

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 868

*An Act to amend and reenact §§ 2.2-1104, 2.2-2101, as it is currently effective and as it shall become effective, 2.2-3802, 4.1-352, 9.1-102, 9.1-501, 18.2-267, 18.2-268.1, 18.2-268.6, 18.2-268.7, 18.2-268.8, 18.2-268.9, 19.2-187, 19.2-187.01, 19.2-187.2, 19.2-188.1, 19.2-270.4:1, 19.2-310.2, 19.2-310.2:1, 19.2-310.3, 19.2-310.3:1, 19.2-310.4, 19.2-310.5, 19.2-310.6, 19.2-310.7, 19.2-327.1, 19.2-327.3, 19.2-327.4, 19.2-386.23, 19.2-386.27, 19.2-387, 19.2-389.1, 46.2-341.25, 46.2-341.26:1, 46.2-341.26:6, 46.2-341.26:7, 46.2-341.26:9, 54.1-3404, and 54.1-3431 of the Code of Virginia, and to amend the Code of Virginia by adding in Title 9.1 a chapter numbered 11, consisting of articles numbered 1 and 2, containing sections numbered 9.1-1100 through 9.1-1113, and to repeal Article 2 (§§ 9.1-117 through 9.1-125) of Chapter 1 of Title 9.1, relating to the creation of the Department of Forensic Science, the Forensic Science Board, and the Scientific Advisory Committee.*

[S 1153]

Approved March 28, 2005

### **Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-1104, 2.2-2101 as it is currently effective and as it shall become effective, 2.2-3802, 4.1-352, 9.1-102, 9.1-501, 18.2-267, 18.2-268.1, 18.2-268.6, 18.2-268.7, 18.2-268.8, 18.2-268.9, 19.2-187, 19.2-187.01, 19.2-187.2, 19.2-188.1, 19.2-270.4:1, 19.2-310.2, 19.2-310.2:1, 19.2-310.3, 19.2-310.3:1, 19.2-310.4, 19.2-310.5, 19.2-310.6, 19.2-310.7, 19.2-327.1, 19.2-327.3, 19.2-327.4, 19.2-386.23, 19.2-386.27, 19.2-387, 19.2-389.1, 46.2-341.25, 46.2-341.26:1, 46.2-341.26:6, 46.2-341.26:7, 46.2-341.26:9, 54.1-3404, and 54.1-3431 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 9.1 a chapter numbered 11, consisting of articles numbered 1 and 2, containing sections numbered 9.1-1100 through 9.1-1113, as follows:**

§ 2.2-1104. Laboratory, testing, and analytical functions.

A. The Division shall provide, but is not limited to, the following specific laboratory, testing and analytical functions:

1. Maintain laboratories for the examination of clinical material and pathological specimens submitted by members of the medical profession of the Commonwealth and for which the Division may charge fees to recover full costs.

2. Provide laboratory services for the testing and analysis of various products, foods, drinks, economic poisons and other materials regulated or controlled by the Commonwealth.

3. Provide laboratory services for the analysis and examination of samples and materials related to environmental control.

4. Establish and conduct programs of inspection and certification of other laboratories in the Commonwealth as mandated by the federal Safe Drinking Water Act (P.L. 93-523) and state requirements pursuant to that Act.

B. No fee shall be charged for the analyses of water samples that are required by regulations of the Department of Health or for feed and fertilizer samples that are required by regulations of the Department of Agriculture and Consumer Services.

C. The Division may provide, upon request of any law-enforcement agency, chemical and microbiological testing and analytical functions related to any criminal investigation. Nothing in this section shall be construed to limit or preclude the ~~Division of Forensic Science within the Department of Criminal Justice Services~~ *Department of Forensic Science* from conducting all necessary testing and analytical functions associated with any criminal investigation.

D. Upon request of a bidder on any state contract that requires the Division to test or analyze the product being offered by the bidder, the Director of the Division of Purchases and Supply may allow such bidder or his representative to witness the test or analysis.

E. The Division shall provide for security and protection of evidence, official samples and all other samples submitted to the Division for analysis or examination.

§ 2.2-2101. (Effective until July 1, 2008) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another

person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Council on Indians, who shall be appointed as provided for in § 2.2-2628; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.1; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 37.1-207; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided in § 2.2-2685; ~~or~~ to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; *or to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109.*

§ 2.2-2101. (Effective July 1, 2008) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Council on Indians, who shall be appointed as provided for in § 2.2-2628; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.1; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 37.1-207; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; ~~or~~ to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; *or to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109.*

§ 2.2-3802. Systems to which chapter inapplicable.

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137;
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;

5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;

6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the Department of Alcoholic Beverage Control;

7. Maintained by the Department of State Police; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23, and that deal with investigations and intelligence gathering relating to criminal activity; and maintained by local departments of social services regarding alleged cases of child

abuse or neglect while such cases are also subject to an ongoing criminal prosecution;

8. Maintained by the Virginia Port Authority as provided in § 62.1-134.1 or § 62.1-132.4;

9. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;

10. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the ~~Division of Forensic Science of the Department of Criminal Justice Services~~ *Department of Forensic Science*, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § ~~9.1-421~~ *9.1-1104* may apply;

11. Maintained by the Department of Corrections that deal with investigations and intelligence gathering by persons acting under the provisions of § 53.1-16; and

12. Maintained by the Department of the State Internal Auditor or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the State Employee Fraud, Waste and Abuse Hotline.

§ 4.1-352. Certificate of forensic scientist as evidence; requiring forensic scientist to appear.

The certificate of any forensic scientist employed by the Commonwealth on behalf of the Board or the ~~Division~~ *Department* of Forensic Science, when signed by him, shall be evidence in all prosecutions for violations of this title and all controversies in any judicial proceedings touching the mixture analyzed by him. On motion of the accused or any party in interest, the court may require the forensic scientist making the analysis to appear as a witness and be subject to cross-examination, provided such motion is made within a reasonable time prior to the day on which the case is set for trial.

§ 9.1-102. Powers and duties of the Board and the Department.

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of (i) this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth or (ii) §§ ~~18.2-268.6, 18.2-268.9, 19.2-188.1, 19.2-310.5~~ and for any provisions of the Code as they relate to the responsibilities of the ~~Division of Forensic Science~~. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;

2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer in (i) permanent positions, and (ii) temporary or probationary status, and establish the time required for completion of such training;

3. Establish minimum training standards and qualifications for certification and recertification for law-enforcement officers serving as field training officers;

4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools, whether located in or outside the Commonwealth, which are operated for the specific purpose of training law-enforcement officers;

5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum qualifications for certification and recertification of instructors who provide such training;

6. Establish compulsory training courses for law-enforcement officers in laws and procedures relating to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be completed by law-enforcement officers who have not completed the compulsory training standards set out in subdivision 2, prior to assignment of any such officers to undercover investigation work. Failure to complete the training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation;

7. Establish compulsory minimum entry-level, in-service and advanced training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § 53.1-120, and to establish the time required for completion of such training;

8. Establish compulsory minimum entry-level, in-service and advanced training standards for deputy sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time required for the completion of such training;

9. Establish compulsory minimum entry-level, in-service, and advanced training standards for persons employed as deputy sheriffs and jail officers by local criminal justice agencies and for correctional officers employed by the Department of Corrections under the provisions of Title 53.1, and establish the time required for completion of such training;

10. Establish compulsory minimum training standards for all dispatchers employed by or in any local

or state government agency, whose duties include the dispatching of law-enforcement personnel. Such training standards shall apply only to dispatchers hired on or after July 1, 1988;

11. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state and federal governmental agencies, and with universities, colleges, community colleges, and other institutions, whether located in or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

12. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not;

13. Establish and maintain police training programs through such agencies and institutions as the Board deems appropriate;

14. Establish compulsory minimum qualifications of certification and recertification for instructors in criminal justice training schools approved by the Department;

15. Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement;

16. Make recommendations concerning any matter within its purview pursuant to this chapter;

17. Coordinate its activities with those of any interstate system for the exchange of criminal history record information, nominate one or more of its members to serve upon the council or committee of any such system, and participate when and as deemed appropriate in any such system's activities and programs;

18. Conduct inquiries and investigations it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to submit information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;

19. Conduct audits as required by § 9.1-131;

20. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;

21. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;

22. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;

23. Adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

24. Operate a statewide criminal justice research center, which shall maintain an integrated criminal justice information system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

25. Develop a comprehensive, statewide, long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

26. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

27. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

28. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

29. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

30. Do all things necessary on behalf of the Commonwealth and its units of general local

government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

31. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

32. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

33. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

34. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

35. Certify and decertify law-enforcement officers in accordance with §§ 15.2-1706 and 15.2-1707;

36. ~~Provide forensic laboratory services as detailed in Article 2 (§ 9.1-117 et seq.) of this chapter;~~

~~37.~~ Establish training standards and publish a model policy for law-enforcement personnel in the handling of family abuse, domestic violence, sexual assault and stalking cases, including standards for determining the predominant physical aggressor in accordance with § 19.2-81.3;

~~38.~~ 37. Establish training standards and publish a model policy for law-enforcement personnel in communicating with and facilitating the safe return of individuals diagnosed with Alzheimer's disease;

~~39.~~ 38. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to ensure sensitivity to and awareness of cultural diversity and the potential for biased policing;

~~40.~~ 39. Review and evaluate community-policing programs in the Commonwealth, and recommend where necessary statewide operating procedures, guidelines, and standards which strengthen and improve such programs, including sensitivity to and awareness of cultural diversity and the potential for biased policing;

~~41.~~ 40. Publish and disseminate a model policy or guideline that may be used by state and local agencies to ensure that law-enforcement personnel are sensitive to and aware of cultural diversity and the potential for biased policing;

~~42.~~ 41. (Effective until July 1, 2005) Assist, as necessary, in the administration of the Live In Our Community Police Housing Program and Fund established pursuant to Chapter 8.1 (§ 36-140.1 et seq.) of Title 36;

~~43.~~ 42. Establish a Virginia Law-Enforcement Accreditation Center. The Center shall, in cooperation with Virginia law-enforcement agencies, provide technical assistance and administrative support, including staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center may provide accreditation assistance and training, resource material, and research into methods and procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia accreditation status;

~~44.~~ 43. Promote community policing philosophy and practice throughout the Commonwealth by providing community policing training and technical assistance statewide to all law-enforcement agencies, community groups, public and private organizations and citizens; developing and distributing innovative policing curricula and training tools on general community policing philosophy and practice and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia organizations with specific community policing needs; facilitating continued development and implementation of community policing programs statewide through discussion forums for community policing leaders, development of law-enforcement instructors; promoting a statewide community policing initiative; and serving as a statewide information source on the subject of community policing including, but not limited to periodic newsletters, a website and an accessible lending library;

~~45.~~ 44. Establish, in consultation with the Department of Education and the Virginia State Crime Commission, compulsory minimum standards for employment and job-entry and in-service training curricula and certification requirements for school security officers, which training and certification shall be administered by the Virginia Center for School Safety pursuant to § 9.1-184. Such training standards shall include, but shall not be limited to, the role and responsibility of school security officers, relevant

state and federal laws, school and personal liability issues, security awareness in the school environment, mediation and conflict resolution, disaster and emergency response, and student behavioral dynamics. The Department shall establish an advisory committee consisting of local school board representatives, principals, superintendents, and school security personnel to assist in the development of these standards and certification requirements;

~~46.~~ 45. Establish training standards and publish a model policy and protocols for local and regional sexual assault response teams;

~~47.~~ 46. (Effective July 1, 2005) License and regulate property bail bondsmen and surety bail bondsmen in accordance with Article 11 (§ 9.1-185 et seq.) of this chapter;

~~48.~~ 47. (Effective October 1, 2005) License and regulate bail enforcement agents in accordance with Article 12 (§ 9.1-186 et seq.) of this chapter; and

~~49.~~ 48. Perform such other acts as may be necessary or convenient for the effective performance of its duties.

#### § 9.1-501. Conduct of investigation.

The provisions of this section shall apply whenever an investigation by an agency focuses on matters which could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law-enforcement officer:

1. Any questioning of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command of the investigating officer or at the office of the local precinct or police unit of the officer being investigated, unless matters being investigated are of such a nature that immediate action is required.

2. Prior to the officer being questioned, he shall be informed of (i) the name and rank of the investigating officer and of any individual to be present during the questioning and (ii) the nature of the investigation.

3. When a blood or urine specimen is taken from a law-enforcement officer for the purpose of determining whether the officer has used drugs or alcohol, the specimen shall be divided and placed into two separate containers. One specimen shall be tested while the other is held in a proper manner to preserve the specimen by the facility collecting or testing the specimen. Should the first specimen test positive, the law-enforcement officer shall have the right to require the second specimen be sent to a laboratory of his choice for independent testing in accordance generally with the procedures set forth in §§ 18.2-268.1 through 18.2-268.12. The officer shall notify the chief of his agency in writing of his request within ~~ten~~ 10 days of being notified of positive specimen results. The laboratory chosen by the officer shall be ~~on the approved list of the Division of Forensic Science accredited or certified by one or more of the following bodies: the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), the College of American Pathologists (CAP), the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA), or the American Board of Forensic Toxicology (ABFT).~~

#### CHAPTER 11.

#### DEPARTMENT OF FORENSIC SCIENCE.

##### Article 1.

##### General Provisions.

#### § 9.1-1100. Department of Forensic Science created; Director.

*There is hereby created in the executive branch of state government, a Department of Forensic Science (the Department), which formerly existed as a division within the Department of Criminal Justice Services. The Department shall be headed by a Director appointed by the Governor, subject to confirmation by the General Assembly if in session when such appointment is made, and if not in session, then at its next succeeding session. In making his appointment, the Governor shall choose a candidate meeting the qualifications recommended by the Forensic Science Board created pursuant to § 9.1-1109. The Director shall serve for a term of six years, or until his successor shall be appointed and qualified. Any vacancy shall be filled for the unexpired term in the same manner as the original appointment.*

*The Director, under the direction and control of the Governor, shall exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties required by the Governor or requested by the Forensic Science Board created pursuant to § 9.1-1109.*

#### § 9.1-1101. Powers and duties of the Department.

*A. It shall be the responsibility of the Department to provide forensic laboratory services upon request of the Superintendent of State Police; the Chief Medical Examiner, the Assistant Chief Medical Examiners, and local medical examiners; any attorney for the Commonwealth; any chief of police, sheriff, or sergeant responsible for law enforcement in the jurisdiction served by him; any local fire department; or any state agency in any criminal matter. The Department shall provide such services to any federal investigatory agency within available resources.*

#### *B. The Department shall:*

*1. Provide forensic laboratory services to all law-enforcement agencies throughout the*

Commonwealth and provide laboratory services, research, and scientific investigations for agencies of the Commonwealth as needed; and

2. Establish and maintain a DNA testing program in accordance with Article 1.1 (§ 19.2-310.2 *et seq.*) of Chapter 18 of Title 19.2 to determine identification characteristics specific to an individual.

C. The Director may appoint and employ a deputy director and such other personnel as are needed to carry out the duties and responsibilities conferred by this chapter.

§ 9.1-1102. Department to be isolated; security and protection of evidence.

A. The Department and its facilities shall be located so as to ensure the protection of evidence.

B. The Department shall provide for security and protection of evidence, official samples, and all other samples submitted to the Department for analysis or examination.

C. The Department shall ensure that its services are performed by skilled professionals who are qualified to testify in court regarding such services.

§ 9.1-1103. Forensic Science Academy.

The Forensic Science Academy, formerly within the Division of Forensic Science, shall be transferred to the Department, and shall provide advanced training to law-enforcement agencies in the location, collection, and preservation of evidence.

§ 9.1-1104. Rights of accused person or his attorney to results of investigation or to investigation.

