

## DNA Collection

### 630.1 PURPOSE AND SCOPE

This policy provides guidelines for the collection of biological samples from those individuals required to provide samples upon conviction or arrest for certain offenses. This policy does not apply to biological samples collected at a crime scene or taken from a person in conjunction with a criminal investigation. Nor does it apply to biological samples from those required to register, such as sex offenders. This policy applies to all deputy probation officers and support staff.

### 630.2 AUTHORITY AND REFERENCES

- 296 PC;
- 296.1 PC;
- 298.1 PC.

### 630.3 POLICY

The Riverside County Probation Department will assist in the expeditious collection of required biological samples from offenders in accordance with the laws of this state. Force shall not be used to obtain samples.

Those who must submit a biological sample include (Penal Code § 296):

- (a) A person, including a juvenile, upon conviction or other adjudication of any felony or qualifying misdemeanor offense.
- (b) A person, including a juvenile, upon conviction or other adjudication of any offense if the person has a prior felony or qualifying misdemeanor on record. Prior offenses include offenses committed in any state, federal, or military court that, if attempted in this state, would have been punishable as described in 296(a) PC.
- (c) A person, including a juvenile, convicted or otherwise adjudicated of any misdemeanor offense conditioned upon collection of a biological sample.
- (d) A person, including a juvenile, on probation that has a prior felony or qualifying misdemeanor on record. Prior offenses include offenses committed in any state, federal, or military court that, if attempted in this state, would have been punishable as described in 296(a) PC.

In juvenile matters, biological samples shall not be taken from juveniles on informal probation pursuant to 654 WIC, 654.2 WIC, and 790 WIC (DEJ).

### 630.4 PROCEDURE

- (a) Collection: When an individual is required to provide a biological sample, a trained employee shall obtain the sample in accordance with this policy.
  1. The following steps should be taken to collect a sample:

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- (a) Verify the identity of the individual to be sampled. Documents such as a driver's license, identification card, resident alien card, student identification card, passport or other picture identification card shall be requested. In the absence of such documents, police reports, booking information and court documents can help establish the person's identity.
  - (b) Verify that the individual is required to provide a sample pursuant to Penal § Code 296; Penal Code § 296.1.
  - (c) Verify that a biological sample has not been previously collected from the offender by querying the individual's criminal history record for a DNA collection flag or, during regular business hours, calling the California Department of Justice (DOJ) designated DNA laboratory. There is no need to obtain a biological sample if one has been previously obtained unless retesting was requested by the DOJ.
  - (d) Use a DNA buccal swab collection kit provided by the California DOJ to perform the collection and take steps to avoid cross contamination.
  - (e) Document collection of the sample in the Juvenile and Adult Management System (JAMS).
- (b) Refusal to Provide Samples:
- 1. A person who is required, but refuses to give a biological sample, is guilty of a misdemeanor, pursuant to Penal Code Section 298.1 (a).
    - (a) Refusers shall be asked to sign an admonishment, utilizing the Admonishment Form (attached), that they have been advised of the law and of the possible penalties, including a misdemeanor conviction and/or probation revocation. If the person refuses to sign the admonition, the refusal shall be noted on the Admonishment Form. The Admonishment Form shall be retained in the probation file. Refusals shall be documented in JAMS.
    - (b) It is the policy of this department to prosecute offenders who refuse to submit a biological sample when mandated to do so by law. In the presence of an order and condition mandating submission, a violation of such order shall be submitted to the appropriate court for filing. In the absence of an order and condition mandating submission on an offender who is otherwise subject to the biological sample requirement, an ex-parte shall be submitted to the appropriate court requesting the addition of the order. Once in place, the offender shall be given a second opportunity to provide a sample. Continued refusal shall be grounds for a violation of such order and submitted to the appropriate court for filing.
- (c) Litigation:
- 1. The Chief Probation Officer or authorized designee should notify the California DOJ's DNA Legal Unit in the event this department is named in a lawsuit involving the DNA Data Bank sample collection, sample use or any aspect of the state's DNA Data Bank Program.

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Date(s) revised: 05/22/2013

Created: 05/01/2006

Attachments:

1. [DNA Admonishment Form](#)



## Admonishment Form

Defendant's Name: \_\_\_\_\_

CID: \_\_\_\_\_

DATE: \_\_\_\_\_

By my signature I acknowledge I have been advised any person who refuses to give any or all of the following: blood specimens, saliva samples, or thumb or palm print impressions as required pursuant to Penal Code section 296.1, is guilty of Penal Code section 298.1 (Refusal or failure to give samples), a misdemeanor. Additionally, I have been advised that refusal to provide specimens as directed by the Probation Officer is a violation of my terms and conditions of probation.

Defendant's Print Name: \_\_\_\_\_

Defendant's Signature: \_\_\_\_\_

Witness: \_\_\_\_\_