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**SENATE BILL 5576**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Dhingra, Kuderer, Lovelett, Nobles, Saldaña, Trudeau, Valdez, and C. Wilson

Read first time 01/26/23. Referred to Committee on Law & Justice.

1 AN ACT Relating to sexual assault procedures; and amending RCW  
2 43.43.754 and 9A.44.020.

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

4 **Sec. 1.** RCW 43.43.754 and 2021 c 215 s 149 are each amended to  
5 read as follows:

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

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

10 (i) Assault in the fourth degree where domestic violence as  
11 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,  
12 9.94A.030);

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

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

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

19 (v) Failure to register (chapter 9A.44 RCW);

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

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

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

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

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

5 (xi) Violation of a sexual assault protection order granted under  
6 chapter 7.105 RCW or former chapter 7.90 RCW; and

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

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

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

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

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

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

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

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

35 (5) Biological samples shall be collected in the following  
36 manner:

37 (a) For persons convicted of any offense listed in subsection  
38 (1)(a) of this section or adjudicated guilty of an equivalent  
39 juvenile offense, who do not serve a term of confinement in a  
40 department of corrections facility or a department of children,

1 youth, and families facility, and are serving a term of confinement  
2 in a city or county jail facility, the city or county jail facility  
3 shall be responsible for obtaining the biological samples prior to  
4 the person's release from confinement. If the biological samples are  
5 not collected prior to the person's release from confinement, then  
6 the sentencing court shall schedule a compliance hearing within five  
7 days of the person's release to ensure that the biological samples  
8 have been collected.

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

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

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

17 (c) For persons convicted of any offense listed in subsection  
18 (1)(a) of this section or adjudicated guilty of an equivalent  
19 juvenile offense, who are serving or who are to serve a term of  
20 confinement in a department of corrections facility or a department  
21 of children, youth, and families facility, the facility holding the  
22 person shall be responsible for obtaining the biological samples as  
23 part of the intake process. If the facility did not collect the  
24 biological sample during the intake process, then the facility shall  
25 collect the biological sample as soon as is practicable prior to the  
26 person's release from confinement. For those persons incarcerated  
27 before June 12, 2008, who have not yet had a biological sample  
28 collected, priority shall be given to those persons who will be  
29 released the soonest. If the biological samples are not collected  
30 prior to the person's release from confinement, then the sentencing  
31 court shall schedule a compliance hearing within five days of the  
32 person's release to ensure that the biological samples have been  
33 collected.

34 (d) For persons convicted of any offense listed in subsection  
35 (1)(a) of this section or adjudicated guilty of an equivalent  
36 juvenile offense, who will not serve a term of confinement, the court  
37 shall: Order the person to (~~report to the local police department or~~  
38 ~~sheriff's office as provided under subsection (5)(b)(i) of this~~  
39 ~~section within a reasonable period of time established by the court~~  
40 ~~in order to provide a biological sample)) be administratively booked~~

1 at a city or county jail facility for the sole purpose of providing a  
2 biological sample; or if the local police department or sheriff's  
3 office has a protocol for collecting the biological sample in the  
4 courtroom, order the person to immediately provide the biological  
5 sample to the local police department or sheriff's office before  
6 leaving the presence of the court. The court must further inform the  
7 person that refusal to provide a biological sample is a gross  
8 misdemeanor under this section.

9 (e) For persons convicted of any offense listed in subsection  
10 (1)(a) of this section or adjudicated guilty of an equivalent  
11 juvenile offense, the court must create and implement a biological  
12 sample collection protocol. The court shall obtain the biological  
13 samples at the time of sentencing. The court must inform the person  
14 that refusal to provide a biological sample is a gross misdemeanor  
15 under this section. If the biological samples are not collected at  
16 the time of sentencing, then the biological samples shall be  
17 collected pursuant to (a) through (d) of this subsection, and the  
18 court shall schedule a compliance hearing within five days of the  
19 sentencing to ensure that the biological samples have been collected.

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

28 (7) The forensic laboratory services bureau of the Washington  
29 state patrol is responsible for testing performed on all biological  
30 samples that are collected under this section, to the extent allowed  
31 by funding available for this purpose. Known duplicate samples may be  
32 excluded from testing unless testing is deemed necessary or advisable  
33 by the director.

