

2009 SPECIAL SESSION I

INTRODUCED

090987404

HOUSE BILL NO. 5006

Offered August 19, 2009

Prefiled August 17, 2009

A *BILL to amend and reenact §§ 9.1-907, 9.1-1101, 16.1-277.1, 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, relating to admission into evidence of certificates of analysis and affidavits.*

Patrons—Albo and 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, 16.1-277.1, 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 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~~ a custodian of the records that such person failed to comply with the duty to register or reregister. ~~Such~~ *If such* affidavit ~~shall be~~ *is* admitted into evidence as, *it shall constitute* 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, *provided that in a trial or hearing other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H 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~~ a custodian of the records that such person failed to comply with the provisions of this chapter. ~~Such~~ *If such* affidavit ~~shall be~~ *is* admitted into evidence as, *it shall constitute* 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, *provided that in a trial or hearing other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H 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

INTRODUCED

HB5006

59 persons under their control who are required to register pursuant to the chapter. Whenever it appears that
60 a person has provided false registration information, the Department of Corrections or Community
61 Supervision shall promptly notify the State Police, who shall investigate and, if there is probable cause
62 to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a
63 violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered. The State
64 Police shall forward to the jurisdiction an affidavit signed by ~~the~~ a custodian of the records that such
65 person failed to comply with the provisions of this chapter. ~~Such~~ *If such* affidavit ~~shall be~~ *is* admitted
66 into evidence ~~as, it shall constitute~~ prima facie evidence of the failure to comply with the provisions of
67 this chapter in any trial *or hearing* for the violation of § 18.2-472.1, *provided that in a trial or hearing*
68 *other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been satisfied*
69 *and the accused has not objected to the admission of the affidavit pursuant to subsection H of*
70 *§ 18.2-472.1.* The State Police shall also promptly notify the local law-enforcement agency of the
71 jurisdiction of the person's last known residence as shown in the records of the State Police.

72 § 9.1-1101. Powers and duties of the Department.

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

79 B. The Department shall:

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

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

85 3. *Test the accuracy of equipment used to test the blood alcohol content of breath at least once every*
86 *six months.*

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

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

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

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

96 D. The Director may appoint and employ a deputy director and such other personnel as are needed
97 to carry out the duties and responsibilities conferred by this chapter. § 16.1-277.1. Time limitation.

98 A. When a child is held continuously in secure detention, he shall be released from confinement if
99 there is no adjudicatory or transfer hearing conducted by the court for the matters upon which he was
100 detained within twenty-one days from the date he was first detained.

101 B. If a child is not held in secure detention or is released from same after having been confined, an
102 adjudicatory or transfer hearing on the matters charged in the petition or petitions issued against him
103 shall be conducted within 120 days from the date the petition or petitions are filed.

104 C. When a child is held in secure detention after the completion of his adjudicatory hearing or is
105 detained when the juvenile court has retained jurisdiction as a result of a transfer hearing, he shall be
106 released from such detention if the disposition hearing is not completed within thirty days from the date
107 of the adjudicatory or transfer hearing.

108 D. The time limitations provided for in this section shall be tolled during any period in which (i) the
109 whereabouts of the child are unknown, (ii) the child has escaped from custody, or (iii) the child has
110 failed to appear pursuant to a court order. The limitations also may be extended by the court for a
111 reasonable period of time based upon good cause shown, provided that the basis for such extension is
112 recorded in writing and filed among the papers of the proceedings. *For the purposes of this section,*
113 *good cause includes, but is not limited to, extension of limitations necessary to obtain the presence of a*
114 *witness to testify regarding the results of scientific analyses or examinations.*

115 § 18.2-268.7. Transmission of blood test samples; use as evidence.

116 A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to
117 § 18.2-268.6, the Department shall have it examined for its alcohol or drug or both alcohol and drug
118 content and the Director shall execute a certificate of analysis indicating the name of the accused; the
119 date, time and by whom the blood sample was received and examined; a statement that the seal on the
120 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. 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. *In the case of a criminal proceeding, such return shall be made at least 21 days prior to the hearing or trial.*

B. 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.

BC. 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, *as evidence of the facts therein stated and of the results of such analysis (i) in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis provided the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any civil proceeding.* 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.

