

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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2004 OCT 13 A 9:07

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

Governor's Committee on Crime, Delinquency
and Correction

AGENCY: _____ TITLE NUMBER: 149

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §17G-2-3.

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 5

TITLE OF RULE BEING PROPOSED: Motor Vehicle Stop Data Collection Standards for the
Study of Racial Profiling

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON November 12, 2004 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Jeffrey D. Estep
Deputy Director - Operations
West Virginia Division of Criminal
Justice Services
1204 Kanawha Boulevard, East
Charleston, West Virginia 25301

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.



Authorized Signature

J. Norbert Federspiel, Director

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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

**SERIES 5
MOTOR VEHICLE STOP DATA COLLECTION STANDARDS
FOR THE STUDY OF RACIAL PROFILING**

SUMMARY OF PROPOSED RULE

This legislative rule establishes standards for the collection, reporting and compilation of data, for the purpose of studying the possible practice of racial profiling by law enforcement in West Virginia. This legislative rule further establishes the standards by which this data will be issued.

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

**SERIES 5
MOTOR VEHICLE STOP DATA COLLECTION STANDARDS
FOR THE STUDY OF RACIAL PROFILING**

STATEMENT OF CIRCUMSTANCES

The West Virginia Legislature passed the West Virginia Racial Profiling Data Collection Act (§17G-1) for the purpose of creating a mechanism to identify factors which may indicate possible racial profiling practices in West Virginia through the production of an annual report, and by law enforcement administrators on an ad hoc basis. The Racial Profiling Data Collection Act stipulates *"To facilitate the commencement of data collection on the first day of January, two thousand five, the director of the governor's committee on crime, delinquency and corrections, in consultation with the division of motor vehicles, shall propose emergency and legislative rules"* designed to implement this Act.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Motor Vehicle Stop Data Collection Standards for the Study of Racial Profiling

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: Governor's Committee on Crime, Delinquency and Correction

Address: West Virginia Division of Criminal Justice Services

1204 Kanawha Boulevard, East, Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST					
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

There are no direct costs associated with this rule beyond those costs established and/or considered in code.

3. Objectives of These Rules:

This legislative rule establishes standards for the collection, reporting and compilation of data, for the purpose of studying the possible practice of racial profiling by law enforcement in West Virginia. This legislative rule further establishes the standards by which this data will be issued.

Rule Title: Motor Vehicle Stop Data Collection Standards for the Study of Racial Profiling

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

N/A (see explanation of estimates)

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

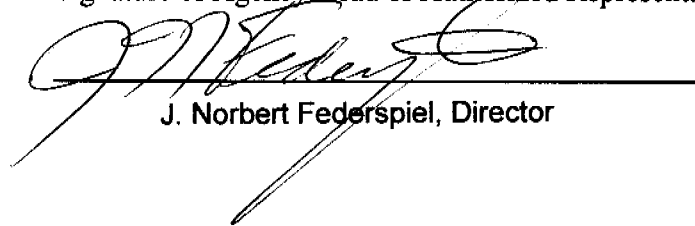
N/A (see explanation of estimates)

C. Economic Impact on Citizens/Public at Large.

N/A (see explanation of estimates)

Date: October 13, 2004

Signature of Agency Head or Authorized Representative:



J. Norbert Federspiel, Director

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: October 13, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Governor's Committee on Crime, Delinquency and
Correction, West Virginia Division of Criminal Justice
Services, 1204 Kanawha Boulevard, East, Charleston,
West Virginia 25301 -- (304) 558-8814

LEGISLATIVE RULE TITLE: _____
Motor Vehicle Stop Data Collection Standards for the Study of
Racial Profiling

1. Authorizing statute(s) citation _____
W. Va. Code §17G-2-3.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
October 13, 2004

b. What other notice, including advertising, did you give of the hearing?
A memorandum was mailed to all chiefs of police and sheriffs, advisory committee members, Law Enforcement Training Subcommittee members, the West Virginia Small Business Development Center, and other individuals whom the promulgating agency deemed to have an interest, advising them of the comment period and where these individuals could obtain a copy or view the rule.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
November 12, 2004

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, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jeffrey D. Estep, Deputy Director - Operations
West Virginia Division of Criminal Justice Services
1204 Kanawha Boulevard, East, Charleston, West Virginia 25301

Phone: (304) 558-8814, Ext. 267/Fax: (304) 558-0391/Email: jestep@wvdcjs.org

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

- 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.

b. Date of hearing or comment period:

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

FILED

TITLE 149
LEGISLATIVE RULE
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION: 08

SERIES 5
MOTOR VEHICLE STOP DATA COLLECTION STANDARDS
FOR THE STUDY OF RACIAL PROFILING
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§149-5-1. General.

