DNA Databank: Expansion of Misdemeanor Crimes

Executive Summary

In February 2017, Speaker William J. Howell and Delegates David J. Toscano and R. Steven Landes sent a letter to the Crime Commission requesting that the agency examine whether additional misdemeanors should be added to the list of offenses requiring submission of a DNA sample upon conviction.[1] Virginia law currently requires that a DNA sample be submitted by adult offenders upon conviction for 14 misdemeanor offenses.[2]

Two types of data analyses were performed as part of this study. The purpose of these analyses was to determine if an association exists between other misdemeanors and violent felonies. First, a prospective analysis was completed to determine how many offenders convicted of certain misdemeanors were subsequently convicted of a felony offense within the following 10 years. Second, a retrospective analysis was completed to determine which misdemeanor convictions are frequently found in the criminal histories of individuals convicted of violent felonies. Both data analyses were generalizable only to misdemeanor and felony convictions in the stated time periods, rather than actual rates of offending, arrests, or charges.

Based on findings from both analyses, it appeared that there was an association between certain misdemeanors and violent felonies/certain burglary offenses for a subset of offenders,[3] including the following:

- Misdemeanor assault and battery[4] convictions appeared to have a compelling relationship with all the violent felony and certain burglary offenses focused upon in both analyses.
- Domestic assault and battery,[5] trespassing,[6] petit larceny,[7] and destruction of property[8] also appeared to be strongly associated with the violent felony and certain burglary offenses focused upon in both analyses.
- Trespassing[9] had a strong association in the prospective analysis with the violent felony and certain burglary offenses focused upon. Any decision on trespassing should only be based on findings from the prospective analysis since this offense was not fully captured on criminal histories, which the retrospective analysis relied upon.[10]

- Obstruction of justice[11] and concealing merchandise/ altering price tags[12] did not show as strong of an association with the violent felony and certain burglary offenses focused upon in the retrospective analysis as seen in the prospective analysis.

In addition to these analyses, staff was asked to provide information on the 14 misdemeanors currently requiring a DNA sample submission upon conviction under Virginia law.[13] Staff found that as of October 13, 2017, a total of 3,330 misdemeanor samples had been entered into the DNA Sample Tracking Database (DNA Web) maintained by the Virginia Department of Forensic Science (DFS). Of that total, 84% (2,797 of 3,330) were the direct result of a misdemeanor charge that resulted in a conviction and 16% (533 of 2,797) were the result of a defendant who was initially charged with a felony offense but was ultimately convicted of a misdemeanor. As of November 27, 2017, there were 26 hits resulting from misdemeanor conviction samples in DFS DNA Web Database.[14]

Staff was also asked to examine privacy concerns relating to the DNA Databank and to provide an overview of DNA sample collection upon conviction for misdemeanors in other states. Staff found that several important safeguards are currently in place to protect the privacy of the DNA databank. Staff also determined that there have been no charges or convictions for unauthorized use of Virginia's DNA Databank over the past 10 years. A review of the DNA collection laws for all 50 states, the District of Columbia, and federal government revealed that at least 26 states collect DNA upon conviction for some non-sexual misdemeanor convictions, while only 3 states collect DNA upon conviction for large classes of misdemeanor offenses (New York, Utah, and Wisconsin).

The Crime Commission reviewed the findings of this study at the November meeting. Crime Commission members unanimously endorsed the following policy option and two staff recommendations at the December meeting.

Policy Option 1: Amend Va. Code § 19.2-310.2 to include a DNA sample submission from adults for the following seven misdemeanors upon conviction:

- Assault and battery;[15]
- Domestic assault and battery;[16]
- Trespassing;[17]
- Petit larceny;[18]
- Destruction of property;[19]
- Obstruction of justice;[20] and,
- Conceal merchandise/alter price tags.[21]

Recommendation 1: The Department of Forensic Science should update their DNA sample submission training materials for sheriffs' deputies and jail intake officers to reflect current law.

Recommendation 2: Amend Va. Code § 19.2-390 to require fingerprinting upon conviction for trespassing and disorderly conduct.

Legislation was introduced and enacted for Policy Option 1 and Recommendation 2 during the Regular Session of the 2018 General Assembly. Bills introduced by Delegate David J. Toscano (House Bill 1249) and Senator Mark D. Obenshain (Senate Bill 565) ultimately added two new crimes - assault and battery and trespassing - to the list of misdemeanor offenses requiring submission of a DNA sample from adults upon conviction.[22] Delegate Toscano (House Bill 1266) and Senator Obenshain (Senate Bill 566) also patroned legislation requiring that fingerprints be taken upon conviction for trespassing and disorderly conduct.[23]

On December 14, 2017, the Crime Commission sent a letter requesting that DFS update their DNA sample submission training materials as endorsed in Recommendation 1.

Background

This study was conducted as a result of the tragic circumstances in the Charlottesville, Virginia area involving the murder of Hannah Graham by Jesse Matthew.[24] In 2010, Jesse Matthew was convicted of trespassing.[25] If his DNA sample had been taken following that trespassing conviction, he would likely have been linked to a 2005 rape case in Fairfax, as well as the murder of Morgan Harrington in 2009.[26]

DNA databanks help law enforcement solve crimes and exonerate innocent individuals. The DNA Identification Act of 1994 authorized the establishment of the National DNA Index System.[27] The system is structured so that Local DNA Index Systems and State DNA Index Systems can feed into the National DNA Index System.[28] All 50 states, the District of Columbia, the federal government, the U.S. Army Criminal Investigation lab, and Puerto Rico participate in National DNA Index System.[29] Virginia ranked 8th nationwide in total offender profiles in the National DNA Index System in July 2017.[30]

In 1989, Virginia was the first state to require certain offenders to submit DNA samples for inclusion in a DNA Databank.[31] DNA samples are required from adults for all felonies upon conviction,[32] for all violent felony and certain burglary offenses upon arrest,[33] and for certain misdemeanor convictions upon conviction.[34] DNA samples from juveniles are only required for offenders 14 years of age or older who

were either convicted of a felony or adjudicated delinquent of a crime that would be considered a felony if committed by an adult.[35] Virginia does not collect DNA samples for any misdemeanors upon arrest.[36]

The main focus of this study was whether the current list of misdemeanors requiring a DNA sample from adults upon conviction should be expanded. Prior to FY12, only a handful of misdemeanor sex offenses required a DNA sample submission as part of the Sex Offender Registry requirements.[37] Five misdemeanors were added in FY12,[38] including the following:

- Sexual battery;[39]
- Sexual abuse of a child under 15 years of age;[40]
- Attempt to commit sexual battery;[41]
- Peeping or spying into dwelling or enclosure;[42] and,
- Penetration of the mouth of a child with lascivious intent.[43]

A second expansion in FY16 added nine additional misdemeanors to the list of offenses requiring a DNA sample submission upon conviction,[44] including the following:

- Violation of a domestic protective order;[45]
- Stalking;[46]
- Violation of a protective order;[47]
- Infected sexual battery;[48]
- Unauthorized use of a vehicle;[49]
- Unlawful entry;[50]
- Indecent exposure;[51]
- Obscene sexual display;[52] and,
- Resisting arrest.[53]

As the total number of offenses requiring a DNA sample has grown over the past 25 years in Virginia, so have the number of DNA samples in the Databank.[54] The large majority of DNA samples received by DFS each year are for felony convictions. The next largest category is violent felony arrests and the smallest category is misdemeanor convictions.[55]

Methodology and Data Analyses

The primary purpose of this study was to determine whether additional misdemeanors should be added to the list of offenses requiring a DNA sample submission from adults upon conviction. In addressing this policy question, prospective and retrospective data analyses were performed to determine if an association existed between certain misdemeanors and violent felonies/certain burglary offenses.[56]

Prospective Analysis

A prospective analysis was completed to determine how many offenders convicted of certain misdemeanors were subsequently convicted of a felony offense within the following 10 years. During the 2015 General Assembly Session, the Virginia Criminal Sentencing Commission (VCSC) analyzed a list of approximately 350 misdemeanor offenses for which a defendant must submit fingerprints to the CCRE, plus trespassing. [57] Specifically, they calculated how many individuals convicted of these misdemeanors in FY08-FY09 had subsequent felony sentencing events between FY08-FY14.[58] As part of the current study, Crime Commission staff reviewed that existing list and requested that 64 of the misdemeanors be recalculated by the VCSC.[59] Sentencing Commission staff then updated how many individuals convicted of these 64 misdemeanors in FY08-FY09 had subsequent felony sentencing events between FY08-FY17.[60]

Specific emphasis was placed on the following eight violent felony and burglary conviction outcome categories: murder, kidnapping, rape, sexual assault, felony assault, robbery, burglary and larceny.[61]

The following seven misdemeanors were identified as having an association with the eight violent felony and burglary outcome categories:

- Assault and battery;[62]
- Domestic assault and battery;[63]
- Trespassing;[64]
- Petit larceny;[65]
- Destruction of property;[66]
- Obstruction of justice;[67] and,
- Concealing merchandise/altering price tags.[68]

See Appendix D for a detailed chart on the association between the first four misdemeanor convictions listed above and the eight felony conviction outcomes. As an example of this association, there were 13,071 individuals convicted of misdemeanor assault and battery in FY08-FY09. Of that number, 18% (2,326 of 13,071) were subsequently convicted of a felony between FY08-FY17. The 18%, as a whole, had a total of 4,466 subsequent felony sentencing events, including 32 murders, 55 kidnappings, 46 rapes, 16 sexual assaults, 640 felony assaults, 123 robberies, 236 burglaries, and 1,020 larcenies.

It is very important to note that these offenses were not identified solely because they are common misdemeanor crimes. By comparison, there were approximately 54,000 individuals convicted of misdemeanor DUI[69] in the FY08-FY09 cohort, but only 8% were subsequently convicted of a felony within 10 years; whereas, approximately 12,000 individuals were convicted of misdemeanor trespassing in FY08-FY09, yet 21% were subsequently convicted of a felony within 10 years. The analysis demonstrated that there is a much larger subset of individuals convicted of the selected misdemeanor offenses who are subsequently convicted of a felony within ten years as compared to other common misdemeanors, such as DUI. Further, the subset of offenders for the selected misdemeanor offenses had a larger proportion of felony convictions that were violent in nature (murder, kidnapping, rape, sexual assault, felony assault, and robbery).

Retrospective Analysis

A retrospective analysis was completed to determine which prior misdemeanor convictions were frequently found in the criminal histories of violent felons. Crime Commission staff requested that the VCSC obtain the total number of individuals convicted of any felony offense in FY16 from their *Sentencing Guidelines Database*. According to this data source, there were 22,301 total individuals convicted of a felony in FY16. Sentencing Commission staff then extracted the individuals who were convicted of a violent felony or certain burglary offense in FY16.[70] Of the 22,301 individuals convicted of a felony, 14% (3,091 of 22,301) were convicted of a violent felony or certain burglary offense in FY16.[71] Sentencing Commission staff prepared the syntax required by the Virginia State Police to query the criminal histories for the 3,091 individuals. Once provided with this information, the Virginia State Police delivered hard copies of the 3,091 individual criminal histories to Crime Commission staff for analysis.

After examining the 3,091 criminal histories, it was determined that 89% (2,753 of 3,091) were valid for inclusion in the final analysis.[72] Thus, the population (N-size), of this analysis was 2,753 adults convicted of a violent felony or certain burglary offense in FY16. The findings reported below are only generalizable to individuals convicted of a violent felony or certain burglary offense in FY16.

