

1 local criminal justice and law-enforcement agencies in the
2 identification, detection and exclusion of individuals who are
3 subjects of the investigation or prosecution of violent crimes,
4 sex-related crimes and other crimes against the person. DNA
5 records are an important identification tool that can be use to
6 confirm/verify information provided by fingerprints. In
7 furtherance of such assistance, the Legislature finds:

8 That the analysis of DNA contained in biological evidence that
9 may be recovered from a crime scene facilitates such
10 identification, detection and exclusion;

11 That the comparison of DNA data recovered from a crime scene
12 with existing DNA records maintained in a central DNA database
13 further facilitates such identification, detection and exclusion;
14 and

15 That requiring individuals arrested or convicted of certain
16 crimes to provide a blood sample for DNA analysis with the
17 resulting DNA records maintained in a central DNA database will
18 likewise further facilitate the aforementioned confirmation,
19 identification, detection and exclusion and may serve to discourage
20 recidivism.

21 Therefore, the Legislature finds that assisting federal, state
22 and local criminal justice and law-enforcement agencies through the
23 use and development of DNA analysis is of the utmost importance and
24 urgency in this state and that a DNA identification system shall be

1 established as described in this article.

2 **§15-2B-3. Definitions.**

3 As used in this article:

4 (1) "CODIS" means the Federal Bureau of Investigation's
5 Combined DNA Index System that allows the storage and exchange of
6 DNA records submitted by federal, state and local forensic DNA
7 laboratories. The term "CODIS" includes the National DNA Index
8 System administered and operated by the Federal Bureau of
9 Investigation.

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

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

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

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

23 (6) "DNA record" means DNA identification information stored
24 in any state DNA database pursuant to this article. The DNA record

1 is the result obtained from DNA typing tests. The DNA record is
2 comprised of the characteristics of a DNA sample which are of value
3 in establishing the identity of individuals. The results of all
4 DNA identification tests on an individual's DNA sample are also
5 included as a "DNA record".

6 (7) "DNA sample" means a tissue, fluid or other bodily sample,
7 suitable for testing, provided pursuant to this article or
8 submitted to the division laboratory for analysis pursuant to a
9 criminal investigation.

10 (8) "FBI" means the Federal Bureau of Investigation.

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

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

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

20 (12) "Qualifying offense" means any felony offense as
21 described in section six of this article or any offense requiring
22 a person to register as a sex offender under this code or the
23 federal law. For the purpose of this article, a person found not
24 guilty of a qualifying offense by reason of insanity or mental

1 disease or defect shall be required to provide a DNA sample in
2 accordance with this article.

3 (13) "Registering Agency" means the West Virginia State
4 Police.

5 (14) "State DNA database" means all DNA identification records
6 included in the system administered by the West Virginia State
7 Police.

8 (15) "State DNA databank" means the repository of DNA samples
9 collected under the provisions of this article.

10 (16) "Arrestee" means any individual arrested for a felony
11 offense as defined in the West Virginia Code.

12 (17) "Arresting authority" means the law-enforcement officer
13 who arrests the individual or an authorized representative of the
14 agency responsible for the arrest.

15 **§15-2B-5. Authority of division to enter into cooperative**
16 **agreements.**

17 The division may enter into cooperative agreements with public
18 or private agencies or entities to provide a service or facility
19 associated with the administration of the DNA database and
20 databank. In the event the division enters into any agreements for
21 the purposes of (1) testing of arrestee/offender samples for CODIS;
22 (2) criminal paternity cases; or (3) identification of human
23 remains for the Office of Chief Medical Examiner using nuclear DNA
24 technology, the division is authorized to only enter into such

1 agreements with the Marshall University Forensic Science Center.

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

3 **DNA sample required for certain prisoners.**

4 (a) Any person convicted of an offense described in section
5 one, four, seven, nine, nine-a (when that offense constitutes a
6 felony), ten, ten-a, ten-b, twelve, fourteen or fourteen-a, article
7 two, chapter sixty-one of this code or section twelve, article
8 eight of said chapter (when that offense constitutes a felony),
9 shall provide a DNA sample to be used for DNA analysis as described
10 in this article. Further, any person convicted of any offense
11 described in article eight-b or eight-d of said chapter shall
12 provide a DNA sample to be used for DNA analysis as described in
13 this article.

