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HOUSE BILL NO. 2118

Offered January 9, 2019

Prefiled January 8, 2019

A BILL 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.

Patron—Mullin

Referred to Committee for Courts of Justice

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

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59 analysis prepared for the remaining blood sample shall be admissible in evidence, provided that the
60 report is duly attested by a person performing such analysis and the independent laboratory that
61 performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or
62 more of the following bodies: ~~American Society of Crime Laboratory Directors/Laboratory Accreditation~~
63 ~~Board (ASCLD/LAB)~~; College of American Pathologists (CAP); U.S. Department of Health and Human
64 Services Substance Abuse and Mental Health Services Administration (SAMHSA); ~~or American Board~~
65 ~~of Forensic Toxicology (ABFT)~~; *or an accrediting body that requires conformance to forensic-specific*
66 *requirements and that is a signatory to the International Laboratory Accreditation Cooperation (ILAC)*
67 *Mutual Recognition Arrangement with a scope of accreditation that covers the testing being performed.*
68 If no notice of a motion to transmit the remainder of the blood sample is received prior to the expiration
69 of the 90-day period, the Department shall destroy the remainder of the blood sample unless the
70 Commonwealth has filed a written request with the Department to return the remainder of the blood
71 sample to the investigating law-enforcement agency. In such case, the Department shall return the
72 remainder of the blood sample, if not sent to an independent laboratory, to the investigating
73 law-enforcement agency.

74 C. When a blood sample taken in accordance with the provisions of §§ 18.2-268.2 through
75 18.2-268.6 is forwarded for analysis to the Department, a report of the test results shall be filed in that
76 office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the
77 withdrawal certificate attached, shall, when attested by the Director, be admissible in any court as
78 evidence of the facts therein stated and of the results of such analysis (i) in any criminal proceeding,
79 provided the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not
80 objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any civil
81 proceeding.

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

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

85 **§ 46.2-341.26:7. Transmission of samples.**

86 A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to
87 § 46.2-341.26:6, the Department shall have it examined for its alcohol or drug content, and the Director
88 shall execute a certificate of analysis indicating the name of the suspect; the date, time, and by whom
89 the blood sample was received and examined; a statement that the seal on the vial had not been broken
90 or otherwise tampered with; a statement that the container and vial were provided or approved by the
91 Department and that the vial was one to which the completed withdrawal certificate was attached; and a
92 statement of the sample's alcohol or drug content. The Director or his representative shall remove the
93 withdrawal certificate from the vial and either (i) attach it to the certificate of analysis and state in the
94 certificate of analysis that it was so removed and attached or (ii) electronically scan it into the
95 Department's Laboratory Information Management System and place the original withdrawal certificate
96 in its case-specific file. The certificate of analysis and the withdrawal certificate shall be returned or
97 electronically transmitted to the clerk of the court in which the charge will be heard.

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

118 C. When a blood sample taken in accordance with the provisions of §§ 46.2-341.26:2 through
119 46.2-341.26:6 is forwarded for analysis to the Department, a report of the test results shall be filed in
120 that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with

121 the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court as
122 evidence of the facts therein stated and of the results of such analysis (i) in any criminal proceeding,
123 provided that the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has
124 not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any
125 civil proceeding.

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

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