

SHB 1326 - S COMM AMD
By Committee on Ways & Means

ADOPTED 04/15/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This act may be known and cited as
4 Jennifer and Michella's law.

5 NEW SECTION. **Sec. 2.** The legislature finds that the state of
6 Washington has for decades routinely required collection of DNA
7 biological samples from certain convicted offenders and persons
8 required to register as sex and kidnapping offenders. The resulting
9 DNA data has proven to be an invaluable component of forensic
10 evidence analysis. Not only have DNA matches focused law enforcement
11 efforts and resources on productive leads, assisted in the
12 expeditious conviction of guilty persons, and provided identification
13 of recidivist and cold case offenders, DNA analysis has also played a
14 crucial role in absolving wrongly suspected and convicted persons and
15 in providing resolution to those who have tragically suffered
16 unimaginable harm.

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

23 **Sec. 3.** RCW 43.43.754 and 2017 c 272 s 4 are each amended to
24 read as follows:

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

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

29 (i) Assault in the fourth degree where domestic violence as
30 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
31 9.94A.030);

1 (ii) Assault in the fourth degree with sexual motivation (RCW
2 9A.36.041, 9.94A.835);

3 (iii) Communication with a minor for immoral purposes (RCW
4 9.68A.090);

5 (iv) Custodial sexual misconduct in the second degree (RCW
6 9A.44.170);

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

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

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

12 (viii) Sexual misconduct with a minor in the second degree (RCW
13 9A.44.096);

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

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

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

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

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

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

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

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

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

37 (3) Law enforcement may submit to the forensic laboratory
38 services bureau of the Washington state patrol, for purposes of DNA
39 identification analysis, any lawfully obtained biological sample
40 within its control from a deceased offender who was previously

1 convicted of an offense under subsection (1)(a) of this section,
2 regardless of the date of conviction.

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

6 ~~((3))~~ (5) Biological samples shall be collected in the
7 following manner:

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

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

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

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

24 (c) For persons convicted of any offense listed in subsection
25 (1)(a) of this section or adjudicated guilty of an equivalent
26 juvenile offense, who are serving or who are to serve a term of
27 confinement in a department of corrections facility or a department
28 of ~~((social and health services))~~ children, youth, and families
29 facility, the facility holding the person shall be responsible for
30 obtaining the biological samples as part of the intake process. If
31 the facility did not collect the biological sample during the intake
32 process, then the facility shall collect the biological sample as
33 soon as is practicable. For those persons incarcerated before June
34 12, 2008, who have not yet had a biological sample collected,
35 priority shall be given to those persons who will be released the
36 soonest.

37 ~~((4))~~ (d) For persons convicted of any offense listed in
38 subsection (1)(a) of this section or adjudicated guilty of an
39 equivalent juvenile offense, who are not immediately taken into the
40 custody of a department of corrections facility, department of

1 children, youth, and families facility, or a city or county jail
2 facility, or who will not otherwise serve a term of confinement, the
3 court shall order the person to report within one business day to
4 provide the required biological sample as follows:

5 (i) For individuals sentenced to the jurisdiction of the
6 department of corrections to report to a facility operated by the
7 department of corrections;

8 (ii) For youth sentenced to the jurisdiction of the department of
9 children, youth, and families to report to a facility operated by the
10 department of children, youth, and families; or

11 (iii) For individuals sentenced to the jurisdiction of a city or
12 county to report to a county or city jail facility.

13 (6) 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))~~ (7) The forensic laboratory services bureau of the
22 Washington state patrol is responsible for testing performed on all
23 biological samples that are collected under ~~((subsection (1) of))~~
24 this section, to the extent allowed by funding available for this
25 purpose. ~~((The director shall give priority to testing on samples~~
26 collected from those adults or juveniles convicted of a felony or
27 adjudicated guilty of an equivalent juvenile offense that is defined
28 as a sex offense or a violent offense in RCW 9.94A.030.)) Known
29 duplicate samples may be excluded from testing unless testing is
30 deemed necessary or advisable by the director.

31 ~~((+6))~~ (8) This section applies to:

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

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

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

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

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

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

6 ~~((7))~~ (9) This section creates no rights in a third person. No
7 cause of action may be brought based upon the noncollection or
8 nonanalysis or the delayed collection or analysis of a biological
9 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

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

24 ~~((9))~~ (11) A person commits the crime of refusal to provide DNA
25 if the person ~~((has a duty to register under RCW 9A.44.130 and the~~
26 ~~person))~~ willfully refuses to comply with a legal request for a DNA
27 sample as required under this section. The refusal to provide DNA is
28 a gross misdemeanor.

29 **Sec. 4.** RCW 9A.44.132 and 2015 c 261 s 5 are each amended to
30 read as follows:

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

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

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

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

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

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

14 (3) A person commits the crime of failure to register as a
15 kidnapping offender if the person has a duty to register under RCW
16 9A.44.130 for a kidnapping offense and knowingly fails to comply with
17 any of the requirements of RCW 9A.44.130.

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

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

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

29 ~~(5))~~ Unless relieved of the duty to register pursuant to RCW
30 9A.44.141 and 9A.44.142, a violation of this section is an ongoing
31 offense for purposes of the statute of limitations under RCW
32 9A.04.080."

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1 On page 1, line 2 of the title, after "system;" strike the
2 remainder of the title and insert "amending RCW 43.43.754 and
3 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.

Clarifies where individuals shall report to provide biological sample.

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