

2009 SPECIAL SESSION I

INTRODUCED

090431568

HOUSE BILL NO. 5001

Offered August 19, 2009

Prefiled August 6, 2009

A *BILL to amend and reenact §§ 9.1-907, 9.1-1101, 18.2-268.2, 18.2-268.7, 18.2-268.9, 18.2-472.1, 19.2-187, 19.2-187.1, 19.2-243, 46.2-341.26:7, and 46.2-341.26:9 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-3.2, relating to admission of testimonial evidence in criminal matters.*

Patron—Janis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-907, 9.1-1101, 18.2-268.2, 18.2-268.7, 18.2-268.9, 18.2-472.1, 19.2-187, 19.2-187.1, 19.2-243, 46.2-341.26:7, and 46.2-341.26:9 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-3.2 as follows:

§ 9.1-907. Procedures upon a failure to register or reregister.

A. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered or, if the person failed to comply with the duty to register, in the jurisdiction in which the person was last convicted of an offense for which registration or reregistration is required or if the person was convicted of an offense requiring registration outside the Commonwealth, in the jurisdiction in which the person resides. The State Police shall forward to the jurisdiction an affidavit signed by the custodian of the records that such person failed to comply with the duty to register or reregister. Such affidavit shall be admitted into evidence, *upon compliance with the requirements of subsection D of § 18.2-472.1*, as prima facie evidence of the failure to comply with the duty to register or reregister in any trial or hearing for the violation of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

B. Nothing in this section shall prohibit a law-enforcement officer employed by a sheriff's office or police department of a locality from enforcing the provisions of this chapter, including obtaining a warrant, or assisting in obtaining an indictment for a violation of § 18.2-472.1. The local law-enforcement agency shall notify the State Police forthwith of such actions taken pursuant to this chapter or under the authority granted pursuant to this section.

C. The State Police shall physically verify or cause to be physically verified the registration information within 30 days of the initial registration and semiannually each year thereafter and within 30 days of a change of address of those persons who are not under the control of the Department of Corrections or Community Supervision as defined by § 53.1-1, who are required to register pursuant to this chapter. Whenever it appears that a person has provided false registration information, the State Police shall promptly investigate and, if there is probable cause to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered. The State Police shall forward to the jurisdiction an affidavit signed by the custodian of the records that such person failed to comply with the provisions of this chapter. Such affidavit shall be admitted into evidence, *upon compliance with the requirements of subsection D of § 18.2-472.1*, as prima facie evidence of the failure to comply with the provisions of this chapter in any trial or hearing for the violation of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

D. The Department of Corrections or Community Supervision as defined by § 53.1-1 shall physically verify the registration information within 30 days of the original registration and semiannually each year thereafter and within 30 days of a change of address of all persons who are under the control of the Department of Corrections or Community Supervision, who are required to register pursuant to this chapter. The Department of Corrections or Community Supervision, upon request, shall provide the State Police the verification information, in an electronic format approved by the State Police, regarding persons under their control who are required to register pursuant to the chapter. Whenever it appears that a person has provided false registration information, the Department of Corrections or Community Supervision shall promptly notify the State Police, who shall investigate and, if there is probable cause

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59 to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a
60 violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered. The State
61 Police shall forward to the jurisdiction an affidavit signed by the custodian of the records that such
62 person failed to comply with the provisions of this chapter. Such affidavit shall be admitted into
63 evidence, *upon compliance with the requirements of subsection D of § 18.2-472.1*, as prima facie
64 evidence of the failure to comply with the provisions of this chapter in any trial *or hearing* for the
65 violation of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency
66 of the jurisdiction of the person's last known residence as shown in the records of the State Police.

67 § 9.1-1101. Powers and duties of the Department.

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

74 B. The Department shall:

75 1. Provide forensic laboratory services to all law-enforcement agencies throughout the
76 Commonwealth and provide laboratory services, research, and scientific investigations for agencies of
77 the Commonwealth as needed; ~~and~~

78 2. *Assign at least one forensic scientist for each locality having a population of 100,000 or more,*
79 *according to the 2000 census, who shall be responsible for the conduct of forensic laboratory services*
80 *provided to law-enforcement agencies in such locality; and*

81 2.3. Establish and maintain a DNA testing program in accordance with Article 1.1 (§ 19.2-310.2 et
82 seq.) of Chapter 18 of Title 19.2 to determine identification characteristics specific to an individual.

83 C. The Department shall have the power and duty to:

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

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

90 3. Perform such other acts as may be necessary or convenient for the effective performance of its
91 duties.

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

94 § 18.2-268.2. Implied consent to post-arrest testing to determine drug or alcohol content of blood.

