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SENATE BILL NO. 593

Offered January 22, 1996

A BILL to amend and reenact §§ 2.1-384, 9-170, 18.2-267, 18.2-268.9, 19.2-310.2, and 46.2-341.25 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 27 of Title 9 an article numbered 4, consisting of sections numbered 9-196.1 through 9-196.12; and to repeal Article 2.1 (§§ 2.1-434.1 through 2.1-434.12) of Chapter 32 of Title 2.1 of the Code of Virginia, relating to the Division of Forensic Science.

Patron—Wampler

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-384, 9-170, 18.2-267, 18.2-268.9, 19.2-310.2 and 46.2-341.25 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 27 of Title 9 an article numbered 4, consisting of sections numbered 9-196.1 through 9-196.12, as follows:

§ 2.1-384. Systems to which chapter inapplicable.

The provisions of this chapter shall not be applicable to personal information systems:

1. Maintained by any court of this Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ 9-184 through 9-196;
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;

5. Maintained by agencies concerning persons required to be licensed by law in this Commonwealth to engage in the practice of any professional occupation, in which case the names and addresses of persons applying for or possessing any such license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing such licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided such disseminating agency is reasonably assured that the use of such information will be so limited;

6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission and the Department of Alcoholic Beverage Control;

7. Maintained by the Department of State Police; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23, and which deal with investigations and intelligence gathering relating to criminal activity; and maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;

8. Maintained by the Virginia Port Authority as provided in § 62.1-134.1 or § 62.1-132.4;

9. Maintained by the Department of Economic Development in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Department of Economic Development is reasonably assured that the use of such information will be so limited;

10. Maintained by the ~~Divisions~~ Division of Consolidated Laboratory Services and Forensic Science of the Department of General Services and the Division of Forensic Science of the Department of Criminal Justice Services, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § 2.1-434.11 may be applicable;

11. Maintained by the Department of Corrections which deal with investigations and intelligence gathering by persons acting under the provisions of § 53.1-16; and

12. Maintained by the Department of the State Internal Auditor or internal audit departments of state agencies or institutions which deal with communications and investigations relating to the State Employee Fraud, Waste and Abuse Hotline.

§ 9-170. Powers and duties of the Board and the Department.

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power to:

1. Promulgate regulations, pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within this Commonwealth. Any proposed regulations

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60 concerning the privacy, confidentiality, and security of criminal justice information shall be submitted
61 for review and comment to any board, commission, or committee or other body which may be
62 established by the General Assembly to regulate the privacy, confidentiality, and security of information
63 collected and maintained by the Commonwealth or any political subdivision thereof;

64 2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement
65 officer (i) in permanent positions, and (ii) in temporary or probationary status, and establish the time
66 required for completion of such training;

67 3. Establish compulsory minimum curriculum requirements for in-service and advanced courses and
68 programs for schools, whether located in or outside the Commonwealth, which are operated for the
69 specific purpose of training law-enforcement officers;

70 3a. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize
71 radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in
72 § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum
73 qualifications for certification and recertification of instructors who provide such training;

74 4. Establish compulsory training courses for law-enforcement officers in laws and procedures relating
75 to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be
76 completed by law-enforcement officers who have not completed the compulsory training standards set
77 out in subdivision 2 above, prior to assignment of any such officers to undercover investigation work.
78 Failure to complete such training shall not, for that reason, constitute grounds to exclude otherwise
79 properly admissible testimony or other evidence from such officer resulting from any undercover
80 investigation;

81 5. Establish compulsory minimum entry level, in-service and advanced training standards for those
82 persons designated to provide courthouse and courtroom security pursuant to the provisions of
83 § 53.1-120, and to establish the time required for completion of such training;

84 6. Establish compulsory minimum entry level, in-service and advanced training standards for deputy
85 sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time
86 required for the completion of such training;

87 7. Establish compulsory minimum entry-level, in-service, and advanced training standards for persons
88 employed as jailers or custodial officers by local criminal justice agencies and for correctional officers
89 employed by the Department of Corrections under the provisions of Title 53.1, and establish the time
90 required for completion of such training;

91 8. Establish compulsory minimum training standards for all dispatchers employed by or in any local
92 or state government agency, whose duties include the dispatching of law-enforcement personnel. Such
93 training standards shall apply only to dispatchers hired on or after July 1, 1988;

