

**SAN DIEGO POLICE DEPARTMENT  
ORDER**

**DATE/TIME:** SEPTEMBER 7, 2023 1830 HOURS

**NUMBER:** OR 23-22

**SUBJECT:** COLLECTION OF DNA REFERENCE SAMPLES

**SCOPE:** ALL MEMBERS OF THE DEPARTMENT

**DEPARTMENT PROCEDURE AFFECTED:** DP 3.02 and 3.08

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**Portions of this document are deemed by the San Diego Police Department to be records of security procedures and are exempt from disclosure under the California Public Records Act (CPRA), Government Code Section 7923.600**

An “Advisal and Consent to Collect DNA Reference Sample” form is required when collecting a DNA reference sample from an individual. Due to a recent change involving the searching of qualifying suspect profiles in CODIS at the national level, the department is required to document an expungement procedure for juveniles and adults, to remove a profile when requested.

Effective immediately, the following two forms will be needed when collecting a DNA reference sample from a juvenile:

1. Advisal and Consent to Collect DNA Reference Sample – Juvenile
2. Request for Expungement of Voluntary Juvenile DNA Reference Sample

The following two forms will be needed when collecting a DNA reference sample from an adult:

1. Advisal and Consent to Collect DNA Reference Sample – Adult
2. Request for Expungement of Voluntary Adult DNA Reference Sample

These forms are located in the Resource Library under Lab Resources/DNA Forms.

**Effective immediately, these procedures shall be followed for the collection of DNA Reference Mouth Swabs:**

**Collection of DNA Reference Mouth Swabs from Adults (DP 3.02)**

1. An “Advisal and Consent to Collect DNA Reference Sample” form and a “Request for Expungement of Voluntary DNA Sample” form are required when

collecting a DNA reference sample from an adult individual. **The consent form is used to inform the individual of the right to refuse to have a sample collected, and is required unless the reference sample is collected for one of the following reasons:**

- a. The person is a suspect and being arrested for a felony;
  - b. The person is a suspect and a Fourth Amendment waiver subject;
  - c. The person is compelled to provide a DNA reference sample through a court order;
  - d. The person is a victim of a sexual assault and has consented to a SART exam.
2. In the event a suspect, who is not subject to sections a through c above, is willing to give a sample for purposes of the current investigation only but is not willing to have the sample entered into the database, the second paragraph of the form shall be crossed out and initialed by the officer.
  3. Suspect samples will be entered into the DNA database(s) for comparison with other profiles. **Suspect DNA reference sample profiles are uploaded to the State and/or National DNA database(s) for a maximum of two years. Victim, elimination, and consensual partner DNA reference samples are never entered into the database.**
  4. Completed consent forms shall be uploaded in the Department's evidence tracking system with the sample. In order to have the sample analyzed by the Crime Laboratory, a consent form must be submitted. If no form was collected or the form was incomplete, the reference will not be analyzed by the Crime Laboratory unless permission is granted by the Chief's Office.
  5. An individual who voluntarily provides a DNA reference sample will be provided with an expungement form and the officer must fill in the case/event number at the top of the form.
  6. If the individual submits a completed expungement form in person at SDPD Headquarters, withdrawing their consent to the collection and testing of their mouth swab, the detective will request that the Property Room destroy the mouth swab and the Crime Laboratory will remove the sample from the DNA database.
    - a. DNA consent forms and expungement forms are provided within the Mouth Swab Collection Kit. These forms are also available in the Resource Library in Lab Resources/DNA Forms.

7. For a DNA reference sample collected from a juvenile, please refer to [San Diego Police Department Procedure 3.08, Section XIV](#).

