

COMMITTEE SUBSTITUTE

FOR

H. B. 3054

(BY DELEGATES MILEY, LONGSTRETH, FLEISCHAUER,
SKAFF, HAMILTON, SOBONYA AND C. MILLER)

(Originating in the Committee on Finance)
[February 24, 2011]

A BILL to amend and reenact §15-2B-3, §15-2B-6, §15-2B-7, §15-2B-9, §15-2B-10 and §15-2B-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §15-2B-15 and §15-2B-16, all relating to the collection and use of DNA data generally; providing for the collection of DNA samples from certain persons; providing for a penalty of contempt for a

person refusing to furnish a DNA sample pursuant to a court order; and authorizing the West Virginia State Police to collect certain fees for DNA testing.

Be it enacted by the Legislature of West Virginia:

That §15-2B-3, §15-2B-6, §15-2B-7, §15-2B-9, §15-2B-10 and §15-2B-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §15-2B-15 and §15-2B-16, all to read as follows:

ARTICLE 2B. DNA DATA.

§15-2B-3. Definitions.

- 1 As used in this article: ~~the following terms mean:~~
- 2 (1) "CODIS" means the Federal Bureau of Investigation's
- 3 Combined DNA Index System that allows the storage and
- 4 exchange of DNA records submitted by federal, state and
- 5 local forensic DNA laboratories. The term "CODIS"
- 6 includes the National DNA Index System administered and
- 7 operated by the Federal Bureau of Investigation.

8 (2) "Conviction" includes convictions by a jury or court,
9 guilty plea, or plea of nolo contendere.

10 (3) "Criminal justice agency" means an agency or
11 institution of a federal, state or local government, other than
12 the office of public defender, which performs as part of its
13 principal function, relating to the apprehension, investigation,
14 prosecution, adjudication, incarceration, supervision or
15 rehabilitation of criminal offenders.

16 (4) "Division" means the West Virginia State Police.

17 ~~(a)~~(5) "DNA" means deoxyribonucleic acid. DNA is
18 located in the nucleus of cells and provides an individual's
19 personal genetic blueprint. DNA encodes genetic
20 information that is the basis of human heredity and forensic
21 identification.

22 ~~(b)~~(6) "DNA record" means DNA identification
23 information stored in any state DNA database pursuant to
24 this article. The DNA record is the result obtained from
25 DNA typing tests. The DNA record is comprised of the
26 characteristics of a DNA sample which are of value in
27 establishing the identity of individuals. The results of all

28 DNA identification tests on an individual's DNA sample are
29 also included as a "DNA record".

30 ~~(c)~~(7) "DNA sample" means a tissue, fluid or other
31 bodily sample, suitable for testing, provided pursuant to this
32 article or submitted to the division laboratory for analysis
33 pursuant to a criminal investigation.

34 ~~(d)~~(8) "FBI" means the Federal Bureau of Investigation.

35 (9) "Interim plan" means the plan used currently by the
36 Federal Bureau of Investigation for Partial Match Protocol
37 and to be adopted under the management rules of this article.

38 (10) "Management rules" means the rules promulgated by
39 the West Virginia State Police that define all policy and
40 procedures in the administration of this article.

41 (11) "Partial match" means that two DNA profiles, while
42 not an exact match, share a sufficient number of
43 characteristics to indicate the possibility of a biological
44 relationship.

45 (12) "Qualifying offense" means any felony offense as
46 described in section six of this article or any offense

47 requiring a person to register as a sex offender under this
48 code or the federal law. For the purpose of this article, a
49 person found not guilty of a qualifying offense by reason of
50 insanity or mental disease or defect shall be required to
51 provide a DNA sample in accordance with this article.

52 (13) "Registering Agency" means the West Virginia State
53 Police.

54 ~~(e)~~(14) "State DNA database" means all DNA
55 identification records included in the system administered by
56 the West Virginia State Police.

57 ~~(f)~~(15) "State DNA databank" means the repository of
58 DNA samples collected under the provisions of this article.

59 ~~(g) "Division" means the West Virginia State Police.~~

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

1 (a) Any person convicted of an offense described in
2 section one, four, seven, nine, nine-a (when that offense
3 constitutes a felony), ten, ten-a, ten-b, twelve, fourteen or
4 fourteen-a, article two, chapter sixty-one of this code or

5 section twelve, article eight of said chapter (when that
6 offense constitutes a felony), shall provide a DNA sample to
7 be used for DNA analysis as described in this article.
8 Further, any person convicted of any offense described in
9 article eight-b or eight-d of said chapter shall provide a DNA
10 sample to be used for DNA analysis as described in this
11 article.

12 (b) Any person presently incarcerated in a state
13 correctional facility or ~~a county or regional~~ in jail in this state
14 after conviction of any offense listed in subsection (a) of this
15 section shall provide a DNA sample to be used for purposes
16 of DNA analysis as described in this article.

17 (c) Any person convicted of a violation of section five or
18 thirteen, article two, chapter sixty-one of this code, section
19 one, two, three, four, five, seven, eleven, twelve (when that
20 offense constitutes a felony) or subsection (a), section
21 thirteen, article three of said chapter, section three, four, five
22 or ten, article three-e of said chapter or section three, article

23 four of said chapter, shall provide a DNA sample to be used
24 for DNA analysis as described in this article.

25 (d) Any person convicted of an offense which constitutes
26 a felony violation of the provisions of article four, chapter
27 sixty-a of this code; or of an attempt to commit a violation of
28 section one or section fourteen-a, article two, chapter
29 sixty-one of this code; or an attempt to commit a violation of
30 article eight-b of said chapter shall provide a DNA sample to
31 be used for DNA analysis as described in this article.

32 (e) The method of taking the DNA sample is subject to
33 the testing methods ~~utilized~~ used by the West Virginia State
34 Police Crime Lab. The DNA sample will be collected using
35 a postage paid DNA collection kit provided by the West
36 Virginia State Police.

37 (f) When a person required to provide a DNA sample
38 pursuant to this section refuses to comply, the state shall
39 apply to a circuit court for an order requiring the person to
40 provide a DNA sample. Upon a finding of failure to comply,

41 the circuit court shall order the person to submit to DNA
42 testing in conformity with the provisions of this article.

43 (g) The West Virginia State Police may, where not
44 otherwise mandated, require any person convicted of a felony
45 offense under the provisions of this code, to provide a DNA
46 sample to be used for the sole purpose of criminal
47 identification of the convicted person who provided the
48 sample: *Provided*, That the person is under the supervision of
49 the criminal justice system at the time the request for the
50 sample is made. Supervision includes prison, the regional
51 jail system, parole, probation, home confinement, community
52 corrections program, and work release.

53 ~~(h) No part of the genetic information that is authorized~~
54 ~~to be collected pursuant to this article may be used for any~~
55 ~~purpose other than to establish the identity of the individual.~~
56 ~~The biological sample obtained to conduct the identity test~~
57 ~~not necessary to conduct a present or future identity test shall~~
58 ~~be destroyed following the performance of the initial identity~~
59 ~~test analysis.~~

60 (h) On the effective date of the amendments to this
61 section enacted during the regular session of the Legislature
62 in 2011, any person required to register as a sex offender in
63 this state and who has not already provided a DNA sample in
64 accordance with this article, shall provide a DNA sample as
65 determined by the registration agency in consultation with
66 the West Virginia State Police Laboratory. The registering
67 agency is responsible for the collection and submission of the
68 sample under this article.

69 (i) When this state accepts a person from another state
70 under any interstate compact, or under any other reciprocal
71 agreement with any county, state or federal agency or any
72 other provision of law whether or not the person is confined
73 or released, the transferred person must submit a DNA
74 sample, if the person was convicted of an offense in any
75 other jurisdiction which would be considered a qualifying
76 offense as defined in section six if committed in this state, or
77 if the person was convicted of an equivalent offense in any
78 other jurisdiction. The person shall provide the DNA sample

79 in accordance with the rules of the custodial institution or
80 supervising agency. If the transferred person has already
81 submitted a DNA sample that can be found in the national
82 database, the accepting agency is not required to draw a
83 second DNA sample.

84 (j) If a person convicted of a qualifying offense is
85 released without giving a DNA sample due to an oversight or
86 error or because of the person's transfer from another
87 jurisdiction, the person shall give a DNA sample for
88 inclusion in the state DNA database after being notified of
89 this obligation. Any such person may request a copy of the
90 court order requiring the sample prior to the collection of the
91 DNA sample.

§15-2B-7. Tests to be performed on DNA sample.

1 The tests to be performed on each ~~blood~~ DNA sample
2 shall analyze and type the genetic markers contained in or
3 derived from the DNA sample in accordance with rules
4 promulgated under this article. Any ~~such~~ rule regarding the

5 typing and analysis of the ~~blood~~ DNA sample shall be
6 consistent with any specifications required by federal law.

**§15-2B-9. Procedures for withdrawal of blood sample for DNA
analysis and for conducting analysis.**

1 (a) Upon incarceration, the Division of Corrections,
2 regional jails ~~county jails~~ and felon facilities shall ensure that
3 the ~~blood~~ DNA sample is ~~drawn~~ collected from all persons
4 described in section six of this article. When any person
5 convicted of an offense described in ~~said~~ section six is not
6 incarcerated, the sheriff in ~~such~~ the county where the person
7 is convicted shall ensure that ~~blood~~ the DNA sample is ~~drawn~~
8 collected from ~~such~~ the person ~~at the regional facility~~:
9 *Provided*, That ~~blood~~ a DNA sample may be ~~drawn~~ collected
10 ~~at a county jail or at a prison, regional facility or local~~
11 ~~hospital unit when so ordered by the sentencing court or~~
12 other location determined by the sheriff. ~~The sheriff shall~~
13 ~~transport such persons who are not incarcerated to the facility~~
14 ~~where the blood is drawn.~~

15 (b) The Superintendent of the ~~division~~ West Virginia
16 State Police shall promulgate a legislative rule pursuant to
17 chapter twenty-nine-a of this code establishing which persons
18 may withdraw blood and further establishing procedures to
19 withdraw blood. At a minimum, these procedures shall
20 require that when blood is withdrawn for the purpose of
21 DNA identification testing, a previously unused and sterile
22 needle and sterile vessel shall be used, the withdrawal shall
23 otherwise be in strict accord with accepted medical practices
24 and in accordance with any recognized medical procedures
25 employing universal precautions as ~~may be~~ outlined by the
26 ~~national~~ Centers for Disease Control and Prevention. No
27 civil liability attaches to any person when the blood was
28 drawn according to recognized medical procedures
29 employing ~~such~~ the universal precautions. No person is
30 relieved of liability for negligence in the drawing of blood for
31 purposes of DNA testing.

32 (c) The Superintendent of the ~~division~~ West Virginia
33 State Police shall promulgate legislative rules pursuant to

34 chapter twenty-nine-a of this code governing the procedures
35 to be used in the ~~withdrawal of blood~~ collection of DNA
36 samples, submission, identification, analysis and storage of
37 DNA samples and typing results of DNA samples submitted
38 under this article which shall be compatible with recognized
39 federal standards.

40 (d) The agency having control, custody or supervision of
41 persons convicted for qualifying offenses may, in
42 consultation with and approval of the West Virginia State
43 Police Laboratory, promulgate rules or policies specifying
44 the time and manner of collection of the DNA samples as
45 well as any other matter necessary to carry out its
46 responsibilities under this article.

47 (e) The agency or institution having custody, control or
48 providing supervision of persons convicted for qualifying
49 offenses, as appropriate, is authorized to contract with third
50 parties to provide for the collection of the DNA samples
51 described in section six of this article.

52 (f) A person, convicted of a qualifying offense and not
53 incarcerated in a facility described in subsection (a) of this
54 section, who has been put on notice of his or her obligation
55 to provide a DNA sample and has not submitted a court
56 ordered DNA sample at the request of a law-enforcement
57 agency, shall be responsible for notifying the agency
58 designated in the court order and complying with that
59 agency's directives for submitting a DNA sample. The person
60 shall have thirty days from the receipt of the court order to
61 comply unless there is a documented exception from the
62 agency responsible for the DNA sample collection. A person
63 refusing to comply with a court order directing that person
64 submit a DNA sample may be considered in contempt.

65 (g) Any court sentencing a person convicted of a
66 qualifying offense to probation, on or after the effective date
67 of the amendments to this section enacted during the regular
68 session of the Legislature in 2011, shall order, as a condition
69 of such probation, that the convicted person report to the

70 local sheriff's department to provide a DNA sample within
71 thirty days.

§15-2B-10. DNA database exchange.

1 (a) The ~~division~~ West Virginia State Police shall receive
2 DNA samples, store, analyze, classify and file the DNA
3 records consisting of all identification characteristics of DNA
4 profiles from ~~blood~~ DNA samples submitted pursuant to the
5 procedures for conducting DNA analysis of ~~blood~~ DNA
6 samples.

7 (b) The ~~division~~ West Virginia State Police may furnish
8 DNA records to authorized law-enforcement and
9 governmental agencies of the United States and its territories,
10 of foreign countries duly authorized to receive ~~the same~~
11 them, of other states within the United States and of the State
12 of West Virginia upon proper request stating that the DNA
13 records requested will be used solely:

14 (1) For law enforcement identification purposes by
15 criminal justice agencies;

16 (2) In judicial proceedings, if otherwise expressly
17 permitted by state or federal laws; ~~or~~

18 (3) If personal identifying information is removed, for a
19 population statistics database, for identification research and
20 protocol development purposes, or for quality control
21 purposes; or

22 (4) For the identification of unidentified human remains,
23 missing persons and relatives of missing persons.

