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California Department of Justice
DIVISION OF LAW
ENFORCEMENT
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Subject:

Expansion of State's DNA Data Bank
Program on January 1, 2009: Collection of
DNA Samples From All Adults Arrested for
Any Felony Offense

No.

08-BFS-02

Contact for information:

Bureau of Forensic Services
CAL-DNA Data Bank Program
(510) 620-3300

Date:

12/15/08

TO: All Police Chiefs, Sheriffs, and District Attorneys

Beginning on January 1, 2009, all adults arrested for any felony offense must provide a buccal swab (inner cheek scraping) DNA sample, and thumb and palm print impressions for the State of California's DNA (CAL-DNA) Data Bank Program (Penal Code section 296(a)(2)(C)). This expands 2008 CAL-DNA Data Bank law provisions governing collection of DNA samples from arrestees. The 2008 law requires adults arrested for a felony Penal Code section 290 registerable sex offense, murder, or voluntary manslaughter (including attempts of these crimes) to provide samples for the CAL-DNA Data Bank (Penal Code section 296(a)(2)(A) and (B)).

The following sets forth information pertinent to the January 1, 2009, expansion of CAL-DNA Data Bank Program providing for DNA identification sample collection from all adult felony arrestees:

- **The 2009 expansion of the CAL-DNA Data Bank Program applies only to *adults* arrested for felony offenses, not to juveniles.**
 - No samples should be collected at arrest from persons under the age of 18. This limitation applies even if the juvenile arrestee is subsequently charged and prosecuted as an adult pursuant to Welfare and Institutions Code section 707.
 - Samples from qualifying juvenile felony offenders should continue to be taken after adjudication or when disposition is rendered. The CAL-DNA Data Bank Program requiring DNA samples from both adults and juveniles who are convicted or adjudicated for felony crimes, and from other qualifying offenders such as registering sex or arson offenders, remains operative, and is unaffected by the 2009 expansion of DNA sample collection to include all adult felony arrestees.
- **Collection of DNA samples from an adult arrested for a felony offense must be based solely upon the offense that was the basis for the arrest.**
 - The January 1, 2009, provisions governing DNA sample collection from adults arrested for any felony offense are not retroactive and so do not permit collection for arrests that took place prior to 2009.
 - DNA sample collection from any qualifying adult felony arrestee (whether 2008 or 2009) must be based solely upon the offense that precipitated the arrest, and not upon the arrested individual's other criminal history (including prior felony convictions or adjudications).

- For example, a person arrested for a misdemeanor offense will not have to provide a DNA sample as an arrestee, even if that person has one or more murder or rape convictions of record. However, by virtue of the CAL-DNA Data Bank law's other provisions (Penal Code section 296.1(a)(3)), if the same person is currently on probation or parole, the prior felony conviction(s) would mandate DNA collection as a convicted offender independent of his or her arrestee status.
- **DNA collection of arrestees should occur at booking and after checking an arrestee's California automated criminal history record for a DNA collection flag.**
 - A qualifying person must provide a DNA sample and palm print impressions for the CAL-DNA Data Bank Program if a suitable DNA sample and print impressions are not already on file for that individual with the Department of Justice (DOJ).
 - The DNA collection from arrestees should occur during the booking process or as soon as possible after the arrest and before the subject is released from confinement or custody (Penal Code section 296.1(a)(1)(A)). The law does not specify any particular local agency as having exclusive responsibility for collecting DNA samples from qualified arrestees. The law does provide, however, that the Chief Administrative Officer of the detention facility, jail, or other facility in which the collection takes place, is responsible for transmitting the completed sample collection kits to the DOJ Jan Bashinski DNA Laboratory (Penal Code section 298(a)).
 - The DOJ Jan Bashinski DNA Laboratory is located at: 1001 West Cutting Boulevard, Suite 110, Richmond, CA 94804-2028.
 - Before collection occurs, the collecting agency should check the subject's criminal history record for a DNA collection flag. (See DNA flags listed below.) Questions concerning an offender's correct collection status may also be directed to the CAL-DNA Data Bank Outreach Program via e-mail, fax, or telephone. (See contact information below.)
 - Before collection occurs, the collecting agency should also check any available local databases that may have been established to help prevent collection of duplicate samples. (See below.)
 - If a qualified arrestee (whose original felony arrest was on or after January 1, 2009), did not provide the requisite DNA sample and prints before being released from custody, please ensure that the court at arraignment orders him or her to report to the county jail or other designated facility to provide the DNA sample and prints (Penal Code section 296.1(a)(1)(B)).
 - Wobblers and Duration of Arrest.
 - If the adult is arrested for a crime that could be charged as a felony or misdemeanor (i.e., it is a wobbler offense), the arrest is considered to be a felony arrest for the purposes of determining qualification for collection under Penal Code section 296. (See *People v. Status* (2002) 28 Cal.4th 682, 685. ["An alternative felony/misdemeanor, also known as a wobbler, is deemed a felony unless charged as a misdemeanor by the People . . . "] See also Penal Code section 299(f).)

- An “arrest” for purposes of DNA collection lasts as long as the subject remains in continuous physical custody after the arrest and prior to conviction or adjudication (Penal Code section 835).

- **Individual counties are encouraged to establish a means of communicating the fact of collection to help avoid duplicate sample collection by local agencies.**

- **The Automated Criminal History System (ACHS) can assist in identifying whether individuals qualify for collection or already have provided a DNA sample.**

- **DNA collection flags**

CAL-DNA Data Bank Program flags found in the ACHS provide information regarding the individual’s DNA collection status. The specific DNA flags that can be found on an individual’s ACHS record are listed in the chart below.

