

TITLE 10 PUBLIC SAFETY & LAW ENFORCEMENT
CHAPTER 14 CORRECTIONAL SERVICES
PART 200 DNA IDENTIFICATION SYSTEM

10.14.200.1 ISSUING AGENCY: DNA Identification System Oversight Committee & Administrative Center, c/o Metropolitan Forensic Science Center 5350 Second Street N.W., Albuquerque, NM 87107 (505) 823-4200.

[10.14.200.1 NMAC - Rp, 10.14.200.1 NMAC, 09/30/2016]

10.14.200.2 SCOPE: Department of public safety, department of corrections, attorney general, state medical investigator, local, county and state New Mexico law enforcement agencies, jails and detention facilities, city of Albuquerque, covered offenders and persons arrested for felony offenses.

[10.14.200.2 NMAC - Rp, 10.14.200.2 NMAC, 09/30/2016]

10.14.200.3 STATUTORY AUTHORITY: Subsection C of 29-3-10, Subsection G of 29-11A-5, Paragraph (6) of Subsection B of 29-16-4, Subsection B of 29-16-5 and Subsection E of 29-16-5 NMSA 1978.

[10.14.200.3 NMAC - Rp, 10.14.200.3 NMAC, 09/30/2016]

10.14.200.4 DURATION: Permanent.

[10.14.200.4 NMAC - Rp, 10.14.200.4 NMAC, 09/30/2016]

10.14.200.5 EFFECTIVE DATE: September 30, 2016, unless a later date is cited at the end of a section.

[10.14.200.5 NMAC - Rp, 10.14.200.5 NMAC, 09/30/2016]

10.14.200.6 OBJECTIVE: To establish a DNA identification system for covered offenders, persons arrested for felony offenses, unidentified persons and unidentified human remains. To facilitate the use of DNA records by local, state and federal law enforcement agencies in the identification, detection or exclusion of persons in connection with criminal investigations, the registration of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act and to facilitate the use of DNA records by local, state and federal law enforcement agencies and the state medical investigator in the identification of unidentified persons or unidentified human remains pursuant to the DNA Identification Act.

[10.14.200.6 NMAC - Rp, 10.14.200.6 NMAC, 09/30/2016]

10.14.200.7 DEFINITIONS:

A. "Administrative center" means the part of a national DNA index system qualified New Mexico crime laboratory that administers and operates the DNA identification system and is governed by the DNA oversight committee.

B. "Analysis" means DNA profile generation.

C. "Arrestee" for purposes of DNA sample collection means any person as described in Subsection A of 29-3-10 NMSA 1978.

D. "Buccal cell" means cells from the interior linings of the cheek and gum in a liquid or semiliquid form.

E. "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by designated forensic or database DNA laboratories.

F. "Collection kit" see Subsection N of 10.14.200.7 NMAC.

G. "Core loci" means the minimal chromosomal locations designated as being required for a known DNA profile to be considered complete by the board of the national DNA index system, and consistent with the federal DNA Identification Act of 1994 and subsequent federal laws.

H. "Covered offender" for purposes of fee assessment means any person convicted of a felony offense, committed after July 1, 1997, and as defined by Subsection C of 29-16-3 NMSA 1978 and as described in Paragraphs (1) through (3) of Subsection A of 29-16-6 NMSA 1978.

I. "Covered offender" for purposes of DNA sample collection means any person as defined by Subsection C of 29-16-3 and Subsection A of 29-16-6 NMSA 1978.

J. "DNA" means deoxyribonucleic acid.

K. "DNA Identification Act" means Sections 29-16-1 to 29-16-13 NMSA 1978, and any subsequent amendments or additions to these sections, the law that authorizes the DNA identification system and the DNA oversight committee.

L. "DNA identification system" means the system established pursuant to the DNA Identification Act.

M. "DNA oversight committee" means the DNA identification system oversight committee.

N. "DNA sample collection kit" means a group of materials assembled or gathered for the collection of DNA samples.

O. "FTA card" means an FTA collection card, a card of blotter paper designed for the collection of liquid or semiliquid biological samples or any other device designed for the collection of liquid or semiliquid biological samples.

