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HOUSE BILL 1382

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State of Washington

61st Legislature

2009 Regular Session

By Representatives Miloscia, Hurst, O'Brien, and Kelley

Read first time 01/20/09. Referred to Committee on Public Safety & Emergency Preparedness.

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

21 (i) Applies to all adults and juveniles who are arrested on or  
22 after January 1, 2010; and

23 (ii) Does not apply unless local law enforcement agencies are  
24 reimbursed for biological sample collection costs as provided for under  
25 RCW 43.43.7532.

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

31 ((+3+)) (4) Such sheriffs, directors of public safety, chiefs of  
32 police, and other chief law enforcement officers, may record, in  
33 addition to photographs and fingerprints, the palmprints, soleprints,  
34 toeprints, or any other identification data of all persons whose  
35 photograph and fingerprints are required or allowed to be taken under  
36 this section when in the discretion of such law enforcement officers it  
37 is necessary for proper identification of the arrested person or the  
38 investigation of the crime with which he is charged.

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

3       (1) A biological sample must be collected for purposes of DNA  
4 identification analysis from((+)

5       (a)) every adult or juvenile individual convicted of a felony,  
6 ~~((or any of the following crimes (or equivalent juvenile offenses):~~

7       ~~Assault in the fourth degree with sexual motivation (RCW 9A.36.041,~~  
8 ~~9.94A.835)~~

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

10       ~~Custodial sexual misconduct in the second degree (RCW 9A.44.170)~~

11       ~~Failure to register (RCW 9A.44.130)~~

12       ~~Harassment (RCW 9A.46.020)~~

13       ~~Patronizing a prostitute (RCW 9A.88.110)~~

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

15       ~~Stalking (RCW 9A.46.110)~~

16       ~~Violation of a sexual assault protection order granted under~~  
17 ~~chapter 7.90 RCW; and~~

18       ~~(b) Every adult or juvenile individual who is required to register~~  
19 ~~under RCW 9A.44.130)) gross misdemeanor, or patronizing a prostitute~~  
20 ~~under RCW 9A.88.110.~~

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

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

25       (a) For persons convicted of any offense listed in subsection  
26 (1)((+a)) of this section or adjudicated guilty of an equivalent  
27 juvenile offense who do not serve a term of confinement in a department  
28 of corrections facility, and do serve a term of confinement in a city  
29 or county jail facility, the city or county shall be responsible for  
30 obtaining the biological samples.

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

33       (i) Persons convicted of any offense listed in subsection  
34 (1)((+a)) of this section or adjudicated guilty of an equivalent  
35 juvenile offense who do not serve a term of confinement in a department  
36 of corrections facility, and do not serve a term of confinement in a  
37 city or county jail facility; and

1 (ii) Persons who are required to register under RCW (~~9A.44.030~~)  
2 9A.44.130.

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

12 (4)(a) Any biological sample taken pursuant to RCW 43.43.735 and  
13 43.43.752 through 43.43.758 (~~(may be retained by the forensic~~  
14 ~~laboratory services bureau, and)~~) and sent to the forensic laboratory  
15 services bureau shall be analyzed unless a searchable DNA profile for  
16 the offender has previously been entered in the DNA profile system.  
17 The searchable DNA profile shall be entered into the DNA identification  
18 system only after the accused has been charged for the offense. The  
19 original biological sample shall be retained through the disposition of  
20 the underlying criminal case that caused the biological sample to be  
21 taken.

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

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

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

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

31 (iii) The underlying conviction or adjudication serving as the  
32 basis for taking the biological sample has been reversed and the case  
33 dismissed.

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

1        (6) Any biological sample taken pursuant to RCW 43.43.735 and  
2 43.43.752 through 43.43.758 shall be used solely for the purpose of  
3 providing DNA or other tests for identification analysis and  
4 prosecution of a criminal offense or for the identification of human  
5 remains or missing persons. Nothing in this section prohibits the  
6 submission of results derived from the biological samples to the  
7 federal bureau of investigation combined DNA index system.

8        ~~((+5))~~ (7) The forensic laboratory services bureau of the  
9 Washington state patrol is responsible for testing performed on all  
10 biological samples that are collected under subsection (1) of this  
11 section, to the extent allowed by funding available for this purpose.  
12 The director shall give priority to testing on samples collected from  
13 those adults or juveniles convicted of a felony or adjudicated guilty  
14 of an equivalent juvenile offense that is defined as a sex offense or  
15 a violent offense in RCW 9.94A.030. Known duplicate samples may be  
16 excluded from testing unless testing is deemed necessary or advisable  
17 by the director.

