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HOUSE BILL NO. 735

INTRODUCED BY S. GALLOWAY, S. GUNDERSON, S. GIST, B. MITCHELL, L. SHELDON-GALLOWAY, L. BREWSTER, N. NICOL, K. SEEKINS-CROWE, R. MARSHALL, J. READ, G. OBLANDER, T. BROCKMAN, M. YAKAWICH, J. FULLER, M. NOLAND, G. KMETZ, J. ETCHART, B. PHALEN, T. SMITH, E. BUTCHER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE COLLECTION AND TESTING OF BIOLOGICAL SAMPLES FOR DNA ANALYSIS; REQUIRING THE COLLECTION OF BIOLOGICAL SAMPLES FOR INDIVIDUALS ARRESTED ON A FELONY OFFENSE CERTAIN FELONY OFFENSES; ALLOWING RAPID DNA TESTING AT BOOKING STATIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 44-6-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-6-103, MCA, is amended to read:

"44-6-103. Collection of samples and maintenance of data. (1)(a) Following Except as provided in subsection (1)(c), the following persons shall provide a biological sample for DNA analysis to determine identification characteristics specific to the person:

(i) a person arrested for a crime listed in Title 45, chapter 5, parts 1 or 2 5; for arson pursuant to 45-6-103; or for burglary pursuant to 45-6-204;

(ii) following entry of judgment, a person convicted of a felony offense;

(iii) a youth found under 41-5-1502 to have committed a sexual or violent offense;

(iv) a defendant ordered under 46-18-202 to provide a biological sample for DNA testing;

(v) a person required to register as a sexual or violent offender under 46-23-504; or

(vi) an adult offender convicted in another state and sentenced to death or imprisonment for more than 1 year who is subject to supervision by the department of corrections pursuant to the Interstate Compact for Adult Offender Supervision provided for in 46-23-1115 shall provide a biological sample for DNA analysis to determine identification characteristics specific to the person.

(b) A county sheriff shall ensure that a biological sample is collected at the time of booking for a

1 person arrested on suspicion of a crime listed in subsection (1)(a)(i).

2 (c) A biological sample is not required to be collected if the department of corrections or a county
3 sheriff confirms that a biological sample from the person is already on file with the DNA identification index.

4 (2) (a) The A biological sample must be provided;

5 (i) to the department of corrections if the person is incarcerated in a facility administered by the
6 department of corrections. If, or

7 (ii) if the person is not incarcerated in a facility administered by the department of corrections, the
8 sample must be provided to a person or entity designated by the county sheriff.

9 (b) The county sheriff may establish a process for immediately analyzing a biological sample
10 collected at booking.

11 (2)(3) The biological sample must be collected, stored, and sent by the department of corrections or
12 the person or entity designated by the county sheriff under subsection (1) to the department for entry in the
13 DNA identification index in accordance with rules adopted by the department with the advice of the department
14 of public health and human services. The rules may allow for the implementation of rapid DNA systems at
15 booking stations in accordance with procedures established by the federal bureau of investigation for
16 participation in the national DNA database systems.

17 (3)(4) The offender is responsible, if able to pay, for the cost of the collection of the sample. The fees
18 charged for the collection may not exceed the actual costs of collection.

19 (4)(5) The forensic DNA laboratory may perform DNA analysis only for those markers that have value
20 for law enforcement identification purposes.

21 (5)(6) The knowing refusal or failure to provide a biological sample under this part is grounds for
22 revocation of a suspended or deferred imposition of sentence.

23 (7) (a) If any of the following dispositions occur in the case of an individual listed in subsection
24 (1)(a), the court shall notify the DNA identification index within 14 business days must, on petition of the person,
25 expunge the biological sample and the profile record of the person:

26 (i)(a) the person is released without the filing of charges;

27 (ii)(b) the charges did not result in a conviction; or

28 (iii)(c) a conviction is later invalidated.