1.1. Scope. -- This legislative rule establishes standards for the collection, reporting and compilation of data, for the purpose of studying the possible practice of racial profiling by law enforcement in West Virginia. This legislative rule further establishes the standards by which this data will be issued.

1.2. Authority. -- W. Va. Code §17G-2-3.

1.3. Filing Date. --

1.4. Effective Date. --

§149-5-2. Definitions.

2.1. "Chief executive" means the superintendent of the State Police; the chief conservation officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief conservation officer of natural resources; or the chief of any West Virginia municipal law enforcement agency.

2.2. "County" means any one of the fifty-five major political subdivisions of the state.

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. "Gross data" means aggregate data regarding the information obtained pursuant to §149-5-3.

2.5. "Law enforcement agency" means every West Virginia state, county or municipal agency with officers who are authorized to direct or regulate traffic or to make arrests or issue citations or warnings for violations of traffic laws and ordinances.

2.6. "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, 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.

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

2.8. "Minority group" means individuals of any ethnic descent, including, but not limited to,

African-American, Hispanic, Native American, Middle Eastern, Asian or Pacific Islander.

2.9. "Municipality" means any incorporated town, village or city whose boundaries lie within the geographic boundaries of the state.

2.10. "West Virginia Motor Vehicle Stop Form," or "MVSF," means the form developed and promulgated by the Division of Motor Vehicles for collecting and reporting data for the study of racial profiling as set forth in this rule.

§149-5-3. Data Collection.

3.1. Operator Information Collected. -- Beginning January 1, 2005, each time a law enforcement officer stops a driver of a motor vehicle for a violation of any motor vehicle statute or ordinance, the officer shall obtain certain information based on the officer's visual observation and perception about the nature, duration and outcome of the stop, including, but not limited to, information relating to the perceived racial characteristics of each operator stopped. This information shall be recorded on a West Virginia Motor Vehicle Stop Form. The Motor Vehicle Stop Form shall be completed during or immediately after the vehicle stop or at any time during the law enforcement officer's shift. The Motor Vehicle Stop Form shall be completed before the officer goes off duty and be provided to the West Virginia law enforcement agency which employs the law enforcement officer.

Information relating to the perceived racial characteristics of each operator shall be collected only for a stop resulting from a violation of a motor vehicle statute or ordinance. Information relating to the perceived racial characteristics need not be collected on the operator for a non-violation stop, even if the initial non-violation stop results in a violation. For the purposes of this rule, non-violation stops include, but are not limited to, a checkpoint for driving under the influence, license, registration or seat belts.

3.2. Passenger Information Collected. -- Beginning January 1, 2005, each time a law enforcement officer stops a driver of a motor vehicle for a violation of any motor vehicle statute or ordinance, and a passenger or passengers is searched as a result of this stop, the officer shall obtain certain information based on the officer's visual observation and perception about the passenger or passengers searched, including, but not limited to, information relating to the perceived age, gender and race or minority group of the passenger or passengers searched. This information shall be recorded on the appropriate portions of a West Virginia Motor Vehicle Stop Form. The Motor Vehicle Stop Form shall be completed during or immediately after the vehicle stop or at any time during the law enforcement officer's shift. The Motor Vehicle Stop Form shall be completed before the officer goes off duty and be provided to the West Virginia law enforcement agency which employs the law enforcement officer.

Information relating to the perceived age, gender and race or minority group of the passenger or passengers searched shall only be collected for a stop resulting from a violation of a motor vehicle statute or ordinance. Information relating to the perceived age, gender and race or minority group need not be collected on the passenger or passengers searched for a non-violation stop, even if the initial non-violation stop results in a violation. For the purposes of this rule, non-

violation stops include, but are not limited to, a checkpoint for driving under the influence, license, registration or seat belts.

3.3. Division of Motor Vehicles Single Point of Contact. -- The Commissioner of the West Virginia Division of Motor Vehicles shall designate an agency, program or single point of contact of that Division responsible for the implementation and administration of the provisions of the West Virginia Racial Profiling Data Collection Act and this rule. The Commissioner may, from time to time and at his or her discretion, change this designation. It is the responsibility of the Division of Motor Vehicles to notify all law enforcement agencies of this designation.

3.4. West Virginia Motor Vehicle Stop Form (MVSF). -- The Division of Motor Vehicles shall develop the MVSF. This form shall:

3.4.a. Contain all components as listed in §149-5-3.5.; and,

3.4.b. At a minimum, be developed in hard copy format; however, the Division of Motor Vehicles may, in its discretion, develop the form to allow a law enforcement agency the ability to complete and/or submit the required information contained on the MVSF in an electronic format.

3.5. MVSF Components. -- The information to be collected and/or contained on the MVSF shall include the following:

3.5.a. MVSF identifier. -- This component shall be a unique identifier (i.e. numeric, alphanumeric, barcode, etc.) which will enable one MVSF to be distinguishable from all other MVSFs which have been issued from the Division of Motor Vehicles.