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

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

1 chapter, shall provide a DNA sample to be used for DNA analysis as
2 described in this article.

3 (d) Any person convicted of an offense which constitutes a
4 felony violation of the provisions of article four, chapter sixty-a
5 of this code; or of an attempt to commit a violation of section one
6 or section fourteen-a, article two, chapter sixty-one of this code;
7 or an attempt to commit a violation of article eight-b of said
8 chapter shall provide a DNA sample to be used for DNA analysis as
9 described in this article.

10 (e) The method of taking the DNA sample is subject to the
11 testing methods used by the West Virginia State Police Crime Lab.
12 The DNA sample will be collected using a postage paid DNA
13 collection kit provided by the West Virginia State Police.

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

20 (g) The West Virginia State Police may, where not otherwise
21 mandated, require any person convicted of a felony offense under
22 the provisions of this code, to provide a DNA sample to be used for
23 the sole purpose of criminal identification of the convicted person
24 who provided the sample: *Provided*, That the person is under the

1 supervision of the criminal justice system at the time the request
2 for the sample is made. Supervision includes prison, the regional
3 jail system, parole, probation, home confinement, community
4 corrections program, and work release.

5 (h) On the effective date of the amendments to this section
6 enacted during the regular session of the Legislature in 2011, any
7 person required to register as a sex offender in this state and who
8 has not already provided a DNA sample in accordance with this
9 article, shall provide a DNA sample as determined by the
10 registration agency in consultation with the West Virginia State
11 Police Laboratory. The registering agency is responsible for the
12 collection and submission of the sample under this article.

13 (i) When this state accepts a person from another state under
14 any interstate compact, or under any other reciprocal agreement
15 with any county, state or federal agency or any other provision of
16 law whether or not the person is confined or released, the
17 transferred person must submit a DNA sample, if the person was
18 convicted of an offense in any other jurisdiction which would be
19 considered a qualifying offense as defined in section six if
20 committed in this state, or if the person was convicted of an
21 equivalent offense in any other jurisdiction. The person shall
22 provide the DNA sample in accordance with the rules of the
23 custodial institution or supervising agency. If the transferred
24 person has already submitted a DNA sample that can be found in the

1 national database, the accepting agency is not required to draw a
2 second DNA sample.

3 (j) If a person convicted of a qualifying offense is released
4 without giving a DNA sample due to an oversight or error or because
5 of the person's transfer from another jurisdiction, the person
6 shall give a DNA sample for inclusion in the state DNA database
7 after being notified of this obligation. Any such person may
8 request a copy of the court order requiring the sample prior to the
9 collection of the DNA sample.

10 (k) Duly authorized law enforcement and corrections personnel
11 may employ reasonable force in cases where an individual refuses to
12 provide a DNA sample required under this article, and no such
13 employee shall be civilly or criminally liable for the use of such
14 reasonable force in the collection of the required DNA sample.

15 (l) A DNA sample obtained in good faith shall be deemed to
16 have been obtained in accordance with the requirements of this
17 article and its use in accordance with this chapter is authorized.
18 Once an error is determined to have occurred, the DNA record will
19 be removed from CODIS and the DNA sample destroyed unless the
20 individual has another qualifying offense(s).

21 (m) Persons authorized to collect DNA samples shall not be
22 civilly or criminally liable for the collection of a DNA sample
23 pursuant to this article if they perform these duties in good faith
24 and in a reasonable manner according to generally accepted medical

1 or other professional practices.

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

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

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

1 when the blood was drawn according to recognized medical procedures
2 employing the universal precautions. No person is relieved of
3 liability for negligence in the drawing of blood for purposes of
4 DNA testing.

5 (c) The Superintendent of the West Virginia State Police shall
6 promulgate legislative rules pursuant to chapter twenty-nine-a of
7 this code governing the procedures to be used in the collection of
8 DNA samples, submission, identification, analysis and storage of
9 DNA samples and typing results of DNA samples submitted under this
10 article which shall be compatible with recognized federal
11 standards.

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

18 (e) The agency or institution having custody, control or
19 providing supervision of persons arrested for a felony offense or
20 convicted for qualifying offenses, as appropriate, is authorized to
21 contract with third parties to provide for the collection of the
22 DNA samples described in section six of this article.

