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WEST VIRGINIA STATE POLICE

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SERIES 9  
WEST VIRGINIA DNA DATABANK

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§81-9-1. General.**

1.1. Scope. -- This legislative rule establishes the methods and standards necessary to establish and administer a DNA database/databank as they relate to the ~~withdrawal of blood~~ collection of DNA samples, the submission of samples, the analysis of samples, the storage of samples and results, and the exchange and expungement of information concerning ~~blood~~ DNA specimens collected for DNA analysis.

1.2. Authority. ---W. Va. Code §15-2-24a, §15-2B-4.

1.3. Filing Date. ---~~March 27, 1996.~~

1.4. Effective Date. ---~~April 1, 1996.~~

**§81-9-2. Application and Enforcement.**

2.1. Application - This legislative rule applies to any person or entity ~~drawing~~ collecting, or causing to be ~~drawn~~ collected, samples of human ~~blood~~ DNA for the purposes stated in this rule.

2.2. Enforcement - The enforcement of this legislative rule is vested with the Superintendent of the West Virginia State Police.

**§81-9-3. Definitions.**

As used in this rule, unless used in a context that clearly requires a different meaning, the term:

3.1. Biochemistry Section - means the section of the State Police laboratory that administers the DNA Databank and conducts analysis of biological materials, including blood and saliva, to determine a genetic profile gleaned from DNA.

3.2. DNA - means deoxyribonucleic acid and refers to the basic biological molecule that carries and transmits genetic information.

3.3. DNA sample - human biological material, including, but not limited to, blood and saliva from which DNA can be extracted and analyzed.

3.4. DNA Analysis - means the analysis performed on biological materials, including blood and saliva, to determine the genetic profile of the individual tested.

~~3.4~~3.5. FBI - means the Federal Bureau of Investigation.

~~3.5 - 3.6.~~ 3.6. Marshall MUFSC - means the DNA testing facility at the Marshall University School of Medicine known as Marshall University Forensic Science Center (MUFSC).

~~3.6~~ 3.7. Medical Technician - includes persons trained as medical technicians, emergency medical technicians, persons certified as phlebotomists by the College of American Pathology, or any other qualified phlebotomists.

~~3.7 State Penitentiary~~—any and all state correctional facilities.

3.8. Approved individual – a probation officer, law enforcement officer or medical technician trained to collect DNA samples for the DNA Databank program.

~~3.8-3.9. WVSP DNA Databank Blood Kit (WVSP Kit)~~ - means either the blood kit currently provided by the West Virginia State Police for the purposes of collecting Databank samples or any other collection kit provided by the West Virginia State Police for the purpose of collecting a DNA Databank sample.

3.10. CODIS - Combined DNA Index System

3.11. NDIS – National DNA Index System

3.12. Collection Facility - any facility or agency that is responsible for the collection of a DNA Databank sample from qualifying individuals under their supervision.

3.13 CODIS Administrator – the Biochemistry Section employee designated by the State Police as the person responsible for the administration of the CODIS program in the State.

3.14 Storage device – any storage unit that can provide acceptable storage conditions for biological stains.

**§81-9-4. Procedures for the ~~Withdrawal of Blood~~ Collection of Samples for DNA Analysis.**

~~4.1.~~ The following standards shall be met when ~~drawing blood~~ collecting samples for the purposes of DNA analysis:

~~(a)–1.~~ Representatives of the West Virginia Division of Corrections and/or Regional Jail Authority, Sheriff's Department or other authorized agency of the criminal justice system, working in conjunction with the West Virginia State Police, shall have a DNA sample collected from:

a. ~~All individuals convicted of any offense specified in West Virginia Code 15-2B-6. under the following sections of the West Virginia Code shall have a sample of blood withdrawn by representatives of the West Virginia Division of Corrections and/or Regional Jail Authority, working in conjunction with the West Virginia State Police:~~

~~61-2-1, 61-2-2, 61-2-3; First and second-degree murder~~

~~61-2-4; Voluntary manslaughter~~

~~61-2-7; Attempt to kill or injure by \_\_\_\_\_poison~~

~~61-2-9; Malicious or unlawful assault, unlawful assault/wounding \_\_\_\_\_~~

~~61-2-10; Assault during the commission of a felony~~

~~61-2-10a; Violent crimes against the elderly~~

~~61-2-12; Robbery or attempted robbery~~

~~61-2-14; Abduction or kidnaping~~

~~61-8D-5; Sexual abuse by parent/guardian~~

~~61-8B-7; Sexual abuse in the first degree~~

~~61-8B-8; Sexual abuse in the second degree~~

~~61-8B-9; Sexual abuse in the third degree~~

~~61-8B-6; Sexual assault of a spouse~~

~~61-8B-3; Sexual assault in the first degree~~

~~61-8B-4; Sexual assault in the second degree~~

~~61-8B-5; Sexual assault in the third degree~~

~~61-8D-2; Child neglect resulting in death of child~~

~~61-8D-2a; Child abuse resulting in death of child~~

~~61-8D-3; Child abuse resulting in injury to child~~

~~61-8D-4; Child neglect resulting in injury to child~~

~~61-8-12; Incest~~

~~61-8-14; Disinterment/displacement of dead bodies~~

b. Where not otherwise mandated, any person convicted of a felony offense under the provisions of this code, provided that the person is under the supervision of the criminal justice system at the time the request for the sample is made. Supervision includes prison, the regional jail system, parole, probation, home confinement, community corrections program, and work release.

