



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

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MEMORANDUM

TO: Leonard G. Cooke, Director
Department of Criminal Justice Services

FROM: James Towey
Assistant Attorney General

DATE: July 22, 2003

SUBJECT: Authority to promulgate regulations pursuant to Code of Virginia § 2.2-4011 regarding implementation of Code of Virginia §§ 19.2-310.2:1 and 19.2-310.3:1

CC: Dr. Paul Ferrara, Director
Division of Forensic Science

In response to a request from the Division of Forensic Science (Division) regarding promulgation of the above referenced regulations, to be located in 6 VAC 20-210-10 *et seq.*, I am of the opinion that these regulations qualify as “emergency regulations” pursuant to Code of Virginia § 2.2-4011(A.)(i.), given there is an imminent threat to public safety.

The statutes at issue went into effect on January 1, 2003. Guidance is necessary as to when a sample may be collected, how the sample will be collected, and who is responsible for collecting the samples. Unless an emergency regulation is adopted, the law will not be properly implemented and many samples required to be collected from arrested persons will not be collected. The DNA profiles from these arrested persons will not be searched against the DNA Data Bank, and these individuals will be released from custody without having been linked to unsolved crimes. Thus, public safety will be directly and imminently threatened without promulgation of these regulations.

Thus, upon review of the above referenced provisions of the Code of Virginia as well as the proposed regulations submitted, in light of the imminent threat to public safety raised by the Division without their promulgation, and in accordance with Executive Order 21 (2002), it appears that the Department has the authority to implement the proposed regulations as “emergency regulations.”

804-371-8947 TDD