

515 CMR: DEPARTMENT OF STATE POLICE

515 CMR 2.00: TESTING AND ANALYSIS, QUALITY ASSURANCE, COMPUTERIZED STORAGE, RETRIEVAL, AND DISSEMINATION FOR THE STATE DNA DATABASE

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2.01: Scope and Purpose

515 CMR 2.00 governs the testing and analysis, quality assurance, computerized storage, retrieval, and dissemination of information contained in the State DNA Database established in M.G.L. c. 22E, § 2. It applies to all DNA samples collected as forensic evidence and from convicted offenders pursuant to M.G.L. c. 22E, § 3. The purpose of 515 CMR 2.00 is the promotion of uniformity, confidentiality, and effective forensic science for the State DNA Database.

2.02: Definitions

As used in 515 CMR 2.00:

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.

CODIS Supervisor means an employee of the Department responsible for maintaining the State DNA Database, fulfilling technical requirements of CODIS, and assuring proper operation of the computer software or hardware on which the DNA Database resides.

Convicted Offender Index means the electronic database containing DNA profiles generated from Massachusetts offenders convicted of one of the crimes described in M.G.L. c. 22E, § 3, stored in the State DNA Index System (SDIS).

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

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 Analysis means DNA typing tests that generate numerical identification information and are obtained from a DNA sample.

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

DNA Profile means the set of identification characteristics or numerical representation at each of the locations of the DNA sample analyzed.

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.

2.02: continued

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

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

Forensic Index means the electronic database of casework evidence DNA profiles generated from analysis of DNA samples from crime scenes.

Index Offense means the offense for which an offender is required to submit a DNA sample under Massachusetts or federal law.

NDIS means the National DNA Index System, the part of CODIS containing the DNA profiles contributed by federal, state, and local participating forensic laboratories.

2.03: Testing and Analysis of DNA Samples

The Crime Laboratory shall test and analyze DNA samples in accordance with the Director's protocol, to generate a DNA profile for inclusion in the State DNA Database.

(1) Forensic DNA Profiles. DNA profiles generated by testing of biological casework evidence related to a crime scene may be added to the Forensic Index of the DNA Database in accordance with Crime Laboratory policies.

(2) Convicted Offender DNA Profiles. DNA profiles generated by testing of DNA samples submitted by convicted offenders in accordance with M.G.L. c. 22E, § 3 shall be added to the Convicted Offender Index of the DNA Database.

(3) Other DNA Profiles. Other DNA profiles, such as those generated from analyses of DNA recovered from unidentified human remains, may be added to the DNA Database per the Crime Laboratories policies as determined by the Director.

2.04: Quality Assurance

The Crime Laboratory will comply with FBI quality assurance standards and maintain appropriate accreditation.

2.05: Computerized Storage and Retrieval of Information

(1) Access Security. The Crime Laboratory shall store information pertaining to the State DNA Database in a secure, limited-access computer system. Only those authorized by the Director may access the computer system.

(2) CODIS Compliance. The computer system of the Crime Laboratory shall allow participation in the federal CODIS program.

(3) Mutual Exchange. The Crime Laboratory may engage in the exchange, use, and storage of DNA Records with CODIS provided that:

(a) The Director determines that such exchange, use, and storage of DNA Records is consistent with Massachusetts law; and

(b) A memorandum of understanding (MOU) has been executed between the Department and the FBI.

2.06: Right of Subjects to Access and Review Records

(1) Subject Request for Access. The Director will review all requests for access to and review of records relating to a subject of the DNA Database, by such subject, on a case-by-case basis. In reviewing and responding to the request, the following steps shall be followed:

- (a) The subject must make the request in writing and include the following information:
  1. Subject's name and any aliases;
  2. Subject's date of birth, social security number, sex, and race;
  3. Subject's current address and phone number;
  4. Index offense;
  5. Date of conviction for the index offense;
  6. Court of jurisdiction in which the subject was convicted of the index offense;
  7. Subject's right thumbprint, of sufficient clarity to allow for processing in the Automated Fingerprint Identification System;
  8. Passport-sized color photograph taken within the past 12 months.
- (b) The information described in 515 CMR 2.06(1)(a) must be submitted under the subject's signature and seal of a registered Notary with the following authentication statement: "I [subject's name] state under oath that the information I am providing to the Massachusetts State Police regarding my identity is true and accurate."
- (c) The Crime Laboratory will determine whether it possesses a DNA sample from an individual corresponding to the information provided.
  1. If no record is found using this information, or if there is any discrepancy discovered in the information submitted by the subject in the request, no information related to the DNA Database will be provided to the subject. The Crime Laboratory shall notify the subject of this determination in writing within 30 days, by certified or registered mail to last known address, return receipt requested.
  2. If a record is found for the identified subject in the DNA Database with no discrepancies in the submitted information, the Crime Laboratory will forward a photocopy of the subject's DNA Database Information Card and the results of the DNA analysis to the subject with a written letter of authentication within 30 days, by certified or registered mail to last known address, return receipt requested.

(2) Appeal. If, due to discrepancies in the information submitted by the subject in the request, the Crime Laboratory does not provide DNA records and related information to the subject, the subject may appeal the determination. In order to appeal the Crime Laboratory's determination, the subject must provide, in writing and under signature and the seal of a registered Notary, the nature of the subject's disagreement with the Crime Laboratory's decision. This appeal document shall be submitted to the Department, which shall take appropriate action to review the merits of the appeal and present a final decision on the appeal in writing within a reasonable period. In the event such decision reverses or modifies that of the Crime Laboratory, the Department shall require that appropriate action be taken with respect to the subject's record.

2.07: Use and Dissemination Agreements

(1) Authorized Agencies. Access to the DNA Database, shall be granted to an agency authorized to have such access, pursuant only to a written use and dissemination agreement. As long as consistent with 42 U.S.C. § 14132, stored DNA samples and DNA analyses can be disclosed only:

- (a) to criminal justice agencies for law enforcement identification purposes, which shall include (at the discretion of the Director) to assist the identification of human remains from mass disasters or to identify whether such remains are from those of a missing person, upon written or electronic request to the Director;
- (b) in judicial proceedings, if otherwise admissible by applicable statutes or rules;
- (c) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; and
- (d) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes:

2.07: continued

(2) Requirements in the Use and Dissemination Agreement. The use and dissemination agreement shall specify:

- (a) Duties of the Director to provide the requested access and information to authorized parties;
- (b) Duties of the user agency to receive, store and use all information covered by the agreement in compliance with all applicable state and federal laws and regulations;
- (c) Duties of the user agency to familiarize all personnel and adhere to all regulations governing the receipt, storage and use of all information covered in the agreement;
- (d) Duties of the user agency to maintain records that support and justify inquiries and requests for DNA Database searches, and to make these records available to the Department upon request;
- (e) Prohibitions on redisclosure by the user agency of any information obtained from the DNA Database to any unauthorized agency or person;
- (f) Policy for suspension of access, cancellation of access, and/or fines for any violations of the terms and conditions of the use and dissemination agreement by a user agency, its employees or agents, and a policy for reinstating access by the Department only after the Department is satisfied that the causes of all violations have been eliminated;
- (g) Specific instructions allowing termination by either party of the agreement for any reason with 30 days notice; and
- (h) Notice that the agreement shall take effect only after officials of the Crime Laboratory and user agency having both the administrative and legal authority to bind the parties to the terms and conditions of the agreement have signed the use and dissemination agreement.

(3) Record Keeping. A copy of each current use and dissemination agreement shall be filed with the Crime Laboratory and maintained in a file for each participant agency at all times. The form of the agreements shall be determined by the Department.

2.08: Severability

If any article, section, subsection, sentence, clause or phrase of 515 CMR 2.00 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 2.00.

REGULATORY AUTHORITY

515 CMR 2.00: M.G.L. c. 22E, §§ 3, 4 and 6.

(PAGES 8.3 THROUGH 8.6 ARE RESERVED FOR FUTURE USE.)