95 A. Any person, whether licensed by Virginia or not, who operates a motor vehicle upon a highway,
96 as defined in § 46.2-100, in the Commonwealth shall be deemed thereby, as a condition of such
97 operation, to have consented to have samples of his blood, breath, or both blood and breath taken for a
98 chemical test to determine the alcohol, drug, or both alcohol and drug content of his blood, if he is
99 arrested for violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance
100 within three hours of the alleged offense.

101 B. Any person so arrested for a violation of ~~clause (i) or (ii) of § 18.2-266 or both, § 18.2-266.1 or~~
102 ~~subsection B of § 18.2-272 or of a similar ordinance shall submit to a breath test or a blood test. If the~~
103 ~~breath test is unavailable or the person is physically unable to submit to the breath test, a blood test~~
104 ~~shall be given.~~ The accused shall, prior to administration of ~~the a~~ breath test, be advised by the person
105 administering the test that he has the right to observe the process of analysis and to see the
106 blood-alcohol reading on the equipment used to perform the breath test. If the equipment automatically
107 produces a written printout of the breath test result, the printout, or a copy, shall be given to the
108 accused.

109 C. A person, after having been arrested for a violation of clause (iii), (iv), or (v) of § 18.2-266 or
110 § 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance, may be required to submit to a
111 blood test to determine the drug or both drug and alcohol content of his blood. ~~When a person, after~~
112 ~~having been arrested for a violation of § 18.2-266 (i) or (ii) or both, submits to a breath test in~~
113 ~~accordance with subsection B or refuses to take or is incapable of taking such a breath test, he may be~~
114 ~~required to submit to tests to determine the drug or both drug and alcohol content of his blood if the~~
115 ~~law-enforcement officer has reasonable cause to believe the person was driving under the influence of~~
116 ~~any drug or combination of drugs, or the combined influence of alcohol and drugs.~~

117 § 18.2-268.7. Transmission of blood test samples; use as evidence.

118 A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to
119 § 18.2-268.6, the Department shall have it examined for its alcohol or drug or both alcohol and drug
120 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 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 *and shall contain notice of the right of the defendant to demand that the person who signed the certificate testify in a criminal proceeding.* 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 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 Department, request an order directing the Department to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. The 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 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 *and in any criminal proceeding, upon compliance with the requirements of § 19.2-187.1, 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 Department.

§ 18.2-268.9. Assurance of breath-test validity; use of breath-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 subsection B of § 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. The Department shall test the accuracy of the breath-testing equipment at least once every six months. *A record certifying (i) the dates on which such testing for accuracy was performed and (ii) whether the equipment was found to be accurate when tested, shall be maintained as a record of the Department. A copy of the record shall be sent to and maintained by the law-enforcement agency where such breath-testing equipment is located.*

The 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 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 *indicates* the test was conducted in accordance with the 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 *or in any criminal proceeding, upon compliance with the requirements of § 19.2-187.1, 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 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 *and shall contain notice of the right of the defendant to demand that the person who conducted the breath test testify in a criminal proceeding.* Copies of Department records relating to any breath test conducted pursuant to this section shall be admissible provided such copies are authenticated as true copies either by the custodian thereof or by

the person to whom the custodian reports.

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 administer the breath test and analyze the results.

§ 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima facie evidence.

A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of a sexually violent offense or murder as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 1 misdemeanor. A second or subsequent conviction for an offense under this subsection is a Class 6 felony.

B. Any person convicted of a sexually violent offense or murder, as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 6 felony. A second or subsequent conviction for an offense under this subsection is a Class 5 felony.

C. A prosecution pursuant to this section shall be brought in the city or county where the offender can be found or where the offender last registered or reregistered or, if the offender failed to comply with the duty to register, where the offender was last convicted of an offense for which registration or reregistration is required.

D. At any trial or hearing, other than a preliminary hearing, pursuant to this section, in which an affidavit from the State Police issued as required in § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister and, a copy of such affidavit shall be provided to the registrant or his counsel seven 21 days prior to hearing or trial by the attorney for the Commonwealth. *The attorney for the Commonwealth shall provide written notice to the registrant or his counsel at least 21 days prior to the hearing or trial that he intends to introduce such affidavit into evidence and that the registrant has the right to demand that the affiant testify. If the registrant or his counsel objects in writing to such introduction within 21 days of receipt of such notice, or at least 10 days prior to the hearing or trial, whichever is earlier, the Commonwealth shall summon the affiant and require him to be available at the trial or hearing. If the registrant or his counsel does not object in writing to the attorney for the Commonwealth within 21 days of receipt of such notice, or at least 10 days prior to the hearing or trial, whichever is earlier, the registrant shall have waived objection to introduction of the affidavit at the hearing or trial upon the basis of absence of the affiant.*

At any preliminary hearing pursuant to this section an affidavit from the State Police issued as required in § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister and a copy of such affidavit shall be provided to the registrant or his counsel seven days prior to hearing or trial by the attorney for the Commonwealth.

E. The accused in any hearing or trial in which an affidavit from the State Police issued as required in § 9.1-907 is admitted into evidence pursuant to this section shall have the right to call the custodian of records issuing the affidavit and examine him in the same manner as if he had been called as an adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.

F. For the purposes of this section any conviction for a substantially similar offense under the laws of (i) any foreign country or any political subdivision thereof, or (ii) any state or territory of the United States or any political subdivision thereof, the District of Columbia, or the United States shall be considered a prior conviction.

§ 19.2-3.2. Testimony by person preparing certificates of analysis, etc., using two-way electronic video and audio communication.

A. In any criminal proceeding where a certificate, affidavit, or other similar document may be admitted into evidence pursuant to § 18.2-268.9, 18.2-472.1, 19.2-187, or 19.2-188.1, the person who prepared the certificate, affidavit, or other similar document shall, upon motion of the attorney for the Commonwealth in the interest of substantial justice, for good cause shown, be permitted to have his testimony taken in a room outside the courtroom and be transmitted by two-way electronic video and audio communication, provided the courtroom and remote locale are outfitted with the equipment required for such communication.

B. The testimony of the person permitted to testify via two-way electronic video and audio communication shall be transmitted into the courtroom for the defendant, jury, judge, and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony. In addition, any two-way electronic video and audio communication system used pursuant to subsection A shall meet the standards set forth in subsection B of § 19.2-3.1.

C. Notwithstanding any other provision of law, none of the cost of the two-way electronic video and audio communication system shall be assessed against the defendant.

§ 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 Department of Forensic Science or authorized by such 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 requirements of § 19.2-187.1 have been satisfied, and (ii) the certificate of analysis is filed with the clerk of the court hearing the case at least seven 25 days prior to the hearing or trial.

A copy of such certificate shall be mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused at no charge at least seven 21 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 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 and shall contain notice of the right of the defendant to demand that the person who performed the analysis or examination testify at trial or in any hearing other than a preliminary hearing. If, upon proper request made by counsel of record for the accused, a copy of such certificate is not mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused in a timely manner in accordance with this section, the defendant shall be entitled to continue the hearing or trial.

The certificate of analysis of any examination conducted by the Department of Forensic Science relating to a controlled substance or marijuana shall be mailed or forwarded by personnel of the 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.

§ 19.2-187.1. Right to examine person performing analysis, or involved in chain of custody.

The accused in any hearing or trial, or hearing other than a preliminary hearing, in which a certificate of analysis is to be admitted into evidence pursuant to § 18.2-268.9, 19.2-187 or § 19.2-187.01 shall have the right to call the person performing may object to the introduction of such certificate of analysis or examination or involved in the chain of custody. If he objects in writing to the attorney for the Commonwealth within 21 days of receipt of the certificate, or at least 10 days prior to the hearing or trial, whichever is earlier, the Commonwealth shall summon the person who performed the analysis or examination and require him to be available at the hearing or trial as a witness therein; and. If the accused or his counsel does not object, the accused shall have waived objection to introduction of the certificate at the trial or hearing upon the basis of absence of the person who performed the analysis or examination. The accused may examine him such person in the same manner as if he had been called as an adverse witness by the accused. Such witness shall be summoned and appear at the cost of the Commonwealth.

The accused in any trial or hearing in which a certificate of analysis is admitted into evidence pursuant to § 19.2-187 or 19.2-187.01 shall have the right to call a person involved in the chain of custody as a witness therein and examine him in the same manner as if he had been called as an adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.

Nothing in this section shall be construed to prohibit or limit the right of a defendant to call as a witness in any hearing or trial the person who performed the analysis or examination and examine him in the same manner as if he had been called as an adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.

§ 19.2-243. Limitation on prosecution of felony due to lapse of time after finding of probable cause; misdemeanors; exceptions.

Where a district court has found that there is probable cause to believe that an adult has committed a felony, the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months from the date such probable cause was found by the district court; and if the accused is not held in custody but has been recognized for his appearance in the circuit court to answer for such offense, he shall be forever discharged from prosecution therefor if no trial is commenced in the circuit court within nine

305 months from the date such probable cause was found.

306 If there was no preliminary hearing in the district court, or if such preliminary hearing was waived
307 by the accused, the commencement of the running of the five and nine months periods, respectively, set
308 forth in this section, shall be from the date an indictment or presentment is found against the accused.

