

Biological Samples

332.1 PURPOSE AND SCOPE

State **MODIFIED**

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, for example, sex offenders. Any use of force applied in any situation under this section shall comply with the Use of Force policies.

332.2 POLICY

Best Practice

The California Department of State Hospitals will assist in the expeditious collection of required biological samples from offenders in accordance with the laws of this state and with as little reliance on force as practicable.

332.3 PERSONS SUBJECT TO DNA COLLECTION

State

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 offense.
- (b) A person, including a juvenile, upon conviction or other adjudication of any offense if the person has a prior felony on record.
- (c) An adult arrested or charged with any felony.

332.4 PROCEDURE

Best Practice

When an individual is required to provide a biological sample, a trained employee shall obtain the sample in accordance with this policy.

332.4.1 COLLECTION

State

The following steps should be taken to collect a sample:

- (a) Verify that the individual is required to provide a sample pursuant to Penal Code § 296; Penal Code § 296.1.
- (b) 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.

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- (c) Use a DNA buccal swab collection kit provided by the California DOJ to perform the collection and take steps to avoid cross contamination.

332.5 USE OF FORCE TO OBTAIN SAMPLES

Best Practice **MODIFIED**

If a person refuses to cooperate with the sample collection process, officers should attempt to identify the reason for refusal and seek voluntary compliance without resorting to using force. Force will not be used in the collection of samples except as authorized by court order and only with the approval of a Watch Commander. Methods to consider when seeking voluntary compliance include contacting:

- (a) The person's parole or probation officer when applicable.
- (b) The prosecuting attorney to seek additional charges against the person for failure to comply or to otherwise bring the refusal before a judge.
- (c) The judge at the person's next court appearance.
- (d) The person's attorney.
- (e) A chaplain.
- (f) Another custody facility with additional resources, where an arrestee can be transferred to better facilitate sample collection.
- (g) A Watch Commander who may be able to authorize custodial disciplinary actions to compel compliance, if any are available.

The Watch Commander shall review and approve any plan to use force and be present to document the process. Any use of force applied in any situation under this section shall comply with the Use of Force policies.

332.5.1 VIDEO RECORDING

Best Practice **MODIFIED**

A video recording should be made anytime force is used to obtain a biological sample. The recording should document all staff participating in the process, in addition to the methods and all force used during the collection. The recording should be part of the investigation file, if any, or otherwise retained in accordance with the department's records retention schedule. (Cal. Code Regs., tit. 15, § 1059.)

332.5.2 ROOM EXTRACTIONS

State **MODIFIED**

If the use of force includes a room extraction, the extraction shall be video recorded, including audio. Video shall be directed at the room extraction event. The video recording shall be retained by the Department for the length of time required by statute. Notwithstanding the use of the video as evidence in a criminal proceeding, the tape shall be retained administratively. (Cal. Code Regs., tit. 15, § 1059.)

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332.6 LEGAL MANDATES AND RELEVANT LAWS

State

California law provides for the following:

332.6.1 DOCUMENTATION RELATED TO FORCE

State

The Watch Commander or the on-duty authorized designee shall prepare prior written authorization for the use of any force (15 CCR 1059). The written authorization shall include information that the subject was asked to provide the requisite specimen, sample, or impression and refused, as well as the related court order authorizing the force.

332.6.2 BLOOD SAMPLES

State

A blood sample should only be obtained under this policy when:

- (a) The California DOJ requests a blood sample and the subject consents, or
- (b) A court orders a blood sample following a refusal.

The withdrawal of blood may only be performed in a medically approved manner by health care providers trained and qualified to draw blood. A California DOJ collection kit shall be used for this purpose (Penal Code § 298(a); Penal Code § 298(b)(2)).

332.6.3 LITIGATION

State

The Chief of Law Enforcement or authorized designee should notify the California DOJ's DNA Legal Unit in the event this OPS 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.