

ESSB 6488 - H COMM AMD

By Committee on Public Safety & Emergency Preparedness

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

3 "**Sec. 1.** RCW 43.43.753 and 2002 c 289 s 1 are each amended to read
4 as follows:

5 The legislature finds that recent developments in molecular biology
6 and genetics have important applications for forensic science. It has
7 been scientifically established that there is a unique pattern to the
8 chemical structure of the deoxyribonucleic acid (DNA) contained in each
9 cell of the human body. The process for identifying this pattern is
10 called "DNA identification."

11 The legislature further finds that DNA databases are important
12 tools in criminal investigations, in the exclusion of individuals who
13 are the subject of investigations or prosecutions, and in detecting
14 recidivist acts. It is the policy of this state to assist federal,
15 state, and local criminal justice and law enforcement agencies in both
16 the identification and detection of individuals in criminal
17 investigations and the identification and location of missing and
18 unidentified persons. Therefore, it is in the best interest of the
19 state to establish a DNA database and DNA data bank containing DNA
20 samples submitted by persons convicted of felony offenses and other
21 crimes as specified in RCW 43.43.754. DNA samples necessary for the
22 identification of missing persons and unidentified human remains shall
23 also be included in the DNA database.

24 The legislature further finds that the DNA identification system
25 used by the federal bureau of investigation and the Washington state
26 patrol has no ability to predict genetic disease or predisposal to
27 illness. Nonetheless, the legislature intends that biological samples
28 collected under RCW 43.43.754, and DNA identification data obtained
29 from the samples, be used only for purposes related to criminal

1 investigation, identification of human remains or missing persons, or
2 improving the operation of the system authorized under RCW 43.43.752
3 through 43.43.758.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.01 RCW
5 to read as follows:

6 (1) In a prosecution for a misdemeanor or gross misdemeanor in a
7 court of limited jurisdiction, the prosecuting attorney may file a
8 special allegation of sexual motivation when sufficient admissible
9 evidence exists, which, when considered with the most plausible,
10 reasonably foreseeable defense that could be raised under the evidence,
11 would justify a finding of sexual motivation by a reasonable and
12 objective fact-finder.

13 (2) In a criminal case wherein there has been a special allegation,
14 the state shall prove beyond a reasonable doubt that the accused
15 committed the crime with a sexual motivation. The court shall make a
16 finding of fact of whether or not a sexual motivation was present at
17 the time of the commission of the crime, or if a jury trial is had, the
18 jury shall, if it finds the defendant guilty, also find a special
19 verdict as to whether or not the defendant committed the crime with a
20 sexual motivation.

21 (3) The prosecuting attorney shall not withdraw the special
22 allegation of sexual motivation without approval of the court through
23 an order of dismissal of the special allegation. The court shall not
24 dismiss this special allegation unless it finds that such an order is
25 necessary to correct an error in the initial charging decision or
26 unless there are evidentiary problems which make proving the special
27 allegation doubtful.

28 (4) For purposes of this section, "sexual motivation" has the same
29 meaning as in RCW 9.94A.030.

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

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

34 (a) Every adult or juvenile individual convicted of a felony,
35 (~~stalking under RCW 9A.46.110, harassment under RCW 9A.46.020,~~
36 ~~communicating with a minor for immoral purposes under RCW 9.68A.090, or~~

1 adjudicated guilty of an equivalent juvenile offense must have a
2 biological sample collected for purposes of DNA identification analysis
3 in the following manner)) or any of the following crimes (or equivalent
4 juvenile offenses):

5 Any misdemeanor or gross misdemeanor with a finding of sexual
6 motivation under RCW 9.94A.835, 13.40.135, or section 2 of this act

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

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

9 Failure to register (RCW 9A.44.130)

10 Harassment (RCW 9A.46.020)

11 Patronizing a prostitute (RCW 9A.88.110)

12 Permitting commercial sexual abuse of a minor (RCW 9.68A.103)

13 Permitting prostitution (RCW 9A.88.090)

14 Prostitution (RCW 9A.88.030)

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

16 Stalking (RCW 9A.46.110)

17 Violation of a sexual assault protection order granted under
18 chapter 7.90 RCW; and

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

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

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

25 (a) For persons convicted of (~~such offenses~~) any offense listed
26 in subsection (1)(a) of this section or adjudicated guilty of an
27 equivalent juvenile offense who do not serve a term of confinement in
28 a department of corrections facility, and do serve a term of
29 confinement in a city or county jail facility, the city or county shall
30 be responsible for obtaining the biological samples (~~either as part of~~
31 ~~the intake process into the city or county jail or detention facility~~
32 ~~for those persons convicted on or after July 1, 2002, or within a~~
33 ~~reasonable time after July 1, 2002, for those persons incarcerated~~
34 ~~before July 1, 2002, who have not yet had a biological sample~~
35 ~~collected, beginning with those persons who will be released the~~
36 ~~soonest)).~~

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

1 (i) Persons convicted of (~~such offenses~~) any offense listed in
2 subsection (1)(a) of this section or adjudicated guilty of an
3 equivalent juvenile offense who do not serve a term of confinement in
4 a department of corrections facility, and do not serve a term of
5 confinement in a city or county jail facility(~~, the local police~~
6 ~~department or sheriff's office is responsible for obtaining the~~
7 ~~biological samples after sentencing on or after July 1, 2002)); and~~

8 (ii) Persons who are required to register under RCW 9A.44.030.

