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**SUBSTITUTE HOUSE BILL 1023**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** House Committee on Public Safety & Emergency Preparedness  
(originally sponsored by Representatives Miloscia, Strow, O'Brien and Moeller)

READ FIRST TIME 01/29/07.

1 AN ACT Relating to the DNA identification system; and amending RCW  
2 43.43.753, 43.43.754, 43.43.7541, and 43.43.756.

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

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

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

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

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

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

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

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

22 Animal cruelty in the second degree (RCW 16.52.207)

23 Assault in the fourth degree (RCW 9A.36.041)

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

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

26 Failure to register as a sex offender (RCW 9A.44.130)

27 Harassment (RCW 9A.46.020)

28 Indecent exposure (RCW 9A.88.010)

29 Malicious mischief in the third degree (RCW 9A.48.090)

30 Patronizing a prostitute (RCW 9A.88.110)

31 Possession of stolen property in the third degree (RCW 9A.56.170)

32 Prostitution (RCW 9A.88.030)

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

34 Stalking (RCW 9A.46.110)

35 Theft in the third degree (RCW 9A.56.050)

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 (~~(in the following manner)~~). If the Washington  
6 state patrol crime laboratory already has a DNA sample from an  
7 individual for a qualifying offense, a subsequent submission is not  
8 required to be submitted. The following applies to the collection and  
9 analysis processes:

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 (2) Any biological sample taken pursuant to RCW 43.43.752 through  
38 43.43.758 may be retained by the forensic laboratory services bureau,

1 and shall be used solely for the purpose of providing DNA or other  
2 tests for identification analysis and prosecution of a criminal offense  
3 or for the identification of human remains or missing persons. Nothing  
4 in this section prohibits the submission of results derived from the  
5 biological samples to the federal bureau of investigation combined DNA  
6 index system.

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

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

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

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

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

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

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

30 The Washington state patrol (~~((in consultation with the University~~  
31 ~~of Washington school of medicine))~~) forensic laboratory services bureau  
32 may:

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

35 (2) Provide assistance to law enforcement officials and prosecutors

1 in the preparation and utilization of DNA evidence for presentation in  
2 court; and  
3 (3) Provide expert testimony in court on DNA evidentiary issues.

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