

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 42

An Act to amend and reenact §§ 9.1-176.1, 9.1-903, 16.1-237, 19.2-303, 19.2-303.3, 19.2-310.2, 19.2-310.3, 19.2-310.3:1, and 53.1-145 of the Code of Virginia, relating to the Department of Forensic Science; DNA data bank sample tracking system.

[H 748]

Approved April 1, 2022

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-176.1, 9.1-903, 16.1-237, 19.2-303, 19.2-303.3, 19.2-310.2, 19.2-310.3, 19.2-310.3:1, and 53.1-145 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-176.1. Duties and responsibilities of local community-based probation officers.

A. Each local community-based probation officer, for the localities served, shall:

1. Supervise and assist all local-responsible adult offenders, residing within the localities served and placed on local community-based probation by any judge of any court within the localities served;

2. Ensure offender compliance with all orders of the court, including the requirement to perform community service;

3. Conduct, when ordered by a court, substance abuse screenings, or conduct or facilitate the preparation of assessments pursuant to state approved protocols;

4. Conduct, at his discretion, random drug and alcohol tests on any offender whom the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana or the abuse of alcohol or prescribed medication;

5. Facilitate placement of offenders in substance abuse education or treatment programs and services or other education or treatment programs and services based on the needs of the offender;

6. Seek a *capias* from any judicial officer in the event of failure to comply with conditions of local community-based probation or supervision on the part of any offender provided that noncompliance resulting from intractable behavior presents a risk of flight, or a risk to public safety or to the offender;

7. Seek a motion to show cause for offenders requiring a subsequent hearing before the court;

8. Provide information to assist any law-enforcement officer with the return to custody of defendants placed on supervision for which a *capias* has been sought;

9. Keep such records and make such reports as required by the Department of Criminal Justice Services;

10. Determine by reviewing the ~~Local Inmate Data System~~ *Department of Forensic Science DNA data bank sample tracking system* upon intake and again prior to discharge whether a blood, saliva, or tissue sample ~~has been taken for DNA analysis is stored in the DNA data bank~~ for each offender required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if ~~no sample has been taken an offender's sample is not stored in the data bank~~, require ~~an~~ the offender to submit a sample for DNA analysis;

11. Monitor the collection and payment of restitution to the victims of crime for offenders placed on local supervised probation; and

12. Determine by reviewing the offender's criminal history record at least 60 days prior to discharge whether all offenses for which the offender is being supervised appear on such record and, if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) order the offender to report to the law-enforcement agency that made the arrest for such offense or to the Department of State Police and submit to having his fingerprints and photograph taken for each such offense, (ii) provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that the offense does not appear on the offender's criminal history record, and (iii) verify that such fingerprints and photograph have been taken.

B. Each local probation officer may provide the following optional services, as appropriate and when available resources permit:

1. Supervise local-responsible adult offenders placed on home incarceration with or without home electronic monitoring as a condition of local community-based probation;

2. Investigate and report on any local-responsible adult offender and prepare or facilitate the preparation of any other screening, assessment, evaluation, testing or treatment required as a condition of probation;

3. Monitor placements of local-responsible adults who are required to perform court-ordered community service at approved work sites;

4. Assist the courts, when requested, by monitoring the collection of court costs and fines for offenders placed on local probation; and

5. Collect supervision and intervention fees pursuant to § 9.1-182 subject to local approval and the

approval of the Department of Criminal Justice Services.

§ 9.1-903. Registration and reregistration procedures.

A. Every person convicted, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as an adult or juvenile, of an offense for which registration is required and every juvenile found delinquent of an offense for which registration is required under subsection C of § 9.1-902 shall be required upon conviction to register, reregister, and verify his registration information with the Department of State Police. The court shall order the person to provide to the local law-enforcement agency of the county or city where he physically resides all information required by the State Police for inclusion in the Registry. The court shall immediately remand the person to the custody of the local law-enforcement agency for the purpose of obtaining the person's fingerprints and photographs of a type and kind specified by the State Police for inclusion in the Registry. Upon conviction, the local law-enforcement agency shall forthwith forward to the State Police all the necessary registration information.

