



COMMONWEALTH of VIRGINIA

DEPARTMENT OF FORENSIC SCIENCE

OFFICE OF THE DIRECTOR
A Nationally Accredited Laboratory

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NOTICE OF DFS POLICY CHANGE

To: All Agencies Serviced by Department of Forensic Science Laboratories
From: Linda C. Jackson, Director *LCT*
Date: March 16, 2017
RE: New DUI Law and Corresponding Revisions to Processes for Handling Blood Samples in Search Warrant DUI Cases

Today, Governor McAuliffe signed House Bill 2327, which is the bill introduced to address the U.S. Supreme Court decision in Birchfield v. North Dakota. The bill was effective upon the Governor's signature because it contained an emergency enactment clause.

This memorandum is intended to notify you of how DFS has revised its processes for handling blood samples collected in DUI cases pursuant to search warrants to comply with the requirements of HB2327. For search warrant blood samples collected in DFS DUI kits for offenses occurring on or after March 16, 2017 (the effective date of the legislation), DFS will treat the samples in the same fashion as those collected pursuant to implied consent. DFS will preserve the remainder of the blood sample for 90 days *after completion of analysis*. If, during the 90-day period, DFS receives an order directing that the remainder of the blood sample be transmitted to an independent laboratory for analysis, DFS will send the blood to the independent laboratory. If no notice of a motion to transmit the remainder of the blood sample is received prior to the expiration of the 90-day period, DFS will destroy the sample unless the Commonwealth has filed a written request to return the remainder of the blood to the investigating law enforcement agency, in which case the remainder of the blood sample will be returned to law enforcement.

The Certificates of Analysis issued for the search warrant blood samples collected using the DFS DUI kits will be identical to those issued in implied consent blood sample cases, with the Certificates of Blood Withdrawal attached. The Certificates of Analysis will be returned to the clerk of the court in which the charge will be heard. The submitting officer from the investigating agency will now be copied on these Certificates of Analysis, and the rebuttable presumptions for alcohol and drug content will now be applicable to the Department's reports for these search warrant blood draws.

For questions regarding this policy, please contact the DFS Toxicology Program Manager, James Hutchings, Ph.D., at (804) 588-4014.