

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 3054**

5 (By Delegates Miley, Longstreth, Fleischauer,  
6 Skaff, Hamilton, Sobonya and C. Miller)

7  
8 [Passed March 12, 2011; in effect ninety days from passage.]  
9

10  
11 AN ACT to amend and reenact §15-2B-3, §15-2B-6, §15-2B-7, §15-2B-9,  
12 §15-2B-10 and §15-2B-12 of the Code of West Virginia, 1931,  
13 as amended; and to amend said code by adding thereto two new  
14 sections, designated §15-2B-15 and §15-2B-16, all relating to  
15 the collection and use of DNA data generally; providing for  
16 the collection of DNA samples from certain persons; providing  
17 for a penalty of contempt for a person refusing to furnish a  
18 DNA sample pursuant to a court order; and authorizing the West  
19 Virginia State Police to collect certain fees for DNA testing.

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

21 That §15-2B-3, §15-2B-6, §15-2B-7, §15-2B-9, §15-2B-10 and  
22 §15-2B-12 of the Code of West Virginia, 1931, as amended, be  
23 amended and reenacted; and that said code be amended by adding  
24 thereto two new sections, designated §15-2B-15 and §15-2B-16, all  
25 to read as follows:

26 **ARTICLE 2B. DNA DATA.**

1 **§15-2B-3. Definitions.**

2 As used in this article:

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

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

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

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

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

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

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

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

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

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

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

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

17 (12) "Qualifying offense" means any felony offense as  
18 described in section six of this article or any offense requiring  
19 a person to register as a sex offender under this code or the  
20 federal law. For the purpose of this article, a person found not  
21 guilty of a qualifying offense by reason of insanity or mental  
22 disease or defect shall be required to provide a DNA sample in  
23 accordance with this article.

24 (13) "Registering Agency" means the West Virginia State  
25 Police.

26 (14) "State DNA database" means all DNA identification records

1 included in the system administered by the West Virginia State  
2 Police.

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

5 **§15-2B-6. DNA sample required for DNA analysis upon conviction;**  
6 **DNA sample required for certain prisoners.**

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

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

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

1 three-e of said chapter or section three, article four of said  
2 chapter, shall provide a DNA sample to be used for DNA analysis as  
3 described in this article.

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

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

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

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

1 for the sample is made. Supervision includes prison, the regional  
2 jail system, parole, probation, home confinement, community  
3 corrections program, and work release.

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

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

26 (j) If a person convicted of a qualifying offense is released

1 without giving a DNA sample due to an oversight or error or because  
2 of the person's transfer from another jurisdiction, the person  
3 shall give a DNA sample for inclusion in the state DNA database  
4 after being notified of this obligation. Any such person may  
5 request a copy of the court order requiring the sample prior to the  
6 collection of the DNA sample.

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

8 The tests to be performed on each DNA sample shall analyze and  
9 type the genetic markers contained in or derived from the DNA  
10 sample in accordance with rules promulgated under this article.  
11 Any rule regarding the typing and analysis of the DNA sample shall  
12 be consistent with any specifications required by federal law.

13 **§15-2B-9. Procedures for withdrawal of blood sample for DNA  
14 analysis and for conducting analysis.**

15 (a) Upon incarceration, the Division of Corrections, regional  
16 jails and felon facilities shall ensure that the DNA sample is  
17 collected from all persons described in section six of this  
18 article. When any person convicted of an offense described in  
19 section six is not incarcerated, the sheriff in the county where  
20 the person is convicted shall ensure that the DNA sample is  
21 collected from the person: *Provided*, That a DNA sample may be  
22 collected at a prison, regional facility or local hospital unit  
23 when so ordered by the sentencing court or other location  
24 determined by the sheriff.

25 (b) The Superintendent of the West Virginia State Police shall

1 promulgate a legislative rule pursuant to chapter twenty-nine-a of  
2 this code establishing which persons may withdraw blood and further  
3 establishing procedures to withdraw blood. At a minimum, these  
4 procedures shall require that when blood is withdrawn for the  
5 purpose of DNA identification testing, a previously unused and  
6 sterile needle and sterile vessel shall be used, the withdrawal  
7 shall otherwise be in strict accord with accepted medical practices  
8 and in accordance with any recognized medical procedures employing  
9 universal precautions as outlined by the Centers for Disease  
10 Control and Prevention. No civil liability attaches to any person  
11 when the blood was drawn according to recognized medical procedures  
12 employing the universal precautions. No person is relieved of  
13 liability for negligence in the drawing of blood for purposes of  
14 DNA testing.

15 (c) The Superintendent of the West Virginia State Police shall  
16 promulgate legislative rules pursuant to chapter twenty-nine-a of  
17 this code governing the procedures to be used in the collection of  
18 DNA samples, submission, identification, analysis and storage of  
19 DNA samples and typing results of DNA samples submitted under this  
20 article which shall be compatible with recognized federal  
21 standards.

