

1 HOUSE BILL NO. 898
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
 3 (Proposed by the House Committee for Courts of Justice
 4 on _____)
 5 (Patron Prior to Substitute--Delegate Kent)

6 A BILL to amend and reenact §§ 9.1-1104, 9.1-1111, 19.2-187.01, 19.2-270.5, 19.2-310.4, 19.2-310.5,
 7 and 19.2-310.6 of the Code of Virginia, relating to Department of Forensic Science; laboratory
 8 procedures; requirements regarding DNA profiles.

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

10 **1. That §§ 9.1-1104, 9.1-1111, 19.2-187.01, 19.2-270.5, 19.2-310.4, 19.2-310.5, and 19.2-310.6 of the**
 11 **Code of Virginia are amended and reenacted as follows:**

12 **§ 9.1-1104. Rights of accused person or his attorney to results of investigation or to**
 13 **investigation.**

14 Upon the request of any person accused of a crime or upon the request of an accused person's
 15 attorney, the Department or the Division of Consolidated Laboratory Services shall furnish to the accused
 16 or his attorney the results of any investigation that has been conducted by it and that is related in any way
 17 to a crime for which the person is accused. In any case in which an attorney of record for a person accused
 18 of violation of any criminal law of the Commonwealth, or the accused, may desire a scientific
 19 investigation, he shall, by motion filed before the court in which the charge is pending, certify that in good
 20 faith he believes that a scientific investigation may be relevant to the criminal charge and that the
 21 Department or the Division of Consolidated Laboratory Services has indicated it has a methodology to
 22 perform the requested scientific investigation. The motion shall be heard ex parte as soon as practicable,
 23 and the court shall, after a hearing upon the motion and being satisfied as to the correctness of the
 24 certification, order that the same be performed by the Department or the Division of Consolidated
 25 Laboratory Services and shall prescribe in its order the method of custody, transfer, and return of evidence

26 submitted for scientific investigation. Upon the request of the attorney for the Commonwealth of the
27 jurisdiction in which the charge is pending, he shall be furnished the results of the scientific investigation.

28 **§ 9.1-1111. Scientific Advisory Committee; membership.**

29 The Scientific Advisory Committee is hereby established as an advisory board within the meaning
30 of § 2.2-2100, in the executive branch of state government. The Scientific Advisory Committee (the
31 Committee) shall consist of 13 members, consisting of the Director of the Department, and 12 members
32 appointed by the Governor as follows: a director of a private or federal forensic laboratory ~~located in the~~
33 ~~Commonwealth~~; a forensic scientist or any other person, with an advanced degree, who has received
34 substantial education, training, or experience in the subject of laboratory standards or quality assurance
35 regulation and monitoring; a forensic scientist with an advanced degree who has received substantial
36 education, training, or experience in the discipline of molecular biology; a forensic scientist with an
37 advanced degree and having experience in the discipline of population genetics; a scientist with an
38 advanced degree and having experience in the discipline of forensic chemistry; a scientist with an
39 advanced degree and having experience in the discipline of forensic biology; a forensic scientist or any
40 other person, with an advanced degree who has received substantial education, training, or experience in
41 the discipline of trace evidence; a scientist with a doctoral degree and having experience in the discipline
42 of forensic toxicology, who is certified by the American Board of Forensic ~~Toxicologists~~ Toxicology; a
43 member of the Board of the International Association for Identification when initially appointed; a
44 member of the Board of the Association of Firearms and ~~Toolmark~~ Tool Mark Examiners when initially
45 appointed; a member of the International Association for Chemical Testing; and a member of the
46 American Society of Crime Laboratory Directors.

47 Members of the Committee initially appointed shall serve the following terms: four members shall
48 serve a term of one year, four members shall serve a term of two years, and four members shall serve a
49 term of four years. Thereafter, all appointments shall be for a term of four years. A vacancy other than by
50 expiration of term shall be filled by the Governor for the unexpired term.

51 Members of the Committee shall be paid reasonable and necessary expenses incurred in the
52 performance of their duties, and shall receive compensation for their services as provided in §§ 2.2-2813
53 and 2.2-2825.

54 **§ 19.2-187.01. Certificate of analysis as evidence of chain of custody of material described**
55 **therein.**

56 A report of analysis duly attested by the person performing such analysis or examination in any
57 laboratory operated by (i) the Division of Consolidated Laboratory Services, the Department of Forensic
58 Science or any of its regional laboratories, or by any laboratory authorized by such Division or Department
59 to conduct such analysis or examination; (ii) the Federal Bureau of Investigation; (iii) the federal Bureau
60 of Alcohol, Tobacco and Firearms; (iv) the Naval Criminal Investigative Service; (v) the federal Drug
61 Enforcement Administration; (vi) the United States Postal Service; (vii) the U.S. Secret Service; or (viii)
62 the Forensic Document Laboratory of the U.S. Department of Homeland Security shall be prima facie
63 evidence in a criminal or civil proceeding as to the custody of the material described therein from the time
64 such material is received by an authorized agent of such laboratory until such material is released
65 subsequent to such analysis or examination. Any such certificate of analysis purporting to be signed by
66 any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or
67 signature or of the official character of the person whose name is signed to it. The signature of the person
68 who received the material for the laboratory on the request for laboratory examination form or evidence
69 submission receipt, either by hand or by electronic means, shall be deemed prima facie evidence that the
70 person receiving the material was an authorized agent and that such receipt constitutes proper receipt by
71 the laboratory for purposes of this section. For purposes of this section, any laboratory that has entered
72 into a contract with the Department of Forensic Science for the provision of forensic laboratory services
73 shall be deemed authorized by the Department to conduct such analyses or examinations.

74 **§ 19.2-270.5. DNA profile admissible in criminal proceeding.**

75 In any criminal proceeding, DNA (deoxyribonucleic acid) testing shall be deemed to be a reliable
76 scientific technique and the evidence of a DNA profile comparison may be admitted to prove or disprove
77 the identity of any person. This section shall not otherwise limit the introduction of any relevant evidence

78 bearing upon any question at issue before the court, including the accuracy and reliability of the procedures
79 employed in the collection and analysis of a particular DNA sample. The court shall, regardless of the
80 results of the DNA analysis, if any, consider such other relevant evidence of the identity of the accused as
81 shall be admissible in evidence.

82 At least ~~twenty-one~~ 21 days prior to commencement of the proceeding in which the results of a
83 DNA analysis will be offered as evidence, the party intending to offer the evidence shall notify the
84 opposing party, in writing, of the intent to offer the analysis and shall provide or make available copies of
85 ~~the profiles and~~ the report or statement to be introduced. In the event that such notice is not given, and the
86 person proffers such evidence, then the court may in its discretion either allow the opposing party a
87 continuance or, under appropriate circumstances, bar the person from presenting such evidence. The
88 period of any such continuance shall not be counted for speedy trial purposes under § 19.2-243. If the
89 opposing party intends to object to the admissibility of such evidence he shall give written notice of that
90 fact and the basis for his objections at least ~~ten~~ 10 days prior to commencement of the proceedings.

91 Nothing in this section shall be construed to limit the ability of the parties to obtain additional
92 writings or documents, including the profiles, used to reach the conclusion in the report pursuant to § 19.2-
93 187.2.

94 **§ 19.2-310.4. Procedures for conducting DNA analysis of blood, saliva or tissue sample.**

95 Whether or not the results of an analysis are to be included in the data bank, the Department shall
96 conduct the DNA analysis in accordance with procedures adopted by the Department to determine
97 identification characteristics specific to the individual whose sample is being analyzed. The Director or
98 his designated representative shall complete and maintain on file a form indicating the name of the person
99 whose sample is to be analyzed, the date and by whom the blood, saliva or tissue sample was received and
100 examined, and a statement that the seal on the tube or envelope containing the sample had not been broken
101 or otherwise tampered with. The remainder of a blood, saliva or tissue sample submitted for analysis and
102 inclusion in the data bank pursuant to § 19.2-310.2 or 19.2-310.2:1 may be divided, labeled as provided
103 for the original sample, and securely stored by the Department in accordance with specific procedures
104 adopted by regulation of the Department to ensure the integrity and confidentiality of the samples. All or

105 part of the remainder of that sample may be used only (i) to create a statistical-~~data base~~ database provided
106 no identifying information on the individual whose sample is being analyzed is included or (ii) for retesting
107 by the Department to validate or update the original analysis.

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

113 **§ 19.2-310.5. DNA data bank.**

114 A. It shall be the duty of the Department to receive samples of human biological evidence and to
115 analyze, classify, and file the results of DNA identification characteristics profiles of samples of human
116 biological evidence submitted pursuant to § 19.2-310.2 or 19.2-310.2:1 and to make such information
117 available as provided in this section. The results of an analysis and comparison of evidence submitted to
118 the Department pursuant to § 9.1-1101 to the identification characteristics of human biological evidence
119 so analyzed, classified, and filed shall be made available directly to duly authorized members of federal,
120 state, and local law-enforcement agencies or private police departments that have been designated as
121 criminal justice agencies by the Department of Criminal Justice Services as defined by § 9.1-101, attorneys
122 for the Commonwealth or attorneys for the United States Department of Justice, or the Office of the Chief
123 Medical Examiner upon request made in furtherance of an official investigation or prosecution of any
124 criminal offense, or to an accused or his attorney pursuant to § 9.1-1104. The Department shall confirm
125 whether or not there is a DNA profile on file for a specific individual if a federal, state, or local law-
126 enforcement officer or any federal, state, or local criminal justice agency that participates in the National
127 DNA Index System requests that information in furtherance of an official investigation of any criminal
128 offense. For law-enforcement identification purposes, the Department shall provide to any federal, state,
129 or local criminal justice agency that participates in the National DNA Index System the personally
130 identifiable information for any confirmed candidate match associated with a DNA data bank record. The

131 name of the requestor and the purpose for which the information is requested shall be maintained on file
132 with the Department.

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

137 C. The Department shall create a separate statistical ~~data base~~ database comprised of DNA profiles
138 of samples of human biological evidence of persons whose identity is unknown. Nothing in this section
139 or § 19.2-310.6 shall prohibit the Department from sharing or otherwise disseminating the information in
140 the statistical ~~data base~~ database with law-enforcement or criminal justice agencies within or without the
141 Commonwealth.

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

144 **§ 19.2-310.6. Unauthorized uses of DNA data bank; forensic samples; penalties.**

145 Any person who, without authority, disseminates information contained in the data bank ~~shall be~~
146 is guilty of a Class 3 misdemeanor. Any person who disseminates, receives, or otherwise uses or attempts
147 to so use information in the data bank, knowing that such dissemination, receipt, or use is for a purpose
148 other than as authorized by law, ~~shall be~~ is guilty of a Class 1 misdemeanor.

149 Any person who receives information pursuant to § 19.2-270.5, 19.2-310.4, or 19.2-310.5 and
150 discloses such information to any third party who is not an agent or employee of the parties or an expert
151 witness or without a valid court order is guilty of a Class 1 misdemeanor.

152 Except as authorized by law, any person who, for purposes of having DNA analysis performed,
153 obtains or attempts to obtain any sample submitted to the Department of Forensic Science for analysis
154 ~~shall be~~ is guilty of a Class 5 felony.

155 #