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HOUSE BILL NO. 2279

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on January 30, 2019)

(Patron Prior to Substitute—Delegate Morefield)

A BILL to amend and reenact §§ 19.2-187 and 19.2-187.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 9.1-1101.1, relating to Department of Forensic Science; purchase of forensic laboratory services.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-187 and 19.2-187.01 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 9.1-1101.1 as follows:

§ 9.1-1101.1. Purchase of forensic laboratory services.

A. Notwithstanding any other provision of law, the Department may make and enter into contracts or agreements for forensic laboratory services with any laboratory located in the Commonwealth that is operated by an institution of higher education located in the Commonwealth or a corporate entity that is wholly owned by an institution of higher education located in the Commonwealth, which institution offers a program leading to the Doctor of Pharmacy degree and is accredited by the Accreditation Council for Pharmacy Education and the Southern Association of Colleges and Schools. No such contract or agreement for forensic laboratory services shall be made or entered into with any other laboratory, except as provided in subsection B.

B. The Department may request, and the Director of the Division of Purchases and Supply of the Department of General Services may grant, an exemption from the provisions of subsection A if (i) a laboratory described in subsection A does not meet the reasonable requirements of the Department; (ii) a laboratory described in subsection A cannot provide the forensic laboratory services required by the Department; (iii) forensic laboratory services identical to those provided by the laboratory described in subsection A can be obtained at a cost that is at least 10 percent less than the cost of obtaining such forensic laboratory services from the laboratory described in subsection A, as evidenced by a verified request for pricing; or (iv) in cases in which the Department has issued a Request for Proposals, a proposal submitted by a laboratory other than a laboratory described in subsection A has received a ranking that is at least 10 percent higher than the ranking of any laboratory described in subsection A. In any case in which an exemption is granted pursuant to this subsection, the Director of the Division of Purchases and Supply of the Department of General Services shall submit a written justification for the exception to the Directors of the Department of Forensic Science and the Department of General Services.

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

A. 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.), a certificate of analysis of a person performing an analysis or examination, duly attested by such person, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided that (i) the certificate of analysis is filed with the clerk of the court hearing the case at least seven days prior to the proceeding if the attorney for the Commonwealth intends to offer it into evidence in a preliminary hearing or the accused intends to offer it into evidence in any hearing or trial, or (ii) 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 of § 19.2-187.1, when any such analysis or examination is 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 examination, or performed by the Federal Bureau of Investigation, the United States Postal 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, the Forensic Document Laboratory of the U.S. Department of Homeland Security, or the U.S. Secret Service Laboratory. For purposes of this section, any laboratory that has entered into a contract with the Department of Forensic Science for the provision of forensic laboratory services shall be deemed authorized by the Department to conduct such analyses or examinations.

B. In a hearing or trial in which the provisions of subsection A of § 19.2-187.1 do not apply, 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 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

HOUSE SUBSTITUTE

HB2279H1

with the clerk at least 10 days prior to the hearing or trial. 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 accused shall be entitled to continue the hearing or trial.

C. 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, either by hand or by electronic means, 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 attestation signature of a person performing the analysis or examination may be either hand or electronically signed.

D. Any testimony offered by either party in a preliminary hearing or sentencing hearing, or offered by the accused in any hearing other than a trial, from a person who performed an analysis or examination that resulted in a certificate of analysis may be presented by two-way video conferencing. The two-way video testimony permitted by this section shall comply with the provisions of subsection B of § 19.2-3.1. In addition, unless otherwise agreed by the parties and the court, (i) all orders pertaining to witnesses apply to witnesses testifying by video conferencing; (ii) upon request, all materials read or used by the witness during his testimony shall be identified on the video; and (iii) any witness testifying by video conferencing shall certify at the conclusion of his testimony, under penalty of perjury, that he did not engage in any off-camera communications with any person during his testimony.

E. For the purposes of this section and §§ 19.2-187.01, 19.2-187.1, and 19.2-187.2, the term "certificate of analysis" includes reports of analysis and results of laboratory examination.

F. Nothing in this section shall be construed as requiring a locality to purchase a two-way electronic video and audio communication system. Any decision to purchase such a system is at the discretion of the locality.

§ 19.2-187.01. Certificate of analysis as evidence of chain of custody of material described therein.

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 United States Postal Service; (vii) the U.S. Secret Service; or (viii) the Forensic Document Laboratory of the U.S. Department of Homeland Security 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. 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. *For purposes of this section, any laboratory that has entered into a contract with the Department of Forensic Science for the provision of forensic laboratory services shall be deemed authorized by the Department to conduct such analyses or examinations.*