B. Every person required to register shall register in person within three days of his release from confinement in a state, local or juvenile correctional facility, in a state civil commitment program for sexually violent predators or, if a sentence of confinement is not imposed, within three days of suspension of the sentence or in the case of a juvenile of disposition. A person required to register shall register, and as part of the registration shall submit to be photographed, submit to have a sample of his blood, saliva, or tissue taken for DNA (deoxyribonucleic acid) analysis and submission to the DNA ~~data bank~~ *data bank* to determine identification characteristics specific to the person, provide electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, submit to have his fingerprints and palm prints taken, provide information regarding his place of employment, and provide motor vehicle, watercraft and aircraft registration information for all motor vehicles, watercraft and aircraft owned by him. The local law-enforcement agency shall obtain from the person who presents himself for registration or reregistration one set of fingerprints, electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, one set of palm prints, place of employment information, motor vehicle, watercraft and aircraft registration information for all motor vehicles, watercraft and aircraft owned by the registrant, proof of residency and a photograph of a type and kind specified by the State Police for inclusion in the Registry and advise the person of his duties regarding reregistration and verification of his registration information. The local law-enforcement agency shall obtain from the person who presents himself for registration 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~~ *is stored in the DNA data bank*, as indicated by the ~~Local Inmate Data System (LIDS)~~ *Department of Forensic Science DNA data bank sample tracking system*, no additional sample shall be taken. The local law-enforcement agency shall forthwith forward to the State Police all necessary registration information.

C. To establish proof of residence in Virginia, a person who has a permanent physical address shall present one photo-identification form issued by a governmental agency of the Commonwealth which contains the person's complete name, gender, date of birth and complete physical address. The local law-enforcement agency shall forthwith forward to the State Police a copy of the identification presented by the person required to register.

D. Any person required to register shall also reregister in person with the local law-enforcement agency following any change of name or any change of residence, whether within or without the Commonwealth. The person shall register in person with the local law-enforcement agency within three days following his change of name. If his new residence is within the Commonwealth, the person shall register in person with the local law-enforcement agency where his new residence is located within three days following his change in residence. If the new residence is located outside of the Commonwealth, the person shall register in person with the local law-enforcement agency where he previously registered within 10 days prior to his change of residence. If a probation or parole officer becomes aware of a change of name or residence for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith of learning of the change. Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

E. Any person required to register shall reregister in person with the local law-enforcement agency where his residence is located within three days following any change of the place of employment, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of the place of employment for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change of the person's place of employment. Whenever a person subject to registration changes his place of employment to another state, the State Police shall notify the designated law-enforcement agency of that state.

F. Any person required to register shall reregister in person with the local law-enforcement agency

where his residence is located within three days following any change of owned motor vehicle, watercraft and aircraft registration information, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of owned motor vehicle, watercraft and aircraft registration information for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change of the person's owned motor vehicle, watercraft and aircraft registration information. Whenever a person required to register changes his owned motor vehicle, watercraft and aircraft registration information to another state, the State Police shall notify the designated law-enforcement agency of that state.

G. Any person required to register shall reregister either in person or electronically with the local law-enforcement agency where his residence is located within 30 minutes following any change of the electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of the electronic mail address information, any instant message, chat or other Internet communication name or identity information for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change.

H. Every person required to register shall submit to be photographed by a local law-enforcement agency every two years, during such person's required verification month and time interval pursuant to subsection B of § 9.1-904, commencing with the date of initial verification. The local law-enforcement agency shall forthwith forward the photograph of a type and kind specified by the State Police to the State Police. Where practical, the local law-enforcement agency may electronically transfer a digital photograph containing the required information to the Registry.

I. Upon registration and every two years thereafter during such person's required verification month and time interval pursuant to subsection B of § 9.1-904, every person required to register shall be required to execute a consent form consistent with applicable law that authorizes a business or organization that offers electronic communications or remote computer services to provide to the Department of State Police any information pertaining to that person necessary to determine the veracity of his electronic identity information in the Registry.

