

**SAN BERNARDINO COUNTY
PROBATION DEPARTMENT PROCEDURE**

DNA BUCCAL SAMPLE COLLECTION

Title 15, Section 1363

Purpose:

To establish guidelines and a standardized process for the collection and submission of buccal DNA samples and print impressions from qualifying persons including youth in the Juvenile Detention and Assessment Centers (JDACs) and Treatment Facilities (TFs).

Definitions:

Buccal Deoxyribonucleic Acid (DNA) Collection Kit: A self-sealing, pre-addressed kit provided to the department by a Department of Justice (DOJ) vendor which contains a DNA Collector, Specimen Information Card, Transport Pouch, gloves, ink strip, DNA collection instructions and a list of race abbreviations.

Criminal Identification Index (CII): The Criminal Identification Index number or CII, is also known as the state identification number or SID. The CII is a nine digit alphanumeric number with a criminal record associated to it in the criminal history system linked by fingerprints.

Live Scan: Live Scan refers to the technique and technology used by law enforcement agencies and private facilities to capture fingerprints and palm prints electronically. The prints are transmitted electronically to the Department of Justice (DOJ) where they are checked against criminal history records. A response (criminal history or no criminal history) is then sent to the agency requesting the Live Scan.

Penal Code Section 296: PC 296 defines offenders subject to DNA collection of specimens, samples, and print impressions.

Penal Code Section 298.1: PC 298.1 defines the regulations and guidelines governing the use of reasonable force. Pursuant to this section, authorized law enforcement, custodial, or corrections personnel including peace officers, may employ reasonable force to collect blood specimens, saliva samples, and thumb or palm print impressions from individuals who are required to provide such samples pursuant to PC 296 and who refuse following written or oral request. This section also defines the punishment for refusal or failure to provide such samples.

Responsibilities:

- I. Probation Corrections Officers in Booking/Intake Release Officer (IRO):
 - A. Collect DNA immediately after disposition/sentencing or as promptly as possible:
 1. Verify the person qualifies for DNA collection.
 - a. Review the juvenile or adult minute order.
 - B. Follow the Buccal DNA Collection Kit instructions to collect the sample and complete the Specimen Information Card.
 - C. Deliver the collected DNA sample to the designated area for pickup and delivery to the Main Office Mailroom.
 1. Document the collection on the DNA CE Log sheet (Attachment B) located at each designated area.
 - D. Document the DNA collection information in CE (CE>Events>General>DNA Sample>enter the information).
 - E. Document the DNA collection on the juvenile history sheet via DNA Stamp to indicate DNA was collected.

- F. Ensure DNA samples are collected from qualifying person's prior to their release from custody.
 - G. Document refusals by completing the PC 298.1 Admonishment/Data Collection Form (Attachment A), any supplemental documentation and an Incident Report.
 - 1. Forward all documents to the Watch Commander (WC).
- II. Watch Commander (WC):
- A. Ensure DNA samples are collected from qualifying person's prior to their release from custody.
- III. Court Liaison/Transportation Officer:
- A. Notify the IRO upon arrival to any juvenile facility when a youth returning from Court qualifies for DNA collection.
- IV. Fiscal Personnel:
- A. Submit required DNA Database Sample Collection Reimbursement reports to the Sheriff's Department annually.
- V. Office Assistants:
- A. If DNA was previously collected, enter collection information in CE.
- VI. Probation Officer I/II (POI/II):
- A. Refer to section I, A through D.
 - B. DNA shall be collected as promptly as possible. DNA shall be collected at the Pre-Sentence Investigation (PSI) appointment (if the offender is out of custody) or during Orientation & Assessment (O&A) or during supervision and verify collection prior to dismissal of supervision.
 - C. Document refusals by completing a PC 298.1 Admonishment/Data Collection Form (Attachment A) and submit the form to the Supervisor.
 - 1. Refer to the "Refusals" section under Guidelines.
- VII. Building DNA Coordinator/Designee:
- A. Maintain inventory of DNA kits and supplies in the designated area of the building.
 - B. Maintain DNA CE Log sheets.
 - C. Verify CE entries of collected samples.
 - D. Package and ship DNA CE Log sheet, and collected DNA samples to the Main Office Mailroom on a weekly basis. Refer to section F under Guidelines.
 - E. Provide in-service training for staff and units as needed.
- VIII. Probation Corrections Supervisor I/II (PCSI/II) and Supervising Probation Officer (SPO):
- A. Review PC 298.1 Admonishment/Data Collection Forms (Attachment A) and forward to the Division Director I/II. Refer to the "Refusals" section under Guidelines.
 - B. Supervise situations when use of reasonable force to collect DNA is used and ensure appropriate paperwork is completed.
- IX. Division Director I/II (DDI/II)/Designee:
- A. Review PC 298.1 Admonishment/Data Collection Forms (Attachment A) and provide direction to supervisory staff.
 - B. Forward PC 298.1 forms to the Deputy Chief Probation Officer when authorization to use reasonable force to collect DNA is requested.
 - C. Designate staff to contact Law Enforcement Medical Services (LEMS) when applicable.
 - D. Arrange for videotaping of the use of reasonable force to collect DNA, including any cell extractions.