3.5.b. Law enforcement agency identifier. -- This component shall enable an individual law enforcement officer to indicate his or her law enforcement agency's complete Originating Agency Identifier (ORI number), or an abbreviated version of that identifier singularly unique to that particular law enforcement agency.

3.5.c. Law enforcement officer primary assignment. -- This component shall enable an individual law enforcement officer to indicate his or her primary activities at the time of stop and be limited to the following:

3.5.c.1. Patrol;

3.5.c.2. Traffic;

3.5.c.3. Investigation;

3.5.c.4. Drug Task Force;

3.5.c.5. Violent Crime Task Force;

3.5.c.6. Special Event; and,

3.5.c.7. Other.

3.5.d. Law enforcement officer identifier. -- This component shall enable an individual law enforcement officer to uniquely identify himself or herself within his or her law enforcement agency. It is the responsibility of the chief executive or law enforcement official of the law enforcement agency to assign a unique four (4) digit identifier to all law enforcement officers within his or her agency to record on the MVSF.

3.5.e. Date of stop. -- This component shall enable an individual law enforcement officer to indicate the month, day and year of the stop.

3.5.f. Time of stop. -- This component shall enable an individual law enforcement officer to indicate the approximate hour and minute of the stop.

3.5.g. Duration of the stop. -- This component shall enable an individual law enforcement officer to indicate the approximate duration of the stop in hours and minutes.

3.5.h. License check. -- This component shall enable an individual law enforcement officer to indicate whether a license check was conducted on the vehicle prior to the stop.

3.5.i. County of stop. -- This component shall enable an individual law enforcement officer to indicate the county in which the stop took place.

3.5.j. Location of stop. -- This component shall enable individual law enforcement officers to indicate a detailed location in which the stop took place and be divided into a "census tract" category and a "census block" category.

3.5.j.1. The census tract category shall enable individual law enforcement officers to indicate the complete census tract identifier in which the stop took place.

3.5.j.2. The census block category shall enable individual law enforcement officers to indicate the complete census block identifier in which the stop took place.

3.5.j.3. It is the responsibility of the chief executive or law enforcement official of the law enforcement agency to provide appropriate maps to his or her officers which contain census tract and census block identification numbers to record on the MVSF.

3.5.k. Type of roadway. -- This component shall enable an individual law enforcement officer to indicate whether the stop took place on an interstate, US route, West Virginia route, city street, turnpike or other location.

3.5.l. Stop directed by. -- This component shall enable an individual law enforcement officer to indicate whether:

3.5.l.1. The stop was initiated solely by the officer;

3.5.l.2. The stop was made at the request of a citizen;

3.5.l.3. The stop was made at the direction of a supervisor; or,

3.5.l.4. The stop was made by direction of dispatch.

3.5.m. The traffic violation or violations alleged to have been committed that led to the stop. -- This component shall be divided into a "vehicle code violation" category and a "penal code violation" category.

3.5.m.1. The vehicle code violation category shall enable an individual law enforcement officer to indicate the primary and secondary reasons for the stop and be limited to the following:

3.5.m.1.A. Red light/stop sign;

3.5.m.1.B. Speeding (<10mph over);

3.5.m.1.C. Speeding (>10mph over);

3.5.m.1.D. Lane violation/failure to signal;

3.5.m.1.E. Other moving violation; or,

3.5.m.1.F. Other nonmoving violation.

3.5.m.2. The penal code violation category shall enable an individual law enforcement officer to indicate the primary and secondary reasons for the stop and be limited to the following:

3.5.m.2.A. Nuisance/vice;

3.5.m.2.B. Suspicious circumstances;

3.5.m.2.C. Be on the lookout (BOLO)/wanted persons;

3.5.m.2.D. Property crime;

3.5.m.2.E. Violent crime; or,

3.5.m.2.F. Local ordinance.

3.5.n. Disposition. -- This component shall enable an individual law enforcement officer to indicate the disposition of the stop and be limited to the following:

3.5.n.1. Arrest;

- 3.5.n.2. Criminal citation;
- 3.5.n.3. Traffic citation;
- 3.5.n.4. Written warning;
- 3.5.n.5. Verbal warning; or,
- 3.5.n.6. No action.

3.5.o. The perceived identifying characteristics of the operator stopped, including:

3.5.o.1. Gender. -- This component shall enable an individual law enforcement officer to indicate whether the operator was male or female.

3.5.o.2. Race. -- This component shall enable an individual law enforcement officer to indicate whether the operator was:

- 3.5.o.2.A. White (W);
- 3.5.o.2.B. Black/African American (B/AA);
- 3.5.o.2.C. Asian/Pacific Islander (A/PI);
- 3.5.o.2.D. Native American (NA);
- 3.5.o.2.E. Middle Eastern (ME); or,
- 3.5.o.2.F. Other (Oth).

