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. Individuals to be tested - Costs.

1. An individual eighteen years of age or over who is arrested or summoned to appear before a magistrate for the commission of a felony shall provide to a law enforcement officer or correctional personnel at the time of the individual's arrest or appearance or upon booking into a correctional facility 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 individual'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 an individual's DNA sample is not already included in the law enforcement identification databases. The court shall order any individual 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 individual engaged in a nonconsensual sexual act or sexual contact with another individual during, in the course of, or as a result of, the offense or any individual 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 individual 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 individual 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. Any individual 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 individual 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 individual being tested. The department shall collect the cost of the procedure from the individual

being tested and transfer the amount collected to the attorney general for deposit in the general fund.

4. If the sentencing court has not ordered an individual to provide a sample of blood or other body fluids under this section, or if an individual required to provide a sample of blood or other body fluids under this section has refused to submit a sample of blood or other body fluids, the sentencing court retains jurisdiction to order the individual, including an individual whose sentence to incarceration or supervised probation has expired, to submit a sample of blood or other body fluids for DNA law enforcement identification purposes, or to order the individual to show cause why the individual should not be required to submit a sample of blood or other body fluids for DNA law enforcement identification purposes.
5. If a sample of blood or body fluids collected under this section does not contain sufficient material necessary to obtain accurate DNA identification, the crime laboratory may request a law enforcement officer or correctional personnel collect another sample for analysis and inclusion in the law enforcement identification databases.
6. The laboratory shall retain DNA samples in accordance with laboratory DNA sample retention procedures.
7. 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.

1. Samples of blood or other body fluids for DNA testing may be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, or medical technologist, and packaged and submitted in kits approved or provided by the laboratory and in accordance with rules adopted by the laboratory.
2. Samples of saliva for DNA testing may be obtained by a licensed peace officer or a correctional officer, and packaged and submitted in kits approved or provided by the laboratory and in accordance with rules adopted by the laboratory. Samples may be collected and submitted by personnel from an agency outside the state with approval of the laboratory.
3. Civil or criminal liability may not attach to any individual authorized to draw or obtain a sample of blood or other body fluids from any individual for DNA testing if the sample of blood or other body fluids was drawn or obtained according to sampling techniques approved by the laboratory.

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.

1. An individual 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.
2. The laboratory shall expunge all identifiable information in the database pertaining to the individual and destroy all samples from the individual upon receipt of a certified order. The detention, arrest, or conviction of an individual 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 or if the specimens or samples should have been expunged. The sealed record may not be opened even by order of the court.
3. Civil or criminal liability may not attach to any individual or to any state or local governmental entity for the good-faith inclusion and retention of identifiable information in the database from a sample of blood or other body fluids which has been legally obtained.

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.

31-13-10. Tampering with DNA sample testing - Penalty.

An individual who willfully tampers or attempts to tamper with a sample of blood or body fluids or a collection device or kit to alter the outcome of DNA testing is guilty of a class C felony. An individual who willfully possesses, distributes, or assists in the use of a device, chemical, or real or artificial sample of blood or body fluids intended to be used to alter the outcome of DNA testing is guilty of a class C felony.