INTRODUCED

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HOUSE BILL NO. 5002

Offered August 19, 2009
Prefiled August 7, 2009

A BILL to amend and reenact §§ 9.1-907, 18.2-268.7, 18.2-268.9, 18.2-472.1, 19.2-187, 19.2-187.01, 19.2-187.1, 19.2-243, 46.2-341.26:7, 46.2-341.26:9, and 46.2-882 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-3.2, relating to admission into evidence of certificates of analysis and affidavits.

Patron—Herring

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-907, 18.2-268.7, 18.2-268.9, 18.2-472.1, 19.2-187, 19.2-187.01, 19.2-187.1, 19.2-243, 46.2-341.26:7, 46.2-341.26:9, and 46.2-882 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-3.2 as follows:

§ 9.1-907. Procedures upon a failure to register or reregister.

A. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered or, if the person failed to comply with the duty to register, in the jurisdiction in which the person was last convicted of an offense for which registration or reregistration is required or if the person was convicted of an offense requiring registration outside the Commonwealth, in the jurisdiction in which the person resides. The State Police shall forward to the jurisdiction an affidavit signed by ~~the~~ *a* custodian of the records that such person failed to comply with the duty to register or reregister. ~~Such~~ *If such* affidavit ~~shall be~~ *is* admitted into evidence ~~as~~, *it shall constitute* prima facie evidence of the failure to comply with the duty to register or reregister in any trial *or hearing* for the violation of § 18.2-472.1, *provided that in a trial or hearing other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H of § 18.2-472.1*. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

B. Nothing in this section shall prohibit a law-enforcement officer employed by a sheriff's office or police department of a locality from enforcing the provisions of this chapter, including obtaining a warrant, or assisting in obtaining an indictment for a violation of § 18.2-472.1. The local law-enforcement agency shall notify the State Police forthwith of such actions taken pursuant to this chapter or under the authority granted pursuant to this section.

C. The State Police shall physically verify or cause to be physically verified the registration information within 30 days of the initial registration and semiannually each year thereafter and within 30 days of a change of address of those persons who are not under the control of the Department of Corrections or Community Supervision as defined by § 53.1-1, who are required to register pursuant to this chapter. Whenever it appears that a person has provided false registration information, the State Police shall promptly investigate and, if there is probable cause to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered. The State Police shall forward to the jurisdiction an affidavit signed by ~~the~~ *a* custodian of the records that such person failed to comply with the provisions of this chapter. ~~Such~~ *If such* affidavit ~~shall be~~ *is* admitted into evidence ~~as~~, *it shall constitute* prima facie evidence of the failure to comply with the provisions of this chapter in any trial *or hearing* for the violation of § 18.2-472.1, *provided that in a trial or hearing other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H of § 18.2-472.1*. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

D. The Department of Corrections or Community Supervision as defined by § 53.1-1 shall physically verify the registration information within 30 days of the original registration and semiannually each year thereafter and within 30 days of a change of address of all persons who are under the control of the Department of Corrections or Community Supervision, who are required to register pursuant to this chapter. The Department of Corrections or Community Supervision, upon request, shall provide the State

Police the verification information, in an electronic format approved by the State Police, regarding persons under their control who are required to register pursuant to the chapter. Whenever it appears that a person has provided false registration information, the Department of Corrections or Community Supervision shall promptly notify the State Police, who shall investigate and, if there is probable cause to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered. The State Police shall forward to the jurisdiction an affidavit signed by ~~the~~ *a* custodian of the records that such person failed to comply with the provisions of this chapter. ~~Such~~ *If such* affidavit ~~shall be~~ *is* admitted into evidence ~~as~~*, it shall constitute* prima facie evidence of the failure to comply with the provisions of this chapter in any trial *or hearing* for the violation of § 18.2-472.1*, provided that in a trial or hearing other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H of § 18.2-472.1*. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

§ 18.2-268.7. Transmission of blood test samples; use as evidence.

