

**6 VAC 20-210-10 et seq. Proposed Regulations for the Implementation of the Law
Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain
Burglaries.**

Statutory Authority: §§ 9.1-102, 19.2-310.2:1 and 19.2-310.3:1 of the Code of Virginia.

CHAPTER 210.

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. 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 Virginia Code § 19.2-310.2:1.

“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 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 for convicted felons and arrestees.

“Division” means the Division 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 Virginia Code § 19.2-310.2:1.

6 VAC 20-210-20. 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. 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.”

PART III.

DNA SAMPLE TRACKING APPLICATION.

6 VAC 20-210-40. 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. 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 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. 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. Buccal sample kits.

Saliva and tissue samples shall be collected using buccal sample kits specified and distributed by the Division. 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. When buccal sample kits are unavailable.

In circumstances where a buccal sample kit is unavailable, the Division 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 20-210-90. 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. Transportation of samples to the Division.

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

PART V.

NOTIFICATION OF FINAL DISPOSITION.

6 VAC 20-210-110. 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 of final disposition of the criminal proceedings under Virginia Code § 19.2-310.2:1.