

# DATABASE

## Creating and Maintaining an Arrestee Database in Virginia—Policy and Practical Aspects

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### CREATING AN ARRESTEE INDEX

It all started with a personal phone call to my home from the State Attorney General one weekend in the fall of 2001; "Paul, I want to tell you personally before my press conference tomorrow that I am going to introduce legislation to add persons arrested of violent crimes to our DNA databank. However there cannot be a fiscal impact, or my bill will die in conference. So I need you to absorb this within your existing budget. Can you do this?"

By all anecdotal accounts, greater than 95% of persons charged with these qualifying felonies (e.g., rape, murder, voluntary manslaughter, robbery, malicious wounding and car jacking) were ultimately convicted. Therefore, if sample profiles were entered into the State DNA Index System (SDIS) at arrest, these individuals would not be re-sampled upon conviction, thus effectively collecting samples earlier in the criminal justice process. However, it would not be that simple...nothing ever is. I immediately asked if he could delay implementation of the bill, if passed, until July 1, 2003 (instead of 2002), to give us time to gear up. "No, but I can delay it to January 1, 2003". As passed in its final form, the law included a provision that, if the arrest charge was subsequently dismissed or the defendant acquitted at trial, the sample and records must be destroyed. Thus the die was cast, and there was a lot to do in the ten months from when the bill was signed into law until January 1, 2003.

- We would have to commit earlier to our already-planned transition from blood to buccal swabs. Foolproof collection kits, forms and instructions would have to be designed, tested, produced in bulk and distributed to every booking station, jail and prison in Virginia.
- Arrest warrants issued by magistrates for qualifying offenses would have to be automatically annotated to flag the need for sample collection before release.
- A widely accessible database system would have to be developed/modified to allow each booking station, jail or prison to be able to check if an individual had been sampled previously, and if not, to record the individual as being sampled pursuant to the arrest charge.
- Since federal grant funding would not be available for arrestee sample testing, and since rapid processing of these samples would be critical to the effectiveness of this law, the databank staff would have to run these samples in-house (and within our existing budget).
- Finally, a system of tracking the case disposition for each person arrested for a qualifying offense under this statute would have to be available to the lab. If and when the person arrested for the violent felony was convicted of the felony charge (or any lesser felony), the DNA profile would be uploaded to the National DNA Index System (NDIS). Conversely, if and when the person arrested was cleared of the qualifying felony (and any lesser felony), a mechanism for destruction of the sample and associated records would have to be developed and implemented.

*A DNA sample collected at the time of arrest will be in the DNA database and available for a search much earlier than one collected after conviction. This means that databank hits for unsolved crimes can be made earlier and potentially prevent future crimes by the same individuals.*

Through the considerable efforts of our staff working in concert with our Supreme Court, the Virginia State Police, Clerks of the Court, Magistrates, booking personnel and the agency responsible for the Local Inmate Data System (LIDS), all of the actions necessary for implementation of this law were accomplished and in place by January 1, 2003.

**BENEFITS OF AN ARRESTEE DATABASE**

Among the first indirect benefits realized from the arrestee law was a dramatic decrease in the number of duplicate samples being received in the laboratory. Before implementation of the arrestee law and use of LIDS to determine if someone had already been sampled, the laboratory was experiencing a 30% duplication rate

among convicted felon samples. Six months after implementation of the arrestee law, the duplicate rate had dropped to, and remains, less than 3%! Another benefit of this program is a system that enables the lab to get accurate, up-to-date information on the disposition of every case involving an arrestee, something we never had for hits to convicted felons. That's because the arrestee law and the regulations promulgated pursuant to the law now mandate that clerks of the courts "notify the Division [of Forensic Science] of final disposition of the criminal proceeding."

As of January 1, 2004, we had received and processed 7,836 arrestee samples and scored 63 hits against these, 16 for rape cases. What is remarkable about this number is that of the 7,836 samples submitted, 2,986 (38%) were cleared (destroyed) for the following reasons:

- 210 were not associated with a qualifying offense
- 1,764 were dismissed/nolle prosequi
- 73 were acquitted
- 939 were reduced to misdemeanors

So much for 95% of persons arrested for violent felonies being convicted! It should be noted that virtually all of the samples were in SDIS long enough for at least one search before receipt of disposition. By policy, if a hit is made at any time prior to official notification of clearance of the arrestee, the hit is reported. Conversely, if notification of clearance of charges is received prior to a hit, the hit is not reportable.

Clearly then, arrestee testing has several advantages and disadvantages. The clearance provision results in a large amount of work and resources (over a third) being wasted, save for a single search. However, as long as

DNA genotypic data is not equated with fingerprints, lawmakers will not be willing to consider and treat them as they do fingerprints.

**MAINTAINING AN ARRESTEE INDEX**

The 2003 Virginia Arrestee law requires that every person arrested for specific violent felonies, and also burglaries, submit a sample to the Virginia Division of Forensic Science for DNA analysis. The laboratory maintains these DNA profiles in an Arrestee Index, separate from the Convicted Offender Index already in CODIS.