J. The registration shall be maintained in the Registry and shall include the person's name, any former name if he has lawfully changed his name during the period for which he is required to register, all aliases that he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current physical and mailing address and a description of the offense or offenses for which he was convicted. The registration shall also include the locality of the conviction and a description of the offense or offenses for previous convictions for the offenses set forth in § 9.1-902.

K. The local law-enforcement agency shall forthwith forward to the State Police all necessary registration or reregistration information received by it. Upon receipt of registration or reregistration information the State Police shall forthwith notify the chief law-enforcement officer of the locality listed as the person's address on the registration and reregistration.

L. If a person required to register does not have a legal residence, such person shall designate a location that can be located with reasonable specificity where he resides or habitually locates himself. For the purposes of this section, "residence" shall include such a designated location. If the person wishes to change such designated location, he shall do it pursuant to the terms of this section.

§ 16.1-237. Powers, duties and functions of probation and parole officers.

In addition to any other powers and duties imposed by this law, a probation or parole officer appointed hereunder shall:

A. Investigate all cases referred to him by the judge or any person designated so to do, and shall render reports of such investigation as required;

B. Supervise persons placed under his supervision and shall keep informed concerning the conduct and condition of every person under his supervision by visiting, requiring reports and in other ways, and shall report thereon as required;

C. Under the general supervision of the director of the court service unit, investigate complaints and accept for informal supervision cases wherein such handling would best serve the interests of all concerned;

D. Use all suitable methods not inconsistent with conditions imposed by the court to aid and encourage persons on probation or parole and to bring about improvement in their conduct and condition;

E. Furnish to each person placed on probation or parole a written statement of the conditions of his probation or parole and instruct him regarding the same;

F. Keep records of his work including photographs and perform such other duties as the judge or other person designated by the judge or the Director shall require;

G. Have the authority to administer oaths and take acknowledgements for the purposes of §§ 16.1-259 and 16.1-260 to facilitate the processes of intake and petition;

H. Have the powers of arrest of a police officer and the power to carry a concealed weapon when specifically so authorized by the judge; and

I. Determine by reviewing the ~~Local Inmate Data System or the Juvenile Tracking System (JTS)~~ *Department of Forensic Science DNA data bank sample tracking system* upon intake and again prior to discharge whether a blood, saliva, or tissue sample ~~has been taken for DNA analysis is stored in the DNA data bank~~ for each offender required to submit a sample pursuant to § 16.1-299.1 and, if ~~no sample has been taken an offender's sample is not stored in the data bank~~, require ~~an~~ the offender to submit a sample for DNA analysis.

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The court may fix the period of probation for up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned. Any period of supervised probation shall not exceed five years from the release of the defendant from any active period of incarceration. The limitation on the period of probation shall not apply to the extent that an additional period of probation is necessary (i) for the defendant to participate in a court-ordered program or (ii) if a defendant owes restitution and is still subject to restitution compliance review hearings in accordance with § 19.2-305.1. The defendant may be ordered by the court to pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of any offense for which a report to the Central Criminal Records Exchange is required in accordance with subsection A of § 19.2-390, shall determine whether a copy of the defendant's fingerprints or fingerprint identification information has been provided by a law-enforcement officer to the clerk of court for each such offense. In any case where fingerprints or fingerprint identification information has not been provided by a law-enforcement officer to the clerk of court, the judge shall require that fingerprints and a photograph be taken by a law-enforcement officer as a condition of probation or of the suspension of the imposition or execution of any sentence for such offense. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the ~~Local Inmate Data System (LIDS)~~ *Department of Forensic Science DNA data bank sample tracking system* within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing ~~LIDS~~ *the DNA data bank sample tracking system* whether a blood, saliva, or tissue sample ~~has been taken for DNA analysis and submitted to~~ *is stored in the DNA data bank* maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample ~~or analysis~~ is not stored in the DNA data bank, or in any case in which electronic access to ~~LIDS~~ *the DNA data bank sample tracking system* is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

Notwithstanding any other provision of law, in any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision

program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation in accordance with the provisions of this section, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections (the Department), the court that heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, or within 60 days of such transfer, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation in accordance with the provisions of this section.

