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HOUSE BILL 1135

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives Miloscia, O'Brien, Kirby, Clibborn, Chase, P. Sullivan and McIntire

Read first time 01/17/2005.            Referred to Committee on Criminal Justice & Corrections.

1            AN ACT Relating to expansion of the DNA identification system;  
2 amending RCW 43.43.735, 43.43.754, 43.43.7532, and 46.63.110; adding a  
3 new section to chapter 43.43 RCW; adding a new section to chapter 9.94A  
4 RCW; and prescribing penalties.

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

6            **Sec. 1.** RCW 43.43.735 and 1991 c 3 s 297 are each amended to read  
7 as follows:

8            (1) It shall be the duty of the sheriff or director of public  
9 safety of every county, and the chief of police of every city or town,  
10 and of every chief officer of other law enforcement agencies duly  
11 operating within this state, to cause the photographing and  
12 fingerprinting of all adults and juveniles lawfully arrested for the  
13 commission of any criminal offense constituting a felony or gross  
14 misdemeanor. (a) When such juveniles are brought directly to a  
15 juvenile detention facility, the juvenile court administrator is also  
16 authorized, but not required, to cause the photographing,  
17 fingerprinting, and record transmittal to the appropriate law  
18 enforcement agency; and (b) a further exception may be made when the

1 arrest is for a violation punishable as a gross misdemeanor and the  
2 arrested person is not taken into custody.

3 (2)(a) Beginning January 1, 2006, it is the duty of the sheriff or  
4 director of public safety of every county, and the chief of police of  
5 every city or town, and of every chief officer of other law enforcement  
6 agencies duly operating within this state, to cause the collection of  
7 biological samples for DNA identification analysis from all adults and  
8 juveniles lawfully arrested for the commission of any criminal offense  
9 constituting a felony, gross misdemeanor, or patronizing a prostitute  
10 under RCW 9A.88.110.

11 (b) Biological samples collected under this subsection shall be:

12 (i) Collected using the same technique biological samples are  
13 collected under RCW 43.43.754;

14 (ii) Forwarded to the forensic laboratory services bureau of the  
15 Washington state patrol for inclusion in the DNA identification system  
16 established under RCW 43.43.752 through 43.43.759; and

17 (iii) Used solely for the purposes of inclusion in the DNA  
18 identification system established under RCW 43.43.752 through  
19 43.43.759.

20 (c) This subsection applies to all adults and juveniles who are  
21 arrested on or after January 1, 2006.

22 (d) This subsection shall not apply unless local law enforcement  
23 agencies are reimbursed for biological sample collection costs as  
24 provided for under RCW 43.43.7532.

25 (3) It shall be the right, but not the duty, of the sheriff or  
26 director of public safety of every county, and the chief of police of  
27 every city or town, and every chief officer of other law enforcement  
28 agencies operating within this state to photograph and record the  
29 fingerprints of all adults lawfully arrested, all persons who are the  
30 subject of dependency record information, or all persons who are the  
31 subject of protection proceeding record information.

32 ((+3+)) (4) Such sheriffs, directors of public safety, chiefs of  
33 police, and other chief law enforcement officers, may record, in  
34 addition to photographs and fingerprints, the palmprints, soleprints,  
35 toeprints, or any other identification data of all persons whose  
36 photograph and fingerprints are required or allowed to be taken under  
37 this section, all persons who are the subject of dependency record  
38 information, or all persons who are the subject of protection

1 proceeding record information, when in the discretion of such law  
2 enforcement officers it is necessary for proper identification of the  
3 arrested person or the investigation of the crime with which he is  
4 charged.

5 ((+4)) (5) It shall be the duty of the department of health or the  
6 court having jurisdiction over the dependency action and protection  
7 proceedings under chapter 74.34 RCW to cause the fingerprinting of all  
8 persons who are the subject of a disciplinary board final decision,  
9 dependency record information, protection proceeding record  
10 information, or to obtain other necessary identifying information, as  
11 specified by the section in rules adopted under chapter 34.05 RCW to  
12 carry out the provisions of this subsection.

