

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 556

By Senators Oliverio, Deeds, Hunt, Rucker, Takubo,

Tarr, Trump, Weld, Plymale, and Maroney

[Originating in the Committee on the Judiciary;

reported on February 14, 2024]

1 A BILL to amend and reenact §15-2B-2, §15-2B-3, §15-2B-5, §15-2B-6, §15-2B-9, and §15-2B-11
2 of the Code of West Virginia, 1931, as amended, all relating to deoxyribonucleic acid that is
3 maintained for law-enforcement purposes in West Virginia; providing updates for the policy
4 of maintaining deoxyribonucleic acid; defining terms; requiring deoxyribonucleic acid
5 collection from all persons convicted of felonies and certain misdemeanors; requiring
6 deoxyribonucleic collection from all persons charged by indictment, or information of any
7 felony offense after a grand jury has returned an indictment, or prosecution by indictment
8 has been waived; adding qualifying offense of domestic battery; specifying testing
9 methods; authorizing emergency, and requiring, legislative rules; specifying expungement
10 in certain circumstances; and providing failure to expunge or reasonably delay
11 expungement will not invalidate an identification, warrant, probable cause to arrest or
12 arrest based upon a database match.

Be it enacted by the Legislature of West Virginia:

ARTICLE	2B.	DNA	DATA.
§15-2B-2.			Policy.

1 (a) It is the policy of this state to assist federal, state, and local criminal justice and law-
2 enforcement agencies in the identification, detection, and exclusion of individuals who are
3 subjects of the investigation or prosecution of violent crimes, sex-related crimes, and other crimes
4 against the person. DNA records are an important identification tool that can be used to confirm
5 and verify information provided by fingerprints, and to identify additional information on potential
6 criminal activity not available through other means. DNA technology further aids the criminal
7 justice system inasmuch as it may assist persons mistakenly accused of crimes and exonerate
8 persons wrongfully convicted of crimes. In furtherance of such assistance, the Legislature finds:
9 (b) That the analysis of DNA contained in biological evidence that may be recovered from a
10 crime scene facilitates such identification, detection, and exclusion;

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

14 (d) That requiring individuals who have been indicted by a grand jury for certain offenses,
15 who have filed a waiver of indictment for certain offenses, and individuals who have been
16 convicted of a felony offense or other certain offenses to submit to ~~convicted of certain crimes to~~
17 ~~provide a sample for~~ DNA analysis with the resulting eligible DNA records maintained in a central
18 DNA database will likewise further facilitate the ~~aforementioned~~ identification, detection, and
19 exclusion and may serve to discourage recidivism.

20 (e) Therefore, the Legislature finds that assisting federal, state, and local criminal justice
21 and law-enforcement agencies through the use and development of DNA analysis is of the utmost
22 importance and urgency in this state and that a DNA identification system shall be established as
23 described in this article.

§15-2B-3. Definitions.

1 As used in this article:

2 (1) "CODIS" means the Federal Bureau of Investigation's Combined DNA Index System
3 that allows 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
5 administered and operated by the Federal Bureau of Investigation.

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

8 (3) "~~Criminal justice agency~~" means an agency or institution of a federal, state, or local
9 government, other than the office of public defender, which performs as part of its principal
10 function the apprehension, investigation, prosecution, adjudication, ~~incarceration~~ imprisonment,
11 supervision, or rehabilitation of criminal offenders. The Forensic Analysis Laboratory of the
12 Marshall University Forensic Science Center is hereby designated by the Legislature and the

13 State Police to be a criminal justice agency for purposes of the laboratory's participation in the
14 West Virginia DNA Database with its access limited to the missing persons, relatives of missing
15 persons, and unidentified human remains databases as part of work performed for the National
16 Missing and Unidentified Persons System.

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

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

21 "DNA analysis" means a laboratory analysis of a DNA specimen to identify DNA
22 characteristics and to create a DNA record.

