

NOTICE OF PROPOSED RULE

DEPARTMENT OF LAW ENFORCEMENT

Division of Local Law Enforcement Assistance

RULE NO: RULE TITLE
11D-6.001: Definitions
11D-6.003: Procedures

PURPOSE AND EFFECT: To update the definitions and procedures as applied to the collection of specimens for the DNA Investigative Support Database and update the rule language to conform to statutory changes.

SUMMARY: The amendments revise the definitions and procedures for the collection of DNA samples to comport with technological advances relating to DNA collection and record keeping.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 943.03(4), 943.325(9)(d) FS.

LAW IMPLEMENTED: 943.325 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: Tuesday, April 6, 2010, 10:00 a.m.

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, FL 32308.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Christopher Carney (850) 617-1337 or Lisa Bohl (850) 617-1303. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice). THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Christopher Carney (850) 617-1337 or Lisa Bohl (850) 617-1303, Florida Department of Law Enforcement, Criminal Justice Information Services, 2331 Phillips Road, Tallahassee, Florida 32308.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Christopher Carney (850) 617-1337 or Lisa Bohl (850) 617-1303, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308.

NAME OF PERSON ORIGINATING PROPOSED RULE: Christopher Carney (850) 617-1337

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 24, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 15, 2010

11D-6.001 Definitions.

As used in Rule 11D-6.003, F.A.C., the following definitions apply:

- (1) "DNA sample" means a buccal or other approved biological specimen capable of undergoing DNA analysis.
~~"Blood sample" shall mean a specimen of whole blood, at least 7 cc in volume.~~
- (2) "Buccal Blood sample" shall mean a specimen of whole blood, at least 7 cc in volume. epithelial cells collected from the cheek in the oral cavity utilizing an FDLE-approved swab collection kit. ~~"Other approved biological specimen" shall mean epithelial cells collected from the cheek in the oral cavity utilizing an FDLE approved swab collection kit.~~
- (3) "Other approved biological specimen" shall mean a specimen of whole blood, at least 7 cc in volume.
~~"Offender" shall mean a person meeting any of the criteria specified in Section 943.325(1), 943.325(10)(e), 943.325(11), 947.1405(7)(a)9., 948.03(1)(n) or 948.30(1)(i), F.S.~~
- (4) "Qualifying Offender" shall mean a person as specified in Section 943.325(2), 943.325(9), 947.1405(7)(a)., or 948.30(1) F.S."
- (5) FALCON is Florida's Integrated Criminal History System. This system allows for the biometric identification of criminal subjects.
- (6) "Rapid-ID Edge Device" shall mean an electronic fingerprint device attached to "FALCON" and available to criminal justice agencies within the state. This device and accompanying software allows agencies responsible for sample collection to determine if a qualifying offender DNA sample is on file, or if collection of the sample is required.

Rulemaking Specific Authority 943.03(4), 943.325(4),(5),(17)(9)(d) FS. Law Implemented 943.325 FS. History– New 7-4-90, Amended 7-6-99, 8-22-00, 11-5-02, 3-21-07, _____.

11D-6.003 Procedures.

- (1) DNA Sample collection. ~~Blood sample collection.~~
 - (a) A qualifying offender providing DNA samples must be positively identified in the manner specified by the Oral Swab Collection Kit Instructions and Form (FDLE/FOR-005, rev. September, 2009 and incorporated by reference) prior to taking the DNA samples from such offender. A qualifying offender may also be identified through use of the Falcon Rapid-ID Edge device. The subject offender providing a blood sample must be positively identified in the manner specified by the FDLE Request for DNA Database Entry Form (FDLE/FOR-003, rev. September, 2000 and incorporated by reference) prior to taking the blood samples from such offender.
 1. DNA samples submitted from qualifying offenders not identified through use of the Falcon Rapid-ID Edge device must be accompanied by a completed Swab Collection Kit form (FDLE/FOR-005).The imprinting of the offender's left and right thumbs, by means of an inked impression, in the spaces indicated on the form shall be completed as well. Inked fingerprint impressions must be legible for fingerprint classification and comparison purposes. DNA samples accompanied by one or more illegible inked fingerprint impressions will be unacceptable for entry into the DNA Database and will be rejected by FDLE. The collecting agency must then submit a new DNA sample and completed form.
 2. DNA Samples submitted from qualifying offenders whose identification is verified using the FALCON Rapid-ID Edge device must be accompanied by the printout and barcode generated by the application. Any required information not captured by the Falcon/Rapid-ID DNA Availability application shall be filled out on the Swab Collection Kit form (FDLE/FOR-005).
 - (b) When positive identification of the qualifying offender is accomplished, DNA two (2) blood samples shall be taken from the qualifying offender in the manner described in Section 943.325(3)(2), F.S.
 - (c) Such samples shall be taken using only the oral swab blood sample collection kit approved and provided by the Department of Law Enforcement. Agencies may obtain additional kits from FDLE, DNA Database, P. O. Box 1489, Tallahassee, Florida 32302-1489.