§ 19.2-303.3. Sentence to local community-based probation services; services agency; requirements for participation; sentencing; and removal from probation; payment of costs towards supervision and services.

A. Any offender who is (i) convicted on or after July 1, 1995, of a misdemeanor or a felony that is not a felony act of violence as defined in § 19.2-297.1, and for which the court imposes a total sentence of 12 months or less, and (ii) no younger than 18 years of age or is considered an adult at the time of conviction may be sentenced to a local community-based probation services agency established pursuant to § 9.1-174 by the local governing bodies within that judicial district or circuit.

B. In those courts having electronic access to the ~~Local Inmate Data System (LIDS)~~ *Department of Forensic Science DNA data bank sample tracking system* within the courtroom, at the time of sentencing, the clerk of court shall determine by reviewing ~~LIDS the DNA data bank sample tracking system~~, in any case where there is a felony *or qualifying misdemeanor* conviction, whether a sample of the offender's blood, saliva, or tissue or an analysis of the sample is stored in the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. If the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to ~~LIDS the DNA data bank sample tracking system~~ is not available in the courtroom, the court shall order that the offender appear within 30 days before the sheriff or community-based probation officer and allow the sheriff or community-based probation officer to take the required sample. The order shall also require that, if the offender has not appeared and allowed the sheriff or community-based probation officer to take the required sample by the date stated in the order, then the sheriff or community-based probation officer shall report to the court the offender's failure to appear and provide the required sample. The court may order the offender placed under local community-based probation services pursuant to § 9.1-174 upon a determination by the court that the offender may benefit from these services and is capable of returning to society as a productive citizen with a reasonable amount of supervision and intervention including services set forth in § 9.1-176. All or part of any sentence imposed that has been suspended, shall be conditioned upon the offender's successful completion of local community-based probation services established pursuant to § 9.1-174.

The court may impose terms and conditions of supervision as it deems appropriate, including that the offender abide by any additional requirements of supervision imposed or established by the local community-based probation services agency during the period of probation supervision.

C. Any sworn officer of a local community-based probation services agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) may seek a capias from any judicial officer for the arrest of any person on local community-based probation and under its supervision for (i) intractable behavior; (ii) refusal to comply with the terms and conditions imposed by the court; (iii) refusal to comply with the requirements of local community-based probation supervision established by the agency; or (iv) the commission of a new offense while on local community-based probation and under agency supervision. Upon arrest, the offender shall be brought for a hearing before the court of appropriate jurisdiction. After finding that the offender (a) exhibited intractable behavior as defined herein; (b) refused to comply with terms and conditions imposed by the court; (c) refused to comply with the requirements of local community-based probation supervision established by the agency; or (d) committed a new offense while on local community-based probation and under agency supervision, the court may revoke all or part of the suspended sentence and supervision, and commit the offender to serve whatever sentence was originally imposed or impose such other terms and conditions of probation as it deems appropriate or, in a case where the proceeding has been deferred, enter an adjudication of guilt and proceed as otherwise provided by law.

"Intractable behavior" is that behavior that, in the determination of the court, indicates an offender's unwillingness or inability to conform his behavior to that which is necessary for successful completion of local community-based probation or that the offender's behavior is so disruptive as to threaten the successful completion of the program by other participants.

D. An offender sentenced to or provided a deferred proceeding and placed on community-based

probation pursuant to this section may be required to pay an amount towards the costs of his supervision and services received in accordance with subsection D of § 9.1-182.

§ 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, 18.2-57, 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, 18.2-119, 18.2-121, 18.2-130, 18.2-370.6, 18.2-387, or 18.2-387.1 or subsection E of § 18.2-460 or of any similar ordinance of any locality 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 is stored in the DNA data bank as indicated by the ~~Local Inmate Data System (LIDS)~~ *Department of Forensic Science DNA data bank sample tracking system*, 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. 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 an offense listed in subsection A 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.

