

## State Regulations on Quality Assurance for Forensic DNA Laboratories

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A number of high profile scandals at forensic laboratories have called into question the reliability and validity of results and analyses used to convict hundreds of criminal defendants. One of the most widely publicized cases was that of Jacqueline Blake, a technician at the FBI laboratory. Blake failed to include negative controls when performing her DNA analyses, and falsified laboratory documentation to conceal this failure.<sup>1</sup> Such misconduct not only calls into question the conduct of the individual technician, but also of the entire forensic laboratory.

Given that many players in the criminal justice system attach great weight to forensic DNA evidence, ensuring the accuracy and reliability of DNA profiling remains of paramount importance. Quality assurance regulations provide one means of oversight of state DNA forensic laboratories. These state regulations generally refer to the quality assurance standards established by the FBI or recognized national organizations. A critical reading of these state regulations informs the legal and policy debates regarding the measures that should be taken to ensure that DNA evidence warrants the deference that it often receives. For example, the New York regulations, exceptional for their detail, establish accreditation procedures for DNA laboratories tied to the accreditation requirements of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB).<sup>2</sup> However, a recently proposed New York regulation, reproduced below, reveals that many laboratories had failed to meet certain quality assurance standards, despite having valid ASCLD/LAB accreditation.<sup>3</sup> Thus, the wholesale adoption of independent accreditation programs, without rigorous enforcement by regulators, may fall short of ensuring the proper day-to-day operation of DNA forensic laboratories.

Following is a compilation of quality assurance regulations identified through a Westlaw search of state administrative codes and registers. Asterisks (\*\*\*) indicate that the regulations have been edited to exclude irrelevant portions. This information is current as of June 29, 2004.

### Alabama

#### Ala. Admin. Code r. 370-2-1-.03 Testing Of DNA Specimens

(1) DNA specimens will be tested according to the CODIS Standards for Acceptance of DNA Data as published by the Federal Bureau of Investigation.

### Illinois

#### Ill. Admin. Code 20 § 1285.80 Non-participation

a) Results of genetic marker grouping analysis and access to the State genetic marker database information may be denied to any agency which fails to comply with these Rules.

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<sup>1</sup> Department of Justice, Office of the Inspector General, "The FBI DNA Laboratory: A Review of Protocol and Practice Vulnerabilities" (May 2004).

<sup>2</sup> N.Y. Comp. Codes R. & Regs. 9 § 6190.1 et seq.

<sup>3</sup> 2004 N.Y. St. Reg. 16689.

b) Access to the State genetic marker database shall be denied to those forensic laboratories that do not comply with the FBI's requirements for DNA indexing entitled "CODIS Standards for Acceptance of DNA Data at NDIS"; FBI Laboratory Division, Forensic Science System Unit, 935 Pennsylvania Avenue N.W., Room GRB-3R, Washington D.C. 20535 (November 1996). This incorporation by reference contains no further editions or amendments.

## **Indiana**

### Ind. Admin. Code tit. 240 r. 8-4-2 Quality Assurance Standards

Sec. 2. (a) A laboratory conducting forensic DNA analysis in Indiana shall comply with nationally recognized standards for quality assurance and proficiency testing.

(b) In the event of competing quality assurance standards, the state police laboratory commander shall identify the nationally recognized standard that a laboratory conducting forensic DNA analysis in Indiana must implement and follow.

### Ind. Admin. Code tit. 240 r. 8-4-3 Participation

Sec. 3. If a laboratory performing forensic DNA analysis in Indiana fails to meet required quality control standards, the superintendent shall deny the laboratory the right to exchange DNA identification records with federal, state, or local criminal justice agencies.

## **Kansas**

### Kan. Admin. Regs. 10-21-3 Procedural compatibility with the FBI

(a) The DNA database as established by the KBI shall be compatible with the following documents, all of which are hereby adopted by reference:

(1) "National DNA index system (NDIS): NDIS standards for acceptance of DNA data," dated January 2000;

(2) "quality assurance standards for forensic DNA testing laboratories," effective October 1998; and

(3) "quality assurance standards for convicted offender DNA databasing laboratories," effective April 1999.

(b) DNA samples shall be received by the KBI for storage and analysis. The DNA analysis may be conducted under contract with the KBI by a qualified DNA laboratory that meets KBI procedural guidelines.

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(3) If the laboratory is a non-CODIS crime laboratory, the laboratory request shall be submitted in compliance with the procedures specified in the documents adopted in subsection (a).

## **Maryland**

### Md. Regs. Code 29 § 29.05.01.01 Definitions

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "CODIS" means the Federal Bureau of Investigation's Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal, state, and local law enforcement systems.

(2) "Crime Laboratory" means the Department of State Police, Crime Laboratory Division.

(3) "DAB" means the DNA Advisory Board, established by the Federal Bureau of Investigation (FBI) as required by the Federal DNA Identification Act of 1994, that establishes national standards on quality assurance and proficiency testing.

(4) "DAB Standards" means the:

(a) Quality Assurance Standards for Forensic DNA Testing Laboratories (effective October 1, 1998); and

(b) Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories (effective April 1, 1999).

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(6) "Director" means the Director of the Department of State Police Crime Laboratory, or the Director's designee.

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(18) "Technical Working Group on DNA Analysis Methods (TWGDAM)" means a working group of scientists which produced a set of guidelines for a quality assurance program for DNA testing laboratories while representing:

(a) Canadian forensic laboratories;

(b) Federal Bureau of Investigation Laboratory Division;

(c) National Institute for Standards and Technology;

(d) State and local crime laboratories; and

(e) University laboratories.

(19) "TWGDAM Guidelines" means Guidelines for a Quality Assurance (QA) Program for DNA Analysis, Crime Laboratory Digest, 18(2): 44-75, 1991. Revised CLD, 22(2): 21-43, 1995.

#### Md. Regs. Code 29 § 29.05.01.01-1 Incorporation by Reference

A. In this chapter, the following documents are incorporated by reference.

B. Documents Incorporated.

(1) Quality Assurance Standards for Forensic DNA Testing Laboratories (October 1, 1998).

