

## DNA AND LIVE SCAN SAMPLE COLLECTION

- AUTHORITY:** Penal Code (PC) Section 296 (Offenders Subject to Sample Collection)  
PC 17(b)
- RESCINDS:** Procedure Manual Item 2-3-010, dated 11/20/19
- FORMS:**
- |  |                |
|--|----------------|
| Admonishment Regarding the Collection of DNA (English) | (Attachment A) |
| Admonishment Regarding the Collection of DNA (Spanish) | (Attachment B) |
| ADULT OFFENDERS DOJ Summary of Qualifying Codes        | (Attachment C) |
| JUVENILE OFFENDERS DOJ Summary of Qualifying Codes     | (Attachment D) |
- PURPOSE:** To establish the procedure by which deputized probation staff can ensure client compliance with palm/fingerprints via Live Scan and DNA collection statutes, as well as maintain accurate and timely information in the Integrated Case Management System (ICMS) regarding the status of each client who is required by law to submit to DNA sampling.

### I. GENERAL INFORMATION

- A. Pursuant to PC 296, any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated under Welfare and Institutions Code (WIC) 602 for committing any felony offense, or **since** January 1, 2009, adults who have been arrested for a felony or of a registrable misdemeanor PC 290 (Sex Offense Registration) or of registrable PC 457.1 (Arson) offenses, must submit their persons to law enforcement for collection of palm and thumbprints via Live Scan and DNA samples. These samples are sent to the Department of Justice (**DOJ**) DNA Data Bank. Collection may only occur while the qualifying person remains legally subject to government supervision or control.
- B. The Orange County Sheriff's Department (**OCSD**) and the Orange County Probation Department are responsible for collection of prints and DNA samples from qualifying persons under the supervision of the Orange County Probation Department.
- C. The **OCSD** will collect DNA samples from qualifying adults while in their custody. Police agencies will collect DNA from qualifying adult arrestees.
- D. DNA samples, palm, and fingerprints (via Live Scan) are not to be collected when any other law enforcement agency or Department of Corrections has already collected a DNA sample. In those cases, the deputy probation officer (DPO) has only to confirm the collection and to record it in ICMS, if this has not already been

done. Once a sample has been taken from an individual, no further samples are needed.

- E. Qualifying **clients** who have not already submitted DNA samples are to be referred to the designated probation office.

## II. PROCEDURE

### A. Procedure to verify that DNA and prints are mandated

- 1. Upon receiving a new case, DPOs are to determine whether the **client** who is under their supervision is mandated by statute to provide a DNA sample, palm, and fingerprints (via Live Scan).

- a. The DPO should review the current convictions, as well as the prior record of the **client** for any past felony or registrable misdemeanor offenses. The DPO needs to double check “wobblers” to ensure the conviction offense was not subsequently reduced to a non-registrable misdemeanor offense. Motions pursuant to **Penal Code (PC) 17(b)** do not disqualify for DNA sample collection.

- b. If the **client** has any qualifying offense(s), a DNA sample and palm/fingerprints are required for the **DOJ** database. A list of qualifying offenses can be found attached to this Procedure Manual Item (PMI) or on [REDACTED] under the *Application* tab. Once there, go to the [REDACTED] section and open the [REDACTED]. The list can be found just underneath the *Help* button on the [REDACTED] page. A query identifying those who have submitted samples can also be found there by following the directions on the screen by entering in the first and last name of the **client**. The list is in alphabetical order by last name; however, care needs to be taken to check the entire list since there are several lists that are merged and the first names are not entirely in alphabetical order. This includes checking past a person’s name the first time it should appear on the list.

- 2. The DPO shall not refer the case for collection until it is confirmed that a DNA sample or palm/fingerprints have not been provided in the past. If a sample has previously been collected, the assigned DPO must update ICMS to show that a collection is not needed. **Clients** who have recently been processed through the Orange County Jail for new law violations or probation violations may have **already submitted to DNA collection with OCSD**.

