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**SUBSTITUTE HOUSE BILL 1111**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Orwall, Klippert, Goodman, Hayes, Stanford, Jenkins, Fey, Muri, Gregerson, and Kilduff)

1 AN ACT Relating to DNA biological samples; amending RCW 43.43.754  
2 and 9A.44.132; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the state of  
5 Washington has for decades routinely required collection of DNA  
6 biological samples from certain convicted offenders and persons  
7 required to register as sex and kidnapping offenders. The resulting  
8 DNA data has proven to be an invaluable component of forensic  
9 evidence analysis. Not only have DNA matches focused law enforcement  
10 efforts and resources on productive leads, assisted in the  
11 expeditious conviction of guilty persons, and provided identification  
12 of recidivist and cold case offenders, DNA analysis has also played a  
13 crucial role in absolving wrongly suspected and convicted persons and  
14 in providing resolution to those who have tragically suffered  
15 unimaginable harm.

16 In an effort to solve cold cases and unsolved crimes, to provide  
17 closure to victims and their family members, and to support efforts  
18 to exonerate the wrongly accused or convicted, the legislature finds  
19 that procedural improvements and measured expansions to the  
20 collection and analysis of lawfully obtained DNA biological samples  
21 are both appropriate and necessary.

1       **Sec. 2.** RCW 43.43.754 and 2015 c 261 s 10 are each amended to  
2 read as follows:

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

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

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

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

14       (C) Custodial sexual misconduct in the second degree (RCW  
15 9A.44.170);

16       (D) Failure to register (~~(RCW 9A.44.130 for persons convicted on~~  
17 ~~or before June 10, 2010, and RCW 9A.44.132 for persons convicted~~  
18 ~~after June 10, 2010)) (chapter 9A.44 RCW);~~

19       (E) Harassment (RCW 9A.46.020);

20       (F) Patronizing a prostitute (RCW 9A.88.110);

21       (G) Sexual misconduct with a minor in the second degree (RCW  
22 9A.44.096);

23       (H) Stalking (RCW 9A.46.110);

24       (I) Indecent exposure (RCW 9A.88.010);

25       (J) Violation of a sexual assault protection order granted under  
26 chapter 7.90 RCW; and

27       (~~(b)~~) (ii) Every adult or juvenile individual who is required  
28 to register under RCW 9A.44.130.

29       (b) Law enforcement may submit to the forensic laboratory  
30 services bureau of the Washington state patrol, for purposes of DNA  
31 identification analysis, any lawfully obtained biological sample  
32 within its control from a deceased offender who was previously  
33 convicted of an offense under (a) of this subsection, regardless of  
34 the date of conviction.

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.

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

1 (a) For persons convicted of any offense listed in subsection  
2 (1)(a) of this section or an equivalent municipal offense, or  
3 adjudicated guilty of an equivalent juvenile offense, who do not  
4 serve a term of confinement in a department of corrections  
5 facility(~~(τ)~~) or a department of social and health services facility  
6 and (~~do serve~~) are serving a term of confinement in a city or  
7 county jail facility, the city or county shall be responsible for  
8 obtaining the biological samples immediately after sentencing in the  
9 city or county jail facility. If the person is not taken into custody  
10 immediately after sentencing or has served his or her entire term of  
11 confinement, the person must be ordered by the court to immediately  
12 report to the city or county jail facility to provide a biological  
13 sample. The court shall establish a status hearing to take place  
14 within fourteen days to ensure the convicted offender has complied  
15 with the court order. If the court receives documentation that the  
16 offender has complied with the court order requiring the submission  
17 of a biological sample, the status hearing may be canceled.

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

20 (i) Persons convicted of any offense listed in subsection (1)(a)  
21 of this section or an equivalent municipal offense, or adjudicated  
22 guilty of an equivalent juvenile offense, who do not serve a term of  
23 confinement in a department of corrections facility(~~(τ)~~) or a  
24 department of social and health services facility and do not serve a  
25 term of confinement in a city or county jail facility. Immediately  
26 after sentencing, such persons must be ordered by the court to  
27 immediately report to the local police department or sheriff's office  
28 to provide a biological sample. The court shall establish a status  
29 hearing to take place within fourteen days to ensure the convicted  
30 offender has complied with the court order. If the court receives  
31 documentation that the offender has complied with the court order  
32 requiring the submission of a biological sample, the status hearing  
33 may be canceled; and

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

35 (c) For persons convicted of any offense listed in subsection  
36 (1)(a) of this section or an equivalent municipal offense, or  
37 adjudicated guilty of an equivalent juvenile offense, who are serving  
38 or who are to serve a term of confinement in a department of  
39 corrections facility or a department of social and health services  
40 facility, the facility holding the person shall be responsible for

1 obtaining the biological samples as part of the intake process. (~~For~~  
2 ~~those persons incarcerated before June 12, 2008, who have not yet had~~  
3 ~~a biological sample collected, priority shall be given to those~~  
4 ~~persons who will be released the soonest~~) If the person is not taken  
5 into custody immediately after sentencing, the person must be ordered  
6 by the court to immediately report to the local police or sheriff's  
7 office to provide a biological sample. The court shall establish a  
8 status hearing to take place within fourteen days to ensure the  
9 convicted offender has complied with the court order. If the court  
10 receives documentation that the offender has complied with the court  
11 order requiring the submission of a biological sample, the status  
12 hearing may be canceled.

