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HOUSE BILL NO. 3034

Offered January 11, 2007

A BILL to amend and reenact §§ 9.1-176.1, 16.1-237, 19.2-303, 19.2-310.2, 19.2-310.3, and 53.1-145 of the Code of Virginia, relating to DNA analysis and data bank; penalty.

 Patron—Bell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-176.1, 16.1-237, 19.2-303, 19.2-310.2, 19.2-310.3, and 53.1-145 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-176.1. Duties and responsibilities of local probation officers.

A. Each local probation officer, for the localities served, shall:

1. Supervise and assist all local-responsible adult offenders, residing within the localities served and placed on local probation by any judge of any court within the localities served;

2. Ensure offender compliance with all orders of the court, including the requirement to perform community service;

3. Conduct, when ordered by a court, substance abuse screenings, or conduct or facilitate the preparation of assessments pursuant to state approved protocols;

4. Conduct, at his discretion, random drug and alcohol tests on any offender whom the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana, or the abuse of alcohol or prescribed medication;

5. Facilitate placement of offenders in substance abuse education or treatment programs or other education or treatment programs based on the needs of the offender;

6. Seek a *capias* from any judicial officer in the event of failure to comply with conditions of probation or supervision on the part of any offender provided that noncompliance resulting from intractable behavior presents a risk of flight, or a risk to public safety or to the offender;

7. Seek a motion to show cause for offenders requiring a subsequent hearing before the court;

8. Provide information to assist any law-enforcement officer with the return to custody of defendants placed on supervision for which a *capias* has been sought; ~~and~~

9. Keep such records and make such reports as required by the Department of Criminal Justice Services; ~~and~~

10. *Determine whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if no sample has been taken, require an offender to submit a sample for DNA analysis.*

B. Each local probation officer may provide the following optional services, as appropriate and when available resources permit:

1. Supervise local-responsible adult offenders placed on home incarceration with or without home electronic monitoring as a condition of probation;

2. Investigate and report on any local-responsible adult offender and prepare or facilitate the preparation of any other screening, assessment, evaluation, testing or treatment required as a condition of probation;

3. Monitor placements of local-responsible adults who are required to perform court-ordered community service at approved work sites;

4. Assist the courts, when requested, by monitoring the collection of court costs, fines and restitution to the victims of crime for offenders placed on local probation; and

5. Collect supervision and intervention fees pursuant to § 9.1-182 subject to local approval and the approval of the Department of Criminal Justice Services.

§ 16.1-237. Powers, duties and functions of probation and parole officers.

In addition to any other powers and duties imposed by this law, a probation or parole officer appointed hereunder shall:

A. Investigate all cases referred to him by the judge or any person designated so to do, and shall render reports of such investigation as required;

B. Supervise persons placed under his supervision and shall keep informed concerning the conduct and condition of every person under his supervision by visiting, requiring reports and in other ways, and shall report thereon as required;

C. Under the general supervision of the director of the court service unit, investigate complaints and accept for informal supervision cases wherein such handling would best serve the interests of all

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59 concerned;

60 D. Use all suitable methods not inconsistent with conditions imposed by the court to aid and
61 encourage persons on probation or parole and to bring about improvement in their conduct and
62 condition;

63 E. Furnish to each person placed on probation or parole a written statement of the conditions of his
64 probation or parole and instruct him regarding the same;

65 F. Keep records of his work and perform such other duties as the judge or other person designated
66 by the judge or the Director shall require;

67 G. Have the authority to administer oaths and take acknowledgements for the purposes of
68 §§ 16.1-259 and 16.1-260 to facilitate the processes of intake and petition; ~~and~~

69 H. Have the powers of arrest of a police officer and the power to carry a concealed weapon when
70 specifically so authorized by the judge; *and*

71 *I. Determine whether a blood, saliva, or tissue sample has been taken for each person placed on*
72 *probation or parole required to submit a sample pursuant to § 16.1-299.1 and, if no sample has been*
73 *taken, require a person placed on probation or parole to submit a sample for DNA analysis.*

74 § 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood,
75 saliva or tissue sample as condition of probation.

