

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 237

SENATORS JEFFRIES, CLINE, AND BALDWIN, *original sponsors*

[Passed March 5, 2019; in effect 90 days from

passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §15-3C-1, §15-3C-2, §15-3C-3, §15-3C-4, §15-3C-5, §15-3C-6, §15-3C-7,
3 and §15-3C-8, all relating generally to missing and unidentified persons investigations;
4 establishing a short title; declaring legislative findings; defining terms; detailing actions
5 that must be taken by law-enforcement agencies following the receipt of a missing persons
6 complaint and during a missing persons investigation; detailing actions that must be taken
7 by medical examiners and law-enforcement agencies related to identification of human
8 remains; requiring the timely notification to family members of identification of human
9 remains; requiring submission of information to certain national and state databases; and
10 creating a misdemeanor offense of knowingly and willfully filing a false missing persons
11 report with a law-enforcement agency.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. MISSING PERSONS ACT.

§15-3C-1. Short title.

1 This article shall be known and may be cited as the Missing Persons Act.

§15-3C-2. Findings.

1 The Legislature finds that:

2 (1) The ability of law-enforcement agencies to rapidly respond in the hours following the
3 discovery that an individual is missing is a crucial factor in the likelihood that the person will
4 ultimately be located and recovered. The prompt communication of detailed information to the
5 public through emergency broadcast systems and media outlets, including through social media
6 platforms and missing persons databases, can be one of the most effective tools in a missing
7 persons investigation.

8 (2) A number of national and state-level databases are available to allow law-enforcement
9 agencies and medical examiners to electronically share key information with other law-

10 enforcement agencies and the public related to the investigation of a missing person or
11 unidentified human remains.

12 (3) In light of technological developments, it is imperative that all law-enforcement
13 agencies in West Virginia follow certain minimum procedures for responding to missing persons
14 complaints and submit key information to national and state-level databases in a timely manner.

§15-3C-3. Definitions.

1 For the purposes of this article:

2 (1) "CODIS" means the Federal Bureau of Investigation's Combined DNA Index System,
3 which allows for the storage and exchange of DNA records submitted by federal, state, and local
4 forensic DNA laboratories. The term "CODIS" includes the National DNA Index System or NDIS,
5 administered and operated by the Federal Bureau of Investigation.

6 (2) "Complainant" means a person who contacts law enforcement to report that a person
7 is missing.

8 (3) "Electronic communication device" means a cellular telephone, personal digital
9 assistant, electronic device with mobile data access, laptop computer, pager, broadband personal
10 communication device, two-way messaging device, electronic game, or portable computing
11 device.

12 (4) "Juvenile" means any person under 21 years of age.

13 (5) "Law-enforcement agency" means any duly authorized state, county, or municipal
14 organization employing one or more persons whose responsibility is the enforcement of laws of
15 the state or any county or municipality thereof.

16 (6) "Lead law-enforcement agency" means the law-enforcement agency that initially
17 receives a missing persons complaint or, after the fulfillment of all requirements of this article
18 related to the initial receipt of a missing persons complaint and transmission of information to
19 required databases, the law-enforcement agency with the primary responsibility for investigating
20 a missing or unidentified persons complaint.

21 (7) "Missing person" means any person who is reported missing to a law-enforcement
22 agency.

23 (8) "NamUs" means the database of the National Missing and Unidentified Persons
24 System.

25 (9) "NCIC" means the database of the National Crime Information Center, the nationwide,
26 online computer telecommunications system maintained by the Federal Bureau of Investigation
27 to assist authorized agencies in criminal justice and related law-enforcement objectives.

28 (10) "NCMEC" means the database of the National Center for Missing and Exploited
29 Children.

30 (11) "Unidentified person" means any person, living or deceased, who has not been
31 identified through investigation for over 30 days.

32 (12) "Violent Criminal Apprehension Program" or "ViCAP" is a unit of the Federal Bureau
33 of Investigation responsible for the analysis of serial violent and sexual crimes.

34 (13) "WEAPON system" means the West Virginia Automated Police Network.

