WEST VIRGINIA CODE: §15-2B-6

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

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

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

(c) Any person convicted of a violation of §61-2-5 or §61-2-13 of this code, §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 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 this code, or §61-4-3 of this code shall provide a DNA sample to be used for DNA analysis as described in this article.

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

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

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

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

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release.

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

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

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

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

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

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

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