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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	Forensic Science Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	6 VAC 40-40
<b>VAC Chapter title(s)</b>	Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries
<b>Date this document prepared</b>	May 24, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

### Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

There are no acronyms or technical terms utilized in this Report that are not also defined in the "Definitions" section of the regulation.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

Virginia Code § 19.2-310.2:1 mandates every person arrested for the commission or attempted commission of a violent felony (as defined in § 19.2-297.1) or certain burglary offenses to submit a DNA sample for inclusion in the DNA Data Bank maintained by the Department of Forensic Science under Virginia Code § 19.2-310.5. Virginia Code § 9.1-1110 grants the Forensic Science Board the power and duty to adopt the regulations for the administration of Virginia Code § 19.2-310.5 and “for any provisions of the Code as they relate to the responsibilities of the Department.”

**Alternatives to Regulation**

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

6 VAC 40-40 establishes notification procedures for all warrants for qualifying offenses, DNA sample tracking and duplicate screening through the State Compensation Board’s Local Inmate Data System (LIDS), collection of samples utilizing buccal sample kits specified and distributed by the Department, and the notification of the Department by the court clerks of the final disposition of qualifying offenses via the Central Criminal Records Exchange (CCRE). The regulation is the least burdensome method of accomplishing the Department’s Code-mandated DNA sampling of those arrested for violent felonies and certain burglaries.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

Commenter	Comment	Agency response
	None received.	

**Effectiveness**

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

The regulation is necessary for the protection of public health, safety, and welfare. As required by the enacting legislation, the regulation provides the procedures for DNA sampling of those arrested for violent felonies and certain burglaries. The regulation is clearly written. No stakeholders have indicated difficulty in understanding the requirements of the regulation. The Department provides education for law enforcement entities on an ongoing basis on the required DNA sampling for certain arrestees.

**Decision**

*Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

Having reviewed 6 VAC 40-40 and having received no public comment objecting to the regulation, the regulation will be retained as is without making any changes.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

This regulation has no significant economic impact on small businesses. Because it was mandated by the legislation, there is a continued need for the regulation. No comments or complaints have been received concerning this regulation. The regulation meets Code requirements and user agencies' needs. The regulation provides necessary guidance for required DNA sampling of certain arrestees. The regulation does not overlap, duplicate or conflict with any federal or state law or regulation. The regulation was last reviewed in 2017, and there have been no changes in technology, economic conditions or other factors in the area affecting the regulation. Changes in technology may eventually require amendment of this regulation, but those technological advancements have not been deployed at the time of this Review.