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SECOND SUBSTITUTE HOUSE BILL 2713

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State of Washington

60th Legislature

2008 Regular Session

**By** House Appropriations (originally sponsored by Representatives Seaquist, Hurst, Lantz, Pearson, Conway, Morrell, Miloscia, Priest, Kenney, Schual-Berke, Haler, McDonald, Loomis, Smith, Bailey, Kristiansen, Hudgins, McCune, Simpson, VanDeWege, Ericks, Kelley, Ormsby, and Rolfes; by request of Governor Gregoire)

READ FIRST TIME 02/06/08.

1 AN ACT Relating to DNA identification of convicted sex offenders  
2 and other persons; amending RCW 43.43.753, 43.43.754, 43.43.7541, and  
3 43.43.756; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 43.43.753 and 2002 c 289 s 1 are each amended to read  
6 as follows:

7 The legislature finds that recent developments in molecular biology  
8 and genetics have important applications for forensic science. It has  
9 been scientifically established that there is a unique pattern to the  
10 chemical structure of the deoxyribonucleic acid (DNA) contained in each  
11 cell of the human body. The process for identifying this pattern is  
12 called "DNA identification."

13 The legislature further finds that DNA databases are important  
14 tools in criminal investigations, in the exclusion of individuals who  
15 are the subject of investigations or prosecutions, and in detecting  
16 recidivist acts. It is the policy of this state to assist federal,  
17 state, and local criminal justice and law enforcement agencies in both  
18 the identification and detection of individuals in criminal  
19 investigations and the identification and location of missing and

1 unidentified persons. Therefore, it is in the best interest of the  
2 state to establish a DNA database and DNA data bank containing DNA  
3 samples submitted by persons convicted of felony offenses and other  
4 crimes as specified in RCW 43.43.754. DNA samples necessary for the  
5 identification of missing persons and unidentified human remains shall  
6 also be included in the DNA database.

7 The legislature further finds that the DNA identification system  
8 used by the federal bureau of investigation and the Washington state  
9 patrol has no ability to predict genetic disease or predisposal to  
10 illness. Nonetheless, the legislature intends that biological samples  
11 collected under RCW 43.43.754, and DNA identification data obtained  
12 from the samples, be used only for purposes related to criminal  
13 investigation, identification of human remains or missing persons, or  
14 improving the operation of the system authorized under RCW 43.43.752  
15 through 43.43.758.

16 **Sec. 2.** RCW 43.43.754 and 2002 c 289 s 2 are each amended to read  
17 as follows:

18 (1)(a) Every adult or juvenile individual convicted of a felony(~~(~~  
19 ~~stalking under RCW 9A.46.110, harassment under RCW 9A.46.020,~~  
20 ~~communicating with a minor for immoral purposes under RCW 9.68A.090,~~)  
21 (or adjudicated guilty of an equivalent juvenile offense), or any of  
22 the following crimes (or equivalent juvenile offenses):

- 23 Animal cruelty in the second degree (RCW 16.52.207)
- 24 Assault in the fourth degree (RCW 9A.36.041)
- 25 Communication with a minor for immoral purposes (RCW 9.68A.090)
- 26 Custodial sexual misconduct in the second degree (RCW 9A.44.170)
- 27 Failure to register (RCW 9A.44.130)
- 28 Harassment (RCW 9A.46.020)
- 29 Indecent exposure (RCW 9A.88.010)
- 30 Patronizing a prostitute (RCW 9A.88.110)
- 31 Permitting commercial sexual abuse of a minor (RCW 9.68A.103)
- 32 Permitting prostitution (RCW 9A.88.090)
- 33 Prostitution (RCW 9A.88.030)
- 34 Sexual misconduct with a minor in the second degree (RCW 9A.44.096)
- 35 Stalking (RCW 9A.46.110)
- 36 Unlawful harboring of a minor (RCW 13.32A.080)

1 Violation of court orders issued under chapter 7.90, 26.50, 10.99,  
2 26.09, 26.26, or 74.34 RCW, and foreign protection orders as defined in  
3 RCW 26.52.020 (RCW 26.50.110)  
4 must have a biological sample collected for purposes of DNA  
5 identification analysis; and

6 (b) Every adult or juvenile individual who is required to register  
7 under RCW 9A.44.130 before, on, or after the effective date of this  
8 section

9 must have a biological sample collected for purposes of DNA  
10 identification analysis ~~((in the following manner))~~. If the Washington  
11 state patrol crime laboratory already has a DNA sample from an  
12 individual for a qualifying offense, a subsequent submission is not  
13 required to be submitted. The following applies to the collection and  
14 analysis processes:

15 ~~((a))~~ (i) For persons convicted of such offenses or adjudicated  
16 guilty of an equivalent juvenile offense who do not serve a term of  
17 confinement in a department of corrections facility, and do serve a  
18 term of confinement in a city or county jail facility, the city or  
19 county shall be responsible for obtaining the biological samples either  
20 as part of the intake process into the city or county jail or detention  
21 facility for those persons convicted on or after July 1, 2002, or  
22 within a reasonable time after July 1, 2002, for those persons  
23 incarcerated before July 1, 2002, who have not yet had a biological  
24 sample collected, beginning with those persons who will be released the  
25 soonest.

26 ~~((b))~~ (ii) For persons convicted of such offenses or adjudicated  
27 guilty of an equivalent juvenile offense who do not serve a term of  
28 confinement in a department of corrections facility, and do not serve  
29 a term of confinement in a city or county jail facility, the local  
30 police department or sheriff's office is responsible for obtaining the  
31 biological samples after sentencing on or after July 1, 2002.

