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**SUBSTITUTE SENATE BILL 6473**

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**State of Washington 57th Legislature**

**2002 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Long, Costa and Winsley; by request of Governor Locke)

READ FIRST TIME 02/08/2002.

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,  
23 stalking under RCW 9A.46.110, harassment under RCW 9A.46.020,  
24 communicating with a minor for immoral purposes under RCW 9.68A.090, or  
25 adjudicated guilty of an equivalent juvenile offense (~~defined as a sex~~  
26 offense under RCW 9.94A.030(33)(a) or a violent offense as defined in  
27 RCW 9.94A.030 shall have a blood sample drawn)) must have a biological  
28 sample collected for purposes of DNA identification analysis(~~(-)~~) in  
29 the following manner:

30 (a) For persons convicted of such offenses or adjudicated guilty of  
31 an equivalent juvenile offense who (~~are serving or who are to serve a~~  
32 term of confinement in a county jail or detention)) do not serve a term  
33 of confinement in a department of corrections facility, and do serve a  
34 term of confinement in a city or county jail facility, the city or  
35 county shall be responsible for obtaining (~~blood~~) the biological  
36 samples either as part of the intake process into the city or county  
37 jail or detention facility for those persons convicted on or after  
38 (~~July 25, 1999~~) the effective date of this act, or within a

1 reasonable time after (~~July 25, 1999~~) the effective date of this act,  
2 for those persons incarcerated (~~prior to July 25, 1999~~) before the  
3 effective date of this act, who have not yet had a (~~blood~~) biological  
4 sample (~~drawn~~) collected, beginning with those persons who will be  
5 released the soonest.

6 (b) For persons convicted of such offenses or adjudicated guilty of  
7 an equivalent juvenile offense who do not serve a term of confinement  
8 in a department of corrections facility, and do not serve a term of  
9 confinement in a city or county jail facility, the city or county is  
10 responsible for obtaining the biological samples after sentencing on or  
11 after the effective date of this act.

12 (c) For persons convicted of such offenses or adjudicated guilty of  
13 an equivalent juvenile offense, who are serving or who are to serve a  
14 term of confinement in a department of corrections facility or a  
15 (~~division of juvenile rehabilitation~~) department of social and health  
16 services facility, the facility holding the person shall be responsible  
17 for obtaining (~~blood~~) the biological samples either as part of the  
18 intake process into such facility for those persons convicted on or  
19 after (~~July 25, 1999~~) the effective date of this act, or within a  
20 reasonable time after (~~July 25, 1999~~) the effective date of this act,  
21 for those persons incarcerated (~~prior to July 25, 1999~~) before the  
22 effective date of this act, who have not yet had a (~~blood~~) biological  
23 sample (~~drawn~~) collected, beginning with those persons who will be  
24 released the soonest.

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

34 (3) The director of the forensic laboratory services bureau of the  
35 Washington state patrol shall perform testing on all biological samples  
36 collected under subsection (1) of this section, to the extent allowed  
37 by funding available for this purpose. The director shall give  
38 priority to testing on samples collected from those adults or juveniles  
39 convicted of a felony or adjudicated guilty of an equivalent juvenile

1 offense that is defined as a sex offense or a violent offense in RCW  
2 9.94A.030.

3 (4) This section applies to all adults who are convicted of a sex  
4 or violent offense after July 1, 1990; and to all adults who were  
5 convicted of a sex or violent offense on or prior to July 1, 1990, and  
6 who are still incarcerated on or after July 25, 1999. This section  
7 applies to all juveniles who are adjudicated guilty of a sex or violent  
8 offense after July 1, 1994; and to all juveniles who were adjudicated  
9 guilty of a sex or violent offense on or prior to July 1, 1994, and who  
10 are still incarcerated on or after July 25, 1999. This section applies  
11 to all adults and juveniles who are convicted of a felony, stalking  
12 under RCW 9A.46.110, harassment under RCW 9A.46.020, or communicating  
13 with a minor for immoral purposes under RCW 9.68A.090, or adjudicated  
14 guilty of an equivalent juvenile offense, on or after the effective  
15 date of this act; and to all adults and juveniles who were convicted or  
16 adjudicated guilty of such an offense before the effective date of this  
17 act and are still incarcerated on or after the effective date of this  
18 act.

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

23 (6) The detention, arrest, or conviction of a person based upon a  
24 data base match or data base information is not invalidated if it is  
25 determined that the sample was obtained or placed in the data base by  
26 mistake, or if the conviction or juvenile adjudication that resulted in  
27 the collection of the biological sample was subsequently vacated or  
28 otherwise altered in any future proceeding including but not limited to  
29 posttrial or postfact-finding motions, appeals, or collateral attacks.

