
HOUSE BILL 1111

State of Washington

65th Legislature

2017 Regular Session

By Representatives Orwall, Klippert, Goodman, Hayes, Stanford, Jinkins, Fey, Muri, Gregerson, and Kilduff

Read first time 01/11/17. Referred to Committee on Public Safety.

1 AN ACT Relating to DNA biological samples; amending RCW 43.43.754
2 and 9A.44.132; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the state of
5 Washington has for decades routinely required collection of DNA
6 biological samples from certain convicted offenders and persons
7 required to register as sex and kidnapping offenders. The resulting
8 DNA data has proven to be an invaluable component of forensic
9 evidence analysis. Not only have DNA matches focused law enforcement
10 efforts and resources on productive leads, assisted in the
11 expeditious conviction of guilty persons, and provided identification
12 of recidivist and cold case offenders, DNA analysis has also played a
13 crucial role in absolving wrongly suspected and convicted persons and
14 in providing resolution to those who have tragically suffered
15 unimaginable harm.

16 In an effort to solve cold cases and unsolved crimes, to provide
17 closure to victims and their family members, and to support efforts
18 to exonerate the wrongly accused or convicted, the legislature finds
19 that procedural improvements and measured expansions to the
20 collection and analysis of lawfully obtained DNA biological samples
21 are both appropriate and necessary.

1 **Sec. 2.** RCW 43.43.754 and 2015 c 261 s 10 are each amended to
2 read as follows:

3 (1)(a) A biological sample must be collected for purposes of DNA
4 identification analysis from:

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

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

10 (B) Communication with a minor for immoral purposes (RCW
11 9.68A.090);

12 (C) Custodial sexual misconduct in the second degree (RCW
13 9A.44.170);

14 (D) Failure to register (~~(RCW 9A.44.130 for persons convicted on~~
15 ~~or before June 10, 2010, and RCW 9A.44.132 for persons convicted~~
16 ~~after June 10, 2010)) (chapter 9A.44 RCW);~~

17 (E) Harassment (RCW 9A.46.020);

18 (F) Patronizing a prostitute (RCW 9A.88.110);

19 (G) Sexual misconduct with a minor in the second degree (RCW
20 9A.44.096);

21 (H) Stalking (RCW 9A.46.110);

22 (I) Indecent exposure (RCW 9A.88.010);

23 (J) Violation of a sexual assault protection order granted under
24 chapter 7.90 RCW; and

25 ((b)) (ii) Every adult or juvenile individual who is required
26 to register under RCW 9A.44.130.

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

33 (c) At an arraignment or bail hearing, the court shall order any
34 person charged with any offense who has previously been convicted of
35 a violent offense pursuant to RCW 9.94A.030, regardless of the date
36 of conviction, to submit a biological sample pursuant to subsection
37 (3)(d) of this section.

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

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

3 (a) For persons convicted of any offense listed in subsection
4 (1)(a) of this section or adjudicated guilty of an equivalent
5 juvenile offense who do not serve a term of confinement in a
6 department of corrections facility or a department of social and
7 health services facility, and ~~((do—serve))~~ are serving a term of
8 confinement in a city or county jail facility, the city or county
9 shall be responsible for obtaining the biological samples immediately
10 after sentencing in the city or county jail facility. If the person
11 is not taken into custody immediately after sentencing or has served
12 his or her entire term of confinement, the person must be ordered by
13 the court to immediately report to the city or county jail facility
14 to provide a biological sample. The court shall establish a status
15 hearing to take place within fourteen days to ensure the convicted
16 offender has complied with the court order. If the court receives
17 documentation that the offender has complied with the court order
18 requiring the submission of a biological sample, the status hearing
19 may be canceled.

