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**SUBSTITUTE HOUSE BILL 2331**

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**State of Washington                      65th Legislature                      2018 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Orwall, Griffey, Goodman, Jenkins, Muri, Kilduff, Klippert, Fey, Kagi, Lovick, Appleton, and Doglio)

READ FIRST TIME 02/02/18.

1            AN ACT Relating to DNA biological samples; and amending RCW  
2 43.43.754.

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

4            **Sec. 1.** RCW 43.43.754 and 2017 c 272 s 4 are each amended to  
5 read as follows:

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

8            (a) Every adult or juvenile individual convicted of a felony, or  
9 any of the following crimes (or equivalent juvenile offenses), or an  
10 equivalent municipal offense where the municipal prosecuting  
11 authority certifies at the time of sentencing that the municipal  
12 offense conviction is equivalent to the following crimes:

13            (i) Assault in the fourth degree where domestic violence as  
14 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,  
15 9.94A.030);

16            (ii) Assault in the fourth degree with sexual motivation (RCW  
17 9A.36.041, 9.94A.835);

18            (iii) Communication with a minor for immoral purposes (RCW  
19 9.68A.090);

20            (iv) Custodial sexual misconduct in the second degree (RCW  
21 9A.44.170);

1 (v) Failure to register (RCW 9A.44.130 for persons convicted on  
2 or before June 10, 2010, and RCW 9A.44.132 for persons convicted  
3 after June 10, 2010);

4 (vi) Harassment (RCW 9A.46.020);

5 (vii) Patronizing a prostitute (RCW 9A.88.110);

6 (viii) Sexual misconduct with a minor in the second degree (RCW  
7 9A.44.096);

8 (ix) Stalking (RCW 9A.46.110);

9 (x) Violation of a sexual assault protection order granted under  
10 chapter 7.90 RCW; and

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

13 (2) A municipal jurisdiction may submit any biological sample  
14 collected prior to the effective date of this section to the forensic  
15 laboratory services bureau of the Washington state patrol for  
16 purposes of DNA identification analysis when:

17 (a) The sample was collected upon conviction for a municipal  
18 offense that is equivalent to an offense listed in subsection (1)(a)  
19 of this section;

20 (b) The equivalent offense listed in subsection (1)(a) of this  
21 section was an offense for which collection of a biological sample  
22 was required under this section at the time of the conviction; and

23 (c) The sample was collected on or after June 12, 2008, as a  
24 requirement of the relevant municipal ordinance.

25 (3) If the Washington state patrol crime laboratory already has a  
26 DNA sample from an individual for a qualifying offense, a subsequent  
27 submission is not required to be submitted.

28 ((+3)) (4) Biological samples shall be collected in the  
29 following manner:

30 (a) For persons convicted of any offense listed in subsection  
31 (1)(a) of this section or an equivalent municipal offense, or  
32 adjudicated guilty of an equivalent juvenile offense, who do not  
33 serve a term of confinement in a department of corrections facility,  
34 and do serve a term of confinement in a city or county jail facility,  
35 the city or county shall be responsible for obtaining the biological  
36 samples.

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

39 (i) Persons convicted of any offense listed in subsection (1)(a)  
40 of this section or an equivalent municipal offense, or adjudicated

1 guilty of an equivalent juvenile offense, who do not serve a term of  
2 confinement in a department of corrections facility, and do not serve  
3 a term of confinement in a city or county jail facility; and

4 (ii) Persons who are required to register under RCW 9A.44.130.

5 (c) For persons convicted of any offense listed in subsection  
6 (1)(a) of this section or an equivalent municipal offense, or  
7 adjudicated guilty of an equivalent juvenile offense, who are serving  
8 or who are to serve a term of confinement in a department of  
9 corrections facility or a department of social and health services  
10 facility, the facility holding the person shall be responsible for  
11 obtaining the biological samples. For those persons incarcerated  
12 before June 12, 2008, who have not yet had a biological sample  
13 collected, priority shall be given to those persons who will be  
14 released the soonest.

15 ~~((+4))~~ (5) Any biological sample taken pursuant to RCW 43.43.752  
16 through 43.43.758, or submitted under subsection (2) of this section,  
17 may be retained by the forensic laboratory services bureau, and shall  
18 be used solely for the purpose of providing DNA or other tests for  
19 identification analysis and prosecution of a criminal offense or for  
20 the identification of human remains or missing persons. Nothing in  
21 this section prohibits the submission of results derived from the  
22 biological samples to the federal bureau of investigation combined  
23 DNA index system.

24 ~~((+5))~~ (6) The forensic laboratory services bureau of the  
25 Washington state patrol is responsible for testing performed on all  
26 biological samples that are collected under subsection (1) of this  
27 section, or submitted under subsection (2) of this section, to the  
28 extent allowed by funding available for this purpose. The director  
29 shall give priority to testing on samples collected from those adults  
30 or juveniles convicted of a felony or adjudicated guilty of an  
31 equivalent juvenile offense that is defined as a sex offense or a  
32 violent offense in RCW 9.94A.030. Known duplicate samples may be  
33 excluded from testing unless testing is deemed necessary or advisable  
34 by the director.

35 ~~((+6))~~ (7) When submitting a biological sample to the forensic  
36 laboratory services bureau of the Washington state patrol that was  
37 collected as a result of a conviction under an equivalent municipal  
38 offense under subsection (1)(a) of this section, or submitted under  
39 subsection (2) of this section, the submitting agency or department  
40 shall include a signed affidavit from the municipal prosecuting

1 authority of the jurisdiction in which the conviction occurred  
2 specifying the state crime to which the municipal offense is  
3 equivalent.

4 (8) This section applies to:

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

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

9 (i) Are convicted on or after June 12, 2008, of an offense  
10 ~~((listed in))~~ qualifying under subsection (1)(a) of this section on  
11 the date of conviction; or

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

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

18 (d) All adults for whom a sample was submitted under subsection  
19 (2) of this section.

20 ~~((+7))~~ (9) This section creates no rights in a third person. No  
21 cause of action may be brought based upon the noncollection or  
22 nonanalysis or the delayed collection or analysis of a biological  
23 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

24 ~~((+8))~~ (10) The detention, arrest, or conviction of a person  
25 based upon a database match or database information is not  
26 invalidated if it is determined that the sample was obtained or  
27 placed in the database by mistake, or if the conviction or juvenile  
28 adjudication that resulted in the collection of the biological sample  
29 was subsequently vacated or otherwise altered in any future  
30 proceeding including but not limited to posttrial or postfact-finding  
31 motions, appeals, or collateral attacks. No cause of action may be  
32 brought against the state based upon the analysis of a biological  
33 sample authorized to be taken pursuant to a municipal ordinance if  
34 the conviction or adjudication that resulted in the collection of the  
35 biological sample was subsequently vacated or otherwise altered in  
36 any future proceeding including, but not limited to, posttrial or  
37 postfact-finding motions, appeals, or collateral attacks.

38 ~~((+9))~~ (11) A person commits the crime of refusal to provide DNA  
39 if the person has a duty to register under RCW 9A.44.130 and the  
40 person willfully refuses to comply with a legal request for a DNA

1 sample as required under this section. The refusal to provide DNA is  
2 a gross misdemeanor.

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