P. "Head of the administrative center" means the authorized person who supervises the day-to-day operations of the administrative center.

Q. "Identification system" see Subsection L of 10.14.200.7 NMAC.

R. "In writing" see Subsection Z of 10.14.200.7 NMAC.

S. "Kit" see Subsection N of 10.14.200.7 NMAC.

T. "Records" means the results of DNA collection, analysis, testing, and other related information.

U. "Sample" means a sample of biological material sufficient for DNA testing.

V. "Sample collection kit" see Subsection N of 10.14.200.7 NMAC.

W. "Sample profile hit" means a match of the examined loci as determined by the servicing forensic DNA laboratory that has undergone a defined level of confirmatory processes and reviews sufficient to allow the issuance of a letter of notification to the servicing forensic DNA laboratory and the reporting of statistical information to the federal bureau of investigation.

X. "Sample profile match" means a match of the examined loci as determined by the servicing forensic laboratory that has not yet undergone the processes described in Subsection W. of 10.14.200.7 NMAC.

Y. "Secured" means limited and controlled access only by authorized personnel including use of protection and safety devices such as restricted space access, physical locks and keys, passwords, encryption, firewalls etc. to safeguard any and all functions of that equipment or facility that may be determined to be necessary.

Z. "Written" means a document that is hand or typewritten on paper and includes the use of facsimile copies, computer or other electronically generated or scanned, traceable documents that can be subsequently printed. [10.14.200.7 NMAC - Rp, 10.14.200.7 NMAC, 09/30/2016]

10.14.200.8 COLLECTION AND TRANSFER OF SAMPLES AND FEES:

A. Routine collection of samples from a covered offender shall be performed only by employees of the department of corrections adult prisons or probation and parole divisions, jail or detention facility personnel, employees of the county sheriff office, members of the administrative center or persons designated by the administrative center and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee and provided by the administrative center.

B. Collection and deposit of assessed fees from covered offenders shall be performed by employees of the department of corrections adult prisons and probation and parole divisions pursuant to policies and procedures established by the department of corrections.

C. The department of corrections shall be responsible for establishing policies and procedures for the collection of samples and assessed fees from covered offenders when custody is maintained by private or out-of-state, probation and parole or corrections facilities.

D. Routine collection of samples from arrestee's shall:

(1) be performed only by jail or detention facility personnel, members of the administrative center or persons designated by the administrative center and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee and provided by the administrative center; and

(2) include the issuance to each collected arrestee a written statement or notice informing the arrestee that if the arrestee is not convicted of the felony charges in this arrest, or that the felony charges are otherwise dismissed, that the arrestee may request that the collected DNA sample and records be expunged, as well as how the arrestee can obtain information related to expungement procedures. Such written statement or notice shall also include information that if the arrestee posted bond or was released prior to appearing before a judge or magistrate and then failed to appear for a scheduled hearing, that the arrestee's DNA sample will automatically be analyzed.

E. DNA sample collection kits and information on the collection, storage, and transfer of samples shall be provided at no cost by the administrative center.

F. The routine method of sample collection shall be by buccal cell collection using the sample collection kit supplied by the administrative center. In non-routine circumstances, including a refusal by an arrestee or a covered offender the collection shall, pursuant to Section 29-16-9 NMSA 1978:

- (1) be referred to the administrative center;
- (2) require a written consent or court order;
- (3) consist of an appropriate, alternative sample type as designated by the administrative center or the court; and
- (4) shall be collected by members of the administrative center; or
- (5) by persons trained in the collection of the designated alternative sample type in coordination with, and as designated by, the administrative center.

G. In the case of an arrestee who refuses to provide a DNA sample to jail or detention facility personnel upon booking as required by Subsection A of 29-3-10 NMSA 1978, the jail or detention facility personnel shall immediately document the refusal and shall immediately report the refusal to the administrative center in order for the administrative center to coordinate, with the office of the district attorney for the county where the arrest took place, the initiation of the required legal proceedings as required by Paragraph (2) of Subsection F of 10.14.200.8 NMAC.

