

**WEST VIRGINIA
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Form #4

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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

CITE AUTHORITY: W. Va. Code §17G-2-3.

AMENDMENT TO AN EXISTING RULE: YES NO

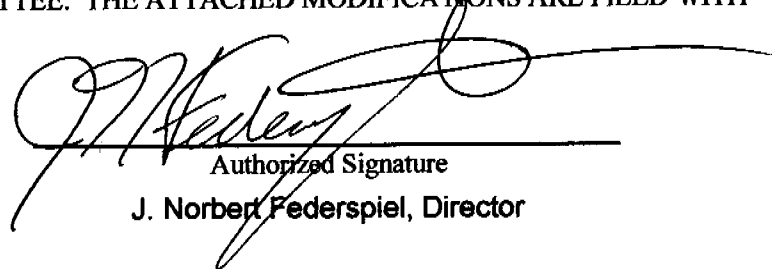
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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


Authorized Signature
J. Norbert Federspiel, Director

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

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

§149-5-1. General.

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

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; the chief of any West Virginia municipal law enforcement agency; or the duly authorized designee of any chief executive.

2.2. "Composition of patrol area" means the demographic description of the population in the patrol area to include elements of ethnicity, national origin, gender and age.

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

2.4 "Driver" or "operator" means the person who drives or is in actual physical control of a motor vehicle upon a highway, or who is exercising control over or steering a vehicle being towed by a motor vehicle.

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

2.6. "Gross data" means aggregate data regarding the information obtained pursuant to section 3.0 of this rule.

2.7. "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.

2.8. "Law enforcement officer" or "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.

2.9. "Minority group" means individuals of any ethnic descent, including, but not limited to, African-American, Hispanic, Native American, Middle Eastern, Asian or Pacific Islander.

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

2.11. "Originating agency Identifier, or ORI Number" means the standard identification number assigned by the Federal Bureau of Investigations to law enforcement and other agencies that submit data required for criminal justice purposes.

2.12. "Patrol area" means a clearly defined geographic area, identified by a number *assigned by the chief law enforcement official*, that is established for the general purpose of providing a visible law enforcement presence in the area, in order to (1) secure property and to protect the public from the risks of damage or injury arising from criminal activity, (2) respond to emergency and non-emergency demands of citizens in a timely manner, (3) conduct prevention and other proactive patrol tasks effectively; and (4) conduct all other patrol tasks effectively, including traffic control and special missions work.

2.13. "West Virginia Motor Vehicle Stop Form," or "MVSF," means the form developed by the Division of Motor Vehicles for collecting and reporting data for the study of racial profiling.

§149-5-3. Data Collection.

3.1. Operator Information Collected.

3.1.a. Beginning January 1, 2005, each time a law enforcement officer stops the operator of a motor vehicle for a violation of any motor vehicle statute or ordinance, the officer shall record, on the West Virginia Motor Vehicle Stop Form appended to this rule, the information required to be collected pursuant to subsection 5 of this section. The officer may complete the Motor Vehicle Stop Form during or immediately after the stop, but must file the completed form with his or her law enforcement agency before the officer goes off duty.

3.1.b. A law enforcement officer is required to record the information required to be collected pursuant to subsection 5 of this section only when the operator has been stopped for violating a motor vehicle statute or ordinance. A law enforcement officer is not required to record such information as a result of a non-violation stop, even if the initial non-violation stop results in a citation or arrest.

3.2. Passenger Information Collected.

3.2.a Beginning January 1, 2005, each time a law enforcement officer stops the operator of a motor vehicle for a violation of any motor vehicle statute or ordinance, and as a result, conducts a search of a passenger in the vehicle, the officer shall record, on the West Virginia Motor Vehicle Stop Form appended to this rule, the information required to be collected pursuant to subsection 5

of this section. The officer may complete the Motor Vehicle Stop Form during or immediately after the stop, but shall file the completed form with his or her law enforcement agency before the officer goes off duty.

3.2.b. A law enforcement officer is required to record the information required to be collected pursuant to subsection 5 of this section with regard to a passenger who has been searched only when the operator of the vehicle has been stopped for violating a motor vehicle statute or ordinance. A law enforcement officer is not required to record such information as a result of a non-violation stop, even if the initial non-violation stop results in a citation or arrest.