§15-3C-4. Missing persons complaints; law-enforcement procedures.

1 (a) *Complaint requirements.* — A person may file a missing persons complaint with any
2 law-enforcement agency having jurisdiction. The law-enforcement agency shall attempt to collect
3 the following information from a complainant:

4 (1) The missing person's name;

5 (2) The missing person's date of birth;

6 (3) The missing person's address;

7 (4) The missing person's identifying characteristics, including, but not limited to:
8 Birthmarks, moles, tattoos, scars, height, weight, gender, race, current hair color, natural hair
9 color, eye color, prosthetics, surgical implants, cosmetic implants, physical anomalies, and blood
10 type;

11 (5) A description of the clothing the missing person was believed to have been wearing
12 when he or she went missing and any items that might be with the missing person, such as
13 jewelry, accessories, shoes, or any other distinguishing garments or items;

14 (6) The date of the last known contact with the missing person;

15 (7) The missing person's driver's license and Social Security number, or any other
16 numbers related to other forms of identification;

17 (8) A recent photograph of the missing person;

18 (9) Information related to the missing person's electronic communication devices or
19 electronic accounts, such as cell phone numbers, social networking login information, and email
20 addresses and login information;

21 (10) Any circumstances that the complainant believes may explain why the person is
22 missing;

23 (11) The name and location of the missing person's school or employer;

24 (12) The name and location of the missing person's dentist or primary care physician;

25 (13) A description of the missing person's possible means of transportation, including
26 make, model, color, license, and identification number of a vehicle;

27 (14) Any identifying information related to a known or possible abductor, or the person last
28 seen with the missing person, including the person's name, physical description, date of birth,
29 identifying physical marks, a description of the person's possible means of transportation,
30 including the make, model, color, license, and identification number of the person's vehicle, and
31 any known associates;

32 (15) The name of the complainant and his or her relationship to the missing person; and

33 (16) Any additional information considered relevant by either the complainant or the
34 law-enforcement agency.

35 (b) *High-risk determination; requirements.* —

36 (1) Upon initial receipt of a missing persons report, the lead law-enforcement agency shall
37 immediately assess whether facts or circumstances indicate that the person meets any of the
38 following risk indicators, which, if applicable, will be entered into NCIC:

39 (A) The person is or was likely involved in a natural disaster;

40 (B) The person is a juvenile, or was a juvenile when he or she went missing;

41 (C) The person is likely endangered;

42 (D) The person has mental or physical disabilities;

43 (E) The disappearance is believed to have been the result of abduction or kidnapping, or
44 was otherwise involuntary;

45 (F) The person is under the age of 21 and declared emancipated by the laws of his or her
46 state of residence; and

47 (G) None of the criteria in paragraphs (A) through (E), inclusive, of this subdivision apply,
48 but additional facts support a reasonable concern for the person's safety.

49 (2) If, upon assessment, the lead law-enforcement agency determines that the missing
50 person meets one of the classifications in subdivision (1) of this subsection, the lead law-
51 enforcement agency shall:

52 (A) Immediately notify the terminal operator responsible for WEAPON system entries for
53 the law-enforcement agency and provide the operator with all relevant information collected from
54 the missing persons complainant as soon as possible. The terminal operator will enter all
55 information into the WEAPON system and submit the information to the West Virginia State Police
56 communications section. If the law-enforcement agency does not have an agreement with a local
57 terminal agency, then the law-enforcement agency will contact the West Virginia State Police
58 terminal agency for that particular area and request that the West Virginia State Police enter the
59 information into the WEAPON system. Once the missing persons complaint has been entered
60 into the WEAPON system, the West Virginia State Police communications section shall
61 immediately notify all law-enforcement agencies within the state and surrounding region by means

62 of the WEAPON system with all information that will promote efforts to promptly locate and safely
63 recover the missing person. Local law-enforcement agencies that receive the notification of a
64 missing persons complaint shall notify all officers to be on the lookout for the missing person or a
65 suspected abductor; and

66 (B) Immediately, and no later than two hours, after the determination that a juvenile is
67 missing, take appropriate steps to ensure that the case is entered into the NCIC database with a
68 photograph and other applicable information related to that missing person.

