

***THE DNA FINGERPRINT, UNSOLVED CRIME AND
INNOCENCE PROTECTION ACT***
(Proposition 69 - 2004)

AGENCY RESPONSIBILITIES

**California Department of Justice
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**California Department of Justice:
Administrative and Fiscal Responsibilities**

- I. Implement the DNA Database Act (Pen. Code, § 295(h).)¹

- II. Dissemination of Information to Public
 - A. Publish quarterly reports from the DOJ DNA Laboratory on Department web site. (§ 295(h)(4).)
 - B. Publish annual county reports on Department web site. (Govt. Code, § 76104.6(c).)

- III. Fiscal Obligations
 - A. Administer the State's DNA Identification Fund to support DNA testing in the State and to offset impacts of increased testing. (Govt. Code, § 76104.6(b)(4).)
 - 1. For funds received in 2005 and 2006, allocate 90% to the DOJ DNA Lab first to comply with outsourcing obligations, and second for all other costs associated with the DNA Data Bank Program. Allocate 10% to the DOJ Information Bureau Criminal History Unit for costs associated with updating offender criminal histories to reflect DNA collection status. (Govt. Code, § 76104.6(b)(4)(A).)
 - 2. For funds received in 2007, allocate 100% to the DOJ DNA Lab first to comply with outsourcing obligations, and second for all other costs associated with DNA Data Bank Program. (Govt. Code, § 76104.6(b)(4)(B).)
 - 3. For funds received in and after 2008, allocate 100% to the DOJ DNA Lab to comply with outsourcing obligations and for all other costs associated with DNA Data Bank Program. (Govt. Code, § 76104.6(b)(4)(C).)
 - B. Repay the Legislature's \$7,000,000 loan within four years, with interest calculated at the rate earned by the Pooled Money Investment Account at the time the loan is made. The loan must be repaid from revenue generated under the DNA Database Act. (Govt. Code, § 76104.6(e).)

¹ Note: All subsequent references to statutory provisions are to the Penal Code unless otherwise indicated.

**California Department of Justice:
DNA Laboratory / CAL-DNA Program**

I. General Mandate

- A. Manage and administer the State DNA Database and Data Bank Program. (§ 295(g).)

II. Scientific / Investigative Responsibilities

- A. Must be accredited by ASCLD/LAB or a certifying body approved by ASCLD/LAB. (§ 297(c).)
- B. Store biological samples and specimens collected or submitted under the DNA Act. (§ 295.1(c).) *See* the DOJ Richmond DNA Laboratory's security protocols for further information and details.
- C. Analyze specimens and samples under this law. (§ 295.1(c).)
1. Perform DNA analysis and other forensic identification work pursuant to the DNA Database Act for identification purposes only. (§ 295.1(a).) Analysis limited to loci approved by CODIS. (§ 295(h)(4).)
- D. Request blood specimen(s) where DOJ determines that buccal swab is insufficient for Data Bank Program purposes. (§ 295(e).)
1. Obtain blood specimen(s) from qualifying offenders through federal, state, or local law enforcement when necessary in a particular case or would aid in generating an accurate forensic DNA profile. (§ 295(f).)
- E. Compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following: (§ 295.1(c).)
1. Forensic casework/unknowns
 2. Known and evidentiary specimens and samples from crime scenes or criminal investigations
 3. Missing / unidentified persons
 4. Qualifying offenders
 5. Legally obtained samples
 6. Samples from deceased qualifying offenders
 7. Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, quality control
- F. May search DNA samples obtained from suspects. (§ 297(b)(1).) This means that any biological sample obtained from a suspect in a criminal investigation may be analyzed and a forensic DNA profile generated for forensic identification purposes. The DOJ DNA Laboratory also may analyze suspect samples, as may any law enforcement crime laboratory accredited either by ASCLD/LAB or by a certifying body approved by ASCLD/LAB. The DNA profile may be included in the laboratory's Database and Data Bank files and searched against all offender and crime scene DNA profiles maintained by DOJ in its DNA databases. The

suspect DNA profile must be removed from the DNA Data Bank upon written notification from a law enforcement agency that the person is no longer a suspect in a criminal investigation.

- G. May contract with/outsource to laboratories accredited by ASCLD/LAB or an ASCLD/LAB-approved certifying body to perform anonymous analysis of DNA specimens and samples for forensic identification pursuant to this law. (§ 297(a)(2); 298.3(a).)

III. Interface With CODIS/ NDIS

- A. Liaison with the FBI regarding California's participation in CODIS. (§ 295(g).)
- B. Ensure that California's Database and Data Bank Program is fully compatible with, and a meaningful part of, CODIS. (Findings, § II, subd. (d)(4).)
- C. Forward any samples collected under this law from federally-incarcerated offenders to the U.S. DOJ DNA Data Bank Program upon request. (§ 296.1(a)(6)(B).)
- D. Collect information from submitting agencies to ensure search capabilities and compliance with NDIS standards. (§ 295.1(f).)

IV. Establish Statewide Policies & Procedures

- A. May adopt policies and enact regulations for implementing this law. (§ 295(h)(1).) All administrative bulletins, notices, regulations, policies, procedures, and/or guidelines adopted by the DOJ and its DNA Laboratory are exempt from the provisions of the California Government Code's Administrative Procedure Act, chapters 3.5, 4, 4.5, and 5.
- B. Establish procedures for entering Database and Data Bank information. (§ 298(b)(6).)
- C. May adopt policies and enact regulations to ensure that required samples and print impressions are collected in timely manner (§ 295(h)(1)), e.g.,
 - 1. ASAP after arrest, verdict, plea, or juvenile disposition
 - 2. When determined that a qualifying offender has not provided required samples, specimens, or print impressions
- D. Set forth policies regarding conditions and limitations of reimbursement of counties for sample collection costs. (§ 295(i)(3).)
- E. Set forth policies for the inclusion of reference samples and suspect samples in the Data Bank Program, where those samples have been typed by local law enforcement crime laboratories.

V. Facilitate DNA Collection (Kits, Training, Law)

- A. Contract with appropriate vendors, and purchase DNA collection materials for use statewide.
- B. Provide blood specimen vials, buccal swab collectors, mailing tubes, labels, full palm print collection materials, and instructions for collections. (§ 298(b)(1).)

- C. Provide collection training to law enforcement.
- D. Consult on implementation issues. Review implementation policies submitted by the Department of Corrections, the Board of Corrections and the Department of the Youth Authority. (§ 295(h)(1).)
- E. DOJ has issued an Information Bulletin addressing data bank program implementation, and clarifying that collection of samples from qualifying adult felony arrestees must be based only upon current arrests. Note: Qualifying individuals listed below are sampled as an administrative consequence of conviction/adjudication (§ 295(d)), a judicial finding that a felony has been committed with concurrent referral to designated institutions, or a felony arrest (with sample retention contingent upon conviction or referral to a designated institution in the case). Therefore, samples are required immediately in conjunction with the current conviction/adjudication/referral, or as soon as possible after conviction/adjudication, and in any event prior to completion of a term of probation, parole, or before supervision or government control or some nexus with criminal justice system or court has ended. The list of qualifying offenders is as follows:
 - 1. Adults and juveniles convicted/adjudicated of any felony offense on or after November 3, 2004.
 - 2. Adults and juveniles currently in custody or on probation, parole, or any other supervised release or government control or supervision for any felony offense, committed prior to November 3, 2004.
 - 3. Adults and juveniles convicted or adjudicated of a misdemeanor, or other crime on or after November 3, 2004, but with a past qualifying felony conviction or adjudication of record.
 - 4. Adults and juveniles who are required to register under Penal Code section 290 or Penal Code section 457.1 for felony or misdemeanor sex or arson offenses.
 - 5. Adults arrested on or after November 3, 2004, for felony PC 290 sex crimes, murder, voluntary manslaughter, or attempts to commit those crimes.
 - 6. Adults and juveniles referred to and housed in mental health treatment programs for felony offenses. Includes those placed in such institutions both prior to and after November 3, 2004.
 - 7. Beginning in 2009, all adults arrested for a felony offense qualify for DNA sample collection.