Description of Population

When examining the population of 2,753 valid records of adults convicted of a violent felony or certain burglary offense in FY16, staff

found the following information:

- Sex: 90% (2,467 of 2,753) of individuals were male; 10% (286 of 2,753) were female.
- Race: 50% (1,380 of 2,753) were white; 49% (1,356 of 2,753) were black; <1% (14 of 2,753) were Asian; and, <1% (3 of 2,753) were Native American.[73]
- Age: The ages ranged from 18 years to 79 years old. The average was 32 years old and the median was 29 years old.
- Address Reported at Time of Arrest: 93% (2,565 of 2,753) reported that they resided in Virginia; 6% (181 of 2,753) reported that they did not reside in Virginia; 7 residence statuses were uncertain.[74]
- Total Felony Convictions Including the Target FY16 Felony Sentencing Event: The number of felony convictions on each individual criminal history varied greatly, with the least being 1 and the greatest being 66.[75] Individuals had an average of 5 total felony convictions including the FY16 target offense, as well as any felony convictions occurring after that point.[76] The median was 3 felony convictions.
- Total Felony Convictions PRIOR to the Target FY16 Felony Sentencing Event: In an attempt to fairly and accurately report total felony convictions, VSCC staff counted the total number of felony convictions occurring prior to the target FY16 sentencing event. Individuals had anywhere from 0 to 64 prior felony convictions. The average was 2 prior felony convictions; the median was 0. It was interesting to note that 60% (1,639 of 2,753) had no prior felony convictions and 40% (1,114 of 2,753) had one or more prior felony convictions. Of those with one or more prior felony convictions, the range was 1 to 64, with an average of 5 and a median of 3.
- Prior Felony and Misdemeanor Charges: Recognizing that many offenses do not result in a conviction, staff attempted to determine the total number of individuals that had either a previous felony charge, misdemeanor charge, or both.
  - 48% (1,329 of 2,753) had prior felony and misdemeanor charges;
  - 21% (566 of 2,753) had no prior felony OR misdemeanor charges;
  - 16% (446 of 2,753) had at least one prior misdemeanor charge, but no felony charges;
  - 15% (412 of 2,753) had at least one prior felony charge, but no misdemeanor charges.

Prior Misdemeanor Convictions

The primary focus of the retrospective analysis was upon the individuals who had at least one prior misdemeanor conviction on their criminal history. Staff noted the number and type of prior misdemeanor convictions on each criminal history occuring before the FY16 felony sentencing event. It was found that 69% (1,898 of 2,753) had at least one prior misdemeanor conviction; whereas, 31% (855 of 2,753) did not have a previous misdemeanor conviction.[77] The average age of individuals at the time of their first misdemeanor conviction was 23 years old. The time between an individual's first misdemeanor conviction and the FY16 target sentencing event varied greatly. For some, both convictions occurred within the same fiscal year while others had a 40-year gap. When examining the group as a whole, the average time was 10 years between an individual's first misdemeanor conviction and the FY16 target felony sentencing event.

Within these 1,898 criminal histories, there were five misdemeanor convictions that appeared to be the most associated with the felony crimes of murder, kidnapping, rape, felony assault, robbery, and burglary:

- Assault and battery;[78]
- Domestic assault and battery;[79]
- Petit larceny;[80]
- Trespassing;[81] and,
- Destruction of property.[82]

See Appendix D for an illustration of the association between the first four misdemeanor convictions listed above and the select felony conviction outcomes. As an example of this association, out of the 104 convicted murderers in FY16, 32 had a prior misdemeanor assault and battery conviction.

Summary of Data Findings

The prospective analysis revealed that most individuals convicted of misdemeanors are not convicted of felonies in the future; whereas, the retrospective analysis demonstrated that nearly 70% of offenders convicted of a violent felony or certain burglary offense in FY16 had at least one prior misdemeanor conviction on their criminal history. Both analyses revealed multiple offender typologies, such as career misdemeanants and felons, as well as general and specific offending profiles and patterns.

Both analyses demonstrated a clear association between certain misdemeanors and violent felonies/certain burglary offenses for a subset of offenders.

- Misdemeanor assault and battery[83] convictions appeared to have a compelling relationship with all the violent felony and certain burglary offenses focused upon in both analyses.
- Domestic assault and battery,[84] trespassing,[85] petit larceny,[86] and destruction of property[87] also appeared to be strongly associated with the violent felony and certain burglary offenses focused upon in both analyses.
- Trespassing[88] had a strong association in the prospective analysis with the violent felony and certain burglary offenses focused upon. Any decision on trespassing should only be based on findings from the prospective analysis since this offense was not fully captured on criminal histories, which the retrospective analysis relied upon.[89]
- Obstruction of justice[90] and concealing merchandise/altering price tags[91] did not show as strong of an association with the violent felony and certain burglary offenses focused upon in the retrospective analysis as seen in the prospective analysis.

It must be emphasized that both data analyses could only be generalized to misdemeanor and felony convictions in the stated time periods, rather than actual rates of offending, arrests, or charges. Appendix D provides an illustration of the associations based on raw data for both the prospective and retrospective analyses.

Misdemeanor DNA Sample Data

Crime Commission staff was requested to provide information on data relating to the existing 14 misdemeanors under Virginia law that require a DNA sample upon conviction.[92] Staff requested a detailed list of all misdemeanor samples received by DFS for convictions for these 14 offenses. There were a total of 3,330 misdemeanor samples entered into DFS' DNA Sample Tracking Database (DNA Web) as of October 17, 2017.[93]

Misdemeanor Conviction Type

Staff requested a breakdown by offense type for the 3,330 misdemeanor conviction DNA samples submitted to DFS. The largest number of misdemeanor samples stemmed from three offense categories. Specifically, 30% (1,011 of 3,330) were for a protective order violation,

20% (670 of 3,330) were for sexual battery, and 16% were for unlawful entry (528 of 3,330) convictions.[94] Of the 3,330, 84% (2,797 of 3,330) were the direct result of a misdemeanor charge resulting in a conviction and 16% (533 of 2,797) were the result of a defendant who was initially charged with a felony offense but subsequently convicted of a misdemeanor offense (i.e., felony sex charge reduced to misdemeanor sexual battery conviction).

DNA Sample Hits

A "hit" occurs when there is an association between an unsolved profile and a convicted offender/arrestee, or between two or more cases that were previously unknown to be linked.[95] A hit is an investigative leadthat is provided to law enforcement in a case, but it does not necessarily solve the case. When a hit occurs, the investigating agency is notified of the lead in the case. Since there is no tracking requirement, it is unknown what occurred with this information after the investigating agency receives the hit.

There were a total of 11,427 hits (investigations aided) resulting from both felony and misdemeanor samples in the Virginia DNA Databank as of FY17. These DNA hits have identified a perpetrator other than the person convicted in 9 of the 16 exonerations in Virginia as listed by the Innocence Project's database.[96]

There have been 26 hits resulting from misdemeanor conviction samples as of November 27, 2017.[97] The first misdemeanor DNA sample hit was in FY16 to a sex offense case dating back to October 1997.

Privacy Considerations

There are several important safeguards in place to protect the information contained in the Virginia DNA Databank. The Virginia DNA Databank is comprised of two separate databases with restricted access:

- DNA Sample Tracking Database (DNA Web); and,
- Virginia Combined DNA Index System (CODIS).

The DNA Web Database maintains the personally identifiable information of each DNA sample and is kept separate from the DNA profiles maintained in CODIS, where the searches take place.[98] CODIS organizes the DNA profiles into the following indices: offender index, arrestee index, forensic index, missing person index, and unidentified human remains index.[99]

All labs participating in the National DNA Index System must adhere to federal quality assurance and privacy standards.[100] External audits are performed every two years. Access to the National DNA Index System is denied if these quality control and privacy standards are not met by participants. The Virginia Department of Forensic Science must also meet accreditation standards set forth by the ANSI-ASQ National Accreditation Board (ANAB), which was formerly the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) through its International program. If these standards are not met, DFS could lose accreditation status (a requirement of participation in the National DNA Index System). The Virginia Department of Forensic Science also performs annual internal audits.

Crime Commission staff found that all states[101] and the federal government[102] have statutes addressing the unauthorized use of DNA databanks. The Code of Virginia criminalizes unauthorized use of the databank and imposes three different penalties, including the following:

- Disseminating information without authorization (Class 3 misdemeanor);[103]
- Using for any purpose other than authorized by law (Class 1 misdemeanor); and,
- Obtaining any sample submitted to DFS (Class 5 felony).

Staff requested the total number of charges and convictions for offenses under this statute over the past 10 years from the VCSC. According to VCSC staff analysis, there have been no charges or convictions for any of these offenses in Virginia over the past 10 years.[104]

Other States

Staff completed a review of statutes relating to the collection of DNA samples for all 50 states, the District of Columbia, and the federal government. All 50 states, the District of Columbia, and the federal government collect DNA samples for all or nearly all felony convictions.[105] As of June 2018, 36 states, the District of Columbia, and the federal government collect DNA for certain sexual misdemeanor convictions.[106] At least 26 states and the federal government collect for some non-sexual misdemeanor convictions.[107] Only 3 states collect for a large classes of misdemeanor offenses upon conviction: New York, Utah, and Wisconsin.

Staff was asked to examine these three states in more detail to assess the impact of requiring DNA samples for broad classes of misdemeanors, with specific attention placed upon misdemeanor trespassing laws. It is important to note that crimes classified as misdemeanors in Virginia may or may not be classified in the same manner in these other states.

New York

New York collects DNA upon conviction for all Class A, B, and unclassified misdemeanors, but not for violations.[108] In terms of trespassing, DNA is collected for trespassing misdemeanors on enclosed land,[109] certain school property,[110] public housing,[111] railroad yards,[112] and dwellings;[113] however, DNA is not collected for trespassing violations.[114]

New York initially required DNA collection upon conviction for 36 specified misdemeanors in 2006.[115] All remaining penal law misdemeanors were added effective August 1, 2012.[116] As of August 2017, there were 22,914 offender profile hits/investigative leads from all DNA-eligible felony and misdemeanor offense samples. Of these hits, 23% (5,666 of 22,914) stemmed from misdemeanor conviction samples. The breakdown of the 5,666 hits for the top three misdemeanor conviction samples was as follows:

- 37% (2,089 of 5,666) were from petit larceny convictions;
- 16% (912 of 5,666) were from assault, third degree convictions; and,
- 11% (627 of 5,666) were from trespassing, second degree convictions.[117]

The data from New York demonstrated that petit larceny and the certain assault and trespassing offenses provided a clear benefit in terms of aiding investigations.

Utah

Utah collects DNA upon conviction for all Class A misdemeanors, but not for Class B or Class C misdemeanors.[118] Trespassing into a dwelling is a Class A misdemeanor and requires the submission of a DNA sample upon conviction;[119] however, other forms of trespassing onto property are punished as Class B misdemeanors.[120] Therefore, DNA samples are not collected for all types of trespassing in Utah.

Staff attempted to obtain detailed information relating to the number and types of hits stemming from Utah's DNA Databank, but data was not readily available to capture this specific request.[121]

Wisconsin

Wisconsin collects DNA upon conviction for all misdemeanors, but does not collect for forfeiture offenses.[122] Trespass is generally punished as a Class B forfeiture and therefore DNA is not collected;[123] however, some criminal forms of trespass require collection upon conviction.[124]

Wisconsin provided information to Crime Commission staff on hits stemming from misdemeanor convictions. In FY17, misdemeanor DNA hits accounted for 26% of overall investigative leads, with the majority of those leads assisting felony casework.[125]

Findings and Recommendations

The Crime Commission reviewed the findings of this study at its November meeting. Crime Commission members unanimously endorsed the policy option and two staff recommendations at the December meeting.

Policy Option 1: Amend Va. Code § 19.2-310.2 to include a DNA sample submission from adults for the following seven misdemeanors upon conviction:

- Assault and battery;[126]
- Domestic assault and battery;[127]
- Trespassing;[128]
- Petit larceny;[129]
- Destruction of property;[130]
- Obstruction of justice;[131] and,
- Conceal merchandise/alter price tags.[132]

Ultimately, as a result of the legislative process, only two offenses were added to the list of misdemeanors requiring a DNA sample submission from adults upon conviction - assault and battery[133] and trespassing.[134]

During the Regular Session of the 2018 General Assembly, identical legislation was introduced in both chambers that included all seven misdemeanors listed in Policy Option 1 - Delegate David J. Toscano (House Bill 1264) and Senator Mark D. Obenshain (Senate Bill 565). Delegate Toscano also introduced a substantially similar bill (House Bill 1249), which only included the first four misdemeanors listed in Policy Option 1. House Bill 1264 was left in House Courts of Justice and Crime Commission staff continued to provide assistance with House Bill 1249 as it moved through the legislative process. House Bill 1249 and Senate Bill 565 passed each chamber of the General Assembly in varying forms. Both bills were sent to conference and ultimately legislation requiring a

DNA sample submission upon conviction for two of the misdemeanors listed in Policy Option 1 (assault and battery and trespassing) was signed into law by the Governor.[135]

Recommendation 1: The Department of Forensic Science should update their DNA sample submission training materials for sheriffs' deputies and jail intake officers to reflect current law.

Based upon informal survey findings and discussions with the field, numerous stakeholders noted a desire for updated training.[136] The DNA sample submission training video currently used by DFS was produced in 2003. Updated training materials will prepare stakeholders for what to expect in the DNA sample submission process, the specific steps that must be undertaken, the difficulties they may experience, and the various resources available to them. Stakeholders also requested that they receive adequate notice of any additional changes to DNA collection laws before they become effective.

On December 14, 2017, the Crime Commission sent a letter requesting that DFS update their DNA sample submission training materials as endorsed in Recommendation 1.

Recommendation 2: Amend Va. Code § 19.2-390 to require fingerprinting upon conviction for trespassing and disorderly conduct.

Fingerprints are currently required upon conviction for any misdemeanor punishable by confinement in jail under Titles 18.2 and 19.2 of the Code of Virginia, except for trespassing and disorderly conduct.[137] Because fingerprints are required for inclusion of a conviction in the Central Criminal Records Exchange (CCRE), these convictions do not consistently appear on defendants' criminal histories.[138] The Virginia State Police advised that fingerprints for trespassing and disorderly conduct convictions could be included in the existing CCRE.

During the Regular Session of the 2018 General Assembly, identical legislation was introduced in both chambers for Recommendation 2 by Delegate Toscano (House Bill 1266) and Senator Obenshain (Senate Bill 566). Both bills passed the General Assembly and were signed into law by the Governor.[139]

Acknowledgements

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New York State Division of Criminal Justice Services

State of Wisconsin Department of Justice-State Crime Laboratory Bureau

Utah Bureau of Forensic Services

Virginia Criminal Sentencing Commission

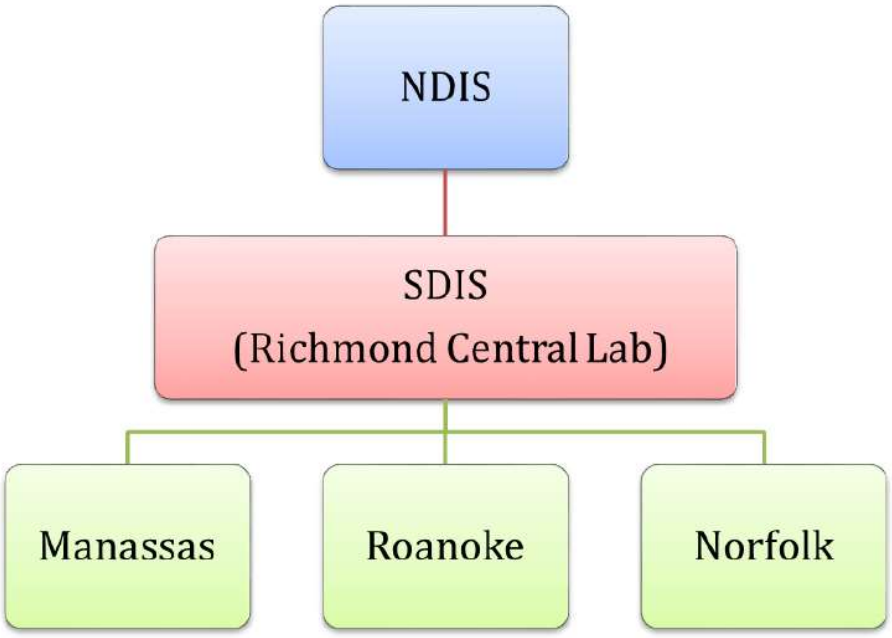
Virginia Department of Forensic Science

Virginia State Police

The Crime Commission also wishes to thank all Sheriffs, regional jail administrators, local community corrections officers, and chief probation officers who met with staff or provided survey responses.

APPENDIX A

Overall Structure of DNA Index System in Virginia



Source: Chart prepared by Virginia State Crime Commission staff.

Virginia has a DNA index system housed in each of its four local laboratories: Manassas, Roanoke, Norfolk, and Richmond. Each of these laboratories upload their information into Virginia's State DNA Index System (S-DIS) at Richmond's Central Lab. S-DIS allows for searches within the state. Once a week, qualifying samples that meet stricter criteria are uploaded to the National DNA Index System (N-DIS), which is housed at FBI headquarters and allows for searches between states. The Combined DNA Index System (CODIS) is the software that is used to run searches between the local, state and national index systems. Each state has a CODIS administrator.

APPENDIX B

Current Virginia Requirements for DNA Sample Submission

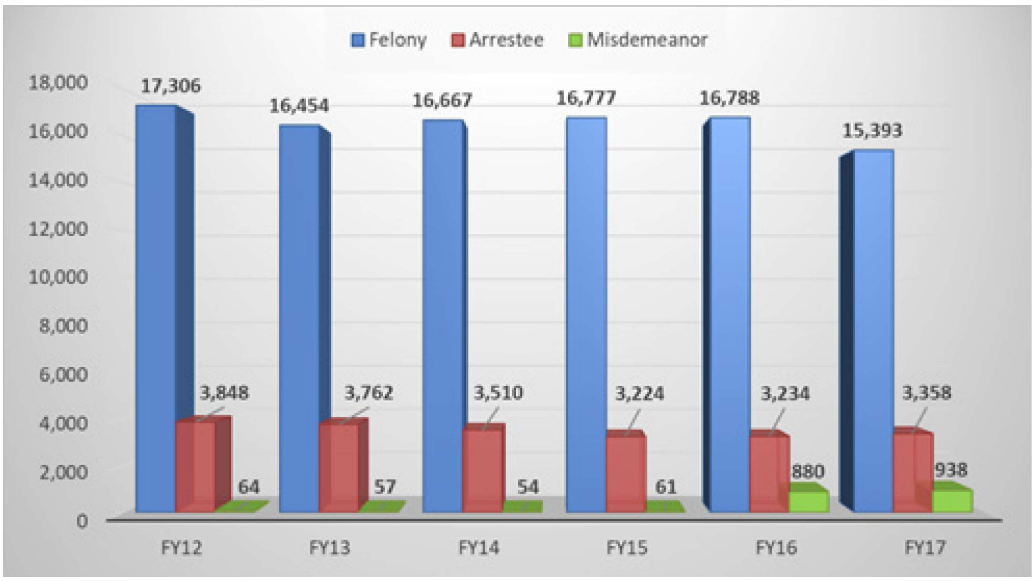
Offense Type	Adults	Juveniles
Felony Convictions* (§19.2-310.2 and §16.1-299.1)	Yes.	Yes. If 14 or older at time of offense; Includes convictions and adjudications.
Felony Arrests (§19.2-310.2:1)	Yes. Violent felonies and certain burglary offenses.	No.
Misdemeanor Convictions* (§19.2-310.2)	**Yes. For 14 specific misdemeanors.**	No.
Misdemeanor Arrests	No.	No.

Source: Virginia State Crime Commission staff analysis. *Virginia Code § 9.1-903 provides that all persons required to register on the Sex Offender and Crimes Against Minors Registry, which includes certain felonies and misdemeanors shall provide a sample.

Note: Effective July 1, 2018, the total number of misdemeanors requiring a DNA sample from adults upon conviction will increase to 16 when assault and battery (§ 18.2-57) and trespassing (§ 18.2-119) are added to the statute.

APPENDIX C

Total Samples Received by Type in Virginia's DNA Databank, FY12-FY17



Source: DNA Sample Tracking Database (DNA Web), Virginia Department of Forensic Science. Chart prepared by Virginia State Crime Commission staff.

APPENDIX D

Prospective Misdemeanor Analysis

How many offenders convicted of certain misdemeanors were subsequently convicted of a felony offense within the following 10 years?

For example, 18% (2,326 of 13,071) of offenders convicted of assault and battery over a 2 year period were subsequently convicted of a FELONY within the following 10 years.

Total Individuals Convicted of Select Misdemeanors in FY08-09 and Number of Individuals Convicted of a Subsequent Felony between FY08-FY17*

Misdemeanor Offense (Code Section)	Total Individuals Convicted of Misdemeanor over 2 Years, FY08-09	Total Individuals Convicted of Subsequent Felony, FY08-FY17	Percentage Convicted of Subsequent Felony, FY08-FY17	Number of Felony Sentencing Events by Type, FY08-FY17*								Total Sentencing Events for ALL Subsequent Felonies, FY08-FY17*
				Murder	Kidnapping	Rape	Sexual Assault	Assault	Robbery	Burglary	Larceny	
Assault and battery (§18.2-57)	13,071	2,326	18%	32	55	46	16	640	123	236	1,020	4,466
Domestic A&B (§18.2-57.2)	12,895	2,363	18%	32	52	32	16	806	83	207	775	4,298
Trespassing (§18.2-119)	12,814	2,729	21%	29	40	52	10	512	171	364	1,454	5,511
Petit larceny (§18.2-96)	19,474	4,041	21%	28	42	51	13	428	221	552	3,742	8,608

Source: Table prepared by Virginia State Crime Commission staff based upon the Virginia Criminal Sentencing Commission staff analysis of Supreme Court of Virginia - Circuit Court Case Management System (CMS); Supreme Court of Virginia - General District Court Case Management System (CMS); Supreme Court of Virginia - Juvenile and Domestic Relations Court Case Management System (Adults only) data. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria. Although Virginia Beach left the system in FY2009, it rejoined the system in October 2014. *FY17 data was preliminary at time of analysis.

APPENDIX D

Retrospective Misdemeanor Analysis

Which prior misdemeanor convictions are frequently found on the criminal histories of violent felons?

- Nearly 70% of individuals convicted of a VIOLENT felony or certain burglary offense in 2016 had at least one prior misdemeanor conviction.
  - 31% (590 of 1,885) had at least one prior assault and battery conviction.
- For example, of the 104 convicted murderers in FY16, 32 had a prior assault and battery conviction.

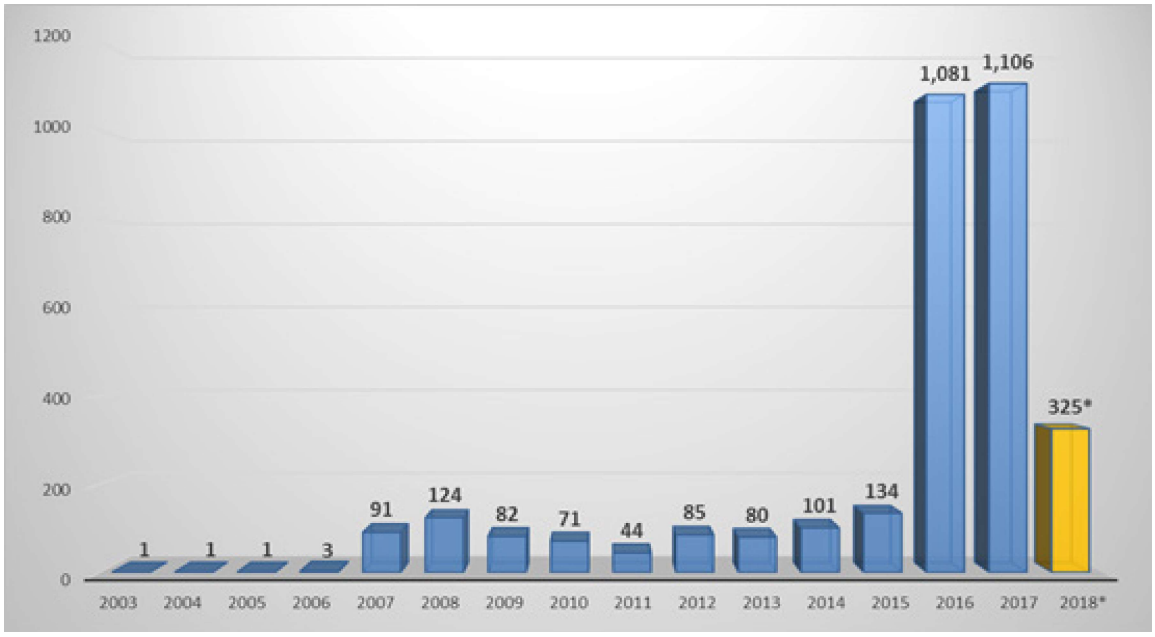
Total Individuals Convicted of FY16 Violent Felony/Certain Burglary Offense with a Select Prior Misdemeanor Conviction

		Total FY16 Felony Convictions with Prior SELECT Misdemeanor Convictions			
Most Serious FY16 Violent Felony/Certain Burglary Offense Conviction*	Total Individuals Convicted (n=1,885)	# with Prior Assault Conviction (§ 18.2-57)	# with Prior Domestic Assault Conviction (§ 18.2-57.2)	# with Prior Petit Larceny Conviction (§18.2-96)	# with Prior Trespassing Conviction (§18.2-119)**
Murder	104	32	19	21	12
Kidnapping	122	49	31	23	15
Rape	158	49	33	39	19
Felony Assault	468	194	118	130	59
Robbery	319	89	40	125	44
Burglary	714	177	103	321	98
TOTAL		**31% (590)**	**18% (344)**	**35% (659)**	**13% (247)****

Source: Virginia State Crime Commission. * Staff defined "violent felony or certain burglary offenses" from the list of offenses requiring a DNA sample upon arrest per § 19.2-310.2:1., which includes §§ 19.2-297.1, 18.2-31, 18.2-89, 18.2-90, 18.2-91, and 18.2-92. ** Fingerprints were not required for trespassing at the time of this study. As such, the number of convictions were likely undercounted on criminal histories because fingerprints are required for CCRE

APPENDIX E

Total Misdemeanor Conviction Samples Received by DFS, FY03-FY18*



Source: DNA Sample Tracking Database (DNA Web), Virginia Department of Forensic Science. Chart prepared by Virginia State Crime Commission staff. * FY18 data as of October 13, 2017.