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

28 ~~(7) "DNA sample" means a tissue, fluid, or other bodily sample, or cells collected through a~~
29 ~~buccal swab, also known as a buccal smear, that is collected from the inside of a person's cheek~~
30 ~~and is suitable for testing, provided pursuant to this article or submitted to the division laboratory~~
31 ~~for analysis pursuant to a criminal investigation.~~

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

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

35 ~~(10) "Management Rules" means the rules promulgated by the West Virginia State Police~~
36 ~~that define all policy and procedures in the administration of this article.~~

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

7 (3) upon conviction of a felony offense or any of the offenses enumerated in subsections
8 (b), (d), and (e) of this section.

9 Any DNA sample collected may be used only for DNA analysis as authorized by this article.

10 ~~(a) (b) Any person convicted of an offense described in §61-2-1, §61-2-4, §61-2-7, §61-2-~~
11 ~~9, §61-2-9a (when that offense constitutes a felony), §61-2-10, §61-2-10a, §61-2-10b, §61-2-12,~~
12 ~~§61-2-14, or §61-2-14a of this code, or §61-8-12 of this code (when that offense constitutes a~~
13 ~~felony), shall provide a DNA sample to be used for DNA analysis as described in this article.~~
14 Further, any person convicted of any offense described in §61-8B-1 *et seq.* of this code or §61-8D-
15 1 *et seq.* of this code shall provide a DNA sample to be used for DNA analysis as authorized by this
16 article.

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

20 ~~(e) (d) Any person convicted of a violation of §61-2-5 or §61-2-13~~ §61-2-28 of this code,
21 ~~§61-3-1, §61-3-2, §61-3-3, §61-3-4, §61-3-5, §61-3-7, §61-3-11, §61-3-12 (when that offense~~
22 ~~constitutes a felony), or §61-3-13(a) of this code, §61-3E-3, §61-3E-4, §61-3E-5, or §61-3E-10 of~~
23 ~~this code, or §61-4-3 of this code shall provide a DNA sample to be used for DNA analysis as~~
24 ~~described in~~ authorized by this article.

25 ~~(d) (e) Any person convicted of an offense which constitutes a felony violation of the~~
26 ~~provisions of §60A-4-401 et seq. of this code; or of an attempt to commit a violation of §61-2-1 or~~
27 ~~§61-2-14a of this code; or an attempt to commit a violation~~ of any offense in §61-8B-1 *et seq.* of
28 this code shall provide a DNA sample to be used for DNA analysis as ~~described in~~ authorized by
29 this article.

30 ~~(e) (f) The method of taking the DNA sample is subject to the testing methods used by the~~
31 approval of the West Virginia State Police Crime Lab. The DNA sample will be collected using a
32 postage paid DNA collection kit provided by the West Virginia State Police.

33 ~~(f)~~ (f) When a person required to provide a DNA sample pursuant to this section refuses to
34 comply, the state shall apply to a circuit court for an order requiring the person to provide a DNA
35 sample. Upon a finding of failure to comply, the circuit court shall order the person to submit to
36 DNA testing in conformity with the provisions of this article.

37 ~~(g)~~ (h) The West Virginia State Police may, where not otherwise mandated, require any
38 person convicted of a felony offense under the provisions of this code to provide a DNA sample to
39 be used for the sole purpose of criminal identification of the convicted person who provided the
40 sample: *Provided*, That the person is under the supervision of the criminal justice system at the
41 time the request for the sample is made. Supervision includes ~~prison~~ state correctional facilities,
42 the regional jail system, parole, probation, home confinement, a community corrections program,
43 and work release.

44 ~~(h)~~ (i) ~~On the effective date of the amendments to this section enacted during the regular~~
45 ~~session of the Legislature in 2011,~~ Any person required to register as a sex offender in this state
46 and who has not already provided a DNA sample in accordance with this article shall provide a
47 DNA sample as determined by the registration agency in consultation with the West Virginia State
48 Police Laboratory. The registering agency is responsible for the collection and submission of the
49 sample under this article.

50 ~~(i)~~ (j) When this state accepts a person from another state under any interstate compact, or
51 under any other reciprocal agreement with any county, state, or federal agency or any other
52 provision of law whether or not the person is confined or released, the transferred person ~~must~~
53 shall submit a DNA sample, if the person was convicted of an offense in any other jurisdiction
54 which would be considered a qualifying offense as defined in this section if committed in this state,
55 or if the person was convicted of an equivalent offense in any other jurisdiction. The person shall
56 provide the DNA sample in accordance with the rules of the custodial institution or supervising
57 agency. If the transferred person has already submitted a DNA sample that can be found in the
58 national database, the accepting agency is not required to draw a second DNA sample.

59 ~~(j)~~ (k) If a person convicted of a qualifying offense is released without giving a DNA sample
60 due to an oversight or error or because of the person's transfer from another jurisdiction, the
61 person shall give a DNA sample for inclusion in the state DNA database after being notified of this
62 obligation. ~~Any such~~ The person may request a copy of the court order requiring the sample prior
63 to the collection of the DNA sample.

64 ~~(k)~~ (l) Duly authorized law-enforcement employees, Regional Jail Authority employees,
65 and Division of Corrections employees may use reasonable force in cases where an individual
66 refuses to provide a DNA sample required under this article, and the employees are not civilly or
67 criminally liable for the use of reasonable force in the collection of the required DNA sample.

68 ~~(l)~~ (m) A DNA sample obtained in accordance with the requirements of this article and its
69 use in accordance with this chapter shall be considered to have been obtained in good faith.
70 ~~Should~~ If an error ~~be~~ is determined to have occurred which caused a person's DNA to be obtained
71 or submitted improperly, the DNA record shall be removed from CODIS and the DNA sample
72 destroyed unless the individual has another qualifying offense or offenses.

73 ~~(m)~~ (n) Persons authorized to collect DNA samples shall may not be civilly or criminally
74 liable for the collection of a DNA sample pursuant to this article if they perform these duties in good
75 faith and in a reasonable manner according to generally accepted medical or other professional
76 practices.

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

1 ~~(a)~~ (a) The Superintendent of the West Virginia State Police may promulgate an emergency
2 rule and shall propose a legislative rule pursuant to §29A-3-1 et seq. of this code establishing the
3 procedure that an arresting authority shall use to obtain a DNA sample.

4 ~~(a)~~ (b) Upon incarceration, the Division of Corrections, regional jails, and felon facilities
5 shall ensure that the DNA sample is collected from all persons described in §15-2B-6 of this code.
6 When any person convicted of an offense described §15-2B-6 of this code is not incarcerated

7 imprisoned, the sheriff in the county where the person is convicted shall ensure that the DNA
8 sample is collected from the person: *Provided*, That a DNA sample may be collected at a prison,
9 regional facility, or local hospital unit when so ordered by the sentencing court or other location
10 determined by the sheriff.

11 ~~(b)~~ (c) The Superintendent of the West Virginia State Police shall promulgate a legislative
12 rule pursuant to §29A-3-1 *et seq.* of this code establishing which persons may withdraw blood and
13 further establishing procedures to withdraw blood. At a minimum, these procedures shall require
14 that when blood is withdrawn for the purpose of DNA identification testing, a previously unused
15 and sterile needle and sterile vessel shall be used, the withdrawal shall otherwise be in strict
16 accord with accepted medical practices and in accordance with any recognized medical
17 procedures employing universal precautions as outlined by the Centers for Disease Control and
18 Prevention. No civil liability attaches to any person when the blood was drawn according to
19 recognized medical procedures employing the universal precautions. No person is relieved of
20 liability for negligence in the drawing of blood for purposes of DNA testing.

21 ~~(e)~~ (d) The Superintendent of the West Virginia State Police shall ~~promulgate legislative~~
22 rules propose rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code governing the
23 procedures to be used in the collection of DNA samples, submission, identification, analysis, and
24 storage of DNA samples and typing results of DNA samples submitted under this article which
25 shall be compatible with recognized federal standards.

26 ~~(d)~~ (e) The agency having control, custody, or supervision of persons convicted ~~for~~ of,
27 charged with, qualifying offenses may, in consultation with and approval of the West Virginia State
28 Police Laboratory, promulgate rules or policies specifying the time and manner of collection of the
29 DNA samples as well as any other matter necessary to carry out its responsibilities under this
30 article.

31 ~~(e)~~ (f) The agency or institution having custody, control, or providing supervision of persons
32 convicted for qualifying offenses, as appropriate, is authorized to contract with third parties to

33 provide for the collection of the DNA samples described in §15-2B-6 of this code.

34 (f) ~~(g)~~ A person, convicted of a qualifying offense and not incarcerated in a facility
35 described in subsection (a) of this section, who has been put on notice of his or her obligation to
36 provide a DNA sample and has not submitted a court ordered DNA sample at the request of a law-
37 enforcement agency, ~~shall be~~ is responsible for notifying the agency designated in the court order
38 and complying with that agency's directives for submitting a DNA sample. The person shall have
39 30 days from the receipt of the court order to comply unless there is a documented exception from
40 the agency responsible for the DNA sample collection. A person refusing to comply with a court
41 order directing that person submit a DNA sample may be considered in contempt.

42 ~~(g)~~ (h) Any court sentencing a person convicted of a qualifying offense to probation, ~~on or~~
43 ~~after the effective date of the amendments to this section enacted during the regular session of the~~
44 ~~Legislature in 2011~~, shall order, as a condition of such probation, that the convicted person report
45 to the local sheriff's department to provide a DNA sample within 30 days.

§15-2B-11.

Expungement.

1 (a) A person from whom a DNA sample has been taken may have the DNA profile
2 expunged from the state and federal databases where:

3 (1) The criminal charge is dismissed and the prosecuting attorney determines that the
4 charge will not be pursued further;

5 (2) The circuit court or jury has entered a judgment of acquittal on the charge or charges
6 supporting the taking of the DNA sample; or

7 (3) The person was convicted of a misdemeanor or a lesser-included misdemeanor
8 offense and was not otherwise convicted of a qualifying offense enumerated in §15-2B-6 of this
9 code.

10 (b) A person seeking expungement pursuant to subsection (a) of this section may, at no
11 cost, submit a written application for expungement to the circuit court of the county in which the
12 charge supporting the taking of a DNA sample was filed. The circuit court shall by order direct the

13 prosecuting attorney and the Superintendent of the West Virginia State Police to conduct
14 appropriate inquiries and report their findings to the circuit court within 20 judicial days of record of
15 the order.

16 (c) Within seven judicial days following any of the enumerated conditions in subsection (a)
17 of this section occurring, the circuit court of the county in which the charge supporting the taking of
18 the DNA sample was filed shall issue an order directing the prosecuting attorney and the
19 Superintendent of the West Virginia State Police to purge all records in their possession and all
20 databases of the DNA records and DNA profile and destroy the DNA sample.

21 (d) Upon complying with the provisions of subsection (b) of this section, the prosecuting
22 attorney and the Superintendent of the West Virginia State Police shall notify the circuit clerk in
23 writing that the expungement of records and databases has occurred. The circuit clerk shall
24 provide a copy of the notice to the person from whom the DNA sample has been collected.

25 ~~(a)~~ (e) Any ~~person convicted of a qualifying offense~~ person whose DNA record or profile
26 has been included in the state database and whose DNA sample is stored in the state databank or
27 the state's designated DNA typing, testing, and research laboratory may apply for expungement
28 on the grounds that the qualifying conviction that resulted in the inclusion of the person's DNA
29 record or profile in the state database or the inclusion of the person's DNA sample in the state
30 databank has been reversed and the case dismissed. The person seeking expungement, either
31 individually or through an attorney, may petition the court for expungement of the record. A copy of
32 the petition for expungement shall be served on the prosecuting attorney for the judicial district in
33 which the qualifying conviction was obtained not less than 20 days prior to the date of the hearing
34 on the petition. A certified copy of the order reversing and dismissing the conviction shall be
35 attached to an order of expungement.

36 ~~(b)~~ (f) Upon receipt of an order of expungement, the ~~division~~ West Virginia State Police
37 shall purge the DNA record and all other identifiable information from the state database and the
38 DNA sample stored in the state databank covered by the order. If the ~~individual~~ person has more

39 than one entry in the state database and databank, then only the entry covered by the
40 expungement order shall be deleted from the state database or databank.

41 (g) Any identification, warrant, probable cause to arrest, or arrest based upon a database
42 match is not invalidated due to a failure to expunge or a reasonable delay in expunging the
43 records.