

2005 DIRECTIVES

• **05-13 (Revised November 2010) COLLECTION OF DNA SAMPLES**

Number 05-13 (Revised November 2010)

Effective November 2, 2010

COLLECTION OF DNA SAMPLES

REVISION NOTICE:

The following Directive revisions listed below apply to all courthouses which have lockup personnel.

LOCKUP RESPONSIBILITIES:

- Court Services lockup personnel utilizing the Livescan machine to process the booking of court remanded individuals shall be responsible to collect DNA from qualified persons, if required.
- All designated lockup personnel shall verify that a DNA sample has been collected for new bookings which have a qualifying arrest charge. The arresting agencies failure to collect a required DNA sample will result in refusal of the new booking acceptance.
- All lockup personnel shall utilize the Court Services rubber stamp (provided by Headquarters Training Unit) on the booking slip to document the new booking DNA status (if the arresting agency does not have a stamp or official documentation of offender DNA status).

BRANCH SUPERVISORS RESPONSIBILITIES:

- Provide overall supervision and accountability for the DNA collection process at designated locations which have permanently assigned Custody Assistants and/or designated lockup personnel trained in the collection of DNA.

- Lockup supervisor's shall print their name and employee number on the outer flap of the collection kit envelope and return it to the designated lockup personnel.
 - Ensure that Court Services personnel shall not use force to obtain a DNA sample when the inmate refuses. All DNA sample refusals shall be returned to IRC for processing.
- Follow proper guidelines for refusal of DNA collection samples (sign the top portion of the "Use of Force to Obtain DNA" form).

CSD DIRECTIVE 05-13 NOVEMBER 02, 2010

COLLECTION OF DNA SAMPLES

Page 2 of 5

PURPOSE

The purpose of this Directive is to establish procedures regarding the collection of DNA samples by Court Services personnel from qualified persons 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 amends Penal Code Sections 295-300 and adds Government Code Section 76104.6. It expands the DNA collection categories to include adults and juveniles convicted of any felony, adults arrested for certain felonies, and in January 1, 2009, adults arrested for any felony.

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 samples shall be collected from all qualifying adults during the Livescan booking process, if required.

DNA samples shall be collected at the courts from adults who are granted an in-court release and meet the following conditions:

- Adults convicted of a misdemeanor with history of a qualifying felony conviction.
- Adults in custody or on probation, or parole, or any other supervised release after any felony offense committed prior to November 3, 2004.
- Adults convicted of any felony offense.
- Any person required to provide DNA as a condition of a plea agreement.

Court services lockup personnel utilizing the Livescan machine to process the booking of court remanded individuals shall be responsible to collect DNA from qualified persons. Adults out of custody (i.e., O.R. status, bail, etc.) will be provided a written order from the court ordering him/her to submit to a DNA sample at the agency of arrest within five days. Should an out of custody defendant request a DNA sample be taken at the courthouse, Court Services personnel will direct the defendant to the appropriate arresting agency as indicated by the court.

Lockup Personnel Responsibilities

All designated lockup personnel shall:

- Verify that a DNA sample has been collected for new bookings, which have a qualifying arrest charge. If the DNA sample was required but not collected, the arresting agency will be contacted and instructed to complete the collection prior to accepting the arrestee. The arresting agencies failure to comply will result in the refusal of new booking acceptance. Direct all compliance issues to the lockup supervisor.

CSD DIRECTIVE 05-13 NOVEMBER 02, 2010

COLLECTION OF DNA SAMPLES

Page 3 of 5

- Lockup personnel will utilize the Court Services rubber stamp to document the new booking DNA

status (if the arresting agency does not have a stamp or official documentation of offender DNA status). Lockup personnel will stamp the upper portion of the booking slip and have the agency sign and check the appropriate DNA criteria. The rubber stamp will assist Court Services Division and Custody Division in tracking the new booking DNA status.

Designated lockup personnel trained in the collection of DNA shall:

- Collect a DNA sample if the inmate's release order has been stamped with a court order requiring a DNA sample via the Livescan Crim DNA process. Authorized lockup personnel may also utilize the DNA Tracking Database (DOTS) if the Livescan application is unavailable.
- If a DNA court order is received and Court Services personnel are unable to obtain the DNA sample at the Courthouse, the inmate shall be transported to the Inmate Reception Center (refer to green band release procedures CSD Lockup Section 2-11/000.15).
- Designated lockup personnel shall periodically (at least once a week) send approved DNA collection kits to the Inmate Reception Center via County mail or other internal delivery process accompanied by a tracking log indicating the Collecting agency, number of kits and CII number for each kit being sent in the package.

Branch Supervisors Responsibilities

Court Services Department personnel **shall not** use force to obtain DNA samples. The Branch Supervisor shall provide overall supervision and be held accountable for the DNA collection process. The Branch Supervisor shall:

- Ensure that components of a DNA collection kit are complete and accurately labeled.
- Maintain quality and control by randomly checking DNA collections kits to verify all steps have been followed (utilizing the DNA Collection Kit Instructions) and are accurately completed.
- Print name and employee number on the outer flap of the collection kit envelope and return it to the designated lockup personnel.

Refusal of DNA Collection Sample

The Branch Supervisor shall adhere to the below listed guidelines in the case of a refusal to provide a required DNA sample:

- Obtain the assistance of other personnel to video tape the refusal.
- For the camera state:
 - < The date, time, and location of the incident.
 - < The inmate's full name, date of birth, and booking number.
 - < The interviewing sergeant's name and employee number.
 - < The names and employee numbers of any other personnel present, and,
 - < If an interpreter is necessary, name of the interpreter.

CSD DIRECTIVE 05-13 NOVEMBER 02, 2010

COLLECTION OF DNA SAMPLES

Page 4 of 5

- Attempt to obtain compliance by fully explaining the requirements of 296.1(a)PC 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/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 tape of the inmate's refusal is labeled and properly processed as evidence.
- Assign the case to the Jail Investigation Unit.
- The Branch Supervisor (shall be the rank of Sergeant or above) shall complete and sign the top portion of 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 inmate will be transported back to IRC as a green band release (refer to green band release procedure), along with the signed "Use of Force to Obtain DNA" form, where the DNA sample (blood) shall be collected upon approval of the IRC Watch Commander.

Supplies

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

Training

All designated lockup personnel shall be trained in the proper collection of DNA samples utilizing the buccal swab process which shall be documented via APIS in the employee's TRS file. Court Services Division Training Unit shall provide initial training to all bureau designated administrative personnel who will then be responsible for training all other bureau personnel.

DNA collection Livescan Training is available from any Livescan machine by pressing F11, Help and DNA Training Video.

CSD DIRECTIVE 05-13 NOVEMBER 02, 2010

COLLECTION OF DNA SAMPLES

Page 5 of 5

CITE/REFERENCES

Penal Code, Sections 290-298, 457.1

California Department of Justice Buccal DNA Collection Kit Instructions

Field Operations Directive 05-01

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

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

Attachment:

“Use of Force to Obtain DNA” Form

APPROVED:

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