VI. Dissemination of Information to Public

- A. On or before April 1, 2005, and quarterly thereafter, submit report to Department of Justice for publication on web site. (§ 295(h)(4).)
 - 1. Total number of samples received
 - 2. Number of samples received from CDC

3. Number of CODIS-eligible samples fully analyzed
4. Number of samples uploaded into CAL-DNA/CODIS for quarter
5. Total, annual, and quarterly number of offender and evidence samples in DNA data bank
6. Number of hits and investigations aided as reported to NDIS
7. Confirm Laboratory's accreditation status and participation in CODIS
8. Accounting of funds collected through DNA Identification Fund
9. Accounting of funds spent and disbursed from the Department of Justice DNA Testing Fund

VII. Outsourcing

- A. May contract with / outsource to laboratories accredited by ASCLD/LAB or an ASCLD/LAB-approved certifying body to perform anonymous analysis of DNA specimens and samples for forensic identification pursuant to this law. (§§ 297(a)(2); 298.3(a).)
- B. If sufficient funding exists, must outsource analysis of offender and arrestee samples if analysis has not begun within six months of receipt. (§ 298.3(b).)

VIII. Expungement / Removal

- A. Must remove a suspect sample from Data Bank files upon written notification that the person is no longer a suspect in a criminal investigation. (§ 297(b)(2).)
- B. Expunge the offender profile from the searchable DNA Database and destroy blood, saliva, and buccal samples after verifying that the person has no present or past qualifying offense of record IF receive court order for expungement verifying that the person seeking expungement has made the necessary showing at a noticed hearing, AND also receive:
 1. a written request for expungement;
 2. EITHER a certified copy of the court order dismissing the conviction or case OR a letter from the D.A. certifying that (1) no criminal charges have been filed, or (2) charges have been dismissed prior to adjudication, or (3) the defendant has been found factually innocent, or (4) the defendant has been acquitted, or (5) the underlying conviction has been reversed and the case dismissed;
 3. proof of written notice to the D.A. that expungement is requested;
 4. a court order verifying that (1) no retrial or appeal of the case is pending, and (2) that the expungement request was made at least 180 days ago, and (3) that neither DOJ nor the D.A. has objected to the expungement. (§ 299(c)(2).)
- C. Expungement/sample destruction is not required where the duty to register under Section 290 or 457.1 is terminated (§ 299(e)), or where action has been taken pursuant to Section 17, 1203.4, or 1203.4a (§ 299(f).)

- D. DOJ need not destroy analytical data, etc., pursuant to the expungement provisions if doing so would compromise or destroy evidence relating to another person. (§ 299(d).)
- E. Note: DOJ is working with county prosecutors to develop a “streamlined” process to facilitate expungement, along with simplified instructions on how to achieve expungement/destruction of samples.

IX. Fiscal Responsibilities

- A. Reimburse counties for collection costs according to discretionary DOJ policies regarding conditions and limitations of reimbursement of counties for sample collection costs. (§ 295(i)(3).) Counties should be aware that because of the provision of statutory funding directly to counties, DOJ will no longer reimburse counties for DNA collection expenses.
- B. May contract with / outsource to laboratories accredited by ASCLD/LAB or an ASCLD/LAB-approved certifying body to perform anonymous analysis of DNA specimens and samples for forensic identification pursuant to this law. (§ 297(a)(2); 298.3(a).)

X. Disclosure and Handling of Information by DOJ

- May provide non-DNA forensic identification information to other DOJ database systems (e.g., sex offender registration). (§ 299.5(c).)
- Provides ACHS with notice of fact of sample collections as soon as administratively practicable. (§ 299.5(e).)
- May release DNA samples, profiles, and other forensic identification information only to law enforcement agencies unless otherwise authorized by this DNA Database Act. (§ 299.5(f).)
- Provides a defendant’s DNA and other forensic identification information to his/her defense counsel pursuant to statutory discovery procedures upon request. (§ 299.5(g).) As a member of the prosecution team, DOJ in practice provides this material directly to the prosecuting attorney to turn over to defense counsel during discovery. Otherwise DOJ does not provide data bank or data base forensic identification information or profiles to the defense.
- May publicly disclose the fact of a DNA profile match, including the name of the offender or missing person identified. (§ 299.5(i)(3).)
- May release DNA and other forensic identification information after a reported match or exclusion to law enforcement, which may at its discretion, also release such information provided to it by the DOJ lab, to a jury, grand jury, in court documents, or as part of a judicial or administrative proceeding because such information pertains to the basis for law enforcement’s identification, arrest, investigation, prosecution or exclusion of a particular person related to the case. (§ 299.5(k).)
- May release “information obtained from a file” in a transcript, judicial proceeding etc. where specifically authorized by law. (§ 299.5(l).)

- May use or may permit authorized agent to use anonymous records or criminal history information for training, research, population statistics, quality assurance, or quality control. (§ 299.5(m).)
- Must publicize DNA Program methodologies and procedures before beginning DNA testing. (§ 299.5(n).)
- Has the sole discretion over sharing any DNA Data Bank Program information in its possession with law enforcement, public or private crime laboratories that serve law enforcement, state attorneys general, authorized state or federal auditing boards, and other third parties necessary to assist in research and development projects. (§ 299.6(a).)
- May make available DOJ's population databases and data banks for search by the FBI or other CODIS participants in accordance with CAL-DNA policies. (§ 299.6(b).)
- May provide portions of DNA samples to local public DNA labs for identification purposes if recipient labs follow all privacy provisions, use DOJ-established procedures for the handling of samples and disclosure of results, use DOJ-approved methodologies and procedures for analysis, conduct only tests of value to law enforcement for identification purposes, send a copy of results to DOJ through their local CODIS database, and assume all costs associated with the sample transfer. (§ 299.6(c).)

What DOJ Does Not Provide:

The information and samples DOJ retains are confidential. There are criminal penalties and fines for unauthorized disclosure of information or misuse of samples. (§ 299.5(i).) DOJ does not provide samples or DNA or identification information unless specifically authorized. The Data Bank law sets forth, in part, as follows regarding the confidentiality of samples and information:

- All Database and Data Bank materials and information are confidential, privileged, and exempt from disclosure except as provided in the DNA Database Act. (§ 299.5(a), (b).)
- Other than the defendant's own DNA-related information, no materials, including DNA, forensic identification information, and computer software or structures, need be disclosed in a legal proceeding, even in response to subpoena or other discovery procedure, whether in criminal or civil cases. (§§ 299.5(h); 299.5(o).)
- Neither DNA nor other forensic identification information may be provided to ACHS. (§ 299.5(d).)
- There is no obligation to provide offender specimens or samples upon request for quality control or other purposes. (§ 295.1(e).)
- There is no required disclosure of DNA and forensic identification information pursuant to public record act requests. (§ 299.5(a).)
- There is no required disclosure or return of evidence or forensic samples or print impressions; The statute specifically exempts data bank samples from any law requiring disclosure of information to the public or the return of samples. (§ 299.5(b).)

**California Department of Justice:
Bureau of Criminal Identification & Information**

- I. Authorized under Proposition 69 to perform palm print examinations in furtherance of the State's DNA Data Bank Program. All such print examinations are to be performed for identification purposes only. (§ 295.1(b).)

- II. Must file and maintain full palm prints of each hand for persons in Database. (§ 299.5(e).)
 - A. Maintain full palm prints in a file for identification purposes. (§ 298(b)(1).)