### B. Procedure to determine if a sample has been previously taken

- 1. It is beneficial to question the **client** as to whether or not they have provided a sample during a recent incarceration as the [REDACTED] site may not have the sample recorded soon after a release from custody. If the **client** indicates

that a sample was taken, the DPO shall wait thirty (30) days and recheck [REDACTED] prior to referring the **client** to MOB 5<sup>th</sup> Floor for sampling.

2. Check ICMS by looking at the **client's** *Flags/Case Plan* section, in the *Special Indicators and Case Plan Actions* sections, as the Probation Department may already have confirmation of a sample noted.
3. The [REDACTED] record check or [REDACTED] will often reflect whether a sample has been collected in the past. If so, this is considered confirmation.
4. The same [REDACTED] page from the [REDACTED] site can be used to find out if the **client** has previously provided a sample *locally in Orange County* only.
5. The **DOJ** can be contacted to determine if a **client** has provided a DNA Sample anywhere in the state by calling [REDACTED] and then select [REDACTED]. A representative from the [REDACTED] will answer. Identify yourself and agency then provide the **client's** [REDACTED] number and name. The [REDACTED] as they cannot look it up.

C. Procedure if a sample is on file, but not recorded in ICMS

1. The assigned DPO is required to update information in ICMS by going into the [REDACTED] tab. Then go to the [REDACTED] section. There are two *DNA tested by...* lines (*by OC Probation and by Outside Agency*). Once the DPO has verified that DNA has been taken by an outside agency, the DPO clicks on the arrow to the left of *DNA tested by Outside Agency*. A box will open up. The DPO should enter the information in the box (e.g., DNA verified through DOJ).
2. Those samples collected by the probation department will be entered in ICMS following Quality Assurance System (QAS) review.

D. Procedure for Live Scan and/or DNA sampling pursuant to PC 296

If a Live Scan and/or DNA sample is required but not yet completed, the assigned DPO is to ensure that the **client** is referred, confirmation is received, and the information is verified by ICMS. The assigned DPO must:

1. Complete the automated form entitled *DNA Admonishment Notification* in ICMS under "Adult" for adults and "Juvenile" for juveniles. Select the dropdown arrow for either category. Scroll down to *Reports* and hover the cursor over *Reports*. Click on the *DNA Admonishment Notification* form. Enter the **client's** J, DL, or A number, as well as requested information. Then select *Generate Form* to create the form. Then select *Email Notification* and the form will automatically be forwarded to the DNA Clerk located at MOB.
2. The DPO is to ensure that the admonishment is completely filled out; verifying that the qualifying charge is noted. Print two (2) copies, which are to be signed and dated by both the DPO and the **client**.

3. Give one (1) copy of the Admonishment Notification form to the **client**. This will provide them with information on where and when to report for DNA Sampling within five (5) days of receipt.
4. Direct the **client** to bring their copy of the signed admonishment form with them and valid photo identification when they report for collection. The other signed copy is retained in the **client's** file.

E. Procedures for DPOs collecting DNA and Live Scan samples

1. The MOB 5<sup>th</sup> Floor Officer of the Day (OD) is responsible for collecting DNA and Live Scan samples during their assigned OD shift. The OD DPO is to verify the **client's** identity using picture identification or other administrative means. If the identity of the **client** cannot be verified, the DPO may request the **client** to return at a later time with appropriate documentation.
2. Collect DNA sample as described in the DNA and Live Scan Desk Manual.
3. If palm and fingerprints need to be collected via Live Scan, the DPO is to log into the Live Scan using their unique user name and password. Input and collect prints as described in the DNA and Live Scan Manual.

F. Procedure once DNA and Live Scan samples have been taken

1. Once the DNA Clerk receives the automated DNA Admonishment Notification form and the sample is taken, they will record it in ICMS and TrackRS/SciLas and forward it to the Department of Justice for inclusion in their database.
2. Failure to comply with DNA Collection
  - a. The assigned DPO is to ensure the **client** has reported for DNA collection by checking ICMS as mentioned above. The DNA Clerk will notify the referring DPO who sent the request form if the **client** failed to submit to DNA collection within five (5) days.
  - b. Failure to submit to DNA collection is a violation of the law pursuant to PC 298.1. If the **client** fails to submit a DNA sample or Live Scan, the DPO will determine, based on case dynamics, whether to arrest the **client** for violation of probation or to allow the **client** to reschedule another appointment.
  - c. PC 296 states that failure to provide DNA samples within five (5) days of admonishment is punishable by one (1) year in custody and a \$500.00 fine.

G. Supervising Probation Officer (SPO) Responsibility

Prior to any case being transferred or terminated, SPOs will ensure that DPOs have complied with the procedure as listed above related to the collection of DNA.

H. **Sealing of Juvenile Records Pursuant to Welfare and Institutions Code (WIC) 786**

**Pursuant to PC 299, when a youth's record is ordered sealed and there was DNA collected in regard to the matter that was sealed, it is the responsibility of the youth to petition DOJ to have their DNA sample destroyed and searchable database profile expunged from the data bank program.**

**REFERENCES:**

Procedures:            3-1-047            DNA Collection – Custodial Youth

DNA and Live Scan Desk Manual

Attachments

C. Ronald

**APPROVED BY:**



**STEVEN J. SENTMAN**  
CHIEF PROBATION OFFICER

TELEPHONE: (714) 935-6611

301 THE CITY DRIVE  
ORANGE, CA

MAILING ADDRESS:  
P.O. BOX 10260  
SANTA ANA, CA 92711-

**ADMONISHMENT REGARDING  
THE COLLECTION OF DNA**

NAME: LAST, First Middle DATE: \_\_\_\_\_  
DOB: \_\_\_\_\_  
COURT CASE NUMBER: \_\_\_\_\_ CII#: \_\_\_\_\_ A/L#: \_\_\_\_\_  
*(Probation use only)*

This is written notification from a peace officer advising you that you must comply with Penal Code Section 296, which directs you to submit a DNA sample within five (5) days. You are to bring this form along with a valid picture identification to:

**ADULTS & JUVENILES**  
*(SEE MAP BELOW)*  
Manchester Office Building—5<sup>th</sup> Floor  
301 The City Drive'  
Orange, CA 92868  
Hours: 8:30 A.M. - 11:30 A.M.  
1:30 P.M. - 4:00 P.M.  
(Monday—Friday)

Refusal to provide DNA samples and palm prints is a violation of Penal Code Section 298.1(a). Failure to comply will be considered a misdemeanor offense and is punishable by up to one year in custody and a \$500.00 fine.

**Questions may be directed to the Orange County Probation Department at 714-935-6611.**

**Probationer's Signature:** \_\_\_\_\_

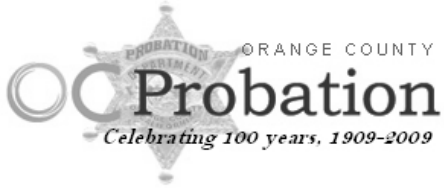
**Submitted by:** \_\_\_\_\_ **Signature:** \_\_\_\_\_

Law Enforcement: Please fax a copy of this form to Probation at: 714-935-6358

**Qualifying charge** (Past or present convicted felony or 290 PC misdemeanor sex offense/457.1PC arson offense) \_\_\_\_\_

