Office of the Deputy Commissioner S&C
7.	Determine the application within 3 business days of receiving the application. Consider the CHO guidelines, any submissions and all available material.	Senior Officer
8.	Complete the <i>Notice of determination of application for MTO order</i> including the DC's reasons for decision. If a mandatory testing order is made, liaise with the Governor/GM/OIC so that the location of the blood test can be included on the completed order. If the DC has determined that the inmate is a vulnerable person and a Court Order should be applied for, forward the package and decision to DCJ Legal/CSO.	Staff member in the Office of the Deputy Commissioner S&C
9.	As soon as possible, issue the <i>Notice of determination of application for mandatory testing order</i> and, if applicable, <i>Mandatory testing order</i> to: <ul style="list-style-type: none"> • the worker • the inmate (which must be personally served by the Governor/GM/OIC or the Sheriff) • the Ombudsman. 	Staff member in the Office of the Deputy Commissioner S&C
10.	If the MTO is <u>not</u> made, inform the worker of their right to seek a review of the decision by the Chief Health Officer. Contact the Governor/GM/OIC of the centre/facility to ensure that support services are available to the worker.	Staff member in the Office of the Deputy Commissioner S&C
11.	If the MTO <u>is</u> made, inform the inmate (with an interpreter if necessary) of their right to seek a review of the decision by the Chief Health Officer. Inform the inmate they must still be tested for BBDs under the MTO, but the test results will not be released until the CHO's review is determined.	Governor/GM/ OIC
12.	If a court makes an MTO decision for a vulnerable inmate, follow steps 10, 11 and 12 above. Ensure the inmate is provided access to a support person and legal representation.	DCS&C staff and Governor /GM/ OIC

2.6 Taking and testing of blood for MTO

If an MTO is made, it will specify a place that the inmate must attend to have a blood sample taken for testing. The inmate is obliged to attend as soon as practicable, but no

later than two business days of being served with the order. The inmate must attend regardless of whether they have sought a review of the order by the CHO.

Generally, for inmates in correctional centres, the specified place will be the Health Centre staffed by Justice Health New South Wales (JH&FMHN). If the inmate is in a location without a health centre such as a Police/Court cell, the inmate may be escorted to the nearest centre staffed by JH&FMHN for their blood to be taken.

The inmate subject to an MTO must be accompanied by a custodial officer (but this must not be the officer applying for the MTO) to the Health Centre, and the JH&FMHN practitioner. Staff taking the sample must:

- be presented with a copy of the order relating to the inmate before taking the inmate’s blood
- take blood in a manner consistent with relevant medical and professional standards
- be provided with the pre-filled *Pathology request form* (available on the COPP website).

If it is impractical or otherwise not possible for the inmate’s blood to be taken at a JH&FMHN Health Centre, the Governor may arrange for a medical escort to take the inmate to the nearest appropriate hospital or medical centre.

For inmates who have been released before the MTO has been made or are released after an MTO has been made but before a blood test can be arranged, NSW Police and Community Corrections (if released to community supervision) must be notified.

	Procedure for taking and testing of inmate’s blood under MDT	Responsibility
1.	Accompany the inmate to the Health Centre	Assigned officer
2.	Present JH&FMHN staff with a copy of the MTO	Assigned officer
3.	If the inmate refuses to comply with the requirements of the MTO, report this to the Governor/OIC for further action and inform the DCS&C staff on: [REDACTED]	Assigned officer

2.7 Use of reasonable force and non-compliant inmates

Reasonable force may be used to take an inmate to the place where blood is to be taken from the inmate under an MTO, or to prevent loss, destruction, or contamination of the blood sample. However, force may not be used to restrain the inmate for the purposes of taking the sample.

If an inmate refuses to have a blood sample taken as specified in the MTO, this is a criminal offence punishable by financial penalty and/or a maximum imprisonment for up to twelve months. Non-compliant inmates should be reminded of this. If still non-compliant, staff must follow procedures outlined in COPP section 14.1 *Inmate discipline*, which may include reporting the offence to Police, and locking the inmate in cell pending adjudication. Staff must inform staff of the DCS&C, who will report the failure to comply with the MTO to the NSW Police Local Area Command. The inmate may also be placed on a segregated custody direction if such segregation is necessary to secure:

- the personal safety of another person(s)
- the security of the correctional centre
- good order and discipline within the correctional centre

3 When the third party is not an inmate held by CSNSW

3.1 Policy

If the third party is;

- a visitor to a correctional centre
- an offender supervised by Community Corrections
- any other person who is not an inmate

the procedures in *Subsection 2 When the third party is an inmate held by CSNSW* above will vary. A worker wishing to apply for an MTO where the third party is not an inmate should, in the first instance, consult a relevant medical practitioner (see subsection 1.3 *Seeking advice of a relevant medical practitioner with 24 hours*) and then, as soon as practicable, notify the Deputy Commissioner Security & Custody (S&C) office at [REDACTED] of their intention to apply for an MTO. The Office of the Deputy Commissioner Security & Custody will provide guidance according to the circumstances.

