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## HOUSE BILL NO. 1617

Offered January 14, 2015

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A *BILL to amend and reenact §§ 16.1-299.1, 19.2-310.2, and 19.2-310.7 of the Code of Virginia, relating to DNA analysis upon conviction of certain Class 1 misdemeanors.*

Patron—Toscano

Referred to Committee for Courts of Justice

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

**1. That §§ 16.1-299.1, 19.2-310.2, and 19.2-310.7 of the Code of Virginia are amended and reenacted as follows:**

**§ 16.1-299.1. Sample required for DNA analysis upon conviction or adjudication of felony or certain misdemeanors.**

A juvenile convicted of a felony or a violation of § 18.2-67.4, subsection C of § 18.2-67.5, or § 18.2-130 or adjudicated delinquent on the basis of an act which that would be a felony or a violation of § 18.2-67.4, subsection C of § 18.2-67.5, or § 18.2-130 if committed by an adult shall have a sample of his blood, saliva, or tissue taken for DNA analysis, provided the juvenile was 14 years of age or older at the time of the commission of the offense.

The provisions of Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 shall apply to all persons and all DNA samples taken as required by this section, mutatis mutandis.

The Department of Juvenile Justice shall verify that a DNA sample required to be taken has been received by the Department of Forensic Science. In any case where a DNA sample has not been received, the Department of Juvenile Justice shall notify the court and the court shall require the person to submit a sample for DNA analysis.

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

A. Every person convicted of a felony on or after July 1, 1990, 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, (ii) § 18.2-67.4:2, (iii) subsection C of § 18.2-67.5, (iv) § 18.2-130 or (v) § 18.2-370.6 an offense punishable as a Class 1 misdemeanor under Article 2 (§ 18.2-38 et seq.) or 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of Title 18.2, § 18.2-47, Article 4 (§ 18.2-51 et seq.), 6 (§ 18.2-59 et seq.), or 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, Article 1 (§ 18.2-77 et seq.), 5 (§ 18.2-119 et seq.), or 6 (§ 18.2-137 et seq.) of Chapter 5 of Title 18.2, § 18.2-144, 18.2-146, 18.2-152.7:1, 18.2-152.15, or 18.2-164, Article 2 (§ 18.2-174 et seq.) of Chapter 6 of Title 18.2, § 18.2-186.2, 18.2-186.3, 18.2-186.4, 18.2-187.2, 18.2-188, 18.2-195, 18.2-197, 18.2-204.2, or 18.2-212, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2, § 18.2-248, 18.2-248.1, 18.2-248.4, 18.2-248.5, 18.2-250, 18.2-250.1, 18.2-251.4, 18.2-255.1, 18.2-255.2, 18.2-258.1, 18.2-258.2, 18.2-260, or 18.2-264, Article 1.1 (§ 18.2-265.1 et seq.), 1.2 (§ 18.2-265.6 et seq.), 1.3 (§ 18.2-265.19 et seq.), 2 (§ 18.2-266 et seq.), 4 (§ 18.2-279 et seq.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2, or § 18.2-346, 18.2-369, 18.2-370.01, 18.2-370.6, 18.2-386.1, 18.2-386.2, 18.2-387, 18.2-387.1, 18.2-461, 18.2-479, or 18.2-479.1 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 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 an offense listed in

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59 *subsection A* who is in custody after July 1, 1990, shall provide a blood, saliva or tissue sample prior to  
60 his release. Every person so convicted after July 1, 1990, who is not sentenced to a term of confinement  
61 shall provide a blood, saliva or tissue sample as a condition of such sentence. A person required under  
62 this section to submit a sample for DNA analysis is not relieved from this requirement regardless of  
63 whether no blood, saliva, or tissue sample has been taken from the person or, if a sample has been  
64 taken, whether the sample or the results from the analysis of a sample cannot be found in the DNA data  
65 bank maintained by the Department of Forensic Science.

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

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

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

81 F. Each community-based probation services agency established pursuant to § 9.1-174 shall determine  
82 by reviewing the Local Inmate Data System upon intake and again prior to discharge whether a blood,  
83 saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample  
84 pursuant to this section and, if no sample has been taken, require an offender to submit a sample for  
85 DNA analysis.

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

90 **§ 19.2-310.7. Expungement when DNA taken for a conviction.**

91 A person whose DNA profile has been included in the data bank pursuant to § 19.2-310.2 may  
92 request expungement on the grounds that the ~~felony~~ conviction on which the authority for including his  
93 DNA profile was based has been reversed and the case dismissed. The Department of Forensic Science  
94 shall purge all records and identifiable information in the data bank pertaining to the person and destroy  
95 all samples from the person upon receipt of (i) a written request for expungement pursuant to this  
96 section and (ii) a certified copy of the court order reversing and dismissing the conviction.

97 **2. That the provisions of this act shall apply only to persons convicted or adjudicated delinquent**  
98 **on or after July 1, 2015.**