3.5.o.3. Ethnicity. -- This component shall enable an individual law enforcement officer to indicate whether the operator was:

- 3.5.o.3.A. Hispanic/Latino (H/L); or,
- 3.5.o.3.B. Nonhispanic/Latino (NH/L).

3.5.o.4. Age. -- This component shall enable an individual law enforcement officer to indicate the age of the operator stopped.

3.5.p. Residence (ZIP code). -- This component shall enable an individual law enforcement officer to indicate the place of residence of the operator stopped based on ZIP code.

3.5.q. Number of passengers. -- This component shall enable an individual law enforcement officer to indicate whether there were no passengers in the vehicle stopped, or whether there was one (1), two (2), three (3), four (4), or five (5) or more passenger(s) in the vehicle stopped.

3.5.r. Whether a search was performed as a result of the stop and, if a search was performed:

3.5.r.1. Whether the officer requested consent to search.

3.5.r.2. The number of passengers searched. -- This component shall enable an individual law enforcement officer to indicate whether there were no passengers searched in the vehicle stopped, or whether there was one (1), two (2), three (3), four (4), or five (5) or more passenger(s) searched in the vehicle stopped.

3.5.r.3. Search authority. -- This component shall enable an individual law enforcement officer to indicate by what authority the search was conducted and be limited to:

- 3.5.r.3.A. Consent;
- 3.5.r.3.B. Reasonable Suspicion/Weapon;
- 3.5.r.3.C. Incident to Arrest;
- 3.5.r.3.D. Inventory;
- 3.5.r.3.E. Probable Cause;
- 3.5.r.3.F. Plain View;
- 3.5.r.3.G. Probation/Parole Waiver; and,
- 3.5.r.3.H. Other.

3.5.r.4. Mode of search. -- This component shall enable an individual law enforcement officer to indicate what type of search took place and be limited to:

- 3.5.r.4.A. Officer;
- 3.5.r.4.B. Canine Unit;
- 3.5.r.4.C. Portable Breath Analyzer;
- 3.5.r.4.D. Drug Test Kit;
- 3.5.r.4.E. Warrant Check; and,
- 3.5.r.4.F. Other.

3.5.r.5. Persons/items searched. -- This component shall enable an individual law

enforcement officer to indicate specifically what was searched and be limited to:

- 3.5.r.5.A. Vehicle;
- 3.5.r.5.B. Driver;
- 3.5.r.5.C. Passenger(s);
- 3.5.r.5.D. Personal Effects; and,
- 3.5.r.5.E. No Search Conducted.

3.5.r.6. Contraband found. -- This component shall enable an individual law enforcement officer to indicate whether any contraband was discovered or seized in the course of the search and the type of any contraband discovered or seized, and be limited to:

- 3.5.r.6.A. None;
- 3.5.r.6.B. Illegal Drugs;
- 3.5.r.6.C. Drug Paraphernalia;
- 3.5.r.6.D. Alcohol;
- 3.5.r.6.E. Firearm(s);
- 3.5.r.6.F. Other Weapon(s);
- 3.5.r.6.G. Currency;
- 3.5.r.6.H. Stolen Property; and,
- 3.5.r.6.I. Other.

3.5.s. Passenger information. -- If a search was of a passenger(s) in the motor vehicle, this component shall enable an individual law enforcement officer to indicate the perceived gender, race, ethnicity and age of the passenger(s) searched. This component shall enable the individual law enforcement officer to indicate this information for up to four (4) passengers searched.

3.5.t. Instructions detailing how an individual law enforcement officer should complete and submit the form. These instructions may be included on the MVSF itself, or provided as an attachment to law enforcement agencies or officers.

3.6. MVSF Distribution. -- The Division of Motor Vehicles shall distribute the MVSF to all West Virginia law enforcement agencies in hard copy format on a monthly basis. The Division of Motor Vehicles may distribute the MVSF on a bimonthly, quarterly, semiannual or annual basis to a

particular agency if the Division of Motor Vehicles determines, in its discretion, that the needs of that agency do not necessitate monthly delivery. The number of forms distributed to a law enforcement agency shall allow for the reporting of data for the greatest anticipated amount of motor vehicle stops for that agency, for any given calendar month, regardless of whether the forms are provided on a monthly, bimonthly, quarterly, semiannual or annual basis. Law enforcement agencies may request additional MVSFs from the Division of Motor Vehicles as the need arises.

