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HOUSE BILL NO. 314

Offered January 13, 2010

Prefiled January 11, 2010

A BILL to amend and reenact § 19.2-310.5 of the Code of Virginia, relating to DNA data bank.

Patron—McClellan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-310.5 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-310.5. DNA data bank.

It shall be the duty of the Department to receive blood, saliva or tissue samples and to analyze, classify, and file the results of DNA identification characteristics profiles of blood, saliva or tissue samples submitted pursuant to § 19.2-310.2 or 19.2-310.2:1 and to make such information available as provided in this section. The results of an analysis and comparison of the identification characteristics from two or more blood, saliva or tissue samples shall be made available directly to federal, state and local law-enforcement officers upon request made in furtherance of an official investigation of any criminal offense, *or otherwise, in any criminal proceeding, upon order of a court of record.* The Department shall confirm whether or not there is a DNA profile on file for a specific individual if a federal, state or local law-enforcement officer requests that information in furtherance of an official investigation of any criminal offense, *or otherwise, in any criminal proceeding, upon order of a court of record.* A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested *and any court order* shall be maintained on file with the Department.

Upon his request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank.

Any person who has reason to believe that his DNA profile may be on file in the data bank may submit a request to the Department to determine whether his DNA profile is contained in the data bank. The Department shall inform the person as to whether his profile is on file in the data bank.

The Department shall adopt regulations governing (i) the methods of obtaining information from the data bank in accordance with this section and (ii) procedures for verification of the identity and authority of the requestor. The Department shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

The Department shall create a separate statistical data base comprised of DNA profiles of blood, saliva or tissue samples of persons whose identity is unknown. Nothing in this section or § 19.2-310.6 shall prohibit the Department from sharing or otherwise disseminating the information in the statistical data base with law-enforcement or criminal justice agencies within or without the Commonwealth.

The Department may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law-enforcement agency outside of the Commonwealth. *A person may challenge the inclusion of his profile in the data bank by petition to the circuit court of the county or city in which he resides, or if the person is not a resident of the Commonwealth, to the circuit court of the City of Richmond. Such petition shall include the reason why the person believes the inclusion of his profile is in contravention of law and certified copies of any relevant court orders shall be attached. The petition shall be served on the Department and on the Office of the Attorney General. If the circuit court finds that the profile is included in the data bank in contravention of law, the Department shall destroy all samples from the person and purge all records and identifiable information in the data bank pertaining to that person.*

INTRODUCED

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