WEST VIRGINIA CODE CHAPTER 15A ARTICLE 1

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§15A-1-1. Rules of construction generally.

Whenever in this chapter, or in any rule or regulation authorized by it, any of the words, terms, or phrases defined in this article are used, they shall be taken and construed to have the meaning, application, and effect ascribed to them in this article, unless otherwise specified or clearly intended.

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§15A-1-2. Department.

"Department" means the Department of Homeland Security.

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§15A-1-3. Secretary.

"Secretary" means the Secretary of the Department of Homeland Security.

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§15A-1-4. "Commissioner" defined.

"Commissioner" means the Commissioner of the Division of Corrections and Rehabilitation within the Department of Military Affairs and Public Safety.

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§15A-1-5. "Inmate" defined.

"Inmate" means an adult incarcerated person.

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§15A-1-6. "Resident" defined.

"Resident" means a juvenile within the custody of the Division of Corrections and Rehabilitation.

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§15A-1-7. Compliance with requests for personnel information.

(a) Notwithstanding any provision of this code or any rule promulgated thereunder to the contrary, when the Department of Military Affairs and Public Safety or any agency within the department is placed on notice that a past or current employee has been subpoenaed or is to be called as a witness in a criminal proceeding on behalf of the state or federal government, the department, or agency, and the employee has, to the departments' or agencies' knowledge, previously been determined to have engaged in conduct reflecting dishonesty, moral turpitude, bias, prejudice, or other conduct which might reasonably be deemed to constitute impeachment evidence, the department or agency shall provide the name of the employee to the prosecuting attorney or United States attorney representing the state or the United States in the prosecution.

(b) The responsibilities of the department and agencies imposed by this section are met by transmittal of the employee name to the prosecuting attorney or attorney for the United States.

(c) The Department of Military Affairs and Public Safety and all its officers and employees are immune from any and all liability arising from the good faith release of information under the provisions of this section. The immunity granted by this section shall be in addition to any other immunity now existing or granted under any other provision of this code or common law.

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§15A-1-8. Preservation of biological evidence from criminal cases; directing Secretary to undertake a study and report to the Legislature.

(a) As used in this section:

(1) "Biological evidence" means:

(A) A sexual assault forensic examination kit; or

(B) Semen, blood, saliva, hair, human body tissue, or other biological material containing human DNA.

(2) "DNA" means deoxyribonucleic acid.

(3) "Secretary" means the Secretary of Military Affairs and Public Safety.

(b) The Secretary of Military Affairs and Public Safety shall undertake an investigation of effective modes and methods of storing and preserving biological materials obtained by law enforcement in criminal investigations and criminal prosecutions.

(c) On or before January 1, 2020, the Secretary shall submit to the President of the Senate and the Speaker of the House of Delegates a proposed plan, along with proposed legislation, creating within the department a program for the centralized storage and preservation of biological evidence obtained in criminal investigations and criminal trials throughout the state.

(d) It is the intent of the Legislature in enacting this section to acknowledge the importance of biological evidence and to recognize that improvements in technology make biological evidence ever more important in identifying criminal perpetrators and protecting innocent persons.

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§15A-1-9. Department of Homeland Security; Secretary of the Department of Homeland Security; powers and duties.

(a)(1) The Department of Homeland Security is established within the Executive Branch as a criminal justice agency. In addition to all other powers and duties set forth in this code, the department is designated as the principal state agency to coordinate the receipt, distribution, and monitoring of all funds available from any source for the purpose of equipping, training, research, and education in regard to homeland security related items, issues, or services. The department is authorized to coordinate and establish standards for all operations and activities of the state related to homeland security efforts and to establish protocols for coordinating and sharing information with state and federal law enforcement and intelligence agencies responsible for investigating and collecting information related to homeland security and national security threats.

(2) The department is designated as the state administrative agency responsible for homeland security and emergency management for the planning and development of state programs and grants which may be funded by federal, state, or other allocations in the areas of homeland security and emergency management, unless such administration has been specifically entrusted to another state agency by the Governor or the Legislature.

