

SB 0252

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 252

(By Senator PLYMOUTH, ET AL)



PASSED MARCH 9 1995

In Effect FROM Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 252

(SENATORS PLYMALE, WAGNER, WOOTON, BUCKALEW,
SCOTT, SCHOONOVER AND CHAFIN, *original sponsors*)

[Passed March 9, 1995; in effect from passage.]

AN ACT to repeal section twenty-four-a, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter fifteen of said code by adding thereto a new article, designated article two-b, relating generally to blood sampling and analyses for DNA database and databank act of 1995; policy of DNA database; definitions; division of public safety to implement database; division to inspect facilities; cooperative agreements; promulgation of legislative rules; compatibility of state program with federal guidelines; requirement of blood sample upon conviction of certain crimes and for certain prisoners; tests; maintenance of records and samples; procedures for drawing blood; the database exchange; disclosure of record; expungement of DNA records; confidentiality, unauthorized use of databank, neglect of duties, destruction of samples; and penalties.

Be it enacted by the Legislature of West Virginia:

That section twenty-four-a, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be amended by adding thereto a new article, designated article two-b, to read as follows:

ARTICLE 2B. DNA DATA.

§15-2B-1. Short title.

1 This article may be cited as the "DNA Database and
2 Databank Act of 1995".

§15-2B-2. Policy.

1 It is the policy of this state to assist federal, state and
2 local criminal justice and law-enforcement agencies in
3 the identification, detection and exclusion of individuals
4 who are subjects of the investigation or prosecution of
5 violent crimes, sex-related crimes and other crimes
6 against the person. In furtherance of such assistance, the
7 Legislature finds:

8 That the analysis of DNA contained in biological
9 evidence that may be recovered from a crime scene
10 facilitates such identification, detection and exclusion;

11 That the comparison of DNA data recovered from a
12 crime scene with existing DNA records maintained in a
13 central DNA database further facilitates such identifica-
14 tion, detection and exclusion; and

15 That requiring individuals convicted of certain crimes
16 to provide a blood sample for DNA analysis with the
17 resulting DNA records maintained in a central DNA
18 database will likewise further facilitate the aforemen-
19 tioned identification, detection and exclusion and may
20 serve to discourage recidivism.

21 Therefore, the Legislature finds that assisting federal,
22 state and local criminal justice and law-enforcement
23 agencies through the use and development of DNA

24 analysis is of the utmost importance and urgency in this
25 state and that a DNA identification system shall be
26 established as described in this article.

§15-2B-3. Definitions.

1 As used in this article the following terms have the
2 meanings specified:

3 (a) "DNA" means deoxyribonucleic acid. DNA is
4 located in the nucleus of cells and provides an individ-
5 ual's personal genetic blueprint. DNA encodes genetic
6 information that is the basis of human heredity and
7 forensic identification.

8 (b) "DNA record" means DNA identification informa-
9 tion stored in any state DNA database pursuant to this
10 article. The DNA record is the result obtained from
11 DNA typing tests. The DNA record is comprised of the
12 characteristics of a DNA sample which are of value in
13 establishing the identity of individuals. The results of all
14 DNA identification tests on an individual's DNA sample
15 are also included as a "DNA record".

16 (c) "DNA sample" means the DNA extracted from a
17 blood sample provided by any person convicted of
18 offenses covered by this article or submitted to the
19 division laboratory for analysis pursuant to a criminal
20 investigation.

21 (d) "FBI" means the federal bureau of investigation.

22 (e) "State DNA database" means all DNA identifica-
23 tion records included in the system administered by the
24 West Virginia division of public safety.

25 (f) "State DNA databank" means the repository of
26 DNA samples collected under the provisions of this
27 article.

28 (g) "Division" means the West Virginia division of
29 public safety.

§15-2B-4. Division of public safety to establish and administer DNA identification system; inspection of laboratories.

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

5 (b) The division shall be the administrator of the state
6 DNA databank and database and the DNA identification
7 system.

8 (c) The division shall supervise all DNA forensic
9 laboratories in this state to ensure that such laboratories
10 are acting in compliance with applicable provisions of
11 state and federal law. The division may inspect or
12 monitor such facilities and may prohibit any such
13 laboratory from participating in the exchange of infor-
14 mation when the division finds that the facility has not
15 acted in conformity with state and federal laws. The
16 superintendent of the division shall further promulgate
17 a legislative rule pursuant to chapter twenty-nine-a of
18 this code regarding the monitoring, inspection and
19 prohibition on the exchange of information.

20 (d) The superintendent of the division shall further
21 establish standards for testing and quality assurance of
22 DNA testing and the exchange of information through
23 the promulgation of a legislative rule pursuant to
24 chapter twenty-nine-a of this code.