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

32 The Washington state patrol shall consult with the forensic  
33 investigations council and adopt rules to implement RCW 43.43.752  
34 through 43.43.758. The rules shall prohibit the use of DNA  
35 identification data for any research or other purpose that is not  
36 related to a criminal investigation, to the identification of human  
37 remains or missing persons, or to improving the operation of the system  
38 authorized by RCW 43.43.752 through 43.43.758. The rules must also

1 identify appropriate sources and collection methods for biological  
2 samples needed for purposes of DNA identification analysis.

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

5 Every sentence imposed under chapter 9.94A RCW, for a felony  
6 specified in RCW 43.43.754 that is committed on or after the effective  
7 date of this act, must include a fee of one hundred dollars for  
8 collection of a biological sample as required under RCW 43.43.754,  
9 unless the court finds that imposing the fee would result in undue  
10 hardship on the offender. The fee is a court-ordered legal financial  
11 obligation as defined in RCW 9.94A.030, payable by the offender after  
12 payment of all other legal financial obligations included in the  
13 sentence has been completed. The clerk of the court shall transmit  
14 fees collected to the state treasurer for deposit in the state DNA data  
15 base account created under section 5 of this act.

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

18 The state DNA data base account is created in the custody of the  
19 state treasurer. All receipts under section 4 of this act must be  
20 deposited into the account. Expenditures from the account may be used  
21 only for creation, operation, and maintenance of the DNA data base  
22 under RCW 43.43.754. Only the chief of the Washington state patrol or  
23 the chief's designee may authorize expenditures from the account. The  
24 account is subject to allotment procedures under chapter 43.88 RCW, but  
25 an appropriation is not required for expenditures.

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

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

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

32 (i) Unless another term of confinement applies, the court shall  
33 impose a sentence within the standard sentence range established in RCW  
34 9.94A.510;

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

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

- 1 (iv) RCW 9.94A.545, relating to community custody for offenders  
2 whose term of confinement is one year or less;  
3 (v) RCW 9.94A.570, relating to persistent offenders;  
4 (vi) RCW 9.94A.540, relating to mandatory minimum terms;  
5 (vii) RCW 9.94A.650, relating to the first-time offender waiver;  
6 (viii) RCW 9.94A.660, relating to the drug offender sentencing  
7 alternative;  
8 (ix) RCW 9.94A.670, relating to the special sex offender sentencing  
9 alternative;  
10 (x) RCW 9.94A.712, relating to certain sex offenses;  
11 (xi) RCW 9.94A.535, relating to exceptional sentences;  
12 (xii) RCW 9.94A.589, relating to consecutive and concurrent  
13 sentences.

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

24 (3) If the court imposes a sentence requiring confinement of thirty  
25 days or less, the court may, in its discretion, specify that the  
26 sentence be served on consecutive or intermittent days. A sentence  
27 requiring more than thirty days of confinement shall be served on  
28 consecutive days. Local jail administrators may schedule court-ordered  
29 intermittent sentences as space permits.

30 (4) If a sentence imposed includes payment of a legal financial  
31 obligation, it shall be imposed as provided in RCW 9.94A.750,  
32 9.94A.753, ~~((and))~~ 9.94A.760, and section 4 of this act.

33 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a  
34 court may not impose a sentence providing for a term of confinement or  
35 community supervision, community placement, or community custody which  
36 exceeds the statutory maximum for the crime as provided in chapter  
37 9A.20 RCW.

38 (6) The sentencing court shall give the offender credit for all  
39 confinement time served before the sentencing if that confinement was

1 solely in regard to the offense for which the offender is being  
2 sentenced.

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

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

8 (9) The court may order an offender whose sentence includes  
9 community placement or community supervision to undergo a mental status  
10 evaluation and to participate in available outpatient mental health  
11 treatment, if the court finds that reasonable grounds exist to believe  
12 that the offender is a mentally ill person as defined in RCW 71.24.025,  
13 and that this condition is likely to have influenced the offense. An  
14 order requiring mental status evaluation or treatment must be based on  
15 a presentence report and, if applicable, mental status evaluations that  
16 have been filed with the court to determine the offender's competency  
17 or eligibility for a defense of insanity. The court may order  
18 additional evaluations at a later date if deemed appropriate.

19 (10) In any sentence of partial confinement, the court may require  
20 the offender to serve the partial confinement in work release, in a  
21 program of home detention, on work crew, or in a combined program of  
22 work crew and home detention.

23 (11) In sentencing an offender convicted of a crime of domestic  
24 violence, as defined in RCW 10.99.020, if the offender has a minor  
25 child, or if the victim of the offense for which the offender was  
26 convicted has a minor child, the court may, as part of any term of  
27 community supervision, community placement, or community custody, order  
28 the offender to participate in a domestic violence perpetrator program  
29 approved under RCW 26.50.150.

30 NEW SECTION. **Sec. 7.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 8.** Section 1 of this act is added to chapter  
35 43.43 RCW.

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

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