

San Diego Police Department

TRAINING BULLETIN

A PUBLICATION OF THE SAN DIEGO POLICE DEPARTMENT

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COLLECTION OF VOLUNTARY JUVENILE DNA

I. PURPOSE

The purpose of this bulletin is to provide Department members with information on changes to the procedures for the collection of a juvenile's DNA by mouth swab based on consent.

II. BACKGROUND

AB 1584, which became effective on January 1, 2019, created many changes as it relates to the collection and testing of DNA collected from juveniles based on consent. Codified in Welfare and Institutions Code Section 625.4, some of these changes include:

- All consent samples require written consent of the minor and approval of the minor's consent by a parent, legal guardian, or attorney.
- A minor's voluntarily given DNA cannot be searched, analyzed, or compared to DNA or profiles related to crimes other than the one for which it was taken.
- Procedures must exist to allow the minor's voluntary sample to be expunged.
- The bill created a procedure whereby civil penalties can be levied against a local law enforcement agency that is found to have a pattern and practice of collecting voluntary samples in violation of the bill's provisions.

The following portions of this Training Bulletin will discuss the proper procedures for the voluntary collection of DNA mouth swabs from juveniles only.

III. PROCEDURES

- A. 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 B below, the DNA sample shall be destroyed, and any profiles uploaded to the local database will be removed.

- B. An officer may only take voluntary mouth swab samples from a juvenile if the juvenile **and** parent, guardian, or attorney voluntarily consent and all the following conditions are met:
 - 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.
 - a. 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.

 - b. 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.

 - 3. The juvenile is provided with a form for requesting expungement of the voluntary DNA sample. The expungement form will be inside the DNA collection kit or it can be located on the LAN system at F:\Juvenile procedures\LAB\DNA Expungement Application.

- C. Prior to collecting a mouth swab sample:
 - 1. The juvenile must be identified and how he/she was identified (i.e., school identification card, passport, California I.D. card, etc.) must be documented.

2. A supervisor or field lieutenant must approve of the collection of DNA.
 - a. During normal business hours, the officer will contact the detective sergeant assigned to the unit affected (i.e., Sex Crimes, Child Abuse, or Juvenile Services Team).
 - b. After business hours, officers must notify and obtain approval from their immediate supervisor. Officers must document the approving supervisor's name in the report.
3. If the sample is consensual, officers must read the "Advisal and Consent to Collect Saliva 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 (B) above.
 - a. This form must be included with the police report.
 - b. The consent form will be inside the DNA collection kit or it can be located on the LAN system at F:Juvenile procedures\LAB \Advisal and Consent to Collect Saliva Sample and printed.
4. 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 (B) above, and must fill in the case number at the top of the form.

D. Checklist for collecting mouth swab samples:

1. Confirm that consent was properly obtained in accordance with paragraph (B) above.
2. Confirm that approval was obtained from a supervisor in accordance with paragraph (C) above.
3. Collect the mouth sample in a controlled environment, outside of public view.
4. Have another officer present to witness the collection and document the witness officer's information in the report.
5. Follow the procedures described on the "SDPD Reference Mouth Swab Collection Kit" envelope.
6. Collect one mouth swab at a time, completing the entire process prior to beginning the collection of an additional mouth swab sample.

Copies of the Advisal and Consent to Collect Saliva Sample form and the DNA Expungement Application are attached to this Training Bulletin. These forms are available in Spanish on the F drive as well.

***NOTE:** The juvenile DNA collection procedures in AB 1584, Department Procedure 3.08, and this training Bulletin apply to samples given voluntary. These procedures do not apply to samples taken under other legal authority, including a court order, Forth Amendment waiver, or a search warrant. Officers shall confirm the 4th waiver status of juveniles through DCU at Juvenile Hall.

Department Procedure 3.08 has already been updated to include segments of this Training Bulletin.