H. The determination of a person's eligibility for DNA sample collection as a qualifying arrestee or as a covered offender shall be the responsibility of the authorized collector designated in Subsection A or D of 10.14.200.8 NMAC. An authorized collector may request, and receive, assistance from the administrative center when making such a determination. The determination of a person's eligibility shall be based upon the statutory requirements for the specific collection.

I. Questions on supplies, collection or packaging should be directed to the administrative center. [10.14.200.8 NMAC - Rp, 10.14.200.8 NMAC, 09/30/2016]

10.14.200.9 HANDLING AND SECURITY OF SAMPLES:

A. DNA records and samples are confidential and shall not be disclosed except as authorized by the DNA oversight committee and as governed by the DNA Identification Act.

B. All files, computer, and sample storage systems maintained by the administrative center pursuant to the DNA Identification Act shall be secured. Access shall be limited to employees of the administrative center as authorized by the head of the administrative center pursuant to and directed by the official functions and duties stated in Paragraph (1) of Subsection B of 29-16-4 NMSA 1978, and as provided by Subparagraph (e) of Paragraph (6) of Subsection B of 29-16-4 and Subsection C of 29-16-8 NMSA 1978 and to technical repair personnel as required to maintain the system as authorized by the head of the administrative center.

C. Both state and national database searches shall be performed via secured computer systems.

D. Any person who willfully discloses, seeks to obtain or use information from the DNA identification system for purposes not authorized in these rules and in violation of Section 29-16-12 NMSA 1978 shall be subject to the penalties thereof.

E. All samples received by the administrative center for DNA analysis shall be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

F. Samples shall be handled, examined, and processed one at a time to avoid possible cross-contamination from another sample or from the examiner.

G. All sample collection kits shall be received in a sealed condition. If the kit is not sealed upon receipt the sample shall be rejected and a request for a new sample shall be made by the head of the administrative center.

H. If the documentation or certification sections are not filled out, it shall be documented and the head of the administrative center shall be notified. The decision as to whether to accept the sample or request a new sample shall be made by the head of the administrative center.

I. Each sample shall receive a unique identifying NMDIS database number that does not include any personal identification information. The database number shall be placed on the sample collection kit and on the FTA card or its proximal container.

J. The FTA card shall be returned to its proximal container and placed into secured storage until processed for analysis.

K. Known, collected and non-analyzed, duplicate arrestee or covered offender samples and DNA collection kits may be destroyed at the discretion of the head of the administrative center, provided that:

(1) the kit duplication is confirmed and documented by fingerprint comparison between the original and duplicate kits;

(2) an image of the duplicate collection kit is retained; and

(3) the original, or other previously collected, DNA collection kit are maintained by the administrative center.

L. Unopened, unanalyzed arrestee samples that are collected but are found to not qualify to have been collected pursuant to Subsection B of 29-3-10 NMSA 1978, and whereby the person collected is not otherwise required to provide a DNA sample pursuant to another DNA collection related New Mexico statute, shall be destroyed by the administrative center.

M. Provided that there has been no qualifying request for expungement pursuant to 29-16-10 NMSA 1978, arrestee samples that are collected, may be retained unopened and unanalyzed as long as may be required to make a final determination of compliance with Subsection B of 29-3-10 NMSA 1978.

N. Unopened, unanalyzed arrestee samples that are collected and after more than one year from the date of collection are found to have no available information with which to make a final determination of compliance with Subsection B of 29-3-10 NMSA 1978, and whereby the person collected is not otherwise required to provide a DNA sample pursuant to another DNA collection related New Mexico statute, shall be destroyed by the administrative center.

[10.14.200.9 NMAC - Rp, 10.14.200.9 NMAC, 09/30/2016]

10.14.200.10 SAMPLE PROCESSING AND ANALYSIS BY THE ADMINISTRATIVE CENTER:

A. All samples received by the administrative center for DNA analysis should be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

B. The mechanism of sample collection authorization for samples collected pursuant to Subsection C of 29-16-6 NMSA 1978 shall be documented and a copy of that authorization maintained by the administrative center.

C. Samples shall be handled, examined, and processed individually to avoid possible cross-contamination from another sample or from the examiner.

D. Samples tested shall follow DNA testing procedures approved by the administrative center. Remaining samples shall be returned to secured storage.

