

Lawfully Owed DNA Virginia

Last Updated: April 2023

Arrest

Question	Answer
Does the law require a DNA sample to be collected from an individual when they are arrested for a crime?	Yes, from adults and minors (by implication).
What crimes require collection of a DNA sample at arrest?	Violent felonies, or a violation or attempt of numerated other offenses, including the criminal code provisions related to: aggravated murder; burglary; entering with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or other felony; breaking and entering with intent to commit other misdemeanor.
Does the law mandate when the DNA sample must be collected after arrest?	After a probable cause determination by a magistrate or grand jury and prior to release from custody. If a sample of the person is stored in the DNA data bank as indicated by the Department of Forensic Science sample tracking system, no additional sample shall be taken.
What agency collects the arrest DNA sample?	Law enforcement agency responsible for arrest booking in the jurisdiction.
What agency manages the analysis and preservation in the DNA database?	Department of Forensic Science
Can the arrest DNA sample be expunged?	Automatic – clerk of the court notifies Dept. of Forensic Science if case dismissed or defendant is acquitted, provided no other pending qualifying warrant for arrest or qualifying felony conviction.
Statutes	<p>VA Code § 19.2–310.2:1. Saliva or Tissue Sample Required for DNA Analysis After Arrest for a Violent Felony</p> <p>Case Law:</p> <p>Johnson v. Commonwealth, 529 S. E. 2d 769, 779–80 (Va. 2000) (“The DNA statutes do not deny a criminal defendant any constitutional rights” including the Fourth, Fifth, and Eighth Amendments)</p>

Conviction

Question	Answer
Does the law require a DNA sample to be collected from the defendant when they are convicted of a crime?	Yes
What convictions require collection of a DNA sample?	<p>For persons convicted on or after July 1, 1990: Felonies or enumerated misdemeanors: Violating certain protective orders; Simple assault and battery; Stalking; Sexual battery; Infected sexual battery without intent to transmit; Sexual abuse of a child under 15 years of age; Attempted sexual battery; Unauthorized use of animal, aircraft, vehicle or boat; Trespass after having been forbidden to do so; Entering property of another for purpose of damaging it; Penetration of mouth of child with lascivious intent; Peeping or spying; Indecent exposure; Obscene sexual display; Resisting arrest (or similar local ordinance)</p> <p>For persons who were incarcerated on July 1, 1989: Felony sexual assault</p> <p>For juveniles at least 14 years old at time of offense: felony convictions or adjudication as delinquent based on an act that would be a felony if committed by an adult</p>
Does the law require DNA collection when a defendant is found not guilty by reason of insanity/mental defect/illness?	Not specifically required.
Does the law mandate when the DNA sample must be collected after conviction?	Taken prior to release from custody. If not sentenced to a term of confinement, must provide DNA as a condition of the sentence. If a sample of the person is stored in the DNA data bank as indicated by the Department of Forensic Science sample tracking system, no additional sample shall be taken.
What agency collects the DNA sample after conviction?	State Police or Department of Corrections, Parole or Probation; Department of Juvenile Justice
What agency manages the analysis and preservation in the DNA database?	Department of Forensic Science

Can the conviction DNA sample be expunged?	Written request with certified copy of court order showing that conviction was reversed and case dismissed
Statutes	VA code § 19.2–310.2. Blood, Saliva, or Tissue Sample Required for DNA Analysis upon Conviction of Certain Crimes; Fee § 19.2–310.7. Expungement when DNA Taken for a Conviction § 16.1-299.1. Sample required for DNA analysis upon conviction or adjudication of felony Case Law: <i>Johnson v. Commonwealth</i> , 529 S. E. 2d 769 779-80 (Va. 2000) (“The DNA statutes do not deny a criminal defendant any constitutional rights” including the Fourth, Fifth and Eighth Amendments).