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HOUSE BILL 2468

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State of Washington

57th Legislature

2002 Regular Session

By Representatives Miloscia, O'Brien and Wood; by request of Governor Locke

Read first time 01/17/2002. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to the convicted offender DNA data base; amending  
2 RCW 43.43.754, 43.43.759, and 9.94A.505; amending 1989 c 350 s 1  
3 (uncodified); adding new sections to chapter 43.43 RCW; and providing  
4 an effective date.

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

6 **Sec. 1.** 1989 c 350 s 1 (uncodified) is amended to read 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 (~~the accuracy of identification~~  
14 ~~provided by this method is superior to that of any presently existing~~  
15 ~~technique and recognizes the importance of this scientific breakthrough~~  
16 ~~in providing a reliable and accurate tool for the investigation and~~  
17 ~~prosecution of sex offenses as defined in RCW 9.94A.030(26) and violent~~  
18 ~~offenses as defined in RCW 9.94A.030(29)) DNA data bases are important  
19 tools in criminal investigations, in the exclusion of individuals who~~

1 are the subject of investigations or prosecutions, and in detecting  
2 recidivist acts. It is the policy of this state to assist federal,  
3 state, and local criminal justice and law enforcement agencies in both  
4 the identification and detection of individuals in criminal  
5 investigations and the identification and location of missing and  
6 unidentified persons. Therefore, it is in the best interest of the  
7 state to establish a DNA data base and DNA data bank containing DNA  
8 samples submitted by persons convicted of felony offenses and DNA  
9 samples necessary for the identification of missing persons and  
10 unidentified human remains.

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

20 **Sec. 2.** RCW 43.43.754 and 1999 c 329 s 2 are each amended to read  
21 as follows:

22 (1) Every adult or juvenile individual convicted of a felony or  
23 adjudicated guilty of an equivalent juvenile offense (~~defined as a sex~~  
24 ~~offense under RCW 9.94A.030(33)(a) or a violent offense as defined in~~  
25 ~~RCW 9.94A.030 shall have a blood sample drawn~~) specified in subsection  
26 (2) of this section must have a biological sample collected for  
27 purposes of DNA identification analysis. For persons convicted of such  
28 offenses or adjudicated guilty of an equivalent juvenile offense who  
29 are serving or who are to serve a term of confinement in a county jail  
30 or detention facility, the county shall be responsible for obtaining  
31 (~~blood~~) the biological samples either as part of the intake process  
32 into the county jail or detention facility for those persons convicted  
33 on or after (~~July 25, 1999~~) the effective date of this act, or within  
34 a reasonable time after (~~July 25, 1999~~) the effective date of this  
35 act, for those persons incarcerated (~~prior to July 25, 1999~~) before  
36 the effective date of this act, who have not yet had a (~~blood~~)  
37 biological sample (~~drawn~~) collected, beginning with those persons who  
38 will be released the soonest. For persons convicted of such offenses

1 or adjudicated guilty of an equivalent juvenile offense, who are  
2 serving or who are to serve a term of confinement in a department of  
3 corrections facility or a (~~division of juvenile rehabilitation~~)  
4 department of social and health services facility, the facility holding  
5 the person shall be responsible for obtaining (~~blood~~) the biological  
6 samples either as part of the intake process into such facility for  
7 those persons convicted on or after (~~July 25, 1999~~) the effective  
8 date of this act, or within a reasonable time after (~~July 25, 1999~~)  
9 the effective date of this act, for those persons incarcerated (~~prior~~  
10 to ~~July 25, 1999~~) before the effective date of this act, who have not  
11 yet had a (~~blood~~) biological sample (~~drawn~~) collected, beginning  
12 with those persons who will be released the soonest.

13 (2) The requirements of subsection (1) of this section apply to  
14 persons (a) convicted of a sex offense or a violent offense as defined  
15 in RCW 9.94A.030, or (b) sentenced to any period of total confinement,  
16 including a period of time served as of the date of sentencing, for a  
17 drug offense as defined in RCW 9.94A.030, assault in the third degree,  
18 or any felony defined in chapter 9A.48, 9A.52, 9A.56, or 70.74 RCW and  
19 not included in (a) of this subsection.