25 (e) The superintendent of the division of public safety
26 shall promulgate additional legislative rules pursuant to
27 chapter twenty-nine-a of this code necessary to establish
28 and administer the DNA database and databank consis-
29 tent with the requirements of state and federal law and
30 consistent with the systems employed by the FBI.

§15-2B-5. Authority of division to enter into cooperative agreements.

1 The division may enter into cooperative agreements
2 with public or private agencies or entities to provide any
3 service or facility associated with the administration of
4 the DNA database and databank: *Provided*, That the
5 division is authorized only to contract services and/or
6 facilities for DNA typing, testing and research with
7 Marshall university.

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

1 (a) Any person convicted of an offense described in
2 section one, two, three, four, seven, nine, nine-a (when
3 that offense constitutes a felony), ten, ten-a, ten-b,
4 twelve, fourteen or fourteen-a, article two, chapter sixty-
5 one of this code or section twelve, article eight of said
6 chapter when that offense constitutes a felony shall
7 provide a blood sample to be used for DNA analysis as
8 described in this article. Further, any person convicted
9 of any offense described in article eight-b or eight-d of
10 said chapter shall provide a blood sample to be used for
11 DNA analysis as described in this article.

12 (b) All persons incarcerated in the state penitentiary or
13 any regional jail in this state who are incarcerated due to
14 the conviction of any offense listed in subsection (a) of
15 this section who are incarcerated on the first day of July,
16 one thousand nine hundred ninety-five, or who are
17 convicted of any such offense on or after the first day of
18 July, one thousand nine hundred ninety-five, shall have
19 a blood sample drawn for purposes of analysis and
20 storage of the DNA.

21 (c) When a person who is required to submit to blood
22 testing as required by this section refuses to comply with
23 any blood testing, the state shall apply to a circuit court
24 for an order requiring the prisoner to permit a blood
25 sample to be withdrawn for the purpose of DNA typing
26 and testing. The circuit court shall order the prisoner to
27 submit to blood testing in conformity with the provisions

28 of this article.

§15-2B-7. Tests to be performed on blood sample.

1 The tests to be performed on each blood sample shall
2 analyze and type the genetic markers contained in or
3 derived from the DNA sample in accordance with rules
4 promulgated under this article. Any such rule regarding
5 the typing and analysis of the blood sample shall be
6 consistent with any specifications required by federal
7 law.

§15-2B-8. Maintenance of DNA samples and records.

1 DNA records and samples shall be stored and main-
2 tained by the division in the state DNA database and
3 databank respectively. DNA samples, without personal
4 identifying information, may also be stored in any DNA
5 typing, testing and research laboratory selected by the
6 division pursuant to section five of this article.

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

1 (a) Upon incarceration, the division of corrections,
2 regional jails, county jails and felon facilities shall insure
3 that the blood is drawn from all persons described in
4 section six of this article. When any person convicted of
5 an offense described in said section is not incarcerated,
6 the sheriff in such county where the person is convicted
7 shall insure that blood is drawn from such person at the
8 regional facility: *Provided*, That blood may be drawn at
9 a county jail or at a prison, regional facility or local
10 hospital unit when so ordered by the sentencing court.
11 The sheriff shall transport such persons who are not
12 incarcerated to the facility where the blood is drawn.

13 (b) The superintendent of the division shall promulgate
14 a legislative rule pursuant to chapter twenty-nine-a of
15 this code establishing which persons may withdraw
16 blood and further establishing procedures to withdraw
17 blood. At a minimum, these procedures shall require

18 that when blood is withdrawn for the purpose of DNA
19 identification testing, a previously unused and sterile
20 needle and sterile vessel shall be used, the withdrawal
21 shall otherwise be in strict accord with accepted medical
22 practices and in accordance with any recognized medical
23 procedures employing universal precautions as may be
24 outlined by the national centers for disease control and
25 prevention. No civil liability attaches to any person
26 when the blood was drawn according to recognized
27 medical procedures employing such universal precau-
28 tions. No person is relieved of liability for negligence in
29 the drawing of blood for purposes of DNA testing.

30 (c) The superintendent of the division shall promulgate
31 legislative rules pursuant to chapter twenty-nine-a of
32 this code governing the procedures to be used in the
33 withdrawal of blood samples, submission, identification,
34 analysis and storage of DNA samples and typing results
35 of DNA samples submitted under this article which shall
36 be compatible with recognized federal standards.

§15-2B-10. DNA database exchange.

1 (a) The division shall receive DNA samples, store,
2 analyze, classify and file the DNA records consisting of
3 all identification characteristics of DNA profiles from
4 blood samples submitted pursuant to the procedures for
5 conducting DNA analysis of blood samples.