9 (c) For persons convicted of (~~such offenses~~) any offense listed
10 in subsection (1)(a) of this section or adjudicated guilty of an
11 equivalent juvenile offense, who are serving or who are to serve a term
12 of confinement in a department of corrections facility or a department
13 of social and health services facility, the facility holding the person
14 shall be responsible for obtaining the biological samples (~~either as~~
15 ~~part of the intake process into such facility for those persons~~
16 ~~convicted on or after July 1, 2002, or within a reasonable time after~~
17 ~~July 1, 2002,)). For those persons incarcerated before (~~July 1,~~
18 ~~2002)~~ the effective date of this section, who have not yet had a
19 biological sample collected, (~~beginning with~~) priority shall be given
20 to those persons who will be released the soonest.~~

21 (~~(2)~~) (4) Any biological sample taken pursuant to RCW 43.43.752
22 through 43.43.758 may be retained by the forensic laboratory services
23 bureau, and shall be used solely for the purpose of providing DNA or
24 other tests for identification analysis and prosecution of a criminal
25 offense or for the identification of human remains or missing persons.
26 Nothing in this section prohibits the submission of results derived
27 from the biological samples to the federal bureau of investigation
28 combined DNA index system.

29 (~~(3)~~) (5) The (~~director of the~~) forensic laboratory services
30 bureau of the Washington state patrol (~~shall perform~~) is responsible
31 for testing performed on all biological samples that are collected
32 under subsection (1) of this section, to the extent allowed by funding
33 available for this purpose. The director shall give priority to
34 testing on samples collected from those adults or juveniles convicted
35 of a felony or adjudicated guilty of an equivalent juvenile offense
36 that is defined as a sex offense or a violent offense in RCW 9.94A.030.
37 Known duplicate samples may be excluded from testing unless testing is
38 deemed necessary or advisable by the director.

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

16 ~~(5))~~ (6) This section applies to:

17 (a) All adults and juveniles to whom this section applied prior to
18 the effective date of this section;

19 (b) All adults and juveniles to whom this section did not apply
20 prior to the effective date of this section who:

21 (i) Are convicted on or after the effective date of this section of
22 an offense listed in subsection (1)(a) of this section; or

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

26 (c) All adults and juveniles who are required to register under RCW
27 9A.44.130 on or after the effective date of this section, whether
28 convicted before, on, or after the effective date of this section.

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 ~~((6))~~ (8) The detention, arrest, or conviction of a person based
34 upon a database match or database information is not invalidated if it
35 is 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.

3 **Sec. 4.** RCW 43.43.7541 and 2002 c 289 s 4 are each amended to read
4 as follows:

5 Every sentence imposed under chapter 9.94A RCW(~~(7)~~) for a
6 (~~(felony)~~) crime specified in RCW 43.43.754 (~~(that is committed on or~~
7 ~~after July 1, 2002,~~) must include a fee of one hundred dollars (~~(for~~
8 ~~collection of a biological sample as required under RCW 43.43.754,~~
9 ~~unless the court finds that imposing the fee would result in undue~~
10 ~~hardship on the offender)~~). The fee is a court-ordered legal financial
11 obligation as defined in RCW 9.94A.030, payable by the offender after
12 payment of all other legal financial obligations included in the
13 sentence has been completed. The clerk of the court shall transmit
14 eighty percent of the fee(~~(s)~~) collected to the state treasurer for
15 deposit in the state DNA database account created under RCW 43.43.7532,
16 and shall transmit twenty percent of the fee collected to the agency
17 responsible for collection of a biological sample from the offender as
18 required under RCW 43.43.754.

19 **Sec. 5.** RCW 43.43.756 and 1989 c 350 s 5 are each amended to read
20 as follows:

21 The Washington state patrol (~~(in consultation with the University~~
22 ~~of Washington school of medicine)~~) forensic laboratory services bureau
23 may:

- 24 (1) Provide DNA analysis services to law enforcement agencies
25 throughout the state (~~(after July 1, 1990)~~);
- 26 (2) Provide assistance to law enforcement officials and prosecutors
27 in the preparation and utilization of DNA evidence for presentation in
28 court; and
- 29 (3) Provide expert testimony in court on DNA evidentiary issues."

30 Correct the title.

EFFECT: Requires all persons convicted of Permitting Commercial Sexual Abuse of a Minor, Permitting Prostitution, or any misdemeanor or

gross misdemeanor committed with sexual motivation to submit a biological sample for inclusion in the DNA database. Creates a special allegation process for use by courts of limited jurisdiction to determine whether a misdemeanor or gross misdemeanor has been committed with sexual motivation. Clarifies that all adults and juveniles who were included in the DNA database prior to the effective date of the act will continue to be included after the effective date of the act.

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