(2) Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories (April 1, 1999).

#### Md. Regs. Code 29 § 29.05.01.10 Quality Assurance

A. Any procedure adopted by the Director shall include quality assurance guidelines to ensure that DNA identification records meet standards and audit requirements for laboratories that submit DNA records for inclusion in the Statewide DNA Data Base System and CODIS.

B. The Crime Laboratory and each analyst performing DNA analyses at the Crime Laboratory shall undergo, twice yearly, external proficiency testing by a DNA proficiency testing program that meets the standards as follows:

(1) Section 1003 of the Federal DNA Identification Act of 1994; or

(2) DAB Standards.

## **Massachusetts**

### Mass. Regs. Code 515 § 2.03 Definitions

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ASCLD/LAB. The American Society of Crime Laboratory Directors/Laboratory Accreditation Board. Current ASCLD/LAB accreditation guidelines are contained in the most recent edition of the ASCLD/LAB Manual.

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Crime Laboratory. Massachusetts State Police Crime Laboratory of the Department of State Police.

Database Coordinator. An employee of the Department responsible for, among other duties, ensuring that all administrative requirements related to the DNA Database (as enumerated in 515 CMR 2.00 et seq.) are met by all participant laboratories and user agencies.

Department. The Department of State Police.

Director. The Director of the Massachusetts State Police Crime Laboratory, or his or her designee.

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TWGDAM. Technical Working Group on DNA Analysis Methods within the FBI.

### 515 CMR 2.05 Quality Assurance

Quality Assurance will be accomplished through compliance with laboratory accreditation standards as promulgated by the FBI's TWGDAM, pursuant to 42 U.S.C. <section> 13132(b), as updated.

### 515 CMR 2.09 Restriction of Access to Information Systems

Access to record information system facilities, systems operating environments and data file contents (whether while in use or when stored in a media library) shall be restricted to authorized personnel only. These restrictions shall be assured through compliance by the laboratory with specific laboratory accreditation criteria of the current ASCLD/LAB manual governing security.

## **Michigan**

Mich. Admin. Code r. 28.5059 Effect of noncompliance with rules

Rule 9. The results of genetic marker grouping analyses and access to the state genetic marker database information may be denied to any agency that fails to comply with these rules.

**Nebraska**

Neb. Admin. Code 272.20.007 Procedures for the Collection, Transportation, Storage, and Analysis of Blood Samples for the Purpose of the DNA Database

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007 Quality Assurance Guidelines for Laboratories Which Submit DNA Profiles to the Nebraska State DNA Database.

007.01 All Nebraska convicted offender DNA profiles must be produced in accordance with the DNA Identification Act of 1994, the FBI approved Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories and the NDIS Standards for Acceptance of DNA Data.

007.01A DNA profiles produced by laboratories that are accredited by the American Society of Crime Laboratory Directors, Laboratory Accreditation Board (ASCLD/LAB) or certified by National Forensic Science Training Center (NFSTC) are considered to meet the standards set forth in the DNA Identification Act of 1994 and the FBI approved Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories.

007.02 All other DNA profiles (i.e., forensic unknowns) offered to the Nebraska State DNA Index System must be produced in accordance with the DNA Identification Act of 1994, the FBI approved Quality Assurance Standards for DNA Testing Laboratories and the NDIS Standards for Acceptance of DNA Data.

007.02A DNA profiles produced by laboratories that are accredited by the American Society of Crime Laboratory Directors, Laboratory Accreditation Board (ASCLD/LAB) or certified by National Forensic Science Training Center (NFSTC) are considered to meet the standards set forth in DNA Identification Act of 1994 and the FBI approved Quality Assurance Standards for DNA Testing Laboratories.

007.02B Laboratories other than the Nebraska State Patrol Crime Laboratory that are not accredited by ASCLD/LAB or certified by NFSTC shall certify in writing that the DNA profiles were produced in accordance with the DNA Identification Act of 1994, the FBI approved Quality Assurance Standards for DNA Testing Laboratories and the NDIS Standards for Acceptance of DNA or that DNA profiles produced before the effective dates of these documents were produced in a manner largely consistent with these documents.

007.02C The following exceptions to the NDIS Standards for Acceptance of DNA Data are acceptable:

007.02C(1) Accepted PCR Kits shall include any commercially available PCR kit that provides analysis of NDIS Accepted PCR loci.

007.02C(2) Accepted Allelic Ladders shall include allelic ladders from the same Accepted PCR Kits.

007.02C(3) The minimum number of NDIS Accepted PCR loci attempted and the minimum number of PCR loci required for search purposes shall be determined on a case by case basis.

007.02C(4) Other exceptions as determined on a case by case basis may be deemed appropriate by the DNA Supervisor.

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## **New York**

### N.Y. Comp. Codes R. & Regs. 9 § 6190.1 Definitions

(a) When used in this Part:

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(5) The term DNA subcommittee refers to the subcommittee on forensic DNA laboratories and forensic DNA testing established pursuant to EL section 955-b(13).

(6) The term commission refers to the Commission on Forensic Science established pursuant to EL section 995-a.

(7) The term division refers to the NYS Division of Criminal Justice Services.

(8) The term ASCLD/LAB refers to the American Society of Crime Laboratory Directors/ Laboratory Accreditation Board. Current ASCLD/LAB accreditation guidelines are contained in the 2001 edition of the ASCLD/LAB manual, which may be obtained from the ASCLD/ LAB, 139 Technology Drive, Garner, NC 27529. These guidelines may also be viewed at the Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, and the Department of State, 41 State Street, Albany, NY 12231.

(9) The phrase Quality Assurance Standards for Forensic DNA Testing Laboratories refers to standards recommended by the Federal DNA Advisory Board, and approved by the Director of the Federal Bureau of Investigation on July 15, 1998, which took effect October 1, 1998. These standards may be obtained from the Federal Bureau of Investigation, Laboratory Division, 935 Pennsylvania Avenue, N.W., Washington, DC 20535. These standards may also be viewed at the Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, and the Department of State, 41 State Street, Albany, NY 12231.

