

BIOLOGY SECTION CASE ACCEPTANCE POLICY

REVISED MAY 24, 2021

The goal of the West Virginia State Police Forensic Laboratory is to generate accurate, impartial, and timely scientific examinations and opinions for the criminal justice system of the State in the interest of public safety. Establish and maintain a database of convicted felons, sex offenders, case work profiles, and missing persons.

To meet this goal, it is necessary to implement a case acceptance policy (CAP) for the Biology Section of the Laboratory, wherein some limitations are set on the initial amount of physical evidence that may be submitted in a case.

This policy is not intended to eliminate necessary analysis or to discourage evidence collection. By limiting the number and types of samples per case, as described below, unnecessary testing is reduced, and turnaround times are improved. Please review the Forensic Laboratory Field Manual or contact the Biology Section Case Coordinator at biology@wvsp.gov with any questions.

Case Submission Review:

Upon receipt of a request for DNA analysis, the case coordinator will review the WVSP Forms 53 and 53A and supporting documentation. To ensure the efficient use of limited resources, the following questions are considered during the review. Based on this review, the case will either be accepted for testing, or additional information will be requested from the submitting officer.

1. Does the evidence being submitted meet the CAP criteria?
2. Is the evidence suitable for DNA analysis?
3. Can CODIS eligibility be determined using the provided documentation?
4. Does the evidence need to be consumed in testing?
5. Is the evidence directly associated with the case?
6. Is there other evidence that directly associates a suspect to the crime, i.e., fingerprint?
7. Are known specimens submitted for comparison purposes?

The laboratory will attempt to clarify any questions about case acceptability prior to testing by telephone call or official email. If we are unable to contact the submitting/investigating officer, the items will be returned untested and may be resubmitted at a later date. We will strive to avoid this, but we cannot store evidence if attempts to communicate go unanswered.

WVSP Forms 53 and 53A:

WVSP Forms 53 and 53A must be completed for a submission of biological evidence to the Biology Section.

The WVSP Form 53A is intended to provide the detailed description of how each item of submitted evidence is related to the crime, who handled or may have handled the item, and the location of the item when it was collected. In addition to the WVSP Form 53A, you may also submit your Criminal Investigation Report to help answer CODIS eligibility questions.

- Each item of evidence should be listed individually on the Form 53 and should correspond to the line items on the Form 53A.
- An item is defined as one article of evidence.
 - Six swabs collected from six different areas on a firearm will equal six individual items of evidence.
 - One bag of clothing containing panties, shirt, bra, and pants will equal four individual items of evidence.
- Only one item should be included in each package. If multiple items are included in one package, they must be itemized on the WVSP Form 53.

Sexual Assault Evidence Collection Kits (SAECKs):

Sexual Assault Evidence Collection Kits (SAECKs) from sexual assaults reported to West Virginia law enforcement must be sent to the WVSP Forensic Laboratory by the collecting facility per HB 4476, effective May 18, 2020. While no law enforcement officer may take possession of the SAECK itself from the collecting facility (hospital), **a copy of the hospital documentation should be obtained from the collecting facility by the investigating officer.** Any person who willfully neglects or refuses to do or perform any duty imposed by this article (HB 4476) is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$50 nor more than \$200, or be confined in jail for a period of not more than 60 days, or both fined and confined.

WVSP Forms 53 and 53A are still required for each SAECK and should be submitted to the lab within 30 days of the kit collection.

When a SAECK is received at the WVSP Forensic Laboratory, the Law Enforcement Agency/Officer listed in the hospital documentation will be recorded at the WVSPFL as the Investigating Agency/Officer. If there is no agency/officer listed in the hospital documentation, then the most appropriate WVSP Detachment (closest to the location of the assault, if known) will be assigned as the Investigating Agency. If the crime location is not known, the WVSP Detachment closest to the collecting facility will be assigned as the investigating agency. The investigating officer selected will be “Sheriff”, “Chief”, “Detachment Commander”, etc. for all SAECK submissions without a Case Submission Form.

Known Specimens:

Prior to DNA analysis being performed, all required known reference specimens (saliva or blood) should be submitted for comparison purposes. Comparisons can not be made without reference material and databased profiles (CODIS) cannot be used in place of reference samples.

- Known reference samples from involved individuals are not included in the number of samples accepted per type of crime as detailed below.
- To expedite the testing process, known reference samples from all involved individuals should be submitted at the same time as your questioned item. This

includes references from individuals whose DNA may be present unrelated to the crime, such as property owners, etc.

- Known reference samples must be packaged separately from the evidentiary material.
- The packaging of known reference samples must be labeled with the full name of the individual from whom the sample was collected.
- The Office of the Chief Medical Examiner will not submit known reference samples directly to the laboratory.
- A known blood or saliva specimen from the victim is required to determine if the victim's DNA is present on your evidence.
- A known blood or saliva specimen from the suspect is required to determine if the suspect's DNA is present on your evidence. If a CODIS hit is generated, a known specimen from the subject is then required to confirm the CODIS hit. If a suspect has not been generated, or if a known sample from the suspect cannot be obtained, the questioned items may be tested without known specimens provided the questioned samples are CODIS eligible.
- A known blood or saliva specimen from consensual sexual partners (intercourse within 120 hours prior to a sexual assault) is needed for elimination purposes and should be submitted. If unable to obtain, submit documentation regarding the attempt to do so.

Items that will not be accepted for DNA testing:

The following types of evidence will not be DNA tested at the WVSPFL:

- Non-Human DNA i.e., Plant or animal DNA
- Bones
- Feces
- Fired cartridge cases.
- Wearer's/User's DNA on items (including firearms) collected from a subject, their residence, or their immediate area of control (vehicle, backpack, etc.)
- Urine
- Paternity samples

Sexual Assaults with a Sexual Assault Evidence Collection Kits (SAECK):

- The first submission in a sexual assault case will be limited to the SAECK (Items sent to the laboratory by the collecting facility) and one condom (if applicable).
- Some items contained in the kit may not be examined if the most intimate samples (i.e., vaginal swab, anal swab, body swab) contain probative information.
- If the sexual assault kit contains probative information, no additional items will be accepted unless special circumstances exist.

- After the initial testing and reporting, if no probative samples are identified from the kit, underwear, or condom, additional items may be submitted. Please contact the laboratory to discuss additional testing (biology@wvsp.gov). Selection of additional items for testing should be directly supported by the investigator's case notes and victim statement, which should be included with the WVSP Form 53 and the WVSP Form 53A.
- Suspect's bedding and/or large items (i.e., mattress) will not be accepted unless special circumstances exist and the laboratory, investigating officer and/or prosecuting attorney discusses the submission of this additional evidence prior to submission.
- Known blood (EDTA tube) or saliva specimens from consensual sexual partners (intercourse within 120 hours prior to a sexual assault) are needed for elimination purposes and should be submitted. If unable to obtain, submit documentation regarding the attempt to do so.

Sexual Assaults without a Sexual Assault Evidence Collection Kit:

- The first submission will be limited to five (5) evidentiary items.
- The selection of items should be directly supported by the investigator's case notes and victim statement, which should be included with the WVSP Form 53 and the WVSP Form 53A.
- If probative information is developed from the first submission, no other items will be tested.
- After the initial testing and reporting, if no probative samples are identified from the kit, underwear, or condom, additional items may be submitted. Please contact the laboratory to discuss additional testing (biology@wvsp.gov). Selection of additional items for testing should be directly supported by the investigator's case notes and victim statement, which should be included with the WVSP Form 53 and the WVSP Form 53A.
- Suspect's bedding/clothing and/or large items (i.e., mattress) will not be accepted unless special circumstances exist and the laboratory, investigating officer and/or prosecuting attorney discusses the submission of this additional evidence.

Homicide/Death Investigations:

- If cases involve one suspect and one victim, the first submission is limited to five (5) evidentiary items.
- If more than one crime scene, suspect, or victim is involved, the laboratory will accept up to eight (8) items in the first submission.
- If probative information is obtained from the first submission, additional items will not be accepted unless special circumstances exist and the laboratory, investigating officer and/or prosecuting attorney discuss the submission of this additional evidence.
- If no probative information is obtained from the first submission, additional items may be submitted. Please contact the laboratory to discuss additional testing (biology@wvsp.gov).

- The selection of items should be directly supported by the investigation case notes included with the WVSP Form 53 and WVSP Form 53A.

Felon in Possession of a Firearm:

- No DNA testing will be performed in Felon in Possession cases where the firearm was recovered from the subject or the subject's area of control, including backpacks, the subject's vehicle, and the subject's home.
- If the weapon was collected from a location not described above, such as along a flight path, or from a home which is not the residence of the subject, it may be submitted for DNA testing.
- The first submission will be limited to three (3) evidentiary items.
- The selection of the items should be directly supported by the investigator's case notes included with the WVSP Form 53 and WVSP Form 53A.
- If no probative information is obtained from the first submission, additional items may be submitted. Please contact the laboratory to discuss additional testing.

Burglary/Property Crimes:

- The first submission will be limited to two (2) evidentiary items.
- The selection of items for submission should be directly supported by the investigator's incident report, which should be included with the WVSP Form 53 and WVSP Form 53A.
- If probative information is obtained, no additional items will be accepted unless special circumstances exist and the laboratory, investigating officer and/or prosecuting attorney discusses the submission of this additional evidence.
- Touch DNA evidence collected from door handles, countertops, cash registers or other public places will not be tested at this time. The laboratory can be contacted if special circumstances exist regarding the submission of touch DNA evidence (biology@wvsp.gov).

Vehicle Submissions:

- The laboratory will NOT inventory vehicle contents unless special circumstances exist.
- If an inventory is needed, it must be completed before submission to the laboratory.
- Any loose probative items should be removed and submitted separately unless this would compromise the evidence.
- Areas of specific interest should be clearly noted on the WVSP Form 53 and WVSP Form 53A and/or discussed with the laboratory upon submission.