76 After conviction, whether with or without jury, the court may suspend imposition of sentence or
77 suspend the sentence in whole or part and in addition may place the defendant on probation under such
78 conditions as the court shall determine or may, as a condition of a suspended sentence, require the
79 defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused
80 by the offense for which convicted, or to perform community service, or both, under terms and
81 conditions which shall be entered in writing by the court. The judge, after convicting the defendant of a
82 felony, shall determine whether a copy of the defendant's fingerprints are on file at the Central Criminal
83 Records Exchange. In any case where fingerprints are not on file, the judge shall require that
84 fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central
85 Criminal Records Exchange under the provisions of subsection D of § 19.2-390. *The judge shall also*
86 *determine whether a sample of the defendant's blood, saliva, or tissue or an analysis of the sample is*
87 *stored in the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1*
88 *(§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2. In any case where a DNA sample or analysis is not*
89 *stored in the DNA data bank, the judge shall order that the required sample be taken before the*
90 *defendant is released from the custody of the sentencing court.*

91 After conviction and upon sentencing of an active participant or member of a criminal street gang,
92 the court may, as a condition for suspending the imposition of the sentence in whole or in part or for
93 placing the accused on probation, place reasonable restrictions on those persons with whom the accused
94 may have contact. Such restrictions may include prohibiting the accused from having contact with
95 anyone whom he knows to be a member of a criminal street gang, except that contact with a family or
96 household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

97 In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1,
98 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of
99 the sentence is suspended, the judge shall order that the period of suspension shall be for a length of
100 time at least equal to the statutory maximum period for which the defendant might originally have been
101 sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension
102 subject to revocation by the court. The conditions of probation may include such conditions as the court
103 shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of
104 subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court
105 shall order that at least three years of the probation include active supervision of the defendant under a
106 postrelease supervision program operated by the Department of Corrections, and for at least three years
107 of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS
108 (Global Positioning System) tracking device, or other similar device.

109 If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any
110 time before the sentence has been completely served, suspend the unserved portion of any such sentence,
111 place the person on probation for such time as the court shall determine, or otherwise modify the
112 sentence imposed.

113 If a person has been sentenced for a felony to the Department of Corrections but has not actually
114 been transferred to a receiving unit of the Department, the court which heard the case, if it appears
115 compatible with the public interest and there are circumstances in mitigation of the offense, may, at any
116 time before the person is transferred to the Department, suspend or otherwise modify the unserved
117 portion of such a sentence. The court may place the person on probation for such time as the court shall
118 determine.

119 § 19.2-310.2. Blood, saliva, or tissue sample required for DNA analysis upon conviction of a felony;
120 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 \$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. *This fee shall only be taxed once regardless of the number of samples taken.* The assessment provided for herein shall be in addition to any other fees prescribed by law. The analysis shall be performed by the Department of Forensic Science or other entity designated by the Department. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the 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. *A person required under this section to submit a sample for DNA analysis is not relieved from this requirement regardless of whether no blood, saliva, or tissue sample has been taken from the person or, if a sample has been taken, whether the sample or the results from the analysis of a sample cannot be found in the DNA data bank maintained by the Department of Forensic Science.*

The Department of Forensic Science shall conduct periodic reviews of the DNA data bank to determine the identity of persons, required under this section to submit a blood, saliva, or tissue sample, for whom no sample or analysis of a sample is contained in the DNA data bank. The Department of Forensic Science shall promptly report the results of these reviews to the Virginia Parole Board, the Virginia Department of Corrections, each probation and parole district established pursuant to Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1 and each community-based probation program established pursuant to § 9.1-174, the sentencing court, and state and local law-enforcement agencies. Upon receiving a report from the Department of Forensic Science that an analysis or sample of the DNA of a person who is required under this section to submit a sample is not contained in the DNA data bank and that, at the time of the report, the person is still subject to probation, parole, a suspended sentence, or any other form of postrelease supervision under Article 1 (§ 19.2-295 et seq.) of Chapter 18, the probation and parole district, the Virginia Parole Board, the Virginia Department of Corrections, or any other entity responsible for overseeing the postrelease supervision of the person shall request that the person submit a DNA sample for analysis. If the person fails to submit a sample within a reasonable time after such a request is made, this failure shall be a violation of the terms of the person's probation or other form of postrelease supervision, and the person's probation or postrelease supervision shall be revoked or terminated pursuant to § 19.2-295.2, 19.2-295.2:1, 19.2-303.3, 19.2-306, or § 53.1-175. If, at the time of the report, the person is no longer subject to probation, a suspended sentence, or any other form of postrelease supervision, the local law-enforcement agency for the locality where the person resides shall request that the person submit a DNA sample for analysis. If the person fails to submit a sample within a reasonable time after such a request is made, he is guilty of a Class 3 misdemeanor. Any charge filed against a person under this section shall be immediately dismissed if the person submits a blood, saliva, or tissue sample for DNA analysis.

