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## SENATE BILL NO. 106

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on January 25, 2010)

(Patron Prior to Substitute—Senator McDougle)

*A BILL to amend and reenact §§ 18.2-472.1, 19.2-187, and 19.2-187.1 of the Code of Virginia, relating to affidavits and certificates of analysis.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-472.1, 19.2-187, and 19.2-187.1 of the Code of Virginia are amended and reenacted as follows:**

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

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

1. Provide by mail, delivery, or otherwise, a copy of the affidavit 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~~ *Provide simultaneously with* the copy of the affidavit so provided under subdivision 1 a notice to the accused of his right to object to having the affidavit admitted without the presence and testimony of a custodian of the records; and

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

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

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

60 been held continuously in custody.

61 J. Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness  
62 of the receipt of notice required by subsection G shall be made before hearing or trial upon his receipt  
63 of actual notice unless the accused did not receive actual notice prior to hearing or trial. A showing by  
64 the Commonwealth that the notice was mailed, delivered, or otherwise provided in compliance with the  
65 time requirements of this section shall constitute prima facie evidence that the notice was timely  
66 received by the accused. If the court finds upon the accused's objection made pursuant to this  
67 subsection, that he did not receive timely notice pursuant to subsection G, the accused's objection shall  
68 not be deemed waived and if the objection is made prior to hearing or trial, a continuance shall be  
69 ordered if requested by either party. Any continuance ordered pursuant to this subsection shall be subject  
70 to the time limitations set forth in subsection I.

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

75 § 19.2-187. Admission into evidence of certain certificates of analysis.

76 In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1  
77 (§ 19.2-386.1 et seq.) of this title, a certificate of analysis of a person performing an analysis or  
78 examination, duly attested by such person, shall be admissible in evidence as evidence of the facts  
79 therein stated and the results of the analysis or examination referred to therein, provided (i) the  
80 certificate of analysis is filed with the clerk of the court hearing the case at least seven days prior to the  
81 proceeding if the attorney for the Commonwealth intends to offer it into evidence in a preliminary  
82 hearing or the accused intends to offer it into evidence in any hearing or trial, or (ii) the requirements of  
83 subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of  
84 the certificate pursuant to subsection B of § 19.2-187.1, when any such analysis or examination is  
85 performed in any laboratory operated by the Division of Consolidated Laboratory Services or the  
86 Department of Forensic Science or authorized by such Department to conduct such analysis or  
87 examination, or performed by a person licensed by the Department of Forensic Science pursuant to  
88 § 18.2-268.9 or 46.2-341.26:9 to conduct such analysis or examination, or performed by the Federal  
89 Bureau of Investigation, the federal Postal Inspection Service, the federal Bureau of Alcohol, Tobacco  
90 and Firearms, the Naval Criminal Investigative Service, the National Fish and Wildlife Forensics  
91 Laboratory, the federal Drug Enforcement Administration, or the United States Secret Service  
92 Laboratory.

93 In a hearing or trial in which the provisions of subsection A of § 19.2-187.1 do not apply, a copy of  
94 such certificate shall be mailed or delivered by the clerk or attorney for the Commonwealth to counsel  
95 of record for the accused at no charge at least seven days prior to the hearing or trial upon request made  
96 by such counsel to the clerk with notice of the request to the attorney for the Commonwealth. The  
97 request to the clerk shall be on a form prescribed by the Supreme Court and filed with the clerk at least  
98 10 days prior to the hearing or trial. In the event that a request for a copy of a certificate is filed with  
99 the clerk with respect to a case that is not yet before the court, the clerk shall advise the requester that  
100 he must resubmit the request at such time as the case is properly before the court in order for such  
101 request to be effective. If, upon proper request made by counsel of record for the accused, a copy of  
102 such certificate is not mailed or delivered by the clerk or attorney for the Commonwealth to counsel of  
103 record for the accused in a timely manner in accordance with this section, the accused shall be entitled  
104 to continue the hearing or trial.

105 The certificate of analysis of any examination conducted by the Department of Forensic Science  
106 relating to a controlled substance or marijuana shall be mailed or forwarded by personnel of the  
107 Department of Forensic Science to the attorney for the Commonwealth of the jurisdiction where such  
108 offense may be heard. The attorney for the Commonwealth shall acknowledge receipt of the certificate  
109 on forms provided by the laboratory.

110 Any such certificate of analysis purporting to be signed by any such person shall be admissible as  
111 evidence in such hearing or trial without any proof of the seal or signature or of the official character of  
112 the person whose name is signed to it.

113 *For the purposes of this section and §§ 19.2-187.01, 19.2-187.1, and 19.2-187.2, the term "certificate*  
114 *of analysis" includes reports of analysis and requests for laboratory examination.*

115 § 19.2-187.1. Procedures for notifying accused of certificate of analysis; waiver; continuances.

116 A. In any trial and in any hearing other than a preliminary hearing, in which the attorney for the  
117 Commonwealth intends to offer a certificate of analysis into evidence *in lieu of testimony* pursuant to  
118 § 19.2-187, the attorney for the Commonwealth shall:

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

122 2. ~~Attach to~~ *Provide simultaneously with* the copy of the certificate so provided under subdivision 1  
123 a notice to the accused of his right to object to having the certificate admitted without the person who  
124 performed the analysis or examination being present and testifying; and

125 3. File a copy of the certificate and notice with the clerk of the court hearing the matter on the day  
126 that the certificate and notice are provided to the accused.

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

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

142 D. Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness  
143 of the receipt of notice required by subsection A shall be made before hearing or trial upon his receipt  
144 of actual notice unless the accused did not receive actual notice prior to hearing or trial. A showing by  
145 the Commonwealth that the notice was mailed, delivered, or otherwise provided in compliance with the  
146 time requirements of this section shall constitute prima facie evidence that the notice was timely  
147 received by the accused. If the court finds upon the accused's objection made pursuant to this  
148 subsection, that he did not receive timely notice pursuant to subsection A, the accused's objection shall  
149 not be deemed waived and if the objection is made prior to hearing or trial, a continuance shall be  
150 ordered if requested by either party. Any continuance ordered pursuant to this subsection shall be subject  
151 to the time limitations set forth in subsection C.

152 E. The accused in any hearing or trial in which a certificate of analysis is offered into evidence shall  
153 have the right to call the person performing such analysis or examination or involved in the chain of  
154 custody as a witness therein, and examine him in the same manner as if he had been called as an  
155 adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.