3.3. West Virginia Motor Vehicle Stop Form (MVSF). -- The MVSF shall allow for the recording of all of the information required to be collected by subsection 4 of this section and at a minimum be developed in hard copy format; however, nothing in this rule prohibits a law enforcement agency from completing and/or submitting the information required to be collected in an electronic format, if a protocol for electronic filing is developed by the Division of Motor Vehicle. This form shall:

3.4. MVSF Components. -- The MVSF shall allow a law enforcement officer to collect and record the following information.

3.4.a. A unique identifier (i.e. numeric, alphanumeric, barcode, etc.) which will distinguish one from all others.

3.4.b. The 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.

3.4.c. The identity of each individual law enforcement officer within his or her law enforcement agency. The chief executive of the law enforcement agency shall assign a unique four (4) digit identifier to each law enforcement officer within his or her agency for this purpose.

3.4.d. The month, day and year of the stop.

3.4.e. The approximate hour and minute of the stop.

3.4.f. The approximate duration of the stop in hours and minutes.

3.4.i. The county in which the stop took place.

3.4.j. The location of stop by patrol area.

3.4.k. The traffic violation that was the primary reason for the stop to be indicated as follows:

3.4.k.1. Code violations:

3.4.k.1.A. Red light/stop sign;

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- 3.4.k.1.B. Speeding (<10mph over);
- 3.4.k.1.C. Speeding (>10mph over);
- 3.4.k.1.D. Lane violation/failure to signal;
- 3.4.k.1.E. Other moving violation; or,
- 3.4.k.1.F. Other nonmoving violation.

3.4.k.2. Penal code violations:

- 3.4.k.2.A. Nuisance/vice;
- 3.4.k.2.B. Suspicious circumstances;
- 3.4.k.2.C. Be on the lookout (BOLO)/wanted persons;
- 3.4.k.2.D. Property crime;
- 3.4.k.2.E. Violent crime; or,
- 3.4.k.2.F. Local ordinance.

3.4.l. Disposition. -- One of the following dispositions of the stop:

- 3.4.l.1. Citation
- 3.4.l.2. Warning
- 3.4.l.3. No action

3.4.m. The perceived identifying characteristics of the operator stopped, including:

- 3.4.m.1. The age of the operator
- 3.4.m.2. Whether the operator was male or female.
- 3.4.m.3. Whether the operator was:
 - 3.4.m.3.A. White (W);
 - 3.4.m.3.B. Black/African American (B/AA);
 - 3.4.m.3.C. Asian/Pacific Islander (A/PI);

3.4.m.3.D. Native American (NA);

3.4.m.3.E. Middle Eastern (ME); or,

3.4.m.3.F. Other (Oth).

3.4.m.4. Whether the operator was:

3.4.m.4.A. Hispanic/Latino (H/L); or,

3.4.m.4.B. Non-Hispanic/Latino (NH/L).

3.4.n. Whether a search was performed as a result of the stop and, if so:

3.4.n.1. The authority for the search to be indicated as follows:

3.4.n.1.A. Consent;

3.4.n.1.B. Reasonable Suspicion/Weapon;

3.4.n.1.C. Incident to Arrest;

3.4.n.1.D. Inventory;

3.4.n.1.E. Probable Cause;

3.4.n.1.F. Plain View;

3.4.n.1.G. Probation/Parole Waiver; and,

3.4.n.1.H. Other.

3.4.n.2. Whether the search involved:

3.4.n.2.A. Officer;

3.4.n.2.B. Canine Unit;

3.4.n.2.C. Portable Breath Analyzer;

3.4.n.2.D. Drug Test Kit;

3.4.n.2.E. Warrant Check; and,

3.4.n.2.F. Other.

3.4.n.3. The persons/items searched, to be indicated as:

- 3.4.n.3.A. Vehicle;
- 3.4.n.3.B. Driver;
- 3.4.n.3.C. Passenger(s);
- 3.4.n.3.D. Personal Effects; and,
- 3.4.n.3.E. No Search Conducted.

3.4.n.4. The type of any contraband discovered or seized as a result of the search, to be indicated as follows:

- 3.4.n.4.A. None;
- 3.4.n.4.B. Illegal Drugs;
- 3.4.n.4.C. Drug Paraphernalia;
- 3.4.n.4.D. Alcohol;
- 3.4.n.4.E. Firearm(s);
- 3.4.n.4.F. Other Weapon(s);
- 3.4.n.4.G. Currency;
- 3.4.n.4.H. Stolen Property; and,
- 3.4.n.4.I. Other.