4 Application for CHO review

4.1 Application for review by CSNSW worker

A CSNSW worker member may request a review by the CHO if the Senior Officer has decided not to make an MTO. Application for CHO review must be made in writing within one business day of notification of the decision by the Senior Officer to refuse an MTO. CSNSW worker must use the *Application for review by CHO – worker* form when requesting a review. Applications for review by the CHO should be sent to [REDACTED] cc'ing [REDACTED].

4.2 Application for review by inmate

Once notified that an MTO has been made, an inmate may apply to the CHO to review the determination. Application for CHO review must be made in writing within one business day of notification of the decision by the Senior Officer to make an MTO. If an inmate intends to apply for a review, they must be provided the form, *Application for review by Chief Health Officer - third party* from a correctional officer. Once completed, CSNSW must ensure the form is emailed to the NSW Health Mandatory Disease Testing inbox ([REDACTED]) cc'ing the [REDACTED] immediately.

While under CHO review, the MTO is still in effect, and the inmate must comply with the order. However, the pathology supplier will be asked not to supply the results of the blood test to the medical practitioners nominated by the CSNSW worker, or the medical practitioner nominated by the inmate, or the CHO, while the order is under review.

Custody (DCS&C) or General Manager Statewide Operations (GM, SWO) to disclose information relevant to the assessment of vulnerability to the Senior Officer (or their representative) of an external agency to assist them to determine whether, on the information available, the third party is a vulnerable third party under the *Mandatory Disease Testing Act 2021*.

The Senior Officer of an external agency must contact the CSNSW MDT contact person in the Office of the DCS&C to assist in the assessment of vulnerability, and staff of in the Office of the DCS&C may retrieve alerts and case notes relating to the third party. The GM, SWO may then forward the relevant information (under 257(3)(b) to the external Senior Officer or their representative within their agency.

If the external Senior Officer assesses the inmate as not vulnerable, they may either:

- request access to the inmate at the correctional centre (e.g. in an interview room) to inform them of the application for an MTO, present them with a copy of the application, ask their consent to give blood voluntarily for testing, and if not consenting, ask if the inmate wishes to make a submission to the Senior Officer, or
- request CSNSW officers to carry out these procedures (steps 3 and 4 in 2.1 *Procedure for Governor/OIC on notification of MTO application*) and inform the Senior Officer of the outcomes.

COPP section **13.14 Mandatory Disease Testing** is also an official policy under 257(3)(b) of the CAS Act and the Commissioner authorises the DCS&C or GM, SWO to disclose information about whether the third party consented (or otherwise) to voluntarily provide blood, to return any consent form (or other documentation) completed by the third party, to advise whether the inmate will be providing a submission and to provide a copy of the submission to the Senior Officer.

If the inmate does consent to give blood voluntarily, the Governor or assigned officer must ask JH&FMHN to do so as soon as practicable.

If consent is not provided and an MTO is issued by the Senior Officer of the external agency, the Governor/GM/OIC or assigned officer may be asked to serve the order (and determination) on the inmate, and should arrange with JH&FMHN for blood testing to be conducted in a Health Centre. In such cases, subsection 2.6 *Taking and testing of blood for MTO*, subsection 4.2 *Application for review by inmate* and 4.3 *Content of application for review* applies. The DCS&C and GM, SWO is also authorised under section 257(3)(b) of the CAS Act to provide any other information in relation to the progression of an MTO application and order, for example information provided to the external agency about whether the inmate was blood tested following the issuing of an order, and the circumstances of any refusal.

If the inmate wishes to apply to the Chief Health Officer for a review of the decision of the Senior Officer of the external agency, this should be facilitated by the Governor/GM/OIC or assigned officer by providing the inmate with a copy of *Application for review by Chief Health Officer – Third party* and stationery (if appropriate). Completed applications for review should be scanned and emailed by the Governor/GM/OIC or assigned officer to [REDACTED] cc'ing [REDACTED].

Costs for the testing of the third party's blood for blood-borne diseases in a pathology laboratory accredited by the National Association of Testing Authorities (NATA) must be met by the external agency. JH&FMHN will request reimbursement for these costs from the external Senior Officer or their representative.

