



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
*Richmond 23219*

**Jason S. Miyares**  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071

**MEMORANDUM**

**TO:** Linda Jackson, Director  
Department of Forensic Science

**FROM:** Phillip O. Figura  
Assistant Attorney General

**DATE:** September 1, 2021

**SUBJECT:** Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries – 6VAC40-40

In response to a request from the Department of Forensic Science, I reviewed the proposed regulations, 6VAC40-40, relating to the implementation of the law permitting DNA analysis upon arrest for all violent felonies and certain burglaries. The changes to the DNA analysis were required based on the passage of HB748 and SB150. Those statutory changes required changes in basic terminology: primarily replacing any reference to “Local Inmate Data System (LIDS)” with the term “Department of Forensic Science DNA data bank sample tracking system.” The Department of Forensic Science is required by law to make these changes to conform the regulation to current state law.

Accordingly, upon review of the aforesaid regulations, I find them to be constitutional and in conformity with existing statutory provisions. These changes to the regulation are exempted from the Administrative Process Act, pursuant to Virginia Code § 2.2-4006(A)(4)(a), as they are necessary to conform to changes in Virginia statutory law where no agency discretion is involved.

*Please note that this memorandum is intended to provide legal interpretations and legal advice, not policy advice. To the extent that this communication may advise you that certain action is lawful, the decision whether to take such action remains a policy decision with the discretion of your agency and this communication should not be construed as a comment for or against the merits of such action.*