A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to § 18.2-268.6, the Department shall have it examined for its alcohol or drug or both alcohol and drug content and the Director shall execute a certificate of analysis indicating the name of the accused; the date, time and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided or approved by the Department and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug or both alcohol and drug content. The Director shall remove the withdrawal certificate from the vial, attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached. The certificate of analysis with the withdrawal certificate shall be returned to the clerk of the court in which the charge will be heard. *In the case of a criminal proceeding, such return shall be made at least 21 days prior to the hearing or trial.*

B. After completion of the analysis, the Department shall preserve the remainder of the blood until 90 days have lapsed from the date the blood was drawn. During this 90-day period, the accused may, by motion filed before the court in which the charge will be heard, with notice to the Department, request an order directing the Department to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. The Department shall destroy the remainder of the blood sample if no notice of a motion to transmit the remaining blood sample is received during the 90-day period.

~~B~~*C.* When a blood sample taken in accordance with the provisions of §§ 18.2-268.2 through 18.2-268.6 is forwarded for analysis to the Department, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court, in any criminal ~~or civil~~ proceeding*, provided the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B or C of § 19.2-187.1, or in a civil proceeding,* as evidence of the facts therein stated and of the results of such analysis. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence provided the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT).

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

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

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

A. To be capable of being considered valid as evidence in a prosecution under § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272, or a similar ordinance, chemical analysis of a person's breath shall be performed by an individual possessing a valid license to conduct such tests, with a type of equipment and in accordance with methods approved by the Department. The Department shall test the accuracy of the breath-testing equipment at least once every six months. *A record certifying (i) the date on which such testing was performed in accordance with Department specifications and (ii) whether such equipment was found to be accurate when tested, shall be provided to and maintained as a business record of the law-enforcement agency where the breath-testing equipment is located.*

B. The Department shall establish a training program for all individuals who are to administer the breath tests. Upon a person's successful completion of the training program, the Department may license

him to conduct breath-test analyses. Such license shall identify the specific types of breath test equipment upon which the individual has successfully completed training. Any individual conducting a breath test under the provisions of § 18.2-268.2 shall issue a certificate which will indicate that the test was conducted in accordance with the Department's specifications~~, the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate~~, the name of the accused, that prior to administration of the test the accused was advised of his right to observe the process and see the blood alcohol reading on the equipment used 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, *provided that the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B or C of § 19.2-187.1, or in a 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 Department 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. Copies of Department records relating to any breath test conducted pursuant to this section shall be admissible provided such copies are authenticated as true copies either by the custodian thereof or by the person to whom the custodian reports.

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 administer the breath test and analyze the results.

§ 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima facie evidence.

A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of a sexually violent offense or murder as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 1 misdemeanor. A second or subsequent conviction for an offense under this subsection is a Class 6 felony.

B. Any person convicted of a sexually violent offense or murder, as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 6 felony. A second or subsequent conviction for an offense under this subsection is a Class 5 felony.

C. A prosecution pursuant to this section shall be brought in the city or county where the offender can be found or where the offender last registered or reregistered or, if the offender failed to comply with the duty to register, where the offender was last convicted of an offense for which registration or reregistration is required.

D. At any ~~trial~~ *preliminary hearing* pursuant to this section, an affidavit from the State Police issued as required in § 9.1-907 shall be ~~admitted~~ *offered* into evidence as prima facie evidence of the failure to comply with the duty to register or reregister and a copy of such affidavit shall be provided to the registrant or his counsel seven days prior to hearing or trial by the attorney for the Commonwealth.

E. The accused in any hearing or trial in which an affidavit from the State Police issued as required in § 9.1-907 is ~~admitted~~ *offered* into evidence pursuant to this section shall have the right to call ~~the~~ *a* custodian of records issuing the affidavit and examine him in the same manner as if he had been called as an adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.

F. At any trial or hearing other than a preliminary hearing conducted pursuant to this section, an affidavit from the State Police issued as required in § 9.1-907 shall have the same effect as if the person who executed the affidavit had personally testified and if such affidavit is admitted into evidence, it shall constitute prima facie evidence of the failure to comply with the duty to register or reregister, provided the requirements of subsection G have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H.

G. If the attorney for the Commonwealth intends to offer the affidavit into evidence at a trial or hearing, other than a preliminary hearing, he shall:

1. Confirm that a copy of the affidavit is filed with the clerk of the court hearing the matter at least seven days prior to the trial or hearing;

2. Mail or deliver a copy of the affidavit to counsel of record for the accused, or to the accused if he is proceeding pro se, at no charge, at least 30 days prior to the hearing or trial; and

3. Attach to the copy of the affidavit mailed or delivered under subdivision 2 a notice to the accused of his right to demand the presence and testimony of a custodian of the records.

