

RULES AND REGULATIONS RELATED TO THE STATE OF RHODE ISLAND DNA DATABASE & DATABANK

[R12-1.5-DNA]



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

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with the provisions of §42-35-4.1 of
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INTRODUCTION

These amended *Rules and Regulations Related to the State of Rhode Island DNA Database and Databank [R12-1.5-DNA]* are promulgated pursuant to the authority conferred under RIGL § 12-1.5-3(2), and are established for the purpose of adopting minimum standards for the collection, submission, identification, analysis, storage, and disposition of DNA samples and typing results of DNA samples submitted under the requirements of RIGL Chapter 12-1.5 and for the creation of a DNA database for use in criminal investigations and humanitarian identification purposes. These specific amendments implement the provisions of P.L. 2014-176 and P.L. 2014-192 regarding collection of a DNA sample from every person arrested for a crime of violence as defined in RIGL § 12-1.5-2, who pleads guilty or nolo contendere, or is convicted of any felony.

In accordance with RIGL Chapter 12-1.5-1, it has been determined by the General Assembly that DNA databanks and DNA databases are important tools in criminal investigations, in the exclusion of individuals who are the subject of criminal investigations or prosecutions, and in deterring and detecting recidivism. Many states have enacted laws requiring persons convicted of sexual and violent offenses to provide genetic samples for DNA profiling. Moreover, it is the policy of the State of Rhode Island to assist federal, state and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations. It is therefore in the best interest of the State of Rhode Island to establish a DNA databank and a DNA database containing DNA samples and DNA records of individuals convicted of certain sexual and violent offenses and missing persons.

Pursuant to the requirements of the Act, the Department of Health shall be responsible for the policy management and administration of the State of Rhode Island DNA database and State of Rhode Island DNA databank and provide for liaison with the FBI and other criminal justice agencies in regard to the State of Rhode Island's participation in CODIS or in any DNA database designated by the Department of Health. The State of Rhode Island DNA Database will be combined with other state databases by the FBI into their "CODIS" system. This enables various states to share their databases and provides a means to search for criminal suspects regionally and nationally.

Pursuant to the provisions of RIGL § 42-35-3(a)(3) and § 42-35.1-4, consideration was given to:

- (1) Alternative approaches to the regulations;
- (2) Duplication or overlap with other state regulations; and
- (3) Significant economic impact on small business.

Based on the available information, no known alternative approach, duplication, overlap or impact upon small business was identified.

Upon promulgation of these amendments, these amended Regulations shall supersede all previous *Rules and Regulations Related to the State of Rhode Island DNA Database and Databank* promulgated by the Rhode Island Department of Health and filed with the Secretary of State.

Table of Contents

	<i>Page</i>
PART I <i>Definitions</i>	
1.0 Definitions	1
PART II <i>Procedures & Requirements Related to the State of Rhode Island DNA Databank and Database</i>	
2.0 Scope of the Act and Applicable Offenses	3
3.0 Procedures for Conduct, Disposition, and Use of DNA Analysis	3
4.0 State of Rhode Island DNA Databank	3
5.0 State of Rhode Island DNA Database	6
PART III <i>Other Administrative Requirements</i>	
6.0 Confidentiality of Records	8
7.0 Prohibition and Disclosure	8
8.0 Expungement	8
PART IV: <i>Penalties and Severability</i>	
9.0 Violations and Penalties	10
10.0 Interpretation and Severability	10
<i>References</i>	11

PART I *Definitions*

Section 1.0 *Definitions*

Wherever used in these Regulations, the following terms shall be construed as follows:

- 1.1 "**Act**" refers to Chapter 12-1.5 of the General Laws of Rhode Island, as amended, entitled, "*An Act Relating to Identification and Apprehension of Criminals.*"
- 1.2 "**CODIS**" is derived from *combined DNA index system*, the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories.
- 1.3 "**Crimes of Violence**" include murder, manslaughter, first degree arson, kidnapping with intent to extort, robbery, larceny from the person, first degree sexual assault, second degree sexual assault, first and second degree child molestation, assault with intent to murder, assault with intent to rob, assault with intent to commit first degree sexual assault, burglary, and entering a dwelling house with intent to commit murder, robbery, sexual assault, or larceny.
- 1.4 "**Department**" means the Rhode Island Department of Health.
- 1.5 "**Director**" means the Director of the Rhode Island Department of Health.
- 1.6 "**DNA**" means deoxyribonucleic acid, which is located in the cells of the body and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.
- 1.7 "**DNA record**" means DNA identification information only, which is stored in the State of Rhode Island DNA database or the combined DNA index system for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value only in establishing the identity of individuals. The DNA record, however, does not include the DNA sample, and the DNA record may never include the results of tests of any structural genes. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the **DNA profile** of an individual.
- 1.8 "**DNA sample**" means a blood or tissue sample provided by any person with respect to offenses covered by the Act or submitted to the Department of Health Laboratory pursuant to the Act for DNA analysis or storage, or both.
- 1.9 "**DNA sample collection kit**" means materials designed for the collection, documentation, and security of DNA samples.
- 1.10 "**FBI**" means the Federal Bureau of Investigation.
- 1.11 "**Laboratory**" means the Rhode Island Department of Health Laboratory.
- 1.12 "**RIGL**" means the General Laws of Rhode Island, as amended.

- 1.13 **"Secured"** means limited and controlled access only by authorized personnel including use of protection and safety devices to safeguard any and all functions of that equipment or facility.
- 1.14 **"State of Rhode Island DNA databank"** means the repository of DNA samples collected under the Act, which is administered by the Department.
- 1.15 **"State of Rhode Island DNA database"** means the state-level DNA identification record system to support law enforcement which is administered by the Department and which provides DNA records to the FBI for storage and maintenance in CODIS. It is the collective capability to store and maintain DNA records related to forensic casework, the DNA records of those convicted offenders required to provide a DNA sample under state law, and anonymous DNA records used for research, quality control, and other DNA analysis support systems.
- 1.16 **"These Regulations"** mean all parts of Rhode Island *Rules and Regulations Related to the State of Rhode Island DNA Database and Databank [R12-1.5-DNA]*.

PART II *Procedures & Requirements Related to the State of Rhode Island DNA Databank and Database*

Section 2.0 *Scope of the Act and Applicable Offenses*

- 2.1 For law enforcement purposes, the Act is applicable to adult persons arrested for crimes of violence as defined in § 12-1.5-2 of the Act and/or convicted of any felony.
- 2.2 Except as otherwise provided in § 12-1.5-11 of the Act, DNA samples and DNA records collected under the Act shall be used only for law enforcement identification purposes or to assist in the recovery of identification of human remains from disasters or for other humanitarian identification purposes, including identification of missing persons; and DNA samples and DNA records collected under the Act shall never be used under the provisions of the Act for the purpose of obtaining information about physical characteristics, traits or predispositions for disease.

Section 3.0 *Procedures for Conduct, Disposition, and Use of DNA Analysis*

- 3.1 All DNA sample typing results, all DNA records and all DNA samples shall be securely stored in the State of Rhode Island DNA database and DNA databank respectively, in the following manner:
 - (a) All DNA sample typing results and the DNA records shall be stored in a computer database after all personal identifiers have been removed.
 - (b) Further, these records shall be accessed only through the use of an encryption code. The encryption code shall be confidential and only those persons authorized by the Department and charged with responsibilities under the Act shall have access to these records and shall be given the encryption code.
 - (c) All DNA samples shall be securely locked, with a coded locking system, in a DNA databank at the Department and only the Director and the DNA laboratory shall have access to these DNA samples to carry out the provisions of the Act.

Handling and Security of Samples

- 3.2 DNA records and samples are confidential and shall not be disclosed except as governed by Rhode Island statute. All files, computer, and sample storage systems maintained by the Department pursuant to the Act shall be secured. Access shall be limited to employees of the Department and technical or repair personnel as required to maintain the system as authorized by the Department. All database searches shall be performed via secured communications systems.

Section 4.0 *State of Rhode Island DNA Databank*

- 4.1 In accordance with the requirements of the Act, a State of Rhode Island DNA databank is established pursuant to these Regulations. It shall serve as the repository of DNA samples collected under the Act and shall be administered by the Department.

DNA Sample Required Upon Arrest after Effective Date (1 July 2015)

- 4.2 Every person arrested for a crime of violence as defined in § 12-1.5-2 of the Act, who pleads guilty or nolo contendere, or is convicted of any felony shall have a DNA sample taken for analysis as follows:
- (a) Every person who is sentenced to a term of confinement to prison, for an offense as listed in § 12-1.5-7 of the Act and § 2.1 of these Regulations shall not be released prior to the expiration of his/her maximum term of confinement unless and until a DNA sample has been taken;
 - (b) Every person convicted of any crime of violence as defined in § 12-1.5-2 of the Act or any felony or who is sentenced thereon to any term of probation, or whose case is referred to a diversion program or upon whose case sentencing is deferred shall have a DNA sample taken for analysis by the Department as a condition for any sentence which disposition will not involve an intake into prison.
 - (c) Every person arrested for any crime of violence as defined in § 12-1.5-2 of the Act shall, at the time of booking, have a DNA sample taken for analysis and included in the Rhode Island DNA database and DNA databank respectively as required by the Act and every such person shall be notified of his or her expungement rights under § 12-1.5-13 of the Act at or near the time the DNA sample is taken.
 - (d) The DNA sample shall be submitted by the arresting authority to the Department. The Department shall not test or place the sample in the Rhode Island DNA database prior to arraignment unless one of the following conditions has been met:
 - (1) The arrestee appeared before any judicial officer for an arraignment and the judicial officer made a finding that there was probable cause for the arrest; or
 - (2) The defendant was released and then failed to appear for the initial hearing, or escaped custody prior to appearing before a judicial officer;
 - (3) The arrestee requests or consents to having their DNA sample processed prior to arraignment for the sole purpose of having the sample checked against a sample that has been processed from the crime scene or the hospital, and is related to the charges against the person
 - (e) If all qualifying criminal charges are determined to be unsupported by probable cause:
 - (1) The DNA sample shall be immediately destroyed; and
 - (2) Notice shall be sent by the prosecuting authority to the defendant and counsel of record for the defendant that the sample was destroyed.
 - (f) A second DNA sample shall be taken if needed to obtain sufficient DNA for the Rhode Island DNA database system or if ordered by the court for good cause shown.
 - (g) The requirements of the Act are mandatory. In the event that an arrestee's DNA sample is not adequate for any reason, the arrestee shall provide another DNA sample for analysis.
 - (h) A sample does not need to be collected if the person has previously provided a sample sufficient for DNA testing pursuant to the provisions of § 4.2 of these Regulations.

Withdrawal, Collection, Transmission and Tracking of DNA Samples

- 4.3 DNA samples collected under the provisions of these Regulations shall be processed in accordance with the procedures contained in the Department's current version of the *Standard Operating Procedures* [Reference 1], which is based on the Federal Bureau of Investigation publication, *Quality Assurance Standards for Forensic DNA Testing Laboratories* [Reference 2].
- 4.4 The Department shall be responsible for the collection of DNA samples from convicted offenders, and law enforcement personnel shall be responsible for the collection of DNA samples from arrested individuals.
- 4.5 DNA samples shall be obtained using a sample collection kit designed and/or recommended by the Department.
- 4.6 Thumbprint, signature and/or other personal identifiers shall document the identity of the offender.
- 4.7 **[DELETED]**.
- 4.8 If the sample is unsuitable for laboratory testing, the Department may authorize collection of a second specimen.
- 4.9 The collection kit shall be sealed and hand-delivered or sent by mail to the Laboratory.
- 4.10 Upon submission of the sample collection kit to the Department, designated personnel shall record the date and time of receipt. The kit shall receive a unique identifying number that does not include any personal identification information.
- 4.11 The sample shall be secured in the appropriate storage area until analysis is performed. The Laboratory shall maintain an internal chain of custody to track the sample throughout its storage and analysis.
- 4.12 The genetic markers comprising the DNA profile shall consist of those adopted by the DNA Advisory Board of the Federal Bureau of Investigation.
- 4.13 Persons who collect DNA samples pursuant to these Regulations shall not be civilly or criminally liable for collecting a DNA sample and transmitting test results if they act in good faith and pursuant to the Act.
- 4.14 It shall be a complete defense to a civil or criminal action if the law enforcement and correction officials who physically restrain a person for the taking of a DNA sample, acted in good faith and under the Act to collect DNA samples.

Section 5.0 ***State of Rhode Island DNA Database***

- 5.1 In accordance with the requirements of the Act, a State of Rhode Island DNA database is established pursuant to these Regulations. It shall be administered by the Department and provide DNA records for the FBI for storage and maintenance by CODIS. The State of Rhode Island DNA database shall have the capability provided by computer software and procedures administered by the Department to store and maintain DNA records related to:
- (a) Forensic casework, including the identification of missing persons;
 - (b) Individual arrested for a crime of violence and convicted offenders required to provide a DNA sample under the Act; and
 - (c) Anonymous DNA records used for research on identification technologies or quality control.
- 5.2 Procedures for using the national DNA database shall be in accordance with the U.S. Department of Justice/Federal Bureau of Investigation publication *NDIS Procedures Manual*.

Procedural Compatibility with FBI

- 5.3 The DNA database system as established by the Act shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies and computer software.

DNA Database Exchange

- 5.4 It shall be the duty of the Department to collect DNA samples, to receive, store, and to perform analysis or to contract for DNA typing analysis with a qualified DNA laboratory that meets the regulations herein to classify and to file the DNA record of identification characteristic profiles of DNA samples submitted under the Act and to make such information available as provided in these Regulations.
- 5.5 Access to the DNA databank shall be for identification analysis only and shall be limited upon a showing of need to duly constituted federal, state and local law enforcement agencies and their servicing forensic DNA laboratories and by court order to the defendant or his/her attorney in a criminal case.
- 5.6 The contents of the DNA record of individuals in the State of Rhode Island DNA database shall be made available:
- (a) To criminal justice agencies or approved DNA forensic laboratories which serve these agencies; or
 - (b) Upon written or electronic request and in furtherance of an official investigation by a criminal justice agency or its designated forensic laboratory of a criminal offense or offender or suspected offender;
 - (c) To prosecuting attorneys who are actively involved in a case in which the DNA record of an individual is relevant; to grand juries and courts when such records are subpoenaed; to defense attorneys when the DNA record is relevant to a pending case.

- 5.7 The Department may create a separate population database comprised of DNA samples obtained under the Act after all personal identification is removed. The Department may share or disseminate the population database with other criminal justice agencies or forensic DNA laboratories that serve to assist the Department with statistical databases. The population database may be made available to and searched by other agencies participating in the CODIS system.

PART III *Other Administrative Requirements*

Section 6.0 *Confidentiality of Records*

- 6.1 All DNA profiles and samples submitted to the Department pursuant to the Act shall be treated as confidential and exempt from the provisions of RIGL Chapter 38-2, except as otherwise provided in the Act.

Section 7.0 *Prohibition and Disclosure*

- 7.1 Any person, who, by virtue of employment or official position, or any person contracting to carry out any functions under the Act, including any officers, employees and agents of such contractor, who has possession of or access to individually identifiable DNA information contained in the State of Rhode Island DNA database or in the State of Rhode Island DNA databank shall not disclose it in any manner to any person or agency not authorized to receive it knowing that such person or agency is not authorized to receive it.
- 7.2 No person shall obtain individually identifiable DNA information from the State of Rhode Island DNA database or the State of Rhode Island DNA databank without authorization pursuant to the Act to do so.

Section 8.0 *Expungement*

- 8.1 A person whose DNA record or profile has been included in the databank pursuant to the Act may request expungement, on the grounds that the conviction on which authority for including that person's DNA record or profile was based, has been reversed.
- 8.2 The Department shall purge all records and identifiable information in the database pertaining to the person and destroy all samples from the person upon receipt of a written request for expungement and a certified copy of the final court order reversing the conviction.
- 8.3 The Department shall purge and destroy all records and identifiable information in its database and all DNA samples taken pursuant to the Act from convicted persons upon official proof that the person has been deceased for a period of at least three (3) years. Official proof shall include, but not be limited to, a certified copy of a death certificate.
- 8.4 If the offense for which an arrestee DNA sample has been taken pursuant to § 12-1.5-8(b) of the Act does not result in a charge through information or indictment, or leads to voluntary dismissal of the charge by the state, or dismissal by a court, or by a not guilty verdict after trial, or upon the vacating or the reversal of a conviction in which the state does not retry the defendant or appeal the decision, or loses such appeal upon hearing, or upon any plea or conviction of a lesser offense that would not give rise to the mandatory sampling of the individual's DNA, the record or profile shall be expunged from the Rhode island DNA identification database, regardless of any prior record for which DNA sampling would not have been authorized.

- 8.5 The prosecuting authority shall, within thirty (30) days of an event listed in § 8.4 of these Regulations, notify the Department of such event for purposes of expunging the person's DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation, arrest and/or prosecution of the crime which resulted in the arrest of the person. The Department shall, within thirty (30) days of receiving such notification, destroy and expunge the person's DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual and shall notify the individual of such action.
- 8.6 Upon receipt of a written request for expungement from the person whose DNA record or profile has been included in the database pursuant to the Act and notification of the completion of a program of diversion or the completion of the term of a sentence of deferment, or of the granting of a pardon, the record or profile shall be expunged from the Rhode Island DNA identification database, regardless of any prior record for which DNA sampling would not have been authorized and such individual may apply to the court for an order directing the expungement of their DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation, arrest and/or prosecution of the crime which resulted in the arrest of the person.
- 8.7 A copy of the expungement motion shall be served on the Attorney General and the arresting police department with ten (10) days' notice prior to hearing, and an order directing expungement shall be granted if the court finds any of the appropriate conditions of § 8.6 of these Regulations are satisfied.
- 8.8 The State of Rhode Island CODIS Administrator or their designee at the Department shall ensure that the DNA record in the Rhode Island DNA identification database, and any samples, analyses, or other documents relating to such record, whether in the possession of the Department, or any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies thereof are destroyed, including any records from CODIS. The State of Rhode Island CODIS Administrator (or designee) at the direction of the Director shall provide a procedure for the expungement in other appropriate circumstances of DNA records contained in the database.
- 8.9 No expungement shall be granted where an individual has a prior conviction requiring a DNA sample, or a pending charge for which collection of a sample was authorized pursuant to the provisions of the Act.
- 8.10 The detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is determined that the sample was obtained or placed in the database by mistake. Any identification, warrant, or probable cause to arrest based upon a database match is not invalidated due to a failure to expunge or a delay in expunging records.
- 8.11 At the time of collection of the DNA sample upon arrest of any crime of violence as defined in § 12-1.5-2 of the Act, the individual from whom a sample is collected shall be given written notice that the DNA record may be expunged and the DNA sample destroyed in accordance with § 8.0 of these Regulations. In addition, the Department shall post on their website the expungement provisions of § 8.0 of these Regulations.

PART IV: *Penalties and Severability*

Section 9.0 *Violations and Penalties*

- 9.1 Any person who, by virtue of employment or official position, or any person contracting to carry out any functions under the Act, including any officers, employees and agents of such contractor, having possession of or access to individually identifiable DNA information contained in the State of Rhode Island DNA database or in the State of Rhode Island DNA databank and discloses it in any manner to any person or agency not authorized to receive it commits a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one (1) year or both.
- 9.2 Except as authorized by law, any person, who, for purposes of having DNA analysis performed, obtains or attempts to obtain any DNA sample, or tampers or attempts to tamper with any DNA sample, commits a felony punishable by a fine not more than five thousand dollars (\$5,000) or imprisonment for not more than five (5) years or both.

Civil Remedies

- 9.3 Any person aggrieved by a violation of § 12-1.5-14 of the Act may, in addition, bring a civil action for damages, injunctive relief, and reasonable attorneys' fees.

Section 10.0 *Interpretation and Severability*

- 10.1 The provisions of the Act shall be liberally construed and shall be held to be in addition to, and not in substitution for or a limitation of, the provisions of any other law. If any provision or part thereof of the Act or application thereof to any person or circumstances is held unconstitutional or otherwise invalid, the remainder of the Act and the application of such provisions to any other persons or circumstances other than those to which it is held invalid shall not be affected thereby.

References

1. *Standard Operating Procedures*, Rhode Island Department of Health, Division of Laboratories, March 2015 (and any subsequent amendments thereto).
2. *Quality Assurance Standards for Forensic DNA Testing Laboratories*, U.S. Department of Justice, Federal Bureau of Investigation, September 1, 2011. Available on-line: <http://www.fbi.gov/about-us/lab/biometric-analysis/codis/quality-assurance-standards-for-forensic-dna-testing-laboratories>
3. *NDIS Operational Procedures Manual, Version 3*, U.S. Department of Justice, Federal Bureau of Investigation, January 1, 2015. Available online: <http://www.fbi.gov/about-us/lab/biometric-analysis/codis/ndis-procedures-manual>