Note: Samples received between FY03-FY06 stemmed from DNA samples collected at arrest for a felony that ultimately resulted in a misdemeanor conviction that required a sample per SOR requirements.

Note: Appendix E figures are larger than those depicted in Appendix C because Appendix E figures also account for all felony arrestee samples that ultimately resulted in a misdemeanor conviction.

APPENDIX F

Misdemeanor Conviction Samples Received by DFS by Offense Type

FY12 Offenses:

- 670 sexual battery
- 15 peeping or spying into dwelling/enclosure
- 8 sexual abuse of child under 15 years of age
- 3 attempted sexual battery
- 1 penetration of child's mouth with lascivious intent

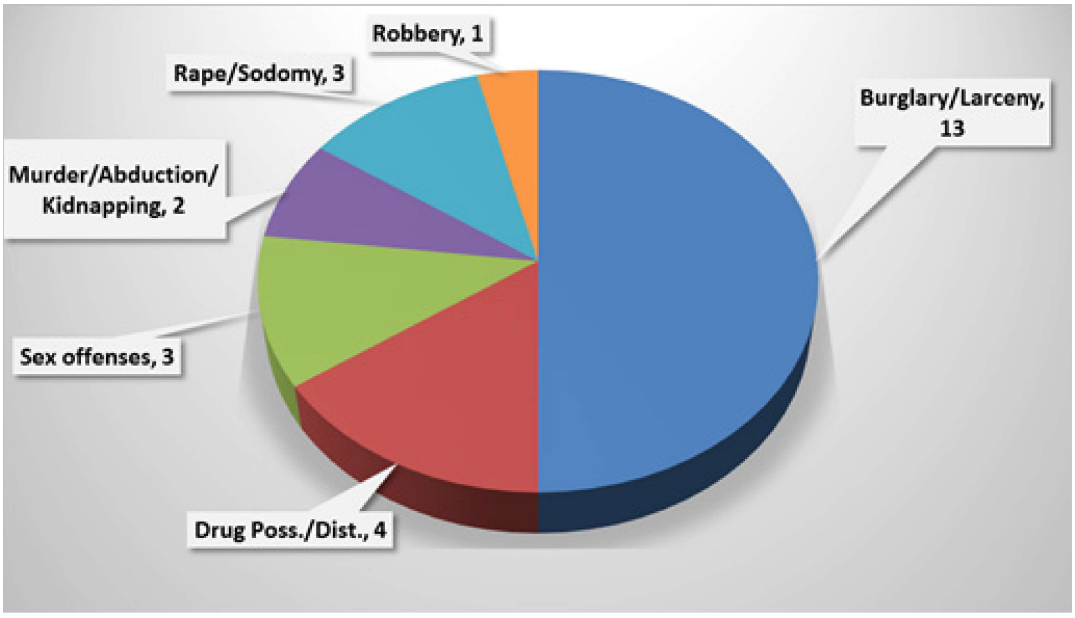
FY16 Offenses:

- 1,011 violation of domestic protective order
- 528 unlawful entry
- 203 violation of protective order
- 175 resisting arrest/fleeing law enforcement
- 116 unauthorized use
- 115 indecent exposure
- 67 stalking
- 36 obscene sexual display
- 1 infected sexual battery
- There are 381 additional unclassified misdemeanor samples entered pre/post FY12.

Source: DNA Sample Tracking Database (DNA Web), Virginia Department of Forensic Science. Chart prepared by Virginia State Crime Commission staff.

APPENDIX G

Types of Investigations Aided by the 26 Misdemeanor Sample Hits



Source: Virginia CODIS, Virginia Department of Forensic Science. Chart prepared by Virginia State Crime Commission staff.

Note: Most misdemeanor sample hits have aided in burglary/larceny investigations. This finding is consistent when looking at all DNA sample hits as well.

APPENDIX H

CODIS Indices for DNA Samples in Virginia

CODIS Index	Total Unique Samples
Offender Index (includes convicted felons and misdemeanants)	414,454
Arrestee Index	4,590
Forensic Index	24,565
Missing Person Index	29
Unidentified Human Remains Index	106
TOTAL	**443,744**

Source: Virginia Department of Forensic Science, CODIS Database. Data as of July 18, 2017.
Chart prepared by Virginia State Crime Commission staff.

APPENDIX I

Penalties and/or Restrictions by State Relating to Unauthorized Use of DNA Databanks

State	Does the state have any statutes punishing the unlawful collection, retention or dissemination of DNA databank information? If so, what are the penalties?
Alabama	Yes; § 36-18-28 (Confidentiality of records; disclosure; penalty, Class C Felony, 1 year and 1 day to 10 years, not more than $15,000 fine); § 36-18-29 (Records; falsification; destruction; unlawful possession, etc., Class B Felony, 2 to 20 years, not more than $30,000 fine).
Alaska	Yes; § 11.56.762 (Unlawful use of DNA samples, Class C Felony, Up to 5 years, no more than $50,000 fine).
Arizona	No; § 13-610(I) states the following: "Any sample and the result of any test that is obtained pursuant to this section or section 8-238 may be used only as follows: 1. For law enforcement identification purposes. 2. In a proceeding in a criminal prosecution or juvenile adjudication. 3. In a proceeding under title 36, chapter 37." However, there does not appear to be a statute that penalizes unlawful collection, retention or dissemination of DNA databank information.
Arkansas	Yes; § 12-12-1115 (Prohibition against disclosure, Class D Felony, Up to 6 years, no more than $10,000 fine); § 12-12-1116 (Prohibition against disclosure for pecuniary gain, Class D Felony, up to 6 years, no more than $10,000 fine).
California	Yes; § 298.2 (Felony to facilitate wrongful collection of, or to tamper with, specimen or sample, Felony, punishable by 2, 3, or 4 years); § 299.5(h)(i)(1)(A) (Unauthorized use or disclosure, up to one year in county jail or 16 months, 2 or 3 years in state prison); § 299.5(h)(i)(1)(B) (Unauthorized use or disclosure for financial gain, same punishment as § 299.5(h)(i)(1)(A) plus fine of greater of 3 times financial gain or $10,000).
Colorado	Yes; §§ 24-72-305 and 24-72-309 (Public access to results of DNA analysis is prohibited, Misdemeanor, up to 90 days, maximum of $100 fine).
Connecticut	Yes; § 54-102k (Unauthorized dissemination or use of DNA data bank information. Obtaining blood sample without authority: Class D Felony for obtaining or attempting to obtain DNA sample, term of imprisonment not more than 5 years, not more than $5,000 fine; Class A Misdemeanor for dissemination, receipt or use of information for unauthorized purpose, term not to exceed 1 year, not more than $2,000 fine; Class C Misdemeanor for disseminating information without authority, term not to exceed 3 months, not more than $500 fine).

State	Does the state have any statutes punishing the unlawful collection, retention or dissemination of DNA databank information? If so, what are the penalties?
Delaware	Yes; Tit. 29 § 4713(d) (Tampering or attempting to tamper with biological sample without authority, Class D Felony, up to 8 years, fines as deemed appropriate by court); Tit. 29 § 4713(l) (Disseminating, receiving or otherwise attempting to use information in database for an unauthorized purpose, Class A Misdemeanor, up to 1 year, fine up to $2,300).
District of Columbia	Yes; 34 U.S.C.S. § 40706 (Privacy protection standards, fine up to $250,000 or imprisonment up to 1 year).
Florida	Yes; § 943.325(15)(b) (Disclosure to unauthorized person, use or receipt for unauthorized purpose, or tampering or attempting to tamper with DNA analysis or sample, Misdemeanor of the First Degree, not more than 1 year, fine not to exceed $1,000).
Georgia	Yes; § 35-3-164 (Unlawful dissemination or use of information; obtaining sample without authority: unauthorized dissemination, Misdemeanor, not to exceed 12 months, maximum of $1,000 fine; dissemination, receipt or use for unauthorized purpose, High and Aggravated Misdemeanor, not to exceed 12 months, maximum of $5,000 fine; obtaining or attempting to obtain DNA sample, Felony).
Hawaii	Yes; § 844D-112 (Fraudulent use or manipulation of biometric sample or information, Class C Felony, up to 5 years, maximum of $10,000 fine); § 844D-113 (Unauthorized disclosure of DNA sample or profile, Misdemeanor, up to 1 year, maximum of $2,000 fine); § 844D-114 (Use of DNA sample or profile for financial gain, Misdemeanor, up to 1 year, maximum of $2,000 fine (discretionary), plus fine shall be imposed 3 times any financial gain or $10,000, whichever is greater).
Idaho	Yes; § 19-5514 (Limitations on disclosure of information, Misdemeanor, up to 6 months, maximum of $1,000 fine).
Illinois	Yes; 730 § 5/5-4-3(f-5) (Unauthorized use of DNA information, Class 4 Felony, fine of not less than $5,000).
Indiana	Yes; § 10-13-6-21 (Tampering with DNA sample or container, Level 6 Felony, 6 month to 2 1/2 years, up to $10,000 fine); § 10-13-6-22 (Unauthorized use of information or of DNA samples, Level 6 Felony, 6 months to 2 1/2 years, up to $10,000 fine).
Iowa	Yes; § 81.6 (Criminal offense: obtains, uses or discloses in unauthorized manner, Aggravated Misdemeanor, maximum of 2 years, $625 to $6,250 mandatory fine; tampers or attempts to tamper with DNA, falsifies source of DNA or alters collection container, Class D Felony, maximum of 5 years, $750 to $7,500 mandatory fine).

State	Does the state have any statutes punishing the unlawful collection, retention or dissemination of DNA databank information? If so, what are the penalties?
Kansas	Yes; § 21-2511(n) (Unauthorized Dissemination of DNA samples or records, Class A Nonperson Misdemeanor, up to 1 year, maximum $2,500 fine or double the pecuniary gain derived from the crime); § 21-2511(o) (Obtaining samples without authorization, Class A Nonperson Misdemeanor, up to 1 year, maximum $2,500 fine or double the pecuniary gain derived from the crime).
Kentucky	Yes; § 17.170(8) (Tampering or attempting to tamper with sample or container, Class D Felony, 1 - 5 years imprisonment; $1,000 - $10,000 fine); § 17.175(8) (Penalty for unlawful use of DNA database identification system, Class D Felony, 1 - 5 years imprisonment; $1,000 - $10,000 fine).
Louisiana	Yes; § 15-618 (Criminal penalties: unauthorized disclosure, up to 6 months, maximum $500 fine; obtaining DNA information without authorization, up to 6 months, maximum $500 fine; tampering or attempting to tamper, up to 6 months, maximum $500 fine).
Maine	Yes; § 1578 (Unlawful dissemination; Class E Crime, up to 6 months, maximum of $1,000 fine).
Maryland	Yes; § 2-512 (Prohibited acts; penalty: unauthorized disclosure, obtaining without authorization or unauthorized testing, Misdemeanor, up to 5 years, maximum of $5,000 fine; willful failure to destroy DNA sample, Misdemeanor, up to 1 year, maximum of $1,000 fine).
Massachusetts	Yes; ch. 22E, § 12 (DNA Records — Unauthorized Disclosure, up to 6 months, maximum of $1,000 fine); ch. 22E, § 13 (DNA Records — Unauthorized Acquisition, up to 6 months, maximum of $1,000 fine); ch. 22E, § 14 (DNA Records — Tampering, state prison up to 5 years, jail or house of correction up to 2 1/2 years, maximum of $5,000 fine).
Michigan	Yes; § 28.175 (DNA profile or sample; unauthorized dissemination, receipt, or use of information; removal, destruction, or tampering; obtaining, testing, or destroying; violation; penalty, Misdemeanor, up to 1 year, maximum $1,000 fine).
Minnesota	Yes; § 299C.155(4) states "The results of the bureau's DNA analysis and related records are private data on individuals, as that term is defined in section 13.02, and may only be used for law enforcement identification purposes. The remedies in section 13.08 apply to a violation of this subdivision." However, § 13.08 only provides for civil remedies. Nonetheless, § 13.09 seems to apply to willful violations of the protections on private data, and therefore applies to data in the DNA databank. (Misdemeanor, up to 90 days, $1,000).

