

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #8

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OFFICE OF KEN HECHLER
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WEST VIRGINIA STATE POLICE TITLE NUMBER: 81

CITE AUTHORITY WVA CODE 15-2B-1 ET SEQ.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: SERIES IX

TITLE OF RULE BEING PROPOSED: WVA DNA DATA BANK

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



West Virginia Department of Military Affairs and Public Safety
Division of Public Safety
Title 81
Series IX

Circumstances Requiring Proposed Rule

The Legislature recently enacted the DNA Database and Databank Act of 1995 [hereinafter "the Act"] under W. Va. Code §15-2B-1 et seq. The Act provides for the creation of the State DNA Databank under the auspices of the West Virginia State Police. The Legislature, in Section 4(d)&(e) of the Act, mandated that the Superintendent of the West Virginia State Police promulgate legislative rules dealing with the establishment and operation of the Databank. Specifically, these rules are to deal with the collection, submission, and analysis of blood samples taken from convicted felons, as well as the proper storage of both the samples and test results. Further, the rules are required to outline the proper procedure for the exchange and expungement of records and information contained in the Databank. The Databank is intended to serve as the central repository for unique genetic patterns of convicted felons as determined from an analysis of their DNA. The statute requires that all convicted felons who are currently incarcerated, and all subsequent felons convicted of certain enumerated offenses, to submit a sample of their blood for the purpose of a DNA analysis. The rules instruct and notify those persons statutorily charged with drawing the blood regarding those procedures necessary to ensure the integrity of the sample. These test results will be entered into the Databank for use by law enforcement officials in identifying known felons based on the unique genetic patterns contained in their DNA. This system will allow law enforcement officers to identify a suspect from biological materials, including blood, left at the scene of a crime.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia DNA Databank

Type of Rule: Legislative Interpretive Procedural

Agency: Marshall University

Address: 400 Hal Greer Blvd.
Huntington, WV

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL * COST	\$ 450,000	\$	\$ 450,000	\$	\$
PERSONAL SERVICES	125,000		125,000		
CURRENT EXPENSE	275,000		275,000		
REPAIRS & ALTERNATIONS					
EQUIPMENT	50,000		50,000		
OTHER					

- 2. Explanation of above estimates:** Personal Services will require two technicians to be hired who will conduct DNA typing of blood samples and ensure quality control/assurance of the DNA laboratory. Current expenses will be directed towards the purchase of blood collection kits, DNA typing kits and other general supplies. Several equipment items are also required.
- 3. Objectives of these rules:** To promulgate legislation under the authority of W.VA. Code 15-2B-1 et seq. Blood samples obtained from convicted felons in the State of West Virginia will be typed by several methodologies in order to establish a DNA databank for the purposes of preventing and solving crimes of violence.

*Estimated total cost represents program operation costs. All costs are covered by Legislature appropriations

Rule Title: West Virginia DNA Databank

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The initial investment will establish DNA laboratories which will enable the Division of Public Safety to apply for funds through the Crime Bill 1994 for continued development.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Has the potential to stimulate the growth of industries involved in medical diagnosis, environmental testing and other areas involving the analysis of DNA.

C. Economic Impact on Citizens/Public at Large.

Will introduce one facet of biotechnology into the economy of W. V., which could spur the development of high technologies and attract biotechnology firms to the area.

Date: 3/20/95

Signature of Agency Head or Authorized Representative

Herbert J. Kablet Vice President
for Marshall University

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia DNA Databank

Type of Rule: X Legislative X Interpretive Procedural

Agency West Virginia State Police

Address 725 Jefferson Road
South Charleston, WV 25309-1698

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ - 0 -	\$	\$ - 0 -	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. **Explanation of above estimates:** None with regard to the West Virginia State Police. See Fiscal Note prepared by Marshall University for program costs which have been funded by legislative appropriation to Marshall University.