E. When applicable, provide notification to the Board of State and Community Corrections (BSCC) when use of reasonable force to collect DNA is used.

X. Deputy Chief Probation Officer (DCPO):

A. Review PC 298.1 Admonishment/Data Collection Forms (Attachment A) when authorization to employ use of reasonable force to collect DNA is requested.

1. Ensure authorization includes information that reflects the offender was asked to provide the requisite specimen, sample, or impression and refused.

Guidelines:

A. Summary of persons who qualify for DNA collection pursuant to PC 296:

1. Any person, including any juvenile:

- a. Convicted of or pleads guilty or no contest to any felony offense or is found not guilty by reason of insanity of any felony offense or any juvenile who is adjudicated under W&I 602 for committing a felony offense.
- b. Convicted/adjudicated of a misdemeanor with a past felony conviction or adjudication.
- c. Required to register under Penal Code Section 290 or 457.1 for felony or misdemeanor sex or arson offenses.
- d. Housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense.
- e. Who has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of PC 296, including those accepted under interstate compact pursuant to PC 296.1(a)(5).

B. For out of state offenders with no California CII or California state I.D. number, but have an out of state I.D. number:

1. Use the out of state I.D. number when completing the Specimen Information Card.
2. Document the use of the out of state ID number in the "Other Relevant Information" section on side B of the Specimen Information Card.

C. If a youth has never been booked and does not have a CII number, complete Live Scan prior to collecting DNA for issuance of a CII number.

D. DNA shall not be collected when:

1. Collection is documented in CE, the Jail Information Management System (JIMS), CLETS, or confirmed received by the DOJ Laboratory.
2. A PC 296 order is stayed by the Court.
3. Juveniles are on Informal Probation pursuant to W&I 654 & W&I 654.2, Deferred Entry of Judgment (DEJ) pursuant to W&I 790 or Summary Probation pursuant to W&I 725(a).
4. A juvenile is adjudicated for a misdemeanor offense unless they are required to register under Section 290 or 457.1.

E. Refusals:

1. All reasonable efforts shall be made to secure voluntary compliance.
 - a. Efforts shall be documented and include an admonishment of the legal obligation to provide DNA specimens, samples or impressions and the consequences of refusal.
 - i. Complete the PC 298.1 Admonishment/Data Collection Form (Attachment A).
 - ii. The person shall sign and date the PC 298.1 form. If they refuse to sign/date, the officer shall document this on the form in the signature field, then initial and date.
 - iii. If the person continues to refuse, the PC 298.1 form shall be reviewed by the Supervisor and submitted to the District Attorney pursuant to PC 298.1.
2. Exceptional Circumstances and use of reasonable force:

