

5-22/003.00 DNA Refusal Procedures

PURPOSE OF ORDER:

The purpose of this order is to establish procedures regarding the collection of DNA samples from arrestees with felony charges at the Inmate Reception Center (IRC). IRC personnel may employ reasonable force to collect blood specimens, saliva samples, and thumb or palm print impressions from inmates who refuse to provide DNA samples.

SCOPE OF ORDER:

This unit order shall apply to all personnel assigned to and/or working in any capacity at IRC, specifically those assigned to DNA Collections.

ORDER:

Per Proposition 69, a ballot initiative voted into law on November 2, 2004, IRC personnel assigned to DNA Collections shall adhere to the following procedures when an inmate refuses to provide DNA samples.

Proposition 69

Pursuant to Proposition 69, DNA samples shall be collected when one of the following conditions or documents exists:

- A person arrested for a felony offense
- A person arrested who is currently on felony probation or parole
- A person arrested who is currently on any type of probation with a previous felony conviction
- Any person who is required to register under Penal Code Section 290 (sex offender) or Penal Code Section 457.1 (arsonist) or any other provision of Penal Code Section 296(a)(3)

- Court order for a collection
- Search warrant requiring collection
- Judicially signed Probable Cause Declaration (PCD) for a felony arrest

Refusal to Provide DNA Samples (Misdemeanor)

Pursuant to Penal Code Section 298.1, any person who refuses to give any or all of the following: blood specimens, saliva samples, or thumb or palm print impressions as required by this chapter, once he or she has received written notice from the Department of Justice, the Department of Corrections and Rehabilitation, any law enforcement personnel, or officer of the court that he or she is required to provide specimens, samples, and print impressions, pursuant to this chapter is guilty of a misdemeanor.

Punishment

The refusal or failure to give any or all of the following: blood specimens, saliva samples, or thumb or palm print impressions is punishable as a separate offense by both a fine of five hundred dollars (\$500) and imprisonment of up to one year in a county jail, or if the person is already imprisoned in the state prison, by sanctions for misdemeanors according to a schedule determined by the Department of Corrections and Rehabilitation.

Reasonable Force

IRC personnel may use reasonable force to collect blood specimens, saliva samples, and thumb or palm print impressions from persons who, after written or oral request is received, refuse to provide DNA samples. IRC personnel shall consider the following prior to using reasonable force:

- As established in the Manual of Policy and Procedures (MPP) section 3-10/020.00 "Authorized Use of Force" and Custody Division Manual (CDM) section 7-01/020.00 "Authorized Use of Force," personnel shall use "objectively reasonable" force. The "reasonableness" of the use of force must be judged from the perspective of a reasonable officer, rather than with the 20/20 vision of hindsight. Personnel shall consider the facts and circumstances confronting them, without regard to their underlying intent and motivation. All force used by IRC personnel for the purposes of collection DNA specimens, samples or print impressions shall be done in accordance with Department policy.

- The use of force shall be carried out in a manner consistent with regulations and guidelines adopted by the Board of Corrections.
- The use of reasonable force shall not be authorized without the prior authorization of the watch commander, for the purpose of collecting DNA specimens, samples or print impressions after a written or oral request is received, and refused by the arrestee.
- Authorization shall include information that reflects the fact that the inmate was asked to provide the requisite specimen, sample, or impression and refused.
- The use of reasonable force shall be preceded by efforts to secure voluntary compliance.
- The refusal and use of force to obtain a DNA sample shall be videotaped.

Applying Reasonable Force to Collect DNA

Prior to an inmate's arrival to IRC, if that inmate requires DNA collection, the arresting law enforcement agencies shall arrange for the collection with appropriate medical personnel. The IRC watch commander shall be notified when law enforcement agencies are unable to make arrangements with medical personnel due to the inmate's refusal.

Arresting law enforcement agencies shall then request booking approval and complete the "Use of Force to Obtain DNA" form authorizing the use of force to obtain a DNA blood sample.

Once approval has been given by the watch commander, the inmate shall be booked and live scanned prior to being transported to IRC.

In all other cases IRC personnel are required to collect DNA from in-custody inmates. IRC personnel assigned to DNA collections are required to collect saliva samples and thumb or palm print impressions. **The withdrawal of blood samples shall be performed by trained and certified phlebotomists, not Medical Services Bureau personnel.** Blood samples will be sent to the California DNA data bank. The phlebotomists shall not be civilly or criminally liable either for drawing blood when done in accordance with medically accepted procedures.

If an inmate from another facility (i.e. Men's Central Jail (MCJ) or Twin Towers Correctional Facility (TTCF)) is ordered by the courts to provide a blood sample and refuses, the handling facility's sergeant shall assemble deputy personnel to place the inmate in a safety chair and transport the inmate to IRC's phlebotomist. Refer to the *Custody Division Manual (CDM) Section, 7-03/040.00 Safety Chair.*

Once it is determined that the inmate is not going to provide the required DNA sample, personnel shall notify the IRC watch sergeant and watch commander.

The sergeant shall assign personnel to videotape the DNA collection, including the counseling and admonitions given to the inmate prior to the forcible DNA collection. The sergeant shall then ensure custody personnel has secured the inmate into a safety chair, assist with the transport of the inmate to the IRC phlebotomist or DNA Collections custody assistant and direct custody personnel to secure the inmate's body. The phlebotomist will then collect DNA samples in accordance with medically accepted procedures.

After a blood sample has been obtained, the inmate will be released from the safety chair, unless the inmate's behavior is such that it requires further use of the safety chair. **The inmate shall not be kept in the safety chair for more than two (2) hours, unless exigent circumstances require the need to keep the inmate secured in the safety chair. Approval shall be obtained from the watch commander (of permanent rank of lieutenant or above) in consultation with medical staff. Refer to (CDM) Section, 7-03/040.00 Safety Chair.**

A gurney may be substituted in place of the safety chair. If an IRC phlebotomist is unavailable, the watch commander shall notify Medical Services Bureau and ascertain if an on-duty MSB phlebotomist is available.

Sergeant Responsibilities

The sergeant shall perform the following:

- Assign personnel to assist in video recording the watch sergeant's interview of the inmate's refusal
- While on 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
- Attempt to obtain compliance by fully explaining the requirements of Penal Code Section 296.2(a) to the inmate 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 inmate if he will provide the required DNA sample. Try to elicit a verbal response from the suspect
 - Review and complete the “Use of Force to Obtain DNA” form authorizing the use of force to obtain a sample (SH-R-475) please refer to the following hyperlink for the form http://intranet.lasd.sheriff.sdn/intranet/sites/rmb/foss/_fods/2005/05-01-dna-forceform.pdf
 - The form shall be attached to a letter from IRC operations to the Board of Corrections within 10 days of the use of force incident
 - Ensure that an incident report (SH-R-49) is written for violation of Penal Code Section 298.1, for refusal or failure to provide a DNA specimen (misdemeanor). In the report, include the inmate’s advisement and refusal on tape or in the incident report (SH-R-49)
 - All reports generated from personnel shall be assigned to the Jail Investigations Unit (JIU)
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