

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### Senate Bill 600

FISCAL  
NOTE

BY SENATORS TRUMP AND BOSO

[Introduced February 13, 2019; Referred  
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §57-5-11a, relating to the preservation and disposal of biological evidence;  
 3 procedures; and defining terms.

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

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§57-5-11A. Preservation and disposal of biological evidence in a criminal case.**

1 (a) Definition. As used in this section:

2 (1) "Biological evidence" means:

3 (A) A sexual assault forensic examination kit; or

4 (B) Semen, blood, saliva, hair, skin tissue, or other identified biological material;

5 (2) "DNA" means deoxyribonucleic acid;

6 (b) Notwithstanding the provisions of §57-5-11 of this code, and subject to the provisions  
 7 of subsection (d) of this section, the courts shall order the preservation of all biological evidence  
 8 that was introduced into evidence in the prosecution of a criminal offense, if a defendant is  
 9 sentenced to imprisonment for such offense.

10 (c) Notwithstanding the provisions of §57-5-11 of this code, and subject to the provisions  
 11 of subsection (d) herein, all law-enforcement agencies shall preserve all biological evidence that  
 12 was secured by such agencies in the investigation or prosecution of an offense but not introduced  
 13 into evidence at trial, if a defendant is sentenced to imprisonment for such offense.

14 (d) Subsections (b) and (c) shall not apply and any exhibit or article may be disposed of,  
 15 returned to its lawful owner, or destroyed, if:

16 (1) The exhibit or article is of such size, bulk, or physical character as to render its retention  
 17 impractical;

18 (2) The defendant, the prosecuting attorney and the last counsel of record for the  
 19 defendant is notified, in writing, 60 days in advance of the disposal or destruction of the article or  
 20 exhibit and does not file with the court in which the conviction was obtained an objection to the

21 disposal or destruction, and

22 (3) The agency intending to dispose or destroy the article or exhibit, prior to disposal or  
23 destruction, takes reasonable measures to remove and preserve portions of the exhibit or article  
24 sufficient to permit future DNA testing of any biological evidence that may be present on the article  
25 or exhibit.

26 (e) In the event that the prosecution or defense files an objection to the disposal or  
27 destruction of biological evidence, the court in which the conviction was obtained shall hold a  
28 hearing, with notice to all parties, to determine whether the evidence shall be preserved, disposed  
29 of, or destroyed.

30 (f) Any order of the court directing or authorizing destruction of biological evidence shall  
31 be stayed pending the right to appeal, pursuant to the Rules of Appellate Procedure.

NOTE: The purpose of this bill is to establish procedures for the preservation and disposal of biological evidence.

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