**Agency & Badge Number:** OC PROBATION

**Date of Arrest:** \_\_\_\_\_  This probationer being referred for Live Scan Only



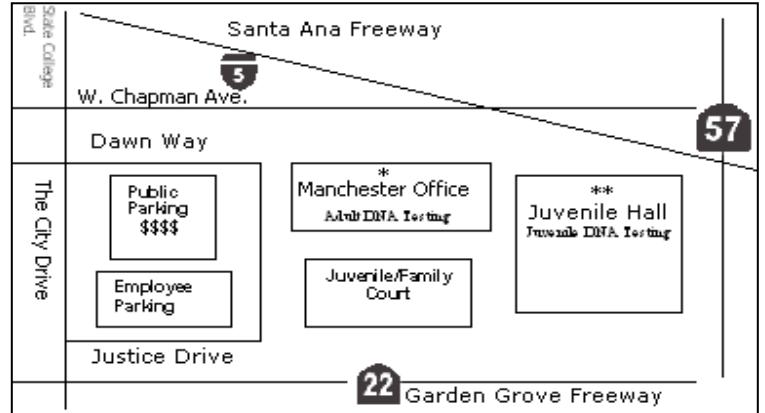
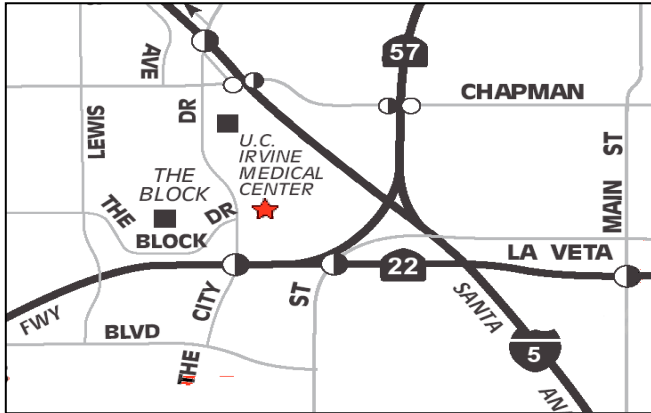
**COLLEENE PRECIADO**  
CHIEF PROBATION OFFICER

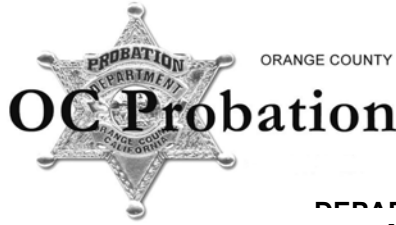
TELEPHONE: (714) 569-2000

1535 E. ORANGEWOOD AVENUE  
ANAHEIM, CA

MAILING ADDRESS:  
P.O. BOX 10260  
SANTA ANA, CA 92711-0260

**DEPARTAMENTO DE LIBERTAD CONDICIONAL**





**STEVEN J. SENTMAN**  
CHIEF PROBATION OFFICER

TELEPHONE: (714) 935-66

301 THE CITY DRIVE  
ORANGE, CA

MAILING ADDRESS:  
P.O. BOX 10260  
SANTA ANA, CA 92711-0

DEPARTAMENTO DE LIBERTAD CONDICIONAL  
**AMONESTACION MANDATORIA  
PARA LA COLLECCION DE DNA  
(ACIDO DEOXIRRIBONUCLEICO)**

FECHA \_\_\_\_\_

NOMBRE: \_\_\_\_\_, FECHA DE NACIMIENTO: \_\_\_\_\_

NO. DEL CASE EN EL TRIBUNAL: \_\_\_\_\_ CII#: \_\_\_\_\_ A/L#: \_\_\_\_\_  
*(Probation use only)*

Esta notificación por escrito le es enviada por un representante de la ley avisándole que debe cumplir con la Sección 296 del Código Penal que indica que debe usted proveer una muestra de DNA dentro de los siguientes cinco (5) días. Deberá traer esta forma junto con una identificación válida con su fotografía a:

**ADULTOS/JOVENES**  
*(VEA EL MAPA ABAJO)*  
  
Manchester Office Building—5o. Piso  
301 The City Drive'  
Orange, CA 92868  
  
Horas: 8:30 A.M. - 11:30 A.M.  
1:30 P.M. - 4:00 P.M.  
(Lunes—Viernes)

El rechazo a proveer muestras de DNA y huellas de la palma de su mano es una violación a la Sección 298.1(a) del Código Penal. La falta de cumplimiento será considerada un delito menor que podrá ser castigado con tiempo máximo de un año bajo custodia y una multa de \$500.00 dólares.