18        ~~((+6))~~ (8) This section applies to:

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

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

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

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

28        (c) All adults and juveniles to whom this section did not apply  
29 prior to July 1, 2009, who:

30        (i) Are convicted on or after July 1, 2009, of an offense listed in  
31 subsection (1) of this section; or

32        (ii) Were convicted prior to July 1, 2009, of an offense listed in  
33 subsection (1) of this section and are still incarcerated on or after  
34 July 1, 2009; and

35        (d) All adults and juveniles who are required to register under RCW  
36 9A.44.130 on or after June 12, 2008, whether convicted before, on, or  
37 after June 12, 2008.

1        ~~((7))~~ (9) This section creates no rights in a third person. No  
2 cause of action may be brought based upon the noncollection or  
3 nonanalysis or the delayed collection or analysis of a biological  
4 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

5        ~~((8))~~ (10) The detention, arrest, or conviction of a person based  
6 upon a database match or database information is not invalidated if it  
7 is determined that the sample was obtained or placed in the database by  
8 mistake, or if the conviction or juvenile adjudication that resulted in  
9 the collection of the biological sample was subsequently vacated or  
10 otherwise altered in any future proceeding including but not limited to  
11 posttrial or postfact-finding motions, appeals, or collateral attacks.

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

14        (1) The state DNA database account is created in the custody of the  
15 state treasurer. All receipts under RCW 43.43.7541, 46.63.110(9), and  
16 section 6 of this act must be deposited into the account. Expenditures  
17 from the account may be used only for:

18        (a) Creation, operation, and maintenance of the DNA database under  
19 RCW 43.43.754;

20        (b) Biological sample analysis for samples taken under RCW  
21 43.43.735 and 43.43.754;

22        (c) Biological sample collection costs, which include reimbursing  
23 local law enforcement for collecting biological samples under RCW  
24 43.43.735 and 43.43.754. These costs shall include expenditures for  
25 DNA collection kits, postage, training, and the extra time necessary to  
26 collect the biological sample;

27        (d) Costs related to identifying and destroying biological samples  
28 pursuant to RCW 43.43.754(2);

29        (e) Costs related to developing and implementing a system that can  
30 identify which individuals already have DNA profiles in the database;  
31 and

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

33        (2) Only the chief of the Washington state patrol or the chief's  
34 designee may authorize expenditures from the account. The account is  
35 subject to allotment procedures under chapter 43.88 RCW, but an  
36 appropriation is not required for expenditures. The chief shall make

1 reimbursing local law enforcement for their biological sample  
2 collection costs under subsection (1)(c) of this section a priority  
3 expenditure for the funds received in the account.

4 (3) Beginning in 2015, the chief of the Washington state patrol is  
5 authorized to proportionately redistribute account surpluses back to  
6 the local governments that contributed to the account. The local  
7 governments shall only use the surplus funds for forensic DNA-related  
8 programs, such as training, DNA collection, and other programs that  
9 encourage the utilization of DNA to solve and prevent crimes.

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

12 (1) Any biological sample taken pursuant to RCW 43.43.735 or  
13 43.43.752 through 43.43.758 shall be used solely for the purpose of  
14 providing DNA or other tests for identification analysis and  
15 prosecution of a criminal offense, or for the identification of human  
16 remains or missing persons.

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

24 **Sec. 5.** RCW 46.63.110 and 2007 c 356 s 8 and 2007 c 199 s 28 are  
25 each reenacted and amended to read as follows:

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

30 (2) The monetary penalty for a violation of (a) RCW 46.55.105(2) is  
31 two hundred fifty dollars for each offense; (b) RCW 46.61.210(1) is  
32 five hundred dollars for each offense. No penalty assessed under this  
33 subsection (2) may be reduced.

34 (3) The supreme court shall prescribe by rule a schedule of  
35 monetary penalties for designated traffic infractions. This rule shall  
36 also specify the conditions under which local courts may exercise

1 discretion in assessing fines and penalties for traffic infractions.  
2 The legislature respectfully requests the supreme court to adjust this  
3 schedule every two years for inflation.

4 (4) There shall be a penalty of twenty-five dollars for failure to  
5 respond to a notice of traffic infraction except where the infraction  
6 relates to parking as defined by local law, ordinance, regulation, or  
7 resolution or failure to pay a monetary penalty imposed pursuant to  
8 this chapter. A local legislative body may set a monetary penalty not  
9 to exceed twenty-five dollars for failure to respond to a notice of  
10 traffic infraction relating to parking as defined by local law,  
11 ordinance, regulation, or resolution. The local court, whether a  
12 municipal, police, or district court, shall impose the monetary penalty  
13 set by the local legislative body.

