

## **CHAPTER 31-13**

### **DNA ANALYSIS**

**31-13-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Department" means the department of corrections and rehabilitation.
2. "DNA" means deoxyribonucleic acid.
3. "Laboratory" means the state crime laboratory.

**31-13-02. DNA testing - Admissibility as evidence.** In any court proceeding, DNA testing is deemed to be a reliable scientific technique, and the evidence of a DNA profile comparison must be admitted as prima facie evidence to prove or disprove the identity of any person. This section does not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court. The court, regardless of the results of the DNA analysis, if any, shall consider other relevant evidence of the identity of the person as is admissible in evidence.

**31-13-03. Persons to be tested - Costs.**

1. A person eighteen years of age or over who is arrested for the commission of a felony shall provide correctional personnel upon booking a sample of blood or other body fluids for DNA law enforcement identification purposes and inclusion in the law enforcement identification databases. If it is determined that the person's DNA sample is included in the law enforcement identification databases, an additional sample is not required.
2. The provisions of this subsection apply only if a person's DNA sample is not already included in the law enforcement identification databases. The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, or 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense or any person who is in the custody of the department after July 31, 1995, as a result of a conviction of one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification databases. The court shall order any person convicted after July 31, 2001, of a felony offense contained in chapter 12.1-16, 12.1-17, or 12.1-18, section 12.1-22-01, or chapter 12.1-27.2 or any person who is in the custody of the department after July 31, 2001, as a result of a conviction for one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification databases. The court shall order an individual convicted after July 31, 2005, of any felony offense or an individual arrested for the commission of a felony offense after July 31, 2009, to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification databases. DNA samples must be collected immediately, but may be preserved by the department for subsequent analysis upon receipt of sufficient funding. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood or other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood or other body fluids as required by this section. Any person convicted after July 31, 1995, who is not sentenced to a term of confinement shall provide a sample of blood or other

body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court.

3. If the person from whom a DNA sample is collected is convicted of a felony offense, the sentencing court shall assess the cost of the procedure against the person being tested. The department shall collect the cost of the procedure from the person being tested and transfer the amount collected to the attorney general for deposit in the general fund.
4. For purposes of this section, "conviction" and "convicted" means a plea of guilty or a finding of guilt by a court or a jury of one of the above-mentioned crimes, notwithstanding that the court suspended execution of sentence or deferred imposition of sentence in accordance with subsection 3 or 4 of section 12.1-32-02, or a felony offense was reduced to a misdemeanor offense in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1.

**31-13-04. DNA testing - Procedure - Immunity - Penalty.** The samples of blood and other body fluids for DNA testing must be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist, or other qualified medical personnel approved by the laboratory and packaged and submitted in containers provided by the laboratory and in accordance with rules adopted by the laboratory. No civil or criminal liability may attach to any person authorized to draw blood and other body fluids as provided by this chapter as a result of the act of drawing blood and other body fluids from any person, provided the blood and other body fluids were drawn according to generally accepted medical procedures. Any person who tampers or attempts to tamper with any sample of blood or other body fluids or the collection container without lawful authority is guilty of a class C felony.

**31-13-05. DNA database established - How utilized.** The laboratory shall establish a centralized database of DNA identification records. The established system must be compatible with the procedures set forth in the national DNA identification index to ensure data exchange on a national level. The centralized DNA database must be used to assist federal, state, and local criminal justice and law enforcement agencies within and outside the state in the identification or prosecution of criminal offenses. The laboratory shall receive, analyze, and classify samples in compliance with section 31-13-04 and shall record the DNA result in a centralized database for identification and statistical purposes. The laboratory may contract with another laboratory for the analysis and classification of the samples. A report of the analysis certified by the laboratory is admissible in any court as prima facie evidence of the facts stated in the report.

**31-13-06. Confidentiality of records.** Notwithstanding section 44-04-18, except as necessary for law enforcement purposes, all records produced from the samples taken as provided in this chapter must be securely stored and are confidential. However, the records must be available to:

1. Any person who is the subject of a record.
2. A public official or the official's authorized agent who requires that information in connection with the discharge of the official's official duties.
3. A court whenever the court determines that the information is necessary for the determination of an issue before the court.

**31-13-07. Removal of DNA profiles from database.** A person whose DNA profile has been included in the database under this chapter may petition the district court to seal the court record on the grounds that the arrest that led to the inclusion of the DNA profile has not resulted in a felony charge within one year; has been resolved by a dismissal, acquittal, or misdemeanor conviction; has not resulted in a felony conviction; or the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The laboratory shall expunge all identifiable information in the database pertaining to the person and destroy all

samples from the person upon receipt of a certified order. The detention, arrest, or conviction of a person based upon database information is not invalidated if it is later determined that the specimens or samples were obtained or placed in the database by mistake. The sealed record may not be opened even by order of the court.

**31-13-08. Rules.** The attorney general shall adopt rules pursuant to chapter 28-32 necessary to carry out provisions of the DNA database identification system. The rules must include procedures for collection, analysis, and classification of samples of blood and other body fluids, database system usage and integrity, and methods for contracting with another laboratory for the analysis and classification of samples.

**31-13-09. DNA profiles to be available to law enforcement - Penalty.** Upon payment of a reasonable fee established by the laboratory, the laboratory shall provide, upon the request of appropriate law enforcement agencies for use for official purposes, an updated list of names of individuals whose DNA profiles are stored in the database at the laboratory. Any person who disseminates, receives, or otherwise uses or attempts to use information in the database, knowing that the dissemination, receipt, or use is for a purpose other than as authorized by law, is guilty of a class A misdemeanor.