Upon the request of any person accused of a crime or upon the request of an accused person's attorney, the Department or the Division of Consolidated Laboratory Services shall furnish to the accused or his attorney the results of any investigation that has been conducted by it and that is related in any way to a crime for which the person is accused. In any case in which an attorney of record for a person accused of violation of any criminal law of the Commonwealth, or the accused, may desire a scientific investigation, he shall, by motion filed before the court in which the charge is pending, certify that in good faith he believes that a scientific investigation may be relevant to the criminal charge. The motion shall be heard *ex parte* as soon as practicable, and the court shall, after a hearing upon the motion and being satisfied as to the correctness of the certification, order that the same be performed by the Department or the Division of Consolidated Laboratory Services and shall prescribe in its order the method of custody, transfer, and return of evidence submitted for scientific investigation. Upon the request of the attorney for the Commonwealth of the jurisdiction in which the charge is pending, he shall be furnished the results of the scientific investigation.

§ 9.1-1105. Reexamination by independent experts.

Independent experts employed by (i) an attorney of record for a person accused of violation of any criminal law of the Commonwealth or (ii) the accused, for the purpose of reexamination of materials previously examined in any laboratory of the Department, shall conduct their analyses or examinations independently of the facilities, equipment, or supplies of the Department.

§ 9.1-1106. Disposal of certain hazardous materials.

Any material that is seized in any criminal investigation and that is deemed to be hazardous to health and safety, may be disposed of upon written application of the Department to the attorney for the Commonwealth in the city or county where the material is seized or where any criminal prosecution in which the material is proposed to be evidence is pending. Upon receipt thereof, the attorney for the Commonwealth shall file the application in the circuit court of such county or city. A sworn analysis report signed by a person designated by the Director of the Department shall accompany the application for disposal and shall clearly identify and designate the material to be disposed of. The application shall state the nature of the hazardous materials, the quantity thereof, the location where seized, the person from whom the materials were seized, and the manner whereby the materials shall be destroyed.

When the ownership of the hazardous material is known, notice shall be given to the owner at least three days prior to any hearing relating to the destruction, and, if any criminal charge is pending in any court as a result of the seizure, the notice shall be given to the accused if other than the owner.

Upon receipt of the analysis report and the application, the court may order the destruction of all, or a part of, the material. However, a sufficient and representative quantity of the material shall be retained to permit an independent analysis when a criminal prosecution may result from the seizure. A return under oath, reporting the time, place, and manner of destruction, shall be made to the courts. Copies of the analysis report, application, order, and return shall be made a part of the record of any criminal prosecution. The sworn analysis report shall be admissible as evidence to the same extent as the disposed-of material would have been admissible.

§ 9.1-1107. Disposal of certain other property after analysis.

Personal property, including drugs, not disposed of under § 9.1-1106, that has been submitted to the Department for analysis or examination and that has not been reclaimed by the agency submitting the property for analysis or examination, may be disposed of by the Department in accordance with this section if, after the expiration of 120 days after the receipt by the Department of the property, the Director notifies the circuit court of the county or city from which the property was taken, in writing, that the analysis or examination has been completed, and a report submitted to the agency that the property has not been reclaimed by the agency submitting it and that the Department proposes to

*dispose of the property. The notice shall state the nature of the property, the quantity thereof, the location where seized, the name of the accused, if known, and the proposed method of disposing of the property.*

*When the ownership of the property is known, a copy of the notice shall be sent simultaneously with the notice to the court to the owner, or, if any criminal charge is pending in any court relating to the property, the copy shall be sent to the accused at his last known address. Notice shall be by certified mail. The court, within 30 days after receipt of the notice, may direct that the property be disposed of by the Department, by an alternative method designed to preserve the property, at the expense of the agency submitting the property to the Department. If the court does not so direct within the 30-day period, then the Department may dispose of the property by the method set out in the notice. Copies of the analysis report and notice shall be made a part of the record of any criminal prosecution. The report, if sworn to, shall be admissible as evidence to the same extent as the disposed-of property would have been admissible.*

*§ 9.1-1108. Disposal of property held by Department for more than 15 years.*

*Notwithstanding the provisions of §§ 9.1-1106 and 9.1-1107, the Department may file an application in the Circuit Court of the City of Richmond seeking an order authorizing the disposal of all personal property, including drugs, received by the Department more than 15 years prior to the filing of the application. The application, under oath, shall list each item of property, the date of submission to the Department, the agency or individual submitting the property, any previous court orders entered regarding the storage of the property, and the proposed method of disposal. The application shall also state that written notice by first-class mail was given to each agency or individual submitting property listed at least 30 days prior to the application, and that no agency or individual objected to the disposal. A return, under oath, reporting the time, place, and manner of disposal, shall be made to the court.*

## *Article 2.*

### *Forensic Science Board.*

*§ 9.1-1109. Forensic Science Board; membership.*

*A. The Forensic Science Board (the Board) is established as a policy board within the meaning of § 2.2-2100, in the executive branch of state government. The Board shall consist of 13 members as follows:*

- 1. The Superintendent of the State Police or his designee;*
- 2. The Director of the Department of Criminal Justice Services or his designee;*
- 3. The Chief Medical Examiner or his designee;*
- 4. The Executive Director of the Virginia Board of Pharmacy or his designee;*
- 5. The Attorney General, or his designee;*
- 6. The Executive Secretary of the Supreme Court of Virginia or his designee;*
- 7. The Chairman of the Virginia State Crime Commission or his designee;*
- 8. The Chairman of the Board of the Virginia Institute of Forensic Science and Medicine or his designee;*
- 9. Two members of the Scientific Advisory Committee, chosen by the chairman of that committee; and*

*10. Three members, appointed by the Governor, from among the citizens of the Commonwealth as follows:*

- a. A member of law enforcement;*
- b. A member of the Virginia Commonwealth's Attorneys Association; and*
- c. A member who is a criminal defense attorney having specialized knowledge in the area of forensic sciences.*

*B. The legislative members shall serve for terms coincident with their terms of office. The members appointed by the Governor shall serve for terms of four years, provided that no member shall serve beyond the time when he holds the office or employment by reason of which he was initially eligible for appointment. Any vacancy on the Board shall be filled in the same manner as the original appointment, but for the unexpired term.*

*C. Notwithstanding any provision of any statute, ordinance, local law, or charter provision to the contrary, membership on the Board shall not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.*

*D. The Board shall elect its chairman and vice chairman. A majority of the members shall constitute a quorum. Members shall be paid reasonable and necessary expenses incurred in the performance of their duties. Legislative members shall receive compensation as provided in § 30-19.12 and nonlegislative citizen members shall receive compensation for their services as provided in §§ 2.2-2813 and 2.2-2825.*

*E. The Board shall hold no less than four regular meetings a year. Subject to the requirements of this subsection, the chairman of the Board shall fix the times and places of meetings, either on his own motion or upon written request of any five members of the Board.*

*§ 9.1-1110. Functions of Forensic Science Board.*

*A. The Board shall have the power and duty to:*

*1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of (i) this chapter or (ii) §§ 18.2-268.6, 18.2-268.9, 19.2-188.1, and 19.2-310.5 and for any provisions of the Code as they relate to the responsibilities of the Department. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information or DNA identification shall be submitted for review and comment to any board, commission, or committee or other body that may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;*

*2. Develop and establish program and fiscal standards and goals governing the operations of the Department;*

*3. Ensure the development of long-range programs and plans for the incorporation of new technologies as they become available;*

*4. Review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds;*

*5. Monitor the activities of the Department and its effectiveness in implementing the standards and goals of the Board;*

*6. Advise the Governor, Director, and General Assembly on matters relating to the Department and forensic science in general;*

*7. Review, amend, and approve recommendations of the Scientific Advisory Committee;*

*8. Receive, administer, and expend all funds and other assistance available for carrying out the purposes of this chapter;*

*9. Approve Department applications for grants from the United States government or any other source in carrying out the purposes of this chapter and approve of acceptance of any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. The report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;*

*10. Monitor all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth; and*

*11. Recommend actions to foster and promote coordination and cooperation between the Department and the user programs that are served.*

*B. By November 1 of each year, the Board shall review and make recommendations to the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance, and the Crime Commission concerning:*

*1. New major programs and plans for the activities of the Department and elimination of programs no longer needed;*

