

**DEPARTMENT OF STATE POLICE**

**FORENSIC SCIENCE DIVISION**

**DNA PROFILING SYSTEM**

(By authority conferred on the department of state police by section 3 of 1990 PA 250, MCL 28.173)

**R 28.5051 Definitions.**

Rule 1. As used in these rules:

(a) "CODIS" means the federal bureau of investigation's combined DNA Index System.

(b) "Offender" means an individual who is required to provide a DNA sample for a qualifying offense at arrest or upon conviction or a finding of responsibility under 1931 PA 328, MCL 750.520m and 1990 PA 250, MCL 28.176(1) or any other applicable law.

(c) "Sample" means a source of cellular DNA that is collected using the DNA collection kit provided by the department.

(d) "Upon conviction" means within a reasonable time after conviction and sentencing or disposition, but before the offender's release or transfer from state or county custody, as applicable.

(e) "At arrest" means within a reasonable time after arrest, typically during the booking process.

(f) "Designated agency" means the law enforcement agency that is responsible for the sample collection and transmittal of the sample to the department.

(g) "DNA" means deoxyribonucleic acid, the heredity material contained in nuclear cells.

(h) "Department" means the Michigan department of state police.

(i) "Qualifying offense" means those offenses for which an individual provides a sample for DNA testing as required by law at arrest, upon conviction, or upon a finding of responsibility.

(j) "Profile" means the results of the DNA identification profiling of a sample, including a paper, electronic, or digital record.

History: 1995 AACCS; 1998 AACCS; 2011 AACCS.

**R 28.5052 Applicability.**

Rule 2. These rules apply to the collecting of samples from the following individuals:

(a) Offenders who are arrested for a qualifying offense under 1931 PA 328, MCL 750.520m(1)(a).

(b) Offenders who are convicted of a qualifying offense under 1990 PA 250, MCL 28.176(1)(b).

(c) Offenders who are prisoners and have not already provided a sample as required by 1953 PA 232, MCL 791.233d(1) that meets the requirements of these rules.

(d) Juvenile offenders who are found responsible for a qualifying offense under 1990 PA 250, MCL 28.176(1)(a) and 1939 PA 288, MCL 712A.18k.

(e) Juvenile offenders who are under the supervision of the state department or county juvenile agency under 1988 PA 73, MCL 803.225a and have not already provided a sample that meets the requirements of these rules.

(f) Juvenile offenders who are public wards under 1974 PA 150, MCL 803.307a(1) and have not already provided a sample that meets the requirements of these rules.

History: 1995 AACCS; 1998 AACCS; 2011 AACCS.

### **R 28.5053 Responsibility for collecting samples.**

Rule 3. (1) The department shall provide DNA collection kits to each designated agency. Each designated agency shall contact the department to order DNA collection kits. Each agency shall designate a point of contact correspond with the department regarding matters concerning DNA collection. Each agency shall notify the department of the designated point of contact's name, address, and telephone number at which the department may direct correspondence to the point of contact regarding matters concerning DNA collection. If the designated point of contact has an e-mail address, the address shall also be provided to the department.

(2) DNA collection kits shall be only used for collecting samples from offenders. DNA collection kits shall not be used to collect evidentiary samples for submission in criminal cases.

(3) The designated agency shall provide gloves to the individual performing the collection. The individual performing the collection shall wear gloves at all times while performing sample collection and packaging.

(4) Each designated agency shall determine if a DNA sample is already on file for the offender through the criminal history record. DNA samples shall not be collected when the criminal history record indicates a DNA sample has previously been obtained from the offender.

(5) If a determination is made that sample collection from the offender is required, then the following shall apply as to the designated agencies:

(a) When applicable law requires sample collection upon arrest of an offender, the investigating law enforcement agency is the designated agency. The collection of a sample from the offender and transmittal of the sample to the department shall be completed within 30 days of the arrest.

(b) When applicable law requires sample collection upon conviction or a finding of responsibility, unless otherwise ordered by the court, the investigating law enforcement agency is the designated agency. If the designated investigating law enforcement agency does not collect a sample from the offender within 15 days of conviction or finding of responsibility, the county sheriff is then the designated agency for collection unless otherwise ordered by the court. If a sample has not already been collected, collection of a sample from the offender and transmittal of the sample to the department shall occur before any transfer or release of the offender, whatever the

terms of incarceration. If the offender will be incarcerated for more than 30 days, the collection of a sample from the offender and transmittal of the sample to the department shall be completed within 30 days of the conviction or finding of responsibility.

(c) When applicable law requires sample collection before release from serving a term of incarceration in a facility under the control of the county sheriff, the county sheriff is the designated agency. If a sample has not already been collected, collection of a sample from the offender and transmittal of the sample to the department shall occur before any transfer or release of the offender, whatever the term of incarceration. If the offender will be incarcerated for more than 90 days, the collection of a

sample from the offender and transmittal of the sample to the department shall be completed 90 days prior to the offender's release.

