



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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### **6 VAC 40-40 Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries**

**Department of Forensic Science**

**Town Hall Action/Stage: 6448 / 10307**

October 25, 2024

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

#### **Summary of the Proposed Amendments to Regulation**

The Forensic Science Board (Board) proposes to state that the Department of Forensic Science’s (DFS) DNA data bank sample tracking system should be utilized (when available) for the submission of DNA buccal samples rather than having law enforcement officers fill out a preprinted form as part of the buccal sample<sup>2</sup> kit.

#### **Background**

DNA buccal samples are collected during booking by the sheriff’s office, police department or regional jail responsible for booking upon arrest.<sup>3</sup> The current regulation states that “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

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> The regulation defines “buccal sample” as “a sample taken by swabbing the cheek inside an arrestee’s mouth.”

<sup>3</sup> See <https://law.lis.virginia.gov/admincode/title6/agency40/chapter40/section60/>.

officer; the qualifying offense; and the document control number (DCN).” Traditionally, this has been done by a staff member at the local law enforcement agency handwriting this information on a form. DFS now has an electronic DNA data bank sample tracking system (DBSATS) that can be used to enter the information. DFS reports that approximately 40 percent of the submissions it receives are already being made through DBSATS. To improve efficiency, the proposed text is intended to encourage the use of the electronic system with the hope that ultimately 100 percent of submissions are via DBSATS.

According to DFS, in order for local law enforcement agencies to sign up and get access to DBSATS, a site administrator must execute an access agreement with the DFS data bank staff and maintain a list of authorized users. There is no charge and DFS states that it takes minimal time. DFS also notes that the local law enforcement agencies should have already signed up to access this system to comply with the current 6 VAC 40-40-50, which states that, “[p]rior to taking the saliva or tissue sample, the DNA data bank sample tracking system shall be queried to determine if there is a DNA sample already in the data bank for the arrestee.”

### **Estimated Benefits and Costs**

DFS reports that it receives approximately 2,000 arrestee buccal samples each fiscal year, that DFS data bank analysts earn on average \$28.25 per hour, and that receiving the information via DBSATS rather than on a handwritten form saves about 0.03 hours per submission for the DFS data bank analysts. Valuing saved time by the amount earned by analysts for that time, if the proposed text results in all submissions being done by DBSATS (versus the current 40 percent), then \$1,017 in costs would be avoided annually for DFS.<sup>4</sup> Additionally, handwriting would not need to be interpreted by DFS staff, which may save additional time.

The U.S. Bureau of Labor Statistics May 2023<sup>5</sup> State Occupational Employment and Wage Estimates indicates an hourly mean wage of \$23.99 for correctional officers and jailers in Virginia.<sup>6</sup> DFS estimates that recording the information via DBSATS rather than writing it on the form saves about 0.08 hours per submission for the local law enforcement agency staff. Valuing saved time by the amount earned for that time, if the proposed text results in all submissions being done by DBSATS (versus the current 40 percent), then \$2,303 in costs would

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<sup>4</sup>  $2,000 \times 0.6 \times \$28.25 \times 0.03 = \$1,017$ .

<sup>5</sup> This is the most recent version published.

<sup>6</sup> See [https://www.bls.gov/oes/current/oes\\_va.htm](https://www.bls.gov/oes/current/oes_va.htm)

be cumulatively avoided annually, which would be distributed across the Commonwealth's local law enforcement agencies that are not already using the DBSATS system.<sup>7</sup>

### **Businesses and Other Entities Affected**

The proposed amendments affect the 122 sheriff's offices,<sup>8</sup> 166 police departments,<sup>9</sup> and 28 regional jails<sup>10</sup> in the Commonwealth, as well as DFS.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>11</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>12</sup> As the proposed amendment neither increases net costs nor reduces net benefits, no adverse impact is indicated.

### **Small Businesses<sup>13</sup> Affected:<sup>14</sup>**

The proposed amendment does not adversely affect small businesses.

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<sup>7</sup>  $2,000 \times 0.6 \times \$23.99 \times 0.08 = \$2,303$ .

<sup>8</sup> Data source: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cslla18st.pdf>.

<sup>9</sup> Ibid.

<sup>10</sup> Data source: <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/research/virginias-peculiar-system-local-and-regional-jails.pdf>.

<sup>11</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

<sup>12</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>13</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

<sup>14</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

**Localities<sup>15</sup> Affected<sup>16</sup>**

The proposed amendment neither disproportionately affects particular localities nor introduces costs for local governments.

**Projected Impact on Employment**

The proposed amendment is not likely to affect total employment.

**Effects on the Use and Value of Private Property**

The proposed amendment neither effects the use and value of private property nor real estate development costs.

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<sup>15</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>16</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.