

SHB 2331 - H AMD 790

By Representative Orwall

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

3 "Sec. 1. RCW 43.43.754 and 2017 c 272 s 4 are each amended to
4 read as follows:

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

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

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

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

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

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

18 (v) Failure to register (RCW 9A.44.130 for persons convicted on
19 or before June 10, 2010, and RCW 9A.44.132 for persons convicted
20 after June 10, 2010);

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

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

23 (viii) Sexual misconduct with a minor in the second degree (RCW
24 9A.44.096);

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

26 (x) Violation of a sexual assault protection order granted under
27 chapter 7.90 RCW; and

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

30 (2)(a) A municipal jurisdiction may submit any biological sample
31 collected prior to the effective date of this section to the forensic

1 laboratory services bureau of the Washington state patrol for
2 purposes of DNA identification analysis when:

3 (i) The sample was collected upon conviction for a municipal
4 offense that is equivalent to an offense listed in subsection (1)(a)
5 of this section;

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

9 (iii) The sample was collected on or after June 12, 2008, as a
10 requirement of the relevant municipal ordinance.

11 (b) When submitting a biological sample under (a) of this
12 subsection, the municipal jurisdiction must include a signed
13 affidavit from the municipal prosecuting authority of the
14 jurisdiction in which the conviction occurred specifying the state
15 crime to which the municipal offense is equivalent.

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

19 ~~((+3))~~ (4) Biological samples shall be collected in the
20 following manner:

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

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

29 (i) Persons convicted of any offense listed in subsection (1)(a)
30 of this section or adjudicated guilty of an equivalent juvenile
31 offense who do not serve a term of confinement in a department of
32 corrections facility, and do not serve a term of confinement in a
33 city or county jail facility; and

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

35 (c) For persons convicted of any offense listed in subsection
36 (1)(a) of this section or adjudicated guilty of an equivalent
37 juvenile offense, who are serving or who are to serve a term of
38 confinement in a department of corrections facility or a department
39 of social and health services facility, the facility holding the
40 person shall be responsible for obtaining the biological samples. For

1 those persons incarcerated before June 12, 2008, who have not yet had
2 a biological sample collected, priority shall be given to those
3 persons who will be released the soonest.

4 ~~((4))~~ (5) Any biological sample taken pursuant to RCW 43.43.752
5 through 43.43.758, or submitted under subsection (2) of this section,
6 may be retained by the forensic laboratory services bureau, and shall
7 be used solely for the purpose of providing DNA or other tests for
8 identification analysis and prosecution of a criminal offense or for
9 the identification of human remains or missing persons. Nothing in
10 this section prohibits the submission of results derived from the
11 biological samples to the federal bureau of investigation combined
12 DNA index system.

13 ~~((5))~~ (6) The forensic laboratory services bureau of the
14 Washington state patrol is responsible for testing performed on all
15 biological samples that are collected under subsection (1) of this
16 section, or submitted under subsection (2) of this section, to the
17 extent allowed by funding available for this purpose. The director
18 shall give priority to testing on samples collected from those adults
19 or juveniles convicted of a felony or adjudicated guilty of an
20 equivalent juvenile offense that is defined as a sex offense or a
21 violent offense in RCW 9.94A.030. Known duplicate samples may be
22 excluded from testing unless testing is deemed necessary or advisable
23 by the director.

24 ~~((6))~~ (7) This section applies to:

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

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

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

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

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

37 (d) All samples submitted under subsection (2) of this section.

38 ~~((7))~~ (8) This section creates no rights in a third person. No
39 cause of action may be brought based upon the noncollection or

1 nonanalysis or the delayed collection or analysis of a biological
2 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

3 ~~((8))~~ (9) The detention, arrest, or conviction of a person
4 based upon a database match or database information is not
5 invalidated if it is determined that the sample was obtained or
6 placed in the database by mistake, or if the conviction or juvenile
7 adjudication that resulted in the collection of the biological sample
8 was subsequently vacated or otherwise altered in any future
9 proceeding including but not limited to posttrial or postfact-finding
10 motions, appeals, or collateral attacks. No cause of action may be
11 brought against the state based upon the analysis of a biological
12 sample authorized to be taken pursuant to a municipal ordinance if
13 the conviction or adjudication that resulted in the collection of the
14 biological sample was subsequently vacated or otherwise altered in
15 any future proceeding including, but not limited to, posttrial or
16 postfact-finding motions, appeals, or collateral attacks.

17 ~~((9))~~ (10) A person commits the crime of refusal to provide DNA
18 if the person has a duty to register under RCW 9A.44.130 and the
19 person willfully refuses to comply with a legal request for a DNA
20 sample as required under this section. The refusal to provide DNA is
21 a gross misdemeanor."

22 Correct the title.

EFFECT: Removes the provisions requiring DNA collection and
analysis from persons convicted under a municipal ordinance that is
equivalent to a state criminal statute for which DNA is collected
upon conviction.

Makes technical and wording changes to harmonize the remaining
provisions in the bill.

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