(d) When applicable law requires sample collection from an offender and the offender is transferred into a facility under the control of the Michigan department of corrections to serve a term of incarceration, the Michigan department of corrections is the designated agency. If the sample has not already been collected, collection of a sample from the offender and transmittal of the sample to the department shall occur before release of the offender, whatever the term of incarceration. If the offender will be incarcerated for more than 90 days, the collection of a sample from the offender and transmittal of the sample to the department shall be completed within 90 days of receipt of the offender into the facility.

(e) When applicable law requires sample collection from an offender and the offender is serving a term of incarceration in a facility under the control of the Michigan department of corrections, the Michigan department of corrections is the designated agency. If a sample has not already been collected, collection of a sample from the offender and transmittal of the sample to the department shall occur before release of the offender, whatever the term of incarceration. If the offender will be incarcerated for more than 1 year, the collection of a sample from the offender and transmittal of the sample to the department shall be completed a minimum of 1 year prior to the offender's release.

(f) When applicable law requires sample collection from an offender and the offender is placed under the supervision of a state department or county juvenile agency or is declared a public ward, the investigating law enforcement agency is the designated agency. Collection of a sample from the offender and transmittal of the sample to the department shall occur before any transfer or discharge from wardship, whatever the term of supervision. If the offender will be under supervision for more than 30 days, the collection of a sample from the offender and transmittal of the sample to the department shall be completed within 30 days of the offender being placed under supervision.

History: 1995 AACS; 1998 AACS; 2011 AACS.

#### **R 28.5054 Procedures for sample collection.**

Rule 4. (1) An offender shall be positively identified by the designated agency or its designee before the samples are taken. The state identification number

associated with the offender, if there is an assigned state identification number, shall be used for this purpose and recorded in the specified area on the DNA collection card.

(2) After the offender is positively identified, the designated agency shall collect samples from the offender according to the collection instructions included in the DNA collection kit. The sample collection shall be performed by the designated agency or its designee; however, the designee shall not be the offender. The designated agency shall provide gloves to the individual performing the collection. The individual performing the collection shall wear gloves at all times while performing sample collection and packaging.

(3) Only the DNA collection kit provided by the department shall be used to collect samples.

(4) The DNA collection card shall be completed by the designated agency prior to beginning sample collection. All relevant information requested on the DNA collection card shall be provided. The DNA collection card shall bear the fingerprint impressions of the offender's thumbs in the spaces indicated on the DNA collection card.

(5) The collecting, labeling, storing, handling, and transmitting of the samples collected shall comply with the collection instructions included in the DNA collection kit. Within 72 hours of sample collection, the DNA collection kit shall be transmitted to the department by hand delivery, U.S. Mail, or certified carrier.

History: 1995 AACS; 2011 AACS.

**R 28.5055 Profile record storage and access.**

Rule 5. (1) The national DNA database system "CODIS" shall be used to file, catalog, retrieve, and compare DNA profiles.

(2) Access and use of the CODIS system shall be in accordance with federal law, memorandum of understanding with the federal bureau of investigation for participation in CODIS, all applicable CODIS rules, policies or procedures, and any licensing agreements established by the United States government.

History: 1995 AACS; 2011 AACS.

**R 28.5056 Privacy protection.**

Rule 6. The results of the DNA profiling shall be disclosed only as provided in 1990 PA 250, MCL 28.176(2).

History: 1995 AACS; 2011 AACS.

**R 28.5057 Authorized use.**

Rule 7. The department shall only use samples and/or test results for the purposes provided in 1990 PA 250, MCL 28.175a.

History: 1995 AACS; 2011 AACS.

**R 28.5058 Disposal of samples and profiles.**

Rule 8. A sample or profile shall not be disposed of if the department determines the individual has otherwise become obligated to submit a sample or if the disposal of the sample would destroy sample or data relating to another individual who would otherwise be retained. If the sample is

eligible for disposal, the sample shall be disposed of in the following instances:

(a) Disposal is ordered by a court of proper jurisdiction in accordance with 1990 PA 250, MCL 28.176(10).

(b) The department receives a written request for disposal from the investigating police agency or prosecutor in accordance with 1990 PA 250, MCL 28.176(11).

(c) The department receives a written request for disposal and a certified copy of a final court order in accordance with 1990 PA 250, MCL 28.176(11)(b).

History: 1995 AACS; 2011 AACS.

**R 28.5059 Effect of noncompliance with rules.**

Rule 9. The uploading of DNA profiles into the state DNA database may be denied if the designated agency fails to comply with these rules.

History: 1995 AACS; 2011 AACS.