

MARIN COUNTY SHERIFF'S DEPARTMENT
CUSTODY DIVISION POLICY AND PROCEDURES MANUAL

CHAPTER 2 - BOOKING
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DATE
01-25-2002
07-21-2006

DNA SAMPLE COLLECTION

POLICY

In compliance with the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69 – 11/04), all inmates meeting criteria set forth in Proposition 69 are required by law to provide for law enforcement identification analysis; a saliva sample, right thumbprints, and a full palm print impression of each hand.

PROCEDURE

Upon identifying any person who qualifies for the collection of a DNA sample set forth by PC296, (Proposition 69), authorized law enforcement, custodial, or corrections personnel including peace officers, shall obtain a DNA sample utilizing a DNA collection kit provided by the DOJ/DNA laboratory.

When obtaining DNA samples pursuant to **PROPOSITION 69**, the person qualified to obtain the sample shall confirm the identity of the qualifying offender prior to DNA collection. The person collecting the DNA sample will confirm the subject is a qualifying offender before collecting samples, specimens or print impressions. This will include a review of the subject's local records and state criminal history to insure that DNA samples and print impressions are not already on record with DOJ. The DOJ/DNA laboratory may be contacted if questions arise concerning collection status at (510) 620-3300.

Collect DNA Samples From Arrestees

- A. Collect buccal swab samples, right thumb print, full palm print from each hand from **adult persons** arrested on or after November 3, 2004 for the following, if their DNA samples and print impressions are not already in the possession of the Department of Justice:
 1. A felony PC 290 offense
 - a. Kidnapping with intent to rape (207PC/261PC)
 - b. Kidnapping with intent to commit sodomy (207PC/286PC)
 - c. Kidnapping with intent lewd or lascivious act (207PC/288PC)
 - d. Kidnapping with intent to commit oral copulation (207PC/288aPC)
 - e. Kidnapping with the intent to commit forcible penetration (207PC/289PC)
 - f. Kidnapping for ransom with intent to rape (209PC/261PC)
 - g. Kidnapping for ransom with intent to commit sodomy (209PC/286PC)
 - h. Kidnapping for ransom with intent to commit lewd or lascivious act (209PC/288PC)
 - i. Kidnapping for ransom with intent to commit oral copulation (207PC/288PC)
 - j. Kidnapping for ransom with intent to commit forcible penetration (209PC/289PC)
 - k. Assault with intent to commit rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or penetration of genitals or anus with foreign object (220PC)
 - l. Sexual battery (243.4PC)
 - m. Rape (261PC)
 - n. Forcible spousal rape (261(a)(1)PC)

- o. Rape or penetration of genital or anal openings by foreign object acting in concert with another person (264.1PC)
 - p. Enticing "chaste" female to prostitute herself (266PC)
 - q. Sexual contact through false pretenses (266cPC)
 - r. Pimping a minor (266h(b)PC)
 - s. Pandering a minor (266i(b)PC)
 - t. Procuring a child for lewd acts (266jPC)
 - u. Abducting a minor for prostitution (267PC)
 - v. Aggravated sexual assault of a child (269PC)
 - w. Incest (285PC)
 - x. Sodomy (286PC)
 - y. Lewd or lascivious acts (288PC)
 - z. Oral copulation (288aPC)
 - aa. Continuous sexual abuse of a child (288.5PC)
 - bb. Forcible sexual penetration (289PC)
 - cc. Importing child pornography (311.1; 311.2PC)
 - dd. Sexual exploitation of a child (311.3PC)
 - ee. Employing a minor for sex acts (311.4PC)
 - ff. Advertising child pornography for sale (311.10PC)
 - gg. Possession of child pornography (311.11PC)
 - hh. Annoying or molesting a child (647.6PC)
 - ii. Solicitation to commit sex offense (653f©PC)
 - jj. Indecent exposure (314(1),(2)PC)
 - kk. Contributing to the delinquency of a minor involving lewd or lascivious conduct (272PC)
 - ll. Sending sexual material to minor with intent to seduce (288.2PC)
2. Murder (187PC)
 3. Voluntary manslaughter (192(a)PC)
 4. Attempt to commit one of the preceding crimes. (296(a)(2)PC)

B. Do not collect from juvenile arrestees.

C. The arrestee provision is not retroactive.

D. Beginning in 2009, all adults arrested for any felony offense on or after January 1, 2009. (PC 296(a)(2)(c).) This expansion of the arrestee provision is not retroactive to arrests that took place before January 1, 2009.

Samples, specimens and print impressions must be collected as soon as practical after arrest (i.e., during booking), conviction, or adjudication, and in any event prior to release from custody on bail or other wise. Samples, specimens and print impressions must be forwarded promptly to the DOJ/DNA laboratory. Palm print impressions are sent electronically to DOJ's Bureau of Criminal Identification & Information in Sacramento. All samples, specimens and print impressions must be collected using DOJ approved collection kits and in accordance with DOJ's instructions.

The preferred, but not required, method of palm print submissions is electronic transmission via a Live Scan device. Palm prints must be obtained when the use of a Live Scan device is not available. The withdrawal of blood, when requested by DOJ, must be done in a medically approved manner by trained and certified health care providers. Buccal swab samples may be collected by law enforcement, correctional staff, or others who have been properly trained. The DOJ/DNA laboratory may request collection of blood specimen(s) where buccal swab is insufficient.

Once a DNA sample has been collected, the person obtaining the sample is responsible for recording the collection

in Sheriff's Office record management systems with the name, date of birth, JID#/CII #, date and time of collection and Sheriff's Office ID # of the person obtaining the sample.

At the completion of the sampling, a supervisor must review the DNA kit for completeness and accuracy. Once approved by a supervisor, the samples will be sealed in the provided collection kit and then mailed with the proper postage to the DOJ/DNA laboratory in Richmond, CA.