A. 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.~~

B. 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 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 *on equipment maintained as required by law and in accordance with the Department's specifications,* shall be admissible in any court *as evidence of the facts therein stated and of the results of such analysis (i) in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such analysis, provided that the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any civil proceeding.* 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. 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

182 the arrest of the accused, if otherwise qualified to conduct such test as provided by this section, may
183 administer the breath test and analyze the results.

184 § 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima
185 facie evidence.

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

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

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

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

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

208 F. *At any trial or hearing other than a preliminary hearing conducted pursuant to this section, an*
209 *affidavit from the State Police issued as required in § 9.1-907 shall constitute prima facie evidence of*
210 *the failure to comply with the duty to register or reregister, provided the requirements of subsection G*
211 *have been satisfied and the accused has not objected to the admission of the affidavit pursuant to*
212 *subsection H.*

213 G. *If the attorney for the Commonwealth intends to offer the affidavit into evidence at a trial or*
214 *hearing, other than a preliminary hearing, he shall:*

215 1. *Provide by mail, delivery, or otherwise a copy of the affidavit to counsel of record for the*
216 *accused, or to the accused if he is proceeding pro se, at no charge, no later than 28 days prior to the*
217 *hearing or trial;*

218 2. *Attach to the copy of the affidavit so provided under subdivision 1 a notice to the accused of his*
219 *right to object to having the affidavit admitted without the presence and testimony of a custodian of the*
220 *records; and*

221 3. *File a copy of the affidavit and notice with the clerk of the court hearing the matter on the day*
222 *that the affidavit and notice are provided to the accused.*

223 H. *The accused may object in writing to admission of the affidavit, in lieu of testimony, as evidence*
224 *of the facts stated therein. Such objection shall be filed with the court hearing the matter, with a copy*
225 *to the attorney for the Commonwealth, no more than 14 days after the affidavit and notice were filed*
226 *with the clerk by the attorney for the Commonwealth, or the objection shall be deemed waived. If timely*
227 *objection is made, the affidavit shall not be admissible into evidence unless (i) the objection is waived*
228 *by the accused or his counsel in writing or before the court, or (ii) the parties stipulate before the court*
229 *to the admissibility of the affidavit.*

230 I. *Where a custodian of the records is not available for hearing or trial and the attorney for the*
231 *Commonwealth has used due diligence to secure the presence of the person, the court shall order a*
232 *continuance. Any continuances ordered pursuant to this subsection shall total not more than 90 days if*
233 *the accused has been held continuously in custody and not more than 180 days if the accused has not*
234 *been held continuously in custody.*

235 J. *Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness*
236 *of the receipt of notice of his right to require the presence and testimony of a custodian of the records*
237 *shall be made before hearing or trial upon his receipt of actual notice unless the accused did not*
238 *receive actual notice prior to trial. A showing by the Commonwealth that the notice was mailed,*
239 *delivered, or otherwise provided in compliance with the time requirements of this section shall constitute*
240 *prima facie evidence that the notice was timely received by the accused. If the court finds upon the*
241 *accused's objection made pursuant to this subsection, that he did not receive timely notice pursuant to*
242 *subsection G, the accused's objection shall not be deemed waived and a continuance shall be ordered*
243 *pursuant to subsection I if requested by either party.*

FK. 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.

§ 19.2-187. 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, *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 the certificate of analysis is filed with the clerk of the court hearing the case at least seven days prior to the proceeding if (i) the attorney for the Commonwealth intends to offer it into evidence in a preliminary hearing, (ii) the accused intends to offer it into evidence in any hearing or trial, or (iii) the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, and the analysis or examination is 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 a person licensed by the Department of Forensic Science pursuant to § 18.2-268.9 or 46.2-341.26:9 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 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.*

A In a hearing or trial in which the provisions of subsection A of § 19.2-187.1 do not apply, 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 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 the hearing or 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. 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 accused 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. Procedures for notifying accused of certificate of analysis; waiver; continuances.

