

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Title of Regulation: **6 VAC 40-40. Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries (formerly 6 VAC 20-210-10 through 6 VAC 20-210-110) (adding 6 VAC 40-40-10 through 6 VAC 40-40-110).**

Statutory Authority: § 9.1-1110 of the Code of Virginia.

Effective Date: February 22, 2006.

Agency Contact: Katya N. Herndon, Regulatory Coordinator, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857 or e-mail katya.herndon@dfs.virginia.gov.

Summary:

The regulation describes when sample DNA is required, who is responsible for collecting the sample, how the sample is to be collected and labeled, and how to transport the sample to the laboratory for analysis. The amendments reflect the agency's new status as a department in two ways. First the amendments change the citation for these regulations from 6 VAC 20-210 to 6 VAC 40-40 to reflect the new agency number assigned to the Department of Forensic Science. Second, the amendments change any reference in the regulations to the agency from the "Division of Forensic Science" to the "Department of Forensic Science."

CHAPTER ~~240~~ 40.

REGULATIONS FOR THE IMPLEMENTATION OF THE LAW PERMITTING DNA ANALYSIS UPON ARREST FOR ALL VIOLENT FELONIES AND CERTAIN BURGLARIES.

PART I.

DEFINITIONS AND GENERAL PROVISIONS.

~~6 VAC 20-210-10.~~ **6 VAC 40-40-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Arrestee" means a person arrested for a qualifying offense under § 19.2-310.2:1 of the Code of Virginia.

"Buccal sample" means a sample taken by swabbing the cheek inside an arrestee's mouth.

"Buccal sample kit" means a kit specified by the ~~division~~ department for the collection of buccal cell samples.

"CCRE" means the Central Criminal Records Exchange operated by the Virginia State Police.

"Clerk" means the clerk of court of any general district, juvenile and domestic relations or circuit court in the Commonwealth, and includes deputy clerks.

"Data bank" means the database of DNA profiles from biological samples maintained by the ~~division~~ department for convicted felons and arrestees.

~~"Division Department"~~ means the ~~Division Department~~ of Forensic Science ~~Department of Criminal Justice Services~~.

"DNA" means deoxyribonucleic acid.

"DNA analysis" means analysis conducted on saliva or tissue samples to obtain a genetic profile of identification characteristics.

"DNA sample" means a biological sample taken for DNA analysis.

"DNA sample tracking application" means an application that can be queried to determine whether an arrestee has a sample in the data bank.

"Document control number" means the number that is pre-printed on the fingerprint card (CCRE arrest forms SP179 and SP180) or assigned by Live-Scan.

"LIDS" means the Local Inmate Data System administered by the State Compensation Board.

"Qualifying offense" means an offense requiring a saliva or tissue sample to be taken upon arrest as described in § 19.2-310.2:1 of the Code of Virginia.

~~6 VAC 20-210-20.~~ **6 VAC 40-40-20. Substantial compliance.**

These regulations and the procedures set forth herein relating to the taking, handling and identification of saliva or tissue samples, and the completion or filing of any form or record prescribed by these regulations, are procedural in nature and not substantive. Substantial compliance therewith shall be deemed sufficient.

PART II.

QUALIFYING OFFENSE WARRANTS.

~~6 VAC 20-210-30.~~ **6 VAC 40-40-30. Qualifying offense warrants.**

All warrants for qualifying offenses shall contain the following language: "Take buccal sample if LIDS shows no DNA sample in Data Bank."

Final Regulations

PART III. DNA SAMPLE TRACKING APPLICATION.

~~6 VAC 20-210-40.~~ **6 VAC 40-40-40. Use of LIDS.**

An Internet accessible DNA sample tracking application developed by the State Compensation Board through LIDS shall be accessible through the State Compensation Board's website at www.scb.state.va.us. Access to the DNA sample tracking application shall be located under the website's "Restricted Access" section. User identifications and passwords shall be assigned to all law-enforcement agencies responsible for taking saliva or tissue samples from arrestees.

~~6 VAC 20-210-50.~~ **6 VAC 40-40-50. Screening for duplicates.**

Prior to taking the saliva or tissue sample, the LIDS DNA sample tracking application, or any such other DNA sample tracking application approved by the ~~division~~ department and permitted by the Code of Virginia, shall be queried to determine if there is a DNA sample already in the data bank for the arrestee. If the DNA sample tracking application indicates that a sample previously has been taken from the arrestee, no additional sample shall be taken. If the DNA sample tracking application indicates no sample has been taken from the arrestee, a saliva or tissue sample shall be taken in accordance with the procedures outlined in this chapter.

PART IV. PROCEDURES FOR TAKING SALIVA OR TISSUE SAMPLE.

~~6 VAC 20-210-60.~~ **6 VAC 40-40-60. Collection of samples.**

The samples shall be collected during booking by the sheriff's office, police department or regional jail responsible for booking upon arrest.

~~6 VAC 20-210-70.~~ **6 VAC 40-40-70. Buccal sample kits.**

Saliva and tissue samples shall be collected using buccal sample kits specified and distributed by the ~~division~~ department. Each buccal sample kit shall contain a submission form, at least one buccal sample collection device and instructions on the procedure for using the device. These instructions shall be followed when collecting the buccal samples.

~~6 VAC 20-210-80.~~ **6 VAC 40-40-80. When buccal sample kits are unavailable.**

In circumstances where a buccal sample kit is unavailable, the ~~division~~ department may accept samples collected without using the buccal sample collection devices contained in the buccal sample kits. These samples shall be collected through the use of sterile swabs and satisfy the sealing and labeling requirements of ~~6 VAC 20-210-90.~~ **6 VAC 40-40-90.**

~~6 VAC 20-210-90.~~ **6 VAC 40-40-90. Sealing and labeling samples.**

All saliva and tissue samples collected shall be placed in sealed, tamper-resistant containers. Samples shall be submitted with the following identifying information: the arrestee's name, social security number, date of birth, race

and gender; the name of the person collecting the samples; the date and place of collection; information identifying the arresting or accompanying officer; the qualifying offense; and the document control number (DCN).

~~6 VAC 20-210-100.~~ **6 VAC 40-40-100. Transportation of samples to the division department.**

Samples shall be transported to the ~~division~~ department in sealed containers not more than 15 days following collection. A copy of the arrest warrant or *capias* shall be included with the sample when it is transported to the ~~division~~ department. Samples may be hand delivered or mailed to the ~~division~~ department.

PART V. NOTIFICATION OF FINAL DISPOSITION.

~~6 VAC 20-210-110.~~ **6 VAC 40-40-110. Notification of final disposition.**

Timely submission of the final disposition of a qualifying offense to CCRE by the clerk shall satisfy the requirement that the clerk notify the ~~division~~ department of final disposition of the criminal proceedings under § 19.2-310.2:1 of the Code of Virginia.

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