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**SUBSTITUTE SENATE BILL 5653**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Darneille, Padden, Kohl-Welles, O'Ban, Fraser, and Pearson)

READ FIRST TIME 02/20/15.

1 AN ACT Relating to the collection of DNA at jail and corrections  
2 facilities; and amending RCW 43.43.754.

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

4 **Sec. 1.** RCW 43.43.754 and 2008 c 97 s 2 are each amended to read  
5 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):

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

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

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

14 Failure to register (RCW 9A.44.130 for persons convicted before  
15 June 10, 2010, and RCW 9A.44.132 for persons convicted after June 10,  
16 2010)

17 Harassment (RCW 9A.46.020)

18 Patronizing a prostitute (RCW 9A.88.110)

19 Sexual misconduct with a minor in the second degree (RCW  
20 9A.44.096)

21 Stalking (RCW 9A.46.110)

1 Violation of a sexual assault protection order granted under  
2 chapter 7.90 RCW; and

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

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

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

10 (a) For persons convicted of any offense listed in subsection  
11 (1)(a) of this section or adjudicated guilty of an equivalent  
12 juvenile offense who do not serve a term of confinement in a  
13 department of corrections facility, and ~~((do serve))~~ are serving a  
14 term of confinement in a city or county jail facility, the city or  
15 county shall be responsible for obtaining the biological samples  
16 immediately after sentencing in the city or county jail facility. If  
17 the person is not taken into custody, the person must be ordered by  
18 the court to immediately report to the city or county jail facility  
19 to provide a biological sample. The person must receive a warning  
20 that the court may issue a warrant for the person's arrest if the  
21 person fails to provide a biological sample as ordered by the court.

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

24 (i) Persons convicted of any offense listed in subsection (1)(a)  
25 of this section or adjudicated guilty of an equivalent juvenile  
26 offense who do not serve a term of confinement in a department of  
27 corrections facility, and ~~((do not serve))~~ are not serving a term of  
28 confinement in a city or county jail facility; and

29 (ii) Persons who are required to register under RCW ~~((9A.44.030))~~  
30 9A.44.130.

31 (c) For persons convicted of any offense listed in subsection  
32 (1)(a) of this section or adjudicated guilty of an equivalent  
33 juvenile offense, who are serving or who are to serve a term of  
34 confinement in a department of corrections facility or a department  
35 of social and health services facility, the facility holding the  
36 person shall be responsible for obtaining the biological samples as  
37 part of the intake process. If the person has served his or her  
38 entire sentence, the person must be ordered by the court to  
39 immediately report to the city or county jail facility to provide a  
40 biological sample. The person must receive a warning that the court

1 may issue a warrant for the person's arrest if the person fails to  
2 provide a biological sample as ordered by the court. For those  
3 persons incarcerated before June 12, 2008, who have not yet had a  
4 biological sample collected, priority shall be given to those persons  
5 who will be released the soonest.

6 (4) Any biological sample taken pursuant to RCW 43.43.752 through  
7 43.43.758 may be retained by the forensic laboratory services bureau,  
8 and shall be used solely for the purpose of providing DNA or other  
9 tests for identification analysis and prosecution of a criminal  
10 offense or for the identification of human remains or missing  
11 persons. Nothing in this section prohibits the submission of results  
12 derived from the biological samples to the federal bureau of  
13 investigation combined DNA index system.

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

24 (6) This section applies to:

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

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

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

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

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

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

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

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