

H. B. 2867

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(By Delegates Sumner, Howell, Smith, O'Neal,
Sobonya, C. Miller, L. Phillips,
Hall and Frazier)

[Introduced January 26, 2011; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §15-2B-6 and §15-2B-11 of the Code of
West Virginia, 1931, as amended, all relating to DNA testing
of persons arrested for certain offenses, storing of DNA
samples from sexual assault victims and expungement of samples
absent a conviction.

Be it enacted by the Legislature of West Virginia:

That §15-2B-6 and §15-2B-11 of the Code of West Virginia,
1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2B. DNA DATA.

**§15-2B-6. DNA sample required for DNA analysis upon conviction;
DNA sample required for certain prisoners.**

(a) Any person ~~convicted of an offense described in section~~
arrested for a violation of section one, four, seven, nine or nine-
a, article two, chapter sixty-one of this code when ~~that the~~
offense constitutes a felony or arrested for violations found in
section ten, ten-a, ten-b, twelve, fourteen or fourteen-a, article
two, chapter sixty-one of this code or arrested for violations
found in section twelve, article eight, ~~of said chapter sixty-one~~
when ~~that the~~ offense constitutes a felony, shall provide a DNA

1 sample to ~~be used~~ jail or detention facility personnel upon booking
2 for DNA analysis as described in this article. Further, any person
3 ~~convicted of any~~ arrested for an offense described in article
4 eight-b or eight-d, ~~of said~~ chapter sixty-one of this code shall
5 provide a DNA sample to ~~be used~~ jail or detention facility
6 personnel upon booking for DNA analysis as described in this
7 article.

8 (b) Any person presently incarcerated in a state correctional
9 facility or a jail in this state after arrest or conviction of any
10 offense listed in subsection (a) of this section shall provide a
11 DNA sample ~~to be used for purposes of~~ for DNA analysis as described
12 in this article.

13 (c) Any person ~~convicted of~~ arrested for a violation of
14 section five or thirteen, article two, chapter sixty-one of this
15 code or section one, ~~two, three, four, five,~~ seven, eleven or
16 twelve, article two, chapter sixty-one when ~~that~~ the offense
17 constitutes a felony or subsection (a), section thirteen, article
18 three, ~~of said chapter section~~ chapter sixty-one of this code or
19 section three, four, five or ten, article three-e, of ~~said~~ chapter
20 sixty-one or section three, article four, ~~of said~~ chapter sixty-
21 one, shall provide a DNA sample to ~~be used~~ jail or detention
22 facility personnel upon booking for DNA analysis as described in
23 this article.

24 (d) Any person ~~convicted of~~ arrested for an offense which
25 constitutes a felony violation of the provisions of article four,
26 chapter sixty-a of this code; or of an attempt to commit a

1 violation of section one or section fourteen-a, article two,
2 chapter sixty-one of this code; or an attempt to commit a violation
3 of article eight-b of ~~said chapter~~ chapter sixty-one shall provide
4 a DNA sample to ~~be used~~ jail or detention facility personnel upon
5 booking for DNA analysis as described in this article.

6 (e) The method of taking the DNA sample is subject to the
7 testing methods utilized by the West Virginia State Police Crime
8 Lab.

9 (f) When a person required to provide a DNA sample pursuant to
10 this section refuses to comply, the state shall apply to a circuit
11 court for an order requiring the person to provide a DNA sample.
12 Upon a finding of failure to comply, the circuit court shall order
13 the person to submit to DNA testing in conformity with the
14 provisions of this article.

15 (g) The West Virginia State Police may, where not otherwise
16 mandated, require ~~any~~ a person convicted of a felony offense under
17 the provisions of this ~~code~~ article to provide a DNA sample to be
18 used for the sole purpose of criminal identification of the
19 convicted person who provided the sample ~~Provided, That~~ if the
20 person is under the supervision of the criminal justice system at
21 the time the request for the sample is made. Supervision includes
22 prison, the regional jail system, parole, probation, home
23 confinement, community corrections program and work release.

24 (h) No part of the genetic information ~~that is~~ authorized to
25 be collected pursuant to this article may be used for any purpose
26 other than to establish ~~the identity of the individual.~~ identity.

1 The biological sample obtained to conduct the identity test not
2 necessary to conduct a present or future identity test shall be
3 destroyed following the performance of the initial identity test
4 analysis.

5 (i) Samples from biological material collected pursuant to a
6 medical examination of a sexual assault victim shall be submitted
7 to the state's designated DNA typing, testing and research
8 laboratory for DNA testing. Records derived from DNA testing that
9 qualify for insertion into CODIS, the Federal Bureau of
10 Investigation's National DNA Index System for storage and exchange
11 of DNA records submitted by forensic DNA laboratory, shall be
12 submitted by the laboratory to the state databank.

13 **§15-2B-11. Expungement.**

14 (a) Any person whose DNA record or profile has been included
15 in the state database and whose DNA sample is stored in the state
16 databank or the state's designated DNA typing, testing and research
17 laboratory may apply for expungement on the grounds that the felony
18 conviction that resulted in the inclusion of the person's DNA
19 record or profile in the state database or the inclusion of the
20 person's DNA sample in the state databank has been reversed and the
21 case dismissed; or, in the case of persons whose arrest led to the
22 inclusion of the same, that the arrest has either:

23 (1) Resulted in a felony charge that has been resolved by a
24 dismissal, nolle prosequi, successful completion of a
25 preprosecution diversion program or a conditional discharge,
26 misdemeanor conviction or acquittal; or

1 (2) Not resulted in a felony charge within one year of arrest.

2 (b) The person requesting expungement, either individually or
3 through an attorney, may apply to the court for expungement of the
4 record. A copy of the application for expungement shall be served
5 on the prosecuting attorney for the judicial district in which the
6 felony conviction was obtained not less than twenty days prior to
7 the date of the hearing on the application. A certified copy of
8 the order reversing and dismissing the conviction shall be attached
9 to an order of expungement.

10 ~~(b)~~ (c) Upon receipt of an order of expungement, the division
11 shall purge the DNA record and all other identifiable information
12 from the state database and the DNA sample stored in the state
13 databank covered by the order. If the individual has more than one
14 entry in the state database and databank, then only the entry
15 covered by the expungement order shall be deleted from the state
16 database or databank.

NOTE: The purpose of this bill is to require DNA testing for individuals arrested for certain offenses, to provide for storage of DNA samples from sexual assault victims and to provide for expungement of DNA samples from persons not convicted of an offense.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.