94 9. Consult and cooperate with counties, municipalities, agencies of this Commonwealth, other state
95 and federal governmental agencies, and with universities, colleges, junior colleges, and other institutions,
96 whether located in or outside the Commonwealth, concerning the development of police training schools
97 and programs or courses of instruction;

98 10. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth,
99 for school operation for the specific purpose of training law-enforcement officers; but this shall not
100 prevent the holding of any such school whether approved or not;

101 11. Establish and maintain police training programs through such agencies and institutions as the
102 Board may deem appropriate;

103 12. Establish compulsory minimum qualifications of certification and recertification for instructors in
104 criminal justice training schools approved by the Department;

105 13. Conduct and stimulate research by public and private agencies which shall be designed to
106 improve police administration and law enforcement;

107 14. Make recommendations concerning any matter within its purview pursuant to this chapter;

108 15. Coordinate its activities with those of any interstate system for the exchange of criminal history
109 record information, nominate one or more of its members to serve upon the council or committee of any
110 such system, and participate when and as deemed appropriate in any such system's activities and
111 programs;

112 16. Conduct inquiries and investigations it deems appropriate to carry out its functions under this
113 chapter and, in conducting such inquiries and investigations shall have the authority to require any
114 criminal justice agency to submit information, reports, and statistical data with respect to its policy and
115 operation of information systems or with respect to its collection, storage, dissemination, and usage of
116 criminal history record information and correctional status information, and such criminal justice
117 agencies shall submit such information, reports, and data as are reasonably required;

118 17. Conduct audits as required by § 9-186;

119 18. Conduct a continuing study and review of questions of individual privacy and confidentiality of
120 criminal history record information and correctional status information;

121 19. Advise criminal justice agencies and initiate educational programs for such agencies with respect

to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;

20. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;

21. Issue regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

22. The Department of State Police shall be the control terminal agency for the Commonwealth and perform all functions required of a control terminal agency by the regulations of the National Crime Information Center. Notwithstanding any other provision to the contrary in this chapter, the Central Criminal Records Exchange and the Department of State Police shall remain the central repository for criminal history record information in the Commonwealth, and the Department shall continue to be responsible for the management and operation of such exchange;

23. Operate a statewide criminal justice statistical analysis center, which shall maintain a unified criminal justice data system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

24. Develop a comprehensive statewide long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

25. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

26. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

27. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

28. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

29. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

30. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

31. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

32. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

33. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the

Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

34. Perform such other acts as may be necessary or convenient for the effective performance of its duties; and

35. Certify and decertify law-enforcement officers in accordance with §§ 15.1-131.8:1 and 15.1-131.8:2; and

36. *Provide forensic laboratory services as detailed in Article 4 (§ 9-196.1 et seq.) of this chapter.*

Article 4.

Division of Forensic Science.

§ 9-196.1. Division of Forensic Science.

There is hereby established within the Department of Criminal Justice Services, a Division of Forensic Science, which heretofore existed as a division within the Department of General Services. The Division shall be headed by a Director. It shall be the responsibility of the Division to provide forensic laboratory services upon request of the Superintendent of State Police; the Chief Medical Examiner, the Assistant Chief Medical Examiners, and local medical examiners; any attorney for the Commonwealth; any chief of police, sheriff, or sergeant responsible for law enforcement in the jurisdiction served by him; any local fire department; or any state agency in any criminal matter. The Division may provide such services to any federal investigatory agency within available resources.

The Division shall provide forensic laboratory services to all law-enforcement agencies throughout the Commonwealth and provide laboratory services, research, and scientific investigations for agencies of the Commonwealth as needed. In addition, the Division shall establish a DNA testing program in accordance with Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 to determine identification characteristics specific to an individual.

§ 9-196.2. Forensic Science Advisory Board.

The Forensic Science Advisory Board is hereby created and shall be referred to in this article as the Board. The Board shall consist of the following members: (i) five members, appointed by the Governor to serve at his pleasure for a term coincident with that of the Governor, one of whom shall be a circuit court judge, one of whom shall be a representative of the Virginia Association of Chiefs of Police, one of whom shall be a representative of the attorneys for the Commonwealth, and one of whom shall be a member of the Virginia State Sheriffs' Association; (ii) the Superintendent of the Department of State Police or his designee; (iii) the Director of the Department of Criminal Justice Services or his designee; (iv) the Director of the Virginia State Crime Commission or his designee; (v) the Chief Medical Examiner or his designee; and (vi) the Executive Director of the Virginia Board of Pharmacy or his designee. The Board shall elect its chairman and vice chairman. Members of the Board shall receive no compensation for their services as members of the Board. The Board shall meet at the call of the chairman or Director of the Department of Criminal Justice Services.

