

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 765

By Senators Takubo, Deeds, Plymale, Woelfel,

Maroney, and Woodrum

[Introduced February 13, 2024; referred
to the Committee on the Judiciary]

15 (e) The superintendent of the division of public safety shall promulgate additional
 16 legislative rules pursuant to chapter 29A of this code necessary to establish and administer the
 17 DNA database and databank consistent with the requirements of state and federal law and
 18 consistent with the systems employed by the FBI.

19 (f) The Forensic Analysis Laboratory of the Marshall University Forensic Science Center is
 20 hereby designated as a backup site for the division's DNA databank and database to function in
 21 the event of a natural disaster or statewide declared emergency which renders the division unable
 22 to function. In the event that the Forensic Analysis Laboratory of the Marshall University Forensic
 23 Science Center is required to operate under this article it shall have all the same powers to
 24 administer the State DNA Databank and the State DNA database as the division while the natural
 25 disaster or statewide declared public emergency is in effect, or until the division regains
 26 operational status, with the exclusion of promulgating legislative rules.

27 (g) The Forensic Analysis Laboratory of the Marshall University Forensic Science Center
 28 shall be designated as an additional site for analyzing DNA samples taken from unidentified
 29 human remains that have been submitted by the Chief Medical Examiner or the division to the
 30 State DNA Databank for the purpose of identification. The Forensic Analysis Laboratory of the
 31 Marshall University Forensic Science Center shall have access to the missing persons, relatives
 32 of missing persons, and unidentified human remains databases as part of work to be performed for
 33 the National Missing and Unidentified Persons System.

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

1 (a) Any person convicted of an offense described in §61-2-1, §61-2-4, §61-2-7, §61-2-9,
 2 §61-2-9a (when that offense constitutes a felony), §61-2-10, §61-2-10a, §61-2-10b, §61-2-12,
 3 §61-2-14, or §61-2-14a of this code, or §61-8-12 of this code (when that offense constitutes a
 4 felony), shall provide a DNA sample to be used for DNA analysis as described in this article.
 5 Further, any person convicted of any offense described in §61-8B-1 *et seq.* of this code or §61-8D-

6 1 *et seq.* of this code shall provide a DNA sample to be used for DNA analysis as described in this
7 article.

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

11 (c) Any person convicted of a violation of §61-2-5 or §61-2-13 of this code, §61-3-1, §61-3-
12 2, §61-3-3, §61-3-4, §61-3-5, §61-3-7, §61-3-11, §61-3-12 (when that offense constitutes a
13 felony), or §61-3-13(a) of this code, §61-3E-3, §61-3E-4, §61-3E-5, or §61-3E-10 of this code, or
14 §61-4-3 of this code shall provide a DNA sample to be used for DNA analysis as described in this
15 article.

16 (d) Any person convicted of an offense which constitutes a felony violation of the provisions
17 of §60A-4-401 *et seq.* of this code; or of an attempt to commit a violation of §61-2-1 or §61-2-14a of
18 this code; or an attempt to commit a violation of §61-8B-1 *et seq.* of this code shall provide a DNA
19 sample to be used for DNA analysis as described in this article.

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

23 (f) When a person required to provide a DNA sample pursuant to this section refuses to
24 comply, the state shall apply to a circuit court for an order requiring the person to provide a DNA
25 sample. Upon a finding of failure to comply, the circuit court shall order the person to submit to
26 DNA testing in conformity with the provisions of this article.

27 (g) The West Virginia State Police may, where not otherwise mandated, require any person
28 convicted of a felony offense under the provisions of this code to provide a DNA sample to be used
29 for the sole purpose of criminal identification of the convicted person who provided the sample:
30 *Provided*, That the person is under the supervision of the criminal justice system at the time the
31 request for the sample is made. Supervision includes prison, the regional jail system, parole,

32 probation, home confinement, community corrections program, and work release.

33 (h) On the effective date of the amendments to this section enacted during the regular
34 session of the Legislature in 2011, any person required to register as a sex offender in this state
35 and who has not already provided a DNA sample in accordance with this article shall provide a
36 DNA sample as determined by the registration agency in consultation with the West Virginia State
37 Police Laboratory. The registering agency is responsible for the collection and submission of the
38 sample under this article.

39 (i) When this state accepts a person from another state under any interstate compact, or
40 under any other reciprocal agreement with any county, state, or federal agency or any other
41 provision of law whether or not the person is confined or released, the transferred person must
42 submit a DNA sample, if the person was convicted of an offense in any other jurisdiction which
43 would be considered a qualifying offense as defined in this section if committed in this state, or if
44 the person was convicted of an equivalent offense in any other jurisdiction. The person shall
45 provide the DNA sample in accordance with the rules of the custodial institution or supervising
46 agency. If the transferred person has already submitted a DNA sample that can be found in the
47 national database, the accepting agency is not required to draw a second DNA sample.

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

53 (k) Duly authorized law-enforcement employees, Regional Jail Authority employees, and
54 Division of Corrections employees may use reasonable force in cases where an individual refuses
55 to provide a DNA sample required under this article, and the employees are not civilly or criminally
56 liable for the use of reasonable force in the collection of the required DNA sample.

57 (l) A DNA sample obtained in accordance with the requirements of this article and its use in

58 accordance with this chapter shall be considered to have been obtained in good faith. Should an
59 error be determined to have occurred which caused a person's DNA to be obtained or submitted
60 improperly, the DNA record shall be removed from CODIS and the DNA sample destroyed unless
61 the individual has another qualifying offense or offenses.

62 (m) Persons authorized to collect DNA samples shall not be civilly or criminally liable for
63 the collection of a DNA sample pursuant to this article if they perform these duties in good faith and
64 in a reasonable manner according to generally accepted medical or other professional practices.

65 (n) The Chief Medical Examiner, or his or her designee, shall collect for inclusion into the
66 State DNA Databank a blood sample, bone sample, oral sample, or tissue sample from crime
67 scene evidence or from unidentified human remains which information shall also reside in the DNA
68 database. The DNA samples collected from unidentified human remains shall be fully accessible
69 by the division and the Forensic Analysis Laboratory of the Marshall University Forensic Science
70 Center.

NOTE: The purpose of this bill is to designate the Forensic Analysis Laboratory of the Marshall University Forensic Science Center as a backup site for the division's DNA databank and database to function in the event of a natural disaster or statewide declared emergency which renders the division unable to function. The bill also requires the Chief Medical Examiner to collect samples for inclusion into the DNA Databank from crimes scene or from unidentified human remains which shall reside in the DNA databank.

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