H. The accused may object in writing to admission of the affidavit as evidence of the facts stated therein and demand in writing that a custodian of the records be present to testify. Such objection and demand shall be filed with the court hearing the matter, with a copy to the attorney for the

Commonwealth, no less than 21 days prior to the trial or hearing or the objection and demand shall be deemed waived. If timely objection and demand is made, the affidavit shall not be admissible into evidence unless (i) the objection and demand is waived by the accused or his counsel in writing or before the court, or (ii) the parties stipulate before the court to the admissibility of the affidavit.

I. Upon receipt of an objection and demand made pursuant to subsection H, the attorney for the Commonwealth shall cause a custodian of the records to be summoned to appear at the hearing or trial. If the witness so summoned is not available, the court shall order a continuance of the matter.

~~F~~*J*. For the purposes of this section any conviction for a substantially similar offense under the laws of (i) any foreign country or any political subdivision thereof, or (ii) any state or territory of the United States or any political subdivision thereof, the District of Columbia, or the United States shall be considered a prior conviction.

§ 19.2-3.2. Testimony by person preparing certificates of analysis, etc., using two-way electronic video and audio communication.

A. In any criminal proceeding where a certificate, affidavit, or other similar document may be admitted into evidence pursuant to § 18.2-268.9, 18.2-472.1, 19.2-187, or 19.2-188.1, the person who prepared the certificate, affidavit, or other similar document shall, upon motion of the attorney for the Commonwealth in the interest of substantial justice, for good cause shown, be permitted to have his testimony taken in a room outside the courtroom and be transmitted by two-way electronic video and audio communication, provided the courtroom and remote locale are outfitted with the equipment required for such communication.

B. The testimony of the person permitted to testify via two-way electronic video and audio communication shall be transmitted into the courtroom for the defendant, jury, judge, and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony. In addition, any two-way electronic video and audio communication system used pursuant to subsection A shall meet the standards set forth in subsection B of § 19.2-3.1.

C. Notwithstanding any other provision of law, none of the cost of the two-way electronic video and audio communication system shall be assessed against the defendant.

§ 19.2-187. Admission into evidence of certain certificates of analysis.

In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, a certificate of analysis of a person performing an analysis or examination, performed in any laboratory operated by the Division of Consolidated Laboratory Services or the Department of Forensic Science or authorized by such Department to conduct such analysis or examination, *or performed by a person licensed by the Department of Forensic Science pursuant to § 18.2-268.9 or 46.2-341.26:9 to conduct such analysis*, or performed by the Federal Bureau of Investigation, the federal Postal Inspection Service, the federal Bureau of Alcohol, Tobacco and Firearms, the Naval Criminal Investigative Service, the National Fish and Wildlife Forensics Laboratory, the federal Drug Enforcement Administration, or the United States Secret Service Laboratory when such certificate is duly attested by such person, shall *have the same effect as if the person who performed the analysis or examination had personally testified and shall* be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided *(i) in the case of a preliminary hearing, or if the accused intends to offer* the certificate of analysis *into evidence, and it* is filed with the clerk of the court hearing the case at least seven days prior to the hearing or *(ii) in the case of a* trial *or of a hearing other than a preliminary hearing in which the attorney for the Commonwealth intends to offer the certificate into evidence, the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B or C of § 19.2-187.1*.

~~A~~*In the case of a preliminary hearing, a* copy of such certificate shall be mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused at no charge at least seven days prior to the *preliminary* hearing ~~or trial~~ upon request made by such counsel to the clerk with notice of the request to the attorney for the Commonwealth. The request to the clerk shall be on a form prescribed by the Supreme Court and filed with the clerk at least 10 days prior to ~~trial~~ *the preliminary hearing*. In the event that a request for a copy of a certificate is filed with the clerk with respect to a case that is not yet before the court, the clerk shall advise the requester that he must resubmit the request at such time as the case is properly before the court in order for such request to be effective. If, upon proper request made by counsel of record for the accused, a copy of such certificate is not mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused in a timely manner in accordance with this section, the defendant shall be entitled to continue the *preliminary* hearing ~~or trial~~.

The certificate of analysis of any examination conducted by the Department of Forensic Science relating to a controlled substance or marijuana shall be mailed or forwarded by personnel of the Department of Forensic Science to the attorney for the Commonwealth of the jurisdiction where such offense may be heard. The attorney for the Commonwealth shall acknowledge receipt of the certificate

on forms provided by the laboratory.

