

SSB 5576 - S AMD 70  
By Senator Dhingra

ADOPTED 02/28/2023

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

3 **"Sec. 1.** RCW 43.43.754 and 2021 c 215 s 149 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 (chapter 9A.44 RCW);

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

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

21 (viii) Sexual misconduct with a minor in the second degree (RCW  
22 9A.44.096);

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

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

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

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

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

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

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

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

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

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

21 (4) 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 (5) Biological samples shall be collected in the following  
25 manner:

26 (a) (i) For persons convicted of any offense listed in subsection  
27 (1)(a) of this section or adjudicated guilty of an equivalent  
28 juvenile offense, who do not serve a term of confinement in a  
29 department of corrections facility or a department of children,  
30 youth, and families facility, and are serving a term of confinement  
31 in a city or county jail facility, the city or county jail facility  
32 shall be responsible for obtaining the biological samples prior to  
33 the person's release from confinement.

34 (ii) If the biological sample is not collected prior to the  
35 person's release from confinement, the responsible city or county  
36 jail facility will notify the sentencing court within three business  
37 days of the person's release that it has released the person without  
38 collecting the person's biological sample. Within 10 days of  
39 receiving notice of the person's release, the sentencing court shall  
40 schedule a compliance hearing. The local police department or

1 sheriff's office shall serve the person with notice of the compliance  
2 hearing and shall file proof of service with the sentencing court. A  
3 representative of the local police department or sheriff's office  
4 shall attend the compliance hearing and obtain the person's  
5 biological sample at the hearing. All attorneys' fees and court costs  
6 associated with scheduling and attending the compliance hearing shall  
7 be paid for by the city or county jail facility that failed to  
8 collect the person's biological sample at the time of the person's  
9 confinement.

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

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

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

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

31 (ii) If the biological sample is not collected prior to the  
32 person's release from confinement, the responsible department of  
33 corrections facility or department of children, youth, and families  
34 facility will notify the sentencing court within three business days  
35 of the person's release that it has released the person without  
36 collecting the person's biological sample. Within 10 days of  
37 receiving notice of the person's release, the sentencing court shall  
38 schedule a compliance hearing. The local police department or  
39 sheriff's office shall serve the person with notice of the compliance  
40 hearing and shall file proof of service with the sentencing court. A

1 representative of the local police department or sheriff's office  
2 shall attend the compliance hearing and obtain the person's  
3 biological sample at the hearing. All attorneys' fees and court costs  
4 associated with scheduling and attending the compliance hearing shall  
5 be paid for by the department of corrections facility or department  
6 of children, youth, and families facility that failed to collect the  
7 person's biological sample at the time of the person's confinement.

8 (d) For persons convicted of any offense listed in subsection  
9 (1)(a) of this section or adjudicated guilty of an equivalent  
10 juvenile offense, who will not serve a term of confinement, the court  
11 shall: Order the person to (~~report to the local police department or~~  
12 ~~sheriff's office as provided under subsection (5)(b)(i) of this~~  
13 ~~section within a reasonable period of time established by the court~~  
14 ~~in order to provide a biological sample)) be administratively booked  
15 at a city or county jail facility for the sole purpose of providing a  
16 biological sample; or if the local police department or sheriff's  
17 office has a protocol for collecting the biological sample in the  
18 courtroom, order the person to immediately provide the biological  
19 sample to the local police department or sheriff's office before  
20 leaving the presence of the court. The court must further inform the  
21 person that refusal to provide a biological sample is a gross  
22 misdemeanor under this section.~~

23 (e) For persons convicted of any offense listed in subsection  
24 (1)(a) of this section or adjudicated guilty of an equivalent  
25 juvenile offense, the court must create and implement a biological  
26 sample collection protocol. The court shall order the biological  
27 samples at the time of sentencing. The court must inform the person  
28 that refusal to provide a biological sample is a gross misdemeanor  
29 under this section. If the biological sample is not collected at the  
30 time of sentencing, then the biological sample shall be collected  
31 pursuant to (a) through (d) of this subsection, and the court shall  
32 schedule a compliance hearing within 10 days of the sentencing to  
33 ensure that the biological sample has been collected.

34 (6) Any biological sample taken pursuant to RCW 43.43.752 through  
35 43.43.758 may be retained by the forensic laboratory services bureau,  
36 and shall be used solely for the purpose of providing DNA or other  
37 tests for identification analysis and prosecution of a criminal  
38 offense or for the identification of human remains or missing  
39 persons. Nothing in this section prohibits the submission of results

1 derived from the biological samples to the federal bureau of  
2 investigation combined DNA index system.

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

9 (8) This section applies to:

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

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

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

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

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

22 (d) All samples submitted under subsections (2) and (3) of this  
23 section.

