

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 440

An Act to amend and reenact §§ 18.2-268.5, 19.2-310.3 and 46.2-341.26:5 of the Code of Virginia, relating to the qualifications of persons authorized to take blood samples.

[H 654]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-268.5, 19.2-310.3 and 46.2-341.26:5 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-268.5. Qualifications and liability of persons authorized to take blood sample; procedure for taking samples.

For purposes of this article, only a physician, registered ~~professional~~ nurse, *licensed practical nurse, phlebotomist*, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting upon the recommendation of a licensed physician, using soap and water, polyvinylpyrrolidone iodine or benzalkonium chloride to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining its alcohol or drug or both alcohol and drug content. It is a Class 3 misdemeanor to reuse single-use-only needles or syringes. No civil liability shall attach to any person authorized to withdraw blood as a result of the act of withdrawing blood as provided in this section from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures. However, the person shall not be relieved from liability for negligence in the withdrawing of any blood sample.

No person arrested for a violation of § 18.2-266 or § 18.2-266.1, or a similar ordinance shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for in this section.

§ 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Each sample required pursuant to § 19.2-310.2 from persons who are to be incarcerated shall be withdrawn at the receiving unit or at such other place as is designated by the Department of Corrections or, in the case of a juvenile, the Department of Juvenile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 The required samples from persons who are not sentenced to a term of confinement shall be withdrawn at a time and place specified by the sentencing court.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 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 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.

§ 46.2-341.26:5. Qualifications and liability of persons authorized to take blood samples; procedure for taking samples.

For purposes of this article, only a physician, registered ~~professional~~ nurse, *licensed practical nurse, phlebotomist*, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting on the recommendation of a licensed physician, using soap and water, polyvinylpyrrolidone iodine or benzalkonium chloride to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining its alcohol or drug content. It is a Class 3 misdemeanor to reuse single-use-only needles or syringes. No civil liability shall attach to any person authorized by this section to withdraw blood as a result of the act of withdrawing blood from any person submitting thereto, provided the

blood was withdrawn according to recognized medical procedures. However, the person shall not be relieved from liability for negligence in the withdrawing of any blood sample.

No person arrested for a violation of § 46.2-341.24 or § 46.2-341.31 shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood or as a condition precedent to the withdrawal of blood as provided for in this section.