
SECOND SUBSTITUTE HOUSE BILL 2341

State of Washington

64th Legislature

2016 Regular Session

By House General Government & Information Technology (originally sponsored by Representatives Orwall, Kilduff, Fitzgibbon, Kirby, Goodman, Jinkins, and Tarleton)

READ FIRST TIME 02/09/16.

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 2015 c 261 s 10 are each amended to
5 read as follows:

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

8 ((a)) (i) Every adult or juvenile individual convicted of a
9 felony, or any of the following crimes (or equivalent juvenile
10 offenses):

11 (A) Assault in the fourth degree with sexual motivation (RCW
12 9A.36.041, 9.94A.835);

13 (B) Communication with a minor for immoral purposes (RCW
14 9.68A.090);

15 (C) Custodial sexual misconduct in the second degree (RCW
16 9A.44.170);

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

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

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

1 (G) Sexual misconduct with a minor in the second degree (RCW
2 9A.44.096);

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

4 (I) Violation of a sexual assault protection order granted under
5 chapter 7.90 RCW; and

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

8 (b) In an effort to solve cold cases and unsolved crimes,
9 provide closure to victims and their family members, and support
10 efforts to exonerate the wrongly convicted, law enforcement may
11 submit a lawfully obtained biological sample that is within their
12 control to the forensic laboratory services bureau for purposes of
13 DNA identification analysis for deceased offenders who were
14 previously convicted before, on, or after July 1, 1990, of an offense
15 under (a) of this subsection.

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

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

21 (a) For persons convicted of any offense listed in subsection
22 (1)(a) of this section or adjudicated guilty of an equivalent
23 juvenile offense who do not serve a term of confinement in a
24 department of corrections facility or a department of social and
25 health services facility, and (~~do—serve~~) are serving a term of
26 confinement in a city or county jail facility, the city or county
27 shall be responsible for obtaining the biological samples immediately
28 after sentencing in the city or county jail facility. If the person
29 is not taken into custody immediately after sentencing or has served
30 his or her entire term of confinement, the person must be ordered by
31 the court to immediately report to the city or county jail facility
32 to provide a biological sample. At the next scheduled hearing date,
33 the court shall confirm that the person has submitted a biological
34 sample to the city or county jail.

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

37 (i) Persons convicted of any offense listed in subsection (1)(a)
38 of this section or adjudicated guilty of an equivalent juvenile
39 offense who do not serve a term of confinement in a department of
40 corrections facility or a department of social and health services

1 facility, and do not serve a term of confinement in a city or county
2 jail facility. Immediately after sentencing, such persons must be
3 ordered by the court to immediately report to the local police
4 department or sheriff's office pursuant to this subsection (3)(b) to
5 provide a biological sample. At the next scheduled hearing date, the
6 court shall confirm that the person has submitted a biological sample
7 to the local police department or sheriff's office; and

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

9 (c) For persons convicted of any offense listed in subsection
10 (1)(a) of this section or adjudicated guilty of an equivalent
11 juvenile offense, who are serving or who are to serve a term of
12 confinement in a department of corrections facility or a department
13 of social and health services facility, the facility holding the
14 person shall be responsible for obtaining the biological samples as
15 part of the intake process. ((For those persons incarcerated before
16 June 12, 2008, who have not yet had a biological sample collected,
17 priority shall be given to those persons who will be released the
18 soonest)) If the person is not taken into custody immediately after
19 sentencing, the person must be ordered by the court to immediately
20 report to the local police or sheriff's office pursuant to (b) of
21 this subsection to provide a biological sample. At the next scheduled
22 hearing date, the court shall confirm that the person has submitted a
23 biological sample to the local police department or sheriff's office.

24 (4) Any biological sample taken pursuant to RCW 43.43.752 through
25 43.43.758 may be retained by the forensic laboratory services bureau,
26 and shall be used solely for the purpose of providing DNA or other
27 tests for identification analysis and prosecution of a criminal
28 offense or for the identification of human remains or missing
29 persons. Nothing in this section prohibits the submission of results
30 derived from the biological samples to the federal bureau of
31 investigation combined DNA index system.

32 (5) The forensic laboratory services bureau of the Washington
33 state patrol is responsible for testing performed on all biological
34 samples that are collected under subsection (1) of this section, to
35 the extent allowed by funding available for this purpose. ((The
36 ~~director shall give priority to testing on samples collected from~~
37 ~~those adults or juveniles convicted of a felony or adjudicated guilty~~
38 ~~of an equivalent juvenile offense that is defined as a sex offense or~~
39 ~~a violent offense in RCW 9.94A.030.)) Known duplicate samples may be~~

1 excluded from testing unless testing is deemed necessary or advisable
2 by the director.

3 ~~(6) ((This section applies to:~~

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

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

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

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

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

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

20 ~~((8))~~ (7) The detention, arrest, or conviction of a person
21 based upon a database match or database information is not
22 invalidated if it is determined that the sample was obtained or
23 placed in the database by mistake, or if the conviction or juvenile
24 adjudication that resulted in the collection of the biological sample
25 was subsequently vacated or otherwise altered in any future
26 proceeding including but not limited to posttrial or postfact-finding
27 motions, appeals, or collateral attacks.

28 ~~((9))~~ (8) A person commits the crime of refusal to provide DNA
29 if the person has a duty to register under RCW 9A.44.130 and the
30 person willfully refuses to comply with a legal request for a DNA
31 sample as required under this section. The refusal to provide DNA is
32 a gross misdemeanor.

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