~~(b)2.- The blood shall be drawn ~~only~~ by a licensed registered professional nurse, doctor of medicine or osteopathy, or ~~by~~ a trained medical technician may draw a blood sample. The WVSP Kit shall be used ~~only~~ for the withdrawal of blood only for the purpose of DNA Databank analysis.~~

~~(e)3.~~ The blood shall be drawn using the sterile, previously unused, needles and storage vessels provided in the ~~WVSP Databank Blood Kit~~. The blood shall be drawn according to accepted medical procedures and according to the universal safety precautions outlined by the National Centers for Disease Control. The provided vessels shall be filled to capacity, if possible, and sealed according to the instructions included in the WVSP Kit.

4. Approved individuals shall collect a buccal (saliva) sample following the guidelines provided in the kit or per communication with the CODIS Administrator or designee.

5. Approved individuals shall collect the DNA sample following the guidelines provided in the kit or per communication with the CODIS Administrator or designee.

6. The CODIS Administrator or his designee may permit the replacement of the blood tube or other collection material by the collection facility with sterile collection material via communication with the State Police.

~~(d)7.~~ The collection facility shall confirm the identity of the individual whose sample is collected shall be confirmed through with an identification card bearing a photograph or through another means that would positively identify the blood-DNA donor. Only one donor shall may be processed at a time to avoid potential mislabeling or misidentification of the samples.

~~(e)8.~~ The kit will include one information card to be used by the Biochemistry Section. The collection facility shall complete the information card in full at the time of collection according to the instructions included in the kit. The Kit will include one information card intended to be used by the Biochemistry Section. The information card shall be completed in full at the time of sample collection according to the instructions included in the Kit. Also, the The collection facility shall also complete the fingerprint identification block on the identification-information card shall be completed at the time of sample collection. A right thumb print is the print of choice. If a right thumb print is not possible, then a left thumb print shall be used. If a thumb print is not possible an index finger (right then left) shall be used for identity confirmation. If an index finger print cannot be collected, the middle finger (right then left), or ring finger print (right then left), or little finger print (right then left) shall be used to confirm identity. In the event that no finger print is possible due to the absence of fingers or hands, the fingerprint block shall be left blank. The identity of the digit used to make the fingerprint shall be noted on the identification-information card.

~~(f)9.~~ A second individual shall verify The verification of the information- data on the identification information card shall be confirmed by a second individual. when possible. The witness shall sign the identification-information card on the appropriate signature line.

~~(g)10.~~ The collection facility shall ensure that the. The collected blood-DNA sample and the completed information card shall be placed in a WVSP Kit according to the instructions included, sealed, and mailed immediately to:

West Virginia State Police,  
Biochemistry Section,  
725 Jefferson Road,  
South Charleston, WV, 25309-1698.

~~(h)11.~~ The collection facility obtaining the DNA sample shall maintain the logbook provided by the State Police containing the A-log book, provided by the State Police, shall be maintained by the collection facility drawing the blood sample. The log shall contain the following information: the WVSP-kit number, the name of the donor, the date and time of sample collection, the name of the witness, and the name of the collecting technician. The log shall be completed in full at the time of sample collection.

~~(i)12.~~ The collection facility shall provide the Biochemistry Section with a copy of the log book- containing entries from the previous three months on On January 15, April 15, July 15, and October 15 of a quarterly basis each calendar year. , aThe copy of the log book entries from the prior three-month period

shall be ~~mailed~~ sent to:

West Virginia State Police,  
Biochemistry Section,  
725 Jefferson Road,  
South Charleston, WV, 25309-1698.

The collecting facility shall ~~mail~~ send the log sheets even if no log entries ~~occurred~~ occurred in the three months prior to the mailing dates.

#### **§81-9-5. Receipt of Blood Samples at State Police Headquarters.**

~~5.1. The CODIS Administrator or his designee is responsible for receipt of samples collected under this rule. The receipt of the samples shall be under the supervision of authorized personnel assigned to the Biochemistry Section, and shall meet the following standards:~~

~~(a)1. The Biochemistry Section CODIS Administrator shall maintain a log of all samples received, record the following on the kit information card: - The log shall record the date of reception, the submitting agency, the individual receiving the kit and the submitting facility if needed, the WVSP kit number, the donor, and a unique identification number.~~

~~(b)2. Personnel assigned to the Biochemistry Section The CODIS Administrator or his designee shall enter information from the WVSP-Kit's identification information card into the appropriate computer file. The card shall be labeled with a unique identifier and shall be filed in a secure, fireproof location. Upon confirmation that a sample is a duplicate of a sample currently in the Databank the duplicate may be destroyed or entered in to the Databank as a quality control sample.~~

~~(c)3. Each Each blood DNA sample received shall be processed according to the existing Biochemistry Section safety and quality assurance guidelines. A minimum of two stain cards shall be prepared from the sample contained in the WVSP-Kit. Each prepared stain card shall be labeled with unique identifiers. Samples shall be prepared for long term storage in a temperature monitored -70°C storage device, based on the sample medium. All prepared stains shall be stored, upon drying, in sequential order in the a long term long-term storage device. One blood stain card shall be forwarded to DNA testing facility at Marshall. A stain and/or liquid sample shall be forwarded to MUFSC. In the case of DNA samples other than blood, up to one half of the total sample shall be forwarded to MUFSC.~~

~~(d). A freezer stain use log shall be maintained by the Biochemistry Section. The removal of a stain card from the long term storage device shall be noted on the log in the following manner: the date and time of removal, the purpose of removal, and the date and time of return, if applicable. All transfers of stain cards to the DNA testing facility at Marshall shall be noted on the log.~~

#### **§81-9-6. Transport and Receipt of ~~Dried Blood Stains~~ DNA samples to Marshall University MUFSC for DNA Analysis.**

~~6.1. The CODIS Administrator or his designee shall be responsible for transportation to and receipt from MUFSC of DNA samples. The transport and receipt of the samples shall be under the supervision of authorized personnel assigned to the Biochemistry Section and shall meet the following standards:~~

~~(a)1. Stain cards prepared for transport shall contain only the following data: the sex, race, and unique identifier of the donor. DNA samples prepared for transport shall only be labeled with the assigned unique identifier.~~

~~(b)2. The CODIS Administrator shall be responsible for transporting the The stain cards- DNA samples to MUFSC. shall be transported to Marshall University by authorized personnel assigned to the Biochemistry Section. A stain-card sample transport and receipt form shall be completed and signed by the transporting and receiving individuals. A copy of the transport and receipt form will be maintained in the records of both agencies.~~

~~(e)3. Upon receipt of the stain cards at Marshall University, the information from each stain card shall be logged into the appropriate computer file. A backup file shall be maintained by Marshall in a secure, destruction proof location. MUFSC, upon receipt of the DNA samples shall log the date of receipt for each sample into the appropriate file in the West Virginia DNA Databank software. MUFSC will only have access to the race, gender, unique identifier and transfer dates of each file.~~

~~(d)4. Upon receipt, stain cards shall be stored in a secure temperature monitored -70°C DNA samples shall be stored in a secure, medium appropriate storage device. The freezer A refrigerated storage device shall be connected to an auxiliary power source in the event of power failures.~~

~~(e)5. A freezer stain use log shall be maintained by Marshall. The removal of a stain card from the long term storage device shall be noted on the log in the following manner: MUFSC shall document all transactions involving the DNA samples including internal transfers, the date and time of removal, the purpose of removal, and the date and time of return, if applicable. All transfers of stain cards- DNA samples to the Biochemistry Section or destruction of DNA samples under the authority of the CODIS Administrator or his designee, shall be noted on the log. Any liquid samples will be destroyed upon confirmation, in writing, of a successful upload of the DNA profile to the national database (NDIS) by the CODIS Administrator.~~

~~(f). Entry and removal of stain cards shall be performed by the primary analyst, as assigned by Marshall, and witnessed by a second analyst. The handling of all stain cards shall be confirmed in this manner to verify stains are being identified properly prior to analysis. Both the primary and secondary analyst shall initial the log at each entry or withdrawal of stain cards.~~

#### **§81-9-7. Handling, Processing and Analyzing Blood Samples at MUFSC, Marshall.**

~~7.1. MUFSC shall perform the The handling, processing and analysis of stains- DNA samples at Marshall shall be performed according to the nationally accepted guidelines for DNA analysis promulgated by the FBI Director, the guidelines promulgated by the American Society of Crime Laboratory Directors Laboratory Accreditation Board, and the National DNA Index System (CODIS) Standards for the Acceptance of DNA Data. In addition to the preceding requirements the handling, processing, and analysis of samples shall meet the following standards:~~

~~(a)1. Only personnel who have successfully completed the required proficiency test(s) approved by the State Police shall conduct DNA analysis on the DNA samples submitted by the State Police. shall be conducted only by personnel who have successfully completed proficiency tests approved by the State Police.~~