**Las preguntas pueden ser dirigidas al Departamento de Libertad Condicional al Teléfono 714-935-6611.**

Firma de la persona en Libertad Condicional: \_\_\_\_\_

Representante de la ley: \_\_\_\_\_ Firma: \_\_\_\_\_

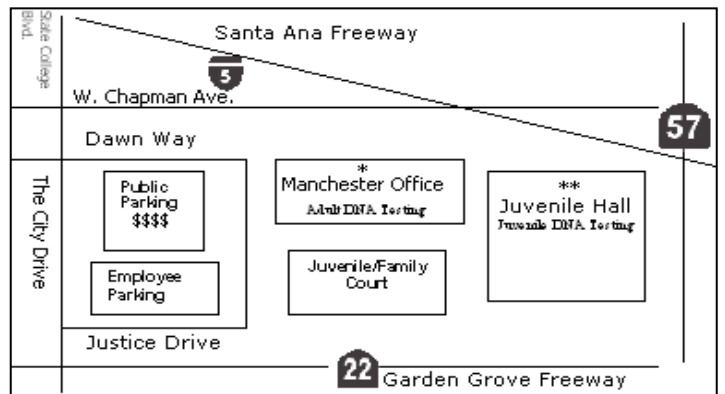
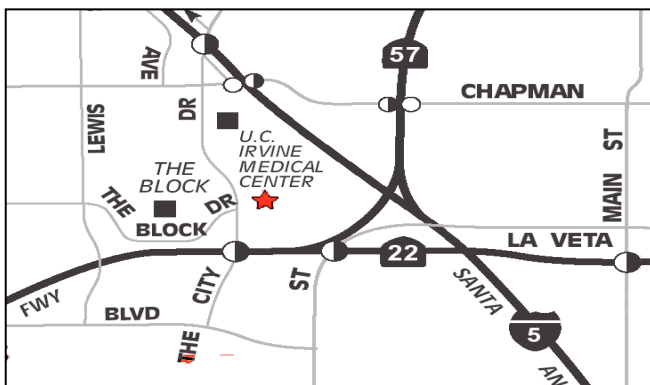
Law Enforcement: Please fax a copy of this form to Probation at: 714-935-6358

**Delito estipulado como requisito**

(Felonía condenada en el pasado o en el presente o delito menor de crimen sexual 290 PC/crimen por incendio 457.1 PC \_\_\_\_\_)

Agencia y & Número de Placa: OC PROBATION

Date of Arrest: \_\_\_\_\_  This probationer being referred for Live Scan Only





**ADULT OFFENDERS**  
**DOJ Summary of Qualifying Codes**

**The DNA and FORENSIC IDENTIFICATION DATA BASE and DATA BANK ACT of 1998 at Penal Code 296 sets forth the following felony offenses as subject to data bank collection:**

**Applicable Penal Codes**

- **187** Murder, all subsections, includes attempts.
- **190** Murder, special allegations, all subsections, and attempts
- **190.05** Murder 2nd with prior murder, all subsections, and attempts
- **192(a)** Voluntary manslaughter, includes attempts
- **203** Mayhem, includes attempts
- **205** Aggravated mayhem, includes attempts
- **206** Torture, includes attempts
- **207** Kidnapping, all subsections (a) through (e), includes attempts
- **208** Kidnapping, all felony subsections, includes attempts
- **208(d)** (Old code) kidnapping person with intent to violate sections 261, 286, 288, 288a and 289, includes attempts
- **209** Kidnapping for ransom, reward, extortion, robbery, or rape, etc., includes attempts
- **209.5** Kidnap during car jacking all subsections including former 208(d), includes attempts
- **210** Pose as kidnapper to extort or by claiming ability to obtain release of victim, includes attempts
- **212.5(a) or (b) PC** First degree robbery, or attempt
- **215 PC** Car jacking, or attempt
- **217.1** Assault/murder public official, all felony subsections
- **220** Assault with intent to commit rape, sodomy or oral copulation, rape in concert, lascivious act on child, penetration with a foreign object.
- **241.1** Assault on custodial officer, felony only.
- **243** Battery on emergency personnel with injury or serious bodily injury, all felonies
- **243.1** Battery on custodial officer
- **243.3** Battery with injury on transportation personnel/passenger, felony
- **243.4** Sexual battery, all felony subsections, and attempts
- **243.7** Battery against juror, felony