*2. Policy and priorities in response to agency needs;*

*3. General fiscal year operational budget and any major changes in appropriated funds;*

*4. Actions to foster and promote coordination and cooperation between the Department and the user programs which are served;*

*5. Rules and regulations necessary to carry out the purposes and intent of this chapter; and*

*6. Any recommendations submitted to the Board or the Director by the Scientific Advisory Committee.*

*§ 9.1-1111. Scientific Advisory Committee; membership.*

*The Scientific Advisory Committee is hereby established as an advisory board within the meaning of § 2.2-2100, in the executive branch of state government. The Scientific Advisory Committee (the Committee) shall consist of 13 members, consisting of the Director of the Department, and 12 members appointed by the Governor as follows: a director of a private or federal forensic laboratory located in the Commonwealth; a forensic scientist or any other person, with an advanced degree, who has received substantial education, training, or experience in the subject of laboratory standards or quality assurance regulation and monitoring; a forensic scientist with an advanced degree who has received substantial education, training, or experience in the discipline of molecular biology; a forensic scientist with an advanced degree and having experience in the discipline of population genetics; a scientist with an advanced degree and having experience in the discipline of forensic chemistry; a scientist with an advanced degree and having experience in the discipline of forensic biology; a forensic scientist or any other person, with an advanced degree who has received substantial education, training, or experience in the discipline of trace evidence; a scientist with a doctoral degree and having experience in the discipline of forensic toxicology, who is certified by the American Board of Forensic Toxicologists; a*

*member of the Board of the International Association for Identification; a member of the Board of the Association of Firearms and Toolmark Examiners; a member of the International Association of Chemical Testing; and a member of the American Society of Crime Laboratory Directors.*

*Members of the Committee initially appointed shall serve the following terms: four members shall serve a term of one year, four members shall serve a term of two years, and four members shall serve a term of four years. Thereafter, all appointments shall be for a term of four years. A vacancy other than by expiration of term shall be filled by the Governor for the unexpired term.*

*Members of the Committee shall be paid reasonable and necessary expenses incurred in the performance of their duties, and shall receive compensation for their services as provided in §§ 2.2-2813 and 2.2-2825.*

*§ 9.1-1112. Meetings and chairman.*

*The Committee shall meet twice a year in the City of Richmond and at such other times and places as it determines or as directed by the Governor or the Forensic Science Board. A chairman shall be elected from among the members appointed by the Governor. Staff to the Committee shall be provided by the Department of Forensic Science.*

*§ 9.1-1113. Functions of the Scientific Advisory Committee.*

*A. The Committee may review laboratory operations of the Department and make recommendations concerning the quality and timeliness of services furnished to user agencies.*

*B. The Committee shall review and make recommendations as necessary to the Director of the Department and the Forensic Science Board concerning:*

- 1. New scientific programs, protocols, and methods of testing;*
- 2. Plans for the implementation of new programs, sustaining existing programs and improving upon them where possible, and the elimination of programs no longer needed;*
- 3. Protocols for testing and examination methods, and guidelines for the presentation of results in court; and*
- 4. Qualification standards for the various scientists of the Department, including the Director.*

*C. Upon request of the Director of the Department, the Forensic Science Board, or the Governor, the Committee shall review analytical work, reports, and conclusions of scientists employed by the Department. The Committee shall recommend to the Forensic Science Board a review process for the Department to use in instances where there has been an allegation of misidentification or other testing error made by the Department during its examination of evidence.*

*§ 18.2-267. Preliminary analysis of breath to determine alcoholic content of blood.*

*A. Any person who is suspected of a violation of §§ 18.2-266, 18.2-266.1 or § 18.2-272 shall be entitled, if such equipment is available, to have his breath analyzed to determine the probable alcoholic content of his blood. The person shall also be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. His breath may be analyzed by any police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department in the normal discharge of his duties.*

*B. The Department of ~~Criminal Justice Services~~, Division of Forensic Science, shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.*

*C. Any person who has been stopped by a police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department and is suspected by such officer to be guilty of a violation of §§ 18.2-266, 18.2-266.1 or § 18.2-272, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under §§ 18.2-266, 18.2-266.1 or § 18.2-272.*

*D. Whenever the breath sample analysis indicates that alcohol is present in the person's blood, the officer may charge the person with a violation of §§ 18.2-266, 18.2-266.1 or § 18.2-272, or a similar ordinance of the county, city or town where the arrest is made. The person so charged shall then be subject to the provisions of §§ 18.2-268.1 through 18.2-268.12, or of a similar ordinance of a county, city or town.*

*E. The results of the breath analysis shall not be admitted into evidence in any prosecution under §§ 18.2-266, 18.2-266.1 or § 18.2-272, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of §§ 18.2-266, 18.2-266.1 or § 18.2-272.*

*F. Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of §§ 18.2-266, 18.2-266.1 or § 18.2-272, advise the person of his rights under the provisions of this section.*

*G. Nothing in this section shall be construed as limiting the provisions of §§ 18.2-268.1 through 18.2-268.12.*

*§ 18.2-268.1. Chemical testing to determine alcohol or drug content of blood; definitions.*

*As used in §§ 18.2-268.2 through 18.2-268.12, unless the context clearly indicates otherwise:*

*The phrase "alcohol or drug" means alcohol, a drug or drugs, or any combination of alcohol and a drug or drugs.*

The phrase "blood or breath" means either or both.

"Chief police officer" means the sheriff in any county not having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city, or the sergeant or chief of police of the town in which the charge will be heard, or their authorized representatives.

*"Department" means the Department of Forensic Science.*

"Director" means the Director of the ~~Division~~ Department of Forensic Science.

*"Division" means the Division of Forensic Science.*

"License" means any driver's license, temporary driver's license, or instruction permit authorizing the operation of a motor vehicle upon the highways.

"Ordinance" means a county, city or town ordinance.

§ 18.2-268.6. Transmission of blood samples.

The blood sample withdrawn pursuant to § 18.2-268.5 shall be placed in vials provided or approved by the ~~Division~~ Department of Forensic Science. The vials shall be sealed by the person taking the sample or at his direction. The person who seals the vials shall complete the prenumbered certificate of blood withdrawal forms and attach one form to each vial. The completed withdrawal certificate for each vial shall show the name of the accused, the name of the person taking the blood sample, the date and time the blood sample was taken and information identifying the arresting or accompanying officer. The vials shall be placed in a container provided by the ~~Division~~ Department, and the container shall be sealed to prevent tampering with the vials. The arresting or accompanying officer shall take possession of the container as soon as the vials are placed in the container and sealed, and shall promptly transport or mail the container to the ~~Division~~ Department.

§ 18.2-268.7. Transmission of blood test samples; use as evidence.

A. Upon receipt of a blood sample forwarded to the ~~Division~~ Department for analysis pursuant to § 18.2-268.6, the ~~Division~~ Department shall have it examined for its alcohol or drug or both alcohol and drug content and the Director shall execute a certificate of analysis indicating the name of the accused; the date, time and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided or approved by the ~~Division~~ Department and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug or both alcohol and drug content. The Director shall remove the withdrawal certificate from the vial, attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached. The certificate of analysis with the withdrawal certificate shall be returned to the clerk of the court in which the charge will be heard. After completion of the analysis, the ~~Division of Forensic Science~~ Department shall preserve the remainder of the blood until 90 days have lapsed from the date the blood was drawn. During this 90-day period, the accused may, by motion filed before the court in which the charge will be heard, with notice to the ~~Division~~ Department, request an order directing the ~~Division of Forensic Science~~ Department to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. The ~~Division~~ Department shall destroy the remainder of the blood sample if no notice of a motion to transmit the remaining blood sample is received during the 90-day period.

B. When a blood sample taken in accordance with the provisions of §§ 18.2-268.2 through 18.2-268.6 is forwarded for analysis to the ~~Division~~ Department, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court, in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence provided the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT).

Upon request of the person whose blood was analyzed, the test results shall be made available to him.

The Director may delegate or assign these duties to an employee of the ~~Division of Forensic Science~~ Department.

§ 18.2-268.8. Fees.