Any such certificate of analysis purporting to be signed by any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or signature or of the official character of the person whose name is signed to it.

§ 19.2-187.01. Certificate of analysis as evidence of chain of custody of material described therein in a trial or hearing other than a preliminary hearing.

A report of analysis duly attested by the person performing such analysis or examination in any laboratory operated by (i) the Division of Consolidated Laboratory Services, the Department of Forensic Science or any of its regional laboratories, or by any laboratory authorized by such Division or Department to conduct such analysis or examination; (ii) the Federal Bureau of Investigation; (iii) the federal Bureau of Alcohol, Tobacco and Firearms; (iv) the Naval Criminal Investigative Service; (v) the federal Drug Enforcement Administration; (vi) the Postal Inspection Service; or (vii) the United States Secret Service shall be prima facie evidence in a criminal or civil proceeding as to the custody of the material described therein from the time such material is received by an authorized agent of such laboratory until such material is released subsequent to such analysis or examination*; provided that in a criminal proceeding other than a preliminary hearing in which the attorney for the Commonwealth intends to offer the certificate of analysis, the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B or C of § 19.2-187.1.* Any such certificate of analysis purporting to be signed by any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or signature or of the official character of the person whose name is signed to it. The signature of the person who received the material for the laboratory on the request for laboratory examination form shall be deemed prima facie evidence that the person receiving the material was an authorized agent and that such receipt constitutes proper receipt by the laboratory for purposes of this section.

§ 19.2-187.1. Right to demand presence and cross-examination of persons performing analysis or involved in chain of custody.

~~The accused in any hearing or trial in which a certificate of analysis is admitted into evidence pursuant to § 19.2-187 or § 19.2-187.01 shall have the right to call the person performing such analysis or examination or involved in the chain of custody as a witness therein, and examine him in the same manner as if he had been called as an adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.~~

A. In any trial and in any hearing other than a preliminary hearing, in which the attorney for the Commonwealth intends to offer a certificate of analysis into evidence pursuant to § 19.2-187 or 19.2-187.01, the attorney for the Commonwealth shall:

1. Confirm that a copy of the certificate is filed with the clerk of the court hearing the matter at least seven days prior to the hearing or trial;

2. Mail or deliver a copy of the certificate to counsel of record for the accused, or to the accused if he is proceeding pro se, at no charge, at least 30 days prior to the hearing or trial;

3. Attach to the copy of the certificate mailed or delivered under subdivision 2 a notice to the accused of his right to demand the presence and testimony of the person who signed the certificate; and

4. Attach to the copy of the certificate mailed or delivered under subdivision 2 a notice to the accused of his right to demand the presence and testimony of the laboratory personnel who received the material for analysis and were involved in the chain of custody.

B. The accused may object in writing to admission of the certificate of analysis as evidence in lieu of testimony of the facts and the results of the analysis or examination stated therein and demand in writing that the person signing the certificate be present to testify. Such objection and demand shall be filed with the court hearing the matter, with a copy to the attorney for the Commonwealth, no less than 21 days prior to the hearing or trial or the objection and demand shall be deemed waived. If timely objection and demand is made, the certificate shall not be admissible into evidence unless (i) the person signing the certificate is present and testifies during the Commonwealth's case-in-chief at the hearing or trial and is subject to cross-examination by the accused, (ii) the objection and demand is waived by the accused or his counsel in writing or before the court, or (iii) the parties stipulate before the court to the admissibility of the certificate.

C. The accused may object in writing to admission of the certificate of analysis to establish chain of custody of the evidence in lieu of testimony and demand in writing that the personnel who received the material for analysis and were involved in the chain of custody be present to testify. Such objection and demand shall be filed with the court hearing the matter, with a copy to the attorney for the Commonwealth, no less than 21 days prior to the hearing or trial or the objection and demand shall be deemed waived. If timely objection and demand is made, the certificate shall not be admissible into evidence unless (i) the personnel involved in the chain of custody are present and testify during the Commonwealth's case-in-chief at the hearing or trial and are subject to cross-examination by the

accused, (ii) the objection and demand is waived by the accused or his counsel in writing or before the court, or (iii) the parties stipulate before the court to the admissibility of the certificate.

