

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

Form #1

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2011 JUN -3 AM 9:43

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

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

RULE TYPE: Legislative CITE AUTHORITY: West Virginia State Code 62-1A-11

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 6

TITLE OF RULE BEING PROPOSED: Motor Vehicle Search Standards

DATE OF PUBLIC HEARING: N/A Public comment period being used, starting June 3, 2011 TIME: _____

LOCATION OF PUBLIC HEARING: N/A Public comment period being used June 3, 2011 through July 6, 2011

COMMENTS LIMITED TO: ORAL WRITTEN BOTH

DATE WRITTEN COMMENT PERIOD ENDS: Wednesday, July 6, 2011 TIME: 5:00 p.m.

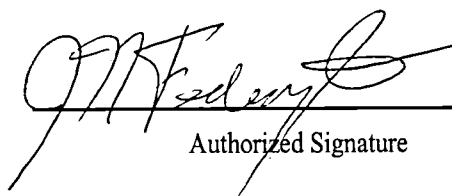
WRITTEN COMMENTS MAY BE MAILED TO:

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Retired Captain Chuck Sadler
Law Enforcement Training Coordinator
DJCS
1204 Kanawha Boulevard East
Charleston, WV 25301

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Motor Vehicle Search Standards

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

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

Address: Division of Justice and Community Services
1204 Kanawha Blvd East
Charleston, WV 25301

Phone Number: (304) 558-8814 ext 53315 Email: Charles.A.Sadler@wv.gov

Fiscal Note Summary

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

This new rule will have no impact on costs and revenue of state government. It set forth procedures to be used by West Virginia law enforcement officers in securing consent to search vehicles during a traffic related stop.

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	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Motor Vehicle Search Standards

Rule Title: _____

Rule Title: _____

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

Not applicable. There are no costs or impact on revenue.

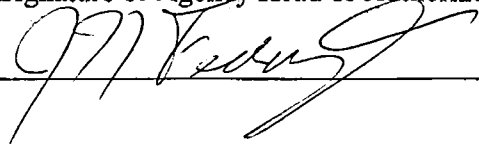
MEMORANDUM

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.

This requirements and procedures being set forth in this new rule will cause any cost, or have any impact on state revenue, as relating to the West Virginia law enforcement agencies who will fall under it.

Date: June 3, 2011

Signature of Agency Head or Authorized Representative



Statement of Facts and Circumstances

Motor Vehicle Search Standards

Summary of Need for new Rule
to become
Series 6 of Title 149

The members of the Law Enforcement Training (LET) Subcommittee, a subcommittee of the Governor's Committee on Crime, Delinquency and Correction, in recognition of the requirement set forth in legislation passed during the 2010 Session of the West Virginia Legislature, West Virginia State Code 62-1A-11, to promulgate legislative rules addressing consent to search vehicles, met April 26-27, 2011 to develop this new rule. As a result of the discussion of the subcommittee members, a quorum being present and it being the unanimous decision of those present a new rule setting forth the requirements concerning motor vehicle search standards was developed.

The proposed new rule sets forth the scope of the rule to address motor vehicle searches by West Virginia law enforcement officers and the actions to be taken on the part of the officer to secure consent to do so. Such consent may be written or audio/video recorded.

The proposed new rule defines the terms relevant to the securing of such consent and outlines the steps to be taken to reflect that the consent, whether in written or verbal form, was secured in accord with the Code. The information to be contained in a written or verbal consent is listed.

Questions concerning the proposed new rule should please be directed to Retired Captain Chuck Sadler, LET Coordinator, at (304) 558-8814, ext 53315 or Charles.A.Sadler@wv.gov

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

**SERIES 6
MOTOR VEHICLE SEARCH STANDARDS**

STATEMENT OF FACTS AND CIRCUMSTANCES

Questions should please be directed to:

Retired Captain Chuck Sadler
(304) 558-8814, ext 53315
Charles.A.Sadler@wv.gov

The following are being proposed for the promulgation of a new rule, 149CSR6 in line with the requirement set forth in the statutory changes made in West Virginia State Code §62-1A-11 passed during the 2010 Session of the West Virginia Legislature:

§Title 149, Series 6

Sets the title of this new series of Title 149, Series 6, as "MOTOR VEHICLE SEARCH STANDARDS" Recommended as the new rule addresses the standards for motor vehicle searches conducted by West Virginia law enforcement officers in acord with West Virginia State Code §62-1A-10.

§149-6-1. General

Sets the scope of the new rule as to the standards being set for motor vehicle searches and the use of the vehicle consent form. The authority to do so is set forth in West Virginia State Code §62-1A-10.

§149-6-2 Definitions

The definitions listed clarify what specific words used in the context of the Rule mean.

- **2.1.**
Defines what a “audio/video recording” is and how it is taken.
- **2.2.**
Defines how “consent” is given and what form it can be in.
- **2.3.**
Defines what the “Governor’s Committee on Crime, Delinquency and Correction” is and the authority establishing it. Defined the same in 149CSR2 addressing Law Enforcement Training and Certification Standards.
- **2.4.**
Defines who is considered to be a “law enforcement officer” in West Virginia. Defined the same in 149CSR2 addressing Law Enforcement Training and Certification Standards.
- **2.5.**
Defines who is considered to be a “law enforcement official” in West Virginia. Defined the same in 149CSR2 addressing Law Enforcement Training and Certification Standards.
- **2.6.**
Defines what is the “Law Enforcement Professional Standards Subcommittee.” Defined the same in 149CSR2 addressing Law Enforcement Training and Certification Standards.
- **2.7.**
Defines the word “operator” within the context of West Virginia State Code §62-1A-10 and 62-1A-11. This is the same definition set forth in Chapter 17, Motor Vehicle Laws, of the Code.
- **2.8.**
Defines the word “vehicle” within the context of West Virginia State Code §62-1A-10 and 62-1A-11. This is the same definition set forth in Chapter 17, Motor Vehicle Laws, of the Code.

- **2.9.**

Defines the words “vehicle search consent form” within the context of West Virginia State Code §62-1A-10 and 62-1A-11.

- **2.10**

Defines the words “West Virginia law enforcement agency” within the context of West Virginia State Code §62-1A-10 and 62-1A-11. Defined the same in 149CSR2 addressing Law Enforcement Training and Certification Standards.

§149-6-3 Written Consent

- **3.1.**

Addresses the use of the vehicle search consent form to secure written consent. Further addresses what may be done if that form is unavailable or if verbal consent is secured.

§149-6-4. Vehicle Search Consent Form (Subcommittee Form – current version)

- **4.1.**

Sets forth the minimum components that the form is to have listed on it as set forth in West Virginia State Code §62-1A-11.

- **4.1.a.**

Requires date of traffic stop.

- **4.1.b.**

Requires time of traffic stop.

- **4.1.c.**

Requires location of traffic stop.

- **4.1.d.**

Requires vehicle make of vehicle involved in traffic stop.

- **4.1.e.**

Requires vehicle registration number of vehicle involved in traffic stop.

- **4.1.f.**
Requires initials of vehicle operator as to his or her understanding of 4.1.f.1. to 4.1.f.4.
- **4.1.f.1.**
Reflection of understanding that the operator is being asked to consent to a search.
- **4.1.f.2**
Reflection of understanding that the operator is being asked to give consent to such a search.
- **4.1.f.3**
Reflection of the understanding by the operator that such consent may be withdrawn at any time.
- **4.1.f.4**
Reflection that the operator is giving the consent freely and voluntarily.
- **4.1.g.**
Requirement for the printed name of the vehicle operator.
- **4.1.h.**
Requirement for the signed name of the vehicle operator and the date signature given.
- **4.1.i.**
Requirement for the printed name of the law enforcement officer securing the consent and the law enforcement agency employed by.
- **4.1.j.**
Requirement for the signed name of the law enforcement officer securing the consent and the date given.

- **4.2**

Addresses when a handwritten consent may be secured when a Vehicle Search Consent Form is not available and what must be addresses in such a handwritten consent.

§149-2-5. Audio/Video Recorded Consent

- **5.1.**

Addresses the securing of an audio/video recorded consent and if so obtained what must be contained within it.

- **5.1.a.**

Reflects requirement that the audio/video recording must contain an affirmative response from the vehicle operator to each of the Subdivisions 4.1.f.1. to 4.1.f.4. of this Rule.

FILED

TITLE 149
LEGISLATIVE RULE
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION AM 9:43

SERIES 6
MOTOR VEHICLE SEARCH STANDARDS

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

§149-6-1. General.

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

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

1.3. Filing Date. --

1.4. Effective Date. --

§149-6-2. Definitions.

2.1. "Audio/Video recording" means utilizing any device for the duplication of audio sounds.

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

2.3. "Governor's Committee on Crime, Delinquency and Correction or Governor's Committee" means the Governor's Committee on Crime Delinquency and Correction established as a state planning agency pursuant to section one, article nine, chapter fifteen of the Code of West Virginia.

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

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

2.6. "Law Enforcement Professional Standards Subcommittee or Subcommittee" means that Subcommittee established by §30-29-2. of the code of West Virginia.

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

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

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

Delinquency and Correction.

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

§149-6-3. Written Consent.

3.1. The approved vehicle search consent form shall be used for the documentation of written consent to search in stops of a motor vehicle for alleged violation(s) of a traffic misdemeanor or ordinance. However, consent may be obtained through the use of audio recording or, in circumstances, when the approved form is unavailable, hand written consent may be obtained.

§149-6-4. Vehicle Search Consent Form (Subcommittee Form – Current version).

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

4.1.a. Date of the stop

4.1.b. Time of stop

4.1.c. Location of stop

4.1.d. Vehicle make

4.1.e. Vehicle registration number

4.1.f. Initials of the vehicle operator consenting to the following:

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

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

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

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

4.1.g. Name of the person granting consent (printed name of the operator of the vehicle)

4.1.h. Signature of the person granting consent (operator of the vehicle) and date.

4.1.i. Law enforcement officer name (printed name of the officer requesting consent) and his/her agency.

4.1.j. Law enforcement officer signature and date.

4.2. Handwritten consent may be obtained when the approved form is unavailable but must include all components of 4.1. of this rule.

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

5.1. Audio/Video consent may be obtained but must include all components of 4.1. of this rule.

5.1.a. Consent must be obtained by receiving affirmative responses from the operator to section 4.1.f. et seq.