

Lawfully Owed DNA California

Last Updated: April 2023

Arrest

Question	Answer
Does the law require a DNA sample to be collected from an individual when they are arrested for a crime?	Yes, from adults and minors.
What crimes require collection of a DNA sample at arrest?	All felonies and misdemeanors.
Does the law mandate when the DNA sample must be collected after arrest?	At booking or “as soon as administratively practicable”
What agency collects the arrest DNA sample?	Department of Corrections and Rehabilitation If collected at a county jail or other county facility, including a private community correctional facility, the county sheriff or chief administrative officer of the county jail.
What agency manages the analysis and preservation in the DNA database?	Department of Justice DNA Laboratory (aka Jan Bashinski DNA Laboratory)
Can the arrest DNA sample be expunged?	Yes – A petitioner must demonstrate one of three conditions: (1) no accusatory pleading was filed within the applicable time period or the charges were dismissed; or (2) the person has been found factually innocent of the underlying offense; or (3) the person has been found not guilty or has been acquitted of the underlying offense. The person must petition the court and provide a copy of the request to the DNA Laboratory and the prosecuting attorney. DNA Laboratory must destroy the sample and expunge the profile upon receipt of a court order, unless the Department determines that the person is subject to the provisions of the law due to a past qualifying offense of record, or is or has otherwise become obligated to submit a specimen as a result of a separate arrest, conviction, juvenile adjudication or other offense.

Statutes	<p>WEST'S ANN. CAL. PENAL CODE § 295. SHORT TITLE; FINDINGS AND INTENT; ADMINISTRATION AND IMPLEMENTATION OF CHAPTER; RESPONSIBILITY FOR COLLECTION OF SPECIMENS, SAMPLES AND IMPRINTS; COSTS AND FUNDS</p> <p>§ 296. OFFENDERS SUBJECT TO COLLECTION OF SPECIMENS, SAMPLES AND PRINT IMPRESSIONS</p> <p>§ 299. REVERSAL, DISMISSAL OR ACQUITTAL; REQUEST FOR EXPUNGEMENT OF INFORMATION; PROCEDURE; SPECIMENS FROM PERSONS NO LONGER CONSIDERED SUSPECTS</p> <p>Case Law:</p> <p>People v. Roberts, 2021 WL 3700319 (Cal. App. 3 Dist. 2021) (arrestee may request expungement of DNA records if no accusatory pleading was filed within applicable period allowed by law, if all qualifying charges are dismissed or arrestee is found not guilty or factually innocent).</p>
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Conviction

Question	Answer
Does the law require a DNA sample to be collected from the defendant when they are convicted of a crime?	Yes
What convictions require collection of a DNA sample?	Felonies (including juveniles convicted of felonies) and sex crime misdemeanors (including juveniles) where sex offender registration is required
Does the law require DNA collection when a defendant is found not guilty by reason of insanity/mental defect/illness?	Yes. If found not guilty by reason of insanity.
Does the law mandate when the DNA sample must be collected after conviction?	If not already taken at arrest, then "as soon as administratively practicable" or upon court order at sentencing.
What agency collects the DNA sample after conviction?	Department of Corrections and Rehabilitation If collected at a county jail or other county facility, including a private community correctional facility, the county sheriff or chief administrative officer of the county jail.

<p>What agency manages the analysis and preservation in the DNA database?</p>	<p>Department of Justice, DNA Laboratory (aka Jan Bashinski DNA Laboratory)</p>
<p>Can the conviction DNA sample be expunged?</p>	<p>Yes – A petitioner must demonstrate that the underlying conviction was reversed and the case dismissed.</p> <p>The person must petition the court and provide a copy of the request to the DNA Laboratory and the prosecuting attorney. Department of Justice must destroy the sample and expunge the profile upon receipt of a court order, unless the Department determines that the person is subject to the provisions of the law due to a past qualifying offense of record, or is or has otherwise become obligated to submit a specimen as a result of a separate arrest, conviction, juvenile adjudication or other offense.</p>
<p>Statutes</p>	<p>West's Ann. Cal. Penal Code § 295. Short Title; Findings and Intent; Administration and Implementation of Chapter; Responsibility for Collection of Specimens, Samples and Imprints; costs and funds</p> <p>West's Ann. Cal. Penal Code § 296. Offenders Subject to Collections of Specimens, Samples, and Print Impressions</p> <p>West's Ann. Cal. Penal Code § 299. Reversal, Dismissal or Acquittal; Request for expungement of information; procedure; specimens from persons no longer considered suspects</p> <p>Case Law:</p> <p><i>In re C.B.</i>, 6 Cal. 5th 118, 425 P.3d 40 (2018) (Minors who had submitted fingerprint and DNA samples under the DNA and Forensic Identification Data Base and Data Bank Act of 1998, as modified by Proposition 69, in connection with felony grand theft person adjudications were not entitled to have DNA samples expunged from databank after felonies were reduced to misdemeanors pursuant to Proposition 47, the Safe Neighborhoods and Schools Act; even though minors no longer were convicted of felonies, they could not show lack of charges, acquittal, appellate reversal, or a finding of factual innocence required for expungement.).</p>