20 (3) Any (~~blood~~) biological sample taken pursuant to RCW 43.43.752  
21 through 43.43.758 may be retained by the forensic laboratory services  
22 bureau, and shall be used solely for the purpose of providing DNA or  
23 other (~~blood grouping~~) tests for identification analysis and  
24 prosecution of a (~~sex offense or a violent offense~~) criminal offense  
25 or for the identification of human remains or missing persons. Nothing  
26 in this section prohibits the submission of results derived from the  
27 biological samples to the Federal Bureau of Investigation combined DNA  
28 index system.

29 (4) The director of the forensic laboratory services bureau of the  
30 Washington state patrol shall perform testing on all biological samples  
31 collected under subsection (1) of this section, to the extent allowed  
32 by funding available for this purpose. The director shall give  
33 priority to testing on samples collected from those adults or juveniles  
34 convicted of a felony or adjudicated guilty of an equivalent juvenile  
35 offense that is defined as a sex offense or a violent offense in RCW  
36 9.94A.030.

37 (5) This section applies to all adults who are convicted after July  
38 1, 1990; and to all adults who were convicted on or prior to July 1,  
39 1990, and who are still incarcerated on or after (~~July 25, 1999~~) the

1 effective date of this act. This section applies to all juveniles who  
2 are adjudicated guilty after July 1, 1994; and to all juveniles who  
3 were adjudicated guilty on or prior to July 1, 1994, and who are still  
4 incarcerated on or after (~~July 25, 1999~~) the effective date of this  
5 act.

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

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

17 **Sec. 3.** RCW 43.43.759 and 1990 c 230 s 1 are each amended to read  
18 as follows:

19 The Washington state patrol shall consult with the forensic  
20 investigations council and adopt rules to implement RCW 43.43.752  
21 through 43.43.758. The rules shall prohibit the use of DNA  
22 identification data for any research or other purpose that is not  
23 related to a criminal investigation, to the identification of human  
24 remains or missing persons, or to improving the operation of the system  
25 authorized by RCW 43.43.752 through 43.43.758. The rules must also  
26 identify appropriate sources and collection methods for biological  
27 samples needed for purposes of DNA identification analysis.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.43 RCW  
29 to read as follows:

30 Every sentence imposed under chapter 9.94A RCW, for a felony  
31 specified in RCW 43.43.754 that is committed on or after the effective  
32 date of this act, must include a fee of one hundred dollars for  
33 collection of a biological sample as required under RCW 43.43.754,  
34 unless the court finds that imposing the fee would result in undue  
35 hardship on the offender. The fee is a court-ordered legal financial  
36 obligation as defined in RCW 9.94A.030, payable by the offender after  
37 payment of all other legal financial obligations included in the

1 sentence has been completed. The clerk of the court shall transmit  
2 fees collected to the state treasurer for deposit in the state DNA data  
3 base account created under section 5 of this act.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.43 RCW  
5 to read as follows:

6 The state DNA data base account is created in the custody of the  
7 state treasurer. All receipts under section 4 of this act must be  
8 deposited into the account. Expenditures from the account may be used  
9 only for creation, operation, and maintenance of the DNA data base  
10 under RCW 43.43.754. Only the chief of the Washington state patrol or  
11 the chief's designee may authorize expenditures from the account. The  
12 account is subject to allotment procedures under chapter 43.88 RCW, but  
13 an appropriation is not required for expenditures.

14 **Sec. 6.** RCW 9.94A.505 and 2001 2nd sp.s. c 12 s 312 are each  
15 amended to read as follows:

16 (1) When a person is convicted of a felony, the court shall impose  
17 punishment as provided in this chapter.

