

**Senate Bill No. 67**

(By Senators Yost, Foster, Jenkins, Miller and Sypolt)

[Introduced January 12, 2011; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new section, designated §15-2B-6a; and to  
amend and reenact §15-2B-11 of said code, all relating to  
requiring persons arrested for a felony to submit to a DNA  
sample; and providing a procedure for expungement if the  
felony charge has been dismissed.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended  
by adding thereto a new section, designated §15-2B-6a; and that  
§15-2B-11 of said code be amended and reenacted, all to read as  
follows:

**ARTICLE 2B. DNA DATA.**

**§15-2B-6a. Collection of DNA from arrested persons.**

(a) A person eighteen years of age or over who is arrested for  
the commission of a felony under the laws of this state or any other

1 jurisdiction shall provide a DNA sample to be used for DNA analysis  
2 as described in this article. A sample is not required if it is  
3 determined that a sample has previously been taken, is in the  
4 possession of the administrative center, has not been expunged  
5 pursuant to section eleven of this article and is sufficient for DNA  
6 identification testing.

7 (b) Any person acquitted of the felony or has the felony  
8 dismissed, whose DNA sample has been taken pursuant to subsection  
9 (a) of this section, may apply for expungement pursuant to section  
10 eleven of this article.

11 **§15-2B-11. Expungement.**

12 (a) Any person whose DNA record or profile has been included  
13 in the state database and whose DNA sample is stored in the state  
14 databank or the state's designated DNA typing, testing and research  
15 laboratory may apply for expungement on the grounds that: ~~the~~ (1)  
16 The felony conviction that resulted in the inclusion of the person's  
17 DNA record or profile in the state database or the inclusion of the  
18 person's DNA sample in the state databank has been reversed and the  
19 case dismissed; or (2) the felony arrest that resulted in the  
20 inclusion of the person's DNA record or profile in the state  
21 database or the inclusion of the person's DNA sample in the state  
22 databank has been dismissed, withdrawn or resulted in a not guilty  
23 verdict. The person requesting expungement, either individually or  
24 through an attorney, may apply to the court for expungement of the  
25 record. A copy of the application for expungement shall be served

1 on the prosecuting attorney for the judicial district in which the  
2 felony conviction, dismissal, withdrawal or not guilty verdict was  
3 obtained not less than twenty days prior to the date of the hearing  
4 on the application. A certified copy of the order reversing and  
5 dismissing the conviction shall be attached to an order of  
6 expungement.

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

NOTE: The purpose of this bill is to require persons arrested  
for a felony to submit to a DNA sample; and providing procedures for  
expungement if the felony has been dismissed.

§15-2B-6a is new; therefore, strike-throughs and underscoring  
have been omitted.

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