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**SUBSTITUTE HOUSE BILL 1382**

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**State of Washington                      61st Legislature                      2009 Regular Session**

**By** House Public Safety & Emergency Preparedness (originally sponsored by Representatives Miloscia, Hurst, O'Brien, and Kelley)

READ FIRST TIME 02/20/09.

1            AN ACT Relating to expansion of the DNA identification system;  
2 amending RCW 43.43.735 and 43.43.754; adding a new section to chapter  
3 43.43 RCW; adding a new section to chapter 9.91 RCW; and prescribing  
4 penalties.

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

6            **Sec. 1.** RCW 43.43.735 and 2006 c 294 s 6 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, 2010, 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  
8 lawfully arrested for the commission of any criminal offense  
9 constituting a most serious offense under RCW 9.94A.030, a sex offense  
10 under chapter 9A.44 RCW, or any of the following crimes:

11 Assault in the fourth degree with sexual motivation (RCW 9A.36.041,  
12 9.94A.835)

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

14 Harassment (RCW 9A.46.020)

15 Patronizing a prostitute (RCW 9A.88.110)

16 Stalking (RCW 9A.46.110)

17 Violation of a sexual assault protection order granted under  
18 chapter 7.90 RCW.

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

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

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

25 (iii) Used solely for the purposes of inclusion in the DNA  
26 identification system established under RCW 43.43.752 through  
27 43.43.759.

28 (c) This subsection applies to all adults arrested on or after  
29 January 1, 2010.

30 (d) This subsection does not apply unless:

31 (i) Federal funding is provided to the state to reimburse local  
32 governments and the Washington state patrol for the cost of biological  
33 sample collection and testing under this subsection; and

34 (ii) The chief of the Washington state patrol notifies the sheriff  
35 or director of public safety of every county, the chief of police of  
36 every city or town, and every chief officer of other law enforcement  
37 agencies operating within this state that funds are available to

1 reimburse the costs of collection of biological samples for DNA  
2 identification analysis.

3 (3) It shall be the right, but not 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 every chief officer of other law enforcement  
6 agencies operating within this state to photograph and record the  
7 fingerprints of all adults lawfully arrested.

8 ((+3+)) (4) Such sheriffs, directors of public safety, chiefs of  
9 police, and other chief law enforcement officers, may record, in  
10 addition to photographs and fingerprints, the palmprints, soleprints,  
11 toeprints, or any other identification data of all persons whose  
12 photograph and fingerprints are required or allowed to be taken under  
13 this section when in the discretion of such law enforcement officers it  
14 is necessary for proper identification of the arrested person or the  
15 investigation of the crime with which he is charged.

16 **Sec. 2.** RCW 43.43.754 and 2008 c 97 s 2 are each amended to read  
17 as follows:

18 (1) A biological sample must be collected for purposes of DNA  
19 identification analysis from:

20 (a) Every adult or juvenile individual convicted of a felony, or  
21 any of the following crimes (or equivalent juvenile offenses):

22 Assault in the fourth degree with sexual motivation (RCW 9A.36.041,  
23 9.94A.835)

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 (RCW 9A.44.130)

27 Harassment (RCW 9A.46.020)

28 Patronizing a prostitute (RCW 9A.88.110)

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

30 Stalking (RCW 9A.46.110)

31 Violation of a sexual assault protection order granted under  
32 chapter 7.90 RCW; and

33 (b) Every adult or juvenile individual who is required to register  
34 under RCW 9A.44.130.

35 (2) If the Washington state patrol crime laboratory already has a  
36 DNA sample from an individual for a qualifying offense, a subsequent  
37 submission is not required to be submitted.

1 (3) Biological samples shall be collected in the following manner:

2 (a) For persons convicted of any offense listed in subsection  
3 (1)(a) of this section or adjudicated guilty of an equivalent juvenile  
4 offense who do not serve a term of confinement in a department of  
5 corrections facility, and do serve a term of confinement in a city or  
6 county jail facility, the city or county shall be responsible for  
7 obtaining the biological samples.

8 (b) The local police department or sheriff's office shall be  
9 responsible for obtaining the biological samples for:

10 (i) Persons convicted of any offense listed in subsection (1)(a) of  
11 this section or adjudicated guilty of an equivalent juvenile offense  
12 who do not serve a term of confinement in a department of corrections  
13 facility, and do not serve a term of confinement in a city or county  
14 jail facility; and

15 (ii) Persons who are required to register under RCW (~~9A.44.030~~)  
16 9A.44.130.