22 (d) The agency having control, custody or supervision of  
23 persons convicted for qualifying offenses may, in consultation with  
24 and approval of the West Virginia State Police Laboratory,  
25 promulgate rules or policies specifying the time and manner of  
26 collection of the DNA samples as well as any other matter necessary



1 to carry out its responsibilities under this article.

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

7 (f) A person, convicted of a qualifying offense and not  
8 incarcerated in a facility described in subsection (a) of this  
9 section, who has been put on notice of his or her obligation to  
10 provide a DNA sample and has not submitted a court ordered DNA  
11 sample at the request of a law-enforcement agency, shall be  
12 responsible for notifying the agency designated in the court order  
13 and complying with that agency's directives for submitting a DNA  
14 sample. The person shall have thirty days from the receipt of the  
15 court order to comply unless there is a documented exception from  
16 the agency responsible for the DNA sample collection. A person  
17 refusing to comply with a court order directing that person submit  
18 a DNA sample may be considered in contempt.

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

25 **§15-2B-10. DNA database exchange.**

26 (a) The West Virginia State Police shall receive DNA samples,

1 store, analyze, classify and file the DNA records consisting of all  
2 identification characteristics of DNA profiles from DNA samples  
3 submitted pursuant to the procedures for conducting DNA analysis of  
4 DNA samples.

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

11 (1) For law enforcement identification purposes by criminal  
12 justice agencies;

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

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

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

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

25 (d) The West Virginia State Police may release DNA samples,  
26 without personal identifying information, to any agency or entity

1 with which the West Virginia State Police contracts pursuant to  
2 section five of this article.

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

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

9 **§15-2B-12. Confidentiality; unauthorized uses of DNA databank;  
10 penalties.**

11 (a) All DNA profiles and samples submitted to the West  
12 Virginia State Police pursuant to this article shall be treated as  
13 confidential except as provided in this article.

14 (b) Any person who, by virtue of employment or official  
15 position has possession of or access to individually identifiable  
16 DNA information contained in the state DNA database or databank and  
17 who willfully discloses it in any manner to any person or agency  
18 not entitled to receive it is guilty of a misdemeanor and, upon  
19 conviction thereof, shall be fined not less than \$50 nor more than  
20 \$500 or confined in jail for a period not to exceed one year, or  
21 both fined and confined.

22 (c) Any person who, without authorization, willfully obtains  
23 individually identifiable DNA information from the state DNA  
24 database or databank is guilty of a misdemeanor and, upon  
25 conviction thereof, shall be fined not less than \$50 nor more than  
26 \$500 or confined in jail for a period not to exceed one year, or

1 both fined and confined.

2 (d) DNA records and DNA samples submitted to the West Virginia  
3 State Police Laboratory pursuant to this article are exempt from  
4 disclosure under the provisions of article one, chapter  
5 twenty-nine-b of this code, or any other statutory provision or  
6 court opinion requiring the disclosure of public records.

7 (e) In case of a criminal proceeding, a request to access a  
8 person's DNA record must be made in accordance with rules for  
9 criminal discovery as provided in the West Virginia Code and the  
10 Rules of Criminal Procedure. The West Virginia State Police  
11 Laboratory is not required to provide, for criminal discovery  
12 purposes, more than the DNA profile(s) and identifying information  
13 generated as a result of the search that led to the match between  
14 the case evidence and the defendant.

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

18 For persons convicted after July 1, 2011, a mandatory fee of  
19 \$150, which is in addition to any other costs imposed pursuant to  
20 statutory authority, shall automatically be assessed on any person  
21 convicted of, or adjudicated delinquent for, a qualifying offense,  
22 unless the court finds that undue hardship would result. This fee  
23 shall be collected by the sentencing court or the agency  
24 responsible for the collection of the DNA sample and remitted to  
25 the State Treasury on or before the tenth of every month.

1 Notwithstanding any other provision of this code to the contrary,  
2 all moneys collected as a result of this fee shall be deposited in  
3 a special account within the State Treasury to be known as the  
4 "West Virginia State Police DNA Database Account" to be  
5 administered by the Superintendent of the West Virginia State  
6 Police. Expenditures from the fund are authorized from collections  
7 for purposes associated with the processing of DNA samples for the  
8 DNA database.

9 **§15-2B-16. Partial matches and the DNA database.**

10       The division may use the data in the DNA database for partial  
11 match analysis for criminal investigations of murder, kidnapping  
12 and first and second degree sexual assault, as defined in this  
13 code, where all investigated leads have been exhausted. The  
14 division shall follow the standards and procedures defined in the  
15 Interim Plan when replying to requests for partial match  
16 information from criminal justice agencies from within or outside  
17 the state until such time as the division promulgates management  
18 rules.