

# **WEST VIRGINIA LEGISLATURE**

**FIRST REGULAR SESSION, 2011**



# **ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**House Bill No. 3054**

(By Delegates Miley, Longstreth, Fleischauer,  
Skaff, Hamilton, Sobonya and C. Miller)



Passed March 12, 2011

In Effect Ninety Days From Passage

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

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## **H. B. 3054**

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(BY DELEGATES MILEY, LONGSTRETH, FLEISCHAUER,  
SKAFF, HAMILTON, SOBONYA AND C. MILLER)

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AN ACT to amend and reenact §15-2B-3, §15-2B-6, §15-2B-7, §15-2B-9, §15-2B-10 and §15-2B-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §15-2B-15 and §15-2B-16, all relating to the collection and use of DNA data generally; providing for the collection of DNA samples from certain persons; providing for a penalty of contempt for a person refusing to furnish a DNA sample pursuant to a court order; and authorizing the West Virginia State Police to collect certain fees for DNA testing.

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

That §15-2B-3, §15-2B-6, §15-2B-7, §15-2B-9, §15-2B-10 and §15-2B-12 of the Code of West Virginia, 1931, as amended, be

amended and reenacted; and that said code be amended by adding thereto two new sections, designated §15-2B-15 and §15-2B-16, all to read as follows:

**ARTICLE 2B. DNA DATA.**

**§15-2B-3. Definitions.**

1 As used in this article:

2 (1) “CODIS” means the Federal Bureau of  
3 Investigation’s Combined DNA Index System that allows the  
4 storage and exchange of DNA records submitted by federal,  
5 state and local forensic DNA laboratories. The term  
6 “CODIS” includes the National DNA Index System  
7 administered and operated by the Federal Bureau of  
8 Investigation.

9 (2) “Conviction” includes convictions by a jury or court,  
10 guilty plea, or plea of nolo contendere.

11 (3) “Criminal justice agency” means an agency or  
12 institution of a federal, state or local government, other than  
13 the office of public defender, which performs as part of its  
14 principal function, relating to the apprehension, investigation,  
15 prosecution, adjudication, incarceration, supervision or  
16 rehabilitation of criminal offenders.

17 (4) “Division” means the West Virginia State Police.

18 (5) “DNA” means deoxyribonucleic acid. DNA is  
19 located in the nucleus of cells and provides an individual’s  
20 personal genetic blueprint. DNA encodes genetic  
21 information that is the basis of human heredity and forensic  
22 identification.

23 (6) “DNA record” means DNA identification information  
24 stored in any state DNA database pursuant to this article.  
25 The DNA record is the result obtained from DNA typing  
26 tests. The DNA record is comprised of the characteristics of  
27 a DNA sample which are of value in establishing the identity  
28 of individuals. The results of all DNA identification tests on  
29 an individual’s DNA sample are also included as a “DNA  
30 record”.

31 (7) “DNA sample” means a tissue, fluid or other bodily  
32 sample, suitable for testing, provided pursuant to this article  
33 or submitted to the division laboratory for analysis pursuant  
34 to a criminal investigation.

35 (8) “FBI” means the Federal Bureau of Investigation.

36 (9) “Interim plan” means the plan used currently by the  
37 Federal Bureau of Investigation for Partial Match Protocol  
38 and to be adopted under the management rules of this article.

39 (10) “Management rules” means the rules promulgated  
40 by the West Virginia State Police that define all policy and  
41 procedures in the administration of this article.

42 (11) “Partial match” means that two DNA profiles, while  
43 not an exact match, share a sufficient number of  
44 characteristics to indicate the possibility of a biological  
45 relationship.

46 (12) “Qualifying offense” means any felony offense as  
47 described in section six of this article or any offense requiring  
48 a person to register as a sex offender under this code or the  
49 federal law. For the purpose of this article, a person found  
50 not guilty of a qualifying offense by reason of insanity or  
51 mental disease or defect shall be required to provide a DNA  
52 sample in accordance with this article.