Payment for withdrawing blood shall not exceed \$25, which shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for a violation of §§ 18.2-266, 18.2-266.1 or § 18.2-272 or of a similar ordinance, or is placed under the purview of a probational, educational, or rehabilitational program as set forth in § 18.2-271.1, the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.

If the person whose blood sample was withdrawn is subsequently convicted for violation of §§ 18.2-266, 18.2-266.1 or § 18.2-272 or a similar ordinance, a fee of \$25 for testing the first blood sample

by the ~~Division~~ *Department* shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.

§ 18.2-268.9. Assurance of breath-test validity; use of test results as evidence.

To be capable of being considered valid as evidence in a prosecution under §§ 18.2-266, 18.2-266.1 or § 18.2-272, or a similar ordinance, chemical analysis of a person's breath shall be performed by an individual possessing a valid license to conduct such tests, with a type of equipment and in accordance with methods approved by the Department of ~~Criminal Justice Services~~, ~~Division of Forensic Science~~. The ~~Division~~ *Department* shall test the accuracy of the breath-testing equipment at least once every six months.

The ~~Division~~ *Department* shall establish a training program for all individuals who are to administer the breath tests. Upon a person's successful completion of the training program, the ~~Division~~ *Department* may license him to conduct breath-test analyses. Such license shall identify the specific types of breath test equipment upon which the individual has successfully completed training.

Any individual conducting a breath test under the provisions of § 18.2-268.2 shall issue a certificate which will indicate that the test was conducted in accordance with the ~~Division's~~ *Department's* specifications, the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate, the name of the accused, that prior to administration of the test the accused was advised of his right to observe the process and see the blood alcohol reading on the equipment used to perform the breath test, the date and time the sample was taken from the accused, the sample's alcohol content, and the name of the person who examined the sample. This certificate, when attested by the individual conducting the breath test, shall be admissible in any court in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such analysis. Any such certificate of analysis purporting to be signed by a person authorized by the ~~Division~~ *Department* shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it. A copy of the certificate shall be promptly delivered to the accused.

The officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, if otherwise qualified to conduct such test as provided by this section, may make the breath test or analyze the results.

§ 19.2-187. Admission into evidence of certain certificates of analysis.

In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, a certificate of analysis of a person performing an analysis or examination, performed in any laboratory operated by the Division of Consolidated Laboratory Services or the ~~Division~~ *Department* of Forensic Science or authorized by such ~~Division~~ *Department* to conduct such analysis or examination, or performed by the Federal Bureau of Investigation, the federal Postal Inspection Service, the federal Bureau of Alcohol, Tobacco and Firearms, the Naval Criminal Investigative Service, the National Fish and Wildlife Forensics Laboratory, the federal Drug Enforcement Administration, or the United States Secret Service Laboratory when such certificate is duly attested by such person, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided (i) the certificate of analysis is filed with the clerk of the court hearing the case at least seven days prior to the hearing or trial and (ii) a copy of such certificate is mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused at least seven days prior to the hearing or trial upon request made by such counsel to the clerk with notice of the request to the attorney for the Commonwealth. The request to the clerk shall be on a form prescribed by the Supreme Court and filed with the clerk at least ~~ten~~ 10 days prior to trial. In the event that a request for a copy of a certificate is filed with the clerk with respect to a case that is not yet before the court, the clerk shall advise the requester that he must resubmit the request at such time as the case is properly before the court in order for such request to be effective.

The certificate of analysis of any examination conducted by the ~~Division~~ *Department* of Forensic Science relating to a controlled substance or marijuana shall be mailed or forwarded by personnel of the ~~Division~~ *Department* of Forensic Science to the attorney for the Commonwealth of the jurisdiction where such offense may be heard. The attorney for the Commonwealth shall acknowledge receipt of the certificate on forms provided by the laboratory.

Any such certificate of analysis purporting to be signed by any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or signature or of the official character of the person whose name is signed to it.

§ 19.2-187.01. Certificate of analysis as evidence of chain of custody of material described therein.

A report of analysis duly attested by the person performing such analysis or examination in any laboratory operated by (i) the Division of Consolidated Laboratory Services, the ~~Division~~ *Department* of Forensic Science or any of its regional laboratories, or by any laboratory authorized by ~~either~~ *such* *Division or Department* to conduct such analysis or examination; (ii) the Federal Bureau of Investigation; (iii) the federal Bureau of Alcohol, Tobacco and Firearms; (iv) the Naval Criminal Investigative Service; (v) the federal Drug Enforcement Administration; (vi) the Postal Inspection Service; or (vii) the United States Secret Service shall be prima facie evidence in a criminal or civil proceeding as to the custody of the material described therein from the time such material is received by

an authorized agent of such laboratory until such material is released subsequent to such analysis or examination. Any such certificate of analysis purporting to be signed by any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or signature or of the official character of the person whose name is signed to it. The signature of the person who received the material for the laboratory on the request for laboratory examination form shall be deemed prima facie evidence that the person receiving the material was an authorized agent and that such receipt constitutes proper receipt by the laboratory for purposes of this section.

§ 19.2-187.2. Procedure for subpoena duces tecum of analysis evidence.

No subpoena duces tecum shall issue for the production of writings or documents used to reach the conclusion contained in a certificate of analysis prepared pursuant to § 19.2-187 except upon affidavit that the requested writings or documents are material. Upon a showing by the Commonwealth that the production of such writings and documents would place an undue burden on the ~~Division~~ Department of Forensic Science, the court may order that the subpoena duces tecum be satisfied by making the writings and documents available for inspection by the requesting party at the laboratory site where the analysis was performed or at the laboratory operated by the ~~Division~~ Department of Forensic Science which is closest to the court in which the case is pending.

§ 19.2-188.1. Testimony regarding identification of controlled substances.

In any preliminary hearing on a violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, any law-enforcement officer shall be permitted to testify as to the results of field tests which have been approved by the ~~Division~~ Department of Forensic Science pursuant to regulations adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), regarding whether or not any substance the identity of which is at issue in such hearing is a controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247.

§ 19.2-270.4:1. Storage, preservation and retention of human biological evidence in felony cases.

A. Notwithstanding any provision of law or rule of court, upon motion of a person convicted of a felony but not sentenced to death or his attorney of record to the circuit court that entered the judgment for the offense, the court shall order the storage, preservation, and retention of specifically identified human biological evidence or representative samples collected or obtained in the case for a period of up to ~~fifteen~~ 15 years from the time of conviction, unless the court determines, in its discretion, that the evidence should be retained for a longer period of time. Upon the filing of such a motion, the defendant may request a hearing for the limited purpose of identifying the human biological evidence or representative samples that are to be stored in accordance with the provisions of this section. Upon the granting of the motion, the court shall order the clerk of the circuit court to transfer all such evidence to the ~~Division~~ Department of Forensic Science. The ~~Division~~ Department of Forensic Science shall store, preserve, and retain such evidence. If the evidence is not within the custody of the clerk at the time the order is entered, the court shall order the governmental entity having custody of the evidence to transfer such evidence to the ~~Division~~ Department of Forensic Science. Upon the entry of an order under this subsection, the court may upon motion or upon good cause shown, with notice to the convicted person, his attorney of record and the attorney for the Commonwealth, modify the original storage order, as it relates to time of storage of the evidence or samples, for a period of time greater than or less than that specified in the original order.

B. In the case of a person sentenced to death, the court that entered the judgment shall, in all cases, order any human biological evidence or representative samples to be transferred by the governmental entity having custody to the ~~Division~~ Department of Forensic Science. The ~~Division~~ Department of Forensic Science shall store, preserve, and retain such evidence until the judgment is executed. If the person sentenced to death has his sentence reduced, then such evidence shall be transferred from the ~~Division~~ Department to the original investigating law-enforcement agency for storage as provided in this section.

C. Pursuant to standards and guidelines established by the ~~Division~~ Department of Forensic Science, the order shall state the method of custody, transfer and return of any evidence to insure and protect the Commonwealth's interest in the integrity of the evidence. Pursuant to standards and guidelines established by the ~~Division~~ Department of Forensic Science, the ~~Division~~ Department of Forensic Science, local law-enforcement agency or other custodian of the evidence shall take all necessary steps to preserve, store, and retain the evidence and its chain of custody for the period of time specified.

