



COMMONWEALTH of VIRGINIA

Office of the Governor

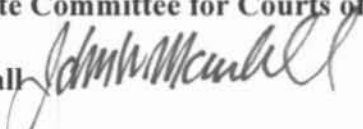
John W. Marshall
Secretary of Public Safety

To: **The Honorable Vincent F. Callahan, Jr.**
 Chairman, House Appropriations Committee

The Honorable John H. Chichester
 Chairman, Senate Finance Committee

The Honorable David B. Albo
 Chairman, House Committee for Courts of Justice

The Honorable Kenneth W. Stolle
 Chairman, Senate Committee for Courts of Justice

From: **John W. Marshall** 

Date: **November 19, 2007**

Re: **Report on Actions to Address Missing DNA Samples, as Required in**
 Chapter 528 (2007 Acts of Assembly)

This report is submitted as required in the second enactment clause of Chapter 528, 2007 Acts, which provides, "That the Secretary of Public Safety shall conduct a review of the procedures for collection of DNA samples pursuant to §16.1-299.1 and Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 of the Code of Virginia. This review shall include a comparison of the data collected and maintained by the Virginia Department of Corrections, the Department of State Police and any entity supervising parole or probation. The Secretary of Public Safety shall submit a status report by November 1, 2007, including any necessary recommendation regarding corrective actions to the Chairmen of the House Appropriations Committee, the Senate Finance Committee, the House Committee for Courts of Justice, and the Senate Committee for Courts of Justice."

Background:

The Virginia DNA data bank is one of the largest data banks in the United States. Currently the DNA data bank contains over 280,000 DNA profiles, which primarily includes convicted felons, adults arrested for violent felonies and sex offenders. Prior to the 2007 General Assembly, and following inquiries by a member of the Charlottesville Police Department, it was determined that a number of DNA profiles which were required by Code, based upon offenses for which individuals had been arrested or convicted, were not included in the DNA data bank maintained by the Department of Forensic Science (DFS). House Bill 3034 (Delegate Bell) was introduced to address this problem.

This office worked with DFS, the Compensation Board (which maintains the Local Inmate Data System), the Department of State Police (VSP), the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ) to determine the magnitude of the problem and to develop processes both to identify and address the missing profiles and to ensure that future profiles are properly accounted for.

Accomplishments to Date:

Both DOC and DJJ have cross matched information in their data bases with the DNA data bank to identify offenders who appeared to meet the statutory requirement for taking a DNA sample. Based on these matches, DOC initially identified 8,439 missing profiles, while DJJ identified 1,528. However, a number of these profiles were ultimately found to not meet the statutory criteria. For example, in a number of instances, the initial charge qualified for sample, but that charge was later dismissed, was pled down to a misdemeanor or was taken under advisement by the court with no final conviction.

At DJJ, a total of 434 cases of the identified 1,528 are currently under advisement by the court. These will be monitored and samples will be taken if there is a guilty finding. Another 213 cases were initially identified as felonies but were ultimately dismissed or pled down. In a number of instances, profiles thought to be missing by both DJJ and DOC were located but had been misidentified due to name misspellings, incorrect Social Security Numbers, or other similar keying errors. For DJJ, 10 cases remain unresolved due to missing court files, but are expected to be completed shortly.

DOC, after reviewing each of its cases, also found that a number of the original cases involved felony charges that were dismissed, were pled down to a lesser charge, or otherwise resulted in, misdemeanant convictions. The agency continues to work on cases where offenders were convicted and sentenced to probation, but are no longer under supervision.

In total, DOC reports that 91% of the previously identified cases have been resolved. Work is continuing on the remaining 9%, a number of which involve offenders who are currently being supervised by other states under the Interstate Compact.

Ongoing Verification:

Both DOC and DJJ have been working with their local courts, sheriffs and police departments to insure that processes are in place to identify and take samples from individuals as required by Code. And, in addition to accessing the Local Inmate Data System (and for DJJ, the Juvenile Tracking System) to verify that a sample has been taken, quarterly cross matches will be executed by both agencies against DFS' data bank to identify any offenders whose arrest/conviction records indicate that a sample should have been taken but for whom no profile is in the DFS bank. Actions can then be taken to obtain any missing profiles in a timely manner.