24 (c) The Superintendent of the ~~division~~ West Virginia
25 State Police shall promulgate ~~further~~ legislative rules
26 pursuant to chapter twenty-nine-a of this code governing the
27 methods by which any law-enforcement agency or other
28 authorized entity may obtain information from the state DNA
29 database consistent with this section and federal law.

30 (d) The ~~division~~ West Virginia State Police may release
31 DNA samples, without personal identifying information, to
32 any agency or entity with which the ~~division~~ West Virginia
33 State Police contracts pursuant to section five of this article.

34 (e) The West Virginia State Police may release DNA
35 samples for criminal defense and appeal purposes, to a
36 defendant who is entitled to access to samples and analysis
37 performed in connection with the case in which the defendant
38 is charged or was convicted.

39 (f) Searches of the state DNA database shall be
40 performed in accordance with state and federal law and
41 procedures.

§15-2B-12. Confidentiality; unauthorized uses of DNA databank; penalties.

1 (a) All DNA profiles and samples submitted to the
2 ~~division of public safety~~ West Virginia State Police pursuant
3 to this article shall be treated as confidential except as
4 provided in this article.

5 (b) Any person who, by virtue of employment or official
6 position has possession of or access to individually
7 identifiable DNA information contained in the state DNA
8 database or databank and who willfully discloses it in any
9 manner to any person or agency not entitled to receive it
10 guilty of a misdemeanor and, upon conviction thereof, shall

11 be fined not less than \$50 nor more than \$500 or ~~be~~
12 ~~imprisoned in the county or regional jails~~ confined in jail for
13 a period not to exceed one year, or both fined and ~~imprisoned~~
14 confined.

15 (c) Any person who, without authorization, willfully
16 obtains individually identifiable DNA information from the
17 state DNA database or databank is guilty of a misdemeanor
18 and, upon conviction thereof, shall be fined not less than \$50
19 nor more than \$500 or ~~be imprisoned in the county or~~
20 ~~regional jails~~ confined in jail for a period not to exceed one
21 year, or both fined and ~~imprisoned~~ confined.

22 (d) DNA records and DNA samples submitted to the
23 West Virginia State Police Laboratory pursuant to this article
24 are exempt from disclosure under the provisions of article
25 one, chapter twenty-nine-b of this code, or any other
26 statutory provision or court opinion requiring the disclosure
27 of public records.

28 (e) In case of a criminal proceeding, a request to access
29 a person's DNA record must be made in accordance with

30 rules for criminal discovery as provided in the West Virginia
31 Code and the Rules of Criminal Procedure. The West
32 Virginia State Police Laboratory is not required to provide,
33 for criminal discovery purposes, more than the DNA
34 profile(s) and identifying information generated as a result of
35 the search that led to the match between the case evidence
36 and the defendant.

§15-2B-15. Collection of fees to cover the cost of DNA profile entry into the DNA database and DNA databank; cost of collecting and analyzing DNA sample.

1 For persons convicted after July 1, 2011, a mandatory fee
2 of \$150, which is in addition to any other costs imposed
3 pursuant to statutory authority, shall automatically be
4 assessed on any person convicted of, or adjudicated
5 delinquent for, a qualifying offense, unless the court finds
6 that undue hardship would result. This fee shall be collected
7 by the sentencing court or the agency responsible for the
8 collection of the DNA sample and remitted to the State
9 Treasury on or before the tenth of every month.
10 Notwithstanding any other provision of this code to the

11 contrary, all moneys collected as a result of this fee shall be
12 deposited in a special account within the State Treasury to be
13 known as the “West Virginia State Police DNA Database
14 Account” to be administered by the Superintendent of the
15 West Virginia State Police. Expenditures from the fund are
16 authorized from collections for purposes associated with the
17 processing of DNA samples for the DNA database.

§15-2B-16. Partial matches and the DNA database.

1 The division may use the data in the DNA database for
2 partial match analysis for criminal investigations of murder,
3 kidnapping and first and second degree sexual assault, as
4 defined in this code, where all investigated leads have been
5 exhausted. The division shall follow the standards and
6 procedures defined in the Interim Plan when replying to
7 requests for partial match information from criminal justice
8 agencies from within or outside the state until such time as
9 the division promulgates management rules.