53 (13) “Registering Agency” means the West Virginia State  
54 Police.

55 (14) “State DNA database” means all DNA identification  
56 records included in the system administered by the West  
57 Virginia State Police.

58 (15) “State DNA databank” means the repository of DNA  
59 samples collected under the provisions of this article.

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

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

12 (b) Any person presently incarcerated in a state  
13 correctional facility or in jail in this state after conviction of  
14 any offense listed in subsection (a) of this section shall  
15 provide a DNA sample to be used for purposes of DNA  
16 analysis as described in this article.

17 (c) Any person convicted of a violation of section five or  
18 thirteen, article two, chapter sixty-one of this code, section  
19 one, two, three, four, five, seven, eleven, twelve (when that  
20 offense constitutes a felony) or subsection (a), section  
21 thirteen, article three of said chapter, section three, four, five

22 or ten, article three-e of said chapter or section three, article  
23 four of said chapter, shall provide a DNA sample to be used  
24 for DNA analysis as described in this article.

25 (d) Any person convicted of an offense which constitutes  
26 a felony violation of the provisions of article four, chapter  
27 sixty-a of this code; or of an attempt to commit a violation of  
28 section one or section fourteen-a, article two, chapter  
29 sixty-one of this code; or an attempt to commit a violation of  
30 article eight-b of said chapter shall provide a DNA sample to  
31 be used for DNA analysis as described in this article.

32 (e) The method of taking the DNA sample is subject to  
33 the testing methods used by the West Virginia State Police  
34 Crime Lab. The DNA sample will be collected using a  
35 postage paid DNA collection kit provided by the West  
36 Virginia State Police.

37 (f) When a person required to provide a DNA sample  
38 pursuant to this section refuses to comply, the state shall  
39 apply to a circuit court for an order requiring the person to  
40 provide a DNA sample. Upon a finding of failure to comply,  
41 the circuit court shall order the person to submit to DNA  
42 testing in conformity with the provisions of this article.

43 (g) The West Virginia State Police may, where not  
44 otherwise mandated, require any person convicted of a felony  
45 offense under the provisions of this code, to provide a DNA  
46 sample to be used for the sole purpose of criminal  
47 identification of the convicted person who provided the  
48 sample: *Provided*, That the person is under the supervision of  
49 the criminal justice system at the time the request for the  
50 sample is made. Supervision includes prison, the regional  
51 jail system, parole, probation, home confinement, community  
52 corrections program, and work release.

53 (h) On the effective date of the amendments to this  
54 section enacted during the regular session of the Legislature

55 in 2011, any person required to register as a sex offender in  
56 this state and who has not already provided a DNA sample in  
57 accordance with this article, shall provide a DNA sample as  
58 determined by the registration agency in consultation with the  
59 West Virginia State Police Laboratory. The registering  
60 agency is responsible for the collection and submission of the  
61 sample under this article.

62 (i) When this state accepts a person from another state  
63 under any interstate compact, or under any other reciprocal  
64 agreement with any county, state or federal agency or any  
65 other provision of law whether or not the person is confined  
66 or released, the transferred person must submit a DNA  
67 sample, if the person was convicted of an offense in any other  
68 jurisdiction which would be considered a qualifying offense  
69 as defined in section six if committed in this state, or if the  
70 person was convicted of an equivalent offense in any other  
71 jurisdiction. The person shall provide the DNA sample in  
72 accordance with the rules of the custodial institution or  
73 supervising agency. If the transferred person has already  
74 submitted a DNA sample that can be found in the national  
75 database, the accepting agency is not required to draw a  
76 second DNA sample.

77 (j) If a person convicted of a qualifying offense is  
78 released without giving a DNA sample due to an oversight or  
79 error or because of the person's transfer from another  
80 jurisdiction, the person shall give a DNA sample for  
81 inclusion in the state DNA database after being notified of  
82 this obligation. Any such person may request a copy of the  
83 court order requiring the sample prior to the collection of the  
84 DNA sample.