3.4.n.5 If the search was of a passenger in the motor vehicle, the age, gender, and perceived race, and ethnicity of the passenger searched.

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

§149-5-4 Designation of Patrol Area.

- 4.1. Patrol area of stop. The chief executive of every law enforcement agency in the state shall establish one or more "Patrol Areas" as defined at section 2.9A of this rule. The boundaries shall be easily recognizable to the law enforcement officer, and the designation of the patrol area shall be identified by up to a three digit number that shall

be entered by the officer on the Motor Vehicle Stop Form. The boundaries and designations of patrol areas shall be provided to all officers under the control of the agency and forwarded to the Governor's Committee on Crime Delinquency and Correction for utilization in preparing the report to the legislature required by West Virginia Code.

- 4.2. Requirements for boundaries of patrol areas. The boundaries of the Patrol Areas shall be drawn to allow the determination of population demographics of the Patrol Area as a whole. Patrol areas may include whole or partial census tracts and whole census blocks. The maps provided to officers need not show this specific information, but only the boundaries of the patrol area using natural landmarks such as streets, streams, railroad tracks, or other boundaries as may be generally known to a community. Maps of Patrol Areas shall be forwarded to the Governor's Committee for approval of conformance to this sub-section.
- 4.3. County level law enforcement agencies in counties with a population of 20,000 or fewer may designate the entire county as one patrol area. Law enforcement agencies in cities or towns with a population of 5,000 or fewer may designate the entire city or town as one patrol area. Law enforcement agencies with state wide jurisdiction shall utilize Patrol Areas established by the county of the stop.

§149-5-5 Training.

- 5.1 The chief executive officer of an Law Enforcement Agency shall, prior to _____, provide to each law enforcement officer of his or her agency, appropriate training on the proper completion of the Motor Vehicle Stop Form. All training shall be based on the instructions developed by the Division of Motor Vehicles pursuant to subsection 3 of this rule. Additional and or ongoing training may be required by the law enforcement agency if improper reporting is identified.

§149-5-6. Data Reporting.

6.1. Beginning January 1, 20--, each law enforcement agency in this state shall submit completed MVSFs to the Division of Motor Vehicles, via United States Postal Service or by any other reputable mail delivery service, hand-delivery or by electronic means, if authorized by the division of Motor Vehicles. 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 during which the information recorded on the form was collected.

6.2. 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. Incomplete or rejected MVSF's will be returned to the law enforcement agency for completion, correction and re-submission.

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

6.4. Failure to comply with the requirements of this section may subject a law enforcement agency to the sanctions provided in West Virginia code §17G-2-2.

§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. Data limitations and confidentiality.

7.1. Any and all data collected, reported, compiled and analyzed pursuant to this rule may be used only for the purposes outlined in this rule.

7.2. Except as provided for in section 8 of this rule, no official of the Division of Motor Vehicles, the Governor's committee or a law enforcement agency may release information from an MVSF regarding the identity of any individual law enforcement officer. The Governor's Committee and the chief executive 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.

§149-5-8. Individual Law Enforcement Agency Data Request and Release.

8.1. The chief executive 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. The request must be in writing and must be received by the Division of Motor Vehicles no sooner than thirty (30) days after the end of the calendar month for which the data is being requested.

8.2. At a minimum, the data shall be organized in such a manner as to allow the chief executive to review the information collected from the MVSF by his or her particular agency and officers for a period of at least one calendar month.

§149-5-9. Division of Motor Vehicles responsibilities.

9.1 The Division of Motor Vehicles and the Governor's Committee on Crime Delinquency and Correction have reduced to writing in a memorandum of understanding, the duties required of the DMV pursuant to §17G-2-3. This memorandum contains the protocols by which the Division of Motor vehicles will collect the data required, and by which the data will be conveyed to the Governor's Committee for analysis and preparation of its annual report.

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

10.1 The Governor's Committee shall analyze and report its finding pursuant to West Virginia Code §17G-2-3. The Criminal Justice Statistical Analysis Center, a unit of the Governor's Committee, shall use its discretion to determine the methodology necessary to meet the analytic reporting requirements of §17G-2-3a9 consistent with the data made available to it.