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**HOUSE BILL 1138**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representative Klippert

AN ACT Relating to expanding collection of offender DNA samples; amending RCW 43.43.753, 43.43.754, 46.63.110, and 43.43.690; adding a new section to chapter 43.43 RCW; adding a new section to chapter 70.48 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  The legislature finds there is a critical need to provide law enforcement officers and agencies with the latest scientific technology available for accurately and expeditiously identifying and prosecuting criminal offenders. Although every state maintains a DNA database for felony convictions, there is a growing trend toward expanding DNA databases to include DNA from offenders prior to conviction. Studies indicate that collection of DNA at an earlier point in the process contributes to the solution of cold cases, saves lives by identifying recidivist offenders, reduces rates of criminality, and increases the rate of successful prosecutions. The legislature further finds that collecting DNA prior to conviction is cost-effective. Early identification of offenders reduces costs by focusing investigations and eliminating suspects, prevents costs associated with recidivist offenders, and prevents property loss. The legislature therefore finds that collecting DNA from adults who have been charged with an offense, or who have been arrested for an offense when there has been a judicial determination of probable cause, is necessary to solve cold cases, prevent recidivist acts, and lower the cost of criminal investigations. The legislature further finds that DNA samples can be collected, analyzed, and stored in a way that only minimally impacts privacy concerns. The sample, typically collected via oral swab, is analyzed only with regard to forensic loci, a small percentage of the arrestee's genetic code, which allows identification but does not reveal other genetic information, other than gender. Arrestee samples will not be collected unless a probable cause determination has been made. Once analyzed, the profile is stored without any personally identifying information, only a sample number and agency identifiers. The DNA profile and sample is accessible only to qualified laboratory personnel. If a hit is made between a stored sample and the forensic profile developed from a crime scene, the laboratory will notify the law enforcement agency, which must follow certain procedures to confirm the hit. Innocent individuals are further protected through expungement procedures, which allow removal of their samples and profiles if convictions are not made or are overturned.

**Sec.**  RCW 43.43.753 and 2008 c 97 s 1 are each amended to read as follows:

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

The legislature further finds that DNA databases are important tools in criminal investigations, in the exclusion of individuals who are the subject of investigations or prosecutions, and in detecting recidivist acts. It is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in both the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons. Therefore, it is in the best interest of the state to establish a DNA database ((~~and DNA data bank~~)) containing DNA samples submitted by persons convicted of felony offenses and other crimes, as well as by adults charged for any criminal offense or arrested for any criminal offense when there has been a judicial determination of probable cause, as specified in RCW 43.43.754. DNA samples necessary for the identification of missing persons and unidentified human remains shall also be included in the DNA database.

The legislature further finds that the DNA identification system used by the federal bureau of investigation and the Washington state patrol has no ability to predict genetic disease or predisposal to illness. Nonetheless, the legislature intends that biological samples collected under RCW 43.43.754, and DNA identification data obtained from the samples, be used only for purposes related to criminal investigation, identification of human remains or missing persons, or improving the operation of the system authorized under RCW 43.43.752 through ((~~43.43.758~~)) 43.43.759, and section 4 of this act.

The legislature further finds that the DNA collection, testing, and storage process is minimally invasive to privacy based on the following features:

(1) Biological samples for DNA testing are routinely collected by an oral swab as part of the legitimate police identification procedure;

(2) A DNA profile is stored in a database accessible only to qualified laboratory personnel and does not appear in an individual's criminal history record;

(3) Entries in the DNA database contain only DNA markers necessary to human identification, which are a small part of a person's total genetic information; and

(4) Personally identifying information does not appear in the DNA database.

**Sec.**  RCW 43.43.754 and 2015 c 261 s 10 are each amended to read as follows:

(1) A biological sample must be collected for purposes of DNA identification analysis from:

(a) Every adult or juvenile individual convicted of a felony, or any of the following crimes (or equivalent juvenile offenses):

Assault in the fourth degree with sexual motivation (RCW 9A.36.041, 9.94A.835)

Communication with a minor for immoral purposes (RCW 9.68A.090)

Custodial sexual misconduct in the second degree (RCW 9A.44.170)

Failure to register (RCW 9A.44.130 for persons convicted on or before June 10, 2010, and RCW 9A.44.132 for persons convicted after June 10, 2010)

Harassment (RCW 9A.46.020)

Patronizing a prostitute (RCW 9A.88.110)

Sexual misconduct with a minor in the second degree (RCW 9A.44.096)

Stalking (RCW 9A.46.110)

Violation of a sexual assault protection order granted under chapter 7.90 RCW; ((~~and~~))

(b) Every adult or juvenile individual who is required to register under RCW 9A.44.130; and

(c) Every adult charged with a criminal offense or lawfully arrested for a criminal offense when there has been a judicial determination of probable cause. If the person will not be detained in a city or county jail facility following the arraignment or probable cause hearing, the court must make the collection of a biological sample a condition of release.

