

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 172

An Act to provide for the notification to certain individuals of the availability of physical evidence suitable for DNA testing for criminal justice purposes.

[S 1391]

Approved March 23, 2009

Whereas, a large number of archived Department of Forensic Science files from the years 1973 to 1988, prior to the availability of DNA testing, have been found to contain physical evidence potentially suitable for DNA testing; and

Whereas, DNA testing of physical evidence found in the case files of several individuals have shown those individuals to have been wrongfully convicted of a crime; and

Whereas, in December 2005, Governor Warner ordered a full review and DNA testing of any biological evidence remaining in the Department of Forensic Science's archived files for calendar years 1973 to 1988, inclusive; and

Whereas, over 5,000 of the archived files from those years have been found to contain physical evidence, 2,166 of the files are associated with a named suspect, and at least 941 of the files relate to cases that resulted in a criminal conviction; and

Whereas, during its 2008 Session, the General Assembly, through the Appropriation Act, directed the Forensic Science Board to ensure that all individuals who were convicted due to criminal investigations, for which case files for the years 1973 to 1988 were found to contain evidence possibly suitable for DNA testing, are informed that such evidence exists and is available for testing. The General Assembly further directed that all such individuals be informed of the testing status of the evidence in their case; and

Whereas, the Forensic Science Board, with the assistance of the Department of Forensic Science, the Department of Corrections, and the Department of State Police, have made significant efforts at accomplishing the notification through letters sent first class and return receipt requested mailings; and

Whereas, despite those efforts, it remains possible that a substantial number of individuals who are required to be notified will not be through the aforementioned mailing method; and

Whereas, making all reasonable efforts to properly notify the correct individuals of the existence and availability for testing of this physical evidence is vital to the integrity of the Commonwealth's criminal justice system and public trust in that system; and

Whereas, the General Assembly finds that it is appropriate and necessary that extraordinary means be utilized to accomplish complete and successful implementation of the notification program; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The Forensic Science Board shall continue to exercise all necessary diligence to expeditiously implement and achieve the goal of the program described in Item 408 B of Chapter 879 of the 2008 Acts of Assembly.*

§ 2. Notwithstanding any other provision of law to the contrary, the Forensic Science Board and other state agencies may receive and disseminate to individuals, state agencies, and private organizations involved in the completion of the program described in Item 408 B of Chapter 879 of the 2008 Acts of Assembly, (i) all Virginia criminal history record information, and (ii) any other information that may be necessary to the successful and timely completion of the program.

§ 3. All state agencies shall provide such assistance as may be requested by the Forensic Science Board to aid in the successful and timely completion of the program described in Item 408 B of Chapter 879 of the 2008 Acts of Assembly.

§ 4. To the extent available, the Forensic Science Board shall utilize the services of pro bono attorneys and may utilize the services of such other individuals, state agencies, or private organizations as the Forensic Science Board determines will assist in the successful and timely completion of the program described in Item 408 B of Chapter 879 of the 2008 Acts of Assembly for all individuals required to be notified. The services of such individuals shall include, but not be limited to, (i) verifying information concerning convictions to determine the individuals to be notified, (ii) notifying those individuals to whom notification has not been sent, (iii) notifying those categories of individuals as was determined by the Virginia State Crime Commission to be in need of additional notification efforts at its December 9, 2008, meeting, and (iv) notifying any additional individual for whom receipt of notification is otherwise uncertain, to be determined by the Chairman of the Virginia State Crime Commission.

§ 5. Any individual, state agency, or private organization volunteering services in the program pursuant to § 4 shall (i) execute a waiver of liability and a confidentiality agreement on forms prepared by the Attorney General of Virginia; (ii) participate in training, approved by the Virginia State Bar, on

the process, manner, and conduct of the notifications; and (iii) agree to fully report to the Forensic Science Board the results of notification efforts and other particulars of participation in the program. In addition, any attorney, or other person with whom a legally recognizable confidential or privileged relationship could be created, who participates in the program, shall agree that he will advise any person that he attempts to notify pursuant to the program that no confidential or privileged relationship created may impair the required reporting of the results of the notification and that all information relevant to the notification will be reported to the Forensic Science Board.

§ 6. The Office of the Attorney General shall prepare the forms required pursuant to § 5 within 30 days of enactment of this legislation. The training to be provided through the Virginia State Bar shall be available within 120 days of enactment. Any individual, state agency, or private organization volunteering services in the program pursuant to § 4 shall report the results of their notification efforts to the Forensic Science Board on or before October 1, 2009. The Forensic Science Board shall make a final report to the General Assembly, the Governor, and the Virginia State Crime Commission detailing the program, including, but not limited to, the notification procedures used, the number of individuals contacted, responses made by contacted individuals, resources utilized, and aggregated results of any DNA testing performed as a result of the notifications and responses, no later than December 1, 2009.

2. That an emergency exists and this act is in force from its passage.