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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Forensic Science
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC 40-40
VAC Chapter title(s)	Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries
Action title	Amendments to Conform Regulations with Chapters 41 and 42 of the 2022 General Assembly
Final agency action date	July 14, 2022
Date this document prepared	September 6, 2022

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

6 VAC 40-40 outlines the requirements which a law enforcement agency must follow to determine if a DNA sample is required under Virginia Code § 19.2-310.2:1 for an individual arrested for a qualifying arrest for a violent felony or certain burglary offenses. Virginia law prohibits the taking of an additional sample if there was a DNA sample already in the data bank for the arrestee. Previously, the booking agency would check the Local Inmate Data System (LIDS), which was developed by the State Compensation Board and accessible through the State Compensation Board's website. The Compensation Board created the LIDS DNA sample tracking system in 2003, which provided an effective solution at the time; however, the access control structure for the LIDS DNA system was outdated.

The Department of Forensic Science (DFS) has developed a DNA data bank sample tracking system that captures real-time data on individuals included in the data bank. This new DNA sample tracking system is now utilized by

law enforcement agencies in lieu of LIDS. The DFS DNA sample tracking system also has a pre-log feature that allows for the electronic entry of information about the sample into the system at the time of collection. This creates efficiencies as the information will be pre-populated into the system at DFS when the sample is received and scanned by data bank staff. The new DFS DNA sample tracking system meets VITA security standards while improving efficiency for both DFS and users in the field who access the system. The new system is web-based and will be accessible to user agencies, including law enforcement agencies, the Department of Corrections, the Department of Juvenile Justice, and the courts, at no cost.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Chapters 41 and 42 of the 2022 Virginia General Assembly modified the language in the Code of Virginia to address the replacement of LIDS with the DFS DNA sample tracking system. Corresponding amendments to 6 VAC 40-40 are mandated to reflect the amendments to the Code made by the General Assembly.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

At its meeting on July 14, 2022, the Forensic Science Board, the Department’s policy board, approved the proposed amendments to 6 VAC 40-40, the Regulations for the Implementation of the Law Permitting DNA Analysis upon Arrest for All Violent Felonies and Certain Burglaries.