(2) If the Washington state patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, a subsequent submission is not required to be submitted.

(3) Biological samples shall be collected in the following manner:

(a) The city or county shall be responsible for obtaining the biological samples at the time of transfer to a city or county jail facility for:

(i) Persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense who do not serve a term of confinement in a department of corrections facility, and do serve a term of confinement in a city or county jail facility((~~, the city or county shall be responsible for obtaining the biological samples~~)); and

(ii) Persons charged with any criminal offense or lawfully arrested for any criminal offense when there has been a judicial determination of probable cause as identified in subsection (1)(c) of this section, when the person is detained in a city or county jail facility.

(b) The local police department or sheriff's office shall be responsible for obtaining the biological samples for:

(i) Persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense who do not serve a term of confinement in a department of corrections facility, and do not serve a term of confinement in a city or county jail facility; ((~~and~~))

(ii) Persons who are required to register under RCW 9A.44.130; and

(iii) Persons charged with any criminal offense or lawfully arrested for any criminal offense when there has been a judicial determination of probable cause as identified in subsection (1)(c) of this section and the person is not detained in a city or county jail facility.

(c) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who are serving or who are to serve a term of confinement in a department of corrections facility or a department of social and health services facility, the facility holding the person shall be responsible for obtaining the biological samples at the time of transfer to the facility. For those persons incarcerated before June 12, 2008, who have not yet had a biological sample collected, priority shall be given to those persons who will be released the soonest.

(d) An entity collecting a biological sample from an adult charged with a criminal offense or lawfully arrested for a criminal offense when there has been a judicial determination of probable cause, as required in this section, must provide the person with a notice of the rights to expungement and destruction as required by section 5 of this act.

(4) Any biological sample taken pursuant to RCW 43.43.752 through ((~~43.43.758~~)) 43.43.759 may be retained by the forensic laboratory services bureau, and must be analyzed by the forensic laboratory services bureau unless a complete DNA profile for the person has previously been entered in the DNA database.

(5) Any biological sample taken pursuant to RCW 43.43.752 through 43.43.759 shall be used solely for the purpose of providing DNA or other tests for identification analysis and prosecution of a criminal offense or for the identification of human remains or missing persons. Nothing in this section prohibits the submission of results derived from the biological samples to the federal bureau of investigation combined DNA index system.

((~~(5)~~)) (6) The forensic laboratory services bureau of the Washington state patrol is responsible for testing performed on all biological samples that are collected under subsection (1) of this section, to the extent allowed by funding available for this purpose. The director shall give priority to testing on samples collected from those adults or juveniles convicted of a felony or adjudicated guilty of an equivalent juvenile offense that is defined as a sex offense or a violent offense in RCW 9.94A.030. Known duplicate samples may be excluded from testing unless testing is deemed necessary or advisable by the director.

((~~(6)~~)) (7) This section applies to:

(a) All adults and juveniles to whom this section applied prior to June 12, 2008;

(b) All adults and juveniles to whom this section did not apply prior to June 12, 2008, who:

(i) Are convicted on or after June 12, 2008, of an offense listed in subsection (1)(a) of this section; or

(ii) Were convicted prior to June 12, 2008, of an offense listed in subsection (1)(a) of this section and are still incarcerated on or after June 12, 2008; ((~~and~~))

(c) All adults and juveniles who are required to register under RCW 9A.44.130 on or after June 12, 2008, whether convicted before, on, or after June 12, 2008; and

(d) All adults charged with a criminal offense or lawfully arrested for a criminal offense when there has been a judicial determination of probable cause on or after the effective date of this section.

((~~(7)~~)) (8) This section creates no rights in a third person. No cause of action may be brought based upon the noncollection or nonanalysis or the delayed collection or analysis of a biological sample authorized to be taken under RCW 43.43.752 through ((~~43.43.758~~)) 43.43.759.