Local Public Law Enforcement Crime Laboratories

- I. If designated by DOJ, and accredited by ASCLD/LAB or a certifying body approved by ASCLD/LAB, any law enforcement crime laboratory may analyze crime scene evidence samples and are authorized to have them run through the California DNA Database. (§ 297(a)(1); 297(c).) Such labs are required to:
 - A. Annually provide DOJ's DNA Data Bank Program with a copy of the accreditation certificate from ASCLD/LAB or certification by a body approved by ASCLD/LAB.
 - B. Annually provide DOJ's DNA Data Bank Program with a copy of ASCLD/LAB letter confirming re-accreditation and continuing annual compliance with accreditation standards.
- II. May analyze suspect samples and have them searched by DOJ. (§ 297(b)(1).)
- III. On an annual basis, must submit the FBI DNA Quality Assurance Standards Audit document and the ASCLD/LAB annual (summary) report to the DOJ DNA Data Bank Program for review. (§ 297(c).)
- IV. May maintain local forensic databases independently of DOJ's DNA Data Bank Program. (§297(d).)
 - A. If local DNA labs provide DOJ with offender reference profile(s) for use in the state Database, they must follow DOJ DNA Lab policies. (§ 299.6(d).)
 - B. When conducting Penal Code section 296 sampling, an additional DNA sample may not be collected for use in county or other local identification database(s) unless such sample is otherwise legally obtained; Only CDC can provide additional samples to county in which the inmate is to be released if the county maintains a local DNA testing laboratory. (§ 290.7.)
 - C. DOJ will provide further policy guidelines with respect to uploading of suspect samples and legally-obtained samples.
- V. Local public laboratories may use anonymous DNA Database records or criminal history information for training, research, population statistics, quality assurance, or quality control. (§ 299.5(m).)
- VI. Local public DNA labs, upon DOJ approval, may obtain portions of DNA samples from DOJ for identification purposes if recipient labs follow all privacy provisions, use DOJ-approved procedures for the handling of samples and disclosure of results, use DOJ-approved methodologies and procedures for analysis, conduct only tests of value to law enforcement for identification purposes, send a copy of results to DOJ through their local CODIS database, and assume all costs associated with the sample transfer. (§ 299.6(c).)

- VII. Local public DNA laboratories may produce DNA profiles of known reference samples for inclusion in the DNA Data Bank Program. Doing so requires that the submitting laboratory follow the policies of the DOJ DNA Laboratory. (§ 299.6(d).)

State, County, and Municipal Law Enforcement Agencies

I. Collect DNA Samples From Arrestees

- A. Collect buccal swab samples, right thumb prints, full palm print from each hand from **adult persons** arrested on or after November 3, 2004 for the following, if their DNA samples and print impressions are not already in the possession of the Department of Justice:
 - 1. A felony PC 290 offense
 - 2. Murder (§ 187)
 - 3. Voluntary manslaughter (§ 192(a))
 - 4. Attempt to commit one of the preceding crimes. (§ 296(a)(2).)
- B. Do not collect from juvenile arrestees
- C. Do not collect on arrest based upon a prior felony conviction or adjudication of record.
- D. The arrestee provision is not retroactive.
- E. Beginning in 2009, collect buccal swab samples from all adults arrested for any felony offense on or after January 1, 2009. (PC 296(a)(2)(C).) This expansion of the arrestee provision is not retroactive to arrests that took place before January 1, 2009.

II. Collect DNA Samples From Registered Sex and Arson Offenders

- A. Collect buccal swab samples, right thumb prints, full palm print from each hand from any registered sex offender (PC 290) or arson offender (PC 457.1) whose DNA samples and print impressions are not already on file with DOJ. (§ 296(a)(3).)
 - 1. Includes those registered as a result of misdemeanor or felony convictions.

III. Timing of Collection & Disposition of Samples

- A. Arrestee collection should occur during booking. (§§ 295(i)(1)(A); 296.1(a)(1)(A).)
- B. Samples, specimens, and print impressions must be forwarded immediately/promptly to the Department of Justice. (§ 295(i)(1)(C); 298(a).)
 - 1. Note that palm print impressions are sent directly to DOJ's Bureau of Criminal Identification & Information in Sacramento, while the buccal collection kit is sent to the DNA Data Bank Program in Richmond. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.
- C. Sex offender registrant samples should be collected at offender's annual registration update or at an appointed time thereafter, or within 10 days of notification. (§ 296.2(c).)

- IV. Confirmation of Subject Identity & Qualifying Status
- A. Must confirm the subject's identity prior to DNA collection.
 - B. Must confirm that the person is a qualifying offender before collecting samples, specimens, or print impressions. (§ 298(b)(5).) Fill out form provided by DOJ as part of collection process.
 - 1. Always review the inmate's state and county custody documentation and criminal history to ensure that DNA samples and print impressions are not already in DOJ's possession. DOJ may be contacted if questions arise concerning collection status. (See DOJ Proposition 69 Information Bulletin.)
- V. Collection Mechanics
- A. Samples, specimens, and print impressions must be collected using DOJ-approved collection kits, and in accordance with DOJ's instructions. (§ 295(i)(2); § 298(b)(4).)
 - B. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.
 - C. The withdrawal of blood, when requested by DOJ, must be done in a medically-approved manner by trained and certified health care providers. (§ 298(b)(2).)
 - D. Buccal swab samples may be collected by law enforcement or correctional staff or others properly trained to do so. (§ 298(b)(3).)
 - E. The DOJ DNA Laboratory may request collection of blood specimen(s) where buccal swab is insufficient. (§ 295(e).)
 - F. California law continues to authorize a collecting agency to use reasonable force to collect DNA samples and specimens from a qualifying offender who refuses to cooperate. (PC 298.1(b) and (c).) There is no need for a court order.
- VI. Communication of Fact of Collection
- A. In order to avoid redundant DNA collection from the same subject, it is important to communicate the fact of collection to DOJ by promptly submitting the collection kit. Other law enforcement and/or correctional agencies that may assume jurisdiction over the subject should be notified as well.
- VII. Must inform the DOJ DNA Laboratory within two years whether a suspect whose sample has been submitted to the Data Bank Program remains a suspect in a criminal investigation. (§ 297(b)(2).)

County Jails / Other County Facilities

I. Specific Collection Mandates

- A. Collect buccal swab samples, right thumb prints, full palm print from each hand from **adult persons** arrested on or after November 3, 2004 for the following, if their DNA samples and print impressions are not already in the possession of the Department of Justice:
 - 1. A felony PC 290 offense
 - 2. Murder (§ 187)
 - 3. Voluntary manslaughter (§ 192(a))
 - 4. Attempt to commit one of the preceding crimes. (§ 296(a)(2).)
- B. Do not collect from juvenile arrestees.
- C. Do not collect on arrest based upon a prior felony conviction or adjudication of record.
- D. The arrestee provision is not retroactive.
- E. Beginning in 2009, collect buccal swabs from all adults arrested for any felony offense on or after January 1, 2009. (PC 296(a)(2)(C).) This expansion of the arrestee provision is not retroactive to arrests that took place before January 1, 2009.
- F. Convicted Felons / Sex & Arson Offender Registrants
 - 1. Collect buccal swab samples, right thumb prints, full palm print from each hand from persons, including juveniles, convicted or adjudicated of a felony offense, or required to register under Section 290 or Section 457.1 for commission of any offense, including misdemeanors, if their DNA samples and print impressions are not already in the possession of the Department of Justice. (§§ 296(a)(1); 296(a)(3).)
- G. Collection Based Upon Prior Felony Offense(s)
 - 1. Collect DNA samples, specimens, and print impressions from any person, including any juvenile, immediately after any current (e.g., misdemeanor) conviction if he or she has a past felony conviction or adjudication in California, or an offense from another jurisdiction that would qualify as a felony in California, and whose DNA samples and print impressions are not already in the possession of the Department of Justice. (§ 296.1(a)(2)(A).); or when the person, including any juvenile is currently imprisoned or confined, or on probation, parole, or other release following conviction for any offense (e.g., misdemeanor) if he or she has a past felony conviction or adjudication in California, or an offense from another jurisdiction that would qualify as a felony in California, and whose DNA samples and print impressions are not already in the possession of the Department of Justice. (§ 296.1(a)(2)(A).)

2. Note: Collection as per above may only occur while the qualifying person remains legally subject to government supervision or control. Samples cannot be collected simply because an individual has a past felony conviction or past arrest of record; There must be a current nexus to the criminal justice system or court to authorize collection. A new conviction provides such a nexus, for example.

H. Referrals

1. Collect from qualified subjects referred to the county jail collection facility by another law enforcement or correctional agency.

II. Timing of Collection & Disposition of Samples

- A. Samples, specimens, and print impressions must be collected reasonably promptly after arrest (i.e., during booking), conviction, or adjudication, and in any event prior to release from custody on bail or otherwise. (§§ 295(i)(1)(A); 296.1(a)(1)(A).)
- B. Samples, specimens, and print impressions must be collected “as soon as administratively possible” after a qualifying person reports to the facility to provide them. (§ 295(i)(1)(B).)
- C. Samples, specimens, and print impressions must be forwarded immediately/promptly to the Department of Justice. (§ 295(i)(1)(C); 298(a).)
 1. Note that palm print impressions are sent directly to DOJ’s Bureau of Criminal Identification & Information in Sacramento, while the buccal collection kit is sent to the DNA Data Bank Program in Richmond. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.

III. Confirmation of Subject Identity & Qualifying Status

- A. Must confirm the subject’s identity prior to DNA collection.
- B. Must confirm that the person is a qualifying offender before collecting samples, specimens, or print impressions. (§ 298(b)(5).)
 1. Always review the inmate’s state and county custody documentation and criminal history to ensure that DNA samples and print impressions are not already in DOJ’s possession. DOJ may be contacted if questions arise concerning collection status. (See DOJ Proposition 69 Information Bulletin.)

IV. Collection Mechanics

- A. Samples, specimens, and print impressions must be collected using DOJ-approved collection kits, and in accordance with DOJ’s instructions. (§ 295(i)(2); § 298(b)(4).)
- B. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.

- C. The withdrawal of blood, when requested by DOJ, must be done in a medically-approved manner by trained and certified health care providers. (§ 298(b)(2).)
- D. Buccal swab samples may be collected by law enforcement or correctional staff or others properly trained to do so. (§ 298(b)(3).)
- E. The DOJ DNA Laboratory may request collection of blood specimen(s) where buccal swab is insufficient. (§ 295(e).)
- F. California law continues to authorize a collecting agency to use reasonable force to collect DNA samples and specimens from a qualifying offender who refuses to cooperate. (PC 298.1(b) and (c).) There is no need for a court order.

V. Communication of Fact of Collection

- A. In order to avoid redundant DNA collection from the same subject, it is important to communicate the fact of collection to DOJ by promptly submitting the collection kit. Other law enforcement and/or correctional agencies that may assume jurisdiction over the subject should be notified as well.
 - 1. E.g., those felons who will be transported to state prison.

County Juvenile Facilities

I. Specific Collection Mandates

- A. **Adjudicated Felons and Sex / Arson Offender Registrants**
 - 1. Collect buccal swab samples, right thumb prints, full palm print from each hand from juveniles who are found to come within the provisions of Welfare & Institutions Code Section 602 for a felony offense, or required to register under Section 290 or Section 457.1 for commission of any offense, including misdemeanors, if their DNA samples and print impressions are not already in the possession of the Department of Justice. (§§ 296(a)(1); 296(a)(3).)
 - 2. Do not collect from juveniles on informal probation.
 - 3. Do not collect from juveniles participating in a deferred entry of judgment program, unless and until the petition is sustained.
- B. **Collection Based Upon Prior Felony Offense(s)**
 - 1. Collect DNA samples, specimens, and print impressions from any currently imprisoned or confined juvenile with a felony offense of record, or following adjudication (i.e., sustained petition) for any offense if he or she has a past felony conviction or sustained petition in California, or an offense from another jurisdiction that would qualify as a felony in California, and whose DNA samples and print impressions are not already in the possession of the Department of Justice. (§ 296.1(a)(2)(A).)
 - 2. Collection may occur only while the qualifying person remains legally subject to government supervision or control.
- C. **Referrals**
 - 1. Collect from qualified subjects referred to the county juvenile collection facility by another law enforcement or correctional agency.

II. Timing of Collection & Disposition of Samples

- A. Samples, specimens, and print impressions must be collected reasonably promptly after the petition is sustained, and in any event prior to release from custody on bail, or before any other government or court control or supervision ends. (§§ 295(i)(1)(A); 296.1(a)(1)(A).)
- B. Samples, specimens, and print impressions must be collected “as soon as administratively possible” after a qualifying person reports to the facility to provide them. (§ 295(i)(1)(B).)
- C. Samples, specimens, and print impressions must be forwarded immediately/promptly to the Department of Justice. (§ 295(i)(1)(C); 298(a).)
 - 1. Note that palm print impressions are sent directly to DOJ’s Bureau of Criminal Identification & Information in Sacramento, while the buccal collection kit is sent to the DNA Data Bank Program in Richmond. The

preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.

III. Confirmation of Subject Identity & Qualifying Status

- A. Must confirm the subject's identity prior to DNA collection.
 - 1. If juvenile does not have an assigned CII number, a CII should be obtained from DOJ before DNA collection occurs.
- B. Must confirm that the person is a qualifying offender before collecting samples, specimens, or print impressions. (§ 298(b)(5).)
 - 1. Always review the offender's state and county custody documentation and criminal history to ensure that DNA samples and print impressions are not already in DOJ's possession. DOJ may be contacted if questions arise concerning collection status. (See DOJ Proposition 69 Information Bulletin.)

IV. Collection Mechanics

- A. Samples, specimens, and print impressions must be collected using DOJ-approved collection kits, and in accordance with DOJ's instructions. (§ 295(i)(2); § 298(b)(4).)
- B. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.
- C. The withdrawal of blood, when requested by DOJ, must be done in a medically-approved manner by trained and certified health care providers. (§ 298(b)(2).)
- D. Buccal swab samples may be collected by law enforcement or correctional staff or others properly trained to do so. (§ 298(b)(3).)
- E. The DOJ DNA Laboratory may request collection of blood specimen(s) where buccal swab is insufficient. (§ 295(e).)
- F. California law continues to authorize a collecting agency to use reasonable force to collect DNA samples and specimens from a qualifying offender who refuses to cooperate. (PC 298.1(b) and (c).) There is no need for a court order as long as necessary regulations are in place. (PC 298.1(b) and (c).)

V. Communication of Fact of Collection

- A. In order to avoid redundant DNA collection from the same subject, it is important to communicate the fact of collection to DOJ by promptly submitting the collection kit. Other law enforcement and/or correctional agencies that may assume jurisdiction over the subject should be notified as well.

State Board of Corrections

I. Creation of Policies & Procedures

- A. May adopt policies and enact regulations for implementing the DNA Database Act. (§ 295(h)(1).)
- B. Objectives:
 - 1. Ensure that required samples collected in timely manner
 - a. As soon as possible after arrest, verdict, plea, or juvenile disposition
 - b. When determined that a qualifying offender has not provided required samples, specimens, or print impressions
- C. Seek advice from and consult with the DOJ DNA Laboratory Director before enacting any regulation or policy implementing this law. (§ 295(h)(1).)
- D. Submit copies of all policies and regulations concerning this law to the DOJ DNA Laboratory Director. (§ 295(h)(3).)

II. Reasonable Force Policy

- A. The Board of Corrections must adopt guidelines for county correctional facility personnel governing use of reasonable force on qualifying offenders who refuse to provide a mandated DNA sample. (§ 298.1(c)(2).)

III. Reporting Requirements

- A. Submit quarterly written updates to the DOJ DNA Laboratory Director as to the status of compliance with this law. (§ 295(h)(3).)
- B. Submit report to Legislature by January 1, 2005, regarding use of reasonable force pursuant to Section 298.1(b). (§ 298.1(c)(3).)