E. 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 *who are required to submit a sample pursuant to this section* if they are not identified in the DNA data bank.

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

G. Each community-based probation services agency established pursuant to § 9.1-174 shall determine by reviewing the ~~Local Inmate Data System~~ *Department of Forensic Science DNA data bank sample tracking system* upon intake and again prior to discharge whether a blood, saliva, or tissue sample ~~has been taken for DNA analysis is stored in the DNA data bank~~ for each offender required to submit a sample pursuant to this section and, if ~~no sample has been taken an offender's sample is not stored in the data bank~~, require ~~an~~ the offender to submit a sample for DNA analysis.

H. The sheriff or regional jailer shall determine by reviewing the ~~Local Inmate Data System~~ *Department of Forensic Science DNA data bank sample tracking system* upon intake and again prior to release whether a blood, saliva, or tissue sample ~~has been taken for DNA analysis is stored in the DNA data bank~~ for each offender required to submit a sample pursuant to this section and, if ~~no sample has been taken an offender's sample is not stored in the data bank~~, require ~~an~~ the offender to submit a

sample for DNA analysis.

§ 19.2-310.3. Procedures for withdrawal of blood, saliva or tissue sample for DNA analysis.

Each sample required pursuant to § 19.2-310.2 from persons who are to be incarcerated shall be withdrawn at the receiving unit or at such other place as is designated by the Department of Corrections or, in the case of a juvenile, the Department of Juvenile Justice. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn at a time and place specified by the sentencing court. Only a correctional health nurse technician or a physician, registered nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any blood sample to be submitted for analysis. No civil liability shall attach to any person authorized to withdraw blood, saliva or tissue as provided herein as a result of the act of withdrawing blood, saliva or tissue from any person submitting thereto, provided the blood, saliva or tissue was withdrawn according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood, saliva or tissue sample.

Chemically clean sterile disposable needles and vacuum draw tubes or swabs shall be used for all samples. The tube or envelope containing the sample shall be sealed and ~~labeled with the subject's name, social security number, date of birth, race and gender; the name of the person collecting the sample; and the date and place of collection.~~ The tubes or envelopes containing the samples shall be secured to prevent tampering with the contents. *The agency submitting the sample shall provide information pertaining to the sample by (i) logging such information into the Department of Forensic Science DNA data bank sample tracking system at the time of collection or (ii) submitting such information to the Department of Forensic Science along with the sample.* The steps herein set forth relating to the taking, handling, identification, and disposition of blood, saliva or tissue samples are procedural and not substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be *mailed or* transported to the Department of Forensic Science not more than 15 days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with §§ 19.2-310.4 and 19.2-310.5.

§ 19.2-310.3:1. Procedures for taking saliva or tissue sample for DNA analysis.

A. Each sample required pursuant to § 19.2-310.2:1 from persons arrested shall be taken before release from custody at such place as is designated by the law-enforcement agency responsible for arrest booking in the jurisdiction. Samples shall be taken in accordance with procedures adopted by the Department of Forensic Science. The sample shall be sealed and ~~labeled with the subject's name, social security number, date of birth, race and gender; the name of the person collecting the sample; the date and place of collection; information identifying the arresting or accompanying officer; and the offense for which the person was arrested.~~ The sample shall be secured to prevent tampering with the contents and be accompanied by a copy of the arrest warrant or capias. *The agency submitting the sample shall provide information pertaining to the sample by (i) logging such information into the Department of Forensic Science DNA data bank sample tracking system at the time of collection or (ii) submitting such information to the Department of Forensic Science along with the sample.* The steps herein set forth relating to the taking, handling, identification, and disposition of saliva or tissue samples are procedural and not substantive. The sample shall be *mailed or* transported to the Department of Forensic Science not more than 15 days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with §§ 19.2-310.4 and 19.2-310.5.