DNA Sample Collection Procedure for MCJ Staff

Upon identifying any person at the time of booking who qualifies for the collection of a DNA pursuant to PC296 (Prop 69) or upon receiving an Order Directing Submission of Buccal (Mouth) Swab Samples from the Superior Court jail staff shall:

- a. Upon identifying any person requiring the collection of a DNA sample at the time of booking, skip to step "d" and the booking deputy will follow the same procedures as noted in place of a MRD.
- b. Upon receipt of a Court Order, the Housing Sergeant (X-80) will place the Court Order in the Movement Relief Deputy (MRD) task box. (These orders must be completed as soon as practical by jail staff.)
- c. A MRD will pull the inmate's file and write the CII and jail number on the bottom portion of the Court Order.
- d. The MRD will check the CJIS "DNA" testing screen and determine if a previous test has been administered. (*Note, CJIS will soon be replaced by CompuDyne once the system is implemented). This is accomplished by entering "C" and the Court Number on the screen. If it determined that a test has already been administered, note on the Court Order and skip to step "i" of this procedure.
- e. The MRD will check via CII to confirm if a DNA testing has not already been administered and accepted by the Department of Justice. If already administered, indicate this on the lower portion of the Court Order along with the initials of the verifying person (MRD). This may also be checked during normal business hours, Monday – Friday, 8a.m.-5p.m., by calling the DOJ DNA Lab @ (510) 620-3300. If DOJ advises a sample has already been successfully obtained, skip to step "i" of this procedure.
- f. The MRD will distribute the Court Order and a DOJ sample collection kit to the Pod Deputy responsible for the inmate where he/she is housed. MRDs will be responsible for conducting Court Order tests to those inmates housed in Administrative or Disciplinary Segregation.
- g. The Deputy collecting the DNA sample will complete the DNA Testing Form and collect the DNA sample as explained in the DNA Sample Collection Kit.
- h. The Deputy collecting the DNA sample is responsible to complete the CJIS-DNA Testing Screen upon successfully obtaining sample. This is done by entering case type "C" and Court Case Number. Your badge number and date of collection will automatically be populated into the CJIS system. The CJIS-DNA Testing Screen must also be completed if the CII and/or DOJ Laboratory advises a sample has previously been obtained.
- i. The collecting deputy will complete the bottom portion of the Court Order. Note in computer on the booking tab in the remarks box "DNA Test Completed" along with the collecting deputies name and ID #.
- j. The completed DNA Sample Collection Kit must be sealed and mailed to the Department of Justice Laboratory in Richmond, CA. Collecting deputies shall insure that the collection packets are properly sealed and addressed as with any evidence sent for outside analysis.

- k. Distribution of completed Court Order (five copies) shall be distributed as follows; Green Copy to be placed in inmate's file, Yellow Copy will be forwarded to the Court via the "PTA" box located in Booking. If the inmate requests a copy of the original the collecting deputy shall provide one photocopy to the inmate.
- l. DNA Sample Collection Kits shall be maintained and stored in the Booking Area of the jail. It is the responsibility of the Booking Sergeant to insure an adequate supply of sample kits are maintained for the use of jail staff. Additional DNA Sample Collection Kits are available from the DOJ Laboratory, Richmond, CA.

Refusal to Submit to Court Ordered DNA Sampling

If an inmate refuses to submit to the sampling, he/she shall be advised that they are committing an additional crime of PC 298.1, a misdemeanor, and the sampling can be obtained by reasonable force. If they continue to refuse, the inmate will be booked for PC 298.1 and the deputy will prepare a crime report for the District Attorney. The report should articulate the specific language used and the demeanor of the inmate when he/she refused to submit to the sampling.

When the inmate refuses to comply with sampling, pursuant to Penal Code Section 298.1, and Title 15, Section 1059, authorized law enforcement, custodial, or corrections personnel including peace officers, may employ reasonable force to collect blood specimens, saliva samples, or thumb or palm print impressions from individuals who are required to provide such samples, specimens, or impressions pursuant to Penal Code Section 296 and who refuse following written and oral request.

For the purpose of this policy, the "use of reasonable force" shall be defined as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance with this regulation.

The use of reasonable force shall be preceded by efforts to secure voluntary compliance. Efforts to secure voluntary compliance shall be documented and include advisement of the legal obligation to provide the requisite specimen, sample or impression and the consequences of refusal.

The force shall not be used without the prior written authorization of the supervising officer on duty. The authorization shall include information that reflects that fact that the offender was asked to provide the requisite specimen, sample, or impressions and refused.

If the use of reasonable force includes cell extraction, the extraction shall be videotaped, including audio. Video shall be directed at the cell extraction event. The videotape shall be retained by the agency for the length of time required by statute. Notwithstanding the use of the video as evidence in a criminal hearing, the tape shall be retained administratively.

Within 10 days of the use of reasonable force pursuant to this regulation, the facility administrator shall send a report and a copy of **THE CALIFORNIA PENAL CODE SECTION 298.1 DATA COLLECTION FORM** (copy attached) to the Board of Corrections, documenting a refusal to voluntarily submit the requisite specimen, sample or impression; the use of reasonable force to obtain the specimen, sample, impression if any; the type of force used; the efforts undertaken to obtain voluntary compliance; and whether medical attention was needed by the prisoner or other person as a result of reasonable force being used.

RELATED STANDARDS:

- 290 P.C.
- 296 P.C.
- 297 P.C.

298.1 P.C.
Title 15, Section 1059
Proposition 69
Government Code, Section 76104.6

DATE REVISED

12-20-98

01-25-2002

05-10-2003

07-21-2006

By order of

DENNIS MCQUEENY
BUREAU COMMANDER