

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

House Bill 4847

BY DELEGATES CAPITO, GRAVES, WESTFALL, FAST,
PUSHKIN, LOVEJOY, PACK, ZUKOFF, HAYNES, PRITT, AND
FLUHARTY

[Passed March 12, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §15-3D-4 and §15-3D-5 of the Code of West Virginia, 1931, as
2 amended; and to amend and reenact §15-10-5 of said code, all relating to law enforcement
3 generally; providing that missing persons information shall be furnished to West Virginia
4 State Police; providing West Virginia State Police shall monitor and assist in missing
5 persons investigation; providing that West Virginia State Police shall supervise missing
6 persons investigation in certain circumstances; providing that missing persons report
7 involving person aged over 75 years are high-risk; providing that an active investigation
8 shall start when the missing persons complaint is received; providing the lead law-
9 enforcement agency engage in coordination efforts with other law-enforcement agencies
10 and ensure appropriate use of certain resources; and removing the incorporation by
11 reference of an obsolete federal statute within the definition of Federal Bureau of
12 Investigation police officer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3D. MISSING PERSONS ACT.

§15-3D-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 and, as soon as thereafter as is practicable, shall
4 then furnish the information to the West Virginia State Police:

5 (1) The missing person's name;

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

7 (3) The missing person's address;

8 (4) The missing person's identifying characteristics, including, but not limited to:

9 Birthmarks, moles, tattoos, scars, height, weight, gender, race, current hair color, natural hair

10 color, eye color, prosthetics, surgical implants, cosmetic implants, physical anomalies, and blood
11 type;

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

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

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

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

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

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

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

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

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

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

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

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

36 (b) Upon receipt of the information required by subsection (a) of this section, the State
37 Police shall monitor and assist in the investigation or, if the available evidence supports a
38 conclusion that the missing person may have left the county from which he or she went missing,
39 or at the request of the lead law-enforcement agency, the State Police shall supervise the
40 investigation.

41 (c) High-risk determination; requirements. —

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

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

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

47 (C) The person is likely endangered;

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

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

51 (F) The person is 75 years of age or older;

52 (G) The person is under the age of 21 and declared emancipated by the laws of his or her
53 state of residence; and

54 (H) None of the criteria in paragraphs (A) through (F), inclusive, of this subdivision apply,
55 but additional facts support a reasonable concern for the person's safety.

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

59 (A) Immediately notify the terminal operator responsible for WEAPON system entries for
60 the law-enforcement agency and provide the operator with all relevant information collected from
61 the missing persons complainant as soon as possible. The terminal operator will enter all

62 information into the WEAPON system and submit the information to the West Virginia State Police
63 communications section. If the law-enforcement agency does not have an agreement with a local
64 terminal agency, then the law-enforcement agency will contact the West Virginia State Police
65 terminal agency for that particular area and request that the West Virginia State Police enter the
66 information into the WEAPON system. Once the missing persons complaint has been entered
67 into the WEAPON system, the West Virginia State Police communications section shall
68 immediately notify all law-enforcement agencies within the state and surrounding region by means
69 of the WEAPON system with all information that will promote efforts to promptly locate and safely
70 recover the missing person. Local law-enforcement agencies that receive the notification of a
71 missing persons shall notify all officers to be on the lookout for the missing person or a suspected
72 abductor; and

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

76 (d) General requirements. —

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

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

87 (e) Removal upon location of person. — Upon the determination that the person is no
88 longer missing, the lead law-enforcement agency or the West Virginia State Police shall
89 immediately remove or request the removal of all records of the missing person from all missing
90 persons databases.

§15-3D-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; and
4 shall commence an active investigation immediately upon receipt of the missing persons
5 complaint.

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

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

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

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

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

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

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

25 (f) The lead law-enforcement agency shall coordinate with all other law-enforcement
26 agencies to ensure the appropriate use of all available and applicable tools, resources, and
27 technologies to resolve a missing persons investigation, including but not limited to:

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

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

32 (3) Cell phone triangularization and tracking services;

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

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

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

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

43 (2) Any necessary written authorization to release the missing person's medical and dental
44 records, including any available x-rays, to the lead law-enforcement agency. If no family or next
45 of kin exists or can be located, the lead law-enforcement agency may execute a written
46 declaration, stating that an active investigation seeking to locate the missing person is being
47 conducted and that the records are required for the exclusive purpose of furthering the

48 investigation. The written declaration, signed by the supervising or chief officer of the
49 law-enforcement agency, is sufficient authority for a health care practitioner to immediately
50 release the missing person's x-rays, dental records, dental x-rays, and records of any surgical
51 implants to the law-enforcement agency;

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

53 (4) Fingerprints of the missing person.

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

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-5. Federal officers' peace-keeping authority.

1 (a) Notwithstanding any provision of this code to the contrary, any person who is employed
2 by the United States government as a federal law-enforcement officer and is listed in subsection
3 (b) of this section, has the same authority to enforce the laws of this state, except state or local
4 traffic laws or parking ordinances, as that authority granted to state or local law-enforcement
5 officers, if one or more of the following circumstances exist:

6 (1) The federal law-enforcement officer is requested to provide temporary assistance by
7 the head of a state or local law-enforcement agency or the designee of the head of the agency
8 and that request is within the state or local law-enforcement agency's scope of authority and
9 jurisdiction and is in writing: *Provided*, That the request does not need to be in writing if an
10 emergency situation exists involving the imminent risk of loss of life or serious bodily injury;

11 (2) The federal law-enforcement officer is requested by a state or local law-enforcement
12 officer to provide the officer temporary assistance when the state or local law-enforcement officer
13 is acting within the scope of the officer's authority and jurisdiction and where exigent
14 circumstances exist; or

15 (3) A felony is committed in the federal law-enforcement officer's presence or under
16 circumstances indicating a felony has just occurred.

17 (b) This section applies to the following persons who are employed as full-time federal
18 law-enforcement officers by the United States government and who are authorized to carry
19 firearms while performing their duties:

20 (1) Federal Bureau of Investigation special agents;

21 (2) Drug Enforcement Administration special agents;

22 (3) United States Marshal's Service marshals and deputy marshals;

23 (4) United States postal service inspectors;

24 (5) Internal revenue service special agents;

25 (6) United States secret service special agents;

26 (7) Bureau of alcohol, tobacco, and firearms special agents;

27 (8) Police officers employed at the Federal Bureau of Investigation's criminal justice
28 information services division facility located within this state;

29 (9) Law enforcement commissioned rangers of the national park service;

30 (10) Department of Veterans Affairs Police and Department of Veterans Affairs special
31 investigators;

32 (11) Office of Inspector General special agents; and

33 (12) Federal Air Marshals with the Federal Air Marshal Service.

34 (c) Any person acting under the authority granted pursuant to this section:

35 (1) Has the same authority and is subject to the same exemptions and exceptions to this
36 code as a state or local law-enforcement officer;

37 (2) Is not an officer, employee, or agent of any state or local law-enforcement agency;

38 (3) May not initiate or conduct an independent investigation into an alleged violation of any
39 provision of this code except to the extent necessary to preserve evidence or testimony at risk of

40 loss immediately following an occurrence described in subdivision (3), subsection (a) of this
41 section;

42 (4) Is subject to 28 U.S.C. §1346, the Federal Tort Claims Act; and

43 (5) Has the same immunities from liability as a state or local law-enforcement officer.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor