

## 05-001 Collection of DNA Samples From Arrestees

Los Angeles County Sheriff's Department

### FIELD OPERATIONS DIRECTIVE

Field Operations Support Services



#### COLLECTION OF DNA SAMPLES FROM ARRESTEES

##### **PURPOSE**

This Field Operations Directive establishes procedures regarding the collection of DNA samples by Department personnel pursuant to the DNA and Forensic Identification Database and Databank Act (Proposition 69).

##### **BACKGROUND**

In November 2004, Proposition 69, a ballot initiative, was voted into law by the citizens of California. The law amended Penal Code sections 295-300 and added Government Code Section 76104.6. It expands the DNA collection categories to include adults and juveniles previously convicted of any felony, adults arrested for certain felonies, and in January 1, 2009, adults arrested for any felony.

On August 4, 2011, the California Appellate Court issued a ruling declaring that the blanket DNA collection of all felony arrestees per Proposition 69 is unconstitutional. This court ruling prohibited collection unless justified by other legal grounds such as: consent, a search warrant, or prior judicial determination of probable cause. The Attorney General's Office has appealed this case, and the California Supreme Court has since agreed to review it. This effectively suspends the Appellate Court ruling until a decision has been passed down from the Supreme Court.

The DNA samples are submitted to the California Department of Justice DNA laboratory for analysis, and the DNA profiles are then stored in the California DNA databank. The profiles are also submitted to the Combined DNA Index System (CODIS), a national repository maintained by the FBI. The information in the DNA databank is compared to evidence collected from crime scenes for possible matches.

##### **POLICY AND PROCEDURES**

DNA collection by LASD personnel shall conform to the provisions of Proposition

69. DNA shall again be taken based on the fact that the person was arrested on a felony charge. Any collection conducted pursuant to consent or other court order is still valid. DNA samples shall be collected when one of the following conditions or documents exist:

- An adult is arrested for a felony offense
- An adult is arrested who is currently on felony probation or parole

- An adult is arrested who is currently on any type of probation (i.e. informal, summary or misdemeanor) with a previous felony conviction
  - Any person who is required to register under 290 PC (sex offender) or 457.1 PC (arsonist) or any other provisions of 296(a)(3)PC
  - Court order for a collection
  - Search warrant requiring collection
  - Judicially signed PCD for a felony arrest
  - Felony arrest warrant
- Jailer Responsibilities

The collection of DNA samples is part of the booking process. DNA may be collected using the LiveScan or the manual methods.

### **LiveScan Collection**

#### New Bookings

On every CRIM/DNA booking, the LiveScan will query the DOJ's DNA Databank to check on the prisoner's collection status. Once the jailer reaches the DNA page during the booking process, they shall read the response and opt to collect DNA at that time or defer it. If the jailer decides to collect DNA after receiving the collection status, they shall use a LiveScan specific buccal swab kit (small envelope) and enter the appropriate data into the LiveScan. The directions inside the kit shall be followed when collecting the sample. If DNA collection is deferred, the Jailer may transform the original transaction into a DNA Submission. Once DNA has been collected and the appropriate information is entered into the LiveScan and submitted, all appropriate downstream systems are updated including DOTS.

#### Prisoners in Custody

For a prisoner that is still in custody and may need to have DNA collected, use the LiveScan to perform an "ID4" transaction. This will query the DOJ, and the jailer can then decide if they wish to continue collecting DNA or not. If the jailer chooses to collect, they shall follow the listed procedures for a standard CRIM/DNA booking.

#### LiveScan Down (Inoperable)

If the LiveScan is inoperable for any reason, DNA should be collected using the manual method.

### **Manual Collections**

Station jailers shall:

- Ensure that all arrestees are properly booked and identified via LiveScan.
- Determine if a booked arrestee is required to provide a DNA sample based on the arrestee's probation/parole status and a review of his/her criminal history.
- Initiate an inquiry of the DNA Tracking Database (DOTS) to determine if a DNA sample has been previously collected.

If a DNA sample has not been previously collected or if it cannot be determined that a DNA sample has been previously collected, station jailers shall collect a DNA sample utilizing the following procedures:

- Explain the collection process to the arrestee. The Watch Sergeant shall be notified of a refusal.
- Complete the "DOJ Specimen Information Card," including placing the arrestee's "Right Thumb" print on the front and back of the card. Have the arrestee sign the back of the card.
- Complete the label on the buccal swab "DNA Collector." Move the Slider Cover back to fully expose the Collection Paper.
- Provide the buccal swab "DNA Collector" to the arrestee, who will administer the swab to himself/herself under the direct supervision of the jailer.

**NOTE:** The use of a new set of latex gloves by the jailer for EACH arrestee swab is imperative to prevent cross-contamination of the DNA samples.

- Instruct the arrestee to hold the buccal DNA Collector with their thumb on the area marked "thumb" located on the back of the Collector. Instruct the arrestee to open his or her mouth and place the collection paper portion of the "DNA Collector" flat against the inside of their cheek and drag it firmly toward the lips and out of the mouth. Have the arrestee repeat this action SEVEN more times, verifying that the arrestee's cheek bulges outward during the collection process. Retrieve the "DNA Collector" from the arrestee and close the Slider Cover towards the tip of the Collector, covering the collection paper. Do not touch the Collection Paper with your hand.
- Place the buccal swab "DNA Collector" in the unsealed "Transport Pouch" and deposit it into the unsealed collection kit envelope.
- Enter the appropriate identifying information of the arrestee into the DNA Tracking Database (DOTS), which may be accessed by any computer which is connected to the internet.
- Place the completed DOJ Specimen Information Card into the unsealed collection kit envelope.
- Submit the unsealed collection kit envelope with the completed booking package to the watch sergeant for approval.

