
SUBSTITUTE SENATE BILL 5026

State of Washington

61st Legislature

2009 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Regala and Brandland)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to the collection of biological samples for DNA
2 identification analysis from individuals whose convictions are the
3 result of a plea agreement; and amending RCW 43.43.754.

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

5 **Sec. 1.** RCW 43.43.754 and 2008 c 97 s 2 are each amended to read
6 as follows:

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

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

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

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

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

15 Failure to register (RCW 9A.44.130)

16 Harassment (RCW 9A.46.020)

17 Patronizing a prostitute (RCW 9A.88.110)

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

19 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 individual convicted of any other offense, if the
4 conviction is the result of a plea agreement in an action in which the
5 original charge was a crime listed in (a) of this subsection and
6 probable cause was found by the court; and

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

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

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

13 (a) For persons convicted of any offense listed in subsection
14 (1)(a) of this section or adjudicated guilty of an equivalent juvenile
15 offense who do not serve a term of confinement in a department of
16 corrections facility, and do serve a term of confinement in a city or
17 county jail facility, the city or county shall be responsible for
18 obtaining the biological samples.

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

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

26 (ii) Persons who are required to register under RCW (~~9A.44.030~~)
27 9A.44.130.

28 (c) For persons convicted of any offense listed in subsection
29 (1)(a) of this section or adjudicated guilty of an equivalent juvenile
30 offense, who are serving or who are to serve a term of confinement in
31 a department of corrections facility or a department of social and
32 health services facility, the facility holding the person shall be
33 responsible for obtaining the biological samples. For those persons
34 incarcerated before June 12, 2008, who have not yet had a biological
35 sample collected, priority shall be given to those persons who will be
36 released the soonest.

37 (4) Any biological sample taken pursuant to RCW 43.43.752 through
38 43.43.758 may be retained by the forensic laboratory services bureau,

1 and shall be used solely for the purpose of providing DNA or other
2 tests for identification analysis and prosecution of a criminal offense
3 or for the identification of human remains or missing persons. Nothing
4 in this section prohibits the submission of results derived from the
5 biological samples to the federal bureau of investigation combined DNA
6 index system.

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

16 (6) This section applies to:

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

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

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

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

26 (c) All adults and juveniles who are required to register under RCW
27 9A.44.130 on or after June 12, 2008, whether convicted before, on, or
28 after June 12, 2008.

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

33 (8) The detention, arrest, or conviction of a person based upon a
34 database match or database information is not invalidated if it is
35 determined that the sample was obtained or placed in the database by
36 mistake, or if the conviction or juvenile adjudication that resulted in
37 the collection of the biological sample was subsequently vacated or

1 otherwise altered in any future proceeding including but not limited to
2 posttrial or postfact-finding motions, appeals, or collateral attacks.

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