



**SAN MATEO COUNTY
PROBATION DEPARTMENT
INSTITUTIONS SERVICES MANUAL**

**ARTICLE 5
Classification and Separation
§1363**

Topic Biological Samples

Policy This policy provides guidelines for the collection of biological samples from youth required by California law to provide a biological sample to the San Mateo County Probation Department - Juvenile Facilities as a result of being adjudicated for certain offenses (15 CCR 1363). 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 collected from those required to register, for example, as sex offenders.

Youth who are in the custody of the San Mateo County Probation Department and who have an adjudication for a felony offense, including an adjudication for an equivalent out of state offense, must submit a biological sample (Penal Code 296.1).

Admissions staff shall collect or cause to be collected by Health Department staff all DNA specimens, samples, and impressions, including blood specimens, buccal swab samples, and thumb and palm print impressions in accordance with Penal Code Section 298 and/or as directed by the Court.

1363.1 OBTAINING BIOLOGICAL SAMPLES FROM NON-COMPLIANT YOUTH

If a youth refuses to cooperate with the sample collection process, Staff 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 prior written authorization from the court order. Any refusal to submit a sample and the steps taken in an attempt to obtain voluntary compliance should be documented in an Incident Report and placed in the youth's Admissions file. Methods to consider when seeking voluntary compliance include contacting: (15 CCR 1363):

1. The youth's probation officer. The Probation Officer shall prepare written documentation pursuant to Penal Code Section 298.1 of the youth's failure to comply with the collection and of the efforts made to achieve voluntary compliance. The Probation Officer shall prepare any appropriate documentation to the Court and to the District Attorney if the youth is to be charged under Penal Code Section 298.1.
2. The Superintendent.
3. The prosecuting attorney to seek additional charges against the youth for failure to

- comply or to otherwise bring the refusal before a judge (Penal Code § 298.1).
4. The judge at the youth's next court appearance.
 5. The youth's attorney, parent/guardian, or custodian.

Should the court order the use of force in obtaining a biological sample from a non-compliant youth, the On-Duty Officer of the Day shall be present to supervise and document the use of force. A video recording shall be made any time force is used to obtain a biological sample (15 CCR 13) The recording should be part of the youth's Admission's file and shall be retained by the Department for the length of time required by statute. Probation staff shall only use reasonable force to obtain compliance with laws regarding the collection of DNA specimens, samples, and impressions.

See Procedures Manual on Biological Samples for further information

1363.2 DOCUMENTATION RELATED TO FORCE

The On-Duty Officer of the Day shall prepare prior written authorization for the use of any force (Penal Code § 298.1). The written authorization shall include information that the youth was asked to provide the requisite specimen, sample, or impression and refused, as well as the related court order authorizing the force.

Efforts to secure voluntary compliance shall be documented and shall include an advisement of the legal obligation to provide the biological sample, and the consequences of refusal (15 CCR 1363).

The Superintendent shall prepare a report to the Board of State and Community Corrections in the event of any use of force necessary to obtain compliance with Penal Code Section 298. The report shall include: the type of force used, the efforts to obtain voluntary compliance, and whether medical attention was needed by the youth or other persons as a result of the reasonable use of force.

1363.3 BLOOD SAMPLES

A blood sample should only be obtained under this policy when (Penal Code § 295; Penal Code § 298):

1. The California DOJ requests a blood sample and the subject consents.
2. 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).