**NOTE:** LiveScan collections using bar-coded buccal swabs do not require a DOJ Specimen Information Card. The collection information will be sent via LiveScan to DOJ and linked to the sample through the scanned bar code on the buccal swab.

Administrative Jailers shall periodically (at least once a week) send approved, sealed DNA collection kits to the "Inmate Reception Center, DNA Unit" via County Mail or other internal delivery process accompanied by a memo indicating the number of kits being sent in the package.

DNA collection from arrestees booked into LASD station jails by outside agencies shall be the responsibility of the station jailers.

#### Watch Sergeant Responsibilities

The Watch Sergeant shall:

- Verify that all components of a DNA collection kit are complete and accurately labeled.
  - Ensure that both sides of the "DOJ Specimen Information Card" are filled out and complete.
  - Verify that there is a legible thumbprint on the front and back of the "DOJ Specimen Information

Card.”

- Compare “DNA Collector” label with “DOJ Specimen Information Card” prior to sealing the “DNA Collector” into the “Transport Pouch.”
- Ensure that all components of a DNA collection kit are present within the collection kit envelope prior to sealing the envelope, utilizing the permanent adhesive of the envelope.
- Print name and employee number on the outer flap of the collection kit envelope and return it to the jailer.

In the case of a refusal to provide a required DNA sample, the Watch Sergeant shall:

- Obtain the assistance of the jailer or other personnel to make a video recording of the refusal.
- For the camera, state:
  - The date, time, and location of the incident.
  - The arrestee’s full name, date of birth, and booking number.
  - The interviewing sergeant’s name and employee number.
  - The name and employee number of any other personnel present, and
  - If an interpreter is necessary, name the interpreter.
- Attempt to obtain compliance by fully explaining the requirements of 296.1(a)PC to the arrestee by reading the following admonishment:

*“It is a violation of Penal Code Section 298.1 if you refuse to provide a DNA sample, fingerprints, and palm prints per Penal Code Section 296(a). You may be arrested and booked for this newcrime. Refusal to provide these samples may result in increased time in custody. In addition, pursuant to Penal Code Section 298.1, reasonable force may be employed to collect DNA samples and print impressions from individuals who refuse to voluntarily provide those samples or impressions.”*

- Ask the arrestee if he/she will provide the required DNA sample. Try to elicit a verbal response from the suspect.
- Ensure that a report (SH-R-49) is written for violation of 298.1 PC (misdemeanor).
  - Include the arrestee’s admonishment and refusal on tape within the narrative of the report (SH-R-49).
- Ensure that the video recording of the arrestee’s refusal is labeled and properly processed as evidence.
- Assign the case to station detectives.
- Complete the “Use of Force to Obtain DNA” form authorizing the use of force to obtain a sample. (See attached example.) The form shall include information that reflects the fact that the offender was asked to provide the requisite specimen, sample, or impression and refused.
- The arrestee shall be transported, along with the signed “Use of Force to Obtain DNA” form, to the Inmate Reception Center for a DNA sample (blood) to be taken.
- Inmate Reception Center personnel will collect the DNA sample following the policies and procedures of Correctional Services Division.

#### IRC Supervising Sergeant’s Responsibilities

The IRC Supervising Sergeant shall review and complete the “Use of Force to Obtain

DNA” form authorizing the use of force to obtain a sample. Additional information on the form shall document:

- A refusal to voluntarily submit the requisite specimen, sample, or impression occurred
- The use of reasonable force to take the sample (if necessary)
- 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.

This form will be attached to a letter from IRC Operations to the Board of Corrections within 10 days of the use of reasonable force. (Sample Letterhead attached.)

### Training

All jailers shall be trained in taking DNA samples utilizing the buccal swab process. This training shall be documented on an APIS roster [class “DNA (DOTS)” TRS #09588].

The APIS roster shall be sent to the Education Training and Records office to be included in the employee’s electronic training records file. Administrative jailers will be responsible for the training of other jailers at their respective units of assignment.

### Supplies

Logistics/Central Supply shall be responsible for obtaining and maintaining an adequate supply of DNA kits from the California Department of Justice. Stations may obtain additional DNA kits (stock # SHDNAKT) from Logistics/Central Supply utilizing existing procedures for ordering supplies.

## **AFFECTED DIRECTIVES**

MPP Section 5-03/030.10 - Adds additional booking processes in cases where DNA samples are required.

## **CITES/REFERENCES**

Station Jail Manual, Booking Procedures

MPP 05-03/030.00, Booking Procedures

Penal Code, Sections 290-298, 457.1

California Department of Justice Buccal DNA Collection Kit Instructions (10/21/04) (12/20/2006)

California Code of Regulations (CCR) Title 15 - Section 1059

California Code of Regulations (CCR) Title 15 - Section 1363

California Code of Regulations (CCR) Title 15 - Section 3025

**ATTACHMENTS**

"Use of Force to Obtain DNA" Form

Department Letterhead Sample letter to CDCR-CSA reporting refusal

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