

515 CMR: DEPARTMENT OF STATE POLICE

515 CMR 1.00: COLLECTION, SUBMISSION, RECEIPT, IDENTIFICATION, STORAGE, AND DISPOSAL OF DNA SAMPLES

Section

- 1.01: Scope and Purpose
- 1.02: Definitions
- 1.03: Collection and Submission of DNA Samples
- 1.04: Receipt, Identification and Storage of DNA Samples
- 1.05: Disposal of DNA Samples
- 1.06: Severability

1.01: Scope and Purpose

515 CMR 1.00 establishes rules and regulations governing the collection, submission, receipt, identification, storage and disposal of DNA samples for the state DNA database established in M.G.L. c. 22E, § 2, and is applicable to all DNA samples collected pursuant to M.G.L. c. 22E, § 3. The purpose of 515 CMR 1.00 is the promotion of uniformity and effective forensic science in the collection, submission, receipt, identification, storage and disposal of DNA samples.

1.02: Definitions

As used in 515 CMR 1.00:

CODIS means the Combined DNA Index System. The Federal Bureau of Investigation's national identification index system which facilitates the storage and exchange of DNA records submitted by state and local criminal justice and law enforcement agencies.

Court means any district court or superior court of the Commonwealth.

Crime Laboratory means the Massachusetts State Police Crime Laboratory, also known as the Forensic Services Group, of the Department of State Police.

Database Information Card means a record of biographical information associated by the DNA sample of an offender.

Department means the Department of State Police.

Director means the Director of the Crime Laboratory within the Department of State Police.

DNA means deoxyribonucleic acid.

DNA Database means the State DNA Database as established in M.G.L. c. 22E.

DNA Database Collection Kit or DNA Kit means the kit provided by the Department for the collection of DNA samples.

DNA Record means DNA information that is derived from a DNA sample and DNA analysis and is stored in the state DNA database or in CODIS, including all records pertaining to DNA analysis.

DNA Sample means biological material or evidence of any nature that is utilized to conduct DNA analysis.

DOC means the Department of Correction.

FBI means the Federal Bureau of Investigation within the United States Department of Justice.

1.03: Collection and Submission of DNA Samples

(1) Collection.

(a) Offenders required to submit a DNA sample to the Department under M.G.L. c. 22E, § 3 or other applicable law must do so.

(b) Only those listed in M.G.L. c. 22E, § 4(a) or individuals approved and trained by the Director or his or her designee may collect DNA samples from offenders.

1. The Director, or his or her designee, shall conduct training of persons, including but not limited to police officers, probation officers, parole officers, employees of the Department of Corrections, and employees of sheriffs on the collection of DNA samples, including buccal swabs. Upon satisfactory completion of the training, the Director may approve such persons to collect DNA samples, including buccal swabs and shall provide DNA Database Collection Kits to such persons.

2. To collect a sample, such individuals must use a DNA Database Collection Kit and employ medical procedures approved by the Director.

(c) The Crime Laboratory may seek an additional sample from the offender in the event that the testing of the original sample does not result in a profile. The Crime Laboratory may not seek more than four samples from a single offender in a 12-month period.

(2) Submission. Those permitted by law or approved and trained by the Director, or their designees, to collect DNA samples must submit all DNA samples to the Crime Laboratory in person or via delivery service such as U.S. mail.

1.04: Receipt, Identification and Storage of DNA Samples

(1) Receipt. Upon receipt and inventory of a DNA Database Collection Kit, the Crime Laboratory will process the kit according to 515 CMR 1.04, 515 CMR 2.00: *Testing and Analysis, Quality Assurance, Computerized Storage, Retrieval, and Dissemination for the State DNA Database*, and Crime Laboratory protocols.

(2) The Crime Laboratory shall:

(a) Ensure that the DNA sample, fingerprint, and all associated offender information is obtained from the same individual.

(b) Assign to each offender's DNA sample a unique identification number associated with the DNA Database Collection Kit used to obtain the DNA sample.

(c) Implement protocols to maintain the integrity of the DNA sample, fingerprint, and associated identifying information.

(d) Use associated offender information when identifying the individual.

(3) Storage.

(a) The Crime Laboratory shall store the DNA Database Collection Kits in a manner that ensures the security and integrity of DNA samples and confidentiality of offender information.

(b) The DNA samples and database information cards shall be stored in a dedicated and secure storage area within the Crime Laboratory. Only personnel authorized by the Director may access the DNA samples, storage area, and database information cards.

1.05: Disposal of DNA Samples

Except as provided in 515 CMR 1.05, the Crime Laboratory shall store DNA samples and DNA database information cards permanently in a secure storage area.

(1) Expungement. Upon receipt of a court order pursuant to M.G.L. c. 22E, § 15, with respect to a subject whose DNA record resides in the DNA Database, such record may be expunged in accordance with M.G.L. c. 22E, § 15. Upon receipt of a court order for expungement, the Crime Laboratory shall verify whether it possesses a DNA sample from an individual with personal identifying data that corresponds with information provided in the court order.

1.05: continued

(a) If no record is found, or if there is any discrepancy in the information submitted by the subject or his or her representative in the request, the Crime Laboratory shall notify the subject in writing within 30 days, setting forth reasons why documents were not returned and requesting additional information, if appropriate, by certified or registered mail, return receipt requested.

(b) If a record is found for the identified subject in the DNA Database and no discrepancies are identified in the information submitted by the subject or his or her representative, the Crime Laboratory shall determine the location of all documents related to the subject's DNA record. The Crime Laboratory shall, within 30 days of the notification of the court order, communicate to the subject in writing the list of documents identified in this search, by certified or registered mail, return receipt requested. In this same letter, the Crime Laboratory shall define for the subject the expected time needed to obtain all documents to be returned to the subject. The time to obtain and return these records to the subject shall not exceed 120 days from the date of notification of the court order for expungement unless exigent circumstances exist.

Upon determining the existence of any DNA record(s), the Crime Laboratory shall obtain all documents related to the subject's DNA record. The Crime Laboratory shall forward to the subject such documents using return receipt requested mail, and maintain a record of the expungement. The Crime Laboratory shall also remove information in CODIS pertaining to the subject.

(2) Disqualification. If the Crime Laboratory determines that it possesses a DNA sample that does not meet all requirements for entrance to the DNA database or CODIS, the Crime Laboratory may destroy such sample.

1.06: Severability

If any article, section, subsection, sentence, clause or phrase of 515 CMR 1.00 is for any reason determined to be unconstitutional, contrary to statute, in excess of authority, or otherwise inoperative, such determination shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 515 CMR 1.00.

REGULATORY AUTHORITY

515 CMR 1.00: M.G.L. c. 22E, §§ 4 and 6.

NON-TEXT PAGE