

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

Form #7

Do Not Mark In This Box
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FILED

2004 NOV 23 A 9:06

OFFICE WEST VIRGINIA
SECRETARY OF STATE
Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Governor's Committee on Crime, Delinquency and Correction
(West Virginia Division of Criminal Justice Services) TITLE NUMBER: 149

CITE AUTHORITY: W. Va. Code §17G-2-3.

EMERGENCY 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: Series 5

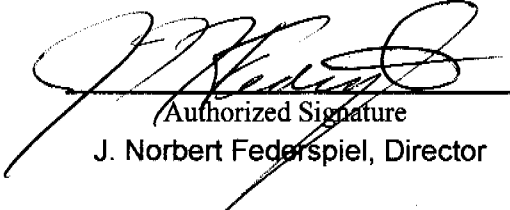
TITLE OF RULE BEING PROPOSED: Motor Vehicle Stop Data Collection Standards for the Study of
Racial Profiling

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

West Virginia Code §17G-2-3.(a). states "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 in accordance with article three, chapter twenty-nine-a of this code."

Use additional sheets if necessary


Authorized Signature
J. Norbert Federspiel, Director



Local 2019

West Virginia Troopers Association, Inc.

210 Chesapeake Avenue • Charleston, West Virginia 25311
Telephone 345-WVTA • Fax 345-9884

wvtaoffice@aol.com

www.wvtroopers.org

November 9, 2004



OFFICE WEST VIRGINIA
SECRETARY OF STATE

2004 NOV 23 A 11: 56

FILED

West Virginia Secretary of State
State Capitol
Kanawha Boulevard
Charleston, WV 25305

ATT: Judy Cooper (via Fax)

RE: Racial Profiling Data Collection Rule

Dear Secretary of State:

This correspondence pertains to the Emergency Legislative Rule §149CSR5, which is a result of West Virginia Code §17G-2-3 that was made into law during the last legislative session. I hereby wish to file the following comments:

As you are aware, all police officers are going to be required to complete data forms for vehicle stops that are made. Most of this code and rule requirement is very similar to what the West Virginia State Police, as an agency has already been doing for the last couple of years using our traffic stop data forms. There are some fields required on the proposed form that are in addition to what the West Virginia State Police require, but most of these are reasonable and will be easy for an officer to complete.

There is, however, one area that causes great concern: Location of Stop. As currently proposed, the rule calls for this to be recorded utilizing census tract and census block numbers. Further, the individual agencies will have the responsibility of obtaining and supplying the census information for it's officers. This is contained in sections 3.5.j.1 - 3.5.j.2 of the proposed rule.

In my opinion this proposal is unrealistic and overly burdensome for the following reasons:

In order for an officer to record the location of a stop he will have to have access to the census tract/block information. This is in a map format. It takes several maps to cover an entire county. As an example, Wirt County has 11 census block maps, Kanawha County has 57. These maps are each 36 inches by 33 inches in size. It is impractical to suggest that an officer stationed in Kanawha County carry with him 57 maps of this size which he has to pull out and look through each and every time he makes a traffic stop.

The maps could be reduced in size but this would necessitate an officer now carrying around a notebook several inches thick that he would have to look through every time a stop was made. Currently a Trooper can complete a traffic stop data form used by the State Police in about 30 seconds. If this information is required it could easily take 2 or 3 or more minutes to complete a form. Additionally, there is the safety issue of the officer looking through maps in order to complete this form while a violator is stopped and the officer is sitting along the road.

Also, there is the cost consideration. A complete set of census block maps for the state costs over \$6,000.00. The maps are available in DVD format for \$70.00, but this serves no purpose to an officer in his cruiser. The maps can be downloaded for free but the agency will still have the expense of copying the maps for each officer.

Using the example of Kanawha County, it could easily take approximately 300 sheets of standard paper to reproduce the one set of maps for that county. Each officer will need their own set of maps, so it is not difficult to see that this will amount to a significant dollar amount.

To better illustrate the unrealistic nature of this, let me use this example: Captain D. W. Skeen lives 9 miles east of Ripley in Jackson County and is stationed in South Charleston at Department Headquarters. During his commute he stops vehicles. He travels through 154 census blocks during this trip. He would have to have access to all of these numbers in order to complete this form. Additionally, if he would take an alternate route he would pass through additional census blocks and would have to have those numbers also.

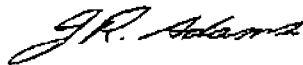
For a municipality this issue is not as great of a concern because the number of maps is less, although the time required and safety issues are still valid. For agencies that cover larger areas and multiple counties this requirement is impractical and burdensome.

