

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 474

An Act to amend and reenact §§ 9.1-501, 18.2-268.7, and 46.2-341.26:7 of the Code of Virginia, relating to Department of Forensic Science; accrediting bodies.

[H 2118]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-501, 18.2-268.7, and 46.2-341.26:7 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-501. Conduct of investigation.

The provisions of this section shall apply whenever an investigation by an agency focuses on matters which could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law-enforcement officer:

1. Any questioning of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command of the investigating officer or at the office of the local precinct or police unit of the officer being investigated, unless matters being investigated are of such a nature that immediate action is required.

2. Prior to the officer being questioned, he shall be informed of (i) the name and rank of the investigating officer and of any individual to be present during the questioning and (ii) the nature of the investigation.

3. When a blood or urine specimen is taken from a law-enforcement officer for the purpose of determining whether the officer has used drugs or alcohol, the specimen shall be divided and placed into two separate containers. One specimen shall be tested while the other is held in a proper manner to preserve the specimen by the facility collecting or testing the specimen. Should the first specimen test positive, the law-enforcement officer shall have the right to require the second specimen be sent to a laboratory of his choice for independent testing in accordance generally with the procedures set forth in §§ 18.2-268.1 through 18.2-268.12. The officer shall notify the chief of his agency in writing of his request within 10 days of being notified of positive specimen results. The laboratory chosen by the officer shall be accredited or certified by one or more of the following bodies: ~~the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB)~~, the College of American Pathologists (CAP), the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA), ~~or the American Board of Forensic Toxicology (ABFT)~~, *or an accrediting body that requires conformance to forensic-specific requirements and that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement with a scope of accreditation that covers the testing being performed.*

§ 18.2-268.7. Transmission of blood test samples; use as evidence.

A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to § 18.2-268.6, the Department shall have it examined for its alcohol or drug or both alcohol and drug content and the Director shall execute a certificate of analysis indicating the name of the accused; the date, time and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided or approved by the Department and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug or both alcohol and drug content. The Director shall remove the withdrawal certificate from the vial and either (i) attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached or (ii) electronically scan it into the Department's Laboratory Information Management System and place the original withdrawal certificate in its case-specific file. The certificate of analysis and the withdrawal certificate shall be returned or electronically transmitted to the clerk of the court in which the charge will be heard.

B. After completion of the analysis, the Department shall preserve the remainder of the blood until at least 90 days have lapsed. The accused may, at any time prior to the expiration of such 90-day period, by motion filed before the court in which the charge will be heard, with notice to the Department, request an order directing the Department to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence, provided that the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: ~~American Society of Crime Laboratory Directors/Laboratory Accreditation~~

~~Board (ASCLD/LAB);~~ College of American Pathologists (CAP); U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); ~~or~~ American Board of Forensic Toxicology (ABFT); *or an accrediting body that requires conformance to forensic-specific requirements and that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement with a scope of accreditation that covers the testing being performed.* If no notice of a motion to transmit the remainder of the blood sample is received prior to the expiration of the 90-day period, the Department shall destroy the remainder of the blood sample unless the Commonwealth has filed a written request with the Department to return the remainder of the blood sample to the investigating law-enforcement agency. In such case, the Department shall return the remainder of the blood sample, if not sent to an independent laboratory, to the investigating law-enforcement agency.

C. When a blood sample taken in accordance with the provisions of §§ 18.2-268.2 through 18.2-268.6 is forwarded for analysis to the Department, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court as evidence of the facts therein stated and of the results of such analysis (i) in any criminal proceeding, provided the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any civil proceeding.

Upon request of the person whose blood was analyzed, the test results shall be made available to him.

The Director may delegate or assign these duties to an employee of the Department.

§ 46.2-341.26:7. Transmission of samples.

A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to § 46.2-341.26:6, the Department shall have it examined for its alcohol or drug content, and the Director shall execute a certificate of analysis indicating the name of the suspect; the date, time, and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided or approved by the Department and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug content. The Director or his representative shall remove the withdrawal certificate from the vial and either (i) attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached or (ii) electronically scan it into the Department's Laboratory Information Management System and place the original withdrawal certificate in its case-specific file. The certificate of analysis and the withdrawal certificate shall be returned or electronically transmitted to the clerk of the court in which the charge will be heard.

B. After completion of the analysis, the Department shall preserve the remainder of the blood until at least 90 days have lapsed. The accused may, at any time prior to the expiration of such 90-day period, by motion filed before the court in which the charge will be heard, with notice to the Department, request an order directing the Department to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence, provided that the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: ~~American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB);~~ College of American Pathologists (CAP); U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); ~~or~~ American Board of Forensic Toxicology (ABFT); *or an accrediting body that requires conformance to forensic-specific requirements and that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement with a scope of accreditation that covers the testing being performed.* If no notice of a motion to transmit the remainder of the blood sample is received prior to the expiration of the 90-day period, the Department shall destroy the remainder of the blood sample unless the Commonwealth has filed a written request with the Department to return the remainder of the blood sample to the investigating law-enforcement agency. In such case, the Department shall return the remainder of the blood sample, if not sent to an independent laboratory, to the investigating law-enforcement agency.

C. When a blood sample taken in accordance with the provisions of §§ 46.2-341.26:2 through 46.2-341.26:6 is forwarded for analysis to the Department, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court as evidence of the facts therein stated and of the results of such analysis (i) in any criminal proceeding, provided that the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any civil proceeding.

Upon request of the person whose blood or breath was analyzed, the test results shall be made

available to him.

The Director may delegate or assign these duties to an employee of the Department.