

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1326

66th Legislature
2019 Regular Session

Passed by the House April 28, 2019
Yeas 97 Nays 1

Speaker of the House of Representatives

Passed by the Senate April 28, 2019
Yeas 48 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1326** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1326

AS AMENDED BY THE SENATE

Passed Legislature - 2019 Regular Session

State of Washington **66th Legislature** **2019 Regular Session**

By House Public Safety (originally sponsored by Representatives Klippert and Goodman)

READ FIRST TIME 02/18/19.

1 AN ACT Relating to the collection of DNA biological samples for
2 entry into the combined DNA index system; amending RCW 43.43.754 and
3 9A.44.132; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** This act may be known and cited as
6 Jennifer and Michella's law.

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

19 In an effort to solve cold cases and unsolved crimes, to provide
20 closure to victims and their family members, and to support efforts

1 to exonerate the wrongly accused or convicted, the legislature finds
2 that procedural improvements and measured expansions to the
3 collection and analysis of lawfully obtained DNA biological samples
4 are both appropriate and necessary.

5 **Sec. 3.** RCW 43.43.754 and 2017 c 272 s 4 are each amended to
6 read 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 (i) Assault in the fourth degree where domestic violence as
12 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
13 9.94A.030);

14 (ii) Assault in the fourth degree with sexual motivation (RCW
15 9A.36.041, 9.94A.835);

16 (iii) Communication with a minor for immoral purposes (RCW
17 9.68A.090);

18 (iv) Custodial sexual misconduct in the second degree (RCW
19 9A.44.170);

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

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

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

25 (viii) Sexual misconduct with a minor in the second degree (RCW
26 9A.44.096);

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

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

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

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

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

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

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

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

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

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

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

20 ~~((+3))~~ (5) Biological samples shall be collected in the
21 following manner:

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

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

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

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

39 (c) For persons convicted of any offense listed in subsection
40 (1)(a) of this section or adjudicated guilty of an equivalent

1 juvenile offense, who are serving or who are to serve a term of
2 confinement in a department of corrections facility or a department
3 of (~~social and health services~~) children, youth, and families
4 facility, the facility holding the person shall be responsible for
5 obtaining the biological samples as part of the intake process. If
6 the facility did not collect the biological sample during the intake
7 process, then the facility shall collect the biological sample as
8 soon as is practicable. For those persons incarcerated before June
9 12, 2008, who have not yet had a biological sample collected,
10 priority shall be given to those persons who will be released the
11 soonest.

12 (~~(4)~~) (6) For persons convicted of any offense listed in
13 subsection (1)(a) of this section or adjudicated guilty of an
14 equivalent juvenile offense, who will not serve a term of
15 confinement, the court shall order the person to report to the local
16 police department or sheriff's office as provided under subsection
17 (5)(b)(i) of this section within a reasonable period of time
18 established by the court in order to provide a biological sample. The
19 court must further inform the person that refusal to provide a
20 biological sample is a gross misdemeanor under this section.

21 (7) Any biological sample taken pursuant to RCW 43.43.752 through
22 43.43.758 may be retained by the forensic laboratory services bureau,
23 and shall be used solely for the purpose of providing DNA or other
24 tests for identification analysis and prosecution of a criminal
25 offense or for the identification of human remains or missing
26 persons. Nothing in this section prohibits the submission of results
27 derived from the biological samples to the federal bureau of
28 investigation combined DNA index system.

29 (~~(5)~~) (8) The forensic laboratory services bureau of the
30 Washington state patrol is responsible for testing performed on all
31 biological samples that are collected under (~~subsection (1) of~~)
32 this section, to the extent allowed by funding available for this
33 purpose. (~~The director shall give priority to testing on samples~~
34 collected from those adults or juveniles convicted of a felony or
35 adjudicated guilty of an equivalent juvenile offense that is defined
36 as a sex offense or a violent offense in RCW 9.94A.030.) Known
37 duplicate samples may be excluded from testing unless testing is
38 deemed necessary or advisable by the director.

39 (~~(6)~~) (9) This section applies to:

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

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

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

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

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

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

15 (~~(7)~~) (10) This section creates no rights in a third person. No
16 cause of action may be brought based upon the noncollection or
17 nonanalysis or the delayed collection or analysis of a biological
18 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

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

33 (~~(9)~~) (12) A person commits the crime of refusal to provide DNA
34 if the person (~~has a duty to register under RCW 9A.44.130 and the~~
35 ~~person~~) willfully refuses to comply with a legal request for a DNA
36 sample as required under this section. The refusal to provide DNA is
37 a gross misdemeanor.

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

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

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

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

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

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

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

22 (3) A person commits the crime of failure to register as a
23 kidnapping offender if the person has a duty to register under RCW
24 9A.44.130 for a kidnapping offense and knowingly fails to comply with
25 any of the requirements of RCW 9A.44.130.

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

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

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

37 ~~(5))~~ Unless relieved of the duty to register pursuant to RCW
38 9A.44.141 and 9A.44.142, a violation of this section is an ongoing

1 offense for purposes of the statute of limitations under RCW
2 9A.04.080.

--- **END** ---