### **Collection of DNA Mouth Swabs from Juveniles (DP 3.08)**

1. Deoxyribonucleic acid (DNA) collection 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.
2. Only under specific circumstances may a juvenile's DNA be taken and submitted to the state's DNA and forensic identification database and data bank. This procedure will generally be performed by a probation officer within Juvenile Hall in conjunction with a court order. Refer to Penal Code section 296 (a) (1) and (3) for further details.
3. A juvenile's DNA may not be taken except by mouth swab pursuant to the procedures described in this section. If a juvenile's DNA is taken without adhering to subsection D below, the DNA sample shall be destroyed, and any profiles uploaded to the local database will be removed.
4. An officer may take mouth swab samples from a juvenile only in the following circumstances:
  - a. Authorized by Law: If specifically authorized by law in cases of sexual assault or in the investigation or identification of a missing or abducted minor (refer to Welfare and Institutions Code section 625.4(i)); or
  - b. Court Order or Warrant: The officer has a court order or a search warrant to take mouth swab samples from the juvenile. This includes juveniles who are 4th waivers (officers shall confirm the 4th waiver status of juveniles through DCU at Juvenile Hall) (PC 625.4(i)(2)); or
  - c. Consent: The juvenile and parent, guardian, or attorney voluntarily consent, and all the following conditions are met (PC 625.4(a)):
    - (1) The juvenile consents in writing, after being orally advised of the purpose and manner of the collection, the right to refuse consent, the right to sample expungement, and the right to consult with an attorney, parent, or legal guardian prior to providing consent.
    - (2) A parent or legal guardian of the juvenile, or an attorney representing the juvenile, is contacted, is provided the admonition specified in paragraph a. above, is allowed to privately consult with the juvenile, and, after that consultation, concurs with the

juvenile's decision to consent. The parent, legal guardian or attorney will also if present, need to sign the consent form.

- (3) If the parent, legal guardian, or attorney is not present, consent to the DNA collection may be obtained via telephone or other means. Such consent must be either audibly recorded on an officer's Body Worn Camera or obtained in the presence of a witness. The parent, legal guardian or attorney consent shall be documented in the report and noted on the consent form.
  - (4) The detention of a juvenile shall not be unreasonably extended solely for contacting a parent, legal guardian, or attorney pursuant to paragraph b. above, if a parent, legal guardian, or attorney cannot be reached after reasonable attempts have been made.
5. The juvenile must be provided with a form for requesting expungement of the voluntary DNA sample. The expungement form will be inside the DNA Mouth Swab Collection Kit as well as the Resource Library in Lab Resources/DNA Forms.
6. Prior to collecting a mouth swab sample:
  - A. The juvenile must be identified and how they were identified (i.e., school identification card, passport, California I.D. card, etc.) must be documented.
  - B. A supervisor or field lieutenant must approve of the collection of the DNA reference sample.
    - (1) During normal business hours, the officer shall contact the detective sergeant assigned to the unit affected (i.e., Sex Crimes, Child Abuse, or Juvenile Services Team).
    - (2) After business hours, officers must notify and obtain approval from their immediate supervisor. Officers must document the approving supervisor's name in the report.
  - C. If the sample is consensual, officers must read the "Advisal and Consent to Collect DNA Reference Sample" form to the juvenile and the juvenile's attorney, parent, or legal guardian, fill out the form in entirety, and obtain the signature of the juvenile and the parent, legal guardian, or attorney in accordance with paragraph 4.c. above.
    - (1) This form must be included with the police report.

- (2) The consent form will be inside the DNA Mouth Swab Collection Kit, in the Resource Library, or on the Department F drive.
  - D. If the sample is consensual, the officer must provide the juvenile with a form for requesting expungement of the voluntary DNA sample in accordance with paragraph 4 above and must fill in the case/event number at the top of the form.
7. Checklist for collecting mouth swab samples:
- a. Confirm that consent was properly obtained in accordance with paragraph 4 above.
  - b. Confirm that approval was obtained from a supervisor in accordance with paragraph 6 above.
  - c. Collect the mouth swab sample in a controlled environment, outside of public view.
  - d. Have another officer present to witness the collection and document the witness officer's information in the report.
  - e. Follow the instructions in the "San Diego Police Department Mouth Reference Swab Collection Kit" envelope.
  - f. Collect mouth swabs from one individual at a time, completing the entire process prior to beginning the collection of mouth swabs from an additional individual.

Department Procedure 3.02 and Department Procedure 3.08 will be updated to include the following information.

If you have any questions, please contact the San Diego Police Department Crime Laboratory at **(Deleted- record of security)**.

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