

H. B. 3054

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

[Introduced February 8, 2011; referred to the
Committee on the Judiciary then Finance.]

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
DNA data collection generally; providing definitions;
authorizing the West Virginia State Police to administer DNA
identification system; authorizing the West Virginia State
Police to enter into certain cooperative agreements; requiring
DNA sample be obtained upon conviction; identifying tests to
be performed on DNA samples; providing authority to maintain
samples; providing procedure for withdrawing and analyzing
samples; providing procedure for exchanging samples with
others; providing procedure for removing sample from database
by expungement; providing for destruction of samples;
providing penalties; and authorizing the West Virginia State

1 Police to collect certain fees for DNA testing.

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

3 That §15-2B-3, §15-2B-6, §15-2B-7, §15-2B-9, §15-2B-10 and
4 §15-2B-12 of the Code of West Virginia, 1931, as amended, be
5 amended and reenacted; and that said code be amended by adding
6 thereto two new sections, designated §15-2B-15 and §15-2B-16, all
7 to read as follows:

8 **ARTICLE 2B. DNA DATA.**

9 **§15-2B-3. Definitions.**

10 As used in this article: ~~the following terms mean:~~

11 (a) "CODIS" means the Federal Bureau of Investigation's
12 Combined DNA Index System that allows the storage and exchange of
13 DNA records submitted by federal, state and local forensic DNA
14 laboratories. The term "CODIS" includes the National DNA Index
15 System administered and operated by the Federal Bureau of
16 Investigation.

17 "Conviction" includes convictions by a jury or court, guilty
18 plea, plea of nolo contendere or a finding of not guilty by reason
19 of insanity or mental disease or defect. A finding of not guilty
20 by reason of insanity or mental disease or defect is considered a
21 conviction solely for purposes of this article insofar as the
22 finding requires a person to provide a DNA sample.

23 "Criminal justice agency" means an agency or institution of a
24 federal, state or local government, other than the office of public

1 defender, which performs as part of its principal function,
2 relating to the apprehension, investigation, prosecution,
3 adjudication, incarceration, supervision or rehabilitation of
4 criminal offenders.

5 "Division" means the West Virginia State Police.

6 "DNA" means deoxyribonucleic acid. DNA is located in the
7 nucleus of cells and provides an individual's personal genetic
8 blueprint. DNA encodes genetic information that is the basis of
9 human heredity and forensic identification.

10 ~~(b)~~ "DNA record" means DNA identification information stored
11 in any state DNA database pursuant to this article. The DNA record
12 is the result obtained from DNA typing tests. The DNA record is
13 comprised of the characteristics of a DNA sample which are of value
14 in establishing the identity of individuals. The results of all
15 DNA identification tests on an individual's DNA sample are also
16 included as a "DNA record".

17 ~~(c)~~ "DNA sample" means a tissue, fluid or other bodily sample,
18 suitable for testing, provided pursuant to this article or
19 submitted to the division laboratory for analysis pursuant to a
20 criminal investigation.

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

22 "Interim plan" means the plan used currently by the Federal
23 Bureau of Investigation for Partial Match Protocol and to be
24 adopted under the management rules of this article.

1 "Juvenile" and "child" refer to a person who has not attained
2 the age of eighteen years or a person who is otherwise subject to
3 the juvenile jurisdiction of a court pursuant to this article.

4 "Management rules" means the rules promulgated by the West
5 Virginia State Police that define all policy and procedures in the
6 administration of this article.

7 "Partial match" means that two DNA profiles, while not an
8 exact match, share a sufficient number of characteristics to
9 indicate the possibility of a biological relationship.

10 "Qualifying offense" means any felony offense as defined in
11 the penal code in any jurisdiction of the person and any offense
12 requiring a person to register as a sex offender under this code or
13 the federal law.

14 "Registering Agency" means the West Virginia State Police.

15 ~~(e)~~ "State DNA database" means all DNA identification records
16 included in the system administered by the West Virginia State
17 Police.

18 ~~(f)~~ "State DNA databank" means the repository of DNA samples
19 collected under the provisions of this article.

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

21 **§15-2B-6. DNA sample required for DNA analysis upon conviction;**

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

23 (a) Any person convicted of an offense described in section
24 one, four, seven, nine, nine-a (when that offense constitutes a

1 felony), ten, ten-a, ten-b, twelve, fourteen or fourteen-a, article
2 two, chapter sixty-one of this code or section twelve, article
3 eight of said chapter (when that offense constitutes a felony),
4 shall provide a DNA sample to be used for DNA analysis as described
5 in this article. Further, any person convicted of any offense
6 described in article eight-b or eight-d of said chapter shall
7 provide a DNA sample to be used for DNA analysis as described in
8 this article.