B. Substantial compliance therewith shall be deemed to be sufficient. If a sample ~~has been previously taken from the individual is stored in the data bank as indicated by the Local Inmate Data System (LIDS)~~ *Department of Forensic Science DNA data bank sample tracking system*, no additional sample shall be taken. No civil liability shall attach to any person authorized to take saliva or tissue as provided herein as a result of the act of taking saliva or tissue from any person submitting thereto, provided the saliva or tissue was taken according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the taking of any saliva or tissue sample.

§ 53.1-145. Powers and duties of probation and parole officers.

In addition to other powers and duties prescribed by this article, each probation and parole officer shall:

1. Investigate and report on any case pending in any court or before any judge in his jurisdiction referred to him by the court or judge;

2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and furnish every such person with a written statement of the conditions of his probation and instruct him therein; if any such person has been committed to the Department of Behavioral Health and Developmental Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of probation shall include the requirement that the person comply with all conditions given him by the Department of Behavioral Health and Developmental Services, and that he follow all of the terms of his treatment plan;

3. Supervise and assist all persons within his territory released on parole or postrelease supervision, secure, as appropriate and when available resources permit, placement of such persons in a substance

abuse treatment program which may include utilization of acupuncture and other treatment modalities, and, in his discretion, assist any person within his territory who has completed his parole, postrelease supervision, or has been mandatorily released from any correctional facility in the Commonwealth and requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to the community;

4. Arrest and recommit to the place of confinement from which he was released, or in which he would have been confined but for the suspension of his sentence or of its imposition, for violation of the terms of probation, post-release supervision pursuant to § 19.2-295.2 or parole, any probationer, person subject to post-release supervision or parolee under his supervision, or as directed by the Chairman, Board member or the court, pending a hearing by the Board or the court, as the case may be;

5. Keep such records, make such reports, and perform other duties as may be required of him by the Director and the court or judge by whom he was authorized;

6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana, or the abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations governing the officer's exercise of this authority shall be promulgated by the Director;

7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the Director and upon the certification of appropriate training and specific authorization by a judge of a circuit court;

8. Provide services in accordance with any contract entered into between the Department of Corrections and the Department of Behavioral Health and Developmental Services pursuant to § 37.2-912;

9. Pursuant to any contract entered into between the Department of Corrections and the Department of Behavioral Health and Developmental Services, probation and parole officers shall have the power to provide intensive supervision services to persons placed on conditional release, regardless of whether the person has any time remaining to serve on any criminal sentence, pursuant to Chapter 9 (§ 37.2-900 et seq.);

10. Determine by reviewing the ~~Local Inmate Data System~~ *Department of Forensic Science DNA data bank sample tracking system* upon intake and again prior to release whether a blood, saliva, or tissue sample ~~has been taken for DNA analysis is stored in the data bank~~ for each person placed on probation or parole required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if ~~no sample has been taken~~ *a person's sample is not stored in the data bank*, require ~~a the person~~ placed on probation or parole to submit a sample for DNA analysis;

11. For every offender accepted pursuant to the Interstate Compact for the Supervision of Adult Offenders (§ 53.1-176.1 et seq.) who has been convicted of an offense that, if committed in Virginia, ~~would be considered a felony~~ *require the offender to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2*, take a sample or verify that a sample has been taken and accepted into the data bank for DNA analysis in the Commonwealth;

12. Monitor the collection and payment of restitution to the victims of crime for offenders placed on supervised probation;

13. Prior to the release from supervision of any offender on probation as of July 1, 2019, review the criminal history record of the offender at least 60 days prior to release from supervision, or immediately if the offender is scheduled to be released from supervision within less than 60 days, to determine whether all offenses for which the offender is being supervised appear on such record and, if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) take and provide fingerprints and a photograph of the offender to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390 and (ii) provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record; and

14. Upon intake of any offender on or after July 1, 2019, (i) take and provide fingerprints and a photograph of the offender to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390, (ii) review the criminal history record of the offender to determine whether all offenses for which the offender is being supervised appear on such record, and (iii) if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record.

Nothing in this article shall require probation and parole officers to investigate or supervise cases before general district or juvenile and domestic relations district courts.