34 (8) This section applies to:

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

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

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

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

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

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

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

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

27 (11) A person commits the crime of refusal to provide DNA if the  
28 person willfully refuses to comply with a legal request for a DNA  
29 sample as required under this section. The refusal to provide DNA is  
30 a gross misdemeanor.

31 **Sec. 2.** RCW 9A.44.020 and 2013 c 302 s 7 are each amended to  
32 read as follows:

33 (1) In order to convict a person of any crime defined in this  
34 chapter it shall not be necessary that the testimony of the alleged  
35 victim be corroborated.

36 (2) Evidence of the victim's past sexual behavior including but  
37 not limited to the victim's marital history~~((τ))~~; divorce  
38 history~~((τ))~~; ~~((⊖))~~ general reputation for promiscuity, nonchastity,  
39 or sexual mores contrary to community standards; or social media

1 account, including any text, image, video, or picture, which depict  
2 sexual content, sexual history, nudity or partial nudity, intimate  
3 sexual activity, communications about sexual activity, communications  
4 about sex, sexual fantasies, and other information that appeals to a  
5 prurient interest is inadmissible on the issue of credibility and is  
6 inadmissible to prove the victim's consent except as provided in  
7 subsection (3) of this section, but when the perpetrator and the  
8 victim have engaged in sexual intercourse with each other in the  
9 past, and when the past behavior is material to the issue of consent,  
10 evidence concerning the past behavior between the perpetrator and the  
11 victim may be admissible on the issue of consent to the offense.

12 (3) In any prosecution for the crime of rape, trafficking  
13 pursuant to RCW 9A.40.100, or any of the offenses in chapter 9.68A  
14 RCW, or for an attempt to commit, or an assault with an intent to  
15 commit any such crime evidence of the victim's past sexual behavior  
16 including but not limited to the victim's marital behavior~~((τ))~~;  
17 divorce history~~((τ))~~; ~~((θ#))~~ general reputation for promiscuity,  
18 nonchastity, or sexual mores contrary to community standards; or  
19 social media account, including any text, image, video, or picture,  
20 which depict sexual content, sexual history, nudity or partial  
21 nudity, intimate sexual activity, communications about sexual  
22 activity, communications about sex, sexual fantasies, and other  
23 information that appeals to a prurient interest is not admissible if  
24 offered to attack the credibility of the victim and is admissible on  
25 the issue of consent, except where prohibited in the underlying  
26 criminal offense, only pursuant to the following procedure:

27 (a) A written pretrial motion shall be made by the defendant to  
28 the court and prosecutor stating that the defense has an offer of  
29 proof of the relevancy of evidence of the past sexual behavior of the  
30 victim proposed to be presented and its relevancy on the issue of the  
31 consent of the victim.

32 (b) The written motion shall be accompanied by an affidavit or  
33 affidavits in which the offer of proof shall be stated.

34 (c) If the court finds that the offer of proof is sufficient, the  
35 court shall order a hearing out of the presence of the jury, if any,  
36 and the hearing shall be closed except to the necessary witnesses,  
37 the defendant, counsel, and those who have a direct interest in the  
38 case or in the work of the court.

39 (d) At the conclusion of the hearing, if the court finds that the  
40 evidence proposed to be offered by the defendant regarding the past

1 sexual behavior of the victim is relevant to the issue of the  
2 victim's consent; is not inadmissible because its probative value is  
3 substantially outweighed by the probability that its admission will  
4 create a substantial danger of undue prejudice; and that its  
5 exclusion would result in denial of substantial justice to the  
6 defendant; the court shall make an order stating what evidence may be  
7 introduced by the defendant, which order may include the nature of  
8 the questions to be permitted. The defendant may then offer evidence  
9 pursuant to the order of the court.

10 (4) Nothing in this section shall be construed to prohibit cross-  
11 examination of the victim on the issue of past sexual behavior when  
12 the prosecution presents evidence in its case in chief tending to  
13 prove the nature of the victim's past sexual behavior, but the court  
14 may require a hearing pursuant to subsection (3) of this section  
15 concerning such evidence.

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