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

14 (c) Any person convicted of a violation of section five or
15 thirteen, article two, chapter sixty-one of this code, section one,
16 two, three, four, five, seven, eleven, twelve (when that offense
17 constitutes a felony) or subsection (a), section thirteen, article
18 three of said chapter, section three, four, five or ten, article
19 three-e of said chapter or section three, article four of said
20 chapter, shall provide a DNA sample to be used for DNA analysis as
21 described in this article.

22 (d) Any person convicted of an offense which constitutes a
23 felony violation of the provisions of article four, chapter sixty-a
24 of this code; or of an attempt to commit a violation of section one

1 or section fourteen-a, article two, chapter sixty-one of this code;
2 or an attempt to commit a violation of article eight-b of said
3 chapter shall provide a DNA sample to be used for DNA analysis as
4 described in this article.

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

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

15 (g) The West Virginia State Police may, where not otherwise
16 mandated, require any person convicted of a felony offense under
17 the provisions of this code, to provide a DNA sample to be used for
18 the sole purpose of criminal identification of the convicted person
19 who provided the sample: *Provided*, That the person is under the
20 supervision of the criminal justice system at the time the request
21 for the sample is made. Supervision includes prison, the regional
22 jail system, parole, probation, home confinement, community
23 corrections program, and work release.

24 ~~(h) No part of the genetic information that is authorized to~~

1 ~~be collected pursuant to this article may be used for any purpose~~
2 ~~other than to establish the identity of the individual. The~~
3 ~~biological sample obtained to conduct the identity test not~~
4 ~~necessary to conduct a present or future identity test shall be~~
5 ~~destroyed following the performance of the initial identity test~~
6 ~~analysis.~~

7 (h) Duly authorized law enforcement and state personnel
8 designated by the collecting agency may employ reasonable force in
9 cases where a person refuses to provide a DNA sample required under
10 this article after first obtaining a court order requiring the
11 person to provide a DNA sample. Those duly authorized law
12 enforcement and state personnel designated by the collecting agency
13 are not civilly or criminally liable for the use of reasonable
14 force.

15 (i) On the effective date of the amendments to this section
16 enacted during the regular session of the Legislature in 2011, any
17 person required to register as a sex offender in this state and who
18 has not already provided a DNA sample in accordance with this
19 article, shall provide a DNA sample as determined by the
20 registration agency in consultation with the West Virginia State
21 Police Laboratory. The registering agency is responsible for the
22 collection and submission of the sample under this article.

23 (j) Effective January 1, 2012, any juvenile under the
24 supervision of the state as a result of an action which would be a

1 qualifying crime if committed by an adult or if a juvenile commits
2 an act which would be a qualifying crime if committed by an adult,
3 and the juvenile is adjudicated delinquent for that act, is
4 required to provide a DNA sample for the sole purpose of criminal
5 identification. The expungement requirements and procedures shall
6 be provided pursuant to section eleven of this article. A person
7 who is convicted or adjudicated delinquent for a qualifying offense
8 shall provide a DNA sample as a condition for any sentence or
9 adjudication which disposition will not involve a period of
10 incarceration. The confidentiality of juvenile records will comply
11 with the standards described in section ten, article two-b, chapter
12 fifteen of the code, as well as section seventeen, article five,
13 chapter forty-nine and section one, article seven, chapter forty
14 nine. The handling of the personal information associated with
15 juvenile DNA records will comply with section eighteen, article
16 five, chapter forty-nine where appropriate.

17 (k) When this state accepts a person from another state under
18 any interstate compact, or under any other reciprocal agreement
19 with any county, state or federal agency or any other provision of
20 law whether or not the person is confined or released, the
21 acceptance is conditional on the person providing a DNA sample if
22 the person was convicted of an offense in any other jurisdiction
23 which would be considered a qualifying offense as defined in
24 section six if committed in this state, or if the person was

1 convicted of an equivalent offense in any other jurisdiction. The
2 person shall provide the DNA sample in accordance with the rules of
3 the custodial institution or supervising agency. However, if the
4 West Virginia State Police determines that such person has already
5 submitted a DNA sample that is stored in the national database, the
6 accepting agency is not required to draw a second DNA sample.

7 (1) If a person convicted or adjudicated of a qualifying
8 offense is released without giving a DNA sample due to an oversight
9 or error or because of the person's transfer from another
10 jurisdiction, the person shall give a DNA sample for inclusion in
11 the state DNA database after being notified by the West Virginia
12 State Police Laboratory and, upon request by the person, being
13 provided a copy of the court order prior to the DNA sample being
14 collected.