3. **Objectives of these rules:** To promulgate legislation under the authority of W.Va. Code 15-2B-1 et seq. Blood samples obtained from convicted felons in the State of West Virginia will be typed by several methodologies in order to establish a DNA databank for the purposes of preventing and solving crimes of violence.

Rule Title: West Virginia DNA Databank

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Will introduce one facet of biotechnology into the economy of West Virginia, which could spur the development of high technologies and attract biotechnology firms to the area.

Date: 3-20-95

Signature of Agency Head or Authorized Representative

H. Cal. Gary A. Griffith

DATE: May 5, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WEST VIRGINIA STATE POLICE

LEGISLATIVE RULE TITLE: WEST VIRGINIA DNA DATABANK

1. Authorizing statute(s) citation W. VA. CODE 15-2B-1 et. seq.

2. a. Date filed in State Register with Notice of Hearing

March 29, 1995 Comment Period Only

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Hearing(s) None

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. Name and phone number(s) of agency person(s) to contact for additional information:

Stephen W. Cogar, 746-2112

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

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Summary of Proposed Rule

The State DNA Databank will serve as a central repository for unique genetic patterns of convicted felons as determined from their DNA. The administrative rules pertaining to the Databank are being promulgated pursuant to the DNA Database and Databank Act of 1995 under W. Va. Code §15-2B-1 et seq. These proposed rules are designed and intended to establish the methods and standards necessary to establish and operate the Databank. Among other things, the rules detail the proper collection, submission, and analysis of blood samples, as well as the proper methodology for the storage of samples and test results. Finally, the rules outline the proper procedure for both the exchange and expungement of information stored in the Databank.

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
DIVISION OF PUBLIC SAFETY
TITLE 81
SERIES IX

Title: West Virginia DNA Databank

Section 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 samples, the submission of samples, the analysis of samples, the storage of samples and results, and the exchange and expungement of information concerning blood specimens collected for DNA analysis.

1.2. Authority - W. Va. Code §15-2B-1 et seq.

1.3. Filing Date -

1.4. Effective Date -

Section 2. Application and Enforcement.

2.1. Application - This legislative rule shall apply to any person or entity drawing, or causing to be drawn, samples of human blood for the purposes stated in this rule.

2.2. Enforcement - The enforcement of this legislative rule is vested with the Superintendent of the Division of Public Safety.

Section 3. Definitions.

As used in these rules, unless used in a context that clearly requires a different meaning, the term:

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

3.2. State Police - means the West Virginia Division of Public Safety.

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3.3. Medical Technician - means and shall include persons trained as medical technicians, emergency medical technicians, or phlebotomist.

3.4. WVSP DNA Databank Blood Kit (WVSP Kit) - means the kit provided by the West Virginia Division of Public Safety for the purposes of collecting Databank samples.

3.5 Marshall - means the DNA testing facility at the Marshall University School of Medicine.

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

Section 4. Procedures for the Withdrawal of Blood Samples for DNA Analysis.

4.1. Blood withdrawal for the purposes of DNA analysis shall meet the following standards:

(a) All individuals convicted under the following sections of the West Virginia Code shall have a sample of blood withdrawn:

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, battery (felony)
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, kidnapping, etc.
61-8-1 et seq.; All felony convictions
61-8b-1 et seq.; All convictions
61-8d-1 et seq.; All convictions

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(b) The blood shall be drawn only by a licensed registered professional nurse, doctor of medicine or osteopathy, or by a trained medical technician. The WVSP Kit shall be used only for the purposes outlined in this section of the West Virginia Code.

(c) 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 and sealed according to the instructions included in the WVSP Kit.

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

(e) The information card provided in the Kit shall be completed in full at the time of sample collection according to the instructions included in the Kit. Also, the fingerprint identification block on the identification card shall be completed at the time of sample collection. A right thumb print shall be 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 card.

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(f) The verification of the information on the identification card shall be confirmed by a second individual. The witness shall sign the identification card on the appropriate signature line.

