

# Chapter 446-75 WAC

## DNA IDENTIFICATION

### WAC

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**WAC 446-75-010 Definitions.** (1) "DNA" wherever used in this chapter shall mean deoxyribonucleic acid.

(2) "Convicted felon" wherever used in this chapter shall mean:

(a) Every individual convicted after July 1, 1990, of a felony defined as a sex or violent offense under RCW 9.94A-.030;

(b) Every individual convicted on or before July 1, 1990, of a felony defined as a sex or violent offense under RCW 9.94A.030, who is still incarcerated on or after July 25, 1999;

(c) Every juvenile adjudicated guilty after July 1, 1994, of a felony defined as a sex or violent offense under RCW 9.94A.030 or an equivalent juvenile offense;

(d) Every juvenile adjudicated guilty on or before July 1, 1994, of a felony defined as a sex or violent offense under RCW 9.94A.030 or an equivalent juvenile offense, who is still incarcerated on or after July 25, 1999;

(e) Every adult or juvenile convicted of a felony, stalking under RCW 9A.46.100, harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense, on or after July 1, 2002;

(f) Every adult or juvenile convicted of a felony, stalking under RCW 9A.46.100, harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense, before July 1, 2002, who is still incarcerated on or after July 1, 2002.

(3) "DNA identification" wherever used in this chapter shall mean the identification of a particular individual from the chemical structure of the DNA contained in cells of the human body.

(4) "Biological sample" wherever used in this chapter means a buccal swab (a swabbing of the inside of the mouth between the cheek and gum). The Washington state patrol crime laboratory division will supply a buccal swab collection kit to any agency responsible for collecting convicted felon samples for DNA typing. If there is a reason that a buccal swab cannot be obtained, a bloodstain collected by a finger stick may be taken from the individual.

[Statutory Authority: RCW 43.43.759. WSR 03-08-053, § 446-75-010, filed 3/28/03, effective 4/28/03; WSR 91-11-046, § 446-75-010, filed 5/14/91, effective 6/14/91.]

(3/28/03)

**WAC 446-75-020 Purpose.** The purpose of this chapter is to provide procedures for the operation of DNA identification systems as required by RCW 43.43.752 through 43.43.-758, and to prohibit the improper use of DNA identification data as required by RCW 43.43.759.

[Statutory Authority: RCW 43.43.759. WSR 03-08-053, § 446-75-020, filed 3/28/03, effective 4/28/03; WSR 91-11-046, § 446-75-020, filed 5/14/91, effective 6/14/91.]

**WAC 446-75-030 Purposes of DNA identification.** DNA identification systems as authorized by chapter 43.43 RCW shall be used only for three purposes:

(1) Identification of possible suspects in criminal investigations;

(2) Convicted felon identification databanking; and

(3) Identification of human remains or missing persons.

Nothing in this section prohibits the submission of results derived from the biological samples to the Federal Bureau of Investigation combined DNA index system.

[Statutory Authority: RCW 43.43.759. WSR 03-08-053, § 446-75-030, filed 3/28/03, effective 4/28/03; WSR 91-11-046, § 446-75-030, filed 5/14/91, effective 6/14/91.]

**WAC 446-75-040 DNA identification system established.** The DNA identification system established by the chief of the Washington state patrol shall be compatible with the method(s) used by the Federal Bureau of Investigation. Identification systems established by other local law enforcement agencies shall be compatible to the current Washington state patrol system.

[Statutory Authority: RCW 43.43.759. WSR 91-11-046, § 446-75-040, filed 5/14/91, effective 6/14/91.]

**WAC 446-75-050 DNA identification system analytical procedures.** Law enforcement agencies establishing a DNA identification system shall maintain written analytical procedures necessary to complete the analyses. A copy of the analytical procedures shall be forwarded to the chief of the Washington state patrol to ensure compatibility with the Washington state patrol system. The chief shall approve or disapprove the procedures utilizing the standards set forth for DNA identification by the Federal Bureau of Investigation prior to any implementation by the submitting agency. The appeal process for any disapproval shall be in accordance with the provisions of the Administrative Procedure Act (chapter 34.05 RCW).