DNA flag language used in ACHS	Action required
<p><u>DO NOT COLLECT DNA.</u> DNA SAMPLE HAS BEEN RECEIVED, TYPED, AND UPLOADED INTO THE CAL-DNA DATA BANK. FOR INFO (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.</p>	<p>No action required. Sample previously collected.</p>
<p><u>DO NOT COLLECT DNA.</u> VERIFIED DNA SAMPLE IS ON FILE WITH THE CAL-DNA DATA BANK. FOR INFO (510) 620-3300 or PC296.PC296@DOJ.CA.GOV.</p>	<p>No action required. Sample previously collected.</p>
<p><u>DO NOT COLLECT DNA.</u> SAMPLE NOT VERIFIED BY FINGERPRINT RECEIVED BY THE CAL-DNA DATA BANK. FOR INFO (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.</p>	<p>Collected, print not yet verified or not yet qualified-for those prior to Prop 69.</p>
<p>DNA SAMPLE NOT VERIFIED BY FINGERPRINT HAS BEEN RECEIVED, TYPED, AND UPLOADED INTO THE CAL-DNA DATA BANK. FOR INFO (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.</p>	<p>Do not collect unless instructed by the Live Scan “DNS” Transaction. DNA Lab is not currently requesting new samples in these cases. If this changes agencies will be notified.</p>

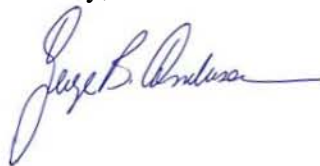
<p>FOR CALIFORNIA AGENCIES ONLY – COLLECT DNA. THE DNA SAMPLE PREVIOUSLY SUPPLIED IS EITHER INADEQUATE OR NOT VERIFIABLE BY FINGERPRINTS. REQUEST KITS AND INFO AT (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.</p>	<p>Collect DNA sample if the subject is incarcerated or on probation or parole (as there is a previous felony conviction of record) or if the subject is otherwise qualified for collection based on arrest or sex/arson registration. New sample needed.</p>
<p>FOR CALIFORNIA AGENCIES ONLY - COLLECT DNA IF PC 290 SEX OR PC 457.1 ARSON REGISTRANT. REQUEST KITS AND INFO AT (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.</p>	<p>Collect DNA sample from sex/arson registrant.</p>
<p>FOR CALIFORNIA AGENCIES ONLY – HAS PREVIOUS QUALIFYING OFFENSE, COLLECT DNA IF INCARCERATED, CONFINED, OR ON PROBATION OR PAROLE FOLLOWING ANY MISDEMEANOR OR FELONY CONVICTION. REQUEST KITS AND INFO AT (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.</p>	<p>Collect DNA sample if the subject is incarcerated, or on probation or parole as there is a previous felony conviction on the record.</p>
<p>Due to the limited period of jurisdiction for DNA collection on arrest, there will not be a DNA flag set upon arrest where no previous felony conviction exists in the criminal history.</p>	

- **Thumbprint and palm print collection**
 The buccal swab sample must be accompanied by two right thumbprints. A full palm print impression of each hand must be collected and submitted separately from the DNA Kit. The preferred, but not required, method of palm print submissions is electronic transmission via a Live Scan device (Penal Code section 296(a)).
- **Funding**
 Proposition 69 provides for substantial funding routed directly to counties. Therefore, DOJ will not reimburse collecting agencies for buccal swab/blood or palm print collection expenses.
- **Verification procedures**
 The collecting agency has exclusive responsibility for verifying an offender’s identity and status as a person qualifying for DNA collection (Penal Code section 295(i)(1); 298(b)(5)). Collecting agencies should use all means reasonably available to certify the offender’s identity and qualifying status. This includes review of all available criminal history records. When implemented, Live Scan-based collection and query of the automated criminal history will suffice to meet the verification requirement.

▪ **DOJ contact information**

- **DNA Buccal Collection Kits** - To order kits, contact the Bureau of Forensic Services CAL-DNA Data Bank Program, preferably by e-mail to PC296.PC296@doj.ca.gov, or by phone at (510) 620-3300.
- **DNA Buccal Collection Training or Collection of DNA Samples** - For questions pertaining to DNA buccal training or the collection of DNA samples, please contact the Bureau of Forensic Services CAL-DNA Data Bank Outreach Program at (916) 227-3405 or email: PC296.PC296@doj.ca.gov.
- **DNA Legal Unit** – Please inform the DOJ’s DNA Legal Unit at (415) 703-5892 or email at Michael.Chamberlain@doj.ca.gov immediately if your agency is named in a lawsuit involving CAL-DNA Data Bank sample collection, sample use, or any aspect of the CAL-DNA Data Bank Program, or if discovery of privileged database information is sought or may be ordered by a court in your jurisdiction.
- **Live Scan DNA Data Automation Project** – Please direct questions pertaining to the Live Scan DNA Data Automation project to the Bureau of Criminal Identification and Information Client Services Program at (916) 227-3332 or email: LiveScan.DNA@doj.ca.gov.
- **Palm Print Cards** - To order palm print cards or for palm print inquiries, please contact the Bureau of Criminal Identification and Information Fingerprint Expedite Unit at (916) 227-1206 or email at palm.print@doj.ca.gov.
- **Website Information** - All Information Bulletins regarding *The DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69 – 2004)* can be viewed on the Attorney General’s California Law Enforcement Web (CLEW) site at: <http://clew.doj.ca.gov> or on the Attorney General’s Internet site at: <http://ag.ca.gov/bfs/prop69.php>.

Sincerely,



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For EDMUND G. BROWN JR.
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