
HOUSE BILL 2405

State of Washington

57th Legislature

2002 Regular Session

By Representatives Miloscia, O'Brien, Ballasiotes, Lantz, Delvin, Lovick, Hurst, Woods and Esser

Read first time 01/16/2002. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to the convicted offender DNA data base; amending
2 RCW 43.43.754, 43.43.759, and 9.94A.505; amending 1989 c 350 s 1
3 (uncodified); adding new sections to chapter 43.43 RCW; and providing
4 an effective date.

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

6 **Sec. 1.** 1989 c 350 s 1 (uncodified) is amended to read as follows:
7 The legislature finds that recent developments in molecular biology
8 and genetics have important applications for forensic science. It has
9 been scientifically established that there is a unique pattern to the
10 chemical structure of the deoxyribonucleic acid (DNA) contained in each
11 cell of the human body. The process for identifying this pattern is
12 called "DNA identification."

13 The legislature further finds that (~~the accuracy of identification~~
14 ~~provided by this method is superior to that of any presently existing~~
15 ~~technique and recognizes the importance of this scientific breakthrough~~
16 ~~in providing a reliable and accurate tool for the investigation and~~
17 ~~prosecution of sex offenses as defined in RCW 9.94A.030(26) and violent~~
18 ~~offenses as defined in RCW 9.94A.030(29)) DNA data bases are important
19 tools in criminal investigations, in the exclusion of individuals who~~

1 are the subject of investigations or prosecutions, and in detecting
2 recidivist acts. It is the policy of this state to assist federal,
3 state, and local criminal justice and law enforcement agencies in both
4 the identification and detection of individuals in criminal
5 investigations and the identification and location of missing and
6 unidentified persons. Therefore, it is in the best interest of the
7 state to establish a DNA data base and DNA data bank containing DNA
8 samples submitted by persons convicted of felony offenses and DNA
9 samples necessary for the identification of missing persons and
10 unidentified human remains.

11 The legislature further finds that the DNA identification system
12 used by the Federal Bureau of Investigation and the Washington state
13 patrol has no ability to predict genetic disease or predisposal to
14 illness. Nonetheless, the legislature intends that biological samples
15 collected under RCW 43.43.754, and DNA identification data obtained
16 from the samples, be used only for purposes related to criminal
17 investigation, identification of human remains or missing persons, or
18 improving the operation of the system authorized under RCW 43.43.752
19 through 43.43.758.

20 **Sec. 2.** RCW 43.43.754 and 1999 c 329 s 2 are each amended to read
21 as follows:

22 (1) Every adult or juvenile individual convicted of a felony,
23 stalking under RCW 9A.46.110, assault in the fourth degree under RCW
24 9A.36.041, harassment under RCW 9A.46.020, communicating with a minor
25 for immoral purposes under RCW 9.68A.090, or adjudicated guilty of an
26 equivalent juvenile offense ((defined as a sex offense under RCW
27 9.94A.030(33)(a) or a violent offense as defined in RCW 9.94A.030 shall
28 have a blood sample drawn)) must have a biological sample collected for
29 purposes of DNA identification analysis((-)) in the following manner:

30 (a) For persons convicted of such offenses or adjudicated guilty of
31 an equivalent juvenile offense who ((are serving or who are to serve a
32 term of confinement in a county jail or detention)) do not serve a term
33 of confinement in a department of corrections facility, and do serve a
34 term of confinement in a city or county jail facility, the city or
35 county shall be responsible for obtaining ((blood)) the biological
36 samples either as part of the intake process into the city or county
37 jail or detention facility for those persons convicted on or after
38 ((July 25, 1999)) the effective date of this act, or within a

1 reasonable time after (~~July 25, 1999~~) the effective date of this act,
2 for those persons incarcerated (~~prior to July 25, 1999~~) before the
3 effective date of this act, who have not yet had a (~~blood~~) biological
4 sample (~~drawn~~) collected, beginning with those persons who will be
5 released the soonest.

6 (b) For persons convicted of such offenses or adjudicated guilty of
7 an equivalent juvenile offense who do not serve a term of confinement
8 in a department of corrections facility, and do not serve a term of
9 confinement in a city or county jail facility, the city or county is
10 responsible for obtaining the biological samples after sentencing on or
11 after the effective date of this act.

12 (c) For persons convicted of such offenses or adjudicated guilty of
13 an equivalent juvenile offense, who are serving or who are to serve a
14 term of confinement in a department of corrections facility or a
15 (~~division of juvenile rehabilitation~~) department of social and health
16 services facility, the facility holding the person shall be responsible
17 for obtaining (~~blood~~) the biological samples either as part of the
18 intake process into such facility for those persons convicted on or
19 after (~~July 25, 1999~~) the effective date of this act, or within a
20 reasonable time after (~~July 25, 1999~~) the effective date of this act,
21 for those persons incarcerated (~~prior to July 25, 1999~~) before the
22 effective date of this act, who have not yet had a (~~blood~~) biological
23 sample (~~drawn~~) collected, beginning with those persons who will be
24 released the soonest.

25 (2) Any (~~blood~~) biological sample taken pursuant to RCW 43.43.752
26 through 43.43.758 may be retained by the forensic laboratory services
27 bureau, and shall be used solely for the purpose of providing DNA or
28 other (~~blood grouping~~) tests for identification analysis and
29 prosecution of a (~~sex offense or a violent offense~~) criminal offense
30 or for the identification of human remains or missing persons. Nothing
31 in this section prohibits the submission of results derived from the
32 biological samples to the Federal Bureau of Investigation combined DNA
33 index system.

34 (3) The director of the forensic laboratory services bureau of the
35 Washington state patrol shall perform testing on all biological samples
36 collected under subsection (1) of this section, to the extent allowed
37 by funding available for this purpose. The director shall give
38 priority to testing on samples collected from those adults or juveniles
39 convicted of a felony or adjudicated guilty of an equivalent juvenile

1 offense that is defined as a sex offense or a violent offense in RCW
2 9.94A.030.

3 (4) This section applies to all adults who are convicted after July
4 1, 1990; and to all adults who were convicted on or prior to July 1,
5 1990, and who are still incarcerated or are sentenced without
6 incarceration on or after ((July 25, 1999)) the effective date of this
7 act. This section applies to all juveniles who are adjudicated guilty
8 after July 1, 1994; and to all juveniles who were adjudicated guilty on
9 or prior to July 1, 1994, and who are still incarcerated or are
10 sentenced without incarceration on or after ((July 25, 1999)) the
11 effective date of this act.

12 (5) This section creates no rights in a third person. No cause of
13 action may be brought based upon the noncollection or nonanalysis or
14 the delayed collection or analysis of a biological sample authorized to
15 be taken under RCW 43.43.752 through 43.43.758.

16 (6) The detention, arrest, or conviction of a person based upon a
17 data base match or data base information is not invalidated if it is
18 determined that the sample was obtained or placed in the data base by
19 mistake, or if the conviction or juvenile adjudication that resulted in
20 the collection of the biological sample was subsequently vacated or
21 otherwise altered in any future proceeding including but not limited to
22 posttrial or postfact-finding motions, appeals, or collateral attacks.

23 **Sec. 3.** RCW 43.43.759 and 1990 c 230 s 1 are each amended to read
24 as follows:

25 The Washington state patrol shