

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WEST VIRGINIA STATE POLICE TITLE NUMBER: 81

CITE AUTHORITY W. VA. CODE 15-2-24a

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: IX

TITLE OF RULE BEING PROPOSED: WEST VIRGINIA DNA DATABASE

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
WEST VIRGINIA STATE POLICE
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 §15-2-24a.

1.3. Filing Date -

1.4. Effective Date -

Section 2. Application and Enforcement.

2.1. Application - This legislative rule applies 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 West Virginia State Police.

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

3.4. FBI - means the Federal Bureau of Investigation.

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

3.6. 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. WVSP DNA Databank Blood Kit (WVSP Kit) - means the kit provided by the West Virginia State Police for the purposes of collecting Databank samples.

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

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

(a) All individuals convicted 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 kidnapping

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) 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 withdrawal of blood for the purpose of DNA analysis.

(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 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 fingerprint identification block on the identification 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 card.

(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: 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) 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, the submitting agency, the WVSP kit number, the donor, and a unique identification number.

(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: 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.

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: the 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.

(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: 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 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 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) DNA analysis shall be conducted only by personnel who have successfully completed proficiency tests approved by the State Police.

(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) The Biochemistry Section shall restrict access to DNA analysis records to criminal justice DNA laboratories. The Biochemistry Section shall release a DNA record to other laboratories only when a potential DNA match is discovered. The Biochemistry Section shall 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) 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. 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) The Biochemistry Section shall expunge records upon receipt of a court order and pursuant to a written request. The Biochemistry Section shall be contacted by the ordering court and the order verified before expungement.

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

(c) 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. The Biochemistry Section shall destroy the corresponding identification card, and any copies that may exist on file. The Biochemistry Section shall destroy all corresponding blood stains collected for the purpose of DNA analysis and in the possession of or under the jurisdiction of the Biochemistry Section. The Biochemistry Section shall destroy blood stains according to accepted safety guidelines for biohazard materials.

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



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West Virginia Legislature OFFICE OF WEST VIRGINIA
Legislative Rule-Making Review Committee SECRETARY OF STATE

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vickie Douglas, Co-Chair

June 12, 1995

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Lt. Col. G. N. Griffith
WV State Police
725 Jefferson Road
South Charleston, WV 26309-1698

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: West Virginia DNA Data Bank

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule (a) as originally filed (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Sgt. Stephen W. Cogar