13 ((+5)) (6) The court having jurisdiction over the dependency or  
14 protection proceeding action may obtain and record, in addition to  
15 fingerprints, the photographs, palmprints, soleprints, toeprints, or  
16 any other identification data of all persons who are the subject of  
17 dependency record information or protection proceeding record  
18 information, when in the discretion of the court it is necessary for  
19 proper identification of the person.

20 **Sec. 2.** RCW 43.43.754 and 2002 c 289 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~~)  
25 gross misdemeanor, or patronizing a prostitute under RCW 9A.88.110, or  
26 adjudicated guilty of an equivalent juvenile offense, must have a  
27 biological sample collected for purposes of DNA identification analysis  
28 unless a biological sample has already been collected from the adult or  
29 juvenile under RCW 43.43.735(2). The biological sample shall be  
30 collected in the following manner:

31 (a) For persons convicted of such offenses or adjudicated guilty of  
32 an equivalent juvenile offense who do not serve a term of confinement  
33 in a department of corrections facility, and do serve a term of  
34 confinement in a city or county jail facility, the city or county shall  
35 be responsible for obtaining the biological samples either as part of  
36 the intake process into the city or county jail or detention facility  
37 for those persons convicted on or after July 1, 2002, or within a

1 reasonable time after July 1, 2002, for those persons incarcerated  
2 before July 1, 2002, who have not yet had a biological sample  
3 collected, beginning with those persons who will be released the  
4 soonest.

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

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

21 (2)(a) Any biological sample taken pursuant to RCW 43.43.735 and  
22 sent to the forensic laboratory services bureau shall be analyzed  
23 unless a searchable DNA profile for the offender has previously been  
24 entered in the DNA profile system. The searchable DNA profile shall be  
25 entered into the DNA identification system only after the accused has  
26 been charged for the offense. The original biological sample shall be  
27 retained through the disposition of the underlying criminal case that  
28 caused the biological sample to be taken.

29 (b) Upon conviction, the biological sample and searchable DNA  
30 profile shall remain in the DNA identification system.

31 (c) The biological sample shall be destroyed and the DNA profile  
32 shall be removed from the DNA identification system if:

33 (i) Following arrest, the accused is not charged within the  
34 applicable charging period;

35 (ii) The accused has been found not guilty or has been acquitted of  
36 any offense that would require a biological sample to be collected  
37 under RCW 43.43.735; or

1        (iii) The underlying conviction or adjudication serving as the  
2 basis for taking the biological sample has been reversed and the case  
3 dismissed.

4        (3) The searchable DNA profile shall be sent to the federal bureau  
5 of investigation for a one-time keyboard search but may be entered in  
6 the combined DNA index system only after the accused has been found  
7 guilty and all right of appeal has lapsed, been waived, or been  
8 exhausted.

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

17        (3)) and sent to the forensic laboratory services bureau shall be  
18 analyzed and the searchable DNA profile shall be entered into the DNA  
19 identification system unless a searchable DNA profile for the offender  
20 has previously been entered in the DNA profile system.

21        (5) Any biological sample taken pursuant to RCW 43.43.735 and  
22 43.43.752 through 43.43.758 shall be used solely for the purpose of  
23 providing DNA or other tests for identification analysis and  
24 prosecution of a criminal offense or for the identification of human  
25 remains or missing persons. Nothing in this section prohibits the  
26 submission of results derived from the biological samples to the  
27 federal bureau of investigation combined DNA index system.

28        (6) The director of the forensic laboratory services bureau of the  
29 Washington state patrol shall perform testing on all biological samples  
30 collected under subsection (1) of this section, to the extent allowed  
31 by funding available for this purpose. The director shall give  
32 priority to testing on samples collected from those adults or juveniles  
33 convicted of a felony or adjudicated guilty of an equivalent juvenile  
34 offense that is defined as a sex offense or a violent offense in RCW  
35 9.94A.030.

