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SENATE BILL NO. 57

Offered January 10, 2018

Prefiled November 27, 2017

A *BILL to amend and reenact §§ 18.2-460 and 19.2-310.2 of the Code of Virginia and to repeal § 18.2-479.1 of the Code of Virginia, relating to fleeing from a law-enforcement officer.*

Patron—DeSteph

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

**1. That §§ 18.2-460 and 19.2-310.2 of the Code of Virginia are amended and reenacted as follows:
§ 18.2-460. Obstructing justice; resisting arrest; fleeing from a law-enforcement officer; penalties.**

A. If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, or animal control officer employed pursuant to § 3.2-6555 in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the Commonwealth, witness, law-enforcement officer, or animal control officer employed pursuant to § 3.2-6555, he ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

B. Except as provided in subsection C, any person who, by threats or force, knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, or an animal control officer employed pursuant to § 3.2-6555 lawfully engaged in his duties as such, or to obstruct or impede the administration of justice in any court, is guilty of a Class 1 misdemeanor.

C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, lawfully engaged in the discharge of his duty, or to obstruct or impede the administration of justice in any court relating to a violation of or conspiracy to violate § 18.2-248 or subdivision (a) (3), (b) or (c) of § 18.2-248.1, or § 18.2-46.2 or § 18.2-46.3, or relating to the violation of or conspiracy to violate any violent felony offense listed in subsection C of § 17.1-805, he ~~shall be~~ *is* guilty of a Class 5 felony.

D. Any person who knowingly and willfully makes any materially false statement or representation to a law-enforcement officer or an animal control officer employed pursuant to § 3.2-6555 who is in the course of conducting an investigation of a crime by another is guilty of a Class 1 misdemeanor.

E. *Any person who intentionally prevents or attempts to prevent a law-enforcement officer from lawfully arresting him, with or without a warrant, is guilty of a Class 1 misdemeanor. For purposes of this subsection, intentionally preventing or attempting to prevent a lawful arrest means fleeing from a law-enforcement officer when (i) the officer applies physical force to the person or (ii) the officer communicates to the person that he is under arrest and (a) the officer has the legal authority and the immediate physical ability to place the person under arrest and (b) a reasonable person who receives such communication knows or should know that he is not free to leave.*

§ 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 misdemeanor violation of § 16.1-253.2, 18.2-60.3, 18.2-60.4, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-102, 18.2-121, 18.2-130, 18.2-370.6, 18.2-387, or 18.2-387.1; or ~~18.2-479.1 subsection E of § 18.2-460~~ 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 \$53 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 \$15 of the fee shall be paid into the general fund of the locality where the sample was taken and \$38 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.

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59 The identification characteristics of the profile resulting from the DNA analysis shall be stored and
60 maintained by the Department in a DNA data bank and shall be made available only as provided in
61 § 19.2-310.5.

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

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

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

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

86 F. The Department of State Police shall verify that a DNA sample required to be taken for the Sex
87 Offender and Crimes Against Minors Registry pursuant to § 9.1-903 has been received by the
88 Department of Forensic Science. In any instance where a DNA sample has not been received, the
89 Department of State Police or its designee shall obtain from the person required to register a sample for
90 DNA analysis.

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

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

100 **2. That § 18.2-479.1 of the Code of Virginia is repealed.**