

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 410.01

EFFECTIVE DATE: 16 August 2023

SUBJECT: DNA ANALYSIS

POLICY DIRECTIVE

PURPOSE:

To comply with the statutory mandate that any person presently incarcerated in a state correctional facility or jail after conviction of a qualifying offense shall provide a DNA sample to be used for DNA analysis.

REFERENCE:

WV Code §15-2B-1, *et seq.*; and 81CSR9 Title 81 Legislative Rule of the WV State Police.

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject, including DCR Policy Directive 410.01, dated 15 January 2021.

APPLICABILITY:

All adult facilities within the Division of Corrections and Rehabilitation (DCR). This Policy is available for general distribution and shall be made available for inmate review upon the effective date.

DEFINITIONS:

CODIS: The Federal Bureau of Investigation's Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories. The term "CODIS" includes the National DNA Index System administered and operated by the Federal Bureau of Investigation.

DNA: Deoxyribonucleic Acid, located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

DNA Record: The DNA identification information stored in a state DNA database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests analyses on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

DNA Sample: A tissue, fluid, or other bodily sample, suitable for testing.

State DNA Database: All DNA identification records included in the system administered by the WV State Police.

State DNA Databank: The repository of DNA samples collected under provisions of WV Code §15-2B-1, *et seq.*

POLICY:

- I. Any person incarcerated in a Division of Corrections and Rehabilitation (DCR) facility convicted of an offense on the Qualifying Offense List (**Attachment #1**) shall provide a DNA sample to be used for DNA analysis and inclusion in the centralized DNA databank.
 - A. Superintendents shall ensure records supervisors or other designated staff are responsible for the identification of all inmates who are to comply with this Policy.
 1. Inmates who have previously provided DNA samples as indicated in the Offender Information System (OIS) shall not be required to provide another sample.
 2. Inmates convicted of a qualifying offense and sentenced to prison shall provide a DNA sample upon transfer to a prison receiving/intake unit.
 3. **Inmates convicted of a qualifying offense who will be released from a jail facility prior to transfer to a prison facility shall provide a DNA sample prior to release from the jail.** This shall occur regardless of the reason for the release (e.g., sentence commutation, suspended sentence, granted parole, nonviolent offense parole program, short length of sentence, etc.)
 - B. Procedures shall be implemented to notify inmates of the statutory authority under which a DNA sample is taken by issuing the inmate the DNA Analysis Requirement memorandum (**Attachment #2**) printed on facility letterhead.
 - C. Priority shall be given to inmates who have been identified as possible parolees or discharge cases in the immediate future.
 - D. The DNA Sample Consent Form (**Attachment #3**) shall be executed, and a copy scanned to OIS Documents Management.

- II. When an inmate required to provide a DNA sample pursuant to this Policy refuses to comply, appropriate staff shall speak with the inmate in an effort to obtain the inmate's voluntary cooperation. The ramifications of refusal shall be explained to the inmate including, but not limited to, disciplinary action, ineligibility to transfer to less secure facilities and the use of force if necessary.
- A. If the inmate is advised of the statutory requirement to provide a DNA sample and he/she does not agree to consent, supervisory staff shall be notified.
1. The inmate shall be given a direct order by the supervisor to comply.
 2. If the inmate still refuses to comply, he/she shall be charged with the appropriate disciplinary rule violation.
- B. If the inmate continues to refuse, after disciplinary action has been initiated, the Superintendent shall seek guidance on the appropriate course of action through his or her chain of command.
- C. Voluntarily consenting to the DNA sample should be noted on the inmate's Pre-Parole Report.
- III. The method of taking the DNA sample is subject to the testing methods used by the WV State Police Crime Lab. The DNA sample will be collected using a postage paid DNA collection kit provided by the WV State Police.
- A. The records Supervisor or other designated staff member shall acquire collection kits from the State Police in ample time and volume to ensure the timely collection of samples from inmates with qualifying offenses.
- B. Instructions for the sample collection and completion of the DNA Database Collection Card provided with the collection kits shall be followed.
- C. DNA sample collection shall be performed by facility medical staff (physician, nurse, or trained phlebotomist) and an appropriate DCR staff member shall observe the entire collection process.
- D. Only one (1) inmate shall be processed at a time to avoid mislabeling or misidentification of samples collected. The inmate's photo-identification or other positive means shall confirm the inmate's identity.
- E. At the time of collection, the appropriate staff shall record the following information on a CODIS Logbook Form (**Attachment #4**) in sequential order in a logbook.
1. DNA collection kit number.
 2. Inmate's name and social security number (the inmate's OID number is to be used when no social security number is available).

3. Date/time of sample collection.
 4. Names of staff collecting and witnessing the process.
 5. In the event of a lost, damaged, destroyed, expired or otherwise unusable kit, the kit number shall be listed in the log, with a notation as to the disposition of the kit.
 6. The collection facility shall provide the WV State Police Laboratory, Biochemistry Section with a copy of the logbook entries from the previous calendar year by the end of January for the preceding year. The collecting facility shall provide the log sheets even if no entries occurred.
- F. Instructions for the packaging and timely return of the collection kit to the WV State Police Crime Lab provided with the collection kit shall be followed.
- G. The records supervisor or other designated staff member shall ensure the collection of a DNA sample is correctly entered in the inmate's record in OIS.
- IV. When DCR accepts a person from another state under any interstate compact, whether the person is confined or released, the transferred person must submit a DNA sample, if the person was convicted of an offense in any other jurisdiction which would be considered a qualifying offense if committed in this state, or if the person was convicted of an equivalent offense in any other jurisdiction. The person shall provide the DNA sample in accordance with the rules of the DCR. If the transferred person has already submitted a DNA sample that can be found in the national database, an additional sample shall not be provided.
- V. Should a court expunge the record of a felony conviction which resulted in the inclusion of the person's DNA sample being stored in the state databank, it is the responsibility of the WV State Police to purge the DNA record and all other identifiable information from the state database and the DNA sample from the databank upon receipt of a certified copy of the order reversing and dismissing the conviction and an order of expungement.

ATTACHMENT(S):

- #1 Qualifying Offense List (2 pages)
- #2 DNA Analysis Requirement memo (to be printed on facility letterhead)
- #3 DNA Sample Consent Form
- #4 CODIS Logbook form

APPROVED SIGNATURE: _____

William K. Marshall III

William K. Marshall III, Commissioner

08/16/2023

Date

DNA Analysis

Qualifying Offense List

60A-4-401 *et seq.* Offenses violating the Uniform Control Substances Act (when constitutes a felony)

- 61-2-1 First and Second Degree Murder Defined; or Attempt to Commit First and Second Degree Murder
- 61-2-4 Voluntary Manslaughter
- 61-2-5 Involuntary Manslaughter (Misdemeanor)
- 61-2-7 Attempt to Kill or Injure by Poison
- 61-2-9 Malicious or Unlawful Assault; Assault; Battery
- 61-2-9a Harassment (when constitutes a felony)
- 61-2-10 Assault During Commission of or Attempt to Commit a Felony
- 61-2-10a Violent Crimes Against the Elderly; Sentence Not Subject to Suspension or Probation
- 61-2-10b Malicious Assault; Unlawful Assault; Battery and Assault on Governmental Representatives,
Health Care Providers, Utility Workers, Law-Enforcement Officers, Correctional Employees and
Emergency Medical Service Personnel; Definitions
- 61-2-12 Robbery or Attempted Robbery
- 61-2-13 Extortion or Attempted Extortion by Threats
- 61-2-14 Abduction of Person; Kidnapping or Concealing Child
- 61-2-14a Kidnapping or Attempt to Commit Kidnapping

- 61-3-1 Burning, etc., of a Dwelling or Outbuilding; First Degree Arson
- 61-3-2 Burning, etc., of other Buildings or Structures; Second Degree Arson
- 61-3-3 Burning Personal Property of Another of the Value of \$500 or more; Third Degree Arson
- 61-3-4 Attempt to Commit Arson; Fourth Degree Arson
- 61-3-5 Burning, or Attempting to Burn, Insured Property
- 61-3-7 Causing Injuries During an Arson-Related Crime
- 61-3-11 Burglary; Entry of Dwelling or Outhouse
- 61-3-12 Entry of Building other than Dwelling; Entry of Railroad, Tractor or Motorcar, Steamboat, or other
Vessel (when constitutes a felony)
- 61-3-13(a) Grand Larceny

- 61-3E-3 Illegal Possession of Destructive Devices, Explosive Materials or Incendiary Devices
- 61-3E-4 Criminal Use of Destructive Device, Explosive Material or Incendiary Devices
- 61-3E-5 Causing Death or Injury
- 61-3E-10 Wanton Endangerment Involving Destructive Devices, Explosive Materials or Incendiary Devices

61-4-3 Counterfeiting

61-8-12 Incest (when constitutes a felony)

- 61-8B-3 Sexual Assault in the First Degree
 - 61-8B-4 Sexual Assault in the Second Degree
 - 61-8B-5 Sexual Assault in the Third Degree
 - 61-8B-7 Sexual Abuse in the First Degree
 - 61-8B-8 Sexual Abuse in the Second Degree (Misdemeanor)
 - 61-8B-9 Sexual Abuse in Third Degree (Misdemeanor)
 - 61-8B-9b Enhanced Penalties for Subsequent Offenses Committed by Those Previously Convicted of Sexually Violent Offenses Against Children
 - 61-8B-10 Imposition of Sexual Acts on Persons Incarcerated or Under Supervision
- ****Or Attempt to Commit Any of These Acts******

- 61-8D-2 Murder of a Child by Parent, Guardian or Custodian or Other Person by Refusal or Failure to Supply Necessities, or by Delivery, Administration or Ingestion of a Controlled Substance
- 61-8D-2a Death of a Child by a Parent, Guardian, or Custodian or Other Person by Child Abuse
- 61-8D-3 Child Abuse Resulting in Injury; Child Abuse Creating Risk of Injury
- 61-8D-3a Female Genital Mutilation
- 61-8D-4 Child Neglect Resulting in Injury, Child Neglect Creating Risk of Injury
- 61-8D-4a Child Neglect Resulting in Death
- 61-8D-5 Sexual Abuse by A Parent, Guardian, Custodian or Person in a Position of Trust to a Child; Parent, Guardian, Custodian or Person in a Position of Trust Allowing Sexual Abuse to be Inflicted Upon a Child; Displaying of Sex Organs by Parent, Guardian, or Custodian
- 61-8D-6 Sending, Distributing, Exhibiting, Possessing, Displaying or Transporting Material by Parent, Guardian, or Custodian, Depicting a Child Engaged in Sexually Explicit Conduct

(Facility Letterhead)

TO: *Inmate's Name and OID Number*
FROM: *Superintendent's Name and Facility*
DATE:
RE: **DNA Analysis Requirement**

You have been identified as an inmate who is required by section 15-2B-1, *et seq.*, of the West Virginia Code to submit a DNA sample for analysis by virtue of your conviction of

_____ (*list convictions*).

This DNA analysis establishes a genetic profile (that is used similarly to a fingerprint) which will be placed in a DNA databank. State statute requires that information contained in this databank be made available to law enforcement agencies in connection with a criminal investigation, to any prosecutor or defense attorney.

If your conviction is set aside, vacated, or reversed, you may petition the court, either individually or through an attorney for expungement of the record from the database.

If you refuse to provide a DNA sample, upon order, you shall be charged with a disciplinary rule violation, be ineligible for transfer to lesser secure facilities, and/or transferred to a more secure facility. If necessary, the required sample will be forcibly obtained pursuant to court order, in accordance with division guidelines for the use of force, and under the direction of a qualified medical practitioner.

_____ You are scheduled to provide a DNA sample at (*location*) on (*month*) (*day*), (*year*) at (*time*).

_____ You will be required to submit a DNA sample as part of your physical examination during the intake process into this facility.

_____ You are scheduled to provide a DNA sample on (*month*) (*day*), (*year*) at (*time*). The facility will provide transportation and/or escort.

WV Division of Corrections and Rehabilitation

DNA SAMPLE CONSENT FORM

I DO HEREBY CONSENT TO PROVIDE A DNA SAMPLE:

INMATE SIGNATURE	INMATE OID NUMBER	DATE
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WITNESS SIGNATURE	DATE SIGNED
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SAMPLE PROVIDED: _____

DATE	TIME
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SAMPLE BY: _____

NAME/TITLE

COMMENTS: _____

INMATE REFUSAL

Inmate _____ OID Number _____

has been given a direct order and has refused to sign a consent form to provide a DNA sample.

SUPERVISORY STAFF SIGNATURE	DATE/TIME
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