District Attorneys

- I. Courtroom Responsibilities
 - A. Notify the court orally on the record, or in writing, whenever a qualifying offender in a court proceeding has not provided the necessary samples, specimens, and print impressions, and request that court order collection to occur. (§ 296(e).)
 - B. May condition a plea on collection of DNA samples from a non-qualifying offender. (§ 296(a)(5).)

- II. Prosecute Collection-Related Offenses
 - A. Prosecute qualifying offenders for sample tampering and falsely attributed sample felony offenses. (§ 298.2.)

- III. Disclosure of DNA Data Bank Information.

What DOJ Does Provide:

- May provide non-DNA forensic identification information to other DOJ database systems (e.g., sex offender registration). (§ 299.5(c).)
- Provides ACHS with notice of fact of sample collections as soon as administratively practicable. (§ 299.5(e).)
- May release DNA samples, profiles, and other forensic identification information only to law enforcement agencies unless otherwise authorized by this DNA Database Act. (§ 299.5(f).)
- Provides a defendant's DNA and other forensic identification information to his/her defense counsel pursuant to statutory discovery procedures upon request. (§ 299.5(g).) As a member of the prosecution team, DOJ in practice provides this material directly to the prosecuting attorney to turn over to defense counsel during discovery. Otherwise does not provide data bank or data base forensic identification information or profiles to the defense.
- May publicly disclose the fact of a DNA profile match, including the name of the offender or missing person identified. (§ 299.5(i)(3).)
- May release DNA and other forensic identification information after a reported match or exclusion to law enforcement, which may at its discretion, also release such information provided to it by the DOJ lab, to a jury, grand jury, in court documents, or as part of a judicial or administrative proceeding because such information pertains to the basis for law enforcement's identification, arrest, investigation, prosecution or exclusion of a particular person related to the case. (§ 299.5(k).)
- May release "information obtained from a file" in a transcript, judicial proceeding etc. where specifically authorized by law. (§ 299.5(l).)
- May use or may permit authorized agent to use anonymous records or criminal history information for training, research, population statistics, quality assurance, or quality control. (§ 299.5(m).)

- Must publicize DNA Program methodologies and procedures before beginning DNA testing. (§ 299.5(n).)
- Has the sole discretion over sharing any DNA Data Bank Program information in its possession with law enforcement, public or private crime laboratories that serve law enforcement, state attorneys general, authorized state or federal auditing boards, and other third parties necessary to assist in research and development projects. (§ 299.6(a).)
- May make available DOJ's population databases and data banks for search by the FBI or other CODIS participants in accordance with CAL-DNA policies. (§ 299.6(b).)
- May provide portions of DNA samples to local public DNA labs for identification purposes if recipient labs follow all privacy provisions, use DOJ-established procedures for the handling of samples and disclosure of results, use DOJ-approved methodologies and procedures for analysis, conduct only tests of value to law enforcement for identification purposes, send a copy of results to DOJ through their local CODIS database, and assume all costs associated with the sample transfer. (§ 299.6(c).)

What DOJ Does Not Provide:

The information and samples DOJ retains are confidential. There are criminal penalties and fines for unauthorized disclosure of information or misuse of samples. (§ 299.5(i).) DOJ does not provide samples or DNA or identification information unless specifically authorized. The Data Bank law sets forth, in part, as follows regarding the confidentiality of samples and information:

- All Database and Data Bank materials and information are confidential, privileged, and exempt from disclosure except as provided in the DNA Database Act. (§ 299.5(a), (b).)
- Other than the defendant's own DNA-related information, no materials, including DNA, forensic identification information, and computer software or structures, need be disclosed in a legal proceeding, even in response to subpoena or other discovery procedure, whether in criminal or civil cases. (§§ 299.5(h); 299.5(o).)
- Neither DNA nor other forensic identification information may be provided to ACHS. (§ 299.5(d).)
- There is no obligation to provide offender specimens or samples upon request for quality control or other purposes. (§ 295.1(e).)
- There is no required disclosure of DNA and forensic identification information pursuant to public record act requests. (§ 299.5(a).)
- There is no required disclosure or return of evidence or forensic samples or print impressions; The statute specifically exempts data bank samples from any law requiring disclosure of information to the public or the return of samples. (§ 299.5(b).)

Superior Courts

I. Plea and Sentencing Issues

- A. May accept a plea conditioned on collection of DNA samples from a non-qualifying offender. (§ 296(a)(5).)
- B. Inquire and verify that the required DNA collection has taken place before the final disposition or sentencing, and include that fact in the abstract of judgment or juvenile dispositional order. (§ 296(f).)
- C. Order offenders to report to county jail or other designated DNA collection facility within five days if required specimens, samples, and print impressions have not been collected as of or following sentencing (e.g., offender granted probation with credit for time served). (§ 296.1(a)(1)(B).)
- D. Levy additional penalty on \$1 for every \$10 in fines, penalties, and forfeitures ordered in all criminal cases except parking offenses. (Govt. Code § 76104.6(a).)
- E. May order that a portion of costs assessed for confinement in county jail (§ 1203.1c), county parole supervision (§ 1203.1e), or incarceration in state prison (§ 1203.1m) include DNA collection costs, with funds generated to be deposited in Department of Justice DNA Testing Fund. (§ 295(j).)

County Probation Departments

- I. Identify all qualifying offenders currently under the supervision of the probation department.

- II. Specific Collection Mandate
 - A. Collect DNA samples, specimens, and print impressions from any person, including any juvenile, who is on probation for any offense – felony or misdemeanor – and has a past or present qualifying offense in California, or an offense from another jurisdiction that would qualify in California, and whose DNA samples and print impressions are not in the possession of the Department of Justice. (§ 296.1(a)(3)(A).)
 - B. Collection may only occur while the qualifying person remains legally subject to government supervision or control.
 - C. Out-of-State Offenders Under California Jurisdiction Pursuant To Compact
 1. Collect buccal swab samples, right thumb prints, full palm print from each hand from any offender from another state accepted into California pursuant to interstate compact or other reciprocal agreement if the offender has a past or present qualifying offense in California or another state that would qualify in California. (§ 296.1(a)(5)(A).)
 2. If the person is not confined upon admittance into California, collection must take place within five calendar days of reporting to the supervising agent, or within five calendar days of notice to the person, whichever comes first. (§ 296.1(a)(5)(B).)

- III. Confirmation of Subject Identity & Qualifying Status
 - A. Must confirm the subject’s identity prior to DNA collection.
 - B. Must confirm that the person is a qualifying offender before collecting samples, specimens, or print impressions. (§ 298(b)(5).)
 1. Always review the probationer’s state and county custody documentation and criminal history to ensure that DNA samples and print impressions are not already in DOJ’s possession. DOJ may be contacted if questions arise concerning collection status. (See DOJ Proposition 69 Information Bulletin.)

- IV. Collection Mechanics
 - A. Samples, specimens, and print impressions must be collected using DOJ-approved collection kits, and in accordance with DOJ’s instructions. (§ 295(i)(2); § 298(b)(4).)
 - B. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.

- C. The withdrawal of blood, when requested by DOJ, must be done in a medically-approved manner by trained and certified health care providers. (§ 298(b)(2).)
- D. Buccal swab samples may be collected by law enforcement or correctional staff or others properly trained to do so. (§ 298(b)(3).)
- E. The DOJ DNA Laboratory may request collection of blood specimen(s) where buccal swab is insufficient. (§ 295(e).)
- F. California law continues to authorize a collecting agency to use reasonable force to collect DNA samples and specimens from a qualifying offender who refuses to cooperate. (PC 298.1(b) and (c).) There is no need for a court order as long as necessary regulations are in place. (PC 298.1(b) and (c).)

