WEST VIRGINIA CODE CHAPTER 15 ARTICLE 3D

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§15-3D-1. Short title.

This article shall be known and may be cited as the Missing Persons Act.

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§15-3D-2. Findings.

The Legislature finds that:

(1) The ability of law-enforcement agencies to rapidly respond in the hours following the discovery that an individual is missing is a crucial factor in the likelihood that the person will ultimately be located and recovered. The prompt communication of detailed information to the public through emergency broadcast systems and media outlets, including through social media platforms and missing persons databases, can be one of the most effective tools in a missing persons investigation.

(2) A number of national and state-level databases are available to allow law-enforcement agencies and medical examiners to electronically share key information with other law-enforcement agencies and the public related to the investigation of a missing person or unidentified human remains.

(3) In light of technological developments, it is imperative that all law-enforcement agencies in West Virginia follow certain minimum procedures for responding to missing persons complaints and submit key information to national and state-level databases in a timely manner.

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§15-3D-3. Definitions.

For the purposes of this article:

(1) "CODIS" means the Federal Bureau of Investigation's Combined DNA Index System, which allows for the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories. The term "CODIS" includes the National DNA Index System or NDIS, administered and operated by the Federal Bureau of Investigation.

(2) "Complainant" means a person who contacts law enforcement to report that a person is missing.

(3) "Electronic communication device" means a cellular telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device.

(4) "Juvenile" means any person under 18 years of age.

(5) "Law-enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof.

(6) "Lead law-enforcement agency" means the law-enforcement agency that initially receives a missing persons complaint or, after the fulfillment of all requirements of this article related to the initial receipt of a missing persons complaint and transmission of information to required databases, the law-enforcement agency with the primary responsibility for investigating a missing or unidentified persons complaint.

(7) "Missing and endangered child" means any missing child for which there are substantial indications the child is at high risk of harm or in immediate danger, and rapid action is required, including, but not limited to:

(A) Physically or mentally disabled and dependent upon an agency or another individual for care;

(B) Under the age of 13;

(C) Missing under circumstances which indicate the child's safety may be in danger; or

(D) A foster child and has been determined a missing and endangered child by the Department of Human Services.

(8) "Missing child" means any child under the age of 18 whose whereabouts are unknown to the child's legal custodian.

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(9) "Missing person" means any person who is reported missing to a law-enforcement agency.

(10) "NamUs" means the database of the National Missing and Unidentified Persons System.

(11) "NCIC" means the database of the National Crime Information Center, the nationwide, online computer telecommunications system maintained by the Federal Bureau of Investigation to assist authorized agencies in criminal justice and related law-enforcement objectives.

(12) "NCMEC" means the database of the National Center for Missing and Exploited Children.

(13) "Unidentified person" means any person, living or deceased, who has not been identified through investigation for over 30 days.

(14) “Unresolved missing persons complaint” means a missing person’s complaint that is unresolved one year from the date the missing persons complaint was filed pursuant to §15-3D-4 of this code.

(15) "Violent Criminal Apprehension Program" or "ViCAP" is a unit of the Federal Bureau of Investigation responsible for the analysis of serial violent and sexual crimes.

(16) "WEAPON system" means the West Virginia Automated Police Network.

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§15-3D-4. Missing persons complaints; law-enforcement procedures.

(a) *Complaint requirements*. — A person may file a missing persons complaint with any law-enforcement agency having jurisdiction. The law-enforcement agency shall attempt to collect the following information from a complainant and, as soon as thereafter as is practicable, shall then furnish the information to the West Virginia State Police:

(1) The missing person's name;

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

(3) The missing person's address;

(4) The missing person's identifying characteristics, including, but not limited to: Birthmarks, moles, tattoos, scars, height, weight, gender, race, current hair color, natural hair color, eye color, prosthetics, surgical implants, cosmetic implants, physical anomalies, and blood type;

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

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

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

(8) A recent photograph of the missing person;

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

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

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

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

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

(14) Any identifying information related to a known or possible abductor, or the person last seen with the missing person, including the person's name, physical description, date of birth, identifying physical marks, a description of the person's possible means of

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transportation, including the make, model, color, license, and identification number of the person's vehicle, and any known associates;

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

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

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

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

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

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

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

(C) The person is likely endangered;

(D) The person has mental or physical disabilities;

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

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

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

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

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

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

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

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

(d) *General requirements*. —

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

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

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

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§15-3D-5. Missing persons investigation requirements.

(a) A law-enforcement agency may not delay an investigation of a missing persons complaint on the basis of a written or unwritten policy requiring that a certain period of time pass after any event, including the receipt of a complaint, before an investigation may commence; and shall commence an active investigation immediately upon receipt of the missing persons complaint.