- **244** Assault with caustic chemical
- **245** Assault with deadly weapon or force likely to produce great bodily injury, all felony subsections
- **245.2** Assault with deadly weapon on transportation personnel/etc.
- **245.3** Assault with deadly weapon or means likely to produce GBI on custodial officer
- **245.5** Assault with a deadly weapon/etc. on school employee, felony only
- **261(a)(1)** Rape: victim incapable of giving consent, includes attempts
- **261(a)(2)** Rape by force/fear/etc., includes attempts
- **261(a)(3)** Rape of drugged victim, includes attempts
- **261(a)(4)** Rape: victim unconscious of the nature of the act, includes attempts
- **261(a)(6)** Rape by threat of retaliation, includes attempts
- **261.2** (Old code) rape by force, includes attempts
- **261.3** (Old code) rape with force or threat, includes attempts
- **261.4** (Old code) rape by threat, includes attempts
- **262(a)(1)** Rape of spouse by force or violence, felony only, includes attempts
- **264.1** Rape/etc. in concert with force/violence, includes attempts
- **266** Entice minor female for prostitution/etc. felony, includes attempts
- **266c** Induce intercourse/sex acts by false representation with intent to create fear, includes attempts, felony only
- **266h(b)** Pimping involving a minor, includes attempts
- **266i(b)** Pandering involving a minor, includes attempts
- **266j** Procure/etc. child under 14/16 for lewd act, after 1987, raised age, include attempts
- **267** Abduct minor for prostitution, includes attempts
- **269** Aggravated sexual assault of a child, includes attempts
- **273.5** Inflict corporal injury on spouse, etc., felony
- **273.55** Inflict corporal injury on spouse, etc., felony with prior
- **285** Incest, includes attempts
- **286** Sodomy, all subsections, includes attempts, felony only
- **286.1** (Old code) act in concert to commit sodomy, repealed by statute 1975, includes attempts

- **288** Crimes against children/lewd or lascivious, all subsections, includes
- **288a** Oral copulation, all subsections, includes attempts, felony only
- **288.2** Harmful matter: sent with intent of seduction of minor, felony only, includes attempts
- **288.5** Continuous sexual abuse of child, includes attempts
- **288b** (Old code) act in concert/sex perversion, repealed by statute, 1975, includes attempts
- **289** Sexual penetration by foreign object, all subsections, includes attempts
- **290(a)(2)(e)** Court ordered sex offense registration, all special court ordered registration for felonies
- **311.1** (Old code) indecent exposure, felony only, includes attempts
- **311.2** Send/possess/etc. obscene matter, subsections (b), (c), and (d) felonies only, includes attempts
- **311.3** (Old code) sexual exploitation of child, felonies only, includes attempts
- **311.4** Employee/use minor for sex acts/obscene matter, all felonies, includes attempts
- **311.10** Obscene matter depicting minor, felony only, includes attempts
- **311.11** Possession or control of child pornography with a prior, includes attempts
- **314** Lewd or obscene conduct, indecent exposure, obscene exhibitions, all subsections, felonies only, includes attempts
- **451(a) or (b) PC** Arson or attempt arson
- **460(a) PC** First Degree Burglary of an inhabited dwelling, or attempt
- **647.6** Felony child molesting, felony only, includes attempts
- **647a** (Old code), annoy, molest children, replaced by 647.6, includes attempts
- **653f(c)** Solicit specified sex acts, includes attempts
- **11418** Terrorist activity, possession, manufacture or use of weapon of mass destruction, includes attempts
- **11418.5** Terrorist activity, threat to use weapon of mass destruction, felony violation, includes attempts
- **11419** Terrorist activity, restricted biological agents, includes attempts

#### **Applicable Welfare and Institutions Codes**

- **702** (Old code) contribute delinquency minor

- **5512** Mentally disordered sex offender (MDSO) commitment up to 90 days
- **6316** Mentally disordered sex offender commitment up to 90 days

For help, call TrackRS at (714) 245-8301, 245-8488 or 245-8312.