State	Does the state have any statutes punishing the unlawful collection, retention or dissemination of DNA databank information? If so, what are the penalties?
Mississippi	Yes; § 45-47-1 (DNA samples to be collected from persons arrested for commission or attempted commission of certain crimes of violence; destruction of sample; penalties for obtaining, receiving or disseminating information in DNA data bank without authority: unauthorized dissemination, Misdemeanor, up to 30 days, maximum of $500 fine; unauthorized dissemination, receipt, use or attempted use, Misdemeanor, up to 6 months, maximum of $1,000 fine; obtaining or attempting to obtain sample for purposes of DNA analysis, Felony, up to 2 years, maximum of $1,000 fine).
Missouri	Yes; § 650.055(5) (Unauthorized use or dissemination, Class A Misdemeanor, up to 1 year, maximum of $1,000 fine).
Montana	No; § 44-6-106 outlines the process for authorized release of DNA records. It reads as follows: "(1) The DNA records contained in the DNA identification index may be released only for the following purposes: (a) to federal, state, and local law enforcement agencies for law enforcement identification purposes; (b) for criminal defense purposes, to a defendant for whom there is a DNA record, who is also entitled to samples and analyses held as part of the record; (c) to assist in the identification of human remains, including missing persons; and (d) if information allowing a person to be identified is removed, for a population statistics database and for identification, research, and protocol development for forensic DNA analysis and quality control. (2) Requests for DNA records must be in writing, signed by the requesting party, and maintained on file in the DNA identification index in accordance with rules adopted by the department. (3) A defendant in a criminal proceeding is entitled to information in the DNA identification index relating to the number of requests previously made for comparison searches relating to the defendant and the names of the requesting parties." Additionally, § 44-6-108, which classifies DNA records as "confidential criminal justice information," falls under the protection of Title 44, Chapter 5, unless the person consents to the use/disclosure. Title 44, Chapter 5 details lawful procedures for disclosing "confidential criminal justice information" via court petition, prosecutor's determination, between criminal justice agencies, etc... However, Title 44, Chapter 5 does not explicitly penalize the unauthorized dissemination of information. Therefore, it appears the law prohibits disseminating information outside what is explicitly authorized, but does not criminalize unauthorized use or dissemination.

State	Does the state have any statutes punishing the unlawful collection, retention or dissemination of DNA databank information? If so, what are the penalties?
Nebraska	Yes; § 29-4110 (Unlawfully obtaining or possessing DNA samples or records; penalty, Class III misdemeanor, up to 3 months, maximum of $500 fine); § 29-4111 (Unlawful disclosure for pecuniary gain; penalty; attorney's fees, Class III Misdemeanor, up to 3 months, maximum of $500 fine, right to action - $100 for each violation, litigation costs and attorney's fees).
Nevada	Yes; §§ 176.0913(6) and (7) (Unauthorized sharing or disclosure, Category C Felony, 1 to 5 years, up to $10,000 fine); same crime and penalty also found in §§ 176.09129 and 176.0916.
New Hampshire	Yes; § 651-C:4 (Unauthorized Dissemination or Use of DNA Database Information; Obtaining DNA Samples Without Authority; Penalties: unauthorized dissemination, Class B Misdemeanor, no jail time, up to $1,200 fine; unauthorized dissemination, receipt, use or attempted use, Class A Misdemeanor, up to 1 year, up to $2,000 fine; obtaining or attempting to obtain sample for purpose of having DNA analysis done, Class B Felony, 3 1/2 to 7 years, up to $4,000 fine).
New Jersey	Yes; § 53.1-20.26 (Wrongful disclosure of information, Disorderly Persons Offense, up to 6 months, up to $1,000 fine)
New Mexico	Yes; § 29-16-12 (Penalty: unauthorized disclosure, Fourth Degree Felony, up to 18 months, maximum of $5,000 fine; unauthorized use or attempted use, Fourth Degree Felony, up to 18 months, maximum of $5,000 fine; obtaining or attempting to obtain, Fourth Degree Felony, up to 18 months, maximum of $5,000 fine).
New York	Yes; § 995-f (Penalties: unauthorized disclosure, use, receipt or tampering/ attempted tampering, Class E Felony, up to 4 years, fine not to exceed $5,000 or double the amount of defendant's gain from the crime).
North Carolina	Yes; § 15A-266.11(Unauthorized uses of DNA Databank; penalties: unauthorized disclosure, Class H Felony, 4 to 25 months, fine; obtaining without authorization, Class H Felony, 4 to 25 months, fine).
North Dakota	Yes; § 31-13-09 (DNA profiles to be available to law enforcement — Penalty, unauthorized dissemination, receipt, use or attempted use, Class A Misdemeanor, up to 1 year, maximum of $2,000 fine); § 31-13-10 (Tampering with DNA sample testing — Penalty, tampering or attempt to tamper, Class C Felony, up to 5 years, maximum of $10,000 fine; possession, distribution, or assisting in use of device, etc. to alter outcome of testing, Class C Felony, up to 5 years, maximum of $10,000 fine).

State	Does the state have any statutes punishing the unlawful collection, retention or dissemination of DNA databank information? If so, what are the penalties?
Ohio	Yes; § 2953.54 (Disposition and use of specific investigatory work product; divulging confidential information, Misdemeanor of Fourth Degree, up to 30 days, maximum of $250 fine); § 2953.55 (Inquiry as to sealed records prohibited; divulging confidential information, Misdemeanor of the Fourth Degree, up to 30 days, maximum of $250 fine); § 2953.59 (Duties of law enforcement officer or agency upon issuance of order; divulging confidential information, Misdemeanor of the Fourth Degree, up to 30 days, maximum of $250 fine); § 2953.60 (Inquiry as to sealed records prohibited; divulging confidential information, Misdemeanor of the Fourth Degree, up to 30 days, maximum of $250 fine) § 2927.15 (Unlawful collection of bodily substance, Misdemeanor of First Degree, up to 180 days, maximum of $1,000 fine, prior conviction makes subsequent offense a Felony of the Fifth Degree, 6 to 12 months, maximum of $2,500 fine).
Oklahoma	Yes; 74 Okl. St. § 150.27a(D) (Unauthorized dissemination, Misdemeanor, up to 1 year in county jail);
Oregon	Yes; § 192.543 (Criminal penalty, unlawfully obtaining, retaining or disclosing, Class A Misdemeanor, up to 1 year, maximum of $6,250 fine).
Pennsylvania	Yes; 44 Pa.C.S. § 2332 (Criminal penalties, disclosure or obtaining information, Misdemeanor of First Degree, up to 5 years, maximum of $10,000 fine).
Rhode Island	Yes; § 12-1.5-15 (Criminal penalties-Civil remedies: unauthorized disclosure, Misdemeanor, up to 1 year, maximum of $1,000 fine; obtains/attempts to obtain or tampers/attempts to tamper, Felony, up to 5 years, maximum of $5,000; civil action for damages, injunctive relief, attorneys' fees).
South Carolina	Yes; § 23-3-650 (Confidentiality of DNA record and profile; availability; willful disclosure; penalty: unauthorized disclosure, Misdemeanor, up to 5 years, greater of $10,000 fine or 3 times financial gain; obtaining without authorization, Misdemeanor, up to 5 years, greater of $10,000 fine or 3 times financial gain).
South Dakota	Yes; § 23-5A-26 (Intentional disclosure, use or receipt of DNA record — Penalty, Class 5 Felony, up to 5 years, maximum of $10,000 fine).
Tennessee	Yes; § 40-32-101(c) (Unauthorized release of confidential records, Class A Misdemeanor, 30 days to 11 months 29 days, fine between $500 and $1,000).
Texas	Yes; § 411.153 (Confidentiality of DNA Records, State Jail Felony, Official Misconduct, 180 days to 2 years, maximum of $10,000 fine)
Utah	Yes; § 53-10-406(12) (Unauthorized disclosure, obtaining without authorization, unauthorized analysis, Third Degree Felony, up to 5 years, maximum of $5,000 fine; failure to destroy when authorized, Class B Misdemeanor, up to 6 months, maximum of $1,000 fine).

State	Does the state have any statutes punishing the unlawful collection, retention or dissemination of DNA databank information? If so, what are the penalties?
Vermont	Yes; 20 V.S.A. § 1941 (Confidentiality of records, up to 1 year, maximum of $10,000 fine); 20 V.S.A. § 1945 (Unlawful tampering with DNA samples, up to 3 years, maximum of $10,000 fine).
Virginia	Yes; § 19.2-310.6 (Unauthorized uses of DNA data bank; forensic samples; penalties: unauthorized dissemination, Class 3 Misdemeanor, maximum of $500 fine; unauthorized dissemination, receipt or use, Class 1 Misdemeanor, up to 12 months, maximum of $2,500 fine).
Washington	Yes; § 43.43.810 (Obtaining information by false pretenses — Unauthorized use of information — Falsifying records — Penalty; Misdemeanor, up to 90 days, maximum of $1,000 fine).
West Virginia	Yes; § 15-2B-12 (Confidentiality; unauthorized uses of DNA databank; penalties; Misdemeanor, up to 1 year, fine of $50 to $500); § 15-2B-13 (Neglect of duties; destruction of samples; penalties; neglect of duties, Misdemeanor, up to 60 days, $50 to $200 fine; destruction of sample, Misdemeanor, up to 1 year, $50 to $500 fine).
Wisconsin	Yes; § 165.77(5) (Unauthorized dissemination, up to 30 days, maximum of $500 fine).
Wyoming	Yes; § 7-19-404(d) (Access to database; information authorized to be stored; unauthorized disclosure, obtaining or attempting to obtain without authorization, tampering or attempting to tamper, Misdemeanor, up to 6 months, maximum of $750 fine).

Source: Virginia State Crime Commission staff analysis.

APPENDIX J

DNA Sample Collection from Adults Upon Conviction for Sexual and Non-Sexual Misdemeanors by State (Includes District of Columbia)

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
Alabama	§§ 36-18-25, 36-18-24, 36-18-26, 36-18-28, 36-18-29	DNA is taken at arrest. See § 36-18-25(c)(1).	Yes. Criminally Negligent Homicide (§ 13A-6-4); Assault in the third degree (§ 13A-6-22); Menacing (§ 13A-6-23); Reckless Endangerment (§ 13A-6-24); Criminal Coercion (§ 13A-6-25); Unlawful Imprisonment in the third degree (§ 13A-6-41); Unlawful Imprisonment in the second degree (§ 13A-6-42); Stalking in the second degree (§ 13A-6-90.1); Domestic Violence in the third degree (§ 13A-6-132); Interference with a Domestic Violence Emergency Call (§ 13A-6-137); Violation of a Domestic Violence Protective Order (§ 13A-6-142); Business Engaged in Escort Service Required to Register with the Secretary of State (§ 13A-6-184); Elder Abuse and Neglect in the third degree (§ 13A-6-194); Financial Exploitation of the Elderly in the third degree (§ 13A-6-197); Bestiality (§ 13A-6-221); Attempt, Solicitation, or Conspiracy to commit any of the aforementioned misdemeanors (§ 36-18-24).