18 (2)(a) The court shall impose a sentence as provided in the  
19 following sections and as applicable in the case:

20 (i) Unless another term of confinement applies, the court shall  
21 impose a sentence within the standard sentence range established in RCW  
22 9.94A.510;

23 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

24 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

25 (iv) RCW 9.94A.545, relating to community custody for offenders  
26 whose term of confinement is one year or less;

27 (v) RCW 9.94A.570, relating to persistent offenders;

28 (vi) RCW 9.94A.540, relating to mandatory minimum terms;

29 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

30 (viii) RCW 9.94A.660, relating to the drug offender sentencing  
31 alternative;

32 (ix) RCW 9.94A.670, relating to the special sex offender sentencing  
33 alternative;

34 (x) RCW 9.94A.712, relating to certain sex offenses;

35 (xi) RCW 9.94A.535, relating to exceptional sentences;

36 (xii) RCW 9.94A.589, relating to consecutive and concurrent  
37 sentences.

1 (b) If a standard sentence range has not been established for the  
2 offender's crime, the court shall impose a determinate sentence which  
3 may include not more than one year of confinement; community service  
4 work; until July 1, 2000, a term of community supervision not to exceed  
5 one year and on and after July 1, 2000, a term of community custody not  
6 to exceed one year, subject to conditions and sanctions as authorized  
7 in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations.  
8 The court may impose a sentence which provides more than one year of  
9 confinement if the court finds reasons justifying an exceptional  
10 sentence as provided in RCW 9.94A.535.

11 (3) If the court imposes a sentence requiring confinement of thirty  
12 days or less, the court may, in its discretion, specify that the  
13 sentence be served on consecutive or intermittent days. A sentence  
14 requiring more than thirty days of confinement shall be served on  
15 consecutive days. Local jail administrators may schedule court-ordered  
16 intermittent sentences as space permits.

17 (4) If a sentence imposed includes payment of a legal financial  
18 obligation, it shall be imposed as provided in RCW 9.94A.750,  
19 9.94A.753, ~~((and))~~ 9.94A.760, and section 4 of this act.

20 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a  
21 court may not impose a sentence providing for a term of confinement or  
22 community supervision, community placement, or community custody which  
23 exceeds the statutory maximum for the crime as provided in chapter  
24 9A.20 RCW.

25 (6) The sentencing court shall give the offender credit for all  
26 confinement time served before the sentencing if that confinement was  
27 solely in regard to the offense for which the offender is being  
28 sentenced.

29 (7) The court shall order restitution as provided in RCW 9.94A.750  
30 and 9.94A.753.

31 (8) As a part of any sentence, the court may impose and enforce  
32 crime-related prohibitions and affirmative conditions as provided in  
33 this chapter.

34 (9) The court may order an offender whose sentence includes  
35 community placement or community supervision to undergo a mental status  
36 evaluation and to participate in available outpatient mental health  
37 treatment, if the court finds that reasonable grounds exist to believe  
38 that the offender is a mentally ill person as defined in RCW 71.24.025,  
39 and that this condition is likely to have influenced the offense. An

1 order requiring mental status evaluation or treatment must be based on  
2 a presentence report and, if applicable, mental status evaluations that  
3 have been filed with the court to determine the offender's competency  
4 or eligibility for a defense of insanity. The court may order  
5 additional evaluations at a later date if deemed appropriate.

6 (10) In any sentence of partial confinement, the court may require  
7 the offender to serve the partial confinement in work release, in a  
8 program of home detention, on work crew, or in a combined program of  
9 work crew and home detention.

10 (11) In sentencing an offender convicted of a crime of domestic  
11 violence, as defined in RCW 10.99.020, if the offender has a minor  
12 child, or if the victim of the offense for which the offender was  
13 convicted has a minor child, the court may, as part of any term of  
14 community supervision, community placement, or community custody, order  
15 the offender to participate in a domestic violence perpetrator program  
16 approved under RCW 26.50.150.

17 NEW SECTION. **Sec. 7.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 8.** Section 1 of this act is added to chapter  
22 43.43 RCW.

23 NEW SECTION. **Sec. 9.** This act takes effect July 1, 2002.

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