D. In any proceeding under this section, the court, upon a finding that the physical evidence is of such a nature, size or quantity that storage, preservation or retention of all of the evidence is impractical, may order the storage of only representative samples of the evidence. The ~~Division~~ Department of Forensic Science shall take representative samples, cuttings or swabbings and retain them. The remaining evidence shall be handled according to § 19.2-270.4 or as otherwise provided for in the Code.

E. An action under this section or the performance of any attorney representing the petitioner under this section shall not form the basis for relief in any habeas corpus or appellate proceeding. Nothing in this section shall create any cause of action for damages against the Commonwealth, or any of its political subdivisions or officers, employees or agents of the Commonwealth or its political subdivisions.

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

fee.

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. A fee of ~~twenty-five dollars~~ \$25 shall be charged for the withdrawal of this sample. The fee shall be taxed as part of the costs of the criminal case resulting in the felony conviction and one-half of the fee shall be paid into the general fund of the locality where the sample was taken and one-half of the fee shall be paid into the general fund of the state treasury. The assessment provided for herein shall be in addition to any other fees prescribed by law. The analysis shall be performed by the ~~Division of Forensic Science, Department of Criminal Justice Services~~ *Department of Forensic Science* or other entity designated by the ~~Division~~ *Department*. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the ~~Division~~ *Department* 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 the commission or attempted commission of a violent felony as defined in § 19.2-297.1 or a violation or attempt to commit 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~~ *Department* of Forensic Science or other entity designated by the ~~Division~~ *Department*. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the ~~Division~~ *Department* 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~~ *Department* 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~~ *Department* 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 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~~ *Department* 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.

§ 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 law-enforcement agency responsible for arrest booking in the jurisdiction. Samples shall be taken in accordance with procedures adopted by the ~~Division~~ *Department* 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~~ *Department* 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.

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~~ *Department* shall conduct the DNA analysis in accordance with procedures adopted by the ~~Division~~ *Department* 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~~ *Department* in accordance with specific procedures adopted by regulation of the ~~Division~~ *Department* 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~~ *Department* to validate or update the original analysis.

A report of the results of a DNA analysis conducted by the ~~Division~~ *Department* as authorized, including the profile and identifying information, shall be made and maintained at the ~~Division~~ *Department*. 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~~ *Department* 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~~ *Department* 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~~ *Department*.

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~~ *Department* 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~~ *Department* 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~~ *Department* 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~~ *Department* 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~~ *Department* 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.

§ 19.2-310.6. Unauthorized uses of DNA data bank; forensic samples; penalties.

Any person who, without authority, disseminates information contained in the data bank shall be guilty of a Class 3 misdemeanor. Any person who disseminates, receives, or otherwise uses or attempts to so use information in the data bank, knowing that such dissemination, receipt, or use is for a purpose other than as authorized by law, shall be guilty of a Class 1 misdemeanor.

Except as authorized by law, any person who, for purposes of having DNA analysis performed,

obtains or attempts to obtain any sample submitted to the ~~Division~~ *Department* of Forensic Science for analysis shall be guilty of a Class 5 felony.

§ 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 § 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~~ *Department of Forensic Science* 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.

§ 19.2-327.1. Motion by a convicted felon for scientific analysis of newly discovered or previously untested scientific evidence; procedure.

A. Notwithstanding any other provision of law or rule of court, any person convicted of a felony may, by motion to the circuit court that entered the original conviction, apply for a new scientific investigation of any human biological evidence related to the case that resulted in the felony conviction if: (i) the evidence was not known or available at the time the conviction became final in the circuit court or the evidence was not previously subjected to testing because the testing procedure was not available at the ~~Division~~ *Department* of Forensic Science at the time the conviction became final in the circuit court; (ii) the evidence is subject to a chain of custody sufficient to establish that the evidence has not been altered, tampered with, or substituted in any way; (iii) the testing is materially relevant, noncumulative, and necessary and may prove the convicted person's actual innocence; (iv) the testing requested involves a scientific method employed by the ~~Division~~ *Department* of Forensic Science; and (v) the convicted person has not unreasonably delayed the filing of the petition after the evidence or the test for the evidence became available at the ~~Division~~ *Department* of Forensic Science.

B. The petitioner shall assert categorically and with specificity, under oath, the facts to support the items enumerated in subsection A and (i) the crime for which the person was convicted, (ii) the reason or reasons the evidence was not known or tested by the time the conviction became final in the circuit court, and (iii) the reason or reasons that the newly discovered or untested evidence may prove the actual innocence of the person convicted. Such motion shall contain all relevant allegations and facts that are known to the petitioner at the time of filing and shall enumerate and include all previous records, applications, petitions, appeals and their dispositions.

C. The petitioner shall serve a copy of such motion upon the attorney for the Commonwealth. The Commonwealth shall file its response to the motion within ~~thirty~~ 30 days of the receipt of service. The court shall, no sooner than ~~thirty~~ 30 and no later than ~~ninety~~ 90 days after such motion is filed, hear the motion. Motions made by a petitioner under a sentence of death shall be given priority on the docket.

D. The court shall, after a hearing on the motion, set forth its findings specifically as to each of the items enumerated in subsections A and B and either (i) dismiss the motion for failure to comply with the requirements of this section or (ii) dismiss the motion for failure to state a claim upon which relief can be granted or (iii) order that the testing be done by the ~~Division~~ *Department* of Forensic Science based on a finding of clear and convincing evidence that the requirements of subsection A have been met.

E. The court shall order the tests to be performed by the ~~Division~~ *Department* of Forensic Science and prescribe in its order, pursuant to standards and guidelines established by the ~~Division~~ *Department*, the method of custody, transfer, and return of evidence submitted for scientific investigation sufficient to insure and protect the Commonwealth's interest in the integrity of the evidence. The results of any such testing shall be furnished simultaneously to the court, the petitioner and his attorney of record and the attorney for the Commonwealth. The ~~Division~~ *Department* of Forensic Science shall give testing priority to cases in which a sentence of death has been imposed. The results of any tests performed and any hearings held pursuant to this section shall become a part of the record.

F. Nothing in this section shall constitute grounds to delay setting an execution date pursuant to § 53.1-232.1 or to grant a stay of execution that has been set pursuant to § 53.1-232.1 (iii) or (iv).

G. An action under this section or the performance of any attorney representing the petitioner under this section shall not form the basis for relief in any habeas corpus proceeding or any other appeal. Nothing in this section shall create any cause of action for damages against the Commonwealth or any of its political subdivisions or any officers, employees or agents of the Commonwealth or its political subdivisions.

H. In any petition filed pursuant to this chapter, the defendant is entitled to representation by counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter 10 of this title.

§ 19.2-327.3. Contents and form of the petition based on previously unknown or untested human biological evidence of actual innocence.

A. The petitioner shall allege categorically and with specificity, under oath, the following: (i) the crime for which the petitioner was convicted, and that such conviction was upon a plea of not guilty or that the person is under a sentence of death or convicted of (1) a Class 1 felony, (2) a Class 2 felony or (3) any felony for which the maximum penalty is imprisonment for life; (ii) that the petitioner is actually innocent of the crime for which he was convicted; (iii) an exact description of the human

biological evidence and the scientific testing supporting the allegation of innocence; (iv) that the evidence was not previously known or available to the petitioner or his trial attorney of record at the time the conviction became final in the circuit court, or if known, the reason that the evidence was not subject to the scientific testing set forth in the petition; (v) the date the test results under § 19.2-327.1 became known to the petitioner or any attorney of record; (vi) that the petitioner or his attorney of record has filed the petition within 60 days of obtaining the test results under § 19.2-327.1; (vii) that the petitioner is currently incarcerated; (viii) the reason or reasons the evidence will prove that no rational trier of fact could have found proof of guilt beyond a reasonable doubt; and (ix) for any conviction that became final in the circuit court after June 30, 1996, that the evidence was not available for testing under ~~§ 9.1-124~~ 9.1-1104. The Supreme Court may issue a stay of execution pending proceedings under the petition. Nothing in this chapter shall constitute grounds to delay setting an execution date pursuant to § 53.1-232.1 or to grant a stay of execution that has been set pursuant to § 53.1-232.1 (iii) or (iv).