~~(b)2. Only MUFSC personnel who have their personal DNA profiles on file with the State Police shall conduct DNA analysis on DNA samples submitted by the State Police. DNA analysis shall be conducted only by personnel who have their personal DNA profiles on file for all DNA tests conducted by the DNA testing facility at Marshall.~~

~~(e)3. The State Police shall conduct periodic quality control inspections and/or audit reviews of MUFSC. MUFSC shall conduct DNA analysis according to a State Police approved quality assurance~~

~~program. DNA analysis shall be conducted according to a State Police approved quality assurance program. Periodic quality control inspections shall be conducted by the State Police.~~

~~(d)4.~~ All DNA analysis data shall be forwarded to the Biochemistry Section for inspection and approval.

~~(e)5.~~ All DNA data generated by Marshall MUFSC shall be stored in a format compatible with the Combined DNA Index National DNA Index System (CODIS) employed by the State Police and the FBI. Data generated at Marshall shall be stored in a location and in a way that is secure from alteration and destruction. All samples and data shall be returned upon the request of the West Virginia State Police.

### **§81-9-8. The Monitoring, Inspection, and Prohibition on the Exchange of Information.**

~~8.1.~~ In order to safeguard the donor's personal privacy, the following standards shall ~~be met in apply to~~ the gathering and exchange of information:

~~(a)1.~~ The information contained in the West Virginia Databank shall be limited to that required to generate investigative leads. Names, addresses, criminal histories or other personally identifying information shall not be included. Only the information required to generate investigative leads shall be entered into the CODIS. Names, addresses, criminal histories or other personally identifiable information shall not be included.

~~(b)2.~~ The Biochemistry Section shall restrict access to DNA analysis records to criminal justice DNA laboratories participating in NDIS. The Biochemistry Section shall release a DNA record to other laboratories only when a potential DNA match is discovered. The Biochemistry Section ~~shall may~~ release identifying information only upon the verified request of an investigating law enforcement agency. ~~The Biochemistry Section shall ensure that all DNA data communications concerning records are encrypted before transmission with electronic devices available only to the criminal justice community.~~

~~(c)3.~~ The West Virginia DNA Databank computer software shall employ user authentication and access control shall be employed by the computer software used in the DNA Databank. Each user shall be uniquely identified by the software. The software shall uniquely identify each user and all activity by a user shall be monitored. Transaction activities shall be monitored by the computer system to record when and by whom a deletion is made, who adds a file or who edited a file last, what activity occurred (ex. add/edit/delete) and when the activity occurred. User authority shall be segregated to limit the activities that one user may perform as opposed to other users.

4. The computer housing the CODIS software shall employ user authentication and access control. The software shall uniquely identify each user. The CODIS Administrator or his designee shall be responsible limiting the activities one user may perform as opposed to other users.

~~(d)5.~~ Confirmation of in-State searches of the DNA Databank CODIS shall be limited to open criminal cases or cases that are being actively investigated by a law enforcement agency. If a potential DNA match is identified, authorized Biochemistry Section personnel shall generate a match report, shall be generated by the Biochemistry Section. The match report ~~shall maybe~~ used as to establish probable cause by the investigating agency to obtain a court order for the collection of a fresh reference sample.

~~(e)6.~~ The CODIS Administrator or his designee shall ensure that all data entered into the Databank shall comply with the approved quality assurance guidelines of the State Police Crime Laboratory.

Data from all points of entry, collection, storage, and testing shall be routinely monitored to insure its integrity.

**§81-9-9. The Expungement of Information.**

9.1. Authorized personnel assigned to the Biochemistry Section of the ~~West Virginia State Police~~ shall supervise the expungement of DNA analysis records based on the following standards:

(a).1. The Biochemistry Section shall expunge records upon receipt of both a court order and pursuant to a written request. The Biochemistry Section shall ~~contacted~~ the ordering court and have the order verified before expungement.

(b).2. The Biochemistry Section shall maintain a file of all expungement orders received and processed.

(c).3. The Biochemistry Section, upon confirmation of the court order, shall erase from the main file and all backup files of the DNA Databank-~~computer~~ all information and records relating to the donor and conviction named in the order. All of the computer files of the donor shall be deleted from the state (CODIS) and national (NDIS) databases and ~~The~~ Biochemistry Section shall destroy the corresponding ~~identification information~~ card, and any copies that may exist on file. The Biochemistry Section shall destroy all corresponding ~~blood stains~~ DNA samples collected for the purpose of DNA analysis and in the possession of or under the jurisdiction of the Biochemistry Section unless the donor wishes to take possession of the DNA sample. The Biochemistry Section shall destroy DNA samples ~~blood stains~~ according to accepted safety guidelines for biohazard materials.

(d).4. The Biochemistry Section shall send a letter of expungement to the court of record upon compliance with the court order.