3.7. Additional Responsibilities of the Division of Motor Vehicles. -- It is the responsibility of the Division of Motor Vehicles to detect missing, incomplete, or erroneous data submitted pursuant to the requirements of this rule. In furtherance of this responsibility, the Division of Motor Vehicles shall establish a mechanism to:

3.7.a. Periodically review data submitted on the MVSF;

3.7.b. Ensure that data submitted on the MVSF is correct and usable pursuant to the requirements of this rule;

3.7.c. Return incomplete or rejected MVSFs to law enforcement agencies;

3.7.d. Remove duplicate data; and,

3.7.e. Perform any other measures necessary to ensure the provisions of this rule are carried out.

§149-5-4. Data Reporting.

4.1. Reporting. -- Beginning January 1, 2005, each law enforcement agency shall submit all completed MVSFs as required by this rule to the Division of Motor Vehicles, via United States Postal Service or any other reputable mail delivery service, hand-delivery or, and at the discretion of the Division of Motor Vehicles, electronically.

4.2. Reporting Frequency. -- Each law enforcement agency shall submit all MVSFs as required by this rule on a monthly basis. MVSFs must be received by the Division of Motor Vehicles no later than close of business, normal operating hours, on the fifteenth (15th) day following the end of the reporting calendar month.

4.3. MVSFs Condition and Usability. -- All MVSFs shall be completed correctly, be free of dirt and debris, and be submitted in usable condition for the purposes outlined in this rule.

4.4. MVSF Completion Training. -- On or after the effective date of this rule, all law enforcement officers shall, prior to duty, and as deemed appropriate by the chief executive or law enforcement official of the law enforcement agency with regard to time and content, receive training on the completion of the MVSF. The law enforcement agency shall develop and deliver this training based on the instructions, as provided by the Division of Motor Vehicles pursuant to §149-5-3.5.t. Upon completion of this training, law enforcement officers must be able to successfully complete and submit the MVSF in a manner usable for the purposes of this rule. Additional and/or ongoing

training may be required by the law enforcement agency or by the Division of Motor Vehicles if problematic reporting is identified.

4.5. It is the responsibility of the chief executive or law enforcement official of the law enforcement agency to ensure that the requirements of this section are met. In furtherance of this responsibility, the chief executive or law enforcement official shall periodically audit and review MVSFs submitted by law enforcement officers within his or her agency to ensure that the facts of the stops taking place are not being intentionally misrepresented.

§149-5-5. Non-compliance of Reporting.

5.1. Non-compliance. -- If a law enforcement agency fails to comply with the provisions of §149-5-4., that law enforcement agency shall be non-compliant. The Division of Motor Vehicles shall notify the agency by certified mail of its failure to comply and require the agency to comply within fifteen (15) calendar days. If the law enforcement agency fails to comply within this fifteen (15) day extension period, the Division of Motor Vehicles shall recommend to the Governor in writing, that state controlled funds appropriated to the non-compliant law enforcement agency be withheld until the requirements of §149-5-4. are met. At that time, the Governor may withhold state controlled funds appropriated to the non-compliant law enforcement agency.

§149-5-6. Receipt and Retention of MVSF.

6.1. MVSF Receiving and Retaining. -- The Division of Motor Vehicles shall establish a written policy designed to address the reasonably foreseeable complications which may arise as a result of receiving and retaining MVSFs submitted by a law enforcement agency, whether in hard copy or electronic format. This policy may change, from time to time and at the discretion of the Division of Motor Vehicles, as necessity dictates. This policy shall include, but not be limited to:

6.1.a. A mechanism for identifying the time, day, date and year the MVSF was received by the Division of Motor Vehicles;

6.1.b. A mechanism for maintaining accurate and easily accessible data regarding the reporting habits of individual law enforcement agencies; and,

6.1.c. The identification of an appropriate and logistically feasible time period to retain MVSFs submitted in hard copy format; as well as any data stored electronically as a result of this rule.

§149-5-7. Individual Law Enforcement Agency Data Request and Release.

7.1. Individual Agency Data Release Request. -- The chief executive or law enforcement official of a law enforcement agency may request from the Division of Motor Vehicles, release of data regarding his or her law enforcement agency and law enforcement officers only. This request must be in writing and must be received by the Division of Motor Vehicles no earlier than thirty (30) days following the end of the calendar month for which individual agency data is being requested. The Division of Motor Vehicles shall provide the individual agency data to the requesting agency no

later than thirty (30) calendar days following receipt of the request.

7.2. Individual Agency Data Release. -- Data regarding individual law enforcement agencies and officers shall be available for release from the Division of Motor Vehicles, to a requesting chief executive or law enforcement official of that law enforcement agency. At a minimum, this data shall be organized in such a manner as to allow the chief executive or law enforcement official of a law enforcement agency the ability to review the information collected from the MVSF for his or her particular agency and officers. This information shall be grouped for periods covering at least one calendar month, for each month of a year. Data regarding individual law enforcement agencies and officers may be released for other varying time periods at the discretion of the Division of Motor Vehicles.

§149-5-8. Data limitations and individual officer anonymity and exemption.