69 (c) *General requirements.* —

70 (1) The lead law-enforcement agency shall take appropriate steps to ensure that all
71 relevant information related to a missing persons complaint is submitted in a timely manner to the
72 WEAPON system, and as applicable, NCIC, CODIS, NDIS, NamUs, and NCMEC. Any
73 information that the West Virginia State Police obtains from these databases must be provided to
74 the lead law-enforcement agency and to other law-enforcement agencies who may come in
75 contact with or be involved in the investigation or location of a missing person.

76 (2) The lead law-enforcement agency or the West Virginia State Police shall submit any
77 available DNA profiles that may aid in a missing persons investigation and that have not already
78 been submitted by a medical examiner into appropriate DNA databases, including, but not limited
79 to, NamUs.

80 (d) *Removal upon location of person.* — Upon the determination that the person is no
81 longer missing, the lead law-enforcement agency or the West Virginia State Police shall
82 immediately remove or request the removal of all records of the missing person from all missing
83 persons databases.

§15-3C-5. Missing persons investigation requirements.

1 (a) A law-enforcement agency may not delay an investigation of a missing persons
2 complaint on the basis of a written or unwritten policy requiring that a certain period of time pass
3 after any event, including the receipt of a complaint, before an investigation may commence.

4 (b) A law-enforcement agency may not refuse to accept a missing person report over
5 which it has investigatory jurisdiction.

6 (c) A law-enforcement agency is not required to obtain written authorization before publicly
7 releasing any photograph that would aid in the location or recovery of a missing person.

8 (d) A lead law-enforcement agency shall notify the complainant, a family member, or other
9 person in a position to assist in efforts to locate the missing person of the following:

10 (1) Whether additional information or materials would aid in the location of the missing
11 person, such as information related to credit or debit cards the missing person may have access
12 to, other banking information, or phone or computer records;

13 (2) That any DNA samples requested for the missing persons investigation are requested
14 on a voluntary basis, to be used solely to help locate or identify the missing person and will not
15 be used for any other purpose; and

16 (3) Any general information about the handling of the investigation and the investigation's
17 progress, unless disclosure would adversely affect the ability to locate or protect the missing
18 person, or to apprehend or prosecute any person criminally involved in the person's
19 disappearance.

20 (e) A law-enforcement agency may provide informational materials through publications,
21 or other means, regarding publicly available resources for obtaining or sharing missing persons
22 information.

23 (f) Lead law-enforcement agencies shall make use of all available and applicable tools,
24 resources, and technologies to resolve a missing persons investigation, including but not limited
25 to:

26 (1) Assistance from other law-enforcement agencies, whether at a local, state, or federal
27 level;

28 (2) Nonprofit search and rescue organizations, which may provide trained animal
29 searches, use of specialized equipment, or man trackers;

30 (3) Cell phone triangularization and tracking services;

31 (4) Subpoenas of cell phone, land line, Internet, email, and social networking website
32 records; and

33 (5) Services of technology experts to examine any available information collected from a
34 computer or communications device belonging to or used by the missing person.

35 (g) If a person remains missing for 30 days after the receipt of a missing persons complaint
36 or the date on which the person was last seen, whichever occurs earlier, the lead law-enforcement
37 agency shall attempt to obtain the following information:

38 (1) DNA samples from family members and the missing person, along with any necessary
39 authorizations to release such information. All DNA samples obtained in a missing persons
40 investigation shall be immediately forwarded to an appropriate laboratory for analysis;

41 (2) Any necessary written authorization to release the missing person's medical and dental
42 records, including any available x-rays, to the lead law-enforcement agency. If no family or next
43 of kin exists or can be located, the lead law-enforcement agency may execute a written
44 declaration, stating that an active investigation seeking to locate the missing person is being
45 conducted and that the records are required for the exclusive purpose of furthering the
46 investigation. The written declaration, signed by the supervising or chief officer of the
47 law-enforcement agency, is sufficient authority for a health care practitioner to immediately
48 release the missing person's x-rays, dental records, dental x-rays, and records of any surgical
49 implants to the law-enforcement agency;

50 (3) Additional photographs of the missing person that may aid the investigation; and

51 (4) Fingerprints of the missing person.