There is one additional area I wish to address concerning this. Census blocks vary in size, the greater the population the smaller the block is. As an example, the town of Elizabeth in Wirt County has 30 census blocks. My question would be is the demographic make up of the east side of Elizabeth that much different than the west side? If not, then what does it matter which of these census block numbers is used? And if it doesn't matter, then why require it? In some larger metropolitan areas this may not be the case, but in a large percentage of the state the demographics do not vary so significantly that it necessitates requiring the location of the stop to be located to within an area that may only be 200 yards by 200 yards in size or even one half mile by one half mile in size.

The West Virginia Deputy Sheriffs Association and Fraternal Order of Police also share the above concerns as indicated by the signatures of their Presidents, respectively, Terry Miller and Steve Walker, below.

If you have any questions, please feel free to contact me at (304) 288-7988.

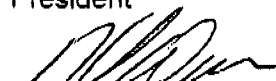
Sincerely,



Joseph R. Adams
President



Terry Miller, President
West Virginia Deputy Sheriffs Association



Steve Walker, President
Fraternal Order of Police

cc: Jeffrey D. Estep, Div. of Criminal Services



EMERGENCY RULE QUESTIONNAIRE

DATE: November 23, 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 Blvd.,

East, Charleston, WV 25301

Contact: Jeffrey D. Estep. Phone: (304) 558-8814, Ext. 267/Email: jestep@wvdcjs.org

Motor Vehicle Stop Data Collection Standards for the Study of

EMERGENCY RULE TITLE: Racial Profiling

1. Date of filing November 23, 2004

2. Statutory authority for promulgating emergency rule:

W. Va. Code §17G-2-3

3. Date of filing of proposed legislative rule: November 23, 2004

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? _____
No

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

There are no facts and circumstances which would make this emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

West Virginia Code §17G-2-3.(a). states "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 in accordance with
article three, chapter twenty nine a of this code." THIS EMERGENCY RULE MUST BE EFFECTIVE JANUARY 1, 2005.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

There are no facts and circumstances which would make this emergency rule necessary
to prevent substantial harm to the public interest.

**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. *THIS EMERGENCY RULE MUST BE EFFECTIVE JANUARY 1, 2005.*

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: 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
Attention: Jeffrey D. Estep

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

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There are no costs associated with the filing of this rule beyond those costs currently established and/or considered in code.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

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

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

There are no costs associated with the filing of this rule beyond those costs currently established and/or considered in code. Enacting legislation has passed which created any fiscal impact. This rule does not create any additional impact (i.e. fees, surcharges, etc.).

Date: November 23, 2004

Signature of Agency Head or Authorized Representative



J. Norbert Federspiel, Director

FILED

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

2004 NOV 23 A 9:06

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 be listed as "Optional" on the MVSF and 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 shall be at the discretion of the chief executive or law enforcement official of the law enforcement agency to require that their officers complete this component of the MVSF. Should this requirement be issued, 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

These attachments represent examples of products to be created by the West Virginia Division of Motor Vehicles as a result of the rule and are intended for informational purposes ONLY. The final products generated may be different from those attached.

- 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 6 9

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 (Optional)

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

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

Stop Directed by (Select one)

- 1 Self-initiated
- 2 Citizen Request
- 3 Supervisor Direction
- 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
- 2 Criminal Citation
- 3 Traffic Citation
- 4 Written Warning
- 5 Verbal Warning
- 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)

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

Ethnicity

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

Age

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

Number of Passengers 0 1 2 3 4 5 5 or more

SEARCH INFORMATION

Consent Requested to Search 1 Yes 2 No

Number of Passengers Searched 0 1 2 3 4 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 0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9
 Passenger #2 0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9
 Passenger #3 0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9
 Passenger #4 0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9

- EXAMPLE INSTRUCTIONS -
FINAL INSTRUCTIONS TO BE PRODUCED AND PROMULGATED BY THE
WEST VIRGINIA DIVISION OF MOTOR VEHICLES

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: The completion of this individual component of the MVSF is optional, at the discretion of the chief executive or law enforcement official of the law enforcement agency. *If* the chief executive or law enforcement official directs their law enforcement officers to complete the "location of stop" component of the MVSF, the officer should utilize the instructions below.

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 -
**FINAL INSTRUCTIONS TO BE PRODUCED AND PROMULGATED BY THE
WEST VIRGINIA DIVISION OF MOTOR VEHICLES**

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").

If the requirement to collect census block and tract information is issued, 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 block identification numbers to record on the MVSF. 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.