(10) The term laboratory director refers to the director of the forensic laboratory.

(11) The term ABFT refers to the American Board of Forensic Toxicology, Inc. The current ABFT laboratory accreditation program is found in the 2002 Forensic Toxicology Laboratory Accreditation Manual, which may be obtained from ABFT, Administrative Office, P.O. Box 669, Colorado Springs, CO 80901-0669. This program may also be viewed at the Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, and the Department of State, 41 State Street, Albany, NY 12231.

### N.Y. Comp. Codes R. & Regs. 9 § 6190.3 NYS accreditation standards

(a) Except as provided below in subdivision (c) of this section, the commission has determined that all forensic laboratories must meet the following standards to receive NYS accreditation in disciplines other than forensic DNA testing: (1) the laboratory must be accredited by ASCLD/LAB; or (2) if the laboratory is performing only toxicology analysis, it must be accredited by either ASCLD/LAB or ABFT.

(b) Except as provided below in subdivision (c) of this section, the commission has further determined, upon the binding recommendation of the DNA subcommittee, that any forensic laboratory performing forensic DNA testing must be accredited by ASCLD/LAB to include forensic

DNA testing, and must comply with all conditions of the Quality Assurance Standards for Forensic DNA Testing Laboratories .

(c) A forensic laboratory that has not satisfied the requirements of subdivision (a) or (b) of this section may apply to the commission for provisional NYS accreditation. Such provisional accreditation shall be granted for an interim period (1) to any forensic laboratory that has submitted an application which has been accepted by ASCLD/LAB and is awaiting ASCLD/LAB accreditation; or (2) to any forensic laboratory performing only toxicology analysis that has submitted an application which has been accepted by ASCLD/LAB or ABFT and is awaiting such accreditation; or (3) to any forensic DNA laboratory that has submitted an application which has been accepted by ASCLD/LAB and is awaiting ASCLD/LAB accreditation and that complies with all conditions of the Quality Assurance Standards for Forensic DNA Testing Laboratories..

(d) Notwithstanding the provisions of this Part, a forensic laboratory that has not satisfied the requirements of subdivision (a) or (b) of this section may request that it be permitted to perform forensic testing on evidence in a criminal investigation or proceeding or for purposes of identification to the extent necessary to satisfy ASCLD/LAB or ABFT accreditation requirements. A forensic laboratory requesting to perform such testing must demonstrate to the satisfaction of the commission (and in any instance involving DNA testing upon the binding recommendation of the DNA subcommittee) through the use of an external audit by an inspector approved by the commission (and in any instance involving DNA testing upon the binding recommendation of the DNA subcommittee) that all aspects of preparation for ASCLD/LAB or ABFT accreditation other than that requiring such testing have been completed.

#### N.Y. Comp. Codes R. & Regs. 9 § 6190.4 NYS accreditation procedures

(a) A forensic laboratory seeking NYS accreditation must file a formal application with the division in a form prescribed by the division. An application seeking accreditation shall include the following supporting documentation, access thereto or authorization for ASCLD/LAB or ABFT, as appropriate, to release:

(1) documentation or accreditation by ASCLD/LAB or ABFT, if obtained;

(2) all documentation submitted to ASCLD/LAB or ABFT, as part of such accreditation application process, the continuing compliance requirements, if any, and any other related matters; and

(3) all documentation received by the laboratory from ASCLD/LAB or ABFT, which may include, but not be limited to any of the following, if appropriate: information pertaining to the application process; the accreditation inspection; the summation conference; the final inspection report; and disciplinary actions or proceedings.

(b) Upon receipt of such materials, the division shall conduct an initial review to ensure that all necessary documents have been submitted. Thereafter, the division shall forward that application and supporting documents to the DNA subcommittee for its review and binding recommendation regarding NYS accreditation to perform DNA testing. The DNA subcommittee shall forward its binding recommendation to the commission, which shall make a final determination as to whether NYS accreditation in forensic DNA testing should be granted. For a forensic laboratory seeking accreditation in disciplines other than DNA testing, the division shall forward the application and supporting documentation directly to the commission for its determination.

(c) Upon the determination to grant NYS accreditation to a forensic laboratory, the division shall forward a certificate of NYS accreditation to such laboratory. The certificate and/or accompanying correspondence shall indicate the forensic disciplines in which the laboratory is accredited.

#### N.Y. Comp. Codes R. & Regs. 9 § 6190.5 Duration of NYS accreditation

(a) A forensic laboratory that is accredited to perform DNA testing will retain its NYS accreditation for the same period as its ASCLD/LAB accreditation, unless such NYS accreditation is revoked pursuant to section 6190.6 of this Part. To retain NYS accredited status, such laboratory shall continue to meet the standards under which it was accredited and shall participate in any proficiency testing mandated by the DNA subcommittee. Such laboratory must submit to the division a copy of any documentation submitted to ASCLD/LAB or received from it as part of the continuing compliance requirements, including any notification of disciplinary action taken by ASCLD/LAB against such laboratory. Such documentation shall be reviewed by the DNA subcommittee, and appropriate action may be taken against such laboratory, if necessary.

(b) A forensic laboratory that receives NYS accreditation in disciplines other than forensic DNA testing will retain its accreditation for the same period as its ASCLD/LAB or ABFT accreditation unless a shorter period is specified in the certificate or its NYS accreditation is revoked pursuant to section 6190.6 of this Part. To retain NYS accredited status, the laboratory shall continue to meet the standards under which it was accredited and shall participate in any proficiency testing mandated by the commission. Such forensic laboratory must submit to the division a copy of any documentation submitted to ASCLD/LAB or ABFT or received therefrom as part of the continuing compliance requirements, including any notification of disciplinary action taken by ASCLD/LAB or ABFT against such laboratory. Such documentation shall be reviewed by the commission, and appropriate action may be taken against such laboratory, if necessary.

