

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 753

An Act to amend and reenact §§ 19.2-310.2, 19.2-310.4, 19.2-310.5 and 19.2-310.7 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 19.2-310.2:1 and 19.2-310.3:1, relating to DNA analysis for persons arrested for a violent felony.

[S 535]

Approved April 7, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-310.2, 19.2-310.4, 19.2-310.5 and 19.2-310.7 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 19.2-310.2:1 and 19.2-310.3:1 as follows:

§ 19.2-310.2. Blood, saliva or tissue sample required for DNA analysis upon conviction of a felony.

Every person convicted of a felony on or after July 1, 1990, and every person convicted of a felony offense under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 who was incarcerated on July 1, 1989, shall have a sample of his blood, saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. *If a sample has been previously taken from the person as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken.* The analysis shall be performed by the Division of Forensic Science, Department of Criminal Justice Services or other entity designated by the Division. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the Division in a DNA data bank and shall be made available only as provided in § 19.2-310.5.

After July 1, 1990, the blood, saliva or tissue sample shall be taken prior to release from custody.

Notwithstanding the provisions of § 53.1-159, any person convicted of a felony who is in custody after July 1, 1990, shall provide a blood, saliva or tissue sample prior to his release. Every person so convicted after July 1, 1990, who is not sentenced to a term of confinement shall provide a blood, saliva or tissue sample as a condition of such sentence.

§ 19.2-310.2:1. *Saliva or tissue sample required for DNA analysis after arrest for a violent felony.*

Every person arrested for a violent felony as defined in § 19.2-297.1 or a violation of §§ 18.2-89, 18.2-90, 18.2-91, or § 18.2-92, shall have a sample of his saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. After a determination by a magistrate that probable cause exists for the arrest, a sample shall be taken prior to the person's release from custody. The analysis shall be performed by the Division of Forensic Science or other entity designated by the Division. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the Division in a DNA data bank and shall be made available as provided in § 19.2-310.5.

The clerk of the court shall notify the Division of final disposition of the criminal proceedings. If the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, the Division shall destroy the sample and all records thereof.

§ 19.2-310.3:1. *Procedures for taking saliva or tissue sample for DNA analysis.*

A. Each sample required pursuant to § 19.2-310.2:1 from persons arrested shall be taken before release from custody at such place as is designated by the magistrate. Samples shall be taken in accordance with procedures adopted by the Division of Forensic Science. The sample shall be sealed and labeled with the subject's name, social security number, date of birth, race and gender; the name of the person collecting the sample; the date and place of collection; information identifying the arresting or accompanying officer; and the offense for which the person was arrested. The sample shall be secured to prevent tampering with the contents and be accompanied by a copy of the arrest warrant. The steps herein set forth relating to the taking, handling, identification, and disposition of saliva or tissue samples are procedural and not substantive. The sample shall be transported to the Division of Forensic Science not more than fifteen days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with §§ 19.2-310.4 and 19.2-310.5.

B. Substantial compliance therewith shall be deemed to be sufficient. If a sample has been previously taken from the individual as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken. No civil liability shall attach to any person authorized to take saliva or tissue as provided herein as a result of the act of taking saliva or tissue from any person submitting thereto, provided the saliva or tissue was taken according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the taking of any saliva or tissue sample.

§ 19.2-310.4. Procedures for conducting DNA analysis of blood, saliva or tissue sample.

Whether or not the results of an analysis are to be included in the data bank, the Division shall conduct the DNA analysis in accordance with procedures adopted by the Division to determine

identification characteristics specific to the individual whose sample is being analyzed. The Director or his designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the blood, saliva or tissue sample was received and examined, and a statement that the seal on the tube containing the sample had not been broken or otherwise tampered with. The remainder of a blood, saliva or tissue sample submitted for analysis and inclusion in the data bank pursuant to § 19.2-310.2 *or* § 19.2-310.2:1 may be divided, labeled as provided for the original sample, and securely stored by the Division in accordance with specific procedures adopted by regulation of the Division to ensure the integrity and confidentiality of the samples. All or part of the remainder of that sample may be used only (i) to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or (ii) for retesting by the Division to validate or update the original analysis.

A report of the results of a DNA analysis conducted by the Division as authorized, including the profile and identifying information, shall be made and maintained at the Division. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts therein stated. Except as specifically provided in this section and § 19.2-310.5, the results of the analysis shall be securely stored and shall remain confidential.

§ 19.2-310.5. DNA data bank exchange.

It shall be the duty of the Division to receive blood, saliva or tissue samples and to analyze, classify, and file the results of DNA identification characteristics profiles of blood, saliva or tissue samples submitted pursuant to § 19.2-310.2 *or* § 19.2-310.2:1 and to make such information available as provided in this section. The results of an analysis and comparison of the identification characteristics from two or more blood, saliva or tissue samples shall be made available directly to federal, state and local law-enforcement officers upon request made in furtherance of an official investigation of any criminal offense. The Division shall confirm whether or not there is a DNA profile on file for a specific individual if a federal, state or local law-enforcement officer requests that information in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the Division.

Upon his request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank.

The Division shall adopt regulations governing (i) the methods of obtaining information from the data bank in accordance with this section and (ii) procedures for verification of the identity and authority of the requestor. The Division shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

The Division shall create a separate statistical data base comprised of DNA profiles of blood, saliva or tissue samples of persons whose identity is unknown. Nothing in this section or § 19.2-310.6 shall prohibit the Division from sharing or otherwise disseminating the information in the statistical data base with law-enforcement or criminal justice agencies within or without the Commonwealth.

The Division may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law-enforcement agency outside of the Commonwealth.

§ 19.2-310.7. Expungement when DNA taken for a felony conviction.

A person whose DNA profile has been included in the data bank pursuant to ~~this chapter~~ § 19.2-310.2 may request expungement on the grounds that the felony conviction on which the authority for including his DNA profile was based has been reversed and the case dismissed. The Division shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of (i) a written request for expungement pursuant to this section and (ii) a certified copy of the court order reversing and dismissing the conviction.

2. That the Department of Criminal Justice Services, Division of Forensic Science, shall adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) for the implementation of this act.

3. That the provisions of this act shall become effective on January 1, 2003.