((~~(8)~~)) (9) The detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is determined that the sample was obtained or placed in the database by mistake, if the sample is subject to expungement pursuant to this chapter, or if the conviction or juvenile adjudication that resulted in the collection of the biological sample was subsequently vacated or otherwise altered in any future proceeding including but not limited to posttrial or postfact-finding motions, appeals, or collateral attacks.

((~~(9)~~)) (10) A person commits the crime of refusal to provide DNA if the person has a duty to register under RCW 9A.44.130 and the person willfully refuses to comply with a legal request for a DNA sample as required under this section. The refusal to provide DNA is a gross misdemeanor.

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

(1) A person may request expungement of the person's sample and DNA records from the DNA identification system if:

(a) The person was required to provide a sample under RCW 43.43.754(1)(c) based on an arrest and a judicial determination of probable cause, but is not charged with an offense based upon the arrest within one year of the arrest;

(b) The person has been found not guilty, has been acquitted, or has had the charges dismissed for an offense requiring the collection of a biological sample under RCW 43.43.754(1)(c); or

(c) The underlying conviction or adjudication requiring the collection of a biological sample under RCW 43.43.754 has been reversed and the case dismissed.

(2) To request expungement, the person must submit the following documents to the forensic laboratory services bureau:

(a) A written request for expungement;

(b) Proof that the person has provided written notice of the request for expungement to the prosecuting attorney of the county in which he or she was arrested, charged, convicted, or adjudicated; and

(c)(i) A sworn affidavit that no charges following an arrest requiring the collection of a biological sample under RCW 43.43.754(1)(c) have been filed within one year of arrest;

(ii) A certified copy of a final court order establishing that a charge for an offense requiring the collection of a biological sample under RCW 43.43.754(1)(c) has been dismissed or has resulted in an acquittal; or

(iii) A certified copy of a final court order reversing the conviction that required the collection of a biological sample under RCW 43.43.754.

(3)(a) Upon receipt of a written request for expungement, if the forensic laboratory services bureau has not previously analyzed the person's sample, the Washington state patrol must give priority to analyzing the person's sample and searching the DNA identification system for a match.

(b) Once the forensic laboratory services bureau has analyzed the person's sample, searched the DNA identification system for a match, and received the documents required by subsection (2) of this section, the forensic laboratory services bureau must expunge the person's sample and DNA records from the DNA identification system.

(c) The forensic laboratory services bureau may not expunge a person's sample and DNA records from the DNA identification system if the person has a prior conviction or a pending charge for which the collection of a sample is authorized under RCW 43.43.754.

(4) The forensic laboratory services bureau must provide information regarding the rights to expungement and destruction on the Washington state patrol's official web site. The information must include the procedures for requesting expungement.

NEW SECTION. **Sec.**  A new section is added to chapter 70.48 RCW to read as follows:

(1) The jail administrator or his or her designee or chief law enforcement executive or his or her designee must provide notice of the requirements of RCW 43.43.740, 43.43.754, and section 4 of this act to jail staff who perform booking procedures and other staff who may be collecting DNA samples pursuant to RCW 43.43.754.

(2) Notice of the rights to expungement and destruction must be provided, at the time a biological sample for DNA testing is taken, to all adults who have been charged with a criminal offense or who have been arrested for a criminal offense and a judicial determination of probable cause has been made. The notice must be in substantially the following form:

"Washington law requires the collection of a biological sample for DNA testing from all adults charged with a criminal offense or arrested for a criminal offense when a judicial determination of probable cause has been made.

THE LABORATORY MUST EXPUNGE YOUR DNA SAMPLE AND RECORDS IF: (1) YOU ARE NOT CHARGED WITHIN ONE YEAR OF AN ARREST PURSUANT TO WHICH A SAMPLE WAS REQUIRED; (2) YOU ARE FOUND NOT GUILTY; OR (3) YOUR CONVICTION IS REVERSED AND THE CASE DISMISSED.

For more information regarding your rights to expungement and destruction, see RCW 43.43.754 and section 4 of this act."

**Sec.**  RCW 46.63.110 and 2012 c 82 s 1 are each amended to read as follows:

(1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The monetary penalty for a violation of (a) RCW 46.55.105(2) is two hundred fifty dollars for each offense; (b) RCW 46.61.210(1) is five hundred dollars for each offense. No penalty assessed under this subsection (2) may be reduced.

(3) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(4) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(5) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter, it is immediately payable and is enforceable as a civil judgment under Title 6 RCW. If the court determines, in its discretion, that a person is not able to pay a monetary obligation in full, and not more than one year has passed since the later of July 1, 2005, or the date the monetary obligation initially became due and payable, the court shall enter into a payment plan with the person, unless the person has previously been granted a payment plan with respect to the same monetary obligation, or unless the person is in noncompliance of any existing or prior payment plan, in which case the court may, at its discretion, implement a payment plan. If the court has notified the department that the person has failed to pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court shall notify the department that the infraction has been adjudicated, and the department shall rescind any suspension of the person's driver's license or driver's privilege based on failure to respond to that infraction. "Payment plan," as used in this section, means a plan that requires reasonable payments based on the financial ability of the person to pay. The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

(a) If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court may refer the unpaid monetary penalty, fee, cost, assessment, or other monetary obligation for civil enforcement until all monetary obligations, including those imposed under subsections (3) and (4) of this section, have been paid, and court authorized community restitution has been completed, or until the court has entered into a new time payment or community restitution agreement with the person. For those infractions subject to suspension under RCW 46.20.289, the court shall notify the department of the person's failure to meet the conditions of the plan, and the department shall suspend the person's driver's license or driving privileges.

(b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court may refer the unpaid monetary penalty, fee, cost, assessment, or other monetary obligation to a collections agency until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section. For those infractions subject to suspension under RCW 46.20.289, the court shall notify the department of the person's delinquency, and the department shall suspend the person's driver's license or driving privileges.

(c) If the payment plan is to be administered by the court, the court may assess the person a reasonable administrative fee to be wholly retained by the city or county with jurisdiction. The administrative fee shall not exceed ten dollars per infraction or twenty-five dollars per payment plan, whichever is less.

(d) Nothing in this section precludes a court from contracting with outside entities to administer its payment plan system. When outside entities are used for the administration of a payment plan, the court may assess the person a reasonable fee for such administrative services, which fee may be calculated on a periodic, percentage, or other basis.

(e) If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of all or part of the monetary obligations due under this section to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments.

(7) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed:

(a) A fee of five dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040;

(b) A fee of ten dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the Washington auto theft prevention authority account; ((~~and~~))

(c) A fee of two dollars per infraction. Revenue from this fee shall be forwarded to the state treasurer for deposit in the traumatic brain injury account established in RCW 74.31.060; and

(d) A fee of two dollars per infraction. One dollar of the revenue from each fee assessed under this subsection (7)(d) must be forwarded to the state treasurer for deposit in the state DNA database account established in RCW 43.43.7532 and one dollar must be retained by the collecting jurisdiction to offset administrative costs.

(8)(a) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction other than of RCW 46.61.527 or 46.61.212 shall be assessed an additional penalty of twenty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a court authorized community restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this subsection (8) by participation in the court authorized community restitution program.

(b) Eight dollars and fifty cents of the additional penalty under (a) of this subsection shall be remitted to the state treasurer. The remaining revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this subsection to the state treasurer must be deposited in the state general fund. The balance of the revenue received by the county or city treasurer under this subsection must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060.

(9) If a legal proceeding, such as garnishment, has commenced to collect any delinquent amount owed by the person for any penalty imposed by the court under this section, the court may, at its discretion, enter into a payment plan.

(10) The monetary penalty for violating RCW 46.37.395 is: (a) Two hundred fifty dollars for the first violation; (b) five hundred dollars for the second violation; and (c) seven hundred fifty dollars for each violation thereafter.

**Sec.**  RCW 43.43.690 and 2015 c 265 s 30 are each amended to read as follows:

(1) When an adult offender has been adjudged guilty of violating any criminal statute of this state and a crime laboratory analysis was performed by a state crime laboratory, in addition to any other disposition, penalty, or fine imposed, the court shall levy a crime laboratory analysis fee of one hundred dollars for each offense for which the person was convicted. ((~~Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay~~)) The court may not suspend, reduce, or defer payment of the fee.

(2) All crime laboratory analysis fees assessed under this section shall be collected by the clerk of the court and forwarded to the state general fund, to be used only for crime laboratories. The clerk may retain five dollars to defray the costs of collecting the fees.

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

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