8.1. Any and all data collected, reported, compiled and issued as a result of this rule will be utilized expressly for the purposes outlined in this rule.

8.2. Except as provided for in §149-5-7., no individual officer information may be released in any manner to any entity, and the Division of Motor Vehicles, the Governor's Committee on Crime, Delinquency and Correction, and any chief executive or law enforcement official of a law enforcement agency shall make appropriate safeguards to protect the identity of individual law enforcement officers collecting data required by this rule at all times.

§149-5-9. Methodology of Data Collection and Analysis of Data.

9.1. Methodology. -- Data will be collected and compiled pursuant to the provisions established in this rule.

9.2. Analysis of Data. -- Data will be analyzed in a manner appropriate for fulfilling the requirements set forth in subsection 10.2. of this rule.

§149-5-10. Governor's Committee on Crime Delinquency and Correction Annual Report.

10.1. Protocols for reporting collected data by the Division of Motor Vehicles. -- On or before the sixteenth day of January, two thousand six, and each year thereafter, the Commissioner of the Division of Motor Vehicles shall provide the Executive Director of the Governor's Committee on Crime, Delinquency and Correction, in electronic delimited text format, the data collected from the MVSF. In addition to the data collected from the MVSF, the Commissioner of the Division of Motor Vehicles shall provide other data deemed necessary by the Governor's Committee on Crime, Delinquency and Correction for fulfilling the requirements set forth in subsection 10.2. of this rule. This data shall include, but not be limited to:

10.1.a. Estimates of the number of vehicles traveling on the public highways; and,

10.1.b. Demographic characteristics of registered vehicle owners and/or licensed drivers by zip codes and/or other geographical identifiers.

10.2. Governor's Committee Annual Report. -- On or before the first day of February, two thousand six and each year thereafter, the Executive Director of the Governor's Committee on Crime, Delinquency and Correction shall publish a public report of the data collected and provide a copy thereof to all law enforcement agencies subject to this rule in hard copy or electronic format. A copy of the report and analysis of the data collected shall also be provided to the Governor and to the Joint Committee on Government and Finance. At a minimum, this public report shall include, but not be limited to, the following information resulting from the provisions of this rule:

10.2.a. An executive summary which summarizes the findings of the report;

10.2.b. The number of motor vehicle stops and searches of motor vehicles occupied by members of a perceived minority group;

10.2.c. The number of motor vehicle stops and searches of motor vehicles occupied by persons who are not members of a minority group;

10.2.d. The population of minorities in the areas where the stops occurred;

10.2.e. Estimates of the number of all vehicles traveling on the public highways where the stops occurred;

10.2.f. Factors to be included in any evaluation that the data may indicate racial profiling, racial stereotyping or other race-based discrimination or selective enforcement; and,

10.2.g. Other data deemed appropriate by the Governor's Committee on Crime, Delinquency and Correction for the analysis of the protection of constitutional rights.

149CSR5 ATTACHMENTS

- 1.) *EXAMPLE* West Virginia Motor Vehicle Stop Form (MVSF)
- 2.) *EXAMPLE* West Virginia MVSF Instructions

West Virginia Motor Vehicle Stop Form (MVSF)

ORI Number (Your agency)

0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9

Officer Primary Assignment

① Patrol
 ② Traffic
 ③ Investigation
 ④ Drug Task Force
 ⑤ Violent Crime TF
 ⑥ Special Event
 ⑦ Other

Officer Identifier

0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9

STOP INFORMATION

Date of Stop

Month 0 1 0 1 2 3 4 5 6 7 8 9
 Day 0 1 2 3 0 1 2 3 4 5 6 7 8 9
 Year 0 1 0 1 2 3 4 5 6 7 8 9

Time of Stop

Hour 0 1 2 0 1 2 3 4 5 6 7 8 9
 Minute 0 1 2 3 4 5 0 5

Duration of Stop

Hours 0 1 2 3
 Minutes 0 1 2 3 4 5 0 5

License Check (Prior to stop)

① Yes ② No

County of Stop

0 1 2 3 4 5
 0 1 2 3 4 5 6 7 8 9

Location of Stop

Census tract

0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9

Census block

0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9
 0 1 2 3 4 5 6 7 8 9

Type of Roadway (Select one)

① Interstate ④ City Street
 ② US Route ⑤ Turnpike
 ③ WV Route ⑥ Other

Stop Directed by (Select one)

① Self-initiated ③ Supervisor Direction
 ② Citizen Request ④ Direct Dispatch

Reason for Stop (P = Primary, S = Secondary)

Vehicle Code Violation

P S Red Light/Stop Sign
 P S Speeding (<10mph over)
 P S Speeding (>10mph over)
 P S Lane violation/failure to signal
 P S Other Moving violation
 P S Other Nonmoving violation