E. Five percent of all samples tested annually, shall consist of samples:

(1) with a known DNA profile; or

(2) that constitute randomly collected, unknown duplicate samples; and

(3) shall be presented to the analyzing laboratory in a "blind" fashion to ensure proficiency and to act as a quality assurance measure. Results of these analyses are to be evaluated with the corresponding offender or arrestee samples. Should any resultant "blind" sample's DNA profile (other than a sample that is determined to be of insufficient quality or quantity to generate a profile) not match the expected known DNA profile for that sample, or should the known personally identifying information for the collectee not reasonably match (other than from the purposeful misidentification by the collected individual or for monozygotic siblings), an error rate is to be calculated by the administrative center and be presented to the analyzing laboratory and to the oversight committee.

F. The genetic markers analyzed shall consist of those contained in commercial analysis kits approved by the board of the national DNA index system, having been selected for identification and statistical purposes only.

G. Excess extracted or amplified arrestee and offender DNA shall be destroyed within 30 days after completion of analysis.

H. Excess DNA collected pursuant to Subsection C of 29-16-2 NMSA 1978 shall be retained by the administrative center, the analyzing laboratory or the submitting agency at the discretion of the submitting agency.

I. No written letters of notification shall be released on any specific DNA sample except as authorized by the DNA Identification Act, these rules and the current New Mexico DNA identification system standard operating procedures.

J. Analysis of arrestee DNA samples collected on, or after, July 1, 2011, shall only be analyzed in conformance with the requirements of Subsection B of 29-3-10 NMSA 1978.

[10.14.200.10 NMAC - Rp, 10.14.200.10 NMAC, 09/30/2016]

10.14.200.11 ACCESS TO DNA SAMPLE INFORMATION, RECORDS AND SAMPLES:

A. Access to or disclosure of DNA records and samples collected shall be authorized only in the following circumstances:

- (1) when used as statistical or research information, and only when all personal identification is removed; or
- (2) for identification, comparison, and investigative purposes, to local, state, and federal law enforcement agencies and the state medical investigator in response to official inquiries as authorized by Section 29-16-2 and Subsection B of 29-16-8 NMSA 1978 and these rules; or
- (3) in order to minimize duplicate sample collection and testing to local, state and federal law enforcement agencies, the corrections department, jails and detention facilities as provided by Subparagraph (e) of Paragraph (6) of Subsection B of 29-16-4 and Subsection C of 29-16-8 NMSA 1978; or
- (4) pursuant to court order.

B. Access to the DNA identification system shall be consistent with the DNA identification act and only by:

- (1) authorized law enforcement agencies and the state medical investigator through their servicing forensic DNA laboratory or by direct written request to the head of the administrative center; or
- (2) authorized law enforcement agencies, the corrections department, jail and detention facilities through secure electronic methods established by the administrative center.

C. DNA records and samples.

- (1) All requests for information on DNA records or requests for DNA samples, other than those intended to minimize duplicate sample collection and testing or accessed through the secure electronic methods established by the administrative center, shall be submitted in writing to the administrative center.
- (2) The head of the administrative center shall verify the validity of all written requests prior to releasing any DNA related information or samples pursuant to the DNA Identification Act.
- (3) A copy of the request and resulting action shall be retained in a retrievable written format.
- (4) Samples from persons defined in Subsections C and I of 10.14.200.7 NMAC are collected and records of analysis for such persons are generated. Samples and records submitted shall not be compared to any other sample or record of analysis unless such comparison is performed pursuant to a CODIS or other DNA identification system maintained database search process or unless it is for a quality control or quality assurance purpose.

D. DNA database searches.

- (1) All specific, non-routine requests for searches of, or through, the administrative center DNA database computers, other than those intended to minimize duplicate sample collection and testing or accessed through the secure electronic methods established by the administrative center, shall be submitted in writing to the administrative center.
- (2) The head of the administrative center shall verify the validity of all written requests pursuant to the DNA Identification Act, prior to initiating any database searches or releasing information from such searches and shall reject inappropriate or invalid requests.
- (3) A copy of the request and resulting action shall be placed with the original sample records if a database hit should occur. If a database hit should occur pursuant to this request, it shall be administratively handled pursuant to the provisions of Subsection E of 10.14.200.11 NMAC.
- (4) A separate file shall be established where copies of all specific, non-routine requests and resulting action shall be kept.
- (5) All routine searches will be performed in such a manner as to not target a specific covered offender or arrestee sample. No documentation of routine searches is required to be maintained.

