

# Chapter 446-75 WAC

## DNA IDENTIFICATION

### WAC

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**WAC 446-75-010 Definitions.** (1) "Applicant" means a person requesting the patrol to expunge his or her DNA record retained in the patrol's DNA identification system.

(2) "Biological sample" means a buccal swab (a swabbing of the inside of the mouth between the cheek and gum) using a buccal swab collection kit provided by the patrol. When a buccal swab cannot be obtained from the convicted offender, a bloodstain collected by a finger stick may be taken from the convicted offender as a biological sample under this chapter.

(3) "DNA" means deoxyribonucleic acid.

(4) "DNA identification" means a DNA profile developed from cells of the human body that identifies a person.

(5) "DNA record" means the convicted offender's DNA profile, the originating agency identifier, the specimen identification number, and the identification of the patrol's personnel associated with the DNA profile analysis.

(6) "Convicted offender" means a person who is required to submit a biological sample pursuant to RCW 43.43.754.

(7) "DNA identification system" means a data base containing the DNA records from individuals convicted of felony offenses and other crimes as specified in RCW 43.43.754.

(8) "Patrol" means the chief of the Washington state patrol or his or her designee.

[Statutory Authority: RCW 43.43.759. WSR 14-17-108, § 446-75-010, filed 8/19/14, effective 9/19/14; 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.]

**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, identify appropriate sources and collection methods for biological samples needed for purposes of DNA identification analysis, and prohibit the use of DNA identification data obtained pursuant to this chapter for any research or other purpose that is not related to a criminal investigation, to the identification of human remains or to missing persons or to improve the operation of the DNA identification system.

[Statutory Authority: RCW 43.43.759. WSR 14-17-108, § 446-75-020, filed 8/19/14, effective 9/19/14; 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.]

(8/19/14)

### WAC 446-75-030 Purposes of DNA identification.

DNA identification systems as authorized by chapter 43.43 RCW will be used only for three purposes:

(1) Identification of possible suspects in criminal investigations;

(2) Retention of convicted offender DNA identification as required by RCW 43.43.754; 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 14-17-108, § 446-75-030, filed 8/19/14, effective 9/19/14; 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 patrol must be compatible with the method(s) used by the Federal Bureau of Investigation. DNA identification systems established by local law enforcement agencies must be compatible with the patrol's DNA identification system.

[Statutory Authority: RCW 43.43.759. WSR 14-17-108, § 446-75-040, filed 8/19/14, effective 9/19/14; 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 must maintain written analytical procedures necessary to complete the analyses. A copy of the analytical procedures must be submitted to the patrol to ensure compatibility with the patrol's DNA identification system. Before the law enforcement agency implements a DNA identification system, the patrol must approve that agency's analytical procedures. The patrol will use Federal Bureau of Investigation's standards for DNA identification to approve or deny the law enforcement agency's analytical procedures. If the patrol denies the law enforcement agency's analytical procedures, the agency may not implement the DNA identification system. The law enforcement agency may appeal the patrol's denial in accordance with the provisions of the Administrative Procedure Act (chapter 34.05 RCW).

[Statutory Authority: RCW 43.43.759. WSR 14-17-108, § 446-75-050, filed 8/19/14, effective 9/19/14; WSR 91-11-046, § 446-75-050, filed 5/14/91, effective 6/14/91.]

**WAC 446-75-060 Collection of biological sample for the DNA identification system—Procedures—Time frame.** (1) The collection, preservation, and shipment of biological samples obtained from convicted offenders pursuant to RCW 43.43.754 for the patrol's DNA identification system must be in conformance with protocols established by the patrol. Copies of the current protocol may be obtained from

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the Washington State Patrol Crime Laboratory Division, 2203 Airport Way S., Suite 250, Seattle, WA 98134.

(2) The DNA profile resulting from the convicted offender's biological sample will be entered into the patrol's DNA identification system. The patrol will retain the convicted offender's DNA record in its DNA identification system until expungement pursuant to WAC 446-75-070 or the patrol determines that the DNA record no longer qualifies to be retained in the DNA identification system.

[Statutory Authority: RCW 43.43.759, WSR 14-17-108, § 446-75-060, filed 8/19/14, effective 9/19/14; 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.** An applicant may request the patrol to expunge his or her DNA record from the patrol's DNA identification system. The request must comply with this subsection and be mailed or delivered to the Washington State Patrol Crime Laboratory Division Headquarters, 2203 Airport Way S., Suite 250, Seattle, WA 98134.

(1) An applicant's expungement request must:

(a) Be in writing and include the applicant's printed name, signature, address, and thumbprints; and

(b) Include certified copies of final court orders vacating a conviction that required the applicant to submit a biological sample under RCW 43.43.754. The order vacating the conviction must be based on a reversal of the conviction. The patrol will not expunge a sample based on a dismissal entered after a period of probation, suspension, or deferral of sentence.

(2) The patrol may require the applicant to provide additional information that is necessary to determine or verify that the applicant qualifies for expungement.

(3) After the patrol determines that the applicant qualifies for expungement, the patrol will:

(a) Destroy the applicant's biological sample and expunge the DNA record from the patrol's DNA identification system unless the patrol determines that the applicant is required to submit a DNA sample pursuant to RCW 43.43.-754.

(b) Remove the applicant's identifying information from the laboratory's case management system.

(4) The patrol is not required to destroy an item of physical evidence obtained from a sample if documentation relating to another person would thereby be destroyed.

(5) Any identification, warrant, probable cause to arrest, or arrest based upon a match from the DNA identification system is not invalidated due to a failure to expunge or a delay in expunging records.

[Statutory Authority: RCW 43.43.759, WSR 14-17-108, § 446-75-070, filed 8/19/14, effective 9/19/14; 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 conducted pursuant to this chapter 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 DNA identifica-

tion system established by the patrol and authorized by RCW 43.43.752 through 43.43.759.

[Statutory Authority: RCW 43.43.759, WSR 14-17-108, § 446-75-080, filed 8/19/14, effective 9/19/14; 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.]