§ 9-196.3. Functions of Board.

A. The Board may review laboratory operations of the Division and make recommendations concerning the quality of services furnished to user agencies.

B. The Board shall review and make recommendations to the Director of the Department of Criminal Justice Services or his designee on the following:

1. New major programs and plans for activities of the Division and elimination of programs no longer needed;

2. Policy and priorities in response to agency needs;

3. General fund biennium operational budget and any major changes in appropriated funds;

4. Actions to foster and promote coordination and cooperation between the Division and the user programs which are served; and

5. Rules and regulations to carry out the purposes and intent of this article.

§ 9-196.4. Forensic Science Academy.

The Forensic Science Academy, which previously operated as a function of the Department of General Services, is hereby transferred to the Division of Forensic Science within the Department of Criminal Justice Services. It shall be the function of the Academy to provide advanced training to law-enforcement agencies in the location, collection, and preservation of evidence.

§ 9-196.5. Division of Forensic Science to be isolated.

The Division of Forensic Science shall be isolated within the Department of Criminal Justice Services as much as necessary to ensure the protection of evidence and to ensure that its services are performed by skilled professionals who are qualified to testify in court regarding such services.

§ 9-196.6. Security and protection of evidence, etc.

The Division shall provide for security and protection of evidence, official samples, and all other samples submitted to the Division for analysis or examination.

§ 9-196.7. Special conservators of the peace.

Upon application of the Director of the Division of Forensic Science, the Circuit Court of the City of

Richmond may appoint security personnel employed by the Division as special conservators of the peace, who shall exercise the powers and functions of conservators of the peace throughout the Commonwealth for the time specified in the order of appointment, while in the performance of their official duties as security personnel. Such appointments as special conservators of the peace shall terminate upon the order of the Division or upon the termination of employment as security personnel of the Division. The circuit court shall be notified forthwith by the Division whenever an appointment is terminated.

§ 9-196.8. Disposal of certain hazardous materials.

Any material which is seized in any criminal investigation and which is deemed to be hazardous to health and safety, may be disposed of upon written application of the Division of Forensic Science to the attorney for the Commonwealth in the city or county where the material is seized or where any criminal prosecution in which such material is proposed to be evidence is pending. Upon receipt thereof, the attorney for the Commonwealth shall file the application in the circuit court of such county or city. A sworn analysis report signed by a person designated by the Director of the Division of Forensic Science shall accompany the application for disposal and shall clearly identify and designate the material to be disposed of. The application shall state the nature of the hazardous materials, the quantity thereof, the location where seized, the person or persons from whom the materials were seized, and the manner whereby such materials shall be destroyed. When the ownership of the hazardous material is known, notice shall be given to the owner thereof at least three days prior to any hearing relating to the destruction, and, if any criminal charge is pending in any court as a result of such seizure, such notice shall be given to the accused if other than the owner. Upon receipt of the analysis report and the application, the court may order the destruction of all, or a part of, such material; however, a sufficient and representative quantity of such material shall be retained to permit an independent analysis when a criminal prosecution may result from such seizure. A return under oath, reporting the time, place, and manner of destruction, shall be made to the courts. Copies of the analysis report, application, order, and return shall be made a part of the record of any criminal prosecution. The sworn analysis report shall be admissible as evidence to the same extent as the disposed-of material would have been admissible.

§ 9-196.9. Disposal of certain other property.

Personal property, including drugs, not subject to be disposed of under § 2.1-434.8, which has been submitted to the Division of Forensic Science or the former Bureau of Forensic Science for analysis or examination and which has not been reclaimed by the agency submitting such property for analysis or examination, may be disposed of by the Division in accordance with this section if, after the expiration of 120 days after the receipt by the Division of the property, the Director notifies the circuit court of the county or city from which the property was taken, in writing, that the analysis or examination has been completed, and a report submitted to the agency that the property has not been reclaimed by the agency submitting it and that the Division proposes to dispose of such property. The notice shall state the nature of the property, the quantity thereof, the location where seized, the name of the accused, if known, and the proposed method of disposing of the property. When the ownership of the property is known, a copy of such notice shall be sent simultaneously with the notice to the court to the owner, or, if any criminal charge is pending in any court relating to the property, the copy shall be sent to the accused at his last known address. Notice shall be by certified mail. The court, within thirty days after receipt of the notice, may direct that the property be disposed of by the Division, by an alternative method designed to preserve the property, at the expense of the agency submitting the property to the Division. If the court does not so direct within such thirty-day period, then the Division may dispose of the property by the method set out in the notice. Copies of the analysis report and notice shall be made a part of the record of any criminal prosecution. The report, if sworn to, shall be admissible as evidence to the same extent as the disposed-of property would have been admissible.

