**1326-S AMS LAW S3257.2 - NOT FOR FLOOR USE**

**SHB 1326** - S COMM AMD

By Committee on Law & Justice

**OUT OF ORDER 04/15/2019**

Strike everything after the enacting clause and insert the following:

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

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

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

**Sec.**  RCW 43.43.754 and 2017 c 272 s 4 are each amended to read as follows:

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

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

(i) Assault in the fourth degree where domestic violence as defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041, 9.94A.030);

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

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

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

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

(vi) Harassment (RCW 9A.46.020);

(vii) Patronizing a prostitute (RCW 9A.88.110);

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

(ix) Stalking (RCW 9A.46.110);

(x) Indecent exposure (RCW 9A.88.010);

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

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

(2)(a) A municipal jurisdiction may also submit any biological sample to the laboratory services bureau of the Washington state patrol for purposes of DNA identification analysis when:

(i) The sample was collected from a defendant upon conviction for a municipal offense where the underlying ordinance does not adopt the relevant state statute by reference but the offense is otherwise equivalent to an offense in subsection (1)(a) of this section;

(ii) The equivalent offense in subsection (1)(a) of this section was an offense for which collection of a biological sample was required under this section at the time of the conviction; and

(iii) The sample was collected on or after June 12, 2008, and before January 1, 2020.

(b) When submitting a biological sample under this subsection, the municipal jurisdiction must include a signed affidavit from the municipal prosecuting authority of the jurisdiction in which the conviction occurred specifying the state crime to which the municipal offense is equivalent.

(3) Law enforcement may submit to the forensic laboratory services bureau of the Washington state patrol, for purposes of DNA identification analysis, any lawfully obtained biological sample within its control from a deceased offender who was previously convicted of an offense under subsection (1)(a) of this section, regardless of the date of conviction.

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

((~~(3)~~)) (5) Biological samples shall be collected in the following manner:

(a) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who do not serve a term of confinement in a department of corrections facility or a department of children, youth, and families facility, and ((~~do serve~~)) are serving a term of confinement in a city or county jail facility, the city or county jail facility shall be responsible for obtaining the biological samples.

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

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

~~(ii)~~)) persons who are required to register under RCW 9A.44.130.

(c) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who are serving or who are to serve a term of confinement in a department of corrections facility or a department of ((~~social and health services~~)) children, youth, and families facility, the facility holding the person shall be responsible for obtaining the biological samples as part of the intake process. If the facility did not collect the biological sample during the intake process, then the facility shall collect the biological sample as soon as is practicable. For those persons incarcerated before June 12, 2008, who have not yet had a biological sample collected, priority shall be given to those persons who will be released the soonest.

((~~(4)~~)) (d) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who are not immediately taken into the custody of a department of corrections facility, department of children, youth, and families facility, or a city or county jail facility, or who will not otherwise serve a term of confinement, the court shall order the person to report to a department of corrections facility, department of children, youth, and families facility, or a city or county jail facility within one business day to provide the required biological sample.

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

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

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

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

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

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

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

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

(d) All samples submitted under subsections (2) and (3) of this section.

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

((~~(8)~~)) (10) The detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is determined that the sample was obtained or placed in the database by mistake, or if the conviction or juvenile adjudication that resulted in the collection of the biological sample was subsequently vacated or otherwise altered in any future proceeding including but not limited to posttrial or postfact-finding motions, appeals, or collateral attacks. No cause of action may be brought against the state based upon the analysis of a biological sample authorized to be taken pursuant to a municipal ordinance if the conviction or adjudication that resulted in the collection of the biological sample was subsequently vacated or otherwise altered in any future proceeding including, but not limited to, posttrial or postfact-finding motions, appeals, or collateral attacks.

((~~(9)~~)) (11) A person commits the crime of refusal to provide DNA if the person ((~~has a duty to register under RCW 9A.44.130 and the person~~)) willfully refuses to comply with a legal request for a DNA sample as required under this section. The refusal to provide DNA is a gross misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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By Committee on Law & Justice

**OUT OF ORDER 04/15/2019**

On page 1, line 2 of the title, after "system;" strike the remainder of the title and insert "amending RCW 43.43.754 and 9A.44.132; and creating new sections."

EFFECT: Authorizes a municipal jurisdiction to submit any biological sample to the Washington State Patrol (WSP) for purposes of DNA identification analysis if all of the following conditions are met: (1) The sample was collected from a defendant upon conviction for a municipal offense where the underlying ordinance does not adopt the relevant state statute by reference but the offense is otherwise equivalent to a state offense for which collection of a sample is required; (2) the equivalent offense was an offense for which collection of a biological sample was required at the time of the conviction; and (3) the sample was collected on or after June 12, 2008, and before January 1, 2020.

Requires the municipal jurisdiction to include a signed affidavit from the municipal prosecuting authority of the jurisdiction in which the conviction occurred specifying the state crime to which the municipal offense is equivalent when submitting a biological sample to the WSP.

Specifies that no cause of action may be brought against the state based on an analysis of a sample taken pursuant to a municipal ordinance conviction that is later vacated or otherwise altered in a future proceeding.

Makes corrections to the applicability provision in the underlying statute.