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

16 The tests to be performed on each ~~blood~~ DNA sample shall
17 analyze and type the genetic markers contained in or derived from
18 the DNA sample in accordance with rules promulgated under this
19 article. Any ~~such~~ rule regarding the typing and analysis of the
20 ~~blood~~ DNA sample shall be consistent with any specifications
21 required by federal law.

22 **§15-2B-9. Procedures for withdrawal of blood sample for DNA**
23 **analysis and for conducting analysis.**

24 (a) Upon incarceration, the Division of Corrections, regional

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

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

1 blood was drawn according to recognized medical procedures
2 employing ~~such~~ 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 ~~division~~ West Virginia State
6 Police shall promulgate legislative rules pursuant to chapter
7 twenty-nine-a of this code governing the procedures to be used in
8 the ~~withdrawal of blood~~ collection of DNA samples, submission,
9 identification, analysis and storage of DNA samples and typing
10 results of DNA samples submitted under this article which shall be
11 compatible with recognized federal standards.

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

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

24 (f) A person, convicted of a qualifying offense and not

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

11 **§15-2B-10. DNA database exchange.**

12 (a) The ~~division~~ West Virginia State Police shall receive DNA
13 samples, store, analyze, classify and file the DNA records
14 consisting of all identification characteristics of DNA profiles
15 from ~~blood~~ DNA samples submitted pursuant to the procedures for
16 conducting DNA analysis of ~~blood~~ DNA samples.

17 (b) The ~~division~~ West Virginia State Police may furnish DNA
18 records to authorized law-enforcement and governmental agencies of
19 the United States and its territories, of foreign countries duly
20 authorized to receive ~~the same~~ them, of other states within the
21 United States and of the State of West Virginia upon proper request
22 stating that the DNA records requested will be used solely:

23 (1) For law enforcement identification purposes by criminal

1 justice agencies;

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

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

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

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

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

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

23 (f) Searches of the state DNA database shall be performed in

1 accordance with state and federal law and procedures.

2 (g) If a DNA match is developed and it is later determined
3 that the person's DNA sample was collected under this law by
4 mistake, the West Virginia State Police may, upon completion of the
5 confirmation process, still release the identification information
6 to the investigation agency. The detention arrest or conviction of
7 an individual based on this match is not invalidated.

8 **§15-2B-12. Confidentiality; unauthorized uses of DNA databank;**
9 **penalties.**

10 (a) All DNA profiles and samples submitted to the ~~division of~~
11 ~~public safety~~ West Virginia State Police pursuant to this article
12 shall be treated as confidential except as provided in this
13 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 ~~be imprisoned in the county or regional jails~~ confined in
21 jail for a period not to exceed one year, or both fined and
22 ~~imprisoned~~ confined.

23 (c) Any person who, without authorization, willfully obtains

1 individually identifiable DNA information from the state DNA
2 database or databank is guilty of a misdemeanor and, upon
3 conviction thereof, shall be fined not less than \$50 nor more than
4 \$500 or ~~be imprisoned in the county or regional jails~~ confined in
5 jail for a period not to exceed one year, or both fined and
6 ~~imprisoned~~ confined.

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

12 (e) In case of a criminal proceeding, a request to access a
13 person's DNA record must be made in accordance with rules for
14 criminal discovery as provided in the West Virginia Code and the
15 Rules of Criminal Procedure. The West Virginia State Police
16 Laboratory is not required to provide the state DNA database for
17 criminal discovery purposes.

18 **§15-2B-15. Collection of fees to cover the cost of DNA profile**
19 **entry into the DNA database and DNA databank; cost**
20 **of collecting and analyzing DNA sample.**

21 Unless the court finds that undue hardship would result, a
22 mandatory fee of \$150, which is in addition to any other costs
23 imposed pursuant to statutory authority, shall automatically be

1 assessed on any person convicted of, or adjudicated delinquent for,
2 a qualifying offense. Notwithstanding any other provision of this
3 code, amounts collected as a result of this fee shall be
4 transferred to a special revenue account within the West Virginia
5 State Police entitled the West Virginia State Police DNA Database
6 Account. Funds deposited are only available for expenditures for
7 purposes associated with the processing of DNA samples for the DNA
8 database.

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

10 In cases limited to murder, kidnapping and first and second
11 degree sexual assault, as defined in this code, where all
12 investigated leads have been exhausted and under the guidance of
13 the management rules, the partial match analysis may be used as an
14 investigative tool. The same standards and procedures defined in
15 the management rules and in this section apply to requests for
16 partial match information from criminal justice agencies from
17 outside the state.

NOTE: The purpose of this bill is to authorize the West Virginia State Police to administer DNA identification system and the collection of DNA generally.

§15-2B-15 and §15-2B-16 are new; therefore, it has been completely underscored.

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

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