

# 1998 SESSION

## SENATE SUBSTITUTE

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### SENATE BILL NO. 380

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 4, 1998)

(Patron Prior to Substitute - Senator Howell)

*A BILL to amend the Code of Virginia by adding in Article 4 of Chapter 27 of Title 9 a section numbered 9-196.13, relating to independent examination of DNA evidence.*

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Article 4 of Chapter 27 of Title 9 a section numbered 9-196.13 as follows:**

*§ 9-196.13. Independent examination of forensic DNA evidence.*

*Any untested portions of a DNA sample submitted to the Division shall be sealed by the person performing the DNA test or another person at his direction and returned to the enforcement agency which submitted the sample. The sample so returned shall be preserved by the enforcement agency for independent analysis by an accused, subject to any standard evidence retention and destruction policies of the agency that are utilized in regard to other case evidence.*

*Upon motion of the accused and a determination by the court that an independent analysis is reasonably necessary, the court shall order the enforcement agency having possession of any untested portions of DNA samples to turn such samples over to the accused for independent analysis. The fact that the sample no longer exists or the enforcement agency no longer has the sample in its custody shall not be grounds for setting aside any related conviction. In addition to ordering the analysis, the court order shall specify the cost and responsibility for payment for the analysis, address the preservation of the integrity of the sample and provide for waiver of any speedy trial rights and the right of the prosecution to reciprocal discovery of the results of the analysis.*

*Any independent analysis of an untested DNA sample performed upon request of an accused pursuant to this section shall be performed by a laboratory which is in demonstrated compliance with the standards promulgated by the Federal Bureau of Investigation DNA Advisory Board.*

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