§ 9-196.10. Disposal of property obtained prior to January 1, 1974.

Notwithstanding the provisions of §§ 2.1-434.8 and 2.1-434.9, the Division of Forensic Science may file an application in the Circuit Court of the City of Richmond seeking an order authorizing the disposal of all personal property, including drugs, received by the Division prior to January 1, 1974. The application, under oath, shall list each item of property, the date of submission to the Division, the agency or individual submitting the property, and the proposed method of disposal. The application shall also state that written notice by first-class mail was given to each agency or individual submitting property listed at least thirty days prior to the application, and that no agency or individual objected to the disposal. A return, under oath, reporting the time, place, and manner of disposal, shall be made to the court.

§ 9-196.11. Rights of accused person or his attorney to results of investigation or to investigation.

Upon the request of any person accused of a crime or upon the request of an accused person's attorney, the Division of Forensic Science or the Division of Consolidated Laboratory Services shall

306 furnish to the accused or his attorney the results of any investigation which has been conducted by it
307 and which is related in any way to a crime for which such person is accused. In any case in which an
308 attorney of record for a person accused of violation of any criminal law of the Commonwealth, or the
309 accused, may desire a scientific investigation, he shall, by motion filed before the court in which the
310 charge is pending, certify that in good faith he believes that a scientific investigation may be relevant to
311 the criminal charge. The motion shall be heard ex parte as soon as practicable, and the court shall,
312 after a hearing upon the motion and being satisfied as to the correctness of the certification, order that
313 the same be performed by the Division of Forensic Science or the Division of Consolidated Laboratory
314 Services and shall prescribe in its order the method of custody, transfer, and return of evidence
315 submitted for scientific investigation. Upon the request of the attorney for the Commonwealth of the
316 jurisdiction in which the charge is pending, he shall be furnished the results of the scientific
317 investigation.

318 § 9-196.12. Reexamination by independent experts.

319 Independent experts employed by an attorney of record for a person accused of violation of any
320 criminal law of the Commonwealth, or the accused, for the purpose of reexamination of materials
321 previously examined in any laboratory of the Division of Forensic Science or the former Bureau of
322 Forensic Science, shall conduct their analyses or examinations independently of the facilities, equipment,
323 or supplies of the Division.

324 § 18.2-267. Preliminary analysis of breath to determine alcoholic content of blood.

325 A. Any person who is suspected of a violation of § 18.2-266 or § 18.2-266.1 shall be entitled, if such
326 equipment is available, to have his breath analyzed to determine the probable alcoholic content of his
327 blood. The person shall also be entitled, upon request, to observe the process of analysis and to see the
328 blood-alcohol reading on the equipment used to perform the breath test. His breath may be analyzed by
329 any police officer of the Commonwealth, or of any county, city or town, or by any member of a
330 sheriff's department in the normal discharge of his duties.

331 B. The Department of ~~General~~ Criminal Justice Services, Division of Forensic Science, shall
332 determine the proper method and equipment to be used in analyzing breath samples taken pursuant to
333 this section and shall advise the respective police and sheriff's departments of the same.

334 C. Any person who has been stopped by a police officer of the Commonwealth, or of any county,
335 city or town, or by any member of a sheriff's department and is suspected by such officer to be guilty
336 of a violation of § 18.2-266 or § 18.2-266.1, shall have the right to refuse to permit his breath to be so
337 analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under
338 § 18.2-266 or § 18.2-266.1.

339 D. Whenever the breath sample analysis indicates that alcohol is present in the person's blood, the
340 officer may charge the person with a violation of § 18.2-266 or § 18.2-266.1, or a similar ordinance of
341 the county, city or town where the arrest is made. The person so charged shall then be subject to the
342 provisions of §§ 18.2-268.1 through 18.2-268.12, or of a similar ordinance of a county, city or town.