23 (f) A person, convicted of a qualifying offense and not
24 incarcerated in a facility described in subsection (a) of this

1 section, who has been put on notice of his or her obligation to
2 provide a DNA sample and has not submitted a court ordered DNA
3 sample at the request of a law-enforcement agency, shall be
4 responsible for notifying the agency designated in the court order
5 and complying with that agency's directives for submitting a DNA
6 sample. The person shall have thirty days from the receipt of the
7 court order to comply unless there is a documented exception from
8 the agency responsible for the DNA sample collection. A person
9 refusing to comply with a court order directing that person to
10 submit a DNA sample may be considered in contempt.

11 (g) Any court sentencing a person convicted of a qualifying
12 offense to probation, on or after the effective date of the
13 amendments to this section enacted during the regular session of
14 the Legislature in 2011, shall order, as a condition of such
15 probation, that the convicted person report to the local sheriff's
16 department to provide a DNA sample within thirty days.

17 **§15-2B-10. DNA database exchange; severability.**

18 (a) The West Virginia State Police shall receive DNA samples,
19 store, analyze, classify and file the DNA records consisting of all
20 identification characteristics of DNA profiles from DNA samples
21 submitted pursuant to the procedures for conducting DNA analysis of
22 DNA samples.

23 (b) The West Virginia State Police may furnish DNA records to
24 authorized law-enforcement and governmental agencies of the United

1 States and its territories, of foreign countries duly authorized to
2 receive them, of other states within the United States and of the
3 State of West Virginia upon proper request stating that the DNA
4 records requested will be used solely:

5 (1) For law enforcement identification purposes by criminal
6 justice agencies;

7 (2) In judicial proceedings, if otherwise expressly permitted
8 by state or federal laws;

9 (3) If personal identifying information is removed, for a
10 population statistics database, for identification research and
11 protocol development purposes, or for quality control purposes; or

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

14 (c) The Superintendent of the West Virginia State Police shall
15 promulgate legislative rules pursuant to chapter twenty-nine-a of
16 this code governing the methods by which any law-enforcement agency
17 or other authorized entity may obtain information from the state
18 DNA database consistent with this section and federal law.

19 (d) The West Virginia State Police may release DNA samples,
20 without personal identifying information, to any agency or entity
21 with which the West Virginia State Police contracts pursuant to
22 section five of this article.

23 (e) The West Virginia State Police may release DNA samples for
24 criminal defense and appeal purposes, to a defendant who is

1 entitled to access to samples and analysis performed in connection
2 with the case in which the defendant is charged or was convicted.

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

5 (g) The provisions of this article shall be liberally
6 construed and shall be held to be in addition to, and not in
7 substitution for or a limitation on the provisions of any other
8 law. If any provision or part of this article is held
9 unconstitutional or otherwise invalid, the remainder of this
10 article shall not be affected.

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 felony
16 conviction that resulted in the inclusion of the person's DNA
17 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. The person requesting expungement, either
20 individually or through an attorney, may apply to the court for
21 expungement of the record. A copy of the application for
22 expungement shall be served on the prosecuting attorney for the
23 judicial district in which the felony conviction was obtained not
24 less than twenty days prior to the date of the hearing on the

1 application. A certified copy of the order reversing and
2 dismissing the conviction shall be attached to an order of
3 expungement.

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

11 (c) Any identification, warrant, probable cause to arrest or
12 arrest based upon a database match is not invalidated due to a
13 failure to expunge or a reasonable delay in expunging records.

14 **§15-2B-11a. Expungement for arrestees.**

15 A person whose DNA record has been included in the State DNA
16 database in accordance with this article may request expungement on
17 the grounds that the arrest on which the authority for including
18 the persons' DNA record or DNA profile was based has resulted in
19 the charge being dismissed or has resulted in acquittal or no
20 charge was filed within the statute of limitations for the offense.

21 Upon receipt of a written request for expungement and any
22 other information necessary to ascertain the validity of the
23 request, the division shall expunge the DNA records and
24 identifiable information in the database pertaining to the arrestee

1 sample of the person and destroy the arrestee DNA sample from the
2 person, unless the division determines that the person has
3 otherwise become obligated to submit a DNA sample.

4 Any identification, warrant, probable cause to arrest or
5 arrest based upon a database match is not invalidated due to a
6 failure to expunge or a reasonable delay in expunging records.

NOTE: The purpose of this bill is to allow law enforcement to obtain DNA samples from suspects at the time of arrest.

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