Penal Code Violation

P S Nuisance/Vice
 P S Suspicious Circum
 P S BOLO/Wanted Per
 P S Property Crime
 P S Violent Crime
 P S Local Ordinance

Disposition (Most serious)

① Arrest ④ Written Warning
 ② Criminal Citation ⑤ Verbal Warning
 ③ Traffic Citation ⑥ No Action

DRIVER CHARACTERISTICS

Gender ① Male ② Female

Race

- ① White (W)
- ② Black/African Am (B/AA)
- ③ Asian/Pacific Islander (A/PI)
- ④ Native American (NA)
- ⑤ Middle Eastern (ME)
- ⑥ Other (Oth)

ZIP Code (Driver's residence)

①②③④⑤⑥⑦⑧⑨
 ①②③④⑤⑥⑦⑧⑨
 ①②③④⑤⑥⑦⑧⑨
 ①②③④⑤⑥⑦⑧⑨
 ①②③④⑤⑥⑦⑧⑨

Ethnicity

- ① Hispanic/Latino (H/L)
- ② Nonhispanic (NH/L)

Age

①②③④⑤⑥⑦⑧⑨
 ①②③④⑤⑥⑦⑧⑨

Number of Passengers ①②③④ ⑤ 5 or more

SEARCH INFORMATION

Consent Requested to Search ① Yes ② No

Number of Passengers Searched ①②③④ ⑤ 5 or more

Search Authority (Select one)

- ① Consent
- ② Reasonable Susp/Weapon
- ③ Incident to Arrest
- ④ Inventory
- ⑤ Probable Cause
- ⑥ Plain View
- ⑦ Prob/Parole Waiver
- ⑧ Other

Mode of Search (Mark all that apply)

- ① Officer
- ② Canine Unit
- ③ Portable Breath Analyzer
- ④ Drug Test Kit
- ⑤ Warrant Check
- ⑥ Other

Persons/Items Searched (Mark all that apply)

- ① Vehicle
- ② Driver
- ③ Passenger(s)
- ④ Personal Effects
- ⑤ No search conducted

Contraband Found (Mark all that apply)

- ① None
- ② Illegal Drugs
- ③ Drug Paraphernalia
- ④ Alcohol
- ⑤ Firearm(s)
- ⑥ Other Weapon(s)
- ⑦ Currency
- ⑧ Stolen Property
- ⑨ Other

PASSENGER INFORMATION (Complete only if search conducted)

Gender

Passenger #1 ①M ②F Passenger #3 ①M ②F
 Passenger #2 ①M ②F Passenger #4 ①M ②F

Race

Passenger #1 ①W ②B/AA ③A/PI ④NA ⑤ME ⑥Oth
 Passenger #2 ①W ②B/AA ③A/PI ④NA ⑤ME ⑥Oth
 Passenger #3 ①W ②B/AA ③A/PI ④NA ⑤ME ⑥Oth
 Passenger #4 ①W ②B/AA ③A/PI ④NA ⑤ME ⑥Oth

Ethnicity

Passenger #1 ①H/L ②NH/L Passenger #3 ①H/L ②NH/L
 Passenger #2 ①H/L ②NH/L Passenger #4 ①H/L ②NH/L

Age

Passenger #1 ①②③④⑤⑥⑦⑧⑨ ①②③④⑤⑥⑦⑧⑨
 Passenger #2 ①②③④⑤⑥⑦⑧⑨ ①②③④⑤⑥⑦⑧⑨
 Passenger #3 ①②③④⑤⑥⑦⑧⑨ ①②③④⑤⑥⑦⑧⑨
 Passenger #4 ①②③④⑤⑥⑦⑧⑨ ①②③④⑤⑥⑦⑧⑨

EXAMPLE INSTRUCTIONS

WEST VIRGINIA MOTOR VEHICLE STOP FORM (MVSF) - INSTRUCTIONS -

Pursuant to §149-5-4.4. of the West Virginia Code of State Rules, on or after January 1, 2005, all law enforcement officers must, prior to duty, receive training on how to properly complete and submit the MVSF. This training must be developed by the chief executive or law enforcement official (or designated individual) of the law enforcement agency. Time and content of the training are at the discretion of those developing and/or administering the training; however, the law enforcement agency must use these instructions as a guide when developing and delivering the training. Following completion of the training, law enforcement officers must be able to successfully complete and submit the MVSF pursuant to these instructions and 149CSR5.

The MVSF must be completed using a number two (2) pencil or black pen to darken the components (bubbles) contained on the form. MVSFs must remain free of wrinkles, creases and dirt/debris at all times. **All** applicable bubbles on the form are to be completely darkened, taking care to only darken the individual bubble and not go outside the lines of that bubble.