13 (4) Any biological sample taken pursuant to RCW 43.43.752 through  
14 43.43.758 may be retained by the forensic laboratory services bureau,  
15 and shall be used solely for the purpose of providing DNA or other  
16 tests for identification analysis and prosecution of a criminal  
17 offense or for the identification of human remains or missing  
18 persons. Nothing in this section prohibits the submission of results  
19 derived from the biological samples to the federal bureau of  
20 investigation combined DNA index system.

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

31 (6) In addition to persons to whom this section applied prior to,  
32 and applies as of, the effective date of this section, this section  
33 applies to:

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

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

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

1       ~~(ii))~~ were convicted prior to June 12, 2008, of an offense  
2 listed in subsection (1)(a) of this section, other than subsection  
3 (1)(a)(i)(I) of this section, and are still incarcerated ~~((on or~~  
4 ~~after June 12, 2008))~~; ~~((and~~

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

8       (c) All adults convicted of a municipal offense that is  
9 equivalent to an offense listed in subsection (1)(a) of this section,  
10 other than subsection (1)(a)(i)(I) of this section, on or after June  
11 12, 2008, from whom a biological sample was obtained as a requirement  
12 of the relevant municipal ordinances prior to the effective date of  
13 this section.

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

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

33       (9) A person commits the crime of refusal to provide DNA if the  
34 person ~~((has a duty to register under RCW 9A.44.130 and the person))~~  
35 willfully refuses to comply with a legal request for a DNA sample as  
36 required under this section. The refusal to provide DNA is a gross  
37 misdemeanor.

38       (10) When submitting a biological sample collected as a result of  
39 a conviction of an equivalent municipal offense requiring submission  
40 under subsection (1)(a) of this section to the forensic laboratory

1 services bureau of the Washington state patrol, the submitting agency  
2 or department shall include a signed affidavit from the municipal  
3 prosecuting authority of the jurisdiction in which the conviction  
4 occurred specifying the state crime to which the municipal ordinance  
5 is equivalent.

6 **Sec. 3.** RCW 9A.44.132 and 2015 c 261 s 5 are each amended to  
7 read as follows:

8 (1) A person commits the crime of failure to register as a sex  
9 offender if the person has a duty to register under RCW 9A.44.130 for  
10 a felony sex offense and knowingly fails to comply with any of the  
11 requirements of RCW 9A.44.130.

12 (a) The failure to register as a sex offender pursuant to this  
13 subsection is a class C felony if:

14 (i) It is the person's first conviction for a felony failure to  
15 register; or

16 (ii) The person has previously been convicted of a felony failure  
17 to register as a sex offender in this state or pursuant to the laws  
18 of another state, or pursuant to federal law.

19 (b) If a person has been convicted of a felony failure to  
20 register as a sex offender in this state or pursuant to the laws of  
21 another state, or pursuant to federal law, on two or more prior  
22 occasions, the failure to register under this subsection is a class B  
23 felony.

24 (2) A person is guilty of failure to register as a sex offender  
25 if the person has a duty to register under RCW 9A.44.130 for a sex  
26 offense other than a felony and knowingly fails to comply with any of  
27 the requirements of RCW 9A.44.130. The failure to register as a sex  
28 offender under this subsection is a gross misdemeanor.

29 (3) A person commits the crime of failure to register as a  
30 kidnapping offender if the person has a duty to register under RCW  
31 9A.44.130 for a kidnapping offense and knowingly fails to comply with  
32 any of the requirements of RCW 9A.44.130.

33 (a) If the person has a duty to register for a felony kidnapping  
34 offense, the failure to register as a kidnapping offender is a class  
35 C felony.

36 (b) If the person has a duty to register for a kidnapping offense  
37 other than a felony, the failure to register as a kidnapping offender  
38 is a gross misdemeanor.

1           (4) (~~(A person commits the crime of refusal to provide DNA if the~~  
2 ~~person has a duty to register under RCW 9A.44.130 and the person~~  
3 ~~willfully refuses to comply with a legal request for a DNA sample as~~  
4 ~~required under RCW 43.43.754(1)(b). The refusal to provide DNA is a~~  
5 ~~gross misdemeanor.~~

6           (5)) Unless relieved of the duty to register pursuant to RCW  
7 9A.44.141 and 9A.44.142, a violation of this section is an ongoing  
8 offense for purposes of the statute of limitations under RCW  
9 9A.04.080.

10           NEW SECTION.     **Sec. 4.**     This act may be known and cited as  
11 Jennifer and Michella's law.

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