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

1 The tests to be performed on each DNA sample shall  
2 analyze and type the genetic markers contained in or derived

3 from the DNA sample in accordance with rules promulgated  
4 under this article. Any rule regarding the typing and analysis  
5 of the DNA sample shall be consistent with any  
6 specifications required by federal law.

**§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 and felon facilities shall ensure that the DNA  
3 sample is collected from all persons described in section six  
4 of this article. When any person convicted of an offense  
5 described in section six is not incarcerated, the sheriff in the  
6 county where the person is convicted shall ensure that the  
7 DNA sample is collected from the person: *Provided*, That a  
8 DNA sample may be collected at a prison, regional facility or  
9 local hospital unit when so ordered by the sentencing court or  
10 other location determined by the sheriff.

11 (b) The Superintendent of the West Virginia State Police  
12 shall promulgate a legislative rule pursuant to chapter  
13 twenty-nine-a of this code establishing which persons may  
14 withdraw blood and further establishing procedures to  
15 withdraw blood. At a minimum, these procedures shall  
16 require that when blood is withdrawn for the purpose of DNA  
17 identification testing, a previously unused and sterile needle  
18 and sterile vessel shall be used, the withdrawal shall  
19 otherwise be in strict accord with accepted medical practices  
20 and in accordance with any recognized medical procedures  
21 employing universal precautions as outlined by the Centers  
22 for Disease Control and Prevention. No civil liability  
23 attaches to any person when the blood was drawn according  
24 to recognized medical procedures employing the universal  
25 precautions. No person is relieved of liability for negligence  
26 in the drawing of blood for purposes of DNA testing.

27 (c) The Superintendent of the West Virginia State Police  
28 shall promulgate legislative rules pursuant to chapter

29 twenty-nine-a of this code governing the procedures to be  
30 used in the collection of DNA samples, submission,  
31 identification, analysis and storage of DNA samples and  
32 typing results of DNA samples submitted under this article  
33 which shall be compatible with recognized federal standards.

34 (d) The agency having control, custody or supervision of  
35 persons convicted for qualifying offenses may, in  
36 consultation with and approval of the West Virginia State  
37 Police Laboratory, promulgate rules or policies specifying the  
38 time and manner of collection of the DNA samples as well as  
39 any other matter necessary to carry out its responsibilities  
40 under this article.

41 (e) The agency or institution having custody, control or  
42 providing supervision of persons convicted for qualifying  
43 offenses, as appropriate, is authorized to contract with third  
44 parties to provide for the collection of the DNA samples  
45 described in section six of this article.

46 (f) A person, convicted of a qualifying offense and not  
47 incarcerated in a facility described in subsection (a) of this  
48 section, who has been put on notice of his or her obligation  
49 to provide a DNA sample and has not submitted a court  
50 ordered DNA sample at the request of a law-enforcement  
51 agency, shall be responsible for notifying the agency  
52 designated in the court order and complying with that  
53 agency's directives for submitting a DNA sample. The  
54 person shall have thirty days from the receipt of the court  
55 order to comply unless there is a documented exception from  
56 the agency responsible for the DNA sample collection. A  
57 person refusing to comply with a court order directing that  
58 person submit a DNA sample may be considered in  
59 contempt.

60 (g) Any court sentencing a person convicted of a  
61 qualifying offense to probation, on or after the effective date

62 of the amendments to this section enacted during the regular  
63 session of the Legislature in 2011, shall order, as a condition  
64 of such probation, that the convicted person report to the  
65 local sheriff's department to provide a DNA sample within  
66 thirty days.

**§15-2B-10. DNA database exchange.**

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

6 (b) The West Virginia State Police may furnish DNA  
7 records to authorized law-enforcement and governmental  
8 agencies of the United States and its territories, of foreign  
9 countries duly authorized to receive them, of other states  
10 within the United States and of the State of West Virginia  
11 upon proper request stating that the DNA records requested  
12 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;

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

21 (4) For the identification of unidentified human remains,  
22 missing persons and relatives of missing persons.