52 (h) Nothing in this section precludes a law-enforcement agency from attempting to obtain
53 the materials identified in subsection (g) of this section before the expiration of the 30-day period.

§15-3C-6. Reporting and handling of unidentified human remains.

1 (a) If a law-enforcement officer or other official discovers or comes into custody of
2 unidentified human remains, the officer or official shall immediately notify the office of the Chief

3 Medical Examiner of the location of those remains. After a law-enforcement agency performs an
4 appropriate death scene investigation with the assistance of the Chief Medical Examiner or county
5 medical examiner, unidentified human remains shall remain in the custody of the office of the
6 Chief Medical Examiner or the county medical examiner pursuant to the requirements of §61-12-3
7 of this code.

8 (b) If a law-enforcement officer or other official is uncertain whether materials he or she
9 discovers or comes into custody of are human remains, the officer or official shall immediately
10 notify and seek the assistance of the office of the Chief Medical Examiner.

§15-3C-7. Identification of human remains.

1 (a) The Chief Medical Examiner or county medical examiner, whichever is applicable, shall
2 make reasonable attempts to promptly identify unidentified human remains, by:

- 3 (1) Taking photographs of the human remains, prior to an autopsy;
- 4 (2) Performing dental or skeletal x-rays, when possible;
- 5 (3) Taking photographs of items found with the human remains;
- 6 (4) Obtaining fingerprints from the remains, when possible;
- 7 (5) Taking samples of tissue suitable for DNA typing, when obtainable;
- 8 (6) Taking samples of whole bone or hair, or both, when obtainable and suitable for DNA
9 typing; and
- 10 (7) Collecting any other information or materials that may support identification efforts.

11 (b) A medical examiner or any other person may not dispose of, or materially alter,
12 unidentified human remains before:

- 13 (1) Any obtainable DNA samples have been collected that are suitable for DNA
14 identification archiving;
- 15 (2) Photographs of the unidentified person or human remains have been taken; and
- 16 (3) All other appropriate methods of identification have been exhausted.

17 (c) A medical examiner shall make reasonable efforts to obtain prompt DNA analysis of
18 biological samples from unidentified human remains if the human remains have not been
19 identified by other means within 30 days.

20 (d) A medical examiner shall seek available support from appropriate state and federal
21 agencies in efforts to identify human remains including, but not limited to, mitochondrial or nuclear
22 DNA testing services, federal grants for DNA testing, or federal grants for laboratory or medical
23 examiner office improvement.

24 (e) The medical examiner shall promptly submit all available information that may aid in
25 the identification of human remains to NamUs and to the West Virginia State Police, for entry into
26 all other appropriate law-enforcement databases.

27 (f) When human remains have been identified as belonging to a missing person, the
28 medical examiner shall promptly notify the lead law-enforcement agency, or if the lead law-
29 enforcement agency is unknown, the West Virginia State Police that the missing person's remains
30 have been identified.

31 (g) As soon as possible, the lead law-enforcement agency shall make and document
32 efforts to locate family members of the deceased person to inform them of the death and location
33 of the remains of their family member, unless disclosure of such information would compromise
34 a criminal investigation into a missing person's death.

35 (h) Nothing in this article shall be interpreted to preclude the West Virginia State Police or
36 any other law-enforcement agency from pursuing additional efforts to identify human remains,
37 including efforts to publicize information, descriptions, or photographs that may aid in the
38 identification of the remains.

§15-3C-8. Filing a false missing persons complaint; criminal penalties.

1 A person who knowingly and willfully files a false missing persons complaint is guilty of a
2 misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$200,
3 or confined in jail for five days, or both fined and confined.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2019.

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Governor