D. Upon receipt of an objection and demand made pursuant to subsection B or C, the attorney for the Commonwealth shall cause the person whose presence is demanded by the accused to be summoned to appear at the hearing or trial. If a witness so summoned is not available, the court shall order a continuance of the matter.

E. The accused, in the event he fails to make timely demand for the presence of a witness in any hearing or trial in which the Commonwealth intends to offer a certificate of analysis into evidence pursuant to § 19.2-187 or 19.2-187.01, shall have the right to call the person performing such analysis or examination or involved in the chain of custody as a witness therein, and examine him in the same manner as if he had been called as an adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.

§ 19.2-243. Limitation on prosecution of felony due to lapse of time after finding of probable cause; misdemeanors; exceptions.

Where a district court has found that there is probable cause to believe that an adult has committed a felony, the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months from the date such probable cause was found by the district court; and if the accused is not held in custody but has been recognized for his appearance in the circuit court to answer for such offense, he shall be forever discharged from prosecution therefor if no trial is commenced in the circuit court within nine months from the date such probable cause was found.

If there was no preliminary hearing in the district court, or if such preliminary hearing was waived by the accused, the commencement of the running of the five and nine months periods, respectively, set forth in this section, shall be from the date an indictment or presentment is found against the accused.

If an indictment or presentment is found against the accused but he has not been arrested for the offense charged therein, the five and nine months periods, respectively, shall commence to run from the date of his arrest thereon.

Where a case is before a circuit court on appeal from a conviction of a misdemeanor or traffic infraction in a district court, the accused shall be forever discharged from prosecution for such offense if the trial de novo in the circuit court is not commenced (i) within five months from the date of the conviction if the accused has been held continuously in custody or (ii) within nine months of the date of the conviction if the accused has been recognized for his appearance in the circuit court to answer for such offense.

The provisions of this section shall not apply to such period of time as the failure to try the accused was caused:

1. By his insanity or by reason of his confinement in a hospital for care and observation;

2. By the witnesses for the Commonwealth being enticed or kept away, or prevented from attending by sickness or accident;

3. By the granting of a separate trial at the request of a person indicted jointly with others for a felony;

4. By continuance granted on the motion of the accused or his counsel, or by concurrence of the accused or his counsel in such a motion by the attorney for the Commonwealth, or by the failure of the accused or his counsel to make a timely objection to such a motion by the attorney for the Commonwealth, or by reason of his escaping from jail or failing to appear according to his recognizance;

5. *By continuance ordered pursuant to subsection I of § 18.2-472.1 or subsection D of § 19.2-187.1;*

6. By the inability of the jury to agree in their verdict; or

~~6~~*7.* By a natural disaster, civil disorder, or act of God.

But the time during the pendency of any appeal in any appellate court shall not be included as applying to the provisions of this section.

For the purposes of this section, an arrest on an indictment or warrant or information or presentment is deemed to have occurred only when such indictment, warrant, information, or presentment or the summons or capias to answer such process is served or executed upon the accused and a trial is deemed commenced at the point when jeopardy would attach or when a plea of guilty or nolo contendere is tendered by the defendant. The lodging of a detainer or its equivalent shall not constitute an arrest under this section.

§ 46.2-341.26:7. Transmission of samples.

A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to § 46.2-341.26:6, the Department shall have it examined for its alcohol or drug content, and the Director shall execute a certificate of analysis indicating the name of the suspect; the date, time, and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided or approved by the

Department and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug content. The Director or his representative shall remove the withdrawal certificate from the vial, attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached. The certificate of analysis with the withdrawal certificate shall be returned to the clerk of the court in which the charge will be heard. *In the case of a criminal proceeding, such return shall be made at least 21 days prior to the hearing or trial.* After completion of the analysis, the Department shall preserve the remainder of the blood until 90 days have lapsed from the date the blood was drawn. During this 90-day period, the accused may, by motion filed before the court in which the charge will be heard, with notice to the Department, request an order directing the Department to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. The Department shall destroy the remainder of the blood sample if no notice of a motion to transmit the remaining blood sample is received during the 90-day period.

B. When a blood sample taken in accordance with the provisions of §§ 46.2-341.26:2 through 46.2-341.26:6 is forwarded for analysis to the Department, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court, in any criminal ~~or civil~~ proceeding, *provided that the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B or C of § 19.2-187.1, or in any civil proceeding,* as evidence of the facts therein stated and of the results of such analysis. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence provided the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT).