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

19 (6) Whenever a monetary penalty, fee, cost, assessment, or other  
20 monetary obligation is imposed by a court under this chapter it is  
21 immediately payable. If the court determines, in its discretion, that  
22 a person is not able to pay a monetary obligation in full, and not more  
23 than one year has passed since the later of July 1, 2005, or the date  
24 the monetary obligation initially became due and payable, the court  
25 shall enter into a payment plan with the person, unless the person has  
26 previously been granted a payment plan with respect to the same  
27 monetary obligation, or unless the person is in noncompliance of any  
28 existing or prior payment plan, in which case the court may, at its  
29 discretion, implement a payment plan. If the court has notified the  
30 department that the person has failed to pay or comply and the person  
31 has subsequently entered into a payment plan and made an initial  
32 payment, the court shall notify the department that the infraction has  
33 been adjudicated, and the department shall rescind any suspension of  
34 the person's driver's license or driver's privilege based on failure to  
35 respond to that infraction. "Payment plan," as used in this section,  
36 means a plan that requires reasonable payments based on the financial  
37 ability of the person to pay. The person may voluntarily pay an amount

1 at any time in addition to the payments required under the payment  
2 plan.

3 (a) If a payment required to be made under the payment plan is  
4 delinquent or the person fails to complete a community restitution  
5 program on or before the time established under the payment plan,  
6 unless the court determines good cause therefor and adjusts the payment  
7 plan or the community restitution plan accordingly, the court shall  
8 notify the department of the person's failure to meet the conditions of  
9 the plan, and the department shall suspend the person's driver's  
10 license or driving privilege until all monetary obligations, including  
11 those imposed under subsections (3) and (4) of this section, have been  
12 paid, and court authorized community restitution has been completed, or  
13 until the department has been notified that the court has entered into  
14 a new time payment or community restitution agreement with the person.

15 (b) If a person has not entered into a payment plan with the court  
16 and has not paid the monetary obligation in full on or before the time  
17 established for payment, the court shall notify the department of the  
18 delinquency. The department shall suspend the person's driver's  
19 license or driving privilege until all monetary obligations have been  
20 paid, including those imposed under subsections (3) and (4) of this  
21 section, or until the person has entered into a payment plan under this  
22 section.

23 (c) If the payment plan is to be administered by the court, the  
24 court may assess the person a reasonable administrative fee to be  
25 wholly retained by the city or county with jurisdiction. The  
26 administrative fee shall not exceed ten dollars per infraction or  
27 twenty-five dollars per payment plan, whichever is less.

28 (d) Nothing in this section precludes a court from contracting with  
29 outside entities to administer its payment plan system. When outside  
30 entities are used for the administration of a payment plan, the court  
31 may assess the person a reasonable fee for such administrative  
32 services, which fee may be calculated on a periodic, percentage, or  
33 other basis.

34 (e) If a court authorized community restitution program for  
35 offenders is available in the jurisdiction, the court may allow  
36 conversion of all or part of the monetary obligations due under this  
37 section to court authorized community restitution in lieu of time  
38 payments if the person is unable to make reasonable time payments.

1 (7) In addition to any other penalties imposed under this section  
2 and not subject to the limitation of subsection (1) of this section, a  
3 person found to have committed a traffic infraction shall be assessed:

4 (a) A fee of five dollars per infraction. Under no circumstances  
5 shall this fee be reduced or waived. Revenue from this fee shall be  
6 forwarded to the state treasurer for deposit in the emergency medical  
7 services and trauma care system trust account under RCW 70.168.040;

8 (b) A fee of ten dollars per infraction. Under no circumstances  
9 shall this fee be reduced or waived. Revenue from this fee shall be  
10 forwarded to the state treasurer for deposit in the Washington auto  
11 theft prevention authority account; and

12 (c) A fee of two dollars per infraction. Revenue from this fee  
13 shall be forwarded to the state treasurer for deposit in the traumatic  
14 brain injury account established in RCW 74.31.060.

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 court  
21 authorized community restitution program for offenders is available in  
22 the jurisdiction, the court shall allow offenders to offset all or a  
23 part of the penalty due under this subsection (8) by participation in  
24 the court authorized 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 database account under RCW 43.43.7532.

6 (10) If a legal proceeding, such as garnishment, has commenced to  
7 collect any delinquent amount owed by the person for any penalty  
8 imposed by the court under this section, the court may, at its  
9 discretion, enter into a payment plan.

10 ~~((+10+))~~ (11) The monetary penalty for violating RCW 46.37.395 is:  
11 (a) Two hundred fifty dollars for the first violation; (b) five hundred  
12 dollars for the second violation; and (c) seven hundred fifty dollars  
13 for each violation thereafter.

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

16 When any person is found guilty in any superior court of having  
17 committed a crime, there shall be imposed by the court upon the  
18 convicted person a penalty assessment. The assessment shall be in  
19 addition to any other penalty or fine imposed by law and shall be equal  
20 to ten percent of the penalty or fine imposed for each conviction of a  
21 crime. Revenue from this assessment shall be forwarded to the state  
22 treasurer for deposit in the DNA database account under RCW 43.43.7532.

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