36        ((+4)) (7) This section applies to all adults who are convicted of  
37 a sex or violent offense after July 1, 1990; and to all adults who were  
38 convicted of a sex or violent offense on or prior to July 1, 1990, and

1 who are still incarcerated on or after July 25, 1999. This section  
2 applies to all juveniles who are adjudicated guilty of a sex or violent  
3 offense after July 1, 1994; and to all juveniles who were adjudicated  
4 guilty of a sex or violent offense on or prior to July 1, 1994, and who  
5 are still incarcerated on or after July 25, 1999. This section applies  
6 to all adults and juveniles who are convicted of a felony other than a  
7 sex or violent offense, stalking under RCW 9A.46.110, harassment under  
8 RCW 9A.46.020, or communicating with a minor for immoral purposes under  
9 RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,  
10 on or after July 1, 2002; and to all adults and juveniles who were  
11 convicted or adjudicated guilty of such an offense before July 1, 2002,  
12 and are still incarcerated on or after July 1, 2002. This section  
13 applies to all adults and juveniles who are convicted of a felony,  
14 gross misdemeanor, or patronizing a prostitute on or after the  
15 effective date of this act; and to all adults and juveniles who were  
16 convicted or adjudicated guilty of such an offense before the effective  
17 date of this act, and are still incarcerated on or after the effective  
18 date of this act.

19 ((+5)) (8) This section creates no rights in a third person. No  
20 cause of action may be brought based upon the noncollection or  
21 nonanalysis or the delayed collection or analysis of a biological  
22 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

23 ((+6)) (9) The detention, arrest, or conviction of a person based  
24 upon a data base match or data base information is not invalidated if  
25 it is determined that the sample was obtained or placed in the data  
26 base by mistake, or if the conviction or juvenile adjudication that  
27 resulted in the collection of the biological sample was subsequently  
28 vacated or otherwise altered in any future proceeding including but not  
29 limited to posttrial or postfact-finding motions, appeals, or  
30 collateral attacks.

31 **Sec. 3.** RCW 43.43.7532 and 2002 c 289 s 5 are each amended to read  
32 as follows:

33 (1) The state DNA data base account is created in the custody of  
34 the state treasurer. All receipts under RCW 43.43.7541, 46.63.110(9),  
35 and section 6 of this act must be deposited into the account.  
36 Expenditures from the account may be used only for:

1       (a) Creation, operation, and maintenance of the DNA data base under  
2 RCW 43.43.754;

3       (b) Biological sample analysis for samples taken under RCW  
4 43.43.735 and 43.43.754;

5       (c) Biological sample collection costs, which include reimbursing  
6 local law enforcement for collecting biological samples under RCW  
7 43.43.735 and 43.43.754. These costs shall include expenditures for  
8 DNA collection kits, postage, training, and the extra time necessary to  
9 collect the biological sample;

10       (d) Costs related to identifying and destroying biological samples  
11 as required under RCW 43.43.754(2);

12       (e) Costs related to developing and implementing a system that can  
13 identify which individuals already have DNA profiles on the data base;  
14 and

15       (f) Costs relating to testing crime scene DNA evidence.

16       (2) Only the chief of the Washington state patrol or the chief's  
17 designee may authorize expenditures from the account. The account is  
18 subject to allotment procedures under chapter 43.88 RCW, but an  
19 appropriation is not required for expenditures. The chief shall make  
20 reimbursing local law enforcement for their biological sample  
21 collection costs under subsection (1)(c) of this section a priority  
22 expenditure for the funds received in the account.

23       (3) Beginning in 2010, the chief of the Washington state patrol is  
24 authorized to proportionately redistribute account surpluses back to  
25 the local governments that contributed to the account. The local  
26 governments shall only use the surplus funds for forensic DNA related  
27 programs, such as training, DNA collection, and other programs that  
28 encourage the utilization of DNA to solve and prevent crimes.

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

31       (1) Any biological sample taken pursuant to RCW 43.43.735 or  
32 43.43.752 through 43.43.758 shall be used solely for the purpose of  
33 providing DNA or other tests for identification analysis and  
34 prosecution of a criminal offense, or for the identification of human  
35 remains or missing persons.

36       (2) Any person who prevails in a court action seeking damages for  
37 misuse or unauthorized retention of a biological sample or DNA profile

1 under this section or for violation of RCW 43.43.754(2) (b) or (c)  
2 shall be awarded all costs, including reasonable attorney fees,  
3 incurred in connection with the action. In addition, the court shall  
4 award not less than one thousand dollars total or ten dollars for each  
5 day of the violation, whichever is greater.

6 **Sec. 5.** RCW 46.63.110 and 2003 c 380 s 2 are each amended to read  
7 as follows:

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

12 (2) The monetary penalty for a violation of RCW 46.55.105(2) is two  
13 hundred fifty dollars for each offense. No penalty assessed under this  
14 subsection (2) may be reduced.

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

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

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

36 (6) Whenever a monetary penalty is imposed by a court under this  
37 chapter it is immediately payable. If the person is unable to pay at



1 that time the court may, in its discretion, grant an extension of the  
2 period in which the penalty may be paid. If the penalty is not paid on  
3 or before the time established for payment the court shall notify the  
4 department of the failure to pay the penalty, and the department shall  
5 suspend the person's driver's license or driving privilege until the  
6 penalty has been paid and the penalty provided in subsection (4) of  
7 this section has been paid.

8 (7) In addition to any other penalties imposed under this section  
9 and not subject to the limitation of subsection (1) of this section, a  
10 person found to have committed a traffic infraction shall be assessed  
11 a fee of five dollars per infraction. Under no circumstances shall  
12 this fee be reduced or waived. Revenue from this fee shall be  
13 forwarded to the state treasurer for deposit in the emergency medical  
14 services and trauma care system trust account under RCW 70.168.040.

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

25 (b) Eight dollars and fifty cents of the additional penalty under  
26 (a) of this subsection shall be remitted to the state treasurer. The  
27 remaining revenue from the additional penalty must be remitted under  
28 chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted  
29 under this subsection to the state treasurer must be deposited as  
30 provided in RCW 43.08.250. The balance of the revenue received by the  
31 county or city treasurer under this subsection must be deposited into  
32 the county or city current expense fund. Moneys retained by the city  
33 or county under this subsection shall constitute reimbursement for any  
34 liabilities under RCW 43.135.060.

35 (9) In addition to any other penalties imposed under this section  
36 and not subject to the limitation of subsection (1) of this section, a  
37 person found to have committed a traffic infraction other than a  
38 parking offense shall be assessed a penalty assessment equal to five

1 percent of the monetary penalty prescribed in the schedule adopted  
2 under subsection (3) of this section per infraction. Under no  
3 circumstances shall this assessment be reduced or waived. Revenue from  
4 this assessment shall be forwarded to the state treasurer for deposit  
5 in the DNA data base account under RCW 43.43.7532.

6 NEW SECTION. Sec. 6. A new section is added to chapter 9.94A RCW  
7 to read as follows:

8 When any person is found guilty in any superior court of having  
9 committed a crime, there shall be imposed by the court upon such  
10 convicted person a penalty assessment. The assessment shall be in  
11 addition to any other penalty or fine imposed by law and shall be equal  
12 to ten percent of the penalty or fine imposed for each conviction of a  
13 crime. Revenue from this assessment shall be forwarded to the state  
14 treasurer for deposit in the DNA data base account under RCW  
15 43.43.7532.

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