

# Biological Samples

## 374.1 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.

## 374.2 POLICY

The Fontana Police Department will assist in the expeditious collection of required biological samples from offenders in accordance with the laws of this state and with as little reliance on force as practicable.

### 374.2.1 ARRESTEES

Any adult arrested or charged with any felony offense is required to provide DNA samples. DNA samples should be collected immediately following arrest, or during the booking process, or as soon as administratively practicable after arrest but in any case prior to release on bail or other physical release from custody (Penal Code § 296.1(a)(1)(A)).

- (a) For felony arrestees booked at any San Bernardino County jail facility, the San Bernardino County Sheriff's Department will obtain the required DNA sample.
- (b) For felony arrestees cite released from the Fontana Police Department per Policy Manual § 420, the arresting officer will collect the DNA sample. The procedure for collection and submission of the sample is covered in the department's Booking and Detention Manual.
- (c) For felony arrestees booked at any facility outside the jurisdiction of the San Bernardino County Sheriff's Department, the transporting officer will inquire as to that agency's requirements and comply with said procedure.

### 374.2.2 SEX AND ARSON REGISTRANTS

Any adult or juvenile who is required to register as a sex offender under Penal Code § 290 or arsonist under Penal Code § 457.1, including those whose registration resulted from a qualifying misdemeanor crime is required to submit a DNA sample. (Penal Code § 296(a)(3)).

At the time that any such registrant registers, updates registration, or is notified by the Department of Justice or other law enforcement officer, an appointment shall be made designating the time and place for the collection of DNA samples if no such sample has already been provided (Penal Code § 296.2(c)).

## 374.3 PERSONS SUBJECT TO DNA COLLECTION

Those who must submit a biological sample include (Penal Code § 296):

# Fontana Police Department

## Fontana PD Policy Manual

### *Biological Samples*

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- (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.

#### 374.3.1 BLOOD SAMPLES

The withdrawal of blood may only be performed in a medically approved manner by health care providers trained and qualified to draw blood. Blood samples obtained for submission to the Department of Justice DNA lab shall be placed in Department of Justice blood vials (Penal Code § 298(a) and (b)(2)). A right thumbprint shall be placed on the sample vial along with other required identifying information.

#### 374.3.2 BUCCAL SWABS

Buccal swab samples (taken from the inside of the mouth) may only be procured by employees who have successfully completed departmentally approved training in the collection of buccal swabs and with the use of Department of Justice buccal swab collectors. (Penal Code § 298(a) and (b)(3)). A right thumbprint shall be placed on the collector along with other required identifying information.

(Note: If an individual violently resists or presents other officer safety issues, employees may omit buccal swab samples upon approval of a supervisor.)

#### 374.3.3 FULL PALM PRINTS

Full palm print impressions shall be obtained on Department of Justice prescribed forms and forwarded separately to CalDOJ. (Penal Code § 298(b)(4)).

#### 374.3.4 USE OF FORCE TO OBTAIN SAMPLES

There may be an occasion where a qualified individual refuses to provide any or all of the required DNA samples. The officer(s) shall take and document reasonable steps to secure voluntary compliance (Penal Code § 298.1(c)(1)(C)). No force shall be used to obtain a DNA sample unless a court order along with the written approval of a watch commander has been obtained (15 CCR § 1059).

- (a) If the individual refusing to provide the sample was arrested for a felony offense, that individual will be taken to the nearest San Bernardino County Jail Facility for booking.
- (b) If the individual refusing to provide the sample was required to register as a sex offender under Penal Code § 290, then alternative solutions may be sought. Such alternatives could be contacting the individual's Probation or Parole Officer.
- (c) In either case the refusal should be documented in a police report. It is a misdemeanor to refuse to provide a sample per Penal Code § 298.1(a), however, this charge is currently not a bookable offense.

# Fontana Police Department

## Fontana PD Policy Manual

### *Biological Samples*

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#### **374.4 PROCEDURE**

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

##### **374.4.1 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.

##### **374.4.2 FOLLOW UP NOTICE TO DOJ**

Within two years of submitting any DNA specimen, sample or impression to the Department of Justice, this department shall notify DOJ whether the individual remains a suspect in a criminal investigation ([Penal Code § 297\(c\)\(2\)](#)). It shall be the responsibility of the Department of Justice to thereafter purge samples of any individual(s) who are no longer a suspect in any criminal investigation from the DNA database.

#### **374.5 USE OF FORCE TO OBTAIN SAMPLES**

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. Force will not be used in the collection of samples except as authorized by court order and only with the approval of a supervisor. Methods to consider when seeking voluntary compliance include contacting:

- (a) The person's parole or probation officer when applicable.
- (b) The prosecuting attorney to seek additional charges against the person for failure to comply or to otherwise bring the refusal before a judge.
- (c) The judge at the person's next court appearance.
- (d) The person's attorney.
- (e) A chaplain.
- (f) Another custody facility with additional resources, where an arrestee can be transferred to better facilitate sample collection.
- (g) A supervisor who may be able to authorize custodial disciplinary actions to compel compliance, if any are available.

# Fontana Police Department

## Fontana PD Policy Manual

### *Biological Samples*

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The supervisor shall review and approve any plan to use force and be present to document the process.

#### **374.6 LITIGATION**

The Chief of Police or authorized designee shall immediately notify the Department of Justice DNA Legal Unit at (415) 703-5892 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.