
HOUSE BILL 2847

State of Washington

58th Legislature

2004 Regular Session

By Representatives Miloscia, O'Brien and Lovick

Read first time 01/21/2004. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to expanding the DNA identification system to
2 include DNA samples from persons arrested on criminal charges; amending
3 RCW 43.43.735 and 43.43.754; creating a new section; and providing an
4 effective date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the DNA
7 identification system is becoming increasingly useful in the accurate
8 investigation and prosecution of criminal offenses. The legislature
9 further finds that the use of DNA identification deters recidivist
10 acts, significantly aids in the exculpation of innocent persons, allows
11 for the accurate identification of prisoners for institutional
12 purposes, and helps in the identification of human remains or missing
13 persons. The legislature therefore determines that it is in the public
14 interest to expand the DNA identification system to include all persons
15 arrested on criminal charges.

16 **Sec. 2.** RCW 43.43.735 and 1991 c 3 s 297 are each amended to read
17 as follows:

18 (1) It shall be the duty of the sheriff or director of public

1 safety of every county, and the chief of police of every city or town,
2 and of every chief officer of other law enforcement agencies duly
3 operating within this state, to cause the photographing and
4 fingerprinting of all adults and juveniles lawfully arrested for the
5 commission of any criminal offense constituting a felony or gross
6 misdemeanor. (a) When such juveniles are brought directly to a
7 juvenile detention facility, the juvenile court administrator is also
8 authorized, but not required, to cause the photographing,
9 fingerprinting, and record transmittal to the appropriate law
10 enforcement agency; and (b) a further exception may be made when the
11 arrest is for a violation punishable as a gross misdemeanor and the
12 arrested person is not taken into custody.

13 (2)(a) It is the duty of the sheriff or director of public safety
14 of every county, and the chief of police of every city or town, and of
15 every chief officer of other law enforcement agencies duly operating
16 within the state, to cause the collection of biological samples for DNA
17 identification analysis from all adults and juveniles lawfully arrested
18 for the commission of any criminal offense constituting a felony or
19 gross misdemeanor.

20 (b) Biological samples collected under this subsection shall be:

21 (i) Collected using the same technique biological samples are
22 collected under RCW 43.43.754;

23 (ii) Forwarded to the state patrol for inclusion in the DNA
24 identification system established under RCW 43.43.752 through
25 43.43.759; and

26 (iii) Used solely for the purpose of inclusion in the DNA
27 identification system established under RCW 43.43.752 through
28 43.43.759.

29 (c) This subsection applies to all adults and juveniles who are
30 arrested on or after the effective date of this section.

31 (3) It shall be the right, but not the duty, of the sheriff or
32 director of public safety of every county, and the chief of police of
33 every city or town, and every chief officer of other law enforcement
34 agencies operating within this state to photograph and record the
35 fingerprints of all adults lawfully arrested, all persons who are the
36 subject of dependency record information, or all persons who are the
37 subject of protection proceeding record information.

1 (~~(3)~~) (4) Such sheriffs, directors of public safety, chiefs of
2 police, and other chief law enforcement officers, may record, in
3 addition to photographs and fingerprints, the palmprints, soleprints,
4 toeprints, or any other identification data of all persons whose
5 photograph and fingerprints are required or allowed to be taken under
6 this section, all persons who are the subject of dependency record
7 information, or all persons who are the subject of protection
8 proceeding record information, when in the discretion of such law
9 enforcement officers it is necessary for proper identification of the
10 arrested person or the investigation of the crime with which he is
11 charged.

12 (~~(4)~~) (5) It shall be the duty of the department of health or the
13 court having jurisdiction over the dependency action and protection
14 proceedings under chapter 74.34 RCW to cause the fingerprinting of all
15 persons who are the subject of a disciplinary board final decision,
16 dependency record information, protection proceeding record
17 information, or to obtain other necessary identifying information, as
18 specified by the section in rules adopted under chapter 34.05 RCW to
19 carry out the provisions of this subsection.

20 (~~(5)~~) (6) The court having jurisdiction over the dependency or
21 protection proceeding action may obtain and record, in addition to
22 fingerprints, the photographs, palmprints, soleprints, toeprints, or
23 any other identification data of all persons who are the subject of
24 dependency record information or protection proceeding record
25 information, when in the discretion of the court it is necessary for
26 proper identification of the person.

27 **Sec. 3.** RCW 43.43.754 and 2002 c 289 s 2 are each amended to read
28 as follows:

29 (1) Every adult or juvenile individual convicted of a felony,
30 stalking under RCW 9A.46.110, harassment under RCW 9A.46.020,
31 communicating with a minor for immoral purposes under RCW 9.68A.090, or
32 adjudicated guilty of an equivalent juvenile offense must have a
33 biological sample collected for purposes of DNA identification analysis
34 unless a biological sample has already been collected from the adult or
35 juvenile under RCW 43.43.735(2). The biological sample shall be
36 collected in the following manner:

1 (a) For persons convicted of such offenses or adjudicated guilty of
2 an equivalent juvenile offense who do not serve a term of confinement
3 in a department of corrections facility, and do serve a term of
4 confinement in a city or county jail facility, the city or county shall
5 be responsible for obtaining the biological samples either as part of
6 the intake process into the city or county jail or detention facility
7 for those persons convicted on or after July 1, 2002, or within a
8 reasonable time after July 1, 2002, for those persons incarcerated
9 before July 1, 2002, who have not yet had a biological sample
10 collected, beginning with those persons who will be released the
11 soonest.

12 (b) For persons convicted of such offenses or adjudicated guilty of
13 an equivalent juvenile offense who do not serve a term of confinement
14 in a department of corrections facility, and do not serve a term of
15 confinement in a city or county jail facility, the local police
16 department or sheriff's office is responsible for obtaining the
17 biological samples after sentencing on or after July 1, 2002.

18 (c) For persons convicted of such offenses or adjudicated guilty of
19 an equivalent juvenile offense, who are serving or who are to serve a
20 term of confinement in a department of corrections facility or a
21 department of social and health services facility, the facility holding
22 the person shall be responsible for obtaining the biological samples
23 either as part of the intake process into such facility for those
24 persons convicted on or after July 1, 2002, or within a reasonable time
25 after July 1, 2002, for those persons incarcerated before July 1, 2002,
26 who have not yet had a biological sample collected, beginning with
27 those persons who will be released the soonest.

28 (2) Any biological sample taken pursuant to RCW 43.43.735 or
29 43.43.752 through 43.43.758 may be retained by the forensic laboratory
30 services bureau, and shall be used solely for the purpose of providing
31 DNA or other tests for identification analysis and prosecution of a
32 criminal offense or for the identification of human remains or missing
33 persons. Nothing in this section prohibits the submission of results
34 derived from the biological samples to the federal bureau of
35 investigation combined DNA index system.

36 (3) The director of the forensic laboratory services bureau of the
37 Washington state patrol shall perform testing on all biological samples
38 collected under subsection (1) of this section, to the extent allowed

1 by funding available for this purpose. The director shall give
2 priority to testing on samples collected from those adults or juveniles
3 convicted of a felony or adjudicated guilty of an equivalent juvenile
4 offense that is defined as a sex offense or a violent offense in RCW
5 9.94A.030.

6 (4) This section applies to all adults who are convicted of a sex
7 or violent offense after July 1, 1990; and to all adults who were
8 convicted of a sex or violent offense on or prior to July 1, 1990, and
9 who are still incarcerated on or after July 25, 1999. This section
10 applies to all juveniles who are adjudicated guilty of a sex or violent
11 offense after July 1, 1994; and to all juveniles who were adjudicated
12 guilty of a sex or violent offense on or prior to July 1, 1994, and who
13 are still incarcerated on or after July 25, 1999. This section applies
14 to all adults and juveniles who are convicted of a felony other than a
15 sex or violent offense, stalking under RCW 9A.46.110, harassment under
16 RCW 9A.46.020, or communicating with a minor for immoral purposes under
17 RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,
18 on or after July 1, 2002; and to all adults and juveniles who were
19 convicted or adjudicated guilty of such an offense before July 1, 2002,
20 and are still incarcerated on or after July 1, 2002.

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

25 (6) The detention, arrest, or conviction of a person based upon a
26 data base match or data base information is not invalidated if it is
27 determined that the sample was obtained or placed in the data base by
28 mistake, or if the conviction or juvenile adjudication that resulted in
29 the collection of the biological sample was subsequently vacated or
30 otherwise altered in any future proceeding including but not limited to
31 posttrial or postfact-finding motions, appeals, or collateral attacks.

32 NEW SECTION. **Sec. 4.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 5.** This act takes effect July 1, 2004.

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