- a. If the above admonitions fail to secure voluntary compliance and the person continues to refuse:
 - i. Under exceptional circumstances, such as a specific court order requiring a blood draw or a high-profile case involving serious felony crimes, a request (PC 298.1 form) to use reasonable force may be submitted to the Superintendent/Division Director II and the DCPO for review.
 - ii. Force shall not be used without prior written authorization by the DCPO.
 - b. The use of reasonable force shall be preceded by efforts to secure voluntary compliance.
 - i. Efforts to secure voluntary compliance shall be documented and include an advisement of the legal obligation to provide requisite specimen, sample or impression and the consequences of refusal.
 - c. Use of force incidents shall be documented in an Incident Report (IR).
 - d. PC 298.1 forms and IRs shall be reviewed by the Supervisor, Division Director/Designee and the DCPO.
 - i. Once approved by the DCPO, the PC298.1 form shall be submitted to the District Attorney's office pursuant to PC 298.1.
3. Law Enforcement Medical Services (LEMS) shall be contacted in the event a blood draw is necessary.
- a. All blood draws shall be videotaped in their entirety, including additional efforts by staff to verbally persuade the person to comply.
 - b. If a blood draw can be obtained at any stage of the process without use of force, this is the preferable method.
4. If the use of reasonable force includes a cell extraction, the extraction shall be videotaped. Video shall be directed at the cell extraction event.
- a. The videotape shall be retained by the department for the length of time required by statute.
 - b. Notwithstanding the use of the video as evidence in a court proceeding, the tape shall be retained administratively.
5. For the purpose of this section, 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 section.
- F. Steps for mailing collected DNA samples:
1. Each building DNA Coordinator/Designee shall send collected DNA samples to the Main Office Mailroom on a weekly basis via mail courier.
 2. Each batch of samples sent to the Main Office Mailroom must include:
 - a. A label with the name and address of the building where the samples were taken.
 - b. The DNA CE Log sheet (Attachment B).
 - i. Each log sheet must contain entries separated by month.
 3. Upon receipt of the DNA samples, the Main Office Mailroom shall log in the samples, and log out the number of samples mailed.
 - a. Collected DNA samples shall be mailed in batches of fifty (50) or less on a weekly basis to the DOJ DNA Laboratory:
To: State of California
Department of Justice
DNA Data Bank Program
1001 W. Cutting Blvd, Suite 110
Richmond, CA 94804-2028
- G. Training:
1. Staff shall receive Buccal DNA collection training in STC Core Course.
 2. A record of staff trained in the collection of DNA shall be maintained by the Training Unit.

Inspections:

Refer to the Policy and Procedure Inspection Matrix.

Foundation:

The DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69-2004)

References:

Welfare & Institution Code 209
Welfare & Institution Code 602
Penal Code 290
Penal Code 295
Penal Code 296
Penal Code 298
Penal Code 298.1
Penal Code 457.1
Welfare & Institutions Code 654
Welfare & Institutions Code 654.2
Welfare & Institutions Code 790
Welfare & Institutions Code 725(a)

Issued by:


Michelle Scray Brown, Chief Probation Officer 8/16/19
Date

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Revised: August 16, 2019

Attachments:

A - PC 298.1 Admonishment/Data Collection Form
B - DNA CE Log



TRACY REECE
Chief Probation Officer

JULIE FRANCIS
Assistant Chief Probation Officer

Penal Code Section 298.1

Admonishment/Data Collection Form

Name: _____ PIN: _____ Date: _____ Time: _____

On or about _____, you were arrested for/convicted/adjudicated of _____

which requires you to comply with Penal Code Section 296.

READ THE FOLLOWING ADMONISHMENT

It is a violation of Penal Code Section 298.1, a misdemeanor, if you refuse to give any or all of the following, blood specimen, saliva sample, thumb or palm print impression. You may be arrested and booked for this new crime. The refusal or failure to give any or all of the following, a blood specimen, saliva sample or print impression is punishable as a separate offense by both a fine and imprisonment up to one year in county jail. In addition, pursuant to PC 298.1, reasonable force may be employed to collect blood specimen, saliva sample, or thumb or palm print impressions from individuals who, after written or oral request, refuse to provide those specimens, samples or thumb or palm print impressions.

Offender signature: _____ Date: _____

Officer name: _____ Date: _____

Supervisor name: _____ Date: _____

Phlebotomist signature: _____ Date: _____

- Offender complied by providing blood specimen/saliva sample/print impressions.
- Offender refused to provide blood specimen/saliva sample/print impressions. Date: _____

Authorization for use of reasonable force to obtain blood specimen/saliva sample/impressions by:

Deputy Chief Probation Officer: _____ Date: _____

Completion and submittal of this form is necessary to maintain compliance with PC 298.1 regarding the use and report of reasonable force in the collection of blood specimen, saliva sample and print impressions from qualifying offenders who refuse to provide specimens, samples or impressions. This form is intended to capture the details of refusal by an offender, what efforts were used to obtain voluntary compliance and the use of reasonable force, if any, to collect DNA.

Facility/Location: _____

What efforts were used to obtain voluntary compliance prior to the use of reasonable force?

- Verbal Written Other (describe):

Did the refusal lead to the use of reasonable force? Yes No

If force was applied, please describe: _____

Was medical attention needed as a result of force? Yes No

If yes, for who? Offender Medical personnel Officer Other:

