

216-RICR-60-05-2

## **TITLE 216 - DEPARTMENT OF HEALTH**

### **CHAPTER 60 - LABORATORIES AND MEDICAL EXAMINER**

#### **SUBCHAPTER 05 – STATE LABORATORY**

PART 2 - Rhode Island DNA Database & Databank

#### **2.1 Authority**

These regulations are promulgated pursuant to the authority conferred by R.I. Gen. Laws § [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 R.I. Gen. Laws Chapter 12-1.5 and for the creation of a DNA database for use in criminal investigations and humanitarian identification purposes.

#### **2.2 Incorporated Materials**

- A. These regulations hereby adopt and incorporate the Federal Bureau of Investigation publication, "Quality Assurance Standards for Forensic DNA Testing Laboratories", U.S. Department of Justice, Federal Bureau of Investigation, (September 1, 2011) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.
- B. These regulations hereby adopt and incorporate the "NDIS Operational Procedures Manual", Version 6, U.S. Department of Justice, Federal Bureau of Investigation, (July 17, 2017) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

#### **2.3 Definitions**

- A. Wherever used in these Regulations, the following terms shall be construed as follows:
  - 1. "Act" means R.I. Gen. Laws Chapter 12-1.5, entitled, "DNA Detection of Sexual and Violent Offenders."

2. "CODIS", derived from combined DNA index system, means 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.
3. "Crimes of violence" means 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.
4. "Department" means the Rhode Island Department of Health.
5. "Director" means the Director of the Rhode Island Department of Health.
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.
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.
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.
9. "DNA sample collection kit" means materials designed for the collection, documentation, and security of DNA samples.
10. "FBI" means the Federal Bureau of Investigation.
11. "Laboratory" means the Rhode Island Department of Health Laboratory.

12. "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.
13. "State of Rhode Island DNA databank" means the repository of DNA samples collected under the Act, which is administered by the Department.
14. "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.

## **2.4 Scope of the Act and Applicable Offenses**

- A. For law enforcement purposes, the Act is applicable to adult persons arrested for crimes of violence as defined in R.I. Gen. Laws § [12-1.5-2\(8\)](#) and/or convicted of any felony.
- B. Except as otherwise provided in R.I. Gen. Laws § [12-1.5-11](#), use of DNA samples and DNA records collected under the Act are limited to those purposes stated in R.I. Gen. Laws § [12-1.5-10\(4\)](#), and shall not be used for the purposes stated in R.I. Gen. Laws § [12-1.5-10\(5\)](#).

## **2.5 Procedures for Conduct, Disposition, and Use of DNA Analysis**

- A. 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 pursuant to R.I. Gen. Laws § [12-1.5-10](#).
- B. 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.

## 2.6 State of Rhode Island DNA Databank

- A. In accordance with the requirements of the Act, a State of Rhode Island DNA databank is established pursuant to this Part. It shall serve as the repository of DNA samples collected under the Act and shall be administered by the Department. Requirements for DNA sampling are pursuant to R.I. Gen. Laws § [12-1.5-8](#).
- B. DNA samples collected under the provisions of this Part shall be processed in accordance with Standard Operating Procedures, Rhode Island Department of Health, Division of Laboratories, January 2017 (and any subsequent amendments thereto), which is based on "Quality Assurance Standards for Forensic DNA Testing Laboratories" incorporated above at § 2.2(A) of this Part.
- C. 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.
- D. DNA samples shall be obtained using a sample collection kit designed and/or recommended by the Department.
- E. Thumbprint, signature and/or other personal identifiers shall document the identity of the offender.
- F. If the sample is unsuitable for laboratory testing, the Department may authorize collection of a second specimen.
- G. The collection kit shall be sealed and hand-delivered or sent by mail to the Laboratory.
- H. 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.
- I. 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.
- J. The genetic markers comprising the DNA profile shall consist of those adopted by the DNA Advisory Board of the Federal Bureau of Investigation.
- K. Protection from civil or criminal liability for withdrawal of DNA samples is pursuant to R.I. Gen. Laws § [12-1.5-9](#).

## **2.7 State of Rhode Island DNA Database**

- A. In accordance with the requirements of the Act, a State of Rhode Island DNA database is established pursuant to this Part. 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's capabilities and requirements are stated in R.I. Gen. Laws §§ [12-1.5-4](#) and [12-1.5-11](#).
- B. Procedures for using the national DNA database shall be in accordance with "NDIS Operational Procedures Manual" incorporated above at § 2.2(B) of this Part.

## **2.8 Confidentiality of Records**

Confidentiality of records is pursuant to R.I. Gen. Laws § [12-1.5-16](#).

## **2.9 Prohibition and Disclosure**

Prohibition and disclosure is pursuant to R.I. Gen. Laws § [12-1.5-14](#).

## **2.10 Expungement**

Expungement is pursuant to R.I. Gen. Laws § [12-1.5-13](#).

## **2.11 Violations and Penalties**

Violations and penalties are pursuant to R.I. Gen. Laws § [12-1.5-15](#).

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