
ENGROSSED SUBSTITUTE SENATE BILL 5576

State of Washington

68th Legislature

2023 Regular Session

By Senate Law & Justice (originally sponsored by Senators Dhingra, Kuderer, Lovelett, Nobles, Saldaña, Trudeau, Valdez, and C. Wilson)

READ FIRST TIME 02/07/23.

1 AN ACT Relating to sexual assault procedures; and amending RCW
2 43.43.754 and 9A.44.020.

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

4 **Sec. 1.** RCW 43.43.754 and 2021 c 215 s 149 are each amended to
5 read as follows:

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

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

10 (i) Assault in the fourth degree where domestic violence as
11 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
12 9.94A.030);

13 (ii) Assault in the fourth degree with sexual motivation (RCW
14 9A.36.041, 9.94A.835);

15 (iii) Communication with a minor for immoral purposes (RCW
16 9.68A.090);

17 (iv) Custodial sexual misconduct in the second degree (RCW
18 9A.44.170);

19 (v) Failure to register (chapter 9A.44 RCW);

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

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

1 (viii) Sexual misconduct with a minor in the second degree (RCW
2 9A.44.096);

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

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

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

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

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

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

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

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

21 (b) When submitting a biological sample under this subsection,
22 the municipal jurisdiction must include a signed affidavit from the
23 municipal prosecuting authority of the jurisdiction in which the
24 conviction occurred specifying the state crime to which the municipal
25 offense is equivalent.

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

32 (4) If the Washington state patrol crime laboratory already has a
33 DNA sample from an individual for a qualifying offense, a subsequent
34 submission is not required to be submitted.

35 (5) Biological samples shall be collected in the following
36 manner:

37 (a) (i) 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 do not serve a term of confinement in a
40 department of corrections facility or a department of children,

1 youth, and families facility, and are serving a term of confinement
2 in a city or county jail facility, the city or county jail facility
3 shall be responsible for obtaining the biological samples prior to
4 the person's release from confinement.

5 (ii) If the biological sample is not collected prior to the
6 person's release from confinement, the responsible city or county
7 jail facility will notify the sentencing court within three business
8 days of the person's release that it has released the person without
9 collecting the person's biological sample. Within 10 days of
10 receiving notice of the person's release, the sentencing court shall
11 schedule a compliance hearing. The local police department or
12 sheriff's office shall serve the person with notice of the compliance
13 hearing and shall file proof of service with the sentencing court. A
14 representative of the local police department or sheriff's office
15 shall attend the compliance hearing and obtain the person's
16 biological sample at the hearing. All attorneys' fees and court costs
17 associated with scheduling and attending the compliance hearing shall
18 be paid for by the city or county jail facility that failed to
19 collect the person's biological sample at the time of the person's
20 confinement.

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

23 (i) Persons convicted of any offense listed in subsection (1)(a)
24 of this section or adjudicated guilty of an equivalent juvenile
25 offense, who do not serve a term of confinement in a department of
26 corrections facility, department of children, youth, and families
27 facility, or a city or county jail facility; and

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

29 (c) (i) For persons convicted of any offense listed in subsection
30 (1)(a) of this section or adjudicated guilty of an equivalent
31 juvenile offense, who are serving or who are to serve a term of
32 confinement in a department of corrections facility or a department
33 of children, youth, and families facility, the facility holding the
34 person shall be responsible for obtaining the biological samples as
35 part of the intake process. If the facility did not collect the
36 biological sample during the intake process, then the facility shall
37 collect the biological sample as soon as is practicable prior to the
38 person's release from confinement. For those persons incarcerated
39 before June 12, 2008, who have not yet had a biological sample

1 collected, priority shall be given to those persons who will be
2 released the soonest.

3 (ii) If the biological sample is not collected prior to the
4 person's release from confinement, the responsible department of
5 corrections facility or department of children, youth, and families
6 facility will notify the sentencing court within three business days
7 of the person's release that it has released the person without
8 collecting the person's biological sample. Within 10 days of
9 receiving notice of the person's release, the sentencing court shall
10 schedule a compliance hearing. The local police department or
11 sheriff's office shall serve the person with notice of the compliance
12 hearing and shall file proof of service with the sentencing court. A
13 representative of the local police department or sheriff's office
14 shall attend the compliance hearing and obtain the person's
15 biological sample at the hearing. All attorneys' fees and court costs
16 associated with scheduling and attending the compliance hearing shall
17 be paid for by the department of corrections facility or department
18 of children, youth, and families facility that failed to collect the
19 person's biological sample at the time of the person's confinement.

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

35 (e) For persons convicted of any offense listed in subsection
36 (1)(a) of this section or adjudicated guilty of an equivalent
37 juvenile offense, the court must create and implement a biological
38 sample collection protocol. The court shall order the biological
39 samples at the time of sentencing. The court must inform the person
40 that refusal to provide a biological sample is a gross misdemeanor

1 under this section. If the biological sample is not collected at the
2 time of sentencing, then the biological sample shall be collected
3 pursuant to (a) through (d) of this subsection, and the court shall
4 schedule a compliance hearing within 10 days of the sentencing to
5 ensure that the biological sample has been collected.

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

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

20 (8) This section applies to:

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

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

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

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

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

33 (d) All samples submitted under subsections (2) and (3) of this
34 section.

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

39 (10) The detention, arrest, or conviction of a person based upon
40 a database match or database information is not invalidated if it is

1 determined that the sample was obtained or placed in the database by
2 mistake, or if the conviction or juvenile adjudication that resulted
3 in the collection of the biological sample was subsequently vacated
4 or otherwise altered in any future proceeding including but not
5 limited to posttrial or postfact-finding motions, appeals, or
6 collateral attacks. No cause of action may be brought against the
7 state based upon the analysis of a biological sample authorized to be
8 taken pursuant to a municipal ordinance if the conviction or
9 adjudication that resulted in the collection of the biological sample
10 was subsequently vacated or otherwise altered in any future
11 proceeding including, but not limited to, posttrial or postfact-
12 finding motions, appeals, or collateral attacks.

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

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

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

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

37 (3) In any prosecution for the crime of rape, trafficking
38 pursuant to RCW 9A.40.100, or any of the offenses in chapter 9.68A
39 RCW, or for an attempt to commit, or an assault with an intent to

1 commit any such crime evidence of the victim's past sexual behavior
2 including but not limited to the victim's marital behavior((~~τ~~));
3 divorce history((~~τ~~)); ((~~θ~~)) general reputation for promiscuity,
4 nonchastity, or sexual mores contrary to community standards; or
5 social media account, including any text, image, video, or picture,
6 which depict sexual content, sexual history, nudity or partial
7 nudity, intimate sexual activity, communications about sexual
8 activity, communications about sex, sexual fantasies, and other
9 information that appeals to a prurient interest is not admissible if
10 offered to attack the credibility of the victim and is admissible on
11 the issue of consent, except where prohibited in the underlying
12 criminal offense, only pursuant to the following procedure:

13 (a) A written pretrial motion shall be made by the defendant to
14 the court and prosecutor stating that the defense has an offer of
15 proof of the relevancy of evidence of the past sexual behavior of the
16 victim proposed to be presented and its relevancy on the issue of the
17 consent of the victim.

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

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

25 (d) At the conclusion of the hearing, if the court finds that the
26 evidence proposed to be offered by the defendant regarding the past
27 sexual behavior of the victim is relevant to the issue of the
28 victim's consent; is not inadmissible because its probative value is
29 substantially outweighed by the probability that its admission will
30 create a substantial danger of undue prejudice; and that its
31 exclusion would result in denial of substantial justice to the
32 defendant; the court shall make an order stating what evidence may be
33 introduced by the defendant, which order may include the nature of
34 the questions to be permitted. The defendant may then offer evidence
35 pursuant to the order of the court.

36 (4) Nothing in this section shall be construed to prohibit cross-
37 examination of the victim on the issue of past sexual behavior when
38 the prosecution presents evidence in its case in chief tending to
39 prove the nature of the victim's past sexual behavior, but the court

1 may require a hearing pursuant to subsection (3) of this section
2 concerning such evidence.

--- **END** ---