

**SAN DIEGO POLICE DEPARTMENT  
ORDER**

**DATE/TIME:** 06/12/09 – 0830 Hours  
**NUMBER:** OR 09-14  
**SUBJECT:** COLLECTION OF DNA MOUTH SWABS FROM JUVENILES  
**ORG. #:** 69924  
**SCOPE:** ~~ALL MEMBERS OF THE DEPARTMENT~~

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**DEPARTMENT PROCEDURE AFFECTED:** 3.08

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Deoxyribonucleic acid (DNA) is a useful law enforcement tool for identifying and prosecuting criminal offenders and exonerating the innocent. The collection of DNA evidence plays an important role in solving a wide variety of crimes.

This Department Order clarifies when and how a juvenile can be swabbed for a DNA sample. Only under specific circumstances can a juvenile's DNA be taken and submitted to a State DNA databank. However, a juvenile's DNA can be taken and stored in the San Diego Police Department's own databank, if obtained legally and for investigative purposes.

State Level DNA Databank (The DNA Act)

The California Legislature enacted the DNA and Forensic Identification Database and Data Bank Act of 1998 (DNA Act) to ensure "the expeditious and accurate detection and prosecution of individuals responsible for sex offenses and other crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children."

Per Penal Code § 295 (b)(2), the DNA Act requires DNA "samples from all persons, including juveniles, for the felony and misdemeanor offenses described in subdivision (a) of Section 296."

The Department of Justice and the Federal Bureau of Investigation (FBI) work together to store and exchange DNA records from different states and national forensic laboratories. This information is stored in national and international DNA databases, such as the FBI's Combined DNA Index System (CODIS). This system includes both juvenile and adult suspects. CODIS is essential in assisting in the identification of suspects in crimes.

The collection of biological samples to send to the state level Department of Justice DNA databank for analysis and storage is restricted to qualified persons. The DNA Act and Penal

Code § 295.1 and 296 are very limited as to when biological samples can be taken from juveniles for the purpose of sending the information to a state level databank.

Pursuant to the DNA Act, there are only three types of juveniles that are required to provide DNA for law enforcement identification analysis and storage at the state level:

1. A juvenile who is *convicted* of or pleads guilty to any felony offense;
2. Any juvenile who is required to register under Section 290 or 457; or,
3. Any juvenile who is housed in a mental health facility or sex offender treatment program by court order after being charged with any felony offense.

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Refer to Penal Code § 296(a)(1) and (3) for further details.

The collection of DNA and other identifying information from a juvenile, for the purpose of submitting it to the Department of Justice pursuant to the DNA Act, will most likely *not* be done by a San Diego Police Officer, but rather at the direction of a County Deputy Sheriff within Juvenile Hall after a felony conviction and with a court order. Collection and submission of a juvenile's DNA to a state level databank shall not be done unless the requirements of Section 296 are met.

#### Investigative Purposes and the Department's Local Databank

Law enforcement personnel can still collect biological samples from adults and juveniles, if they are for *an investigative purpose* to be held in the Department's local databank and not for the submission to a state level DNA database under the DNA Act.

The law recognizes the need to protect the public from criminal conduct by any perpetrators which includes minors. Reasonable suspicion must exist prior to the collection of evidence. Establishing articulated facts leading to the subject(s) potential involvement in the crime(s) should be clearly determined prior to the collection of DNA.

Obtaining mouth swab samples by scraping the inner cheek cells is permissible and not considered intrusive. Because this process is not painful, causes no lasting damage and no permanent effects, it is considered non-intrusive.

**In order to obtain such samples, law enforcement personnel must obtain consent from the suspected subject(s), obtain a search warrant, or obtain a court order.** Exigent circumstances will be virtually non-existent in most cases because DNA is a hereditary material in humans that does not change over time.

Patrol officers most often will be the first to encounter an incident that may result in the decision to collect DNA because further investigation is required. Patrol units dispatched to investigate a crime that may involve the collection of DNA, such as blood or a mouth swab, from a juvenile must follow particular and strict procedures.

An officer may take mouth swab samples from a juvenile for investigative purposes, either in the field or at a police station, under the following conditions:

- A. The juvenile is being legally detained as a suspect in a criminal investigation;
- B. If the juvenile is in a place of confinement, immediate steps must be taken to notify the juvenile's parent, guardian, or a responsible relative that the minor is in custody and the location in which the minor is being held, per W&I § 627. The means of notification should be noted on the Juvenile Contact Report (JCR). When a parent or guardian cannot be notified, an explanation must be included on the JCR;
- C. The juvenile has been identified and the means by which he/she was identified (i.e. school identification card, passports, California I.D., etc.) is documented in the JCR;
- D. A Juvenile Contact Report (JCR) documenting the circumstances for the contact and reasons for the detention is completed;
- E. To obtain a mouth swab from a juvenile under the age of 14 years, it must be established that the juvenile knew what he/she did was wrong at the time the crime was committed. Children under the age of 14 years are not considered capable of committing a crime, UNLESS there is clear proof that WHEN they committed the crime, they knew its wrongfulness, per Penal Code § 26;
- F. Prior to collecting a mouth swab sample, officers will notify their immediate supervisor or contact the field lieutenant for approval. During normal business hours, the officer will contact the detective sergeant assigned to the unit affected (i.e., Sex Crimes, Child Abuse, Juvenile Services Team). After business hours, officers will ensure their immediate supervisor has been notified and briefed on the circumstances, prior to the collection, and obtain approval to collect the sample. Officers must document the approving supervisor's name in the JCR;
- G. Officers shall fill out the "Consent to Collect Saliva Sample" form and obtain the signature of the juvenile. This form must be included in the police report;
- H. Once approval is obtained, the officer will ensure the mouth swab sample is obtained in a controlled environment, outside of public view. The officer obtaining the sample will also ensure a witness is present during the collection. The witness officer's information will be documented on the report;
- I. Officers will obtain one mouth swab sample at a time and ensure the process is complete prior to collecting an additional mouth swab sample;
- J. Officers will ensure they follow the procedures described on the "SDPD Reference Mouth Swab Collection Kit" envelope;

- K. An officer who takes a mouth swab sample from a juvenile will notify the parent or legal guardian that a sample was taken. Notification will be documented on the JCR. Notification information includes the date and time of notification and the name and telephone number of the person notified.

Department Procedures 3.08, Juvenile Procedures, will be updated to reflect these changes.

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Please read at squad conferences and give a copy to all personnel.

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