

11101119D

## HOUSE BILL NO. 2065

Offered January 12, 2011

Prefiled January 11, 2011

*A BILL to amend and reenact §§ 19.2-310.2 and 19.2-310.2:1 of the Code of Virginia, relating to DNA analysis of certain sex offenders.*

Patrons—Bell, Robert B., Athey, Cleaveland, Cox, J.A., Habeeb, Lingamfelter, Merricks and Miller, J.H.

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-310.2 and 19.2-310.2:1 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-310.2. Blood, saliva, or tissue sample required for DNA analysis upon conviction of a felony; fee.

A. Every person convicted of a felony on or after July 1, 1990, ~~and every person convicted of a felony offense under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 who was incarcerated on July 1, 1989, and every person convicted of a violation of (i) § 18.2-67.4 where the perpetrator is an adult and the victim is a minor, (ii) § 18.2-67.4:2, (iii) subsection C of § 18.2-67.5 where the perpetrator is an adult and the victim is a minor, or (iv) § 18.2-370.6~~ shall have a sample of his blood, saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. If a sample has been previously taken from the person as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken. The Department of Forensic Science shall provide to LIDS the most current information submitted to the DNA data bank on a weekly basis and shall remove from LIDS and the data bank persons no longer eligible to be in the data bank. A fee of \$25 shall be charged for the withdrawal of this sample. The fee shall be taxed as part of the costs of the criminal case resulting in the ~~felony~~ conviction and one-half of the fee shall be paid into the general fund of the locality where the sample was taken and one-half of the fee shall be paid into the general fund of the state treasury. This fee shall only be taxed one time regardless of the number of samples taken. The assessment provided for herein shall be in addition to any other fees prescribed by law. The analysis shall be performed by the Department of Forensic Science or other entity designated by the Department. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the Department in a DNA data bank and shall be made available only as provided in § 19.2-310.5.

B. After July 1, 1990, the blood, saliva or tissue sample shall be taken prior to release from custody. Notwithstanding the provisions of § 53.1-159, any person convicted of a felony who is in custody after July 1, 1990, shall provide a blood, saliva or tissue sample prior to his release. Every person so convicted after July 1, 1990, who is not sentenced to a term of confinement shall provide a blood, saliva or tissue sample as a condition of such sentence. A person required under this section to submit a sample for DNA analysis is not relieved from this requirement regardless of whether no blood, saliva, or tissue sample has been taken from the person or, if a sample has been taken, whether the sample or the results from the analysis of a sample cannot be found in the DNA data bank maintained by the Department of Forensic Science.

C. *Nothing in this section shall prevent the Department of Forensic Science from including the identification characteristics of an individual's DNA profile in the DNA data bank as ordered by a circuit court pursuant to a lawful plea agreement.*

D. A collection or placement of a sample for DNA analysis that was taken or retained in good faith does not invalidate the sample's use in the data bank pursuant to the provisions of this article. The detention, arrest, or conviction of a person based upon a data bank match or data bank information is not invalidated if it is determined that the sample was obtained, placed, or retained in the data bank in good faith, or if the conviction or juvenile adjudication that resulted in the collection of the DNA sample was subsequently vacated or otherwise altered in any future proceeding, including but not limited to post-trial or post-fact-finding motions, appeals, or collateral attacks.

~~DE.~~ The Virginia Department of Corrections and the Department of Forensic Science shall, on a quarterly basis, compare databases of offenders under the custody or supervision of the Department of Corrections with the DNA data bank of the Department of Forensic Science. The Virginia Department of Corrections shall require a DNA sample of those offenders under its custody or supervision if they are not identified in the DNA data bank.

~~EF.~~ Each community-based probation services agency established pursuant to § 9.1-174 shall

INTRODUCED

HB2065

59 determine by reviewing the Local Inmate Data System upon intake and again prior to discharge whether  
60 a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a  
61 sample pursuant to this section and, if no sample has been taken, require an offender to submit a sample  
62 for DNA analysis.

63 FG. The sheriff or regional jailer shall determine by reviewing the Local Inmate Data System upon  
64 intake and again prior to release whether a blood, saliva, or tissue sample has been taken for DNA  
65 analysis for each offender required to submit a sample pursuant to this section and, if no sample has  
66 been taken, require an offender to submit a sample for DNA analysis.

67 § 19.2-310.2:1. Saliva or tissue sample required for DNA analysis after arrest for a violent felony.

68 Every person arrested for the commission or attempted commission of a violent felony as defined in  
69 § 19.2-297.1 or a violation or attempt to commit a violation of § 18.2-31, 18.2-67.4:2, 18.2-89, 18.2-90,  
70 18.2-91, ~~or~~ 18.2-92, 18.2-370, 18.2-370.1, or 18.2-370.6, or a violation of § 18.2-67.4 where the  
71 perpetrator is an adult and the victim is a minor or subsection C of § 18.2-67.5 where the perpetrator is  
72 an adult and the victim is a minor shall have a sample of his saliva or tissue taken for DNA  
73 (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. After a  
74 determination by a magistrate or a grand jury that probable cause exists for the arrest, a sample shall be  
75 taken prior to the person's release from custody. The analysis shall be performed by the Department of  
76 Forensic Science or other entity designated by the Department. The identification characteristics of the  
77 profile resulting from the DNA analysis shall be stored and maintained by the Department in a DNA  
78 data bank and shall be made available as provided in § 19.2-310.5.

79 The clerk of the court shall notify the Department of final disposition of the criminal proceedings. If  
80 the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, the  
81 Department shall destroy the sample and all records thereof, provided there is no other pending  
82 qualifying warrant or capias for an arrest or felony conviction that would otherwise require that the  
83 sample remain in the data bank.