Proposed Amendment to N.Y. Comp. Codes R. & Regs. 9 § 6190.5(b) (2004 N.Y. St. Reg. 16689):

(b) A forensic laboratory that receives NYS accreditation in disciplines other than forensic DNA testing will retain its accreditation for the same period as its ASCLD/LAB or ABFT accreditation unless a shorter period is specified in the certificate or its NYS accreditation is revoked pursuant to section 6190.6 of this Part. To retain NYS accredited status, the laboratory shall continue to meet the standards under which it was accredited and shall participate in any proficiency testing mandated by the commission. *<<+In addition, a forensic laboratory that is accredited by ASCLD/LAB shall request ASCLD/LAB to conduct an interim inspection during the third year of the five-year accreditation period. A+>> <<-Such->>* forensic laboratory must submit to the division a copy of any documentation submitted to ASCLD/ LAB or ABFT or received therefrom as part of the continuing compliance requirements, including any notification of disciplinary action taken by ASCLD/LAB or ABFT against such laboratory. Such documentation shall be reviewed by the commission, and appropriate action may be taken against such laboratory, if necessary.

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[Select Notes from the Proposed Amendment]:

2. Legislative objectives: Executive Law section 995-b(1) requires the development of minimum standards and a program of accreditation for all forensic laboratories in New York State. Executive Law section 995-b(3)(a) provides that the program of accreditation shall include an initial inspection and routine inspections, as necessary, to ensure compliance with accreditation requirements. Thus, the Legislature clearly intended that accreditation standards, including provisions for inspections during the accreditation cycle, be established.

3. Needs and benefits: Executive Law section 995-b(1) requires forensic laboratories to obtain New York State accreditation. Executive Law section 995- b(3)(a) requires that the program of accreditation include routine inspections, as necessary, to ensure compliance accreditation requirements.

Part 6190 requires a forensic laboratory to be accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or the American Board of



Forensic Toxicology, Inc. (ABFT) in order to obtain New York State accreditation. The ABFT accreditation remains valid for a two year period, while the ASCLD/LAB accreditation remains valid for five years.

Under current rules, inspections by the ASCLD/LAB are conducted every five years with self-assessments conducted annually by the laboratory. Other organizations involved in accreditation and quality assurance programs call for more frequent external inspections. For example, the FBI's Quality Assurance Standards for Forensic DNA Analysis call for external inspections every two years as does the NYS Department of Health (DOH) (regarding private forensic DNA laboratory certifications). Other organizations such as the American Association for Laboratory Accreditation (A2LA) and the National Forensic Science Technology Center (NFSTC) will accredit forensic laboratories using the criteria of the International Organization for Standardization (ISO) and these, too, call for external inspections on a two-year cycle.

The length of the ASCLD/LAB accreditation cycle and the absence of external inspection during the cycle have been a concern of the Commission for several years. Several Commission members have voiced their concern that the length of the ASCLD/LAB accreditation cycle may contribute to continued non-compliance with accreditation standards. For example, at a recent meeting of the Commission a review was conducted of the status of laboratories that had recently undergone inspections for reaccreditation. During the period October 6, 2002 through April 29, 2003, seven public forensic laboratories in New York State underwent inspections by ASCLD/LAB to renew accreditation. In addition to satisfying other requirements, a laboratory must demonstrate compliance with all criteria rated by the accrediting body as "essential." There were an average of seven findings of non-compliance with "essential" criteria for these laboratories, with the number of non-compliant criteria falling in a range from two to fifteen. It was noted by the Commission that in the annual self- assessment reports submitted by the individual laboratories prior to the reinspection by ASCLD/LAB, all had indicated compliance with all "essential" criteria. Obviously, these findings call into question the reliability of self- assessments to ensure on-going compliance with accreditation standards.

Moreover, because the ASCLD/LAB accreditation cycle is five years, non-compliance can, and often does, linger over several years. When this occurs, a laboratory's integrity may be seriously compromised, with the potential consequence that the results of case work performed by the laboratory will be questioned or impeached by criminal defendants.

In an attempt to address its concerns, the Commission formed a working group in 2002 to review forensic laboratory accreditation standards and to make recommendations for a program of external audits of NYS accredited laboratories. The advisory group met on two occasions and concluded that an external audit midway through the ASCLD/LAB five-year reaccreditation cycle would enhance the NYS public forensic laboratory certification process. The inspections were proposed to be conducted under the direction of the Division's Office of Forensic Services utilizing staff from the forensic laboratories in New York State.

This proposal was presented to the New York Crime Laboratory Advisory Committee (NYCLAC) for its review and input. NYCLAC represents all of the public forensic laboratories in New York that are subject to the Commission's accreditation requirements. After much discussion over the details of the interim inspections, NYCLAC recommended that if the Commission were to implement interim inspections they should be conducted by ASCLD/LAB as a full inspection.

The Commission believes this is a serious matter that must be addressed to ensure the integrity of forensic laboratories in New York and the quality of case work they perform. Therefore, the Commission seeks to require interim inspections of forensic laboratories during the third year of the five year ASCLD/LAB accreditation cycle. Such inspections will be conducted by ASCLD/LAB pursuant to their accreditation procedures.

The proposed revisions are endorsed by the Commission of Forensic Science in

accordance Executive Law sections 995-b(1).

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9. Federal standards: The Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Analysis require an annual self-audit, and require involvement by an external agency in the audit every two years.]

N.Y. Comp. Codes R. & Regs. 9 § 6190.6 Sanctions for noncompliance; appeals

(a) In accordance with Executive Law, section 995-b(3)(e), the commission (and with respect to forensic DNA laboratories, upon the binding recommendation of the DNA subcommittee to the commission) may revoke, suspend or otherwise limit the NYS accreditation of a forensic laboratory, if the commission, or where appropriate, the DNA subcommittee determines that the forensic laboratory or one or more persons in its employ:

- (1) is guilty of misrepresentation in obtaining a forensic laboratory NYS accreditation;
- (2) rendered a report on laboratory work actually performed in another forensic laboratory without disclosing the fact that the examination or procedure was performed by such other forensic laboratory;
- (3) showed unacceptable error or errors in the performance of forensic laboratory examination procedures;
- (4) failed to file any report required to be submitted pursuant to EL article 49-B or violated in a material respect any provision of that article;
- (5) violated in a material respect any provision of this Part, including the continuing compliance requirements of ASCLD/LAB or ABFT; or
- (6) failed to participate in or to meet the standards of any proficiency test required by the DNA subcommittee and/or the commission.

