

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Governor's Committee on Crime, Delinquency and Correction TITLE NUMBER: 149

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 RULE BEING PROPOSED: 6

TITLE OF RULE BEING PROPOSED: Motor Vehicle Search Standards

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 321

SECTION WV Code 64-6-2(b), PASSED ON March 9, 2012

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 6, 2012



Authorized Signature
J Norbert Federspiel
Executive Director

FILED

TITLE 149
LEGISLATIVE RULE
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION

2012 APR 6 PM 2:56

SERIES 6
MOTOR VEHICLE SEARCH STANDARDS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§149-6-1. General.

1.1. Scope. -- This legislative rule establishes standards for the use of the vehicle consent search form in accordance with W. Va. Code § 62-1A-10.

1.2. Authority. -- W. Va. Code §62-1A-11

1.3. Filing Date. -- April 6, 2012

1.4. Effective Date. -- April 6, 2012

§149-6-2. Definitions.

2.1. "Audio recording" means using any device for the duplication of audio sounds.

2.2. "Consent" means giving permission or an affirmative reply to a request, whether the consent is written or via some audio recorded method.

2.3. "Governor's Committee on Crime, Delinquency and Correction or Governor's Committee" means the Governor's Committee on Crime Delinquency and Correction established as a state planning agency pursuant to W. Va. Code §15-9-1.

2.4. "Law enforcement officer" means any duly authorized member of a law enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality of the state, other than parking ordinances, including persons employed as campus police officers at state institutions of higher education and those persons employed as rangers by the Hatfield-McCoy Regional Recreation Authority. The term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special conservation officer.

2.5. "Law enforcement official" means the duly appointed chief administrator of a designated law enforcement agency or a duly authorized designee.

2.6. "Law Enforcement Professional Standards Subcommittee or Subcommittee" means the Subcommittee established by W. Va. Code §30-29-2.

2.7. "Operator" means every person who drives or is in actual physical control of a motor vehicle or who is exercising control over or steering a vehicle being towed by a motor vehicle.

2.8. "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway excepting devices moved by human power or used exclusively upon stationary rails or tracks.

2.9. "Vehicle search consent form" means the form developed and approved by the Law Enforcement Professional Standards Sub-Committee of the Governor's Committee on Crime, Delinquency and

Correction.

2.10. "West Virginia law enforcement agency" means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of law of the state or any county or municipality of this state.

§149-6-3. Written Consent.

3.1. A law enforcement officer shall use the Subcommittee approved vehicle search consent form for the documentation of written consent to search in stops of a motor vehicle for alleged violation(s) of a traffic statute or ordinance. A law enforcement officer may also obtain consent through the use of an audio recording or, in circumstances, when the Subcommittee approved form is unavailable, hand written consent may be obtained.

§149-6-4. Vehicle Search Consent Form.

4.1. The Vehicle Search Consent Form shall contain the following components:

4.1.a. The date of the stop;

4.1.b. The time of stop;

4.1.c. The location of stop;

4.1.d. The vehicle's make;

4.1.e. The vehicle's registration number;

4.1.f. The initials of the vehicle's operator consenting to the following statements:

4.1.f.1. I understand that I am being asked by a law enforcement officer for consent to search the vehicle listed in the consent form;

4.1.f.2. I understand that I may refuse to give the law enforcement officer consent to search the vehicle listed in the consent form;

4.1.f.3. I understand that I may withdraw my consent at any time during this search; and

4.1.f.4. I freely and voluntarily give the law enforcement officer consent to search the vehicle listed in the consent form.

4.1.g. The printed name of the person granting the consent; and

4.1.h. The signature of the person granting the consent and the date;

4.1.i. The printed name of the law enforcement officer's name requesting the consent and his or her agency.

4.1.j. The signature of the law enforcement officer signature requesting the consent and the date.

4.2. The law enforcement officer may obtain handwritten consent when the Subcommittee approved form is unavailable but the handwritten consent must include all of the components of Subsection §4.1. of this section.

§149-6-5. Audio or Video Recorded Consent.

5.1. A law enforcement officer may obtain audio or video consent from the vehicle's operator.

5.2. Such audio or video consent must include all of the components of Subsection §4.1. of this rule.

5.2.a. The law enforcement officer shall obtain affirmative responses from the vehicle's operator to the statements set forth in Subdivision §4.1.f. of this rule.