23 (c) The Superintendent of the West Virginia State Police  
24 shall promulgate legislative rules pursuant to chapter  
25 twenty-nine-a of this code governing the methods by which  
26 any law-enforcement agency or other authorized entity may  
27 obtain information from the state DNA database consistent  
28 with this section and federal law.

29 (d) The West Virginia State Police may release DNA  
30 samples, without personal identifying information, to any  
31 agency or entity with which the West Virginia State Police  
32 contracts pursuant to section five of this article.

33 (e) The West Virginia State Police may release DNA  
34 samples for criminal defense and appeal purposes, to a  
35 defendant who is entitled to access to samples and analysis  
36 performed in connection with the case in which the defendant  
37 is charged or was convicted.

38 (f) Searches of the state DNA database shall be  
39 performed in accordance with state and federal law and  
40 procedures.

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

1 (a) All DNA profiles and samples submitted to the West  
2 Virginia State Police pursuant to this article shall be treated  
3 as confidential except as provided in this article.

4 (b) Any person who, by virtue of employment or official  
5 position has possession of or access to individually identifiable  
6 DNA information contained in the state DNA database or  
7 databank and who willfully discloses it in any manner to any  
8 person or agency not entitled to receive it is guilty of a  
9 misdemeanor and, upon conviction thereof, shall be fined not  
10 less than \$50 nor more than \$500 or confined in jail for a  
11 period not to exceed one year, or both fined and confined.

12 (c) Any person who, without authorization, willfully  
13 obtains individually identifiable DNA information from the  
14 state DNA database or databank is guilty of a misdemeanor  
15 and, upon conviction thereof, shall be fined not less than \$50  
16 nor more than \$500 or confined in jail for a period not to  
17 exceed one year, or both fined and confined.

18 (d) DNA records and DNA samples submitted to the  
19 West Virginia State Police Laboratory pursuant to this article  
20 are exempt from disclosure under the provisions of article  
21 one, chapter twenty-nine-b of this code, or any other statutory  
22 provision or court opinion requiring the disclosure of public  
23 records.

24 (e) In case of a criminal proceeding, a request to access  
25 a person's DNA record must be made in accordance with  
26 rules for criminal discovery as provided in the West Virginia  
27 Code and the Rules of Criminal Procedure. The West  
28 Virginia State Police Laboratory is not required to provide,  
29 for criminal discovery purposes, more than the DNA  
30 profile(s) and identifying information generated as a result of  
31 the search that led to the match between the case evidence  
32 and the defendant.

**§15-2B-15. Collection of fees to cover the cost of DNA profile  
entry into the DNA database and DNA databank;  
cost of collecting and analyzing DNA sample.**

1 For persons convicted after July 1, 2011, a mandatory fee  
2 of \$150, which is in addition to any other costs imposed  
3 pursuant to statutory authority, shall automatically be  
4 assessed on any person convicted of, or adjudicated  
5 delinquent for, a qualifying offense, unless the court finds  
6 that undue hardship would result. This fee shall be collected  
7 by the sentencing court or the agency responsible for the  
8 collection of the DNA sample and remitted to the State  
9 Treasury on or before the tenth of every month.

10 Notwithstanding any other provision of this code to the  
11 contrary, all moneys collected as a result of this fee shall be  
12 deposited in a special account within the State Treasury to be  
13 known as the “West Virginia State Police DNA Database  
14 Account” to be administered by the Superintendent of the  
15 West Virginia State Police. Expenditures from the fund are  
16 authorized from collections for purposes associated with the  
17 processing of DNA samples for the DNA database.

**§15-2B-16. Partial matches and the DNA database.**

1 The Division may use the data in the DNA database for  
2 partial match analysis for criminal investigations of murder,  
3 kidnapping and first and second degree sexual assault, as  
4 defined in this code, where all investigated leads have been  
5 exhausted. The Division shall follow the standards and  
6 procedures defined in the Interim Plan when replying to  
7 requests for partial match information from criminal justice  
8 agencies from within or outside the state until such time as  
9 the Division promulgates management rules.

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2011.

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*Governor*