V. Timing of Collection & Disposition of Samples

- A. Collection should occur within five days of notification at a county jail or other designated collection facility. (§ 296.1(a)(3)(B).)
- B. Probation officers or other persons identified by the agency, if trained in buccal swab collections, may collect DNA samples from qualifying probationers during normally scheduled meetings.
- C. Samples, specimens, and print impressions must be forwarded immediately/promptly to the Department of Justice. (§ 295(i)(1)(C); 298(a).)
 - 1. Note that palm print impressions are sent directly to DOJ's Bureau of Criminal Identification & Information in Sacramento, while the buccal collection kit is sent to the DNA Data Bank Program in Richmond. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.

VI. Communication of Fact of Collection

- A. In order to avoid redundant DNA collection from the same subject, it is important to communicate the fact of collection to DOJ by promptly submitting the collection kit. Other law enforcement and/or correctional agencies that may assume jurisdiction over the subject should be notified as well.

California Department of Corrections: Institutions

I. Specific Collection Mandates

- A. Convicted Felons / Sex & Arson Offender Registrants
 - 1. Collect buccal swab samples, right thumb prints, full palm print from each hand from persons, including juveniles, convicted or adjudicated of a felony offense, or required to register under Section 290 or Section 457.1 for commission of any offense, including misdemeanors, if their DNA samples and print impressions are not already in the possession of the Department of Justice. (§§ 296(a)(1); 296(a)(3).)
 - 2. Collection may only occur while the qualifying person remains legally subject to government supervision or control.
- B. Incarcerated Offenders
 - 1. Collect DNA samples, specimens, and print impressions from any currently imprisoned or confined person, including any juvenile, if he or she has a present or past qualifying conviction or adjudication in California, or an offense from another jurisdiction that would qualify in California, and whose DNA samples and print impressions are not in the possession of the Department of Justice. (§ 296.1(a)(2)(A).)
- C. Out-of-State Offenders Under California Jurisdiction Pursuant To Compact
 - 1. Collect buccal swab samples, right thumb prints, full palm print from each hand from any offender from another state accepted into California pursuant to interstate compact or other reciprocal agreement if the offender has a past or present qualifying offense in California or another state that would qualify in California. (§ 296.1(a)(5)(A).)
 - 2. If the person is not confined upon admittance into California, collection must take place within five calendar days of reporting to the supervising agent, or within five calendar days of notice to the person, whichever comes first. (§ 296.1(a)(5)(B).)
 - 3. If the person is confined, collection must occur as soon as practicable. (§ 296.1(a)(5)(C).)

II. Confirmation of Subject Identity & Qualifying Status

- A. Must confirm the subject's identity prior to DNA collection.
- B. Must confirm that the person is a qualifying offender before collecting samples, specimens, or print impressions. (§ 298(b)(5).)
 - 1. Always review the inmate's county custody documentation and criminal history to ensure that DNA samples and print impressions are not already in DOJ's possession. DOJ may be contacted if questions arise concerning collection status. (See DOJ Proposition 69 Information Bulletin.)

II. Collection Mechanics

- A. Samples, specimens, and print impressions must be collected using DOJ-approved collection kits, and in accordance with DOJ's instructions. (§ 295(i)(2); § 298(b)(4).)
- B. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.
- C. The withdrawal of blood, when requested by DOJ, must be done in a medically-approved manner by trained and certified health care providers. (§ 298(b)(2).)
- D. Buccal swab samples may be collected by law enforcement or correctional staff or others properly trained to do so. (§ 298(b)(3).)
- E. The DOJ DNA Laboratory may request collection of blood specimen(s) where buccal swab is insufficient. (§ 295(e).)
- F. California law continues to authorize a collecting agency to use reasonable force to collect DNA samples and specimens from a qualifying offender who refuses to cooperate. (PC 298.1(b) and (c).) There is no need for a court order.

III. Timing of Collection & Disposition of Samples

- A. Samples, specimens, and print impressions must be collected during the intake or reception center process, or reasonably promptly thereafter, and in any event before physical release from custody. (§§ 295(i)(1)(A); 296.1(a)(1)(A).)
- B. Samples, specimens, and print impressions must be forwarded immediately/promptly to the Department of Justice. (§ 295(i)(1)(C); 298(a).)
 - 1. Note that palm print impressions are sent directly to DOJ's Bureau of Criminal Identification & Information in Sacramento, while the buccal collection kit is sent to the DNA Data Bank Program in Richmond. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.

IV. Communication of Fact of Collection

- A. In order to avoid redundant DNA collection from the same subject, it is important to communicate the fact of collection to DOJ by promptly submitting the collection kit. Other law enforcement and/or correctional agencies that may assume jurisdiction over the subject should be notified as well.

V. Policies & Regulations

- A. May adopt policies and enact regulations for implementing this law. (§ 295(h)(1).)
- B. Ensure that required samples collected in timely manner when it is determined that a qualifying offender has not provided required samples, specimens, or print impressions
- C. Seek advice from and consult with the DOJ DNA Laboratory Director before enacting any regulation or policy implementing this law. (§ 295(h)(1).)

- D. Submit copies of all policies and regulations concerning this law to the DOJ DNA Laboratory Director. (§ 295(h)(3).)
- E. The Department of Corrections must adopt regulations governing use of reasonable force on qualifying offenders who refuse to provide a mandated DNA sample. (§ 298.1(c)(1).)

VI. Reporting Requirements

- A. Submit quarterly written updates to the DOJ DNA Laboratory Director as to the status of compliance with this law. (§ 295(h)(3).)
- B. On or before April 1, 2005, and quarterly thereafter, publish quarterly report on CDC website. (§ 295(h)(5).)
 - 1. Total number of inmates housed in state correctional facilities, broken down by
 - a. state prisons
 - b. camps
 - c. community correctional facilities
 - d. other facilities such as medical facilities
 - 2. Total, annual, and quarterly number of inmates who have NOT provided samples
 - 3. Number of samples not yet forwarded to DOJ within 30 days of collection
- C. Submit report to Legislature by January 1, 2005, regarding use of reasonable force pursuant to Section 298.1(b). (§ 298.1(c)(3).)

California Department of Corrections: Parole Division

I. Specific Collection Mandates

A. Current Parolees

1. Collect DNA samples, specimens, and print impressions from any person, including any juvenile, who is on parole for any offense and has a past or present qualifying offense, or an offense from another jurisdiction that would qualify in California, and whose DNA samples and print impressions are not in the possession of the Department of Justice. (§ 296.1(a)(3)(A).)
2. Collection may only occur while the qualifying person remains legally subject to government supervision or control.

B. Parole Violators

1. Collect DNA samples, specimens, and print impressions from any person, including any juvenile, who is returned to custody on a parole violation and has a past or present qualifying offense, and whose DNA samples and print impressions are not in the possession of the Department of Justice. (§ 296.1(a)(4).)

C. Out-of-State Offenders Under California Jurisdiction Pursuant To Compact

1. Collect buccal swab samples, right thumb prints, full palm print from each hand from any offender from another state accepted into California pursuant to interstate compact or other reciprocal agreement if the offender has a past or present qualifying offense in California or another state that would qualify in California. (§ 296.1(a)(5)(A).)
2. If the person is not confined upon admittance into California, collection must take place within five calendar days of reporting to the supervising agent, or within five calendar days of notice to the person, whichever comes first. (§ 296.1(a)(5)(B).)

II. Confirmation of Subject Identity & Qualification Status

A. Must confirm the subject's identity prior to DNA collection.

B. Must confirm that the person is a qualifying offender before collecting samples, specimens, or print impressions. (§ 298(b)(5).)

1. Always review the parolee's state and county custody documentation and criminal history to ensure that DNA samples and print impressions are not already in DOJ's possession. DOJ may be contacted if questions arise concerning collection status. (See DOJ Proposition 69 Information Bulletin.)