E. Database hits.

- (1) If a DNA profile match should occur between the DNA profile from a covered offender or arrestee and an unknown forensic sample, an unidentified person or unidentified human remains, a reanalysis of the stored DNA sample shall be performed, if possible, to verify the generated profile.
- (2) A written letter of notification indicating the hit shall be forwarded to the requesting agency through their servicing laboratory or directly by the head of the administrative center. Release of personal identifying information shall be made only after compliance with Subsection D of 10.14.200.11 NMAC.
- (3) Should the reanalysis of a profile match not be confirmed, a written letter of notification to that effect shall be forwarded to the requesting agency through their servicing laboratory or directly by the head of the administrative center and a non-conformance investigation will be executed.

(4) All written letters of notification that possess an original signature shall be kept by the administrative center. Copies of letters of notification that possess an original signature will be distributed as deemed appropriate by the head of the administrative center. As required, a certified copy of a letter of notification that possesses an original signature will be distributed as deemed appropriate by the head of the administrative center.

F. Only DNA records that directly relate to the identification characteristics of individuals shall be collected and stored in the DNA identification system database. The information contained in the DNA identification system database shall not be collected, stored, or released for the purpose of obtaining information about physical characteristics, traits, or predisposition for a disease or mental illness or behavior and shall not serve any purpose other than those specifically allowed by the DNA Identification Act.

G. CODIS.

(1) The administrative center will contribute data obtained from the DNA identification system to CODIS.

(2) The information maintained and accessed by CODIS shall adhere to the procedures, rules and regulations established by the board of the national DNA index system and the FBI for CODIS access.

(3) Both state and national CODIS searches shall be performed via secured computer systems.

[10.14.200.11 NMAC - Rp, 10.14.200.11 NMAC, 09/30/2016]

10.14.200.12 EXPUNGEMENT OF INFORMATION:

A. A person may request expungement of his arrestee or offender DNA sample and DNA records from the DNA identification system on the following grounds:

(1) that the conviction that led to the inclusion of the offender DNA sample and DNA records in the DNA identification system has been reversed; or

(2) that the arrest that led to the inclusion of the arrestee DNA sample and DNA records in the DNA identification system has resulted in a felony or misdemeanor charge that has been resolved by a dismissal with or without prejudice, nolle prosequi, the successful completion of a pre-prosecution diversion program or a conditional discharge, misdemeanor conviction or acquittal; or

(3) that the arrest that led to the inclusion of the arrestee DNA sample and DNA records did not result in a felony charge being filed within one year of the date of arrest.

B. The head of the administrative center shall expunge a person's arrestee or offender DNA sample and DNA records from the DNA identification system when the person provides the administrative center with the following materials:

(1) a written request for expungement of the sample and DNA records; and

(2) for offender samples and DNA records, a certified copy of a court order or mandate that reverses the *conviction that led to the inclusion of the sample and DNA records in the DNA identification system*; or

(3) for arrestee samples and DNA records, a certified copy of the dismissal with or without prejudice, nolle prosequi, conditional discharge, misdemeanor conviction or acquittal or, documentation certifying the successful completion of a pre-prosecution diversion program or, a sworn affidavit that the arrest that led to the inclusion of the sample has not resulted in a felony charge being filed within one year of the date of arrest.

C. Before expungement of an arrestee or offender DNA sample the administrative center shall, within 30 days of the receipt of the request for expungement, request that an independent review of the submitted materials be conducted by the attorney general's office. The attorney general shall confirm or reject the expungement request, or request a reasonable extension of time for the review of the request from the administrative center, in writing within 45 days from the receipt of the request for review by the attorney general's office. If no action is taken and there is no request for an extension of the review by the attorney general after 45 days from the receipt of the request for review, expungement shall automatically occur.