B. Such petition shall contain all relevant allegations of facts that are known to the petitioner at the time of filing and shall enumerate and include all previous records, applications, petitions, appeals and their dispositions. A copy of any test results shall be filed with the petition. The petition shall be filed on a form provided by the Supreme Court. If the petitioner fails to submit a completed form, the court may dismiss the petition or return the petition to the prisoner pending the completion of such form. The petitioner shall be responsible for all statements contained in the petition. Any false statement in the petition, if such statement is knowingly or willfully made, shall be a ground for prosecution and conviction of perjury as provided for in § 18.2-434.

C. The Supreme Court shall not accept the petition unless it is accompanied by a duly executed return of service in the form of a verification that a copy of the petition and all attachments has been served on the attorney for the Commonwealth of the jurisdiction where the conviction occurred and the Attorney General or an acceptance of service signed by these officials, or any combination thereof. The Attorney General shall have 30 days after receipt of the record by the clerk of the Supreme Court in which to file a response to the petition. The response may contain a proffer of any evidence pertaining to the guilt of the defendant that is not included in the record of the case, including evidence that was suppressed at trial.

D. The Supreme Court may, when the case has been before a trial or appellate court, inspect the record of any trial or appellate court action, and the Court may, in any case, award a writ of certiorari to the clerk of the respective court below, and have brought before the Court the whole record or any part of any record.

E. In any petition filed pursuant to this chapter, the defendant is entitled to representation by counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter 10 of this title.

§ 19.2-327.4. Determination by the Supreme Court for findings of fact by the circuit court.

If the Supreme Court determines from the petition, from any hearing on the petition, from a review of the records of the case, including the record of any hearing on a motion to test evidence pursuant to ~~§ 9.1-124~~ 9.1-1104, or from any response from the Attorney General that a resolution of the case requires further development of the facts under this chapter, the court may order the circuit court to conduct a hearing within ~~ninety~~ 90 days after the order has been issued to certify findings of fact with respect to such issues as the Supreme Court shall direct. The record and certified findings of fact of the circuit court shall be filed in the Supreme Court within ~~thirty~~ 30 days after the hearing is concluded. The petitioner or his attorney of record, the attorney for the Commonwealth and the Attorney General shall be served a copy of the order stating the specific purpose and evidence for which the hearing has been ordered.

§ 19.2-386.23. Disposal of seized controlled substances, marijuana and paraphernalia.

A. All controlled substances, imitation controlled substances, marijuana or paraphernalia, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, shall be forfeited and disposed of as follows:

1. Upon written application by the ~~Division~~ Department of Forensic Science the court may order the forfeiture of any such substance or paraphernalia to the ~~Division~~ Department for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice Drug Enforcement Administration and of the Board of Pharmacy once these purposes have been fulfilled.

2. In the event no application is made under subdivision 1 of this subsection, the court shall order the destruction of all such substances or paraphernalia, which order shall state the existence and nature of the substance or paraphernalia, the quantity thereof, the location where seized, the person or persons from whom the substance or paraphernalia was seized, if known, and the manner whereby such item shall be destroyed. However, the court may order that paraphernalia identified in subdivision 5 of § 18.2-265.1 not be destroyed and that it be given to a person or entity that makes a showing to the court of sufficient need for the property and an ability to put the property to a lawful and publicly beneficial use. A return under oath, reporting the time, place and manner of destruction shall be made to the court and to the Board of Pharmacy by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which the substance

or paraphernalia was used as evidence and shall, thereafter, be prima facie evidence of its contents. In the event a law-enforcement agency recovers, seizes, finds, is given or otherwise comes into possession of any such substances or paraphernalia that are not evidence in a trial in the Commonwealth, the chief law-enforcement officer of the agency may, with the written consent of the appropriate attorney for the Commonwealth, order destruction of same; provided that, a statement under oath, reporting a description of the substances and paraphernalia destroyed, and the time, place and manner of destruction is made to the chief law-enforcement officer and to the Board of Pharmacy by the officer to whom the order is directed.

B. No such substance or paraphernalia used or to be used in a criminal prosecution under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 shall be disposed of as provided by this section until all rights of appeal have been exhausted, except as provided in § 19.2-386.24.

§ 19.2-386.27. Forfeiture of firearms carried in violation of § 18.2-308.

Any weapon used in the commission of a violation of § 18.2-308 shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the ~~Division~~ *Department* of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § 19.2-386.29.

§ 19.2-387. Exchange to operate as a division of Department of State Police; authority of Superintendent of State Police.

A. The Central Criminal Records Exchange shall operate as a separate division within the Department of State Police and shall be the sole criminal record-keeping agency of the Commonwealth, except for (i) the Department of Juvenile Justice pursuant to Chapter 10 (§ 16.1-222 et seq.) of Title 16.1, (ii) the Department of Motor Vehicles, (iii) for purposes of the DNA data bank, the ~~Division~~ *Department* of Forensic Science and (iv) for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3 and 5 of § 53.1-136, the Virginia Parole Board.

B. The Superintendent of State Police is hereby authorized to employ such personnel, establish such offices, and acquire such equipment as shall be necessary to carry out the purposes of this chapter and is also authorized to enter into agreements with other state agencies for services to be performed for it by employees of such other agencies.

§ 19.2-389.1. Dissemination of juvenile record information.

Record information maintained in the Central Criminal Records Exchange pursuant to the provisions of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of this title, a presentence or post-sentence investigation report pursuant to § 19.2-264.5 or § 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation programs established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, for purposes of the administration of criminal justice as defined in § 9.1-101; and (vii) to the ~~Division~~ *Department* of Forensic Science to verify its authority to maintain the juvenile's sample in the DNA data bank pursuant to § 16.1-299.1.

§ 46.2-341.25. Preliminary analysis of breath of commercial drivers to determine alcohol content of blood.

A. Any person who is reasonably suspected of a violation of § 46.2-341.24 or of having any alcohol in his blood while driving or operating a commercial motor vehicle may be required by any law-enforcement officer to provide a sample of such person's breath for a preliminary screening to determine the probable alcohol content of his blood. Such person shall be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. Such breath may be analyzed by any police officer of the Commonwealth, or of any county, city, or town, or by any member of a sheriff's department in the normal discharge of his duties.

B. The Department of ~~Criminal Justice Services~~, ~~Division~~ Forensic Science, shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

C. If the breath sample analysis indicates that there is alcohol present in the person's blood, or if the person refuses to provide a sample of his breath for a preliminary screening, such person shall then be

subject to the provisions of §§ 46.2-341.26:1 through 46.2-341.26:11.

D. The results of a breath analysis conducted pursuant to this section shall not be admitted into evidence in any prosecution under § 46.2-341.24 or § 46.2-341.31, but may be used as a basis for charging a person for a violation of the provisions of § 46.2-341.24 or § 46.2-341.31.

E. The law-enforcement officer requiring the preliminary screening test shall advise the person of his obligations under this section and of the provisions of subsection C of this section.

§ 46.2-341.26:1. Use of chemical tests to determine alcohol or drug content of blood of commercial driver; definitions.

As used in §§ 46.2-341.26:2 through 46.2-341.26:11, unless the context clearly indicates otherwise:

The phrase "alcohol or drug" means alcohol, drug or drugs, or any combination of alcohol and a drug or drugs.

The phrase "blood or breath" means either or both.

"Chief police officer" means the sheriff in any county not having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city, or the sergeant or chief of police of the town in which the charge will be heard, or their authorized representatives.

"Department" means the Department of Forensic Science.

"Director" means the Director of the ~~Division~~ Department of Forensic Science.

"Division" means the ~~Division of Forensic Science~~.

§ 46.2-341.26:6. Transmission of blood samples.