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III. Collection Mechanics

- A. Samples, specimens, and print impressions must be collected using DOJ-approved collection kits, and in accordance with DOJ's instructions. (§ 295(i)(2); § 298(b)(4).)
- B. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.
- C. The withdrawal of blood, when requested by DOJ, must be done in a medically-approved manner by trained and certified health care providers. (§ 298(b)(2).)
- D. Buccal swab samples may be collected by law enforcement or correctional staff or others properly trained to do so. (§ 298(b)(3).)
- E. The DOJ DNA Laboratory may request collection of blood specimen(s) where buccal swab is insufficient. (§ 295(e).)
- F. California law continues to authorize a collecting agency to use reasonable force to collect DNA samples and specimens from a qualifying offender who refuses to cooperate. (PC 298.1(b) and (c).) There is no need for a court order.

IV. Timing of Collection & Disposition of Samples

- A. Collection should occur within five days of notification at a county jail or other designated collection facility. (§ 296.1(a)(3)(B).)
- D. Parole officers and other individuals identified by the agency, if trained in buccal swab collections, may collect DNA samples from qualifying parolees during normally scheduled meetings.
- E. Samples, specimens, and print impressions must be forwarded promptly to the Department of Justice. (§ 298(a).)
 - 1. Note that palm print impressions are sent directly to DOJ's Bureau of Criminal Identification & Information in Sacramento, while the buccal collection kit is sent to the DNA Data Bank Program in Richmond. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.

V. Communication of Fact of Collection

- A. In order to avoid redundant DNA collection from the same subject, it is important to communicate the fact of collection to DOJ by promptly submitting the collection kit. Other law enforcement and/or correctional agencies that may assume jurisdiction over the subject should be notified as well.

California Youth Authority

I. Specific Collection Mandates

- A. Adjudicated Juvenile Felons and Sex / Arson Offender Registrants
 - 1. Collect buccal swab samples, right thumb prints, full palm print from each hand from juveniles adjudicated of a felony offense, or required to register under Section 290 or Section 457.1 for commission of any offense, including misdemeanors, if their DNA samples and print impressions are not already in the possession of the Department of Justice. (§§ 296(a)(1); 296(a)(3).)
 - 2. “Adjudicated” means a sustained petition
- B. Incarcerated Offenders
 - 1. Collect DNA samples, specimens, and print impressions from any currently imprisoned or confined juvenile if he or she has a past qualifying conviction or adjudication in California or in another jurisdiction that would qualify in California, and whose DNA samples, etc., are not in the possession of the Department of Justice. (§ 296.1(a)(2)(A).)
- C. Offenders on Probation or Parole
 - 1. Collect DNA samples, specimens, and print impressions from any juvenile who is on probation or parole for any offense – felony or misdemeanor – and has a past or present qualifying offense, or an offense from another jurisdiction that would qualify in California, and whose DNA samples and print impressions are not in the possession of the Department of Justice. (§ 296.1(a)(3)(A).)
 - 2. Collection may only occur while the qualifying person remains legally subject to government supervision or control.
- D. Parole Violators
 - 1. Collect DNA samples, specimens, and print impressions from any juvenile who is returned to custody on a parole violation and has a past or present qualifying offense in California, or an offense from another jurisdiction that would qualify in California, and whose DNA samples and print impressions are not in the possession of the Department of Justice. (§ 296.1(a)(4).)

II. Confirmation of Subject Identity & Qualification Status

- A. Must confirm the subject’s identity prior to DNA collection.
- B. Must confirm that the person is a qualifying offender before collecting samples, specimens, or print impressions. (§ 298(b)(5).)
 - 1. Always review the inmate’s county custody documentation and criminal history to ensure that DNA samples and print impressions are not already in DOJ’s possession. DOJ may be contacted if questions arise concerning collection status. (See DOJ Proposition 69 Information Bulletin.)

III. Collection Mechanics

- A. Samples, specimens, and print impressions must be collected using DOJ-approved collection kits, and in accordance with DOJ's instructions. (§ 295(i)(2); § 298(b)(4).)
- B. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.
- C. The withdrawal of blood, when requested by DOJ, must be done in a medically-approved manner by trained and certified health care providers. (§ 298(b)(2).)
- D. Buccal swab samples may be collected by law enforcement or correctional staff or others properly trained to do so. (§ 298(b)(3).)
- E. The DOJ DNA Laboratory may request collection of blood specimen(s) where buccal swab is insufficient. (§ 295(e).)
- F. California law continues to authorize a collecting agency to use reasonable force to collect DNA samples and specimens from a qualifying offender who refuses to cooperate. (PC 298.1(b) and (c).) There is no need for a court order.

IV. Timing of Collection & Disposition of Samples

- A. Samples, specimens, and print impressions must be collected during the intake or reception center process, or reasonably promptly thereafter, and in any event before physical release from custody. (§§ 295(i)(1)(A); 296.1(a)(1)(A).)
- B. Samples, specimens, and print impressions must be forwarded promptly to the Department of Justice. (§ 298(a).)
 - 1. Note that palm print impressions are sent directly to DOJ's Bureau of Criminal Identification & Information in Sacramento, while the buccal collection kit is sent to the DNA Data Bank Program in Richmond. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.

V. Communication of Fact of Collection

- A. In order to avoid redundant DNA collection from the same subject, it is important to communicate the fact of collection to DOJ by promptly submitting the collection kit. Other law enforcement and/or correctional agencies that may assume jurisdiction over the subject should be notified as well.

VI. Policies & Procedures

- A. May adopt policies and enact regulations for implementing this law. (§ 295(h)(1).)
 - 1. Ensure that required samples collected in timely manner when it is determined that a qualifying offender has not provided required samples, specimens, or print impressions
- B. Seek advice from and consult with the DOJ DNA Laboratory Director before enacting any regulation or policy implementing this law. (§ 295(h)(1).)

- C. Submit copies of all policies and regulations concerning this law to the DOJ DNA Laboratory Director. (§ 295(h)(3).)
- D. The California Youth Authority must adopt regulations governing use of reasonable force on qualifying offenders who refuse to provide a mandated DNA sample. (§ 298.1(c)(1).)

VII. Reporting Requirements

- A. Submit quarterly written updates to the Director as to the status of compliance with this law. (§ 295(h)(3).)
- B. Submit report to Legislature by January 1, 2005, regarding use of reasonable force pursuant to Section 298.1(b). (§ 298.1(c)(3).)

Mental Health Facilities

I. Specific Collection Mandates

- A. Collect buccal swab samples, right thumb prints, full palm print from each hand from persons, including juveniles, housed in a mental health facility or sex offender treatment program by order of the court after being charged with a felony offense, if their DNA samples and print impressions are not already in the possession of the Department of Justice. (§ 296(a)(3).)
- B. Collect buccal swab samples, right thumb prints, full palm print from each hand from persons, including juveniles, who qualify for collection and are committed to a state hospital or other treatment facility as W&I Code mentally disordered sex offenders (§ 296(c)(1)); are classified as having a severe mental disorder (§ 296(c)(2)); or are found to be sexually violent predators, if their DNA samples and print impressions are not already in the possession of the Department of Justice (§ 296(c)(1)).

II. Confirmation of Subject Identity & Qualification Status

- A. Must confirm the subject's identity prior to DNA collection.
- B. Must confirm that the person is a qualifying offender before collecting samples, specimens, or print impressions. (§ 298(b)(5).)
 - 1. Always review the subject's state and county custody documentation and criminal history to ensure that DNA samples and print impressions are not already in DOJ's possession. DOJ may be contacted if questions arise concerning collection status. (See DOJ Proposition 69 Information Bulletin.)

III. Collection Mechanics

- A. Samples, specimens, and print impressions must be collected using DOJ-approved collection kits, and in accordance with DOJ's instructions. (§ 295(i)(2); § 298(b)(4).)
- B. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.
- C. The withdrawal of blood, when requested by DOJ, must be done in a medically-approved manner by trained and certified health care providers. (§ 298(b)(2).)
- D. Buccal swab samples may be collected by law enforcement or correctional staff or others properly trained to do so. (§ 298(b)(3).)
- E. The DOJ DNA Laboratory may request collection of blood specimen(s) where buccal swab is insufficient. (§ 295(e).)
- F. California law continues to authorize a collecting agency to use reasonable force to collect DNA samples and specimens from a qualifying offender who refuses to cooperate. (PC 298.1(b) and (c).) There is no need for a court order.

