

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 19.2-310.2 of the Code of Virginia, relating to DNA analysis upon*
 3 *conviction of certain misdemeanors.*

[S 565]

4 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 19.2-310.2 of the Code of Virginia is amended and reenacted as follows:**8 **§ 19.2-310.2. Blood, saliva, or tissue sample required for DNA analysis upon conviction of**
 9 **certain crimes; fee.**

10 A. Every person convicted of a felony on or after July 1, 1990, every person convicted of a felony
 11 offense under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 who was incarcerated on July 1,
 12 1989, and every person convicted of a misdemeanor violation of § 16.1-253.2, 18.2-57, 18.2-60.3,
 13 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,
 14 18.2-370.6, 18.2-387, 18.2-387.1, or 18.2-479.1 shall have a sample of his blood, saliva or tissue taken
 15 for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the
 16 person. If a sample has been previously taken from the person as indicated by the Local Inmate Data
 17 System (LIDS), no additional sample shall be taken. The Department of Forensic Science shall provide
 18 to LIDS the most current information submitted to the DNA data bank on a weekly basis and shall
 19 remove from LIDS and the data bank persons no longer eligible to be in the data bank. A fee of \$53
 20 shall be charged for the withdrawal of this sample. The fee shall be taxed as part of the costs of the
 21 criminal case resulting in the conviction and \$15 of the fee shall be paid into the general fund of the
 22 locality where the sample was taken and \$38 of the fee shall be paid into the general fund of the state
 23 treasury. This fee shall only be taxed one time regardless of the number of samples taken. The
 24 assessment provided for herein shall be in addition to any other fees prescribed by law. The analysis
 25 shall be performed by the Department of Forensic Science or other entity designated by the Department.
 26 The identification characteristics of the profile resulting from the DNA analysis shall be stored and
 27 maintained by the Department in a DNA data bank and shall be made available only as provided in
 28 § 19.2-310.5.

29 B. After July 1, 1990, the blood, saliva, or tissue sample shall be taken prior to release from custody.
 30 Notwithstanding the provisions of § 53.1-159, any person convicted of an offense listed in subsection A
 31 who is in custody after July 1, 1990, shall provide a blood, saliva, or tissue sample prior to his release.
 32 Every person so convicted after July 1, 1990, who is not sentenced to a term of confinement shall
 33 provide a blood, saliva, or tissue sample as a condition of such sentence. A person required under this
 34 section to submit a sample for DNA analysis is not relieved from this requirement regardless of whether
 35 no blood, saliva, or tissue sample has been taken from the person or, if a sample has been taken,
 36 whether the sample or the results from the analysis of a sample cannot be found in the DNA data bank
 37 maintained by the Department of Forensic Science.

38 C. Nothing in this section shall prevent the Department of Forensic Science from including the
 39 identification characteristics of an individual's DNA profile in the DNA data bank as ordered by a
 40 circuit court pursuant to a lawful plea agreement.

41 D. A collection or placement of a sample for DNA analysis that was taken or retained in good faith
 42 does not invalidate the sample's use in the data bank pursuant to the provisions of this article. The
 43 detention, arrest, or conviction of a person based upon a data bank match or data bank information is
 44 not invalidated if it is determined that the sample was obtained, placed, or retained in the data bank in
 45 good faith, or if the conviction or juvenile adjudication that resulted in the collection of the DNA
 46 sample was subsequently vacated or otherwise altered in any future proceeding, including but not limited
 47 to post-trial or post-fact-finding motions, appeals, or collateral attacks.

48 E. The Virginia Department of Corrections and the Department of Forensic Science shall, on a
 49 quarterly basis, compare databases of offenders under the custody or supervision of the Department of
 50 Corrections with the DNA data bank of the Department of Forensic Science. The Virginia Department
 51 of Corrections shall require a DNA sample of those offenders under its custody or supervision if they
 52 are not identified in the DNA data bank.

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

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57 DNA analysis.

58 G. Each community-based probation services agency established pursuant to § 9.1-174 shall
59 determine by reviewing the Local Inmate Data System upon intake and again prior to discharge whether
60 a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a
61 sample pursuant to this section and, if no sample has been taken, require an offender to submit a sample
62 for DNA analysis.

63 H. The sheriff or regional jailer shall determine by reviewing the Local Inmate Data System upon
64 intake and again prior to release whether a blood, saliva, or tissue sample has been taken for DNA
65 analysis for each offender required to submit a sample pursuant to this section and, if no sample has
66 been taken, require an offender to submit a sample for DNA analysis.