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

22 (i) Persons convicted of any offense listed in subsection (1)(a)
23 of this section or adjudicated guilty of an equivalent juvenile
24 offense who do not serve a term of confinement in a department of
25 corrections facility or a department of social and health services
26 facility, and do not serve a term of confinement in a city or county
27 jail facility. Immediately after sentencing, such persons must be
28 ordered by the court to immediately report to the local police
29 department or sheriff's office pursuant to this subsection (3)(b) to
30 provide a biological sample. The court shall establish a status
31 hearing to take place within fourteen days to ensure the convicted
32 offender has complied with the court order. If the court receives
33 documentation that the offender has complied with the court order
34 requiring the submission of a biological sample, the status hearing
35 may be canceled; and

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

37 (c) 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 are serving or who are to serve a term of
40 confinement in a department of corrections facility or a department

1 of social and health services facility, the facility holding the
2 person shall be responsible for obtaining the biological samples as
3 part of the intake process. (~~For those persons incarcerated before~~
4 ~~June 12, 2008, who have not yet had a biological sample collected,~~
5 ~~priority shall be given to those persons who will be released the~~
6 ~~soonest~~) If the person is not taken into custody immediately after
7 sentencing, the person must be ordered by the court to immediately
8 report to the local police or sheriff's office pursuant to (b) of
9 this subsection to provide a biological sample. The court shall
10 establish a status hearing to take place within fourteen days to
11 ensure the convicted offender has complied with the court order. If
12 the court receives documentation that the offender has complied with
13 the court order requiring the submission of a biological sample, the
14 status hearing may be canceled.

15 (d) Following an arraignment or bail hearing under subsection
16 (1)(c) of this section:

17 (i) If the person is not taken into custody, the person must be
18 ordered by the court to immediately report to the city or county jail
19 facility to provide a biological sample. The court shall establish a
20 status hearing to take place within fourteen days to ensure the
21 defendant has complied with the court order. If the court receives
22 documentation that the defendant has complied with the court order
23 requiring the submission of a biological sample, the status hearing
24 may be canceled; and

25 (ii) If the person is taken into custody, the city or county
26 shall be responsible for obtaining the biological sample in the city
27 or county jail facility as part of the intake process.

28 (4) Any biological sample taken pursuant to RCW 43.43.752 through
29 43.43.758 may be retained by the forensic laboratory services bureau,
30 and shall be used solely for the purpose of providing DNA or other
31 tests for identification analysis and prosecution of a criminal
32 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 (5) The forensic laboratory services bureau of the Washington
37 state patrol is responsible for testing performed on all biological
38 samples that are collected under subsection (1) of this section, to
39 the extent allowed by funding available for this purpose. (~~The~~
40 ~~director shall give priority to testing on samples collected from~~

1 ~~those adults or juveniles convicted of a felony or adjudicated guilty~~
2 ~~of an equivalent juvenile offense that is defined as a sex offense or~~
3 ~~a violent offense in RCW 9.94A.030.)~~ Known duplicate samples may be
4 excluded from testing unless testing is deemed necessary or advisable
5 by the director.

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

7 ~~(a) All adults and juveniles to whom this section applied prior~~
8 ~~to June 12, 2008;~~

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

11 ~~(i) Are convicted on or after June 12, 2008, of an offense listed~~
12 ~~in subsection (1)(a) of this section; or~~

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

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

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

23 ~~((8))~~ (7) The detention, arrest, or conviction of a person
24 based upon a database match or database information is not
25 invalidated if it is determined that the sample was obtained or
26 placed in the database by mistake, or if the conviction or juvenile
27 adjudication that resulted in the collection of the biological sample
28 was subsequently vacated or otherwise altered in any future
29 proceeding including but not limited to posttrial or postfact-finding
30 motions, appeals, or collateral attacks.

31 ~~((9))~~ (8) A person commits the crime of refusal to provide DNA
32 if the person ~~((has a duty to register under RCW 9A.44.130 and the~~
33 ~~person))~~ willfully refuses to comply with a legal request for a DNA
34 sample as required under this section. The refusal to provide DNA is
35 a gross misdemeanor.

36 **Sec. 3.** RCW 9A.44.132 and 2015 c 261 s 5 are each amended to
37 read as follows:

38 (1) A person commits the crime of failure to register as a sex
39 offender if the person has a duty to register under RCW 9A.44.130 for

1 a felony sex offense and knowingly fails to comply with any of the
2 requirements of RCW 9A.44.130.

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

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

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

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

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

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

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

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

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

35 ~~(5))~~ Unless relieved of the duty to register pursuant to RCW
36 9A.44.141 and 9A.44.142, a violation of this section is an ongoing
37 offense for purposes of the statute of limitations under RCW
38 9A.04.080.

1 NEW SECTION. **Sec. 4.** This act may be known and cited as
2 Jennifer and Michella's law.

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