32 ~~((c))~~ (iii) For persons convicted of such offenses or adjudicated  
33 guilty of an equivalent juvenile offense, who are serving or who are to  
34 serve a term of confinement in a department of corrections facility or  
35 a department of social and health services facility, the facility  
36 holding the person shall be responsible for obtaining the biological  
37 samples either as part of the intake process into such facility for  
38 those persons convicted on or after July 1, 2002, or within a

1 reasonable time after July 1, 2002, for those persons incarcerated  
2 before July 1, 2002, who have not yet had a biological sample  
3 collected, beginning with those persons who will be released the  
4 soonest.

5 (2) Any biological sample taken pursuant to RCW 43.43.752 through  
6 43.43.758 may be retained by the forensic laboratory services bureau,  
7 and shall be used solely for the purpose of providing DNA or other  
8 tests for identification analysis and prosecution of a criminal offense  
9 or for the identification of human remains or missing persons. Nothing  
10 in this section prohibits the submission of results derived from the  
11 biological samples to the federal bureau of investigation combined DNA  
12 index system.

13 (3) The (~~director of the~~) forensic laboratory services bureau of  
14 the Washington state patrol (~~shall perform~~) is responsible for  
15 testing performed on all biological samples that are collected under  
16 subsection (1) of this section, to the extent allowed by funding  
17 available for this purpose. The director shall give priority to  
18 testing on samples collected from those adults or juveniles convicted  
19 of a felony or adjudicated guilty of an equivalent juvenile offense  
20 that is defined as a sex offense or a violent offense in RCW 9.94A.030.  
21 Known duplicate samples may be excluded from testing unless testing is  
22 deemed necessary or advisable by the director.

23 (4) This section applies to all adults who are convicted of a sex  
24 or violent offense after July 1, 1990; and to all adults who were  
25 convicted of a sex or violent offense on or prior to July 1, 1990, and  
26 who are still incarcerated on or after July 25, 1999. This section  
27 applies to all juveniles who are adjudicated guilty of a sex or violent  
28 offense after July 1, 1994; and to all juveniles who were adjudicated  
29 guilty of a sex or violent offense on or prior to July 1, 1994, and who  
30 are still incarcerated on or after July 25, 1999. This section applies  
31 to all adults and juveniles who are convicted of a felony other than a  
32 sex or violent offense, stalking under RCW 9A.46.110, harassment under  
33 RCW 9A.46.020, or communicating with a minor for immoral purposes under  
34 RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,  
35 on or after July 1, 2002; and to all adults and juveniles who were  
36 convicted or adjudicated guilty of such an offense before July 1, 2002,  
37 and are still incarcerated on or after July 1, 2002. This section  
38 applies to all adults and juveniles who are convicted or adjudicated

1 guilty of an offense added to the list of crimes and juvenile offenses  
2 in subsection (1) of this section by this act, on or after the  
3 effective date of this section; and to all adults and juveniles who  
4 were convicted or adjudicated guilty of such an offense before the  
5 effective date of this section, and who are still incarcerated on or  
6 after the effective date of this section.

7 (5) This section creates no rights in a third person. No cause of  
8 action may be brought based upon the noncollection or nonanalysis or  
9 the delayed collection or analysis of a biological sample authorized to  
10 be taken under RCW 43.43.752 through 43.43.758.

11 (6) The detention, arrest, or conviction of a person based upon a  
12 database match or database information is not invalidated if it is  
13 determined that the sample was obtained or placed in the database by  
14 mistake, or if the conviction or juvenile adjudication that resulted in  
15 the collection of the biological sample was subsequently vacated or  
16 otherwise altered in any future proceeding including but not limited to  
17 posttrial or postfact-finding motions, appeals, or collateral attacks.

18 **Sec. 3.** RCW 43.43.7541 and 2002 c 289 s 4 are each amended to read  
19 as follows:

20 Every sentence imposed under chapter 9.94A RCW((~~7~~)) for a  
21 ((~~felony~~)) crime specified in RCW 43.43.754 ((~~that is committed on or~~  
22 ~~after July 1, 2002,~~)) must include a fee of one hundred dollars ((~~for~~  
23 ~~collection of a biological sample as required under RCW 43.43.754,~~  
24 ~~unless the court finds that imposing the fee would result in undue~~  
25 ~~hardship on the offender~~)). The fee is a court-ordered legal financial  
26 obligation as defined in RCW 9.94A.030, payable by the offender after  
27 payment of all other legal financial obligations included in the  
28 sentence has been completed. The clerk of the court shall transmit  
29 eighty percent of the fee((~~s~~)) collected to the state treasurer for  
30 deposit in the state DNA database account created under RCW 43.43.7532,  
31 and shall transmit twenty percent of the fee collected to the agency  
32 responsible for collection of a biological sample from the offender as  
33 required under RCW 43.43.754.

34 **Sec. 4.** RCW 43.43.756 and 1989 c 350 s 5 are each amended to read  
35 as follows:

1       The Washington state patrol (~~(in consultation with the University~~  
2 ~~of Washington school of medicine)~~) forensic laboratory services bureau  
3 may:

4       (1) Provide DNA analysis services to law enforcement agencies  
5 throughout the state (~~(after July 1, 1990)~~);

6       (2) Provide assistance to law enforcement officials and prosecutors  
7 in the preparation and utilization of DNA evidence for presentation in  
8 court; and

9       (3) Provide expert testimony in court on DNA evidentiary issues.

10       NEW SECTION. Sec. 5. If specific funding for the purposes of this  
11 act, referencing this act by bill or chapter number, is not provided by  
12 June 30, 2008, in the omnibus appropriations act, this act is null and  
13 void.

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