~~The accused in any hearing or trial 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 the person performing such analysis or examination or 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.~~

A. In any trial and in any hearing other than a preliminary hearing, in which the attorney for the Commonwealth intends to offer a certificate of analysis into evidence pursuant to § 19.2-187, the attorney for the Commonwealth shall:

1. Provide by mail, delivery, or otherwise a copy of the certificate to counsel of record for the accused, or to the accused if he is proceeding pro se, at no charge, no later than 28 days prior to the hearing or trial;

2. Attach to the copy of the certificate so provided under subdivision 1 a notice to the accused of his right to object to having the certificate admitted without the person who performed the analysis or examination being present and testify; and

3. File a copy of the certificate and notice with the clerk of the court hearing the matter on the day

305 *that the certificate and notice are provided to the accused.*

306 *B. The accused may object in writing to admission of the certificate of analysis, in lieu of testimony,*
307 *as evidence of the facts stated therein and of the results of the analysis or examination. Such objection*
308 *shall be filed with the court hearing the matter, with a copy to the attorney for the Commonwealth, no*
309 *more than 14 days after the certificate and notice were filed with the clerk by the attorney for the*
310 *Commonwealth or the objection shall be deemed waived. If timely objection is made, the certificate shall*
311 *not be admissible into evidence unless (i) the testimony of the person who performed the analysis or*
312 *examination is admitted into evidence describing the facts and results of the analysis or examination*
313 *during the Commonwealth's case-in-chief at the hearing or trial and that person is present and subject*
314 *to cross-examination by the accused, (ii) the objection is waived by the accused or his counsel in*
315 *writing or before the court, or (iii) the parties stipulate before the court to the admissibility of the*
316 *certificate.*

317 *C. Where the person who performed the analysis and examination is not available for hearing or*
318 *trial and the attorney for the Commonwealth has used due diligence to secure the presence of the*
319 *person, the court shall order a continuance. Any continuances ordered pursuant to this subsection shall*
320 *total not more than 90 days if the accused has been held continuously in custody and not more than*
321 *180 days if the accused has not been held continuously in custody.*

322 *D. Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness*
323 *of the receipt of notice of his right to require the presence and testimony of the person who performed*
324 *the analysis or examination shall be made before hearing or trial upon his receipt of actual notice*
325 *unless the accused did not receive actual notice prior to trial. A showing by the Commonwealth that the*
326 *notice was mailed, delivered, or otherwise provided in compliance with the time requirements of this*
327 *section shall constitute prima facie evidence that the notice was timely received by the accused. If the*
328 *court finds upon the accused's objection made pursuant to this subsection, that he did not receive timely*
329 *notice pursuant to subsection A, the accused's objection shall not be deemed waived and a continuance*
330 *shall be ordered pursuant to subsection C if requested by either party.*

331 *E. When the Commonwealth does not intend to offer such certificate of analysis into evidence, the*
332 *accused shall have the right to offer the certificate into evidence and to call as his witness in any*
333 *hearing or trial the person who performed the analysis or examination.*

334 *§ 19.2-243. Limitation on prosecution of felony due to lapse of time after finding of probable cause;*
335 *misdemeanors; exceptions.*

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

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

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

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

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

- 357 *1. By his insanity or by reason of his confinement in a hospital for care and observation;*
- 358 *2. By the witnesses for the Commonwealth being enticed or kept away, or prevented from attending*
359 *by sickness or accident;*
- 360 *3. By the granting of a separate trial at the request of a person indicted jointly with others for a*
361 *felony;*
- 362 *4. By continuance granted on the motion of the accused or his counsel, or by concurrence of the*
363 *accused or his counsel in such a motion by the attorney for the Commonwealth, or by the failure of the*
364 *accused or his counsel to make a timely objection to such a motion by the attorney for the*
365 *Commonwealth, or by reason of his escaping from jail or failing to appear according to his*
366 *recognizance;*

5. By continuance ordered pursuant to subsection I of § 18.2-472.1 or subsection C of § 19.2-187.1;

6. By the inability of the jury to agree in their verdict; or

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

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

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

§ 46.2-341.26:7. Transmission of samples.

A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to § 46.2-341.26:6, the 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 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. *In the case of a criminal proceeding, such return shall be made at least 21 days prior to the hearing or trial.* 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 §§ 46.2-341.26:2 through 46.2-341.26:6 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, *as evidence of the facts therein stated and of the results of such analysis (i) in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis provided that the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any civil proceeding.* 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 tests 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.

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 of analysis, when attested by the authorized individual conducting the breath test *on equipment maintained as required by law and in accordance with the Department's specifications*, shall be admissible in any court *as evidence of the facts therein stated and of the results of such analysis (i)*

428 in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such
429 analysis, provided that the requirements of subsection A of § 19.2-187.1 have been satisfied and the
430 accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or
431 (ii) in any civil proceeding. Any such certificate of analysis purporting to be signed by a person
432 authorized by the Department shall be admissible in evidence without proof of seal or signature of the
433 person whose name is signed to it.

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

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