An arrestee database is different from a conventional convicted offender database in that none of the profiles within the arrestee database are expected to be there permanently. After a profile is entered into the Arrestee Index in CODIS, further action will have to be taken at a later date when the status of the arrestee sample changes. If the charge for which the sample was taken is dismissed or reduced or the defendant is acquitted at trial, the profile will have to be removed since it does not qualify as an arrestee sample anymore. If the defendant is convicted of the felony, the profile will be moved from the Arrestee Index to the Convicted Offender Index. This status change is significant in that, based on current federal law, convicted offender profiles are eligible for upload to NDIS, whereas arrestee profiles are not.

To ensure that the arrestee samples collected by the numerous police agencies will produce results at the analytical stage, a buccal sample collection kit was custom designed and distributed by the Division. The kit contains all the necessary material, as well as detailed instructions, for the collection of buccal swabs.

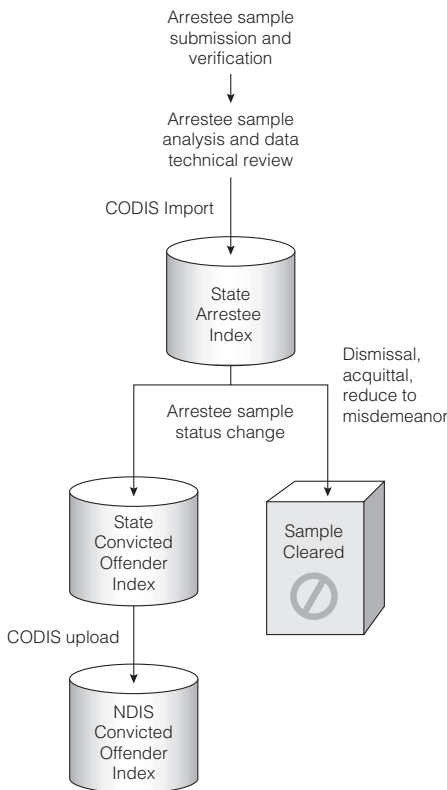


Figure 1. Arrestee sample flow chart.

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A training video was also produced and distributed to all the collecting agencies.

After submission to the laboratory, each arrestee sample is verified for a qualifying offense. Beginning in January 2003, all arrest warrants issued for a qualifying offense are automatically flagged with a statement specifying the need for collection and submission of a DNA sample. Division staff will confirm this statement on the copy of the arrest warrant, which is required to accompany each arrestee sample. The person actually collecting the sample, usually the booking officer, is also required to check the LIDS computer database to determine whether a convicted offender or arrestee sample for that individual had been collected previously to prevent duplicate sample submission.

Some recurring problems were observed with the documentation submitted with arrestee samples. Occasionally, samples were submitted without critical information such as the Document Control Number, a reference number generated during the fingerprinting stage of the arrest process and necessary for the subsequent tracking of the sample status. The copy of the arrestee warrant, which contains information necessary for confirming the qualifying offense, was also missing in some instances. These types of documentation problems consume a significant amount of staff time spent contacting various agencies to obtain, clarify or correct information.

## UPDATING THE STATUS OF AN ARRESTEE SAMPLE

The Division obtains weekly updates on the status of current arrestee samples from the Virginia State Police database. Based on the information obtained, appropriate action is then

taken for those arrestee samples with a status change.

For some arrestee samples, the status change information will result in the sample being cleared. A sample will be cleared if the charge for the qualifying offense is dismissed, acquitted or pled down to a nonqualifying offense. The arrestee profile is removed from the arrestee index when

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clearance information is obtained. As mentioned previously, it was found that a significant number (more than a third) of arrestee samples were subsequently cleared after they were submitted to the laboratory. In addition, the vast majority of the arrestee samples being cleared were already analyzed and entered into the Arrestee Index in CODIS by the time clearance information was obtained by the Division.

For other arrestee samples, the status will change from "charges pending" to "felony conviction." This permits the associated DNA profile to be changed from arrestee to convicted offender status, making that sample eligible for upload to NDIS. The specimen category in CODIS will be changed from "Arrestee" to "Convicted Offender," thereby moving the profile from the

Arrestee Index to the Convicted Offender Index. The Arrestee Index contained 3,412 profiles at the end of December 2003. During the same time period, 1,125 profiles were moved from the Arrestee Index to the Convicted Offender Index. The actual number of DNA profiles in the Arrestee Index fluctuates regularly as a consequence of this status change and the removal of cleared profiles.

Preliminary data, as of July 2003, indicate that only 23 out of the over 4,700 arrestee buccal samples received by the Division failed to produce a DNA profile. This represents less than 0.5% of the total samples received to that point, indicating that the collection of buccal samples was not a significant problem. These particular samples did not produce any DNA profile at all, even with repeated testing. We suspect that there was no saliva or cellular material deposited on the collectors.

## CONCLUSION

Operating an arrestee database, in addition to a convicted offender database, does increase work for the databank laboratory in terms of sample handling and data management. However, the fact remains that a DNA sample collected at the time of arrest will be in the DNA database, and available for a search, much earlier than if it was collected after conviction. This means that databank hits for unsolved crimes can be made earlier and potentially prevent future crimes by the same individuals.