

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 2539**

5
6 (By Delegates Frazier, Miley, Brown, Caputo,
7 Ellem, Hamilton, Longstreth, Moore and Sobonya)

8 [Passed March 12, 2011; in effect ninety days from passage.]

9
10 AN ACT to amend and reenact §15-2B-3 and §15-2B-5 of the Code of
11 West Virginia, 1931, as amended, all relating to authorizing
12 the West Virginia State Police to enter into agreements with
13 the Marshall University Forensic Science Center; and adding
14 and amending definitions.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §15-2B-3 and §15-2B-5 of the Code of West Virginia, 1931,
17 as amended, be amended and reenacted, all to read as follows:

18 **ARTICLE 2B. DNA DATA.**

19 **§15-2B-3. Definitions.**

20 As used in this article:

21 (1) "CODIS" means the Federal Bureau of Investigation's
22 Combined DNA Index System that allows the storage and exchange of
23 DNA records submitted by federal, state and local forensic DNA
24 laboratories. The term "CODIS" includes the National DNA Index
25 System administered and operated by the Federal Bureau of
26 Investigation.

1 (2) "Conviction" includes convictions by a jury or court,
2 guilty plea, or plea of nolo contendere.

3 (3) "Criminal justice agency" means an agency or institution
4 of a federal, state or local government, other than the office of
5 public defender, which performs as part of its principal function,
6 relating to the apprehension, investigation, prosecution,
7 adjudication, incarceration, supervision or rehabilitation of
8 criminal offenders.

9 (4) "Division" means the West Virginia State Police."

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

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

21 (7) "DNA sample" means a tissue, fluid or other bodily sample,
22 suitable for testing, provided pursuant to this article or
23 submitted to the division laboratory for analysis pursuant to a
24 criminal investigation.

25 (8) "FBI" means the Federal Bureau of Investigation.

26 (9) "Interim plan" means the plan used currently by the

1 Federal Bureau of Investigation for Partial Match Protocol and to
2 be adopted under the management rules of this article.

3 (10) "Management rules" means the rules promulgated by the
4 West Virginia State Police that define all policy and procedures in
5 the administration of this article.

6 (11) "Partial match" means that two DNA profiles, while not an
7 exact match, share a sufficient number of characteristics to
8 indicate the possibility of a biological relationship.

9 (12) "Qualifying offense" means any felony offense as
10 described in section six of this article or any offense requiring
11 a person to register as a sex offender under this code or the
12 federal law. For the purpose of this article, a person found not
13 guilty of a qualifying offense by reason of insanity or mental
14 disease or defect shall be required to provide a DNA sample in
15 accordance with this article.

16 (13) "Registering Agency" means the West Virginia State
17 Police.

18 (14) "State DNA database" means all DNA identification records
19 included in the system administered by the West Virginia State
20 Police.

21 (15) "State DNA databank" means the repository of DNA samples
22 collected under the provisions of this article.

23 **§15-2B-5. Authority of division to enter into cooperative**
24 **agreements.**

25 The division may enter into cooperative agreements with public
26 or private agencies or entities to provide a service or facility

1 associated with the administration of the DNA database and
2 databank. In the event the division enters into any agreements for
3 the purposes of (1) testing of offender samples for CODIS; (2)
4 criminal paternity cases; or (3) identification of human remains
5 for the Office of Chief Medical Examiner using nuclear DNA
6 technology, the division is authorized to only enter into such
7 agreements with the Marshall University Forensic Science Center.