

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 280

An Act to amend and reenact §§ 16.1-299.1 and 19.2-310.2 through 19.2-310.5 of the Code of Virginia, relating to procedures for the withdrawal and maintenance of blood, saliva or tissue for DNA analysis.

[S 208]

Approved April 8, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-299.1 and 19.2-310.2 through 19.2-310.5 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-299.1. Blood sample required for DNA analysis upon conviction or adjudication of felony.

A juvenile convicted of a felony or adjudicated delinquent on the basis of an act which would be a felony if committed by an adult shall have a sample of his blood, *saliva or tissue* taken for DNA analysis provided the juvenile was fourteen years of age or older at the time of the commission of the offense.

The provisions of Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 shall apply to all persons and all blood samples taken as required by this section, *mutatis mutandis*.

§ 19.2-310.2. Blood, saliva or tissue 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, *saliva or tissue* 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 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, *saliva or tissue* 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, *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.

§ 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 professional nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any 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 *containing the sample* shall be sealed and labelled 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. The tubes *containing the samples* shall be secured to prevent tampering with the contents. 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 transported to the Division of Forensic Science not more than fifteen 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.

§ 19.2-310.4. Procedures for conducting DNA analysis of blood, saliva or tissue sample.

Whether or not the results of an analysis are to be included in the data bank, the Division shall conduct the DNA analysis in accordance with procedures adopted by the Division to determine identification characteristics specific to the individual whose sample is being analyzed. The Director or his designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the blood, *saliva or tissue* sample was received and examined, and a statement that the seal on the tube *containing the sample* had not been broken or otherwise tampered with. The remainder of a blood, *saliva or tissue* sample submitted for

analysis and inclusion in the data bank pursuant to § 19.2-310.2 may be divided, labeled as provided for the original sample, and securely stored by the Division in accordance with specific procedures adopted by regulation of the Division to ensure the integrity and confidentiality of the samples. All or part of the remainder of that sample may be used only (i) to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or (ii) for retesting by the Division to validate or update the original analysis.

A report of the results of a DNA analysis conducted by the Division as authorized, including the profile and identifying information, shall be made and maintained at the Division. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts therein stated. Except as specifically provided in this section and § 19.2-310.5, the results of the analysis shall be securely stored and shall remain confidential.

§ 19.2-310.5. DNA data bank exchange.

It shall be the duty of the Division to receive blood, *saliva or tissue* samples and to analyze, classify, and file the results of DNA identification characteristics profiles of blood, *saliva or tissue* samples submitted pursuant to § 19.2-310.2 and to make such information available as provided in this section. The results of an analysis and comparison of the identification characteristics from two or more blood, *saliva or tissue* samples shall be made available directly to federal, state and local law-enforcement officers upon request made in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the Division.

Upon his request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank. Only when a sample or DNA profile supplied by the requestor satisfactorily matches a profile in the data bank shall the existence of data in the data bank be confirmed or identifying information from the data bank be disseminated.

The Division shall adopt regulations governing (i) the methods of obtaining information from the data bank in accordance with this section and (ii) procedures for verification of the identity and authority of the requestor. The Division shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

The Division shall create a separate statistical data base comprised of DNA profiles of blood, *saliva or tissue* samples of persons whose identity is unknown. Nothing in this section or § 19.2-310.6 shall prohibit the Division from sharing or otherwise disseminating the information in the statistical data base with law-enforcement or criminal justice agencies within or without the Commonwealth.

The Division may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law-enforcement agency outside of the Commonwealth.