

H. B. 2858

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(By Delegates Frazier, Ellem, Ellington,
Lane, Ferro, Sumner, Manypenny, Longstreth,
Skaff, Pino and Hunt)

[Introduced January 26, 2011; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §15-2B-6a; and to
12 amend and reenact §15-2B-11 of said code, all relating to
13 requiring persons arrested for a felony to submit to a DNA
14 sample; and providing a procedure for expungement if the
15 felony charge has been dismissed.

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

17 That the Code of West Virginia, 1931, as amended, be amended
18 by adding thereto a new section, designated §15-2B-6a; and to amend
19 and reenact §15-2B-11 of said code, all to read as follows:

20 **ARTICLE 2B. DNA DATA.**

21 **§15-2B-6a. Collection of DNA from arrested persons.**

22 (a) A person eighteen years of age or over who is arrested for
23 the commission of a felony under the laws of this state or any other
24 jurisdiction shall provide a DNA sample to be used for DNA analysis
25 as described in this article. A sample is not required if it is
26 determined that a sample has previously been taken, is in the

1 possession of the administrative center, has not been expunged
2 pursuant to section eleven of this article and is sufficient for DNA
3 identification testing.

4 (b) Any person acquitted of the felony or has the felony
5 dismissed, whose DNA sample has been taken pursuant to subsection
6 (a) of this section, may apply for expungement pursuant to section
7 eleven of this article.

8 **§15-2B-11. Expungement.**

9 (a) Any person whose DNA record or profile has been included
10 in the state database and whose DNA sample is stored in the state
11 databank or the state's designated DNA typing, testing and research
12 laboratory may apply for expungement on the grounds that: ~~the~~ (1)
13 The felony conviction that resulted in the inclusion of the person's
14 DNA record or profile in the state database or the inclusion of the
15 person's DNA sample in the state databank has been reversed and the
16 case dismissed; or (2) the felony arrest that resulted in the
17 inclusion of the person's DNA record or profile in the state
18 database or the inclusion of the person's DNA sample in the state
19 databank has been dismissed, withdrawn or resulted in a not guilty
20 verdict. The person requesting expungement, either individually or
21 through an attorney, may apply to the court for expungement of the
22 record. A copy of the application for expungement shall be served
23 on the prosecuting attorney for the judicial district in which the
24 felony conviction, dismissal, withdrawal or not guilty verdict was
25 obtained not less than twenty days prior to the date of the hearing

1 on the application. A certified copy of the order reversing and
2 dismissing the conviction shall be attached to an order of
3 expungement.

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

NOTE: The purpose of this bill is to require persons arrested
for a felony to submit to a DNA sample; and providing procedures for
expungement if the felony has been dismissed.

§15-2B-6a is new; therefore, it has been completely
underscored.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.