

Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM: Edgardo Garcia**
Chief of Police

SUBJECT: DUTY MANUAL ADDITION
L 6712 – DNA SAMPLES
FROM MINORS

DATE: June 3, 2020

Memo# 2020-024

BACKGROUND

Welfare & Institutions Code § 625.4 requires law enforcement agencies to follow certain procedures in order to collect a voluntary DNA reference sample from a minor. The statute requires that officers may only collect voluntary DNA samples (including buccal swabs or other biological samples) when the minor consents in writing. The written consent must be preceded by a verbal advisement of the purpose and manner of the collection, the right to refuse consent, the right to later have the sample expunged, and the right to consult with an attorney, parent, or legal guardian prior to providing consent. The parent or legal guardian or attorney representing the minor must also be contacted, provided with the same information that was provided to the minor, and be allowed to privately consult by telephone or in person with the minor, and, after that consultation, must concur with the minor's decision to consent. The minor must be provided with documents to request expungement of the sample should the minor desire such at a later date and the Department must expunge certain samples within two years if the investigation does not yield a criminal filing.

The conditions on collecting voluntary samples as described in W&I § 625.4 are onerous when compared to the procedure for obtaining a search warrant. Current Department practice is to seek a warrant rather than to ask for a voluntary sample from a minor. The Duty Manual is being revised to make the current practice the policy of the Department. Exceptions to this general rule may be approved by the investigator's Deputy Chief. When the Deputy Chief approves such an exception, the process of requesting, collecting, and expunging the sample must be done in compliance with W&I § 625.4. An electronic only version of the SJPd Minor's Voluntary DNA Sample Consent/Expungement (Form 204-30) is available on the Department's intranet Forms Library.

Note that W&I § 625.4 does not have any bearing on the collection of physical DNA evidence from crime scenes.

ANALYSIS

The Duty Manual has been revised to add section L 6712 – DNA SAMPLES FROM MINORS. Additions are shown in *italics and underlined*.

L 6712 **DNA SAMPLES FROM MINORS:**
Added 06-03-20

When seeking to collect a DNA sample from a minor, (including buccal swabs or other biological samples) investigating officers will use the search warrant process rather than requesting the sample by consent. In the rare circumstance that there is an investigative necessity to seek a DNA sample from a minor (under 18) by consent rather than by warrant, such an exception may be granted by the investigating officer's Deputy Chief.

All approved consensual requests for DNA samples from a minor shall be performed in compliance with the provisions contained in Welfare & Institutions Code Section 625.4. The investigating officer will be responsible for preparing all written consent & expungement documents required by the statute (to include completing Form 204-30, Minor's Voluntary DNA Sample Consent/Expungement Form).

ORDER

The above stated changes to the Duty Manual are effective immediately.

A handwritten signature in black ink, appearing to read 'Edgardo Garcia', with a long horizontal stroke extending to the right.

EDGARDO GARCIA
Chief of Police

EG:PC

Attachment: Form 204-30, SJPd Minor's Voluntary DNA Sample Consent/Expungement Form

**SJPD Minor's Voluntary DNA
Sample
Consent/Expungement Form**

 San Jose Police Department
201 W. Mission Street
San Jose, CA 95110

Case Number: _____

☐ Bureau Deputy Chief Approval
Required Per Duty Manual L 6712

NAME OF APPROVING DEPUTY CHIEF
Minor Giving Consent

Name (First Last DOB): _____

I _____, understand that under the law, I do not have to consent to give permission to the purposed collection of any DNA reference sample by the San Jose Police Department. However, on this day of _____, I do voluntarily and knowingly consent after having consulted with my attorney, parent or legal guardian and getting their support, to the collection of the listed DNA reference sample and manner of collection below:

DNA Reference Sample Requested _____ Manner of Collection _____

Purpose of DNA Reference Sample _____

- ☐ The above consent statement was read aloud and provided in writing to the minor.
☐ Attorney, parent, or legal guardian was consulted by minor before providing consent.
☐ Attorney, parent, or legal guardian concurred with minor's decision to consent.

SIGNATURE OF CONSENTING PARTY _____

SIGNATURE OF POLICE OFFICER _____

* All check boxes and fillable lines are mandatory. Officers are reminded to follow all requirements per 625.4(a) W&I. Especially, the requirements to verbally inform the minor of their right to refuse consent, consult with an attorney, parent or legal guardian, and expunge DNA reference sample. Officers are to comply with the mandated expungement criteria outlined in 625.4(a) W&I.

To request expungement, complete and return this form to:
 San Jose Police Department
201 West Mission St., San Jose, Ca 95110

Pursuant to the California Welfare and Institution Code 625.4(a), a minor who voluntarily provided a DNA reference sample, has the right to request their DNA reference sample and DNA profile information be expunged from all DNA databases or data banks.

I _____, request that my DNA reference sample collected by the San Jose Police Department on the above case number, and DNA profile information be expunged from all DNA databases or data banks.

NAME OF REQUESTING PARTY _____

SIGNATURE OF REQUESTING PARTY _____

Date _____