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

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

§ 46.2-341.26:9. Assurance of breath test validity; use of breath tests as evidence.

To be capable of being considered valid in a prosecution under § 46.2-341.24 or 46.2-341.31, chemical analysis of a person's breath shall be performed by an individual possessing a valid license to conduct such tests, with the type of equipment and in accordance with methods approved by the Department under the provisions of § 18.2-268.9.

Any individual conducting a breath test under the provisions of § 46.2-341.26:2 shall issue a certificate which includes the name of the suspect, the date and time the sample was taken from the suspect, the alcohol content of the sample, and the identity of the person who examined the sample. The certificate ~~will~~ *shall* also indicate that the test was conducted in accordance with the Department's specifications ~~and that the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate~~. *A record certifying (i) the date on which such testing was performed in accordance with Department specifications and (ii) whether such equipment was found to be accurate when tested, shall be provided to and maintained as a business record of the law-enforcement agency where the breath-testing equipment is located.*

The certificate *of analysis,* when attested by the authorized individual conducting the breath test, shall *have the same effect as if the person who performed the analysis or examination had personally testified and shall* be admissible in any court in any criminal ~~or civil~~ proceeding, *provided that the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B or C of § 19.2-187.1, or in a 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 Department shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it.

A copy of such certificate shall be promptly delivered to the suspect. The law-enforcement officer requiring the test or anyone with such officer at the time if otherwise qualified to conduct such test as provided by this section, may administer the breath test or analyze the results thereof.

§ 46.2-882. Determining speed with various devices; certificate as to accuracy of device; arrest without warrant.

The speed of any motor vehicle may be determined by the use of (i) a laser speed determination device, (ii) radar, (iii) a microcomputer device that is physically connected to an odometer cable and both measures and records distance traveled and elapsed time to determine the average speed of a motor vehicle, or (iv) a microcomputer device that is located aboard an airplane or helicopter and measures and records distance traveled and elapsed time to determine the average speed of a motor vehicle being

operated on highways within the Interstate System of highways as defined in § 33.1-48. The results of such determinations shall be accepted as prima facie evidence of the speed of such motor vehicle in any court or legal proceeding where the speed of the motor vehicle is at issue.

In any court or legal proceeding in which any question arises about the calibration or accuracy of any laser speed determination device, radar, or microcomputer device as described in this section used to determine the speed of any motor vehicle, a certificate, or a true copy thereof, showing the calibration or accuracy of (i) the speedometer of any vehicle, (ii) any tuning fork employed in calibrating or testing the radar or other speed determination device or (iii) any other method employed in calibrating or testing any laser speed determination device, and when and by whom the calibration was made, shall be admissible as evidence of the facts therein stated. No calibration or testing of such device shall be valid for longer than six months. *A record certifying (a) the date on which such calibration or testing was performed and (b) whether such device was found to be accurate when tested, shall be maintained as a business record of the agency conducting such calibration or test.*

The driver of any such motor vehicle may be arrested without a warrant under this section if the arresting officer is in uniform and displays his badge of authority and if the officer has observed the registration of the speed of such motor vehicle by the laser speed determination device, radar, or microcomputer device as described in this section, or has received a radio message from the officer who observed the speed of the motor vehicle registered by the laser speed determination device, radar, or microcomputer device as described in this section. However, in case of an arrest based on such a message, such radio message shall have been dispatched immediately after the speed of the motor vehicle was registered and furnished the license number or other positive identification of the vehicle and the registered speed to the arresting officer.

Neither State Police officers nor local law-enforcement officers shall use laser speed determination devices or radar, as described herein in airplanes or helicopters for the purpose of determining the speed of motor vehicles.

State Police officers may use laser speed determination devices, radar, and/or microcomputer devices as described in this section. All localities may use radar and laser speed determination devices to measure speed. The Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park and the Counties of Arlington, Fairfax, Loudoun, and Prince William and towns within such counties may use microcomputer devices as described in this section.

The Division of Purchases and Supply, pursuant to § 2.2-1112, shall determine the proper equipment used to determine the speed of motor vehicles and shall advise the respective law-enforcement officials of the same. Police chiefs and sheriffs shall ensure that all such equipment and devices purchased on or after July 1, 1986, meet or exceed the standards established by the Division.

2. That an emergency exists and this act is in force from its passage.