5.2 Procedures

	Procedure	Responsibility
1.	On request from the office of the Senior Officer of an external agency, with the approval of the GM SWO, provide relevant information regarding the vulnerability status of the inmate from OIMS.	Office of the DCS&C
2.	<p>If informed by the Office of the Deputy Commissioner that the third party has been assessed by the Senior Officer of the external agency as not vulnerable:</p> <ul style="list-style-type: none"> • facilitate access to the inmate for Senior Officer of the external agency or their representative; or • present the third party with a copy of the application, ask their consent to give blood voluntarily for testing, and if not consenting, ask if the inmate wishes to make a submission to the Senior Officer. If the third party would like to make a submission, provide them with a copy of the <i>Mandatory disease testing order: Third party submission to Senior Officer</i> and stationery (if appropriate). <p>Inform the Office of the Deputy Commissioner of the outcomes and provide documentation completed by the third party.</p>	Governor /GM/ OIC
3.	If the inmate consents to give blood voluntarily, contact JH&FMHN as soon as practicable to request the taking of blood. Provide the <i>Consent and nomination of medical practitioner</i> form to [REDACTED]. Provide the pre-filled <i>Pathology request form</i> to JH&FMHN (available on the COPP website). If the inmate is a fresh custody inmate who has not yet entered a correctional centre, prioritise their progression to a correctional centre to facilitate blood testing.	Governor /GM/ OIC
4.	If the inmate does not consent and an MTO order is made by the Senior Officer of the external agency, serve the order (and determination) on the inmate, and arrange with JH&FMHN for blood testing to be conducted in a Health Centre. In such cases, subsection 2.6 <i>Taking and testing of blood for MTO</i> applies. If blood testing is not available at the correctional centre or location, arrange for transport for the inmate to a location where blood testing is available.	Governor /GM/ OIC
5.	If a court orders an MTO on a vulnerable inmate, the procedures in step 4 above are to be followed. Ensure the inmate is provided access to a support person and legal representation.	Governor /GM/ OIC

6 Quick links

- [Related COPP](#)
- [Forms and annexures](#)
- [Related documents](#)

7 Definitions

Act	The <i>Mandatory Disease Testing Act 2021</i> (NSW)
Assigned Officer	An individual officer or an officer who is a position that the Governor (or MOS) in charge of a correctional centre has assigned to perform a particular duty or task.
BBD	A blood borne virus, corresponding to blood borne disease defined in the Dictionary of the <i>Mandatory Disease Testing Act 2021</i> .
Bodily fluids	Blood, faeces, saliva, semen or other bodily fluid or substance prescribed by the <i>Mandatory Disease Testing Regulation 2022</i> .
CADL	Common Auto Dial List
CHO	Chief Health Officer
Delegated Officer	In this policy, refers to a Senior Executive staff member with who has been delegated the functions of the Senior Officer by the Commissioner of CSNSW.
GM	General Manager
Governor	Governor includes a MOS in charge of a correctional centre (see Crimes (Administration of Sentences) Act 1999 subsection 233(3) and the definition of Governor at section 3)
HBV	Hepatitis B virus
HCV	Hepatitis C virus
HIV	Human immunodeficiency virus
MTO	Mandatory Testing Order
OIMS	Offender Integrated Management System
OTS	Offender Telephone System
Relevant medical practitioner	A medical practitioner with qualifications or experience in managing BBD infection or, if a medical practitioner with qualifications or experience in managing BBD infection is not available at the time the worker requires a consultation under section 9 of the Act, another medical practitioner.
Senior officer	In CSNSW, for the purposes of the Act, the senior officer is the Commissioner, whose function has been delegated to the Deputy Commissioner of the applicant's subdivision.

Third party	A person aged 14 and over from whom the bodily fluids originated (see section 8 of the Mandatory Disease Testing Act 2021)
Vulnerable person	<ul style="list-style-type: none"> is at least 14 years of age but under 18 years of age, or has a mental health impairment or cognitive impairment within the meaning sections 4 and 5 of the Mental Health and Cognitive Impairment Forensic Provisions Act 2020 that significantly affects the person's capacity to consent to voluntarily provide blood.
Worker	A worker specified in the Table at the end of the Dictionary of the Mandatory Disease Testing Act 2021.

8 Document information

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1.1	13/05/24	Review of procedures and inclusion of ability to engage JH&FMHN EDP Program Amendments/creation of forms to assist in strengthening applications. Refer to Deputy Commissioner's memorandum 2024/16