(b) A forensic DNA laboratory found to be in violation of the provisions of subdivision (a) of this section shall be subject to the following sanctions:

- (1) Probation: NYS accreditation becomes probationary for a limited, specified time. Analytical work can continue uninterrupted provided the laboratory adheres to specified requirements and/or conditions.
- (2) Suspension: NYS accreditation is suspended pending demonstration within a specified time frame that the laboratory has remedied the problem.
- (3) Revocation: NYS accreditation is revoked for a minimum specified time after which the laboratory may submit a new application for NYS accreditation. The laboratory shall cease performing casework analysis until reaccredited.

(c) No forensic laboratory NYS accreditation shall be revoked, suspended, or otherwise limited without a hearing. On its own initiative or, with respect to forensic DNA laboratories at the request of the DNA subcommittee, the commission shall serve written notice of the alleged violation, together with written notice of the time and place of the hearing, which notice shall be mailed by certified mail to the holder of the NYS accreditation at the address of such holder at least 21 days prior to the date fixed for such hearing. A NYS accredited laboratory may file a written answer to the charges with the commission and, where appropriate, the DNA subcommittee, not less than five days prior to the hearing. The hearing shall be conducted by the commission or where

appropriate, the DNA subcommittee. The laboratory director shall be allowed to appear in person and present relevant testimony. If the DNA subcommittee conducts such hearing, it shall make a binding recommendation to the commission with respect to the appropriate sanction, if any.

(d) NYS accreditation shall be reinstated when the forensic laboratory demonstrates to the satisfaction of the commission, and, where appropriate, upon the binding recommendation of the DNA subcommittee, that the deficiencies which resulted in the sanctions have been corrected.

(e) The outcome of any disciplinary proceeding conducted by ASCLD/LAB or ABFT with respect to ASCLD/LAB or ABFT accreditation shall not bind the DNA subcommittee or commission with respect to the imposition of sanctions as set forth in this Part.

#### N.Y. Comp. Codes R. & Regs. 9 § 6192.4 Accuracy and completeness of DNA records

The accuracy and completeness of all DNA records maintained as part of the DNA databank will be assured through compliance with laboratory accreditation standards as promulgated by the commission in Part 6190 of this Title. In addition, accuracy and completeness of all DNA records maintained as part of the DNA databank will be assured through compliance by all forensic DNA laboratories with the requirements of the NDIS Standards for Acceptance of DNA Data. Each DNA profile (for either convicted offender or forensic samples) submitted must be certified by the submitting laboratory as being associated with the appropriate controls and blanks. Copies of all official correspondence between the DNA databank and participating laboratories will be maintained in the appropriate division file.

#### **North Dakota**

##### N.D. Admin. Code § 10-17-01-05 Procedures for analysis of samples

The division shall perform DNA analysis in accordance with national standards for DNA quality assurance and proficiency testing issued pursuant to the DNA Identification Act of 1994 [Pub. L. 103-322; 108 Stat. 2065].

##### N.D. Admin. Code § 10-17-01-08 Procedures for contracting with another laboratory for analysis and classification of samples

1. The division shall follow state procurement procedures when contracting for analysis of samples.
2. The division shall contract with laboratories that hold a current accreditation from the association of crime laboratory directors laboratory accreditation board.
3. The cost of the procedure must be assessed to the qualifying offender as designated in North Dakota Century Code chapter 31-13.

#### **Oklahoma**

##### Okla. Admin. Code § 375:30-7-3. Referral of analysis to other private or governmental laboratories

(a) The DNA laboratory may submit State DNA offender databank samples to other private or government laboratories for DNA analysis.

(b) Submission of samples to other laboratories must be approved in advance by the Assistant Director of Criminalistics.

(c) The DNA laboratory will specify integrity, quality control, and privacy measures to be

employed by the laboratory receiving and analyzing the samples.

(d) The DNA laboratory will specify the genetic loci to be profiled and the technology to be used in the analysis of the samples.

## **Texas**

### 37 Tex. Admin. Code § 28.3 Compliance with FBI and Department Procedures

A criminal justice or law enforcement agency shall follow the procedures established by the department under this chapter and specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies, and computer software.

### 37 Tex. Admin. Code § 28.27 Required Compliance with National DNA Analysis Standards

Standards for DNA analysis shall meet or exceed the current standards for quality assurance and proficiency testing for forensic DNA analysis issued by the FBI. These standards are established by the FBI publication Standards for CODIS Acceptance of DNA Data, which is incorporated and which standards are adopted by this reference. The DNA database may contain only DNA records of DNA analyses performed according to the standards required by this chapter.

### 37 Tex. Admin. Code § 28.83 Compliance with CODIS and with Department Rules

A CODIS user laboratory shall comply with CODIS and with this chapter in the collection, preservation, shipment, and analysis of specimens, and in the access and use of the DNA database. A CODIS user laboratory shall follow the procedures established by the department under this chapter and specified by the FBI, including the use of comparable test procedures, laboratory equipment, supplies and computer software.

### 37 Tex. Admin. Code § 28.84 Annual and Biannual Inspection of CODIS User Laboratories

On at least an annual basis, a CODIS user laboratory shall conduct an inspection of its facilities and procedures. On at least a biannual basis, a CODIS user laboratory shall cause and permit an inspection of its facilities and procedures to be performed either by the department or by another outside agency. A copy of all inspection reports shall be forwarded to the department at its headquarters in Austin.

### 37 Tex. Admin. Code § 28.85 Right To Enter and Inspect Premises

The director shall have the right to enter and inspect a CODIS user laboratory during reasonable business hours and to monitor operations related to collection, preservation, shipment, and analysis of specimens, and to the access and use of the DNA database.

