WEST VIRGINIA CODE: §15-2B-9

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

(a) Upon incarceration, the Division of Corrections, regional jails and felon facilities shall ensure that the DNA sample is collected from all persons described in section six of this article. When any person convicted of an offense described in section six is not incarcerated, the sheriff in the county where the person is convicted shall ensure that the DNA sample is collected from the person: Provided, That a DNA sample may be collected at a prison, regional facility or local hospital unit when so ordered by the sentencing court or other location determined by the sheriff.

(b) The Superintendent of the West Virginia State Police shall promulgate a legislative rule pursuant to chapter twenty-nine-a of this code establishing which persons may withdraw blood and further establishing procedures to withdraw blood. At a minimum, these procedures shall require that when blood is withdrawn for the purpose of DNA identification testing, a previously unused and sterile needle and sterile vessel shall be used, the withdrawal shall otherwise be in strict accord with accepted medical practices and in accordance with any recognized medical procedures employing universal precautions as outlined by the Centers for Disease Control and Prevention. No civil liability attaches to any person when the blood was drawn according to recognized medical procedures employing the universal precautions. No person is relieved of liability for negligence in the drawing of blood for purposes of DNA testing.

(c) The Superintendent of the West Virginia State Police shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code governing the procedures to be used in the collection of DNA samples, submission, identification, analysis and storage of DNA samples and typing results of DNA samples submitted under this article which shall be compatible with recognized federal standards.

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

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

(f) A person, convicted of a qualifying offense and not incarcerated in a facility described in subsection (a) of this section, who has been put on notice of his or her obligation to provide a DNA sample and has not submitted a court ordered DNA sample at the request of a law-

WV Legislature

enforcement agency, shall be responsible for notifying the agency designated in the court order and complying with that agency's directives for submitting a DNA sample. The person shall have thirty days from the receipt of the court order to comply unless there is a documented exception from the agency responsible for the DNA sample collection. A person refusing to comply with a court order directing that person submit a DNA sample may be considered in contempt.

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

WV Legislature