

## Biological Samples

### 337.1 PURPOSE AND SCOPE

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.

### 337.2 POLICY

The Berkeley Police Department will assist in the expeditious collection of required biological samples from offenders in accordance with the laws of this state.

### 337.3 PERSONS SUBJECT TO DNA COLLECTION

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.

### 337.4 PROCEDURE

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

#### 337.4.1 COLLECTION

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

### 337.5 INVOLUNTARY DNA COLLECTION

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.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Biological Samples*

---

Force will not be used in the collection of samples except as authorized by a court order or with the approval of the Watch Commander.

The following employees shall be involved in the administration of an involuntary DNA collection procedure:

- (a) A sworn supervisor,
- (b) An assigned officer and
- (c) An assisting employee.

The incident supervisor shall involve as many assisting employees as may be required to ensure the restraint of the individual and to accomplish the DNA collection. The incident supervisor shall explain to the individual that their refusal will result in his/her physical restraint, and that reasonable force may be employed to promote the safety of all involved parties during the impending collection.

#### 337.5.1 RESTRAINT EQUIPMENT

When available and practical, restraint equipment should be employed if its use would enhance the safety of persons involved in an involuntary DNA collection process.

“Restraint equipment”, as used in this policy, may include, but is not limited to, a padded phlebotomy chair, a hospital gurney equipped with soft-restraints and “The Wrap” restraint device. The use of restraint equipment shall not preclude the physical restraint of an individual’s person by an employee if such action is necessary to mitigate the potential for injury.

The incident supervisor shall monitor the restraint process to ensure only reasonable force is employed. If confronted with violent resistance, the incident supervisor may elect to terminate the procedure, and develop an alternate plan for the DNA collection.

Should employees use physical force to overcome an individual’s violent resistance to the DNA collection process, the incident supervisor shall adhere to the reporting protocols in the Use of Force Policy. The arresting officer shall document the conduct of the individual during the DNA collection procedure in his/her report.

In the event an individual is injured, or complains of injury, as a result of police action, the incident supervisor shall ensure medical service protocols are followed.

#### 337.5.2 VIDEO RECORDING

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 (15 CCR 1059).

### *Biological Samples*

---

#### 337.5.3 CELL EXTRACTIONS

If the use of force includes a cell extraction, the extraction shall be video recorded, including audio. Video shall be directed at the cell 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 (15 CCR 1059).

#### **337.6 LEGAL MANDATES AND RELEVANT LAWS**

California law provides for the following:

##### 337.6.1 DOCUMENTATION RELATED TO FORCE

The Watch Commander shall prepare prior written authorization for the use of any force (15 CCR 1059). The written authorization (the BPD "Upgraded Search and DNA Collection Request" form) shall include information that the individual was asked to provide the requisite specimen, sample or impression and refused, and if applicable, the related court order authorizing the force.

##### 337.6.2 BLOOD SAMPLES

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

- (a) The California DOJ requests a blood sample and the individual 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)).

##### 337.6.3 LITIGATION

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

#### **337.7 EXPUNGEMENT FROM CAL-DNA DATA BANK**

California Penal Code § 299 sets forth the criteria for DNA Database sample expungement. Expungement can be accomplished easily and quickly when a DNA sample qualifies for removal from the State database and a person provides sufficient documentation of his/ her identity, legal status and criminal history to the California Department of Justice, DNA Database Program (CAL-DNA). A petitioner whose sample qualifies for DNA database sample expungement and who provides appropriate documentation can expedite the process so that neither a court hearing, nor a 180-day waiting period permitted by Section 299, likely will be necessary.

If CAL-DNA receives sufficient documentation showing that an individual meets the criteria for expungement of his or her DNA sample, CAL-DNA will review and research the request and issue a response to the petitioner indicating that the expungement was completed and the sample destroyed, or notify the petitioner of the legal reason the Department is required to retain the sample and profile.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Biological Samples*

---

A form to request CAL-DNA to expunge a DNA database sample and profile can be obtained by contacting the California Office of the Attorney General. The Attorney General's website is <https://oag.ca.gov> or a petitioner can call 800-952-5225. The form to request the expungement is the "Streamlined DNA Expungement Application Form" (State of California DLE 244). Expungement of a DNA sample and profile are the responsibility of the Department of Justice. The Berkeley Police Department has no influence on this decision.