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SECOND SUBSTITUTE HOUSE BILL 2969

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State of Washington

58th Legislature

2004 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives O'Brien, Miloscia, Lovick, Linville, McDonald, D. Simpson and Rockefeller)

READ FIRST TIME 02/10/04.

1 AN ACT Relating to expanding the convicted offender DNA data base;  
2 amending RCW 43.43.754; creating a new section; and providing an  
3 effective date.

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

5 **Sec. 1.** RCW 43.43.754 and 2002 c 289 s 2 are each amended to read  
6 as follows:

7 (1) Every adult or juvenile individual (~~convicted of a felony,~~  
8 ~~stalking under RCW 9A.46.110, harassment under RCW 9A.46.020,~~  
9 ~~communicating with a minor for immoral purposes under RCW 9.68A.090, or~~  
10 ~~adjudicated guilty of an equivalent juvenile offense~~) must have a  
11 biological sample collected for purposes of DNA identification analysis  
12 if he or she:

13 (a) Has been convicted, or adjudicated guilty of an equivalent  
14 juvenile offense, of any of the following crimes:

15 (i) Any felony;

16 (ii) Stalking under RCW 9A.46.110;

17 (iii) Harassment under RCW 9A.46.020;

18 (iv) Communicating with a minor for immoral purposes under RCW  
19 9.68A.090;

1 (v) Patronizing a prostitute under RCW 9A.88.110;

2 (b) Has been charged with any of the following crimes or equivalent  
3 juvenile offenses, but pled guilty to another offense:

4 (i) Any felony;

5 (ii) Patronizing a prostitute under RCW 9A.88.110; or

6 (c) Has been found not guilty by reason of insanity for any crime  
7 listed in (a) of this subsection.

8 (2) The biological sample shall be collected in the following  
9 manner:

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

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

27 (c) For persons convicted of such offenses or adjudicated guilty of  
28 an equivalent juvenile offense, who are serving or who are to serve a  
29 term of confinement in a department of corrections facility or a  
30 department of social and health services facility, the facility holding  
31 the person shall be responsible for obtaining the biological samples  
32 either as part of the intake process into such facility for those  
33 persons convicted on or after July 1, 2002, or within a reasonable time  
34 after July 1, 2002, for those persons incarcerated before July 1, 2002,  
35 who have not yet had a biological sample collected, beginning with  
36 those persons who will be released the soonest.

37 (d) For persons found not guilty by reason of insanity for any  
38 crime listed in subsection (1)(a) of this section, the local police

1 department or sheriff's office is responsible for obtaining the  
2 biological samples before the person is civilly committed or released  
3 on or after July 1, 2004.

4 ((+2)) (3) Any biological sample taken pursuant to RCW 43.43.752  
5 through 43.43.758 may be retained by the forensic laboratory services  
6 bureau, and shall be used solely for the purpose of providing DNA or  
7 other tests for identification analysis and prosecution of a criminal  
8 offense or for the identification of human remains or missing persons.  
9 Nothing in this section prohibits the submission of results derived  
10 from the biological samples to the federal bureau of investigation  
11 combined DNA index system.

12 ((+3)) (4) The director of the forensic laboratory services bureau  
13 of the Washington state patrol shall perform testing on all biological  
14 samples collected under subsection (1) of this section, to the extent  
15 allowed by funding available for this purpose. The director shall give  
16 priority to testing on samples collected from those adults or juveniles  
17 convicted of a felony or adjudicated guilty of an equivalent juvenile  
18 offense that is defined as a sex offense or a violent offense in RCW  
19 9.94A.030.

20 ((+4)) (5) This section applies to all adults who are convicted of  
21 a sex or violent offense after July 1, 1990; and to all adults who were  
22 convicted of a sex or violent offense on or prior to July 1, 1990, and  
23 who are still incarcerated on or after July 25, 1999. This section  
24 applies to all juveniles who are adjudicated guilty of a sex or violent  
25 offense after July 1, 1994; and to all juveniles who were adjudicated  
26 guilty of a sex or violent offense on or prior to July 1, 1994, and who  
27 are still incarcerated on or after July 25, 1999. This section applies  
28 to all adults and juveniles who are convicted of a felony other than a  
29 sex or violent offense, stalking under RCW 9A.46.110, harassment under  
30 RCW 9A.46.020, or communicating with a minor for immoral purposes under  
31 RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,  
32 on or after July 1, 2002; and to all adults and juveniles who were  
33 convicted or adjudicated guilty of such an offense before July 1, 2002,  
34 and are still incarcerated on or after July 1, 2002. This section  
35 applies to all adults and juveniles who are convicted of patronizing a  
36 prostitute under RCW 9A.88.110, or adjudicated guilty of an equivalent  
37 juvenile offense, on or after July 1, 2004; to all adults and juveniles  
38 who were charged with any felony or patronizing a prostitute under RCW

1 9A.88.110, or an equivalent juvenile offense, but pled guilty to  
2 another offense on or after July 1, 2004; to all adults and juveniles  
3 who were found not guilty by reason of insanity for any crime listed in  
4 subsection (1)(a) of this section on or after July 1, 2004; and to all  
5 such adults and juveniles who were convicted, adjudicated guilty, pled  
6 guilty, or found not guilty by reason of insanity before July 1, 2004,  
7 and are still incarcerated or held on or after July 1, 2004.

8 ((+5+)) (6) This section creates no rights in a third person. No  
9 cause of action may be brought based upon the noncollection or  
10 nonanalysis or the delayed collection or analysis of a biological  
11 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

12 ((+6+)) (7) The detention, arrest, or conviction of a person based  
13 upon a data base match or data base information is not invalidated if  
14 it is determined that the sample was obtained or placed in the data  
15 base by mistake, or if the conviction or juvenile adjudication that  
16 resulted in the collection of the biological sample was subsequently  
17 vacated or otherwise altered in any future proceeding including but not  
18 limited to posttrial or postfact-finding motions, appeals, or  
19 collateral attacks.

20 NEW SECTION. Sec. 2. If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

24 NEW SECTION. Sec. 3. If specific funding for the purposes of this  
25 act, referencing this act by bill or chapter number, is not provided by  
26 June 30, 2004, in the omnibus appropriations act, this act is null and  
27 void.

28 NEW SECTION. Sec. 4. This act takes effect July 1, 2004.

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