§ 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; *however the required samples shall be withdrawn prior to the release of persons from the custody of 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

182 samples. The tube or envelope containing the sample shall be sealed and labeled with the subject's
183 name, social security number, date of birth, race and gender; the name of the person collecting the
184 sample; and the date and place of collection. The tubes or envelopes containing the samples shall be
185 secured to prevent tampering with the contents. The steps herein set forth relating to the taking,
186 handling, identification, and disposition of blood, saliva or tissue samples are procedural and not
187 substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be
188 transported to the Department of Forensic Science not more than 15 days following withdrawal and shall
189 be analyzed and stored in the DNA data bank in accordance with §§ 19.2-310.4 and 19.2-310.5.

190 § 53.1-145. Powers and duties of probation and parole officers.

191 In addition to other powers and duties prescribed by this article, each probation and parole officer
192 shall:

193 1. Investigate and report on any case pending in any court or before any judge in his jurisdiction
194 referred to him by the court or judge;

195 2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and
196 when available resources permit, placement of such persons in a substance abuse treatment program
197 which may include utilization of acupuncture and other treatment modalities, and furnish every such
198 person with a written statement of the conditions of his probation and instruct him therein; if any such
199 person has been committed to the Department of Mental Health, Mental Retardation and Substance
200 Abuse Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of
201 probation shall include the requirement that the person comply with all conditions given him by the
202 Department of Mental Health, Mental Retardation and Substance Abuse Services, and that he follow all
203 of the terms of his treatment plan;

204 3. Supervise and assist all persons within his territory released on parole or postrelease supervision,
205 secure, as appropriate and when available resources permit, placement of such persons in a substance
206 abuse treatment program which may include utilization of acupuncture and other treatment modalities,
207 and, in his discretion, assist any person within his territory who has completed his parole, postrelease
208 supervision, or has been mandatorily released from any correctional facility in the Commonwealth and
209 requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to
210 the community;

211 4. Arrest and recommit to the place of confinement from which he was released, or in which he
212 would have been confined but for the suspension of his sentence or of its imposition, for violation of
213 the terms of probation, post-release supervision pursuant to § 19.2-295.2 or parole, any probationer,
214 person subject to post-release supervision or parolee under his supervision, or as directed by the
215 Chairman, Board member or the court, pending a hearing by the Board or the court, as the case may be;

216 5. Keep such records, make such reports, and perform other duties as may be required of him by the
217 Director or by regulations prescribed by the Board of Corrections, and the court or judge by whom he
218 was authorized;

219 6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person
220 subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the
221 officer has reason to believe is engaged in the illegal use of controlled substances or marijuana or the
222 abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations
223 governing the officer's exercise of this authority shall be promulgated by the Board;

224 7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the
225 Board and upon the certification of appropriate training and specific authorization by a judge of a circuit
226 court;

227 8. Provide services in accordance with any contract entered into between the Department of
228 Corrections and the Department of Mental Health, Mental Retardation and Substance Abuse Services
229 pursuant to § 37.2-912; and

230 9. Pursuant to any contract entered into between the Department of Corrections and the Department
231 of Mental Health, Mental Retardation and Substance Abuse Services, probation and parole officers shall
232 have the power to provide intensive supervision services to persons placed on conditional release,
233 regardless of whether the person has any time remaining to serve on any criminal sentence, pursuant to
234 Chapter 9 (§ 37.2-900 et seq.); and

235 10. *Determine whether a blood, saliva or tissue sample has been taken for DNA analysis for each*
236 *person placed on probation or parole required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2*
237 *et seq.) of Chapter 18 of Title 19.2 and, if no sample has been taken, require a person placed on*
238 *probation or parole to submit a sample for DNA analysis.*

239 Nothing in this article shall require probation and parole officers to investigate or supervise cases
240 before general district or juvenile and domestic relations district courts.