~~(d) Collection, labeling, storage, handling, and transmittal of DNA Samples shall be as prescribed in the printed instructions included with each oral swab sample collection kit. The collecting agency should forward DNA samples to the Department within 7 working days of collection. Prior to or immediately after the taking of the samples, the FDLE Request for DNA Database Entry Form (FDLE/FOR-003) must be completed, providing all information requested on the form. The imprinting of the offender's left and right thumbs, by means of an inked impression, in the spaces indicated on the form shall be completed as well. Inked fingerprint impressions must be sufficiently legible for fingerprint classification and comparison purposes. Blood samples accompanied by one or more illegible inked fingerprint impressions are unacceptable for entry into the DNA Database and will be rejected by FDLE. The collecting agency must then submit a new blood sample and completed form. The person taking, or witnessing the taking, of the blood samples shall certify, under oath and before a notary or a law enforcement or correctional officer, as indicated on the form, that two blood samples were in fact taken from the offender thus positively identified. Additional supplies of these forms can be obtained from FDLE, DNA Database, P. O. Box 1489, Tallahassee, Florida 32302-1489.~~

~~(e) Collection, labeling, storage, handling, and transmittal of other approved biological specimens shall be as prescribed in the printed instructions included with each oral swab sample collection kit. The collecting agency should forward oral swab samples to the Department within 7 working days of collection.~~

~~(2) Removal of DNA Information from the DNA Database. Persons seeking removal of their DNA information from the DNA Investigative Support Database shall mail certified copies of the required documentation as described in 943.325(16) to the FDLE DNA Investigative Support Database, P. O. Box 1489, Tallahassee, Florida 32302-1489. Other approved biological specimen collection:~~

~~(a) A subject offender providing an other approved biological specimen must be positively identified in the manner specified by the Oral Swab Collection Kit Instructions (FDLE/FOR-005, May 2001, and incorporated by reference) prior to taking the other approved biological specimens from such offender.~~

~~(b) When positive identification of the offender is accomplished, approved biological specimens (oral swabs) shall be taken from the offender in the manner described in Section 943.325(2), F.S.~~

~~(c) Such samples shall be taken using only the oral swab collection kit approved and provided by the Department of Law Enforcement. Agencies may obtain additional kits from FDLE, DNA Database, P. O. Box 1489, Tallahassee, Florida 32302-1489.~~

~~(d) Prior to or immediately after the taking of the samples, the FDLE Oral Swab Collection Kit (FDLE/FOR-005) must be completed, providing all information requested on the form. The imprinting of the offender's left and right thumbs, by means of an inked impression, in the spaces indicated on the form shall be completed as well. Inked fingerprint impressions must be sufficiently legible for fingerprint classification and comparison purposes. Approved biological specimens accompanied by one or more illegible inked fingerprint impressions are unacceptable for entry into the DNA Database and will be rejected by FDLE. The collecting agency must then submit a new approved biological specimen and completed form. Additional supplies of these forms can be obtained from FDLE, DNA Database, P. O. Box 1489, Tallahassee, Florida 32302-1489.~~

~~(e) Collection, labeling, storage, handling, and transmittal of other approved biological specimens shall be as prescribed in the printed instructions included with each oral swab sample collection kit. The collecting agency should forward oral swab samples to the Department within 7 working days of collection.~~

Rulemaking Specific Authority 943.03(4), 943.325(4),(5),(17)(9)(d) FS. Law Implemented 943.325 FS. History—
New 7-4-90, Amended 7-6-99, 8-22-00, 7-29-01, 11-5-02, _____.