

Biological Samples

374.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the collection of DNA evidence from those individuals required to provide such samples under the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, and the State of California DNA Data Bank Program (Penal Code § 295, et seq.). Biological samples collection pursuant to Penal Code § 296 is addressed in the Custody and Court Operations Manual section 1500

374.2 POLICY

While the courts may order biological samples taken in a variety of circumstances under the Act, Members of this Department are only authorized to obtain biological samples from the following individuals absent other lawful means (e.g., consent or a search warrant).

Only those qualifying individuals whose biological sample is not currently on file with the Department of Justice may be required to provide samples. Verification of biological samples on file may be determined by a DNA collection flag on the individual's criminal history record or, during regular business hours, by calling the Department of Justice designated DNA laboratory at (510) 620-3300. All DNA collection flags should be verified by contacting DOJ prior to the collection of the sample (Penal Code § 298(b)(5)).

It is a misdemeanor for any qualified individual to refuse to give any or all required biological samples following written notice of the requirement to do so (Penal Code § 298.1(a)).

374.2.1 ARRESTEES

Any adult arrested or charged with any felony offense is required to provide biological samples. Biological samples should be collected immediately following arrest, or during the booking process, or as soon as administratively practicable after arrest but in any case prior to release on bail or other physical release from custody (Penal Code § 296.1(a)(1)(A)).

374.2.2 SEX AND ARSON REGISTRANTS

Any adult or juvenile who is required to register as a sex offender under Penal Code § 290 or arsonist under Penal Code § 457.1 including those whose registration resulted from a qualifying misdemeanor crime is required to submit a biological sample (Penal Code § 296(a)(3)).

At the time that any such registrant registers, updates registration, or is notified by the Department of Justice or other law enforcement officer, an appointment shall be made designating the time and place for the collection of biological samples if no such sample has already been provided (Penal Code § 296.2(c)).

374.3 PERSONS SUBJECT TO DNA COLLECTION

Upon a determination that any individual is qualified and required to provide biological samples under the Act, the arresting deputy or other Member designated by a supervisor shall obtain biological samples in accordance with this policy.

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374.3.1 BLOOD SAMPLES

The withdrawal of blood may only be performed in a medically approved manner by health care providers trained and qualified to draw blood. Blood samples obtained for submission to the Department of Justice DNA lab shall be placed in Department of Justice blood vials (Penal Code § 298(a) and (b)(2)). A right thumbprint shall be placed on the sample vial along with other required identifying information.

374.3.2 BUCCAL SWABS

Buccal swab samples (taken from the inside of the mouth) may only be procured by Members who have successfully completed departmentally approved training in the collection of buccal swabs and with the use of Department of Justice buccal swab collectors (Penal Code § 298(a) and (b)(3)). A right thumbprint shall be placed on the collector along with other required identifying information.

Note: If an individual violently resists or presents other officer safety issues, Members may omit buccal swab samples upon approval of a supervisor.

374.3.3 FULL PALM PRINTS

Full palm print impressions shall be obtained on Department of Justice prescribed forms along with all biological samples (Penal Code § 298(b)(4)).

374.3.4 USE OF FORCE TO OBTAIN SAMPLES

If after a written or oral request, a qualified individual who refuses to provide any or all of the required biological samples, a sworn Member of this Department may use reasonable force to obtain such sample(s) under the following conditions:

1. Prior to the use of reasonable force, the deputy(s) shall take and document reasonable steps to secure voluntary compliance (Penal Code § 298.1(c)(1)(C)).
2. Prior to the use of reasonable force, the deputy(s) shall obtain written authorization from a supervisor which shall minimally include that the individual was asked to provide the sample(s) and refused (Penal Code § 298.1(c)(1)(B)).
3. If the authorized use of reasonable force includes a cell extraction, such extraction shall be video recorded (Penal Code § 298.1(c)(1)(D)).

For the purpose of this section, the "use of reasonable force" shall be defined as the force that an objective, trained, and competent deputy faced with similar facts and circumstances would consider necessary and reasonable to gain compliance (Penal Code § 298.1(c)(1)(A)).

374.4 PROCEDURE

All biological samples and related materials shall be promptly forwarded to the DNA Lab using DOJ mailing tubes, labels, and instructions for prompt analysis (Penal Code § 298(a) and (b)(1)).

374.4.1 COLLECTION

In the event the Department of Justice notifies the Department that a biological sample or print impression is not usable, the individual whose original sample or impression was provided is required to submit to collection of additional samples. The Department shall thereafter take all

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reasonable steps to collect additional samples from any such individual and promptly transmit these to the Department of Justice (Penal Code § 296.2(a)).

374.4.2 FOLLOW UP NOTICE TO DOJ

Within two years of submitting any DNA specimen, sample or impression to the Department of Justice, this Department shall notify DOJ whether the individual remains a suspect in a criminal investigation (Penal Code § 297(c)(2)). It shall be the responsibility of the Department of Justice to thereafter purge samples of any individual(s) who are no longer a suspect in any criminal investigation from the DNA database.

374.5 UNLAWFUL COLLECTION OR TAMPERING OF DNA SAMPLE OR IDENTIFICATION INFORMATION

It is a felony for any qualifying individual to knowingly facilitate the collection of a wrongfully attributed biological sample or identification information, or to knowingly tamper with any biological sample or collection container with the intent to deceive the government as to the identity of the person who provided the sample (Penal Code § 298.2).

It is unlawful for any person to knowingly misuse or disclose to an unauthorized entity a biological sample collected or profile obtained for DNA database purposes (Penal Code § 299.5(i)(1)(A)).

374.6 LITIGATION

The Sheriff or authorized designee shall immediately notify the Department of Justice DNA Legal Unit at [REDACTED] in the event this Department is named in a lawsuit involving the DNA Data Bank sample collection, sample use, or any aspect of the state's DNA Data Bank Program.