The blood sample withdrawn pursuant to § 46.2-341.26:5 shall be placed in vials provided or approved by the ~~Division~~ Department of Forensic Science. The vials shall be sealed by the person taking the sample or at his direction. The person who seals the vials shall complete the prenumbered certificate of blood withdrawal forms and attach one form to each vial. The completed withdrawal certificate for each vial shall show the name of the suspect, the name of the person taking the blood sample, the date and time the blood sample was taken and information identifying the arresting or accompanying officer. The vials shall be placed in a container provided by the ~~Division~~ Department, and the container shall be sealed to prevent tampering with the vials. A law-enforcement officer shall take possession of the container as soon as the vials are placed in such container and sealed, and shall promptly transport or mail the container to the ~~Division~~ Department.

§ 46.2-341.26:7. Transmission of samples.

A. Upon receipt of a blood sample forwarded to the ~~Division~~ Department for analysis pursuant to § 46.2-341.26:6, the ~~Division~~ Department shall have it examined for its alcohol or drug content, and the Director shall execute a certificate of analysis indicating the name of the suspect; the date, time, and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided or approved by the ~~Division~~ Department and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug content. The Director or his representative shall remove the withdrawal certificate from the vial, attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached. The certificate of analysis with the withdrawal certificate shall be returned to the clerk of the court in which the charge will be heard. After completion of the analysis, the ~~Division of Forensic Science~~ Department shall preserve the remainder of the blood until 90 days have lapsed from the date the blood was drawn. During this 90-day period, the accused may, by motion filed before the court in which the charge will be heard, with notice to the ~~Division~~ Department, request an order directing the ~~Division of Forensic Science~~ Department to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. The ~~Division~~ Department shall destroy the remainder of the blood sample if no notice of a motion to transmit the remaining blood sample is received during the 90-day period.

B. When a blood sample taken in accordance with the provisions of §§ 46.2-341.26:2 through 46.2-341.26:6 is forwarded for analysis to the ~~Division~~ Department, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court, in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence provided the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT).

Upon request of the person whose blood or breath was analyzed, the test results shall be made available to him.

The Director may delegate or assign these duties to an employee of the ~~Division of Forensic Science~~ Department.

§ 46.2-341.26:9. Assurance of breath test validity; use as evidence.

To be capable of being considered valid in a prosecution under § 46.2-341.24 or § 46.2-341.31, chemical analysis of a person's breath shall be performed by an individual possessing a valid license to conduct such tests, with the type of equipment and in accordance with methods approved by the ~~Division~~ *Department* under the provisions of § 18.2-268.9.

Any individual conducting a breath test under the provisions of § 46.2-341.26:2 shall issue a certificate which includes the name of the suspect, the date and time the sample was taken from the suspect, the alcohol content of the sample, and the identity of the person who examined the sample. The certificate will also indicate that the test was conducted in accordance with the ~~Division's~~ *Department's* specifications and that the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate. The certificate, when attested by the authorized individual conducting the breath test, shall be admissible in any court in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such analysis. Any such certificate of analysis purporting to be signed by a person authorized by the ~~Division~~ *Department* shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it.

A copy of such certificate shall be promptly delivered to the suspect. The law-enforcement officer requiring the test or anyone with such officer at the time if otherwise qualified to conduct such test as provided by this section, may administer the breath test or analyze the results thereof.

§ 54.1-3404. Inventories of controlled substances required of certain persons; contents and form of record.

A. Except as set forth in subsection G, every person manufacturing, compounding, processing, selling, dispensing or otherwise disposing of drugs in Schedules I, II, III, IV or V shall take a complete and accurate inventory of all stocks of Schedules I through V drugs on the date he first engages in business. If there are no controlled substances on hand at that time, he shall record this fact as part of the inventory. An inventory taken by use of an oral recording device shall be promptly reduced to writing and maintained in a written, typewritten or printed form. Such inventory shall be made either as of the opening of business or as of the close of business on the inventory date.

B. After the initial inventory is taken, every person described herein shall take a new inventory at least every two years of all stocks on hand of Schedules I through V drugs. The biennial inventory shall be taken on any date which is within two years of the previous biennial inventory.

C. The record of such drugs received shall in every case show the date of receipt, the name and address of the person from whom received and the kind and quantity of drugs received, the kind and quantity of drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture. The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced.

D. The record of all drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Any person selling, administering, dispensing or otherwise disposing of such drugs shall make and sign such record at the time of each transaction. The keeping of a record required by or under the federal laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of any drugs lost, destroyed or stolen, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft. The form of records shall be prescribed by the Board.

E. Whenever any registrant or licensee discovers a theft or any other unusual loss of any controlled substance, he shall immediately report such theft or loss to the Board. If the registrant or licensee is unable to determine the exact kind and quantity of the drug loss, he shall immediately make a complete inventory of all Schedule I through V drugs.

Within 30 days after the discovery of a loss of drugs, the registrant or licensee shall furnish the Board with a listing of the kind, quantity and strength of such drugs lost.

F. All records required pursuant to this section shall be maintained completely and accurately for two years from the date of the transaction recorded.

G. Each person authorized to conduct chemical analyses using controlled substances in the ~~Division of Forensic Science within the Department of Criminal Justice Services~~ *Department of Forensic Science* shall comply with the inventory requirements set forth in subsections A through F; however, the following substances shall not be required to be included in such inventory: (i) controlled substances on hand at the time of the inventory in a quantity of less than one kilogram, other than a hallucinogenic controlled substance listed in Schedule I of this chapter; or (ii) hallucinogenic controlled substances, other than lysergic acid diethylamide, on hand at the time of the inventory in a quantity of less than 20 grams; or (iii) lysergic acid diethylamide on hand at the time of the inventory in a quantity of less than 0.5 grams. Further, no inventory shall be required of known or suspected controlled substances that have been received as evidentiary materials for analyses by the ~~Division of Forensic Science within the Department of Criminal Justice Services~~ *Department of Forensic Science*.

§ 54.1-3431. Admission into evidence of certain certificates of analysis.

In any administrative hearing, a certificate of analysis of a chemist, performed in any laboratory

operated by the ~~Division~~ *Department* of Forensic Science or authorized by such ~~Division~~ *Department* to conduct such analysis, when such certificate is attested by such chemist, shall be admissible as evidence. A copy of such certificate shall be delivered to the parties in interest at least seven days prior to the date fixed for the hearing.

Any certificate of analysis purporting to be signed by any chemist shall be admissible as evidence in such hearing without any proof of the seal or signature or of the official character of the chemist whose name is signed to it.

**2. That Article 2 (§§ 9.1-117 through 9.1-125) of Chapter 1 of Title 9.1 is repealed.**

**3. That as of July 1, 2005, the Department of Forensic Science shall be deemed successor in interest to the Division of Forensic Science of the Department of Criminal Justice Services to the extent that this act transfers powers and duties. All right, title and interest in and to any real or tangible personal property vested in the Division of Forensic Science of the Department of Criminal Justice Services shall be transferred to and taken as standing in the name of the Department of Forensic Science.**

**4. That the Governor may transfer an appropriation or any portion thereof within a state agency established, abolished, or otherwise affected by the provisions of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of this act.**

**5. That any general fund and nongeneral fund positions at the Division of Forensic Science of the Department of Criminal Justice Services on July 1, 2005, shall be transferred to the Department of Forensic Science to support the changes in organization or responsibility resulting from or required by the provisions of this act.**

**6. That all rules and regulations adopted by the Department of Criminal Justice Services which are in effect as of July 1, 2005, and which pertain to the subject of this act, shall remain in full force and effect until altered, amended, or rescinded by the Board of Forensic Science.**

**7. That on and after July 1, 2005, any reference in the Code of Virginia or in the Acts of Assembly to the Division of Forensic Science shall be construed to mean the Department of Forensic Science.**

**8. That the Department of Criminal Justice Services shall continue to provide administrative support services to the Department of Forensic Science.**

**9. That the Department of Criminal Justice Services and the Division of Forensic Science shall complete a Memorandum of Understanding detailing the activities related to the Division of Forensic Science becoming an independent agency. The Memorandum of Understanding shall include, but not be limited to, the transfer of existing equipment and personnel and such administrative services to be provided by the Department of Criminal Justice Services.**