### 37 Tex. Admin. Code § 28.89 Penalty for Noncompliance; Prohibition Order

If a CODIS user laboratory violates this subchapter or a rule adopted under this subchapter, the department may prohibit the laboratory from exchanging DNA records with another DNA laboratory or criminal justice or law enforcement agency.

### 37 Tex. Admin. Code § 28.90 Hearing Procedure

A CODIS user laboratory prohibited from exchanging DNA records under this subsection may petition the department for a hearing to show cause why the laboratory's authority to exchange DNA records should be reinstated.

### 37 Tex. Admin. Code § 28.104 Approval of Outside Laboratory

(a) Date of approval. A laboratory outside the department must:

(1) be approved on the date a restricted DNA specimen is analyzed by the lab; and

(2) remain approved at least until the date the analysis report is submitted by the lab to the department.

(b) Manner. An agency or other entity seeking approval for a lab under this section must submit to the director a written justification for the approval as described in the Restricted DNA Procedural Guidelines.

#### 37 Tex. Admin. Code § 28.121 Purpose

(a) Generally. This subchapter contains the director's rules adopted under Government Code, <section>411.0205, that govern:

(1) the granting of recognition to an outside accrediting body by the Department of Public Safety (DPS); and

(2) the accreditation of an individual crime laboratory or other entity by DPS.

(b) Accreditation sequence. To be accredited by DPS under this subchapter, a laboratory must first be accredited by an accrediting body that is recognized by the director under this subchapter.

(c) Source of evidence predicate. The Code of Criminal Procedure, Article 38.35, requires DPS accreditation of an individual laboratory or other entity for admission of evidence or testimony if the laboratory or entity conducts a forensic analysis of physical evidence for use in a criminal proceeding.

(d) Statutory DPS accreditation. A laboratory may apply for statutory DPS accreditation if accreditation is required for evidence admissibility under Code of Criminal Procedure, Article 38.35.

(e) Voluntary DPS accreditation. A laboratory may apply for voluntary DPS accreditation for any purpose if permitted under this subchapter.

#### 37 Tex. Admin. Code § 28.122 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

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(4) Recognized accrediting body--refers to an entity outside DPS that:

(A) is recognized by the director under this subchapter;

(B) issues an accreditation accepted throughout the relevant scientific community; and

(C) accredits a laboratory, including its personnel, procedures, and facilities, whether the body uses "accreditation," "certification," or a similar term. In this subchapter, the term accreditation does not include the certification of an individual unless that certification is relevant to an accreditation review of personnel employed by a laboratory or entity.

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37 Tex. Admin. Code § 28.123 Recognition Process; List of Recognized Accrediting Bodies

(a) Process. The director shall recognize an accrediting body under this section if the director determines that the accrediting body:

- (1) issues an accreditation that is accepted throughout the relevant scientific community and appropriate or available to a laboratory;
- (2) has established adequate accreditation criteria reasonably likely to ensure trustworthy forensic analysis;
- (3) requires a periodic competency audit or review of the personnel, facilities, and procedures employed by a laboratory to conduct a forensic analysis; and
- (4) withholds, grants, or withdraws its accreditation of a crime laboratory based on its own determination of a reasonable likelihood of meaningful corrective action for each deficiency noted during the periodic audit or review.

(b) List of recognized bodies and disciplines. The director recognizes the following accrediting bodies, subject to the stated discipline or subdiscipline limitations:

- (1) American Board of Forensic Toxicology (ABFT)--recognized for accreditation of toxicology discipline only.
- (2) American Society of Crime Laboratory Directors, Laboratory Accreditation Board (ASCLD/LAB)--recognized for accreditation of all disciplines which it accredits, except digital evidence and a crime scene search team.
- (3) National Forensic Science Technology Center (NFSTC)--recognized for accreditation of biology only, including the subdiscipline of DNA.

37 Tex. Admin. Code § 28.124 Disciplines and Subdisciplines Subject to DPS Accreditation

(a) 'Forensic analysis'/recognized accreditation. This section describes a discipline or subdiscipline that involves forensic analysis for use in a criminal proceeding and for which accreditation is available from an accrediting body that is recognized by the director under this subchapter.

(b) By entire discipline. A laboratory may apply for DPS accreditation for one or more of the following disciplines:

- (1) controlled substances;
- (2) toxicology;
- (3) biology;
- (4) firearms/toolmark;
- (5) questioned documents;
- (6) trace evidence; or
- (7) other discipline if approved by a recognized accrediting body and the director.

(c) Limited to subdiscipline. A laboratory may apply for DPS accreditation limited to one or more of the following subdisciplines:

(1) under the controlled substances discipline, subdiscipline limitation may include controlled substance (marihuana only) or similar limitation;

(2) under the toxicology discipline, subdiscipline limitation may include toxicology (blood alcohol only) or similar limitation;

(3) under the biology discipline, subdiscipline limitation may include biology (serology only) or similar limitation;

(4) under the firearms/toolmark discipline, subdiscipline limitation may include: firearms/toolmarks (firearms only), (serial number restoration only), or similar limitation;

(5) under the questioned documents discipline, subdiscipline limitation may include questioned documents (handwriting only) or similar limitation;

(6) under the trace evidence discipline, subdiscipline limitation may include: trace evidence (fire debris only), (explosives only), (fibers only), (gun shot residue only), (glass only), (hairs only), (paint only), (filaments only), or similar limitation; and

(7) other discipline and its related subdiscipline if accredited by a recognized accrediting body and the director.

(d) A laboratory may chose to assign a particular subdiscipline to a different administrative section or unit in the laboratory. For example, the subdiscipline of impression evidence, including footwear, tiretrack, and similar impression evidence, may be administratively assigned by the laboratory to its trace evidence, firearms, or questioned document section. The director deems impression evidence to be a subdiscipline of several disciplines under this subchapter, including trace evidence, firearms/toolmark, or questioned documents.

(e) If an accreditation for a subdiscipline is accompanied by the term 'only' or a similar notation, DPS will deem the accreditation to exclude other subdisciplines in that discipline.