[Statutory Authority: RCW 43.43.759. WSR 91-11-046, § 446-75-050, filed 5/14/91, effective 6/14/91.]

**WAC 446-75-060 Collection of biological sample for DNA databank—Procedures—Time frame.** (1) The collection, preservation, and shipment of blood samples obtained from convicted felons pursuant to RCW 43.43.754 for the convicted felon databank program shall be in confor-

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mance with the "Protocol for the Collection of Biological Sample for the Convicted Felon DNA Program" as prepared by the Washington state patrol crime laboratory division. Copies of the current protocol may be obtained from the Washington State Patrol Crime Laboratory Division, Olympia, WA.

(a) If the convicted felon does not serve a term of confinement in a facility operated by the department of corrections or the department of social and health services, and does serve a term of confinement in a city or county jail facility, officials at the city or county jail facility shall be responsible for obtaining the biological sample either as part of the intake process if the person is convicted on or after July 1, 2002, or within a reasonable time after July 1, 2002, but prior to the person's release, if the person was incarcerated before July 1, 2002.

(b) If the convicted felon serves a term of confinement in a facility operated by the department of corrections or the department of social and health services, officials at the facility shall be responsible for obtaining the biological sample either as part of the intake process if the person is convicted on or after July 1, 2002, or within a reasonable time after July 1, 2002, but prior to the person's release, if the person was incarcerated before July 1, 2002.

(c) If the convicted felon is sentenced on or after July 1, 2002, and does not serve a term of confinement in a city, county or state facility, the local police department or sheriff's office shall be responsible for obtaining the biological sample after sentencing.

(2) Results from DNA identifications made from blood samples obtained from convicted felons under RCW 43.43.754 shall be submitted to the chief of the Washington state patrol and entered into the Washington state patrol DNA databank. Such results shall reside in the databank until expungement pursuant to WAC 446-75-070.

[Statutory Authority: RCW 43.43.759. WSR 03-08-053, § 446-75-060, filed 3/28/03, effective 4/28/03; WSR 91-11-046, § 446-75-060, filed 5/14/91, effective 6/14/91.]

**WAC 446-75-070 Expungement of DNA data.** (1) A person desiring the destruction of his DNA identification data from a DNA databank shall make his request therefor on a form furnished by the chief of the Washington state patrol. The request shall be mailed or delivered to the Washington State Patrol Crime Laboratory Division, Olympia, WA.

(2) The request shall be completed, signed by the person whose record is sought to be expunged. The signature shall be notarized. It shall include the address of the applicant, the printed name and the address of the witness to the applicant's signature and such other information requested on the application as identifies the applicant and the offense for which the request of expungement is made.

(3) The request shall include proof that the person making the request for expungement is the same person whose DNA data is sought to be expunged. Such proof shall include a sworn statement of identity. When requested by the patrol, fingerprints and a blood sample shall also be required from the applicant.

(4) The request shall include proof that the person making the request has no record as a convicted felon under RCW 43.43.754 or has other lawful grounds for expungement.

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Such proof shall include a sworn statement from the applicant, and not-guilty or released without conviction documentation from such criminal charges. Where the finding or release is based on an order of a court, the applicant shall furnish a certified true copy of the court order.

(5) The Washington state patrol crime laboratory has discretion to deny the request for expungement.

[Statutory Authority: RCW 43.43.759. WSR 03-08-053, § 446-75-070, filed 3/28/03, effective 4/28/03; WSR 91-11-046, § 446-75-070, filed 5/14/91, effective 6/14/91.]

**WAC 446-75-080 DNA identification data—Prohibitions.** The use of any data obtained from DNA identification procedures is prohibited for any research or other purpose not related to a criminal investigation, to identification of human remains or missing persons, or to improving the operation of the system established by the Washington state patrol and authorized by RCW 43.43.752 through 43.43.759.

[Statutory Authority: RCW 43.43.759. WSR 03-08-053, § 446-75-080, filed 3/28/03, effective 4/28/03; WSR 91-11-046, § 446-75-080, filed 5/14/91, effective 6/14/91.]