By darkening the corresponding number(s) and/or letter(s) on the MVSF, the law enforcement officer should indicate the following:

Originating Agency Identifier (Your agency): The last seven (7) digits of the law enforcement agency's Originating Agency Identifier (ORI). All agencies will exclude the first two letters "WV" from the ORI number. West Virginia State Police agencies should substitute the "WSP" of their ORI number with "977."

Officer primary assignment: The officer's "primary" assignment *at the time of the stop*.

Officer identifier: The four (4) digit identifier (assigned by the chief executive or law enforcement official) of the individual officer completing the MVSF.

Date of stop: The month, day and year of the stop. For example, February 16, 2005, would be indicated as follows:

Month: 01 0123456789
Day: 0123 0123456789
Year: 01 0123456789

Time of stop: Utilizing military time, the approximate

hour and minute of the stop. For example, 9:30 p.m. would be indicated as follows:

Hour: 012 0123456789
Minute: 012345 05

Duration of the stop: How long, in hours and/or minutes, the stop actually lasted. For example, a stop which took approximately one (1) hour and forty-five (45) minutes would be indicated as follows:

Hour: 0123
Minute: 012345 05

License check: Whether or not a license check was conducted on the vehicle *prior to the stop*.

County of stop: The County in which the stop took place (all fifty-five (55) West Virginia Counties are coded numerically). For example, Pendleton County (#36) would be entered as follows:

012345
0123456789

Location of stop: Using U.S. Census tract and block information, record the approximate location of the traffic stop. (Note: county, tract, and block MUST be identified to determine approximate stop location).

Census tract: Enter the six-digit tract number that corresponds to the census tract where the stop took place. *All six (6) digits must be entered. Blank digits should be zero-filled.* For example, an officer would enter "0007.00" for a stop made in Census track "7." This would be indicated on the form as follows:

0123456789
0123456789
0123456789
0123456789

0123456789
0123456789

For a traffic stop made in census track "2952.02", the officer would simply enter "2952.02" as:

0123456789
0123456789
0123456789
0123456789

0123456789
0123456789

EXAMPLE INSTRUCTIONS

Census block: Enter the four (4) digit block number that corresponds to the census block (within the census tract identified above) where the traffic stop took place. For example, an officer would enter "3011" for a stop made in the City of Charleston between 1st and 2nd Avenues & Stockton and Bream Streets (Note: block "3011" is within census tract "7").

Census track and block maps must be issued by the chief executive or law enforcement official of each agency. Agency representatives may contact the U.S. Census Bureau for information on obtaining maps for specific jurisdictions or the WV Division of Motor Vehicles for guidance.

Type of roadway: The type of roadway where the stop took place. *Select one.*

Stop directed by: The circumstance that initiated the stop. *Select one.*

Self-initiated: Stop solely on officer's own initiative (e.g., traffic stop while on patrol).

Citizen request: Stop initiated by direct citizen contact or request.

Supervisor direction: Stop based on special detail or assignment (e.g., hot-spot enforcement, targeted enforcement area, DUI reduction initiative).

Direct dispatch: Stop initiated by dispatcher request.

Reason(s) for stop: The primary (P) and secondary (S) vehicle and/or penal code violation(s) which led to the traffic stop. *Select only one primary and, if present, only one secondary reason for the stop.*

Disposition: The *most serious* disposition or outcome of the stop. *Select one.*

Gender: The gender of the operator stopped (e.g., male or female).

Race: The perceived race of the operator stopped. *Select one.*

ZIP code (Driver's Residence): The place of residence for the operator of the vehicle stopped based on ZIP code retrieved from the operator's driver's license. For example, if the operator of the vehicle is from Huntington, WV and resides in the ZIP code 25701, the officer would enter the information as follows:

0123456789
0123456789
0123456789
0123456789
0123456789

Ethnicity: The perceived ethnicity of the operator stopped.

Age: The perceived age of the operator stopped. For example, 25 years of age would be indicated as follows:
0123456789
0123456789

Number of passengers: The number of passengers in the vehicle at time of stop.

Consent requested to search: Whether or not the officer requested consent to search.

Number of passengers searched: The number of passengers searched which were in the vehicle at the time of the stop.

Search authority: The legal authority for which the search was conducted. *Select one.*

Mode of search: The manner in which the search took place. *Mark all that apply.*

Persons/items searched: What was searched. *Mark all that apply.*

Contraband found: The contraband (if any) discovered or seized due to the search. *Mark all that apply.*

Passenger information: Complete this section ONLY if a "search" took place of a passenger(s) in the motor vehicle.

Record the perceived gender, race, ethnicity, and age of the passenger(s) searched. This information will be recorded for each individual passenger searched, up to four (4) passengers. *Mark only one for each.*

END.

Upon completion, the MVSF should be submitted to the chief executive or law enforcement official (or designated individual) of the law enforcement agency to be submitted pursuant to the requirements established in 149CSR5.