D. A person may request expungement of his DNA sample and DNA records from the missing persons DNA identification system at any time.

E. The head of the administrative center shall expunge a person's sample and DNA records from the missing persons DNA identification system when the person provides the administrative center with the following materials.

(1) A written request for expungement of his sample and DNA records.

(2) A certified copy of a court order overturning any original search warrant or court order that led to the inclusion of his sample and DNA records in the missing persons DNA identification system, if applicable.

F. Before expungement of a DNA sample collected for the missing persons DNA identification system, a review of the mechanism of sample collection authorization shall be conducted by the administrative center. The administrative center shall confirm or reject the expungement request in writing within 30 business days from the receipt of the written request by the administrative center.

G. Requests for a review extension and the rejection of requests for expungement shall not be made without cause.

H. Should a request for expungement be rejected, the written notification shall include information as to the reason for rejection and that the rejection may be appealed to the oversight committee.

I. The administrative center shall not expunge a person's sample or DNA records from the DNA identification system if the person has a prior felony conviction or a pending felony charge for which collection of a sample is authorized pursuant to the provisions of the DNA Identification Act.

J. When a person's sample and DNA records are to be expunged from the DNA identification system, the head of the administrative center shall ensure that the person's sample and DNA records are expunged from CODIS within 30 days after the receipt of the confirmation of the expungement request by the attorney general.

K. Written confirmation of the expungement shall be sent to the requesting party and a record of the written confirmation, as well as all expungement related correspondence and checklists, shall be securely kept solely by the head of the administrative center.

L. Expungement related confirmation, correspondence and checklists shall not list any results of DNA testing or the NMDIS database number and if such items do contain these identifiers the identifiers shall be obliterated.

M. All items kept by the head of the administrative center pursuant to Subsection K of 10.14.200.12 NMAC shall be destroyed not less than six months, nor greater than seven months, from the date of the written confirmation of the expungement being sent to the requesting party.

N. For purposes of this section, expungement means the complete destruction of all samples, records, personal identification and information concerning that person, such that the person could not be re-associated with the expunged materials as described in this section.

[10.14.200.12 NMAC - Rp, 10.14.200.12 NMAC, 09/30/2016]

10.14.200.13 OPERATION AND OVERSIGHT OF THE ADMINISTRATIVE CENTER:

A. The written agreement required in Section 29-16-4 NMSA1978 shall:

- (1) provide for the general terms of the operation and administration of the administrative center; and
- (2) define the relationship between the DNA oversight committee and the law enforcement agency that administers and operates the DNA identification system; and
- (3) be read and interpreted consistent with the provisions of these rules and the DNA Identification Act.

B. Personnel staffing.

(1) Staffing for the administrative center, to include the head of the administrative center, shall be selected by the law enforcement agency or unit that administers and operates the DNA identification system following the agency or unit's standard hiring policies.

(2) In the event of a vacancy of the position held by the head of the administrative center, the law enforcement agency or unit that administers and operates the DNA identification system shall notify the oversight committee chairperson of the vacancy and coordinate the inclusion of two or more oversight committee members, not affiliated with the law enforcement agency that administers and operates the DNA identification system, for the selection interviews.

(3) The head of the administrative center shall meet or exceed the educational and experience requirements of a technical leader or a CODIS administrator as required by the FBI's quality assurance standards.

(4) All analysts shall meet or exceed the educational and experience requirements of an analyst as required by the FBI's quality assurance standards.

C. Funding of positions.

(1) All positions funded by the DNA identification system shall be for the execution of the duties listed in Subsection B of 29-16-4 NMSA 1978 and for the benefit of the DNA identification system.

(2) The creation of any full-time or permanent, DNA identification system funded staff positions by the law enforcement agency or unit that administers and operates the DNA identification system shall be approved by the oversight committee prior to the hiring process.

(3) The utilization of part-time or temporary, DNA identification system funded staff positions shall be at the discretion of the head of the administrative center, however any such positions shall be limited in duration and maintained only for such time as their specific need exists.

D. Authority of the head of the administrative center.

(1) The head of the administrative center is authorized to make all reasonable administrative decisions as are required to comply with the duties listed in Subsection B of 29-16-4 NMSA 1978, these rules, the operational procedures of the board of the national DNA index system and the FBI's quality assurance standards.

