

Biological Samples

519.1 PURPOSE AND SCOPE

This policy provides guidelines for the collection of biological samples from those inmates required to provide samples upon conviction and/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 collected from those required to register, for example, as sex offenders.

519.2 POLICY

The Nevada County Sheriff's Office will assist in the expeditious collection of required biological samples from arrestees and offenders in accordance with the laws of this state and with as little reliance on force as practicable.

519.3 PERSONS SUBJECT TO BIOLOGICAL SAMPLE COLLECTION

The following inmates must submit a biological sample (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
- (d) A 298.1 Admonition form should be filled out when conducting DNA samples.

[See attachment: 298.1 Admonition.pdf](#)

519.4 PROCEDURE

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

519.4.1 COLLECTION

The following steps should be taken to collect a sample:

- (a) Verify that the inmate is required to provide a sample pursuant to Penal Code § 296 and 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.
- (c) Use the designated collection kit provided by the California DOJ to perform the collection and take steps to avoid cross contamination.

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519.5 CALCULATED USE OF FORCE TO OBTAIN SAMPLES

If an inmate refuses to cooperate with the sample collection process, correctional 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 or approval of legal counsel and only with the approval of the jail's lieutenant. Methods to consider when seeking voluntary compliance include contacting:

- (a) The inmate's parole or probation officer when applicable.
- (b) The prosecuting attorney to seek additional charges against the inmate for failure to comply or to otherwise bring the refusal before a judge.
- (c) The judge at the inmate's next court appearance.
- (d) The inmate's attorney.
- (e) A chaplain.
- (f) A supervisor who may be able to authorize disciplinary actions to compel compliance, if any are available.

The jail lieutenant shall review and approve any calculated use of force. The supervisor shall be present to supervise and document the calculated use of force.

519.5.1 VIDEO RECORDING

A video recording should be made any time 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 office's established records retention schedule (15 CCR 1059).

If the use of force includes a cell extraction, the extraction shall also be video recorded, including audio. The video recording shall be retained by the facility in accordance with established records retention schedules. Notwithstanding the use of the video as evidence in a criminal proceeding, the tape shall be retained by the jail administration (15 CCR 1059).

519.6 LEGAL MANDATES AND RELEVANT LAWS

California law provides for the following:

519.6.1 DOCUMENTATION RELATED TO FORCE

The sergeant or officer in charge (OIC) 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 sample and refused, as well as any related court order authorizing the force.

[See attachment: Reasonable Force Form.pdf](#)

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519.6.2 BLOOD SAMPLES

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)).

519.6.3 LITIGATION

The Sheriff or the authorized designee should notify the California DOJ's DNA Legal Unit in the event this office is named in a lawsuit involving the DNA Data Bank.

Attachments

298.1 Admonition.pdf

Penal Code Section 298.1 Admonishment Form

Name: _____

Date/Time: _____

- You have been convicted of: _____ which requires you to comply with Penal Code Section 296;
- In the past, you were convicted of: _____ which requires you to comply with Penal Code 296; and/or
- You have received written notification, from a peace officer, advising you that you must comply with Penal Code Section 296.

It is a violation of Penal Code Section 298.1 (misdemeanor), if you refuse to provide blood and saliva samples and palm prints, per Penal Code Section 296. You may be arrested and booked for this new crime. Refusal to provide these samples may result in increased jail time. In addition, pursuant to Penal Code Section 298.1, reasonable force may be employed to collect blood and saliva samples and print impressions from individuals who refuse to voluntarily provide those samples or impressions.

Inmate Signature: _____

Officer Signature: _____

Supervisor Signature: _____

Phlebotomist Signature: _____

- Inmate complied by providing all samples and print impressions.
- Inmate refused to voluntarily provide all samples and print impressions.

Reasonable Force Form.pdf

CALIFORNIA PENAL CODE SECTION 298.1

DATA COLLECTION FORM

Completion and submittal of this report form is necessary to maintain compliance with California Penal Code Section 298.1 and Title 15 Section 1059 regarding the use and report of reasonable force in the collection of DNA samples and specimens from inmates. Completion of this form acknowledges that a refusal has been documented within your institution.

This form is intended to capture the details of refusal by an inmate, to submit the requisite specimen, sample or impression, and the use of reasonable force, if any, to obtain the specimen, sample or impression.

Facility: _____

County: _____

Date of Refusal: _____

What efforts were used to gain compliance prior to the use of force?

Verbal

Written

Other (describe): _____

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

If force was applied, please indicate the type (check all that apply):

Physical

Diversionsary

Chemical

Electronic

Impact

Other (describe): _____

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

If so, for whom?

Inmate

Correctional Staff

Medical Staff

Other: _____