**JUVENILE OFFENDERS  
DOJ Summary of Qualifying Codes**

**At a minimum, data bank samples can be collected for:**

- 1) All juveniles, subject to section 290 sex offender registration for felony offenses (reference the following list).
- 2) All juveniles who are remanded to a criminal superior court and are convicted of any of the enumerated felonies (Refer to the Adult list).
- 3) Pending interagency agreements, the juvenile list may be revised/expanded.

**PENAL CODE**

- **207** Kidnapping committed with intent to violate sections 261, 286, 288, 288a, 289 includes attempts
- **207(b)** Kidnapping, victim under 14 with the intent to violate any 288 sections, includes attempts
- **208(d)** (Old code) kidnapping victim under 14 with the intent to violate sections 261, 286, 288, 288a or 289, includes attempts
- **209** Kidnapping for ransom committed with intent to violate sections 261
- **209(b)(1)** Kidnapping for ransom committed with intent to violate sections 261, 288, 288a, 289, includes attempts
- **220** Assault with intent to commit rape, sodomy or oral copulation, or any violation of 264.1, 288, or 289 includes attempts
- **261(a)(1)** Rape: victim incapable of giving consent, includes attempts
- **261(a)(2)** Rape by force/fear/etc., includes attempts
- **261(a)(3)** Rape of drugged victim, includes attempts
- **261(a)(4)** Rape: victim unconscious of the nature of the act, includes attempts
- **261(a)(6)** Rape by threat of retaliation, includes attempts
- **261.2** (Old code) rape by force, includes attempts
- **261.3** (Old code) rape with force or threat, includes attempts
- **261.4** (Old code) rape by threat, includes attempts
- **264.1** Rape etc. in concert with force/violence, includes attempts
- **266c** Unlawful intercourse/sex acts by false representation with intent to cause fear, includes attempts
- **267** Abduct person under 18 for prostitution, includes attempts
- **286(b)(1)** Sodomy with person under 18, includes attempts

- **286(c)** (Old code) sodomy with person under 14, includes attempts
- **286(c)(1)** Sodomy with force violence, etc., includes attempts
- **286(c)(3)** Sodomy with threat of retaliation, includes attempts
- **286(d)** Sodomy in concert with force, includes attempts
- **288** Crimes against children/lewd or lascivious, includes attempts
- **288(a)** Lewd or lascivious act with child under 14, includes attempts
- **288(b)(1)** Lewd or lascivious act with child under 14 with force, includes attempts
- **288(b)(2)** Caretaker/sexual act on dependent adult with force, includes attempts
- **288(c)(1)** Lewd or lascivious act with child under 14 or 15 years, includes attempts
- **288(c)(2)** Caretaker, lewd or lascivious act on dependent adult, includes attempts
- **288a(b)(1)** Oral copulation with person under 18, includes attempts
- **288a(c)** (Old code) oral copulation with person under 14/etc. or by force/etc., includes attempts
- **288a(c)(1)** Oral copulation with person under 14 or by force/etc., includes attempts
- **288a(c)(2)** Oral copulation with force or violence, etc., includes attempts
- **288a(c)(3)** Oral copulation with threat of retaliation, includes attempts
- **288a(d)** Oral copulation in concert with force/etc., includes attempts
- **288.5** Continuous sexual abuse of child, includes attempts
- **288.5(a)** Continuous sexual abuse of child, includes attempts
- **289(a)** (Old code) Sexual penetration by foreign object, includes attempts
- **289(a)(1)** Sexual penetration by foreign object with force, includes attempts
- **289(a)(2)** Sexual penetration by foreign object with threat of retaliation, includes attempts
- **647.6** Annoy/molest children, includes attempts

For help, call TracKRS at (714) 245-8312.