WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED
Committee Substitute for
SENATE BILL NO. 252

(By Senator ROYAL ET AL.)

PASSED 9 1995
In Effect 4 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article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be amended by adding thereto a new article, designated article two-b, to read as follows: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.


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


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

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

11 That the comparison of DNA data recovered from a crime scene with existing DNA records maintained in a central DNA database further facilitates such identification, detection and exclusion; and

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

21 Therefore, the Legislature finds that assisting federal, state and local criminal justice and law-enforcement agencies through the use and development of DNA
analysis is of the utmost importance and urgency in this state and that a DNA identification system shall be established as described in this article.


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

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

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

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

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

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

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

28 (g) "Division" means the West Virginia division of public safety.
§15-2B-4. Division of public safety to establish and administer DNA identification system; inspection of laboratories.

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

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

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

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

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

§15-2B-5. Authority of division to enter into cooperative agreements.
The division may enter into cooperative agreements with public or private agencies or entities to provide any service or facility associated with the administration of the DNA database and databank: Provided, That the division is authorized only to contract services and/or facilities for DNA typing, testing and research with Marshall university.


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

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

(c) When a person who is required to submit to blood testing as required by this section refuses to comply with any blood testing, the state shall apply to a circuit court for an order requiring the prisoner to permit a blood sample to be withdrawn for the purpose of DNA typing and testing. The circuit court shall order the prisoner to submit to blood testing in conformity with the provisions
§15-2B-7. Tests to be performed on blood sample.

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


DNA records and samples shall be stored and maintained by the division in the state DNA database and databank respectively. DNA samples, without personal identifying information, may also be stored in any DNA typing, testing and research laboratory selected by the division pursuant to section five of this article.


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

(b) The superintendent of the division 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 may be outlined by the national centers for disease control and prevention. No civil liability attaches to any person when the blood was drawn according to recognized medical procedures employing such 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 division shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code governing the procedures to be used in the withdrawal of blood 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.

§15-2B-10. DNA database exchange.

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

(b) The division may furnish DNA records to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the state of West Virginia upon proper request stating that the DNA records requested will be used solely:

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

(2) In judicial proceedings, if otherwise expressly permitted by state or federal laws; or
(3) If personal identifying information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

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

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


(a) Any person whose DNA record or profile has been included in the state database and whose DNA sample is stored in the state databank or the state's designated DNA typing, testing and research laboratory may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the state database or the inclusion of the person's DNA sample in the state databank has been reversed and the case dismissed. The person requesting expungement, either individually or through an attorney, may apply to the court for expungement of the record. A copy of the application for expungement shall be served on the prosecuting attorney for the judicial district in which the felony conviction was obtained not less than twenty days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement.

(b) Upon receipt of an order of expungement, the division shall purge the DNA record and all other identifiable information from the state database and the
DNA sample stored in the state databank covered by the order. If the individual has more than one entry in the state database and databank, then only the entry covered by the expungement order shall be deleted from the state database or databank.

§15-2B-12. Confidentiality; unauthorized uses of DNA databank; penalties.

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

(b) Any person who, by virtue of employment, or official position has possession of or access to individually identifiable DNA information contained in the state DNA database or databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars or be imprisoned in the county or regional jails for a period not to exceed one year, or both fined and imprisoned.

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


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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 23 day of March 1995.

Governor