

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 150

An Act to amend and reenact §§ 16.1-299.1, 19.2-310.2:1, 19.2-310.3, 19.2-310.3:1, and 19.2-310.4 of the Code of Virginia, relating to DNA samples for violent crime arrests.

[H 2661]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-299.1, 19.2-310.2:1, 19.2-310.3, 19.2-310.3:1, and 19.2-310.4 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-299.1. Blood, saliva or tissue sample required for DNA analysis upon conviction or adjudication of felony.

A juvenile convicted of a felony or adjudicated delinquent on the basis of an act which would be a felony if committed by an adult shall have a sample of his blood, saliva or tissue taken for DNA analysis provided the juvenile was ~~fourteen~~ 14 years of age or older at the time of the commission of the offense.

The provisions of Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 shall apply to all persons and all ~~blood~~ samples taken as required by this section, mutatis mutandis.

§ 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 *or a grand jury* 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, *provided there is no other pending qualifying warrant or capias for an arrest or felony conviction that would otherwise require that the sample remain in the data bank.*

§ 19.2-310.3. Procedures for withdrawal of blood, saliva or tissue sample for DNA analysis.

Each sample required pursuant to § 19.2-310.2 from persons who are to be incarcerated shall be withdrawn at the receiving unit or at such other place as is designated by the Department of Corrections or, in the case of a juvenile, the Department of Juvenile Justice. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn at a time and place specified by the sentencing court. Only a correctional health nurse technician or a physician, registered professional nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any *blood* sample to be submitted for analysis. No civil liability shall attach to any person authorized to withdraw blood, saliva or tissue as provided herein as a result of the act of withdrawing blood, saliva or tissue from any person submitting thereto, provided the blood, saliva or tissue was withdrawn according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood, saliva or tissue sample.

Chemically clean sterile disposable needles and vacuum draw tubes or swabs shall be used for all samples. The tube *or envelope* containing the sample shall be sealed and ~~labeled~~ *labeled* with the subject's name, social security number, date of birth, race and gender; the name of the person collecting the sample; and the date and place of collection. The tubes *or envelopes* containing the samples shall be secured to prevent tampering with the contents. The steps herein set forth relating to the taking, handling, identification, and disposition of blood, saliva or tissue samples are procedural and not substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be transported to the Division of Forensic Science not more than ~~fifteen~~ 15 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.

§ 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~~ *law-enforcement agency responsible for arrest booking in the jurisdiction*. 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 *or capias*. 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~~ 15 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 *or envelope* 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.