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

28 (10) The detention, arrest, or conviction of a person based upon  
29 a database match or database information is not invalidated if it is  
30 determined that the sample was obtained or placed in the database by  
31 mistake, or if the conviction or juvenile adjudication that resulted  
32 in the collection of the biological sample was subsequently vacated  
33 or otherwise altered in any future proceeding including but not  
34 limited to posttrial or postfact-finding motions, appeals, or  
35 collateral attacks. No cause of action may be brought against the  
36 state based upon the analysis of a biological sample authorized to be  
37 taken pursuant to a municipal ordinance if the conviction or  
38 adjudication that resulted in the collection of the biological sample  
39 was subsequently vacated or otherwise altered in any future

1 proceeding including, but not limited to, posttrial or postfact-  
2 finding motions, appeals, or collateral attacks.

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

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

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

12 (2) Evidence of the victim's past sexual behavior including but  
13 not limited to the victim's marital history~~((τ))~~; divorce  
14 history~~((τ))~~; ~~((⊖))~~ general reputation for promiscuity, nonchastity,  
15 or sexual mores contrary to community standards; or social media  
16 account, including any text, image, video, or picture, which depict  
17 sexual content, sexual history, nudity or partial nudity, intimate  
18 sexual activity, communications about sexual activity, communications  
19 about sex, sexual fantasies, and other information that appeals to a  
20 prurient interest is inadmissible on the issue of credibility and is  
21 inadmissible to prove the victim's consent except as provided in  
22 subsection (3) of this section, but when the perpetrator and the  
23 victim have engaged in sexual intercourse with each other in the  
24 past, and when the past behavior is material to the issue of consent,  
25 evidence concerning the past behavior between the perpetrator and the  
26 victim may be admissible on the issue of consent to the offense.

27 (3) In any prosecution for the crime of rape, trafficking  
28 pursuant to RCW 9A.40.100, or any of the offenses in chapter 9.68A  
29 RCW, or for an attempt to commit, or an assault with an intent to  
30 commit any such crime evidence of the victim's past sexual behavior  
31 including but not limited to the victim's marital behavior~~((τ))~~; divorce  
32 history~~((τ))~~; ~~((⊖))~~ general reputation for promiscuity,  
33 nonchastity, or sexual mores contrary to community standards; or  
34 social media account, including any text, image, video, or picture,  
35 which depict sexual content, sexual history, nudity or partial  
36 nudity, intimate sexual activity, communications about sexual  
37 activity, communications about sex, sexual fantasies, and other  
38 information that appeals to a prurient interest is not admissible if  
39 offered to attack the credibility of the victim and is admissible on

1 the issue of consent, except where prohibited in the underlying  
2 criminal offense, only pursuant to the following procedure:

3 (a) A written pretrial motion shall be made by the defendant to  
4 the court and prosecutor stating that the defense has an offer of  
5 proof of the relevancy of evidence of the past sexual behavior of the  
6 victim proposed to be presented and its relevancy on the issue of the  
7 consent of the victim.

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

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

15 (d) At the conclusion of the hearing, if the court finds that the  
16 evidence proposed to be offered by the defendant regarding the past  
17 sexual behavior of the victim is relevant to the issue of the  
18 victim's consent; is not inadmissible because its probative value is  
19 substantially outweighed by the probability that its admission will  
20 create a substantial danger of undue prejudice; and that its  
21 exclusion would result in denial of substantial justice to the  
22 defendant; the court shall make an order stating what evidence may be  
23 introduced by the defendant, which order may include the nature of  
24 the questions to be permitted. The defendant may then offer evidence  
25 pursuant to the order of the court.

26 (4) Nothing in this section shall be construed to prohibit cross-  
27 examination of the victim on the issue of past sexual behavior when  
28 the prosecution presents evidence in its case in chief tending to  
29 prove the nature of the victim's past sexual behavior, but the court  
30 may require a hearing pursuant to subsection (3) of this section  
31 concerning such evidence."

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**ADOPTED 02/28/2023**

32 On page 1, line 1 of the title, after "procedures;" strike the  
33 remainder of the title and insert "and amending RCW 43.43.754 and  
34 9A.44.020."

EFFECT: Requires the responsible city and county jail facility, department of corrections facility, and department of children, youth, and families facility to notify the sentencing court within three business days if a person owing a biological sample was released from confinement without the facility collecting the person's biological sample. Requires the sentencing court to schedule a compliance hearing within 10 days of receiving a notice that a person owing a biological sample was released from confinement, or within 10 days after sentencing if the biological sample was not collected at the time of sentencing. Requires the local police department or sheriff's office to serve the person owing a biological sample with notice of the compliance hearing and to file proof of service with the sentencing court. Requires a representative of the local police department or sheriff's office to attend the compliance hearing and obtain the person's biological sample. Requires attorneys' fees and court costs associated with scheduling and attending the compliance hearing to be paid for by the facility that failed to collect the person's biological sample at the time of the person's confinement.

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