37 Tex. Admin. Code § 28.125 Disciplines, Subdisciplines, and Procedures to Which Statutory DPS Accreditation Does Not Apply

This section describes a discipline, subdiscipline, or procedure excluded from the definition of forensic analysis by the Code of Criminal Procedure, Article 38.35, subsection (a) or by this subchapter based on their nature.

(1) Voluntary DPS accreditation only. This paragraph describes a discipline, subdiscipline, or procedure that is excluded from the definition of forensic analysis by the Code of Criminal Procedure, Article 38.35, subsection (a) and for which recognized accreditation is available. A laboratory may apply for voluntary DPS accreditation for: latent print examination (including development and comparison).

(2) No DPS accreditation.

(A) This subparagraph describes a discipline, subdiscipline, or procedure that is excluded from the definition of forensic analysis by the Code of Criminal Procedure, Article 38.35, subsection (a) and for which no recognized accreditation is appropriate or available. A laboratory may not apply for voluntary or statutory DPS accreditation for: breath specimen testing under Transportation Code, Chapter 724.

(B) This subparagraph describes a discipline, subdiscipline, or procedure that does not normally involve forensic analysis of physical evidence for use in a criminal proceeding and for which recognized accreditation is inappropriate or unavailable. A laboratory may not apply for voluntary or statutory DPS accreditation for:

- (i) forensic photography;
- (ii) non-criminal paternity testing;
- (iii) non-criminal testing of human or nonhuman blood, urine, or tissue;
- (iv) a crime scene search team (whether or not associated with an accredited laboratory) if the team does not engage in forensic analysis because it only engages in the location, identification, collection, or preservation of physical evidence and the activity is not integral to an expert examination or test;
- (v) other evidence processing or handling that is excluded under 28.122(2)(B), (C), or (D) of this subchapter (relating to Definitions); or
- (vi) other discipline or subdiscipline so determined by the director.

37 Tex. Admin. Code § 28.126 Disciplines, Subdisciplines, and Procedures Exempt from Statutory DPS Accreditation

(a) This section describes a discipline, subdiscipline, or procedure that is 'forensic analysis' but is not subject to accreditation by one or more accrediting bodies recognized by the director under this subchapter.

(b) Even though a discipline or subdiscipline is forensic analysis, the director has determined that no accreditation is appropriate or available from a recognized accrediting body for the following disciplines, subdisciplines, or procedures and a laboratory may not apply for voluntary or statutory DPS accreditation for:

- (1) sexual assault examination of the person;
- (2) forensic pathology, anthropology, entomology, or botany;
- (3) environmental testing;
- (4) facial or traffic accident reconstruction;
- (5) digital evidence (subdisciplines may include computer forensics, audio, video, or imaging);
- (6) polygraph examination;
- (7) voice stress, voiceprint, or similar voice analysis;
- (8) forensic hypnosis;
- (9) statement analysis;
- (10) profiling; or
- (11) other discipline or subdiscipline so determined by the director.

37 Tex. Admin. Code § 28.127 Full DPS Accreditation



(a) Issuance and renewal. The director may issue or renew voluntary or statutory accreditation under this section.

(b) Application. An applicant for full DPS accreditation shall complete and submit a current form LAB-5 and attach copies of the following:

(1) an accreditation certificate and letter of notification of accreditation from an accrediting body recognized by the director under this subchapter; and

(2) each document provided by the recognized accrediting body that identifies the discipline or subdiscipline for which the laboratory has received accreditation and any limitation or restriction regarding that accreditation.

(c) Additional information. The director may require additional information to properly evaluate the application either as part of the original application or as supplemental information.

(d) Reports to director.

(1) If accredited by ASCLD/LAB, a laboratory shall provide the director with a copy of each Annual Accreditation Review Report. If accredited by another recognized accrediting body, a laboratory shall provide the director with a copy of each equivalent annual accreditation assessment document. The copy shall be submitted to the director at the same time that it is due to the recognized accrediting body.

(2) A laboratory shall provide the director with a copy of correspondence and each report or communication between the laboratory and the recognized accrediting body. The laboratory shall submit the copy to the director no later than 10 business days after the date the laboratory receives or transmits the correspondence, report, or communication.

(3) A laboratory that discontinues a specific forensic discipline or subdiscipline shall submit written notification to the director at least 10 business days before the effective date of the discontinuation.

### 37 Tex. Admin. Code § 28.128 Provisional DPS Accreditation

(a) Issuance and renewal. The director may issue or renew provisional accreditation under this section.

(b) Application. An applicant for provisional DPS accreditation shall complete and submit a current form LAB-5 as referenced in <section>28.127(b) of this subchapter (relating to Full DPS Accreditation) and attach copies of the following:

(1) the application for accreditation by an accrediting body recognized by the director under this subchapter;

(2) the initial audit, inspection, or review report from an independent auditor based on the standards of the recognized accrediting body;

(3) a full response in writing to the initial audit, inspection, or review report described in paragraph (2) of this subsection; and

(4) each document provided by the recognized accrediting body that identifies the discipline or subdiscipline for which the laboratory seeks accreditation.

(c) Additional information. The director may require additional information to properly evaluate the application either as part of the original application or as supplemental information.

(d) Reports to director.

(1) The laboratory shall request that the recognized accrediting body provide the director with a copy of each audit, inspection, or review report conducted before full DPS accreditation.

(2) A laboratory shall provide the director with a copy of correspondence and each report or communication between the laboratory and the recognized accrediting body. The laboratory shall submit the copy to the director no later than 10 business days after the date the laboratory receives or transmits the correspondence, report, or communication.

(3) A laboratory that discontinues a specific forensic discipline, subdiscipline, or procedure shall submit written notification to the director at least 10 business days before the effective date of the discontinuation.

(e) Second sample required. A laboratory with provisional DPS accreditation under this section must:

(1) preserve one or more separate samples of the physical evidence for use by the defense attorney or use under order of the convicting court; and

(2) agree to preserve, and preserve those samples until all appeals in the case are final.