(3) Notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule promulgated thereunder, a reference is made to the Department of Military Affairs and Public Safety, it means the Department of Homeland Security.

(b) The secretary is the chief executive officer of the department. Subject to §5F-2-2 of this code, the secretary shall organize the department into such offices, sections, agencies, and other units of activity as may be found by the secretary to be desirable for the orderly, efficient and economical administration of the department and for the accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief of staff, assistants, hearing officers, clerks, stenographers, and other officers, technical personnel, and employees needed for the operation of the department and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(c) The secretary has the power to and may designate supervisory officers or other officers or employees of the department to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings, or other activities with such substitute having the same powers, duties, authority, and responsibility as the secretary. The secretary has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the department his or her powers, duties, authority and responsibility relating to such duties and functions set forth in this chapter or elsewhere in this code.

(d) The secretary has responsibility for the conduct of the intergovernmental relations of the department, including assuring:

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(1) That the department carries out its functions in a manner which supplements and complements the homeland security and public safety policies, programs and procedures of the federal government, other state governments, and other instrumentalities of this state; and

(2) That appropriate officers and employees of the department consult with individuals responsible for making policy relating to homeland security and public safety issues in the federal government, other state governments, and other instrumentalities of this state concerning differences over policies, programs, and procedures and concerning the impact of statutory law and rules upon the homeland security and public safety of this state.

(e) In addition to other powers, duties, and responsibilities granted and assigned to the secretary by this code, the secretary is authorized and empowered to:

(1) Sign and execute in the name of the state by the Department of Homeland Security any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: *Provided,* That the powers granted to the secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors, or board members of the various departments, agencies, or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter 5F of this code;

(2) Conduct research in improved homeland security and public safety methods and disseminate information to the citizens of this state;

(3) Require any persons contracting to install, establish, modify, operate, or close a correctional or other public safety facility to furnish the fingerprints of the person or persons; any officer, director, or manager of the contractor; any person owning a five percent or more interest, beneficial or otherwise, in the contractor's business; or any other person conducting or managing the affairs of the contractor, in whole or in part. These fingerprints may be used to obtain and review any police record for the purposes that may be in the interest of homeland security or public safety, and to use the fingerprints furnished to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of the checks shall be provided to the secretary;

(4) Acquire for the state in the name of the Department of Homeland Security by purchase, lease, or agreement, or accept or reject for the state, in the name of the Department of Homeland Security, gifts, donations, contributions, bequests, or devises of money, security, or property, both real and personal, and any interest in property; and

(5) Provide for workshops, training programs, and other educational programs, apart from or in cooperation with other governmental agencies, necessary to ensure adequate standards of

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public service in the department. The secretary may provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The secretary is authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to the educational programs, training and instruction. Eligibility for participation by employees shall be in accordance with guidelines established by the secretary.

(f) The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate and serves at the will and pleasure of the Governor.

(g) The secretary shall serve as the Homeland Security Advisor (HSA) for West Virginia, and shall be responsible for coordinating, designing, and implementing West Virginia's program for homeland security. The secretary shall be the principal point of contact between the State of West Virginia and the federal government with respect to homeland security issues. The HSA shall either possess at least a secret clearance through the federal government or be able to qualify for, and be in the process of obtaining, such clearance at the time of his or her appointment as HSA. The HSA shall keep the Governor advised of all homeland security matters and shall be the main point of contact for the Governor on these issues. The secretary, with permission of the Governor, may delegate all or a portion of the functions of the HSA to a designee who possesses at least a secret clearance.

(h) Notwithstanding any other provision of this code to the contrary, any records compiled by the department or any division, agency, office, or unit thereof, the disclosure of which could be used to create an endangerment to municipal, county, state, or national welfare and security, are not public records and are not subject to disclosure in response to a Freedom of Information Act request under §29B-1-1 *et seq.* of this code.

(i) The Department of Homeland Security shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

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