6 (b) The division may furnish DNA records to autho-
7 rized law-enforcement and governmental agencies of the
8 United States and its territories, of foreign countries
9 duly authorized to receive the same, of other states
10 within the United States and of the state of West Vir-
11 ginia upon proper request stating that the DNA records
12 requested will be used solely:

13 (1) For law-enforcement identification purposes by
14 criminal justice agencies;

15 (2) In judicial proceedings, if otherwise expressly
16 permitted by state or federal laws; or

17 (3) If personal identifying information is removed, for
18 a population statistics database, for identification
19 research and protocol development purposes, or for
20 quality control purposes.

21 (c) The superintendent of the division shall promulgate
22 further legislative rules pursuant to chapter twenty-
23 nine-a of this code governing the methods by which any
24 law-enforcement agency or other authorized entity may
25 obtain information from the state DNA database consis-
26 tent with this section and federal law.

27 (d) The division may release DNA samples, without
28 personal identifying information, to any agency or entity
29 with which the division contracts pursuant to section
30 five of this article.

§15-2B-11. Expungement.

1 (a) Any person whose DNA record or profile has been
2 included in the state database and whose DNA sample is
3 stored in the state databank or the state's designated
4 DNA typing, testing and research laboratory may apply
5 for expungement on the grounds that the felony convic-
6 tion that resulted in the inclusion of the person's DNA
7 record or profile in the state database or the inclusion of
8 the person's DNA sample in the state databank has been
9 reversed and the case dismissed. The person requesting
10 expungement, either individually or through an attorney,
11 may apply to the court for expungement of the record.
12 A copy of the application for expungement shall be
13 served on the prosecuting attorney for the judicial
14 district in which the felony conviction was obtained not
15 less than twenty days prior to the date of the hearing on
16 the application. A certified copy of the order reversing
17 and dismissing the conviction shall be attached to an
18 order of expungement.

19 (b) Upon receipt of an order of expungement, the
20 division shall purge the DNA record and all other
21 identifiable information from the state database and the

22 DNA sample stored in the state databank covered by the
23 order. If the individual has more than one entry in the
24 state database and databank, then only the entry covered
25 by the expungement order shall be deleted from the state
26 database or databank.

**§15-2B-12. Confidentiality; unauthorized uses of DNA data-
bank; penalties.**

1 (a) All DNA profiles and samples submitted to the
2 division of public safety pursuant to this article shall be
3 treated as confidential except as provided in this article.

4 (b) Any person who, by virtue of employment, or
5 official position has possession of or access to individu-
6 ally identifiable DNA information contained in the state
7 DNA database or databank and who willfully discloses
8 it in any manner to any person or agency not entitled to
9 receive it is guilty of a misdemeanor, and, upon convic-
10 tion thereof, shall be fined not less than fifty dollars nor
11 more than five hundred dollars or be imprisoned in the
12 county or regional jails for a period not to exceed one
13 year, or both fined and imprisoned.

14 (c) Any person who, without authorization, willfully
15 obtains individually identifiable DNA information from
16 the state DNA database or databank is guilty of a
17 misdemeanor, and, upon conviction thereof, shall be
18 fined not less than fifty dollars nor more than five
19 hundred dollars or be imprisoned in the country or
20 regional jails for a period not to exceed one year, or both
21 fined and imprisoned.

**§15-2B-13. Neglect of duties; destruction of samples; penal-
ties.**

1 (a) Any person who neglects or refuses to do or perform
2 any act on his or her part to be done or performed in
3 connection with the operation of this article, is guilty of
4 a misdemeanor, and, upon conviction thereof, shall be
5 fined not less than fifty dollars nor more than two
6 hundred dollars or be imprisoned in the county or

7 regional jail for a period of not more than sixty days, or
8 both fined and imprisoned. Further, such neglect
9 constitutes misfeasance in office and may subject that
10 person to removal from office.

11 (b) Any person who willfully removes, destroys or
12 mutilates any of the DNA samples, records or other
13 information acquired or stored pursuant to this article,
14 is guilty of a misdemeanor, and, upon conviction thereof,
15 shall be fined not less than fifty dollars nor more than
16 five hundred dollars or imprisoned in the county or
17 regional jail not to exceed one year, or both fined and
18 imprisoned.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schooner
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Parrella Thomas
.....
Clerk of the Senate

Donald R. Kepp
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Paul Abner
.....
Speaker House of Delegates

The within *15* approved this the *23rd*

day of *March*, 1995.

Winston Copeland
.....
Governor

GOVERNOR

Date 3/16/95

Time 10:33am