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
Alaska	§§ 44.41.035, 11.56.762	Yes. DNA is statutorily authorized to be taken at both arrest and conviction. *See* § 44.41.035(b)(1).	Yes. DNA is statutorily authorized to be taken at both arrest and conviction. Assault in the fourth degree (§ 11.41.230); Reckless Endangerment (§ 11.41.250); Stalking in the second degree (§ 11.41.270); Custodial Interference in the second degree (§ 11.41.330); Attempt or Solicitation to commit a crime against person (§ 44.41.035 (s)(2)).
Arizona	§§ 13-610, 8-238	DNA is taken at arrest. *See* A.R.S. § 13-610(O)(3).	DNA is taken at arrest. *See* A.R.S. §§ 13-610(O)(3) and 13-610(G).
Arkansas	§§ 12-12-1109, 12-2-1103, 12-12-1006, 9-27-357	Yes. *See* § 12-12-1103(9).	Yes, if a repeat offense. *See* §§ 12-12-1103(9) and (10). Any misdemeanor involving violence that meets the definition of a repeat offense requires the taking of a DNA sample.
California	Penal Code §§ 296, 296.1, 299	Yes. *See* § 296(3).	No.
Colorado	§§ 16-23-103, 16-23-105, 16-11-102.4, 19-2-925.6	Yes. *See* § 16-11-102.4.	No
Connecticut	§§ 54-102g, 54-102k, 54-102l	Yes. *See* § 54-102g(b).	Yes. *See* § 54-102g(b), (c), (e), (f). Any criminal offense where the victim is a minor requires a DNA sample upon conviction.
Delaware	Tit. 29 § 4713	Yes. *See* Tit. 29 § 4713 (b)(1) and Tit. 11, Chapter 5, subchapter II, subpart D.	Yes. Endangering the Welfare of a Child (11 Del. C. § 1102); Child Abuse in the third degree (11 Del. C. § 1103); Crime Against a Vulnerable Adult (11 Del.C. § 1105); Unlawfully Dealing with a Child (11 Del. C. § 1106); Endangering Children (11 Del. C. § 1107); Criminal Nonsupport (11 Del. C. § 1113); Body Piercing, Tattooing or Branding (11 Del. C. § 1114); Tongue-splitting (11 Del. C. § 1114A).

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
District of Columbia	§ 22-4151, 34 U.S.C.S. § 40703, 34 USCS § 12592(d)(1)(B)(ii)	Yes. *See* § 22-4151.	No.
Florida	§ 943.325	Yes. *See* § 943.325(g). Some of the misdemeanor crimes listed are of a sexual nature, although they may fall under a section of the Florida statutes that is not specifically dedicated to sex crimes. All of the misdemeanors listed in the above section, including those of a sexual nature, are also listed under the non-sexual misdemeanor offenses upon conviction column.	Yes. Stalking (§ 784.048); Voyeurism (§ 810.14); Obscene/Lewd Materials (§ 847.011); Exposing Minors to Harmful Motion Pictures, etc. (§ 847.013); Computer Pornography, etc. (§ 847.0135(6)); Direct Observation/Videotaping of Customers by Merchant in Dressing Room, etc. (§ 877.26); Gang Related Offenses (§ 874.04).
Georgia	§§ 35-3-160, 35-3-164, 35-3-165	No.	No.
Hawaii	§§ 844D-31, 844D-39, 844D-71, 844D-72, 844D-112, 844D-113, 844D-114, 846E-1	Yes. *See* §§ 844D-39, 846E-1.	No.
Idaho	§§ 19-5506, 19-5513, 19-5514	No. *See* § 18-8304.	No.
Illinois	730 § 5/5-4-3	Yes. *See* 730 Ill. Comp. Stat. 5/5-4-3(a) (2018).	No.
Indiana	§§ 10-13-6-10, 10-13-6-18, 10-13-6-21, 10-13-6-22	No.	No.

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
Iowa	Tit. III §§ 81.2, 81.6, 81.9	Yes.	Yes. Aggravated misdemeanors, which include sexual and non-sexual offenses, *see* § 81.2. Examples of non-sexual aggravated misdemeanors include Theft in the Third Degree (§ 714.293); Assault Using/Displaying Dangerous Weapon (§ 708.2(3)); Tampering with Records (§ 715A.5); Prostitution (§ 725.1).
Kansas	§ 21-2511	DNA taken at arrest, unless incarcerated on May 2, 1991 for a crime committed prior to that date, *see also* § 21-2511(d). *See* § 21-2511(a)(1).	Any person convicted as an adult and who was incarcerated on May 2, 1991, for a crime committed prior to May 2, 1991, shall be required to submit a sample prior to final discharge or conditional release, *see* § 21-2511(d). Cruelty to animals (§ 21-6412); Criminal restraint (§ 21-5411); Buying Sexual Relations (§ 21-6421); Attempt, Conspiracy, or Solicitation to commit the aforementioned misdemeanors (§ 21-2511(a)(10)).
Kentucky	§§ 17.170, 17.175, 17.510, 635.510	Yes. *See* §§ 17.170 and 17.510.	No.

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
Louisiana	§§ 15:603, 15:609, 15:614, 15:618	No. *See* §§ 15:603(10) and 14:43.1.1.	Yes. *See* § 15:603(10); Battery of Police Officer (§ 14:34.2); Battery of School Teacher (§ 14:34.3); Battery of Recreation Athletic Contest Official (§ 14:34.4); Battery of Correctional Facility Employee (§ 14:34.5); Simple Battery (§ 14:35); Battery of Child Welfare or Adult Protective Service Worker (§ 14:35.1); Simple Battery of Persons with Infirmities (§ 14:35.2); Domestic Abuse Battery (§ 14:35.3); Unlawful Use of Laser on Police Officer (§ 14:37.3); Simple Assault (§ 14:38); Assault on a School Teacher (§ 14:38.2); Stalking (§ 14:40.2); Identity Theft (§ 14:67.16); Prostitution (§ 14:82); Soliciting for Prostitution (§ 14:83); Inciting Prostitution (§ 14:83.1); Prostitution by Massage (§ 14:83.3); Massage/Sexual Conduct Prohibited (§ 14:83.4); Letting Premises for Prostitution (§ 14:85); Contributing to Delinquency of Juvenile (§ 14:92); Hate Crimes (§ 14:107.2); Peeping Tom (§ 14:284); Inciting to Riot (§ 14:329.2).

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
Maine	Tit. 25 §§ 1574, 1577, 1578	Yes. Maine has a lesser included offense provision which could cover misdemeanors, *see* § 1574(4)(N) and (5)(H). Additionally, Unlawful Sexual Contact (§ 255-A) and Criminal Restraint (§ 302) have misdemeanor gradations, although Criminal Restraint specifically stopped applying to adults after October 1, 2001, and only applies to juveniles after 2003. However, after 2003, adults could still be required to give DNA for misdemeanor Criminal Restraint by virtue of the lesser included offense provision.	Possibly. Maine has a lesser included offense provision which could cover misdemeanors, *see* § 1574(4)(N) and (5)(H).
Maryland	Public Safety §§ 2-504, 2-511, 2-512	No. *See* Criminal Law § 3-308.	Yes. Burglary in the Fourth Degree (Criminal Law § 6-205); Breaking and Entering Motor Vehicle (Criminal Law § 6-206), *see* Public Safety § 2-504(a)(1) and (2).
Massachusetts	Ch. 22E, § 3, 12, 13, 14, 15	No.	No.
Michigan	§§ 750.520m, 28.176, 803.307a, 803.225a	Yes. As listed in § 750.520m(1)(b)(i-iv).	Yes. Peeping/Indecent Conduct in Public/Loitering in House of Prostitution (§ 750.167(1)(c), (f) or (i)); Indecent Exposure (§ 750.335a(1)); Prostitution (§ 750.451(1) or (2)); Leasing House for Prostitution (§ 750.454). Note that Indecent Exposure is treated as a sex crime for purposes of Michigan's Sex Offenders Registration Act.

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
Minnesota	§§ 299C.105, 609.117	Possibly. *See* § 609.117; "[T]he court sentences a person charged with committing or attempting to commit a felony offense and the person is convicted of that offense *or of any offense arising out of the same set of circumstances"* (emphasis added).	Possibly. *See* § 609.117; "[T]he court sentences a person charged with committing or attempting to commit a felony offense and the person is convicted of that offense *or of any offense arising out of the same set of circumstances"* (emphasis added).
Mississippi	§§ 47-5-183, 45-33-23, 45-33-37, 45-47-1	Yes. Obscene Electronic Communications (§ 97-29-45), *see* §§ 45-33-23(h) and 45-33-37.	No.
Missouri	§ 650.055	Yes. But only if victim is a minor. *See* § 650.055(1)(4) and § 589.400(1)(1)-(2).	No.
Montana	§§ 44-6-103, 44-6-107	Yes. But only if the offense results in registration as a Sex Offender under § 46-23-502.	No.
Nebraska	§§ 29-4106, 4103, 4109, 4110, 4111	Yes. If specified in § 29-4103(7).	Yes, if specified in § 29-4103(7). Stalking (§ 28-311.02-.05); False Imprisonment in the second degree (§ 28-315); Attempt/Conspiracy/Solicitation to commit Stalking (§ 28-311.02-.05), False Imprisonment in the first degree (§ 28-314), False Imprisonment in the second degree (§ 28-315), or Knowing and Intentional Sexual Abuse of a Vulnerable Adult or Senior Adult (§ 28-386(1)(c)); Sex Offender Registration Act (§ 29-4011).
Nevada	§§ 176.0913, 176.09116, 176.09123, 176.09125, 176.09129	Yes. If specified in NRS § 179D.097.	Yes. False Imprisonment (§ 200.460); Abuse of Older/Vulnerable Person (§ 200.5099); Stalking (§ 200.575); Attempt/Conspiracy to commit the aforementioned crimes.

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
New Hampshire	§§ 651-C:2, 651-C:4, 651-C:5	Yes. If specified in RSA 651-B:1, V.	Yes. False Imprisonment (§ 633:3); Endangering Welfare of Child or Incompetent (§ 639:3); Attempt/Conspiracy/Solicitation to commit aforementioned; § 651-C:2 indicates "any offense against a child as defined in RSA 651-B:1, VII," and the only non-sexual offenses appear to be ones listed here.
New Jersey	§§ 53:1-20.20, 53:1-20.25, 53:1-20.26, 2C:1-4	No.	Yes. Domestic Violence Assault (§ C.2C:25-19); Prostitution (§ 2C:34-1); Any Disorderly Persons Offense Relating to Narcotics or Dangerous Drugs which requires person to be fingerprinted (§ C.53:1-18.1, but excludes 50 g. or less of marijuana or 5 g. or less of hashish); Any other disorderly persons offense requiring a person to be fingerprinted, excluding shoplifting (R.S. § 53:1-15).
New Mexico	§§ 29-16-6, 29-16-3, 29-16-10, 29-16-12, 29-3-10	Yes. If specified in § 29-11A-3(I).	No.
New York	Exec. Law §§ 995-c, 995, 995-f	Yes.	Yes, all Class A, B, and unclassified misdemeanors. However, only under certain circumstances for Criminal Possession of Marijuana in the fifth degree (§ 221.10) ("only a person convicted under subdivision two of such section, or a person convicted under subdivision one of such section who stands previously convicted of any crime as defined in subdivision six of section 10.00 of the penal law," *see* § 995(7)).
North Carolina	§§ 15A-266.3A, 15A-266.4, 15A-266.11, 7B-2201, 7B-1604	Yes. If specified in § 15A-266.3A(f) and not previously obtained pursuant to § 15A-266.3A. *See* § 15A-266.4.	Yes. *See* § 15A-266.4(b) and § 15A-266.3A(f). Assaults on Handicapped Persons (§ 14-32.1); Secretly peeping into room occupied by another person (§ 14-202); Cyberstalking (§ 14-196.3).

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
North Dakota	§§ 31-13-03, 31-13-07, 31-13-09, 31-13-10	Yes. *See* § 31-13-03(2).	Generally, no. But possible under certain limited circumstances, although the conviction may have initially been a felony, *see* § 31-13-03(7).
Ohio	§§ 2901.07, 2151.356, 2151.357, 2151.358, 2152.74, 2953.52, 2953.54, 2953.55, 2953.57, 2953.59, 2953.60, 2927.15	Yes. As specified in § 2901.07(D)(4).	Yes. "A misdemeanor violation of any law that arose out of the same facts and circumstances and same act as did a charge against the person of a violation of [Aggravated Murder (§ 2903.01), Murder (§ 2903.02), Kidnapping (§ 2905.01), Rape (§ 2907.02), Sexual Battery (§ 2907.03), Unlawful Sexual Conduct with a Minor (§ 2907.04), Gross Sexual Imposition (§ 2907.05), or Aggravated Burglary (§ 2911.11)] of the Revised Code that previously was dismissed or amended or as did a charge against the person of a violation of [Felonious Sexual Penetration (§ 2907.12)] of the Revised Code as it existed prior to September 3, 1996, that previously was dismissed or amended," *see* § 2901.07(D); Interference with Custody 9 (§ 2919.23), formerly Child Stealing (§ 2905.04).