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

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

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

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

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

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

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

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

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

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

(3) Cell phone triangularization and tracking services;

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

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

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

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

(2) Any necessary written authorization to release the missing person's medical and dental records, including any available x-rays, to the lead law-enforcement agency. If no family or next of kin exists or can be located, the lead law-enforcement agency may execute a written declaration, stating that an active investigation seeking to locate the missing person is being conducted and that the records are required for the exclusive purpose of furthering the investigation. The written declaration, signed by the supervising or chief officer of the law-enforcement agency, is sufficient authority for a health care practitioner to immediately release the missing person's x-rays, dental records, dental x-rays, and records of any surgical implants to the law-enforcement agency;

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

(4) Fingerprints of the missing person.

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

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§15-3D-6. Reporting and handling of unidentified human remains.

(a) If a law-enforcement officer or other official discovers or comes into custody of unidentified human remains, the officer or official shall immediately notify the office of the Chief Medical Examiner of the location of those remains. After a law-enforcement agency performs an appropriate death scene investigation with the assistance of the Chief Medical Examiner or county medical examiner, unidentified human remains shall remain in the custody of the office of the Chief Medical Examiner or the county medical examiner pursuant to the requirements of §61-12-3 of this code.

(b) If a law-enforcement officer or other official is uncertain whether materials he or she discovers or comes into custody of are human remains, the officer or official shall immediately notify and seek the assistance of the office of the Chief Medical Examiner.

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§15-3D-7. Identification of human remains.

(a) The Chief Medical Examiner or county medical examiner, whichever is applicable, shall make reasonable attempts to promptly identify unidentified human remains, by:

(1) Taking photographs of the human remains, prior to an autopsy;

(2) Performing dental or skeletal x-rays, when possible;

(3) Taking photographs of items found with the human remains;

(4) Obtaining fingerprints from the remains, when possible;

(5) Taking samples of tissue suitable for DNA typing, when obtainable;

(6) Taking samples of whole bone or hair, or both, when obtainable and suitable for DNA typing; and

(7) Collecting any other information or materials that may support identification efforts.

(b) A medical examiner or any other person may not dispose of, or materially alter, unidentified human remains before:

(1) Any obtainable DNA samples have been collected that are suitable for DNA identification archiving;

(2) Photographs of the unidentified person or human remains have been taken; and

(3) All other appropriate methods of identification have been exhausted.

(c) A medical examiner shall make reasonable efforts to obtain prompt DNA analysis of biological samples from unidentified human remains if the human remains have not been identified by other means within 30 days.

(d) A medical examiner shall seek available support from appropriate state and federal agencies in efforts to identify human remains including, but not limited to, mitochondrial or nuclear DNA testing services, federal grants for DNA testing, or federal grants for laboratory or medical examiner office improvement.

(e) The medical examiner shall promptly submit all available information that may aid in the identification of human remains to NamUs and to the West Virginia State Police, for entry into all other appropriate law-enforcement databases.

(f) When human remains have been identified as belonging to a missing person, the medical examiner shall promptly notify the lead law-enforcement agency, or if the lead law-enforcement agency is unknown, the West Virginia State Police that the missing person’s remains have been identified.

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(g) As soon as possible, the lead law-enforcement agency shall make and document efforts to locate family members of the deceased person to inform them of the death and location of the remains of their family member, unless disclosure of such information would compromise a criminal investigation into a missing person's death.

(h) Nothing in this article shall be interpreted to preclude the West Virginia State Police or any other law-enforcement agency from pursuing additional efforts to identify human remains, including efforts to publicize information, descriptions, or photographs that may aid in the identification of the remains.

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§15-3D-8. Filing a false missing persons complaint; criminal penalties.

A person who knowingly and willfully files a false missing persons complaint is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $200, or confined in jail for five days, or both fined and confined.

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§15-3D-9. Missing and Endangered Child Advisory System; definitions; rule-making authority.

(a) There is hereby created an advisory system, referred to in this section as the "system", to aid in the identification and location of missing and endangered children.

(b) "Missing and Endangered Child Advisory" means a system used to alert the public of a missing and endangered child to aid in the child's rapid recovery.

(c) The State Police shall promulgate emergency rules establishing procedures for local law-enforcement agency's issuance of a missing and endangered child advisory.

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§15-3D-10. Unresolved missing persons complaints.

(a) Law enforcement agencies shall permanently retain and shall not destroy unresolved missing persons complaint records and evidence.

(b) Law enforcement agencies may follow the state's existing record-retention schedules for resolved missing persons complaints.

(c) Law-enforcement agencies shall digitize active and unresolved missing persons complaint files, ensuring that all related documentation and evidence are scanned, uploaded, or otherwise preserved in a secure, searchable digital format. Physical and biological evidence shall be retained permanently by the lead law-enforcement agency or the West Virginia State Police pursuant to the policies of the law-enforcement agency.

(d) All documentation related to an unresolved missing persons complaint shall be transmitted to the West Virginia Fusion Center by the lead law-enforcement agency. The West Virginia Fusion Center shall retain the documentation until it is provided notice by the lead law-enforcement agency or the West Virginia State Police that the person has been located or the complaint has been resolved.

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