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**SUBSTITUTE HOUSE BILL 2331**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Orwall, Griffey, Goodman, Jinkins, Muri, Kilduff, Klippert, Fey, Kagi, Lovick, Appleton, and Doglio)

AN ACT Relating to DNA biological samples; and amending RCW 43.43.754.

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

**Sec.**  RCW 43.43.754 and 2017 c 272 s 4 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), or an equivalent municipal offense where the municipal prosecuting authority certifies at the time of sentencing that the municipal offense conviction is equivalent to the following crimes:

(i) Assault in the fourth degree where domestic violence as defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041, 9.94A.030);

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

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

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

(v) 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);

(vi) Harassment (RCW 9A.46.020);

(vii) Patronizing a prostitute (RCW 9A.88.110);

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

(ix) Stalking (RCW 9A.46.110);

(x) 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.

(2) A municipal jurisdiction may submit any biological sample collected prior to the effective date of this section to the forensic laboratory services bureau of the Washington state patrol for purposes of DNA identification analysis when:

(a) The sample was collected upon conviction for a municipal offense that is equivalent to an offense listed in subsection (1)(a) of this section;

(b) The equivalent offense listed in subsection (1)(a) of this section was an offense for which collection of a biological sample was required under this section at the time of the conviction; and

(c) The sample was collected on or after June 12, 2008, as a requirement of the relevant municipal ordinance.

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

(a) For persons convicted of any offense listed in subsection (1)(a) of this section or an equivalent municipal offense, 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.

(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 an equivalent municipal offense, 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.

(c) For persons convicted of any offense listed in subsection (1)(a) of this section or an equivalent municipal offense, 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. 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.

((~~(4)~~)) (5) Any biological sample taken pursuant to RCW 43.43.752 through 43.43.758, or submitted under subsection (2) of this section, may be retained by the forensic laboratory services bureau, and 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, or submitted under subsection (2) 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) When submitting a biological sample to the forensic laboratory services bureau of the Washington state patrol that was collected as a result of a conviction under an equivalent municipal offense under subsection (1)(a) of this section, or submitted under subsection (2) of this section, the submitting agency or department shall include a signed affidavit from the municipal prosecuting authority of the jurisdiction in which the conviction occurred specifying the state crime to which the municipal offense is equivalent.

(8) 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~~)) qualifying under subsection (1)(a) of this section on the date of conviction; 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 for whom a sample was submitted under subsection (2) of this section.

((~~(7)~~)) (9) 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.

((~~(8)~~)) (10) 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, 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. No cause of action may be brought against the state based upon the analysis of a biological sample authorized to be taken pursuant to a municipal ordinance if the conviction or 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)~~)) (11) 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.

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