(g) The collected blood 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) 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: WVSP kit number, name of donor, date and time of sample collection, name of witness, and name of collecting technician. The log shall be completed in full at the time of sample collection.

(i) The collection facility shall provide the Biochemistry Section with a copy of the log book. On January 15, April 15, July 15, and October 15 of each calendar year, a copy of the log book entries from the prior three month period shall be mailed to: West Virginia State Police, Biochemistry Section, 725 Jefferson Road, South Charleston, WV, 25309-1698. The collecting facility shall mail the log sheets even if no log entries occur in the three months prior to the mailing dates.

Section 5. Receipt of Blood Samples at State Police Headquarters.

5.1. 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) The Biochemistry Section shall maintain a log of all samples received. The log shall record the date of reception, submitting agency, WVSP kit number, donor, and a unique identification number.

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(b) Personnel assigned to the Biochemistry Section shall enter information from the WVSP Kit's identification card into the appropriate computer file. The card shall be labeled with a unique identifier and shall be filed in a secure/fireproof location.

(c) Each blood 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. All prepared stains shall be stored, upon drying, in sequential order in the long term storage device. One blood stain card shall be forwarded to DNA testing facility at Marshall.

(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: date and time of removal, purpose of removal, and 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.

Section 6. Transport and Receipt of Dried Blood Stains to Marshall University for DNA Analysis.

6.1. 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) Stain cards prepared for transport shall contain only the following data: sex, race, and unique identifier of the donor.

(b) The stain cards shall be transported to Marshall University by authorized personnel assigned to the Biochemistry Section. A stain card 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.

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(c) 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.

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

(e) 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: date and time of removal, purpose of removal, and date and time of return, if applicable. All transfers of stain cards to the Biochemistry Section shall be noted on the log.

(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.

Section 7. Handling, processing and analyzing blood samples at Marshall.

7.1. The handling, processing and analysis of stains at Marshall will be performed according to the nationally accepted guidelines for DNA analysis promulgated by the FBI Director, according to the guidelines promulgated by the American Society of Crime Laboratory Directors Laboratory Accreditation Board and according to 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) DNA analysis shall be conducted only by personnel who have successfully completed proficiency tests approved by the State Police.

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(b) 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.

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

(e) All DNA data generated by Marshall shall be stored in a format compatible with the 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.

Section 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 the gathering and exchange of information:

(a) 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.

(b) Access to DNA analysis records shall be restricted to criminal justice DNA laboratories. Laboratories other than the West Virginia State Police Crime Laboratory shall obtain a DNA record only when a potential DNA match is discovered. Release of identifying information shall occur only upon the verified request of an investigating law enforcement agency. Data communications concerning records shall be encrypted before transmission with electronic devices available only to the criminal justice community.

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(c) 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 and all activity by a user shall be monitored. Transaction activities shall be monitored by the computer system to record 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.

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

(e) 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.

Section 9. The Expungement of Information.

9.1. The expungement of DNA analysis records shall be under the supervision of authorized personnel assigned to the Biochemistry Section and shall meet the following standards:

(a) Records shall be expunged upon receipt of a court order. The ordering court shall be contacted and the order verified before expungement.

(b) A file shall be maintained of all expungement orders received and processed by the Biochemistry Section.

(c) Upon confirmation of the court order, the DNA Databank computer file relating to the donor and conviction named in the order shall be erased from the main file and all backup files. The corresponding identification card, and any copies that may exist, on file with the Biochemistry Section shall be destroyed. All corresponding blood stains collected, according to this section

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of the West Virginia Code, in the possession of or under the jurisdiction of the Biochemistry Section, shall be destroyed according to accepted safety guidelines for biohazard materials.

(d) Upon compliance, a notification letter of expungement shall be sent to the court of record by authorized personnel assigned to the Biochemistry Section.

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REPORT ON NOTICE/COMMENT PERIOD

During the notice/comment period, which was held between March 29, 1995, and May 1, 1995, no comments or other information was received in relation to the proposed rule. No public hearing was held. The proposed rule has not been amended.