IV. Communication of Fact of Collection

- A. In order to avoid redundant DNA collection from the same subject, it is important to communicate the fact of collection to DOJ by promptly submitting the collection kit. Other law enforcement and/or correctional agencies that may assume jurisdiction over the subject should be notified as well.

V. Timing of Collection & Disposition of Samples

- A. Samples, specimens, and print impressions must be collected during the intake or reception center process, or reasonably promptly thereafter, and in any event before physical release from custody. (§§ 295(i)(1)(A); 296.1(a)(1)(A).)
- B. Samples, specimens, and print impressions must be forwarded promptly to the Department of Justice. (§ 298(a).)
 - 1. Note that palm print impressions are sent directly to DOJ's Bureau of Criminal Identification & Information in Sacramento, while the buccal collection kit is sent to the DNA Data Bank Program in Richmond. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.

Sex Offender Treatment Facilities

I. Specific Collection Mandates

- A. Collect buccal swab samples, right thumb prints, full palm print from each hand from persons, including juveniles, housed in a mental health facility or sex offender treatment program by order of the court after being charged with a felony offense, if their DNA samples and print impressions are not already in the possession of the Department of Justice. (§ 296(a)(3).)

II. Confirmation of Subject Identity & Qualification Status

- A. Must confirm the subject's identity prior to DNA collection.
- B. Must confirm that the person is a qualifying offender before collecting samples, specimens, or print impressions. (§ 298(b)(5).)
 - 1. Always review the subject's state and county custody documentation and criminal history to ensure that DNA samples and print impressions are not already in DOJ's possession. DOJ may be contacted if questions arise concerning collection status. (See DOJ Proposition 69 Information Bulletin.)

III. Collection Mechanics

- A. Samples, specimens, and print impressions must be collected using DOJ-approved collection kits, and in accordance with DOJ's instructions. (§ 295(i)(2); § 298(b)(4).)
- B. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.
- C. The withdrawal of blood, when requested by DOJ, must be done in a medically-approved manner by trained and certified health care providers. (§ 298(b)(2).)
- D. Buccal swab samples may be collected by law enforcement or correctional staff or others properly trained to do so. (§ 298(b)(3).)
- E. The DOJ DNA Laboratory may request collection of blood specimen(s) where buccal swab is insufficient. (§ 295(e).)
- F. California law continues to authorize a collecting agency to use reasonable force to collect DNA samples and specimens from a qualifying offender who refuses to cooperate. (PC 298.1(b) and (c).) There is no need for a court order.

IV. Communication of Fact of Collection

- A. In order to avoid redundant DNA collection from the same subject, it is important to communicate the fact of collection to DOJ by promptly submitting the collection kit. Other law enforcement and/or correctional agencies that may assume jurisdiction over the subject should be notified as well.

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V. Timing of Collection & Disposition of Samples

- A. Samples, specimens, and print impressions must be collected during the intake or reception center process, or reasonably promptly thereafter, and in any event before physical release from custody. (§§ 295(i)(1)(A); 296.1(a)(1)(A).)
- B. Samples, specimens, and print impressions must be forwarded promptly to the Department of Justice. (§ 298(a).)
 - 1. Note that palm print impressions are sent directly to DOJ's Bureau of Criminal Identification & Information in Sacramento, while the buccal collection kit is sent to the DNA Data Bank Program in Richmond. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.

Federal Institutions

I. Federal Inmate DNA Collection

- A. With approval of the FBI Director, collect buccal swab samples, right thumb prints, full palm print from each hand from any person confined or incarcerated in any federal institution who has a past or present California qualifying offense, or an offense from another jurisdiction that would qualify in California, if the person has a qualifying offense of record in California and will be released in California. (§ 296.1(a)(6)(A).)

II. Confirmation of Subject Identity & Qualification Status

- A. Must confirm the subject's identity prior to DNA collection.
- B. Must confirm that the person is a qualifying offender before collecting samples, specimens, or print impressions. (§ 298(b)(5).)
 - 1. Always review the inmate's state and county custody documentation and criminal history to ensure that DNA samples and print impressions are not already in DOJ's possession. DOJ may be contacted if questions arise concerning collection status. (See DOJ Proposition 69 Information Bulletin.)

III. Collection Mechanics

- A. Samples, specimens, and print impressions must be collected using DOJ-approved collection kits, and in accordance with DOJ's instructions. (§ 295(i)(2); § 298(b)(4).)
- B. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.
- C. The withdrawal of blood, when requested by DOJ, must be done in a medically-approved manner by trained and certified health care providers. (§ 298(b)(2).)
- D. Buccal swab samples may be collected by law enforcement or correctional staff or others properly trained to do so. (§ 298(b)(3).)
- E. The DOJ DNA Laboratory may request collection of blood specimen(s) where buccal swab is insufficient. (§ 295(e).)
- F. California law continues to authorize a collecting agency to use reasonable force to collect DNA samples and specimens from a qualifying offender who refuses to cooperate. (PC 298.1(b) and (c).) There is no need for a court order.

IV. Timing of Collection & Disposition of Samples

- A. Samples, specimens, and print impressions must be collected reasonably promptly after arrest, conviction, or adjudication, and in any event prior to release from custody on bail or otherwise. (§§ 295(i)(1)(A); 296.1(a)(1)(A).)

- B. Samples, specimens, and print impressions must be collected “as soon as administratively possible” after a qualifying person reports to the facility to provide them. (§ 295(i)(1)(B).)
- C. Samples, specimens, and print impressions must be forwarded immediately/promptly to the Department of Justice. (§ 295(i)(1)(C); 298(a).)
 - 1. Note that palm print impressions are sent directly to DOJ’s Bureau of Criminal Identification & Information in Sacramento, while the buccal collection kit is sent to the DNA Data Bank Program in Richmond. The preferred, but not required, method of palm print submissions is electronic transmission via a live scan device.

V. Communication of Fact of Collection

- A. In order to avoid redundant DNA collection from the same subject, it is important to communicate the fact of collection to DOJ by promptly submitting the collection kit. Other law enforcement and/or correctional agencies that may assume jurisdiction over the subject should be notified as well.

County Boards of Supervisors

- I. Establish a DNA Identification Fund in county treasury, and into it deposit all surcharge money collected from fines, penalties, and forfeitures in criminal cases. (Govt. Code, § 76104.6(a).)
 - A. Keep monies and interest in the Fund separate from any funds subject to transfer or division under Penal Code section 1463. (Govt. Code, § 76104.6(b)(1).)
 - B. On the last day of each calendar quarter of 2005 and 2006, transfer 70% of the amount collected (including interest) to the state Controller for deposit in the state's DNA Identification Fund. (Govt. Code, § 76104.6(b)(2).)
 - C. On the last day of each calendar quarter of 2007, transfer 50% of the amount collected (including interest) to the state Controller for deposit in the state's DNA Identification Fund. (Govt. Code, § 76104.6(b)(2).)
 - D. On the last day of each calendar quarter of 2008 on, transfer 25% of the amount collected (including interest) to the state Controller for deposit in the state's DNA Identification Fund. (Govt. Code, § 76104.6(b)(2).)

- II. The funds remaining in the county account after transfer must be used to reimburse local law enforcement for DNA collection expenses and verification of offender/arrestee identity & qualifying status expenses, and to reimburse local and state crime laboratories for evidence analysis and storage costs. (Govt. Code, § 76104.6(b)(3).)

- III. Beginning in 2005, submit an annual report to the Legislature and DOJ on or before April 1. Include the total amount of money collected and allocated under this law, as well as expenditures for DNA collection, offender/offense verification, and DNA laboratory analysis and storage. (Govt. Code, § 76104.6(c).)