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
Oklahoma	Tit. 74 Ch. 5 § 150.27a, Tit. 22 Ch. 1 § 18	Yes. If the offense requires registration pursuant to the Sex Offenders Registration Act. *See* §§ 150.27a and 582(A).	Yes; Subject to Availability of Funds: Assault and Battery (21 Okl. Stat. § 644(A) and (B)); Domestic Abuse (21 Okl. Stat. § 644(C)); Stalking (21 Okl. Stat. § 1173); Possession of a Controlled Substance under Schedule IV (63 Okl. St. § 2-402); Outraging Public Decency (21 Okl. St. § 22); Resisting Arrest (21 Okl.St. § 268); Escaping or Attempting to Escape (21 Okl. St. § 444); Eluding a Police Officer (21 Okl. St. § 540A); Peeping Tom (21 Okl. St. § 1171); Pointing a Firearm (21 Okl. St. § 1279); Threatening an Act of Violence (21 Okl. St. § 1378); Breaking and Entering a Dwelling Place (21 Okl. St. § 1438); Destruction of Property (21 Okl. St. § 1760); Negligent Homicide (47 Okl. St. § 11-903); Causing a Personal Injury Accident while DUI (47 Okl. St. § 11-904). Note that the law covering these misdemeanors will go into effect on November 1, 2017 - the current law covers all of these crimes plus Unlawful Carry of a Firearm (21 Okl. St. § 1272), Illegal Transport of a Firearm (21 Okl. St. § 1289.13) and Discharging of a Firearm (21 Okl. St. § 1364).
Oregon	§§ 137.076, 419C.473, 181A.155, 192.543	Yes. If specified in § 137.07(1).	No.
Pennsylvania	Tit. 44 Ch. 23 §§ 2303, 2316, 2321, 2332	Yes. If specified in Tit. 44 Ch. 23 § 2303.	Yes. Luring Child into Motor Vehicle or Structure (18 Pa.C.S. § 2910) or attempt to commit this offense.
Rhode Island	§§ 12-1.5-8, 12-1.5-13, 12-1.5-15	No.	No.

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
South Carolina	§§ 23-3-620, 23-3-650, 23-3-660	DNA taken upon arrest if specified in § 23-3-620(A) and if sample was not previously taken at arrest or is otherwise not suitable. Eavesdropping/ Peeping (§ 16-17-470) are treated as sex crimes, *see* § 23-3-430.	DNA taken upon arrest if specified in § 23-3-620(A) and if sample was not previously taken at arrest or is otherwise not suitable.
South Dakota	§§ 23-5A-1 through 23-5A-8, 23-5A-26, 23-5A-28	Yes. If not otherwise previously obtained. *See* §§ 23-5A-1(8) and 22-22. *See also* §§ 23-5A-4 through 23-5A-5.1, 23-5A-6, and 23-5A-7.	No. *See* § 23-5A-1(8).
Tennessee	§§ 40-35-321, 40-32-101	Yes. If required to register as sex offender. *See* §§ 40-35-321(d)(1) and 40-39-202(20)(A).	No.

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
Texas	Govt. Code Ann. §§ 411.1471, 411.151, 411.153; Tex. Code Crim. Prod. Art. 55.01, 55.02	Yes. If specified by § 411.1471(a)(3).	Yes. "A) under Title 5, Penal Code, other than an offense described by Subdivision (1), that is punishable as a Class A misdemeanor or any higher category of offense, except for an offense punishable as a Class A misdemeanor under [Unlawful Restraint (§ 20.02), Assault (§ 22.01), or Deadly Conduct (§22.05), Penal Code; OR, (B) Indecent Assault (§ 21.08), Enticing a Child (§ 25.04), Prostitution (§ 43.02(b)), Promotion of Prostitution (§ 43.03), or Sale, Distribution or Display of Harmful Material to Minor (§ 43.24), Penal Code]," *see* § 411.1471(3)(A) and (B). Title 5 covers Offenses Against the Person.
Utah	§§ 53-10-403, 403.5, 404, 406	Yes. If specified in § 53-10-403(2).	Yes. Any Class A Misdemeanor, *see* § 53-10-403(1) and (2).
Vermont	Tit. 20 §§ 1932, 1933, 1940, 1941, 1945	Yes. If crime results in requirement to register as sex offender. *See* Tit. 20 § 1932(12)(C) and Tit. 13 § 5401(10).	Yes. Domestic Assault (13 V.S.A. § 1042); Stalking (13 V.S.A. § 1062); Reckless Endangerment (13 V.S.A. § 1025); Violation of Abuse Prevention Order (13 V.S.A. § 1030, but does not include those issued pursuant to 13 V.S.A. § 1104 or 33 V.S.A. § 6936, both of which are Emergency Relief); Abuse, Neglect, and Exploitation of Vulnerable Adults (any misdemeanor violation of 13 V.S.A. chapter 28); Attempt to commit any of the aforementioned offenses; "any other offense, if, as part of a plea agreement in an action in which the original charge was a crime listed in this subdivision and probable cause was found by the court, there is a requirement that the defendant submit a DNA sample to the DNA data bank," see 20 V.S.A. 1932(12).

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
Virginia	§§ 19.2-310.2 19.2-310.7	Yes.	Yes. Violation of Protective Order (§ 16.1-253.2); Stalking (§ 18.2-60.3); Violation of Protective Order (§ 18.2-60.4); Sexual Battery (§ 18.2-67.4); Infected Sexual Battery § 18.2-67.4:1); Sexual Abuse of Child Under 15 (§ 18.2-67.4:2); Attempted Sexual Battery (§ 18.2-67.5); Unauthorized Use of Animal, Aircraft, Vehicle or Boat (§ 18.2-102); Entering Property of Another for Purpose of Damaging It (§ 18.2-121); Peeping (§ 18.2-130); Penetration of Mouth of Child with Lascivious Intent (§ 18.2-370.6); Indecent Exposure (§ 18.2-387); Obscene Sexual Display (§ 18.2-387.1); Fleeing from Law Enforcement Officer (§ 18.2-479.1); Effective July 1, 2018 Assault and Battery (§ 18.2-57) and Trespassing (§ 18.2-119) will be added.
Washington	Rev. Code Wash. §§ 43.43.754, 43.43.810, 5.70.020; WAC § 446-75-070	Yes. If specified by § 43.43.754.	Yes. Assault in the Fourth Degree (Domestic Violence) (§ 9A.36.041); Assault in the Fourth Degree (Sexual Motivation) (§ 9A.36.041, *see also* § 9.94A.835); Communication with Minor for Immoral Purposes (§ 9.68A.090); Custodial Sexual Misconduct in the Second Degree (§ 9A.44.170); Failure to Register (§§ 9A.44.130 and 9A.44.132); Harassment (§ 9A.46.020); Patronizing a Prostitute (§ 9A.88.110); Sexual Misconduct with a Minor in the Second Degree (§ 9A.44.096); Stalking (§ 9A.46.110); Violation of a Sexual Assault Protection Order under chapter 790.

Jurisdiction	Relevant Statutes	Sexual Misdemeanor Offenses Upon Conviction	Non-Sexual Misdemeanor Offenses Upon Conviction
West Virginia	§§ 15-2B-6, 15-2B-11, 15-2b-12, 15-2b-13	Yes. If registration as sex offender is required. *See* § 15-2B-3(12) and § 15-12-2(b)	Yes. Assault (§ 61-2-10b(e)); Child Abuse with Injury/Risk of Injury (§ 61-8D-3(d)(1) and (2)); Child Neglect with Injury/Risk of Injury (§ 61-8D-4(d)(1) and (2)); Presentation of False Information Regarding Child's Injuries (§ 61-8D-7); Contributing to Delinquency of Child (§ 61-8D-10); Involuntary Manslaughter (§ 61-2-5); Extortion (§ 61-2-13).
Wisconsin	§§ 973.047, 165.76, 165.77, 165.84, 938.34(15)	Yes.	Yes.
Wyoming	§§ 7-19-403, 7-19-404, 7-19-405	No.	No.

Source: Virginia State Crime Commission staff analysis.

Endnotes

[1] This request stemmed from House Joint Resolution 711, which was introduced by Delegate David J. Toscano during the Regular Session of the 2017 General Assembly and was left in the House Committee on Rules.
[2] Va. Code § 19.2-310.2(A) (2018). The list of 14 misdemeanors includes: sexual battery (§ 18.2-67.4); sexual abuse of a child under 15 years of age (§ 18.2-67.4:2); attempt to commit sexual battery (§ 18.2-67.5(C)); peeping or spying into dwelling or enclosure (§ 18.2-130); penetration of the mouth of a child with lascivious intent (§ 18.2-370.6); violation of a domestic protective order (§ 16.1-253.2); stalking (§ 18.2-60.3); violation of a protective order (§ 18.2-60.4); infected sexual battery (§ 18.2-67.4:1); unauthorized use (§ 18.2-102); unlawful entry (§ 18.2-121); indecent exposure (§ 18.2-387); obscene sexual display (§ 18.2-387.1); and, resisting arrest (§ 18.2-479.1).
[3] Staff defined "violent felony or certain burglary offenses" from the list of offenses requiring a DNA sample upon arrest per Va. Code § 19.2-310.2:1 (2017), which includes Va. Code §§ 19.2-297.1, 18.2-31, 18.2-89, 18.2-90, 18.2-91, and 18.2-92 (2017).
[4] Va. Code § 18.2-57 (2018).
[5] Va. Code § 18.2-57.2 (2018).
[6] Va. Code § 18.2-119 (2018).
[7] Va. Code § 18.2-96 (2018).
[8] Va. Code § 18.2-137 (2018).
[9] Va. Code § 18.2-119 (2018).
[10] *See* Va. Code § 19.2-390(A)(1)(d) (2018). Fingerprints were not required for trespassing convictions under Va. Code § 18.2-119. As such, the accurate number of convictions are likely not reported and, thus, undercounted on criminal histories because fingerprints are required for CCRE inclusion. Fingerprints will be required for trespassing convictions under Va. Code § 18.2-119 effective July 1, 2018.
[11] Va. Code § 18.2-460 (2018).
[12] Va. Code § 18.2-103 (2018).
[13] Va. Code § § 19.2-310.2(A) (2018).
[14] A "hit" occurs when there is an association between an unsolved profile and a convicted offender/arrestee, or between two or more cases that were previously unknown to be linked. *See* Virginia Department of Forensic Science, *What does a CODIS hit mean?*, available at http://www.dfs.virginia.gov/question_answer/what-does-a-codis-hit-mean/.
[15] Va. Code § 18.2-57 (2018).
[16] Va. Code § 18.2-57.2 (2018).
[17] Va. Code § 18.2-119 (2018).
[18] Va. Code § 18.2-96 (2018).
[19] Va. Code § 18.2-137 (2018).
[20] Va. Code § 18.2-460 (2018).
[21] Va. Code § 18.2-103 (2018).
[22] 2018 Va. Acts ch. 543, 544.
[23] 2018 Va. Acts ch. 51, 178.
[24] *See, e.g.,* T. Rees Shapiro and Justin Jouvenal, *Jesse Matthew Pleads Guilty in Slayings of College Students,* The Washington Post, March 2, 2016, available at https://www.washingtonpost.com/local/public-safety/jesse-matthew-to-appear-in-court-for-plea-agreement-hearing/2016/03/01/f6b7093a-dfd8-11e5-846c-10191d1fc4ec_story.html?noredirect=on&utm_term=.59c94a7eaed8.
[25] Va. Code § 18.2-119 (2018).

[26] *See, e.g.,* Matt Talhelm, *Grahams Ask Senate Committee to Expand DNA Collecting* (John Early ed.), NBC29.COM, Feb 12, 2018, http://www.nbc29.com/story/37372205/grahams-speak-to-senate-courts-of-justice-committee-01-29-2018.
[27] 34 U.S.C. § 12592 (2018). Formerly 42 U.S.C. § 14132.
[28] *See* Appendix A for the overall structure of the DNA Index System in Virginia.
[29] *See* FBI, *Frequently Asked Questions on CODIS and NDIS*, https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet.
[30] *See* FBI, *CODIS – NDIS Statistics,* https://www.fbi.gov/services/laboratory/biometric-analysis/codis/ndis-statistics.
[31] 1990 Va. Acts ch. 669.
[32] Va. Code § 19.2-310.2(A) (2018).
[33] Va. Code § 19.2-310.2:1 (2018).
[34] Va. Code § 19.2-310.2(A) (2018).
[35] Va. Code § 16.1-299.1 (2018).
[36] *See* Appendix B for an outline of Virginia's requirements for DNA sample submission. For a general overview of the DNA sample collection process from arrestees and convicted individuals, *see* Commonwealth of Virginia Compensation Board*, Collecting Buccal DNA Samples for Virginia's DNA Data Bank*, http://www.scb.virginia.gov/DNA/dnaguidance.pdf.
[37] Sex offender and crimes against minors registry offenses, which includes some misdemeanor crimes, were added in FY07. 2007 Va. Acts ch. 528.
[38] 2011 Va. Acts ch. 247.
[39] Va. Code § 18.2-67.4 (2018).
[40] Va. Code § 18.2-67.4:2 (2018).
[41] Va. Code § 18.2-67.5(C) (2018).
[42] Va. Code § 18.2-130 (2018).
[43] Va. Code § 18.2-370.6 (2018).
[44] 2015 Va. Acts ch. 209, 437.
[45] Va. Code § 16.1-253.2 (2018).
[46] Va. Code § 18.2-60.3 (2018).
[47] Va. Code § 18.2-60.4 (2018).
[48] Va. Code § 18.2-67.4:1 (2018).
[49] Va. Code § 18.2-102 (2018).
[50] Va. Code § 18.2-121 (2018).
[51] Va. Code § 18.2-387 (2018).
[52] Va. Code § 18.2-387.1 (2018).
[53] Va. Code § 18.2-479.1 (2018).
[54] There were 297 samples received by DFS as of FY90, which has now grown to 576,262 total samples received by DFS as of FY17. It should be noted that samples received by DFS is a larger number than what is ultimately reported as the total number of actual samples in the database as reported on their website, *see* Virginia Department of Forensic Science, *Databank Statistics*, http://www.dfs.virginia.gov/about-dfs/dna-databank-statistics/.
[55] *See* Appendix C for the total DNA samples received by type in Virginia's Databank for the past six fiscal years.

[56] Note that Crime Commission staff purposefully used the term "association" rather than "correlation" in reporting its findings. While it would not be incorrect to say "correlation," it was avoided to discourage the direct implication that specific misdemeanor convictions and felony convictions were *statistically* correlated. Correlation, statistically speaking, is defined as a measure of the strength of the linear relationship between two random variables. Initially, staff had planned to conduct a bivariate correlation analysis to determine strengths of relationships between the variables. Unfortunately, many of the assumptions required for this type of bivariate analysis to be performed were not met, including the following: sample size, linearity of data, and data independency. However, this does not preclude an association from existing between the variables.

[57] This analysis played a large role in determining the nine misdemeanors that were ultimately added in FY16.

[58] A "sentencing/conviction event" is defined by the VCSC as "the conviction/sentencing or the delinquent adjudication of an offender in a particular court at a particular time for one or more offenses. If an offender is convicted/sentenced or adjudicated delinquent in different courts, before different judges, or at different times, each court appearance is counted as a separate event." *See* Virginia Criminal Sentencing Commission, *Virginia Sentencing Guidelines* (2017), available at http://bycell.mobi/wap/default/item.jsp?entryid=ECMTg2OQ==&itemid=42097&_t=1528823947339#m.

[59] In order to narrow the list of misdemeanors, Crime Commission staff adhered to the following threshold: at least 5% of the individuals convicted of a misdemeanor had a subsequent felony sentencing event within 10 years of the misdemeanor conviction.

[60] FY17 data was preliminary at the time of the analysis.

[61] Crime Commission staff defined "violent felony or certain burglary offenses" from the list of offenses requiring a DNA sample upon arrest per Va. Code § 19.2-310.2:1, which includes Va. Code §§ 19.2-297.1, 18.2-31, 18.2-89, 18.2-90, 18.2-91, and 18.2-92.

[62] Va. Code § 18.2-57 (2018).

[63] Va. Code § 18.2-57.2 (2018).

[64] Va. Code § 18.2-119 (2018).

[65] Va. Code § 18.2-96 (2018).

[66] Va. Code § 18.2-137 (2018).

[67] Va. Code § 18.2-460 (2018).

[68] Va. Code § 18.2-103 (2018).

[69] Va. Code § 18.2-266 (2018).

[70] *See* supra note 61.

[71] 72 of these individuals had more than one sentencing event in FY16 that included a violent felony or certain burglary offense.

[72] 338 records were determined to be invalid due to reasons such as the FY16 target sentencing event not appearing on criminal history, incorrect or nonexistent matches between syntax and query, and if the individual was or likely was a juvenile at the time of the FY16 target sentencing event. There were 10 individuals removed from the analysis because they were or likely were a juvenile at the time of the FY16 target sentencing event.

[73] Racial categories were based on the definitional categories provided within the Virginia State Police's CCH database.

[74] Of the 181 individuals not residing in Virginia, 34 resided in North Carolina; 33 in Maryland; and, 23 in D.C. The remainder were from other states.

[75] Criminal histories were downloaded by the Virginia State Police over a course of 2-3 weeks in June 2017.

[76] Since criminal histories were queried by the VSP in June 2017, it included criminal history activity occurring after the end of FY16 (June 30, 2016).
[77] It should also be noted that of the 2,753 individuals, 26% (727 of 2,753) had no prior felony or misdemeanor convictions; and, 13% (360 of 2,753) had no prior felony convictions, felony charges, misdemeanor convictions, or misdemeanor charges.
[78] Va. Code § 18.2-57 (2018).
[79] Va. Code § 18.2-57.2 (2018).
[80] Va. Code § 18.2-96 (2018).
[81] Va. Code § 18.2-119 (2018). Fingerprints were not required for trespassing. As such, the number of convictions are likely undercounted on criminal histories since fingerprints are required for CCRE inclusion. Fingerprints will be required for trespassing convictions under Va. Code § 18.2-119 effective July 1, 2018.
[82] Va. Code § 18.2-137 (2018).
[83] Va. Code § 18.2-57 (2018).
[84] Va. Code § 18.2-57.2 (2018).
[85] Va. Code § 18.2-119 (2018).
[86] Va. Code § 18.2-96 (2018).
[87] Va. Code § 18.2-137 (2018).
[88] Va. Code § 18.2-119 (2018).
[89] *See* Va. Code § 19.2-390(A)(1)(d) (2018). Fingerprints were not required for trespassing convictions under Va. Code § 18.2-119. As such, the number of convictions are likely undercounted on criminal histories because fingerprints are required for CCRE inclusion. Fingerprints will be required for trespassing convictions under Va. Code § 18.2-119 effective July 1, 2018.
[90] Va. Code § 18.2-460 (2018).
[91] Va. Code § 18.2-103 (2018).
[92] Va. Code § 19.2-310.2(A) (2018). The list of 14 misdemeanors includes: sexual battery (§ 18.2-67.4); sexual abuse of a child under 15 years of age (§ 18.2-67.4:2); attempt to commit sexual battery (§ 18.2-67.5(C)); peeping or spying into dwelling or enclosure (§ 18.2-130); penetration of the mouth of a child with lascivious intent (§ 18.2-370.6); violation of a domestic protective order (§ 16.1-253.2); stalking (§ 18.2-60.3); violation of a protective order (§ 18.2-60.4); infected sexual battery (§ 18.2-67.4:1); unauthorized use (§ 18.2-102); unlawful entry (§ 18.2-121); indecent exposure (§ 18.2-387); obscene sexual display (§ 18.2-387.1); and, resisting arrest (§ 18.2-479.1).
[93] *See* Appendix E for a breakdown of the total misdemeanor conviction samples received by DFS between FY03-FY18.
[94] *See* Appendix F for a breakdown of misdemeanor conviction samples received by DFS by offense type.
[95] *See supra* note 14.
[96] Personal correspondence with Mid-Atlantic Innocence Project, October 30, 2017. *See also* https://www.innocenceproject.org/.
[97] *See* Appendix G for an illustration of the types of investigations aided by the 26 misdemeanor sample hits.
[98] DNA Web accounts for all samples received by DFS. Each sample receives a unique DNA sample number and contains personally identifiable information. CODIS accounts for all unique samples (no double counts). CODIS does not contain any personally identifiable information, rather the only reference is a DNA sample number that links with the DNA Web.
[99] *See* Appendix H for a breakdown of CODIS indices for DNA samples in Virginia as of July 18, 2017.
[100] 34 U.S.C. § 12592 (2018).

[101] *See* Appendix I for a breakdown of relevant statutes by state.
[102] 34 U.S.C. § 12593 (2018).
[103] Va. Code § 19.2-310.6 (2018).
[104] For the misdemeanor offenses, there were no cases concluded in General District Courts between CY05-FY16. For the felony offense, there were no cases concluded in Circuit Courts between FY00-FY16 nor in Pre-Sentence Investigation (PSI) data for felonies since 1985 for charges that resulted in a conviction.
[105] *See* National Conference of State Legislatures, *Convicted Offenders Required to Submit DNA Samples*, http://www.ncsl.org/Documents/cj/ConvictedOffendersDNALaws.pdf.
[106] *See* Appendix J for a Crime Commission staff analysis of whether DNA samples are collected upon conviction for sexual misdemeanor offenses by state. Note that four states collect DNA upon arrest for such offenses.
[107] *See* Appendix J for a Crime Commission staff analysis of whether DNA samples are collected upon conviction for non-sexual misdemeanors by state. Note that an additional two states collect DNA upon arrest for such offenses.
[108] N.Y. Exec. Law §§ 995 and 995-c (McKinney 2018). *See also* N.Y. Penal Law §§ 70.15 and 80.05 (McKinney 2018) for the maximum sentences of imprisonment and fines for Class A, B, and unclassified misdemeanors and for violations.
[109] N.Y. Penal Law § 140.10(a) (McKinney 2018).
[110] N.Y. Penal Law §§ 140.10(b), (c), and (d), and 140.15(2) (McKinney 2018).
[111] N.Y. Penal Law §§ 140.10(e) and (f) (McKinney 2018).
[112] N.Y. Penal Law § 140.10(g) (McKinney 2018).
[113] N.Y. Penal Law § 140.15(1) (McKinney 2018).
[114] N.Y. Penal Law § 140.05 (McKinney 2018).
[115] 2005 N.Y. S.N. 8446.
[116] 2011 N.Y. S.N. 6733.
[117] Personal correspondence with the New York State Division of Criminal Justice Services and data provided on August 31, 2017.
[118] *See* Utah Code Ann. § 53-10-403 (2018). *See also* Utah Code Ann. §§ 76-3-204 and 76-3-301 (2018) for the maximum sentences of imprisonment and fines for Class A, B, and C misdemeanors.
[119] Utah Code Ann. § 76-6-206(3)(a) (2018).
[120] *See* Utah Code Ann. §§ 76-6-206, 76-6-206.1, 76-6-206.2, 76-6-206.3, and 76-6-206.4 (2018).
[121] Personal correspondence with the Utah Bureau of Forensic Services, July 2017. *See also* https://forensicservices.utah.gov/testing-services/biology.
[122] Wis. Stat. § 165.76 (2018). *See also* Wis. Stat. §§ 939.51 and 939.52 (2018) for the classification and punishment of misdemeanor and forfeiture offenses.
[123] Wis. Stat. § 943.13 (2018).
[124] *See* Wis. Stat. §§ 943.14, 943.143, 943.145, and 943.15 (2018).
[125] Personal correspondence with the State of Wisconsin Department of Justice-State Crime Laboratory Bureau and data provided on June 22, 2017.
[126] Va. Code § 18.2-57 (2018).
[127] Va. Code § 18.2-57.2 (2018).
[128] Va. Code § 18.2-119 (2018).
[129] Va. Code § 18.2-96 (2018).
[130] Va. Code § 18.2-137 (2018).
[131] Va. Code § 18.2-460 (2018).

[132] VA. CODE § 18.2-103 (2018).
[133] VA. CODE § 18.2-57 (2018).
[134] VA. CODE § 18.2-119 (2018).
[135] 2018 Va. Acts ch. 543, 544.
[136] Informal surveys were sent to all regional jail administrators, Sheriffs, local community corrections agencies, and state probation offices.
[137] VA. CODE § 19.2-390(A)(1)(d) (2018).
[138] For additional information on the CCRE, *see*, VIRGINIA STATE POLICE, *Central Criminal Records Exchange*, http://www.vsp.state.va.us/CJIS_CCRE.shtm.
[139] 2018 Va. Acts ch. 51, 178.