17 (c) For persons convicted of any offense listed in subsection  
18 (1)(a) of this section or adjudicated guilty of an equivalent juvenile  
19 offense, who are serving or who are to serve a term of confinement in  
20 a department of corrections facility or a department of social and  
21 health services facility, the facility holding the person shall be  
22 responsible for obtaining the biological samples. For those persons  
23 incarcerated before June 12, 2008, who have not yet had a biological  
24 sample collected, priority shall be given to those persons who will be  
25 released the soonest.

26 (4)(a) Any biological sample taken pursuant to RCW 43.43.735 and  
27 43.43.752 through 43.43.758 (~~(may be retained by the forensic~~  
28 ~~laboratory services bureau, and)~~) and sent to the forensic laboratory  
29 services bureau shall be analyzed unless a searchable DNA profile for  
30 the offender has previously been entered in the DNA profile system.  
31 The searchable DNA profile shall be entered into the DNA identification  
32 system only after the accused has been charged for the offense. The  
33 original biological sample shall be retained through the disposition of  
34 the underlying criminal case that caused the biological sample to be  
35 taken.

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

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

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

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

8 (iii) The underlying conviction or adjudication serving as the  
9 basis for taking the biological sample has been reversed and the case  
10 dismissed.

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

16 (6) Any biological sample taken pursuant to RCW 43.43.735 and  
17 43.43.752 shall be used solely for the purpose of providing DNA or  
18 other tests for identification analysis and prosecution of a criminal  
19 offense or for the identification of human remains or missing persons.  
20 Nothing in this section prohibits the submission of results derived  
21 from the biological samples to the federal bureau of investigation  
22 combined DNA index system.

23 ~~((+5))~~ (7) The forensic laboratory services bureau of the  
24 Washington state patrol is responsible for testing performed on all  
25 biological samples that are collected under subsection (1) of this  
26 section, to the extent allowed by funding available for this purpose.  
27 The director shall give priority to testing on samples collected from  
28 those adults or juveniles convicted of a felony or adjudicated guilty  
29 of an equivalent juvenile offense that is defined as a sex offense or  
30 a violent offense in RCW 9.94A.030. Known duplicate samples may be  
31 excluded from testing unless testing is deemed necessary or advisable  
32 by the director.

33 ~~((+6))~~ (8) This section applies to:

34 (a) All adults and juveniles to whom this section applied prior to  
35 June 12, 2008;

36 (b) All adults and juveniles to whom this section did not apply  
37 prior to June 12, 2008, who:

1 (i) Are convicted on or after June 12, 2008, of an offense listed  
2 in subsection (1)(a) of this section; or

3 (ii) Were convicted prior to June 12, 2008, of an offense listed in  
4 subsection (1)(a) of this section and are still incarcerated on or  
5 after June 12, 2008; and

6 (c) All adults and juveniles who are required to register under RCW  
7 9A.44.130 on or after June 12, 2008, whether convicted before, on, or  
8 after June 12, 2008.

9 ~~((7))~~ (9) This section creates no rights in a third person. No  
10 cause of action may be brought based upon the noncollection or  
11 nonanalysis or the delayed collection or analysis of a biological  
12 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

13 ~~((8))~~ (10) The detention, arrest, or conviction of a person based  
14 upon a database match or database information is not invalidated if it  
15 is determined that the sample was obtained or placed in the database by  
16 mistake, or if the conviction or juvenile adjudication that resulted in  
17 the collection of the biological sample was subsequently vacated or  
18 otherwise altered in any future proceeding including but not limited to  
19 posttrial or postfact-finding motions, appeals, or collateral attacks.

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

22 (1) Any biological sample taken pursuant to RCW 43.43.735 or  
23 43.43.752 through 43.43.758 shall be used solely for the purpose of  
24 providing DNA or other tests for identification analysis and  
25 prosecution of a criminal offense, or for the identification of human  
26 remains or missing persons.

27 (2) Any person who prevails in a court action seeking damages for  
28 misuse or unauthorized retention of a biological sample or DNA profile  
29 under this section or for violation of RCW 43.43.754 (4)(b) or (c)  
30 shall be awarded all costs, including reasonable attorneys' fees,  
31 incurred in connection with the action. In addition, the court shall  
32 award not less than one thousand dollars total or ten dollars for each  
33 day of the violation, whichever is greater.

34 NEW SECTION. Sec. 4. A new section is added to chapter 9.91 RCW  
35 to read as follows:

1           (1) Any misuse or unauthorized retention of a biological sample or  
2 DNA profile taken pursuant to RCW 43.43.735 or 43.43.752 through  
3 43.43.758 is a class C felony.

4           (2) For the purposes of this section, "misuse" means any purpose  
5 other than providing DNA or other tests for identification analysis and  
6 prosecution of a criminal offense, or for the identification of human  
7 remains or missing persons.

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