#### 37 Tex. Admin. Code § 28.129 Term for Provisional Accreditation

(a) Lab before August 19, 2003, filing provisional application on or before September 1, 2004. A laboratory or its discipline or subdiscipline that was in existence before August 19, 2003, and that applies for accreditation from a recognized accrediting body on or before September 1, 2004, may apply for a provisional DPS accreditation for a term not to exceed 180 days.

(b) Lab established and provisional application filed on or after August 20, 2003. A laboratory or its discipline or subdiscipline that was not in existence before August 20, 2003, and that applies for accreditation from a recognized accrediting body on or after that date may apply for a provisional DPS accreditation for a term not to exceed one year.

#### 37 Tex. Admin. Code § 28.130 DPS Accreditation for a Limited Term

A laboratory, including an out of state, federal, or private laboratory, may request DPS accreditation for a term less than the term normally available under this subchapter.

#### 37 Tex. Admin. Code § 28.131 Withdrawal of DPS Accreditation

(a) Automatic withdrawal. The director shall automatically withdraw:

(1) the full DPS accreditation for a laboratory, discipline, or subdiscipline at the date and time that the recognized accrediting body withdraws its relevant laboratory, discipline, or subdiscipline accreditation; or

(2) the provisional DPS accreditation for a laboratory, discipline, or subdiscipline at the date and time that the recognized accrediting body notifies the director that the laboratory has withdrawn its application for the relevant recognized accreditation of the laboratory, discipline, or subdiscipline.

(b) Director withdrawal. The director may withdraw full or provisional DPS accreditation for a laboratory, discipline, or subdiscipline if the laboratory fails to comply with a rule under this subchapter.

37 Tex. Admin. Code § 28.132 Communication

The laboratory shall communicate with DPS or the director under this subchapter through the DPS Crime Laboratory Service at:

- (1) telephone number: (512) 424-2105;
- (2) fax number: (512) 424-5645;
- (3) e-mail address: LABQA@txdps.state.tx.us;
- (4) web site: <http://www.txdps.state.tx.us>;
- (5) Post Office Box mailing address: Crime Laboratory Service, QA MSC 0460, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; and
- (6) physical mailing address: Crime Laboratory Service, QA MSC 0460, Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin, Texas 78752-4422.

**Washington**

Wash. Admin. Code § 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).

**West Virginia**

W. Va. Code St. R. § 81-9-7 Handling, Processing and Analyzing Blood Samples at Marshall

7.1. The handling, processing and analysis of stains at Marshall shall be performed according to the nationally accepted guidelines for DNA analysis promulgated by the FBI Director, the guidelines promulgated by the American Society of Crime Laboratory Directors Laboratory Accreditation Board, and the National DNA Index System (CODIS) Standards for the Acceptance of DNA Data. In addition to the preceding requirements the handling, processing, and analysis of samples shall meet the following standards:

- (a). DNA analysis shall be conducted only by personnel who have successfully completed proficiency tests approved by the State Police.
- (b). DNA analysis shall be conducted only by personnel who have their personal DNA profiles on file for all DNA tests conducted by the DNA testing facility at Marshall.
- (c). DNA analysis shall be conducted according to a State Police approved quality assurance program. Periodic quality control inspections shall be conducted by the State Police.

(d). All DNA analysis data shall be forwarded to the Biochemistry Section for inspection and approval.

(e). All DNA data generated by Marshall shall be stored in a format compatible with the National DNA Index System (CODIS) employed by the State Police and the FBI. Data generated at Marshall shall be stored in a location and in a way that is secure from alteration and destruction.

## **Wyoming**

### Wyo. Admin. Code ATTG CICR Ch 1

#### Section 2. Definitions

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(2) DNA-COD--DNA Convicted Offender Database

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(5) DOC--Department of Corrections

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(7) FBI-Standards--Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories, issued by FBI, dated April 1, 1999.

#### Section 5. Profiling Convicted Offender Database Samples

(1) Outsourcing Samples for Processing--testing of the DNA-COD samples for DNA shall follow the criteria established in W.S. 7-19-403(c) and FBI Standards dated April 1, 1999.

i) DNA-COD samples shall be handled and stored separately from normal Laboratory case work and access to those samples shall be limited to CODIS personnel.

ii) upon removing each sample from the DNA storage freezer, the respective DNA-COD Evidence Flow Log shall be initialed, dated, carrier/shipper shall be documented and shall include the final tracking notice.

iii) Each sample (foil package envelope) transferred to a contracting Laboratory shall:

A) be packaged for transfer following established Wyoming State Crime Laboratory procedures for evidence handling and transferring.

B) have the Evidence Flow Log show the transfer date and initials of person making the transfer.

iv) Each sample tested in the Wyoming State Crime Laboratory shall follow the same documentation established for contracting laboratories but reflect in- house testing.

(2) Receiving Samples After Processing--Upon completion of testing, each sample shall be returned to DNA storage and the DNA-COD Evidence Flow Log for each sample shall be dated and initialed.

i) All samples shall be stored in accordance with the manufacturer's recommendations.

(3) Reports of DNA Testing--No written report shall be constructed on any DNA- COD database case number without approval of the CODIS manager and Laboratory Supervisor. Any such release shall be in accordance with Wyoming State Statute and CODIS guidelines, and then documented in the respective case file.

i) Security of all information obtained by accession of and testing from DNA- COD samples shall follow the rules and regulations established under CODIS Guidelines, DNA Database Act of 1994, W.S. 7-19-404 and the Rules for the Wyoming DNA Identification Records System established by the Wyoming State Crime Laboratory.

#### Section 6. DNA Profiles and CODIS

(1) Requirements for DNA Samples Entered into CODIS--All samples entered into CODIS shall follow the rules set forth by the DNA Identification Act of 1994, and the Standards for Laboratories participating in the National DNA Identification Database issued by the FBI, dated April, 1 1999.

(2) Procedures for Entering Samples into CODIS--Only CODIS personnel shall enter data into the Wyoming DNA Convicted Offender Database.