309 If an indictment or presentment is found against the accused but he has not been arrested for the
310 offense charged therein, the five and nine months periods, respectively, shall commence to run from the
311 date of his arrest thereon.

312 Where a case is before a circuit court on appeal from a conviction of a misdemeanor or traffic
313 infraction in a district court, the accused shall be forever discharged from prosecution for such offense if
314 the trial de novo in the circuit court is not commenced (i) within five months from the date of the
315 conviction if the accused has been held continuously in custody or (ii) within nine months of the date of
316 the conviction if the accused has been recognized for his appearance in the circuit court to answer for
317 such offense.

318 The provisions of this section shall not apply to such period of time as the failure to try the accused
319 was caused:

320 1. By his insanity or by reason of his confinement in a hospital for care and observation;

321 2. By the witnesses for the Commonwealth being enticed or kept away, or prevented from attending
322 by sickness or accident;

323 3. By the granting of a separate trial at the request of a person indicted jointly with others for a
324 felony;

325 4. By continuance granted on the motion of the accused or his counsel, or by concurrence of the
326 accused or his counsel in such a motion by the attorney for the Commonwealth, or by the failure of the
327 accused or his counsel to make a timely objection to such a motion by the attorney for the
328 Commonwealth, or by reason of his escaping from jail or failing to appear according to his
329 recognizance;

330 5. By the inability of the jury to agree in their verdict; ~~or~~

331 6. *By continuance granted on the motion of the Commonwealth, for good cause shown, to include*
332 *obtaining the presence of the person who performed an analysis or examination or who executed an*
333 *affidavit or certificate and whose testimony is required pursuant to § 18.2-268.9, 18.2-472.1 or*
334 *19.2-187.1; or*

335 7. By a natural disaster, civil disorder, or act of God.

336 But the time during the pendency of any appeal in any appellate court shall not be included as
337 applying to the provisions of this section.

338 For the purposes of this section, an arrest on an indictment or warrant or information or presentment
339 is deemed to have occurred only when such indictment, warrant, information, or presentment or the
340 summons or capias to answer such process is served or executed upon the accused and a trial is deemed
341 commenced at the point when jeopardy would attach or when a plea of guilty or nolo contendere is
342 tendered by the defendant. The lodging of a detainer or its equivalent shall not constitute an arrest under
343 this section.

344 § 46.2-341.26:7. Transmission of samples.

345 A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to
346 § 46.2-341.26:6, the Department shall have it examined for its alcohol or drug content, and the Director
347 shall execute a certificate of analysis indicating the name of the suspect; the date, time, and by whom
348 the blood sample was received and examined; a statement that the seal on the vial had not been broken
349 or otherwise tampered with; a statement that the container and vial were provided or approved by the
350 Department and that the vial was one to which the completed withdrawal certificate was attached; ~~and~~ a
351 statement of the sample's alcohol or drug content, *and shall contain notice of the right of the defendant*
352 *to demand that the person who signed the certificate testify in a criminal proceeding.* The Director or
353 his representative shall remove the withdrawal certificate from the vial, attach it to the certificate of
354 analysis and state in the certificate of analysis that it was so removed and attached. The certificate of
355 analysis with the withdrawal certificate shall be returned to the clerk of the court in which the charge
356 will be heard. After completion of the analysis, the Department shall preserve the remainder of the
357 blood until 90 days have lapsed from the date the blood was drawn. During this 90-day period, the
358 accused may, by motion filed before the court in which the charge will be heard, with notice to the
359 Department, request an order directing the Department to transmit the remainder of the blood sample to
360 an independent laboratory retained by the accused for analysis. The Department shall destroy the
361 remainder of the blood sample if no notice of a motion to transmit the remaining blood sample is
362 received during the 90-day period.

363 B. When a blood sample taken in accordance with the provisions of §§ 46.2-341.26:2 through
364 46.2-341.26:6 is forwarded for analysis to the Department, a report of the test results shall be filed in
365 that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with
366 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 *or in any criminal proceeding, upon compliance with the requirements of § 19.2-187.1, 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 Department.

§ 46.2-341.26:9. Assurance of breath test validity; use of breath test results 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 Department under the provisions of § 18.2-268.9. *The Department shall test the accuracy of the breath-testing equipment at least once every six months. A record certifying (i) the dates on which such testing of accuracy was performed and (ii) whether the equipment was found to be accurate when tested, shall be maintained as a record of the Department. A copy of the record shall be sent to and maintained by the law-enforcement agency where such breath-testing equipment is located.*

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~~ *shall* also indicate that the test was conducted in accordance with the 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 shall also contain notice of the right of the defendant to demand that the person who signed the certificate testify in a criminal proceeding.* 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 *or in any criminal proceeding, upon compliance with the requirements of § 19.2-187.1, 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 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.

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