

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 765

BY SENATORS TAKUBO, DEEDS, PLYMALE, WOELFEL,

MARONEY, AND WOODRUM

[Originating in the Committee on the Judiciary;

reported on February 21, 2024]

1 A BILL to amend and reenact §15-2B-4 and §15-2B-6 of the Code of West Virginia, 1931, as
2 amended, all relating to designating the Forensic Analysis Laboratory of the Marshall
3 University Forensic Science Center as the back-up provider to manage the
4 deoxyribonucleic acid databank and database in the event of a statewide declared, public
5 emergency, or natural disaster; designating Forensic Analysis Laboratory of the Marshall
6 University Forensic Science Center as an additional site for the analysis of the
7 deoxyribonucleic acid samples from unidentified human remains; providing Forensic
8 Analysis Laboratory of the Marshall University Forensic Science Center access to certain
9 databases; and requiring the Chief Medical Examiner, or his or her designee, to collect
10 specified samples for inclusion into the state deoxyribonucleic acid databank and
11 specifying access to those samples.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. DNA DATA.

**§15-2B-4. Division of public safety to establish and administer DNA identification system;
inspection of laboratories; designation of back up facility in the event of natural
disaster or statewide declared emergency.**

1 (a) The division shall establish a DNA identification system consisting of a state DNA
2 database and a state DNA databank compatible with the procedures specified by the FBI.

3 (b) The division shall be the administrator of the state DNA databank and database and
4 the DNA identification system.

5 (c) The division shall supervise all DNA forensic laboratories in this state to ensure that
6 such laboratories are acting in compliance with applicable provisions of state and federal law. The
7 division may inspect or monitor such facilities and may prohibit ~~any such~~ a laboratory from
8 participating in the exchange of information when the division finds that the facility has not acted
9 in conformity with state and federal laws. The superintendent of the division shall further

10 promulgate a legislative rule pursuant to chapter 29A of this code regarding the monitoring,
11 inspection, and prohibition on the exchange of information.

12 (d) The superintendent of the division shall further establish standards for testing and
13 quality assurance of DNA testing and the exchange of information through the promulgation of a
14 legislative rule pursuant to chapter 29A of this code.

15 (e) The superintendent of the division of public safety shall promulgate additional
16 legislative rules pursuant to chapter 29A of this code necessary to establish and administer the
17 DNA database and databank consistent with the requirements of state and federal law and
18 consistent with the systems employed by the FBI.

19 (f) The Forensic Analysis Laboratory of the Marshall University Forensic Science Center
20 is hereby designated as a backup site for the division's DNA databank and database to function
21 in the event of a natural disaster or statewide declared emergency which renders the division
22 unable to function. In the event that the Forensic Analysis Laboratory of the Marshall University
23 Forensic Science Center is required to operate under this article, it shall have all the same powers
24 to administer the State DNA Databank and the State DNA database as the division while the
25 natural disaster or statewide declared public emergency is in effect, or until the division regains
26 operational status, with the exclusion of promulgating legislative rules.

27 (g) The Forensic Analysis Laboratory of the Marshall University Forensic Science Center
28 shall be designated as an additional site for analyzing DNA samples taken from unidentified
29 human remains that have been submitted by the Chief Medical Examiner or the division to the
30 State DNA Databank for the purpose of identification. The Forensic Analysis Laboratory of the
31 Marshall University Forensic Science Center shall have access to the missing persons, relatives
32 of missing persons, and unidentified human remains databases as part of work to be performed
33 for the National Missing and Unidentified Persons System.

**§15-2B-6. DNA sample required for DNA analysis upon conviction; DNA sample required
for certain prisoners; DNA sample required by Chief Medical Examiner.**

1 (a) Any person convicted of an offense described in §61-2-1, §61-2-4, §61-2-7, §61-2-9,
2 §61-2-9a (when that offense constitutes a felony), §61-2-10, §61-2-10a, §61-2-10b, §61-2-12,
3 §61-2-14, or §61-2-14a of this code, or §61-8-12 of this code (when that offense constitutes a
4 felony), shall provide a DNA sample to be used for DNA analysis as described in this article.
5 Further, any person convicted of any offense described in §61-8B-1 *et seq.* of this code or §61-
6 8D-1 *et seq.* of this code shall provide a DNA sample to be used for DNA analysis as described
7 in this article.

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

11 (c) Any person convicted of a violation of §61-2-5 or §61-2-13 of this code, §61-3-1, §61-
12 3-2, §61-3-3, §61-3-4, §61-3-5, §61-3-7, §61-3-11, §61-3-12 (when that offense constitutes a
13 felony), or §61-3-13(a) of this code, §61-3E-3, §61-3E-4, §61-3E-5, or §61-3E-10 of this code, or
14 §61-4-3 of this code shall provide a DNA sample to be used for DNA analysis as described in this
15 article.

16 (d) Any person convicted of an offense which constitutes a felony violation of the
17 provisions of §60A-4-401 *et seq.* of this code; or of an attempt to commit a violation of §61-2-1 or
18 §61-2-14a of this code; or an attempt to commit a violation of §61-8B-1 *et seq.* of this code shall
19 provide a DNA sample to be used for DNA analysis as described in this article.

20 (e) The method of taking the DNA sample is subject to the testing methods used by the
21 West Virginia State Police Crime Lab. The DNA sample ~~will~~ shall be collected using a postage
22 paid DNA collection kit provided by the West Virginia State Police.

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

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

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

39 (i) When this state accepts a person from another state under any interstate compact, or
40 under any other reciprocal agreement with any county, state, or federal agency or any other
41 provision of law whether or not the person is confined or released, the transferred person must
42 submit a DNA sample, if the person was convicted of an offense in any other jurisdiction which
43 would be considered a qualifying offense as defined in this section if committed in this state, or if
44 the person was convicted of an equivalent offense in any other jurisdiction. The person shall
45 provide the DNA sample in accordance with the rules of the custodial institution or supervising
46 agency. If the transferred person has already submitted a DNA sample that can be found in the
47 national database, the accepting agency is not required to ~~draw~~ obtain a second DNA sample.

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

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

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

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

66 (n) The Chief Medical Examiner, or his or her designee, shall collect for inclusion into the
67 State DNA Databank, a blood sample, bone sample, oral sample, or tissue sample from crime
68 scene evidence or from unidentified human remains which information shall also reside in the
69 DNA database. The DNA samples collected from unidentified human remains shall be fully
70 accessible by the division and the Forensic Analysis Laboratory of the Marshall University
71 Forensic Science Center.