(2) The head of the administrative center shall abide by all decisions of the oversight committee.

E. General strategic plan.

(1) The head of the administrative center shall present a general strategic plan to the oversight committee within the first four months of each calendar year, for approval by the committee.

(2) Should significant changes to the strategic plan, the operations or processes of the administrative center be necessary during the interim period, those changes shall require the prior approval of the oversight committee.

F. Authority of the administrative center over forensic laboratories with respect to their participation in CODIS.

(1) The administrative center shall have "stop work" authority over forensic laboratories. This authority shall not be exercised without cause.

(2) Forensic laboratories shall utilize and provide any documents as designed by, or otherwise required by, the administrative center.

(3) Forensic laboratories shall abide by all policies and procedures established by the administrative center.

(4) Forensic laboratories shall abide by all federal and New Mexico laws, rules and standards as shall be enacted.

G. For purposes of the required memorandum between the federal bureau of investigation, laboratory division and a New Mexico, national DNA index system participating forensic laboratory the signatory shall be the crime laboratory director that oversees the respective forensic laboratory. For purposes of the required memorandum between the federal bureau of investigation, laboratory division and the administrative center the signatory shall be the chairperson of the DNA oversight committee, after review and advisement of the DNA oversight committee.

[10.14.200.13 NMAC - Rp, 10.14.200.13 NMAC, 09/30/2016]

10.14.200.14 [RESERVED]

10.14.200.15 [RESERVED]

10.14.200.16 MISCELLANEOUS PROVISIONS:

A. Savings clause. These rules shall be read and interpreted consistent with the provisions of the DNA Identification Act. If a topic is not addressed in these rules, reference shall be made to the DNA Identification Act.

B. Annual review. These rules shall be reviewed on, at least, an annual basis by the DNA oversight committee.

C. Purpose and intent. The purpose and intent of these rules is to fully implement the provisions of Sections 29-3-10, 29-16-1 et seq. and 29-11A-1 et seq. NMSA 1978. These rules are governed by the Uniform Statute and Rule Construction Act, Section 12-2A-1 et seq. NMSA 1978. These rules rely on the primary text of each statute and the common and technical use of the language in each statute.

D. Chairperson. The DNA oversight committee shall, in such a manner and for such duration as the DNA oversight committee may choose, select from the members of the DNA oversight committee, a chairperson and a vice-chairperson. In the absence of the chairperson, the vice-chairperson shall act in the capacity of the chairperson. In the circumstance that the chairperson is no longer willing, or able, to continue to act as the chairperson, the vice-chairperson shall act in the capacity of the chairperson until such time that the DNA oversight committee selects a new chairperson. The chairperson is eligible to vote on all motions brought before the DNA oversight committee.

E. Spokesperson. The chairperson of the DNA oversight committee, or designee, shall be empowered to act as the official spokesperson on behalf of the DNA oversight committee and the administrative center.

F. Proxy, abstention and electronic participation and voting. Designation of a proxy by any member of the DNA oversight committee is allowed when the respective member is unable to attend a meeting of the DNA oversight committee. Such proxy shall count towards establishing a quorum and be eligible to cast a vote as may be necessary. Any member of the DNA oversight committee, or their proxy, may abstain from any vote and such abstention shall not count towards, or against, the majority on any motion. Electronic participation and voting may be allowed pursuant to the approval of a majority of the quorum that is physically present at any meeting of the DNA oversight committee. Such approved electronic participation and voting shall be considered to be the same as if the member of the DNA oversight committee were physically present at that meeting.
[10.14.200.16 NMAC - Rp, 10.14.200.16 NMAC, 09/30/2016]

HISTORY OF 10.14.200 NMAC:

Pre-NMAC History: none.

History of Repealed Material:

10.14.200 NMAC, DNA Identification System, filed 4/14/2000 - Repealed effective 09/30/2016.

Other History:

10 NMAC 14.200, DNA Identification System, filed 2/12/1998 was renumbered, reformatted, amended and replaced by 10.14.200 NMAC, DNA Identification System, effective 5/1/2000.