343 E. The results of the breath analysis shall not be admitted into evidence in any prosecution under
344 § 18.2-266 or § 18.2-266.1, the purpose of this section being to permit a preliminary analysis of the
345 alcoholic content of the blood of a person suspected of having violated the provisions of § 18.2-266 or
346 § 18.2-266.1.

347 F. Police officers or members of any sheriff's department shall, upon stopping any person suspected
348 of having violated the provisions of § 18.2-266 or § 18.2-266.1, advise the person of his rights under the
349 provisions of this section.

350 G. Nothing in this section shall be construed as limiting the provisions of §§ 18.2-268.1 through
351 18.2-268.12.

352 § 18.2-268.9. Assurance of breath-test validity; use of test results as evidence.

353 To be capable of being considered valid as evidence in a prosecution under § 18.2-266 or
354 § 18.2-266.1, chemical analysis of a person's breath shall be performed by an individual possessing a
355 valid license to conduct such tests, with a type of equipment and in accordance with methods approved
356 by the Department of ~~General~~ Criminal Justice Services, Division of Forensic Science. The Division
357 shall test the accuracy of the breath-testing equipment at least once every six months.

358 The Division shall establish a training program for all individuals who are to administer the breath
359 tests. The program shall include at least forty hours of instruction in the operation of the breath-test
360 equipment and the administration of such tests. Upon a person's successful completion of the training
361 program, the Division may license him to conduct breath-test analyses.

362 Any individual conducting a breath test under the provisions of § 18.2-268.2 shall issue a certificate
363 which will indicate that the test was conducted in accordance with the Division's specifications, the
364 equipment on which the breath test was conducted has been tested within the past six months and has
365 been found to be accurate, the name of the accused, that prior to administration of the test the accused
366 was advised of his right to observe the process and see the blood alcohol reading on the equipment used
367 to perform the breath test, the date and time the sample was taken from the accused, the sample's

alcohol content, and the name of the person who examined the sample. This certificate, when attested by the individual conducting the breath test, shall be admissible in any court in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such analysis. Any such certificate of analysis purporting to be signed by a person authorized by the Division shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it. A copy of the certificate shall be promptly delivered to the accused.

The officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, if otherwise qualified to conduct such test as provided by this section, may make the breath test or analyze the results.

§ 19.2-310.2. Blood sample required for DNA analysis upon conviction of a felony.

Every person convicted of a felony on or after July 1, 1990, and 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, shall have a sample of his blood taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. The analysis shall be performed by the Division of Forensic Science, Department of ~~General~~ *Criminal Justice* Services. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the Division in a DNA data bank and shall be made available only as provided in § 19.2-310.5.

After July 1, 1990, the blood sample shall be taken prior to release from custody.

Notwithstanding the provisions of § 53.1-159, any person convicted of a felony who is in custody after July 1, 1990, shall provide a blood 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 sample as a condition of such sentence.

§ 46.2-341.25. Preliminary analysis of breath of commercial drivers to determine alcohol content of blood.

A. Any person who is reasonably suspected of a violation of § 46.2-341.24 or of having any alcohol in his blood while driving or operating a commercial motor vehicle may be required by any law-enforcement officer to provide a sample of such person's breath for a preliminary screening to determine the probable alcohol content of his blood. Such person shall be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. Such breath may be analyzed by any police officer of the Commonwealth, or of any county, city, or town, or by any member of a sheriff's department in the normal discharge of his duties.

B. The Department of ~~General~~ *Criminal Justice* Services, Division of Forensic Science, shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

C. If the breath sample analysis indicates that there is alcohol present in the person's blood, or if the person refuses to provide a sample of his breath for a preliminary screening, such person shall then be subject to the provisions of §§ 46.2-341.26:1 through 46.2-341.26:11.

D. The results of a breath analysis conducted pursuant to this section shall not be admitted into evidence in any prosecution under § 46.2-341.24 or § 46.2-341.31, but may be used as a basis for charging a person for a violation of the provisions of § 46.2-341.24 or § 46.2-341.31.

E. The law-enforcement officer requiring the preliminary screening test shall advise the person of his obligations under this section and of the provisions of subsection C of this section.

2. That Article 2.1 (§§ 2.1-434.1 through 2.1-434.12) of Chapter 32 of Title 2.1 of the Code of Virginia is repealed.

3. That wherever the term "Division of Forensic Science" is used in this Code, it shall be taken to mean the Division of Forensic Science within the Department of Criminal Justice Services.

4. That the Forensic Science Advisory Board shall continue with the same membership as appointed under the Department of General Services until those appointments expire.