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**SUBSTITUTE SENATE BILL 5165**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Kline, Brandland, Roach, Stevens, Regala, Shin, Keiser, McCaslin and Thibaudeau)

READ FIRST TIME 02/25/05.

1 AN ACT Relating to expansion of the DNA identification system;  
2 amending RCW 43.43.754 and 43.43.7532; and prescribing penalties.

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

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

6 (1) Every adult or juvenile individual convicted of a felony,  
7 (~~stalking under RCW 9A.46.110, harassment under RCW 9A.46.020,~~  
8 ~~communicating with a minor for immoral purposes under RCW 9.68A.090~~)  
9 a gross misdemeanor if the offender has a criminal history that  
10 includes a felony committed within the last ten years prior to the  
11 current conviction, one of the following offenses: RCW 9A.36.041,  
12 9A.44.096, 9A.44.170, 9A.46.020, 9A.46.110, 9A.88.010, 26.44.080,  
13 26.50.110, or adjudicated guilty of an equivalent juvenile offense,  
14 must have a biological sample collected for purposes of DNA  
15 identification analysis in the following manner:

16 (a) For persons convicted of such offenses or adjudicated guilty of  
17 an equivalent juvenile offense who do not serve a term of confinement  
18 in a department of corrections facility, and do serve a term of  
19 confinement in a city or county jail facility, the city or county shall

1 be responsible for obtaining the biological samples either as part of  
2 the intake process into the city or county jail or detention facility  
3 for those persons convicted on or after July 1, 2002, or within a  
4 reasonable time after July 1, 2002, for those persons incarcerated  
5 before July 1, 2002, who have not yet had a biological sample  
6 collected, beginning with those persons who will be released the  
7 soonest.

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

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

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

32 (3) The director of the forensic laboratory services bureau of the  
33 Washington state patrol shall perform testing on all biological samples  
34 collected under subsection (1) of this section, to the extent allowed  
35 by funding available for this purpose. The director shall give  
36 priority to testing on samples collected from those adults or juveniles  
37 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 other than a  
12 sex or violent offense, stalking under RCW 9A.46.110, harassment under  
13 RCW 9A.46.020, or communicating with a minor for immoral purposes under  
14 RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,  
15 on or after July 1, 2002; and to all adults and juveniles who were  
16 convicted or adjudicated guilty of such an offense before July 1, 2002,  
17 and are still incarcerated on or after July 1, 2002. This section  
18 applies to all adults and juveniles who are convicted of a felony, a  
19 gross misdemeanor if the offender has a criminal history that includes  
20 a felony committed within the last ten years prior to the current  
21 conviction, or one of the following offenses: RCW 9A.36.041,  
22 9A.44.096, 9A.44.170, 9A.46.020, 9A.46.110, 9A.88.010, 26.44.080,  
23 26.50.110, on or after the effective date of this act; and to all  
24 adults and juveniles who were convicted or adjudicated guilty of such  
25 an offense before the effective date of this act, and are still  
26 incarcerated on or after the effective date of this act.

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

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

1       **Sec. 2.** RCW 43.43.7532 and 2002 c 289 s 5 are each amended to read  
2 as follows:

3       (1) The state DNA data base account is created in the custody of  
4 the state treasurer. All receipts under RCW 43.43.7541 must be  
5 deposited into the account. Expenditures from the account may be used  
6 only for:

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

9       (b) Biological sample analysis for samples taken under RCW  
10 43.43.754;

11       (c) Biological sample collection costs, which include reimbursing  
12 local law enforcement for collecting biological samples under RCW  
13 43.43.754. These costs shall include expenditures for DNA collection  
14 kits, postage, training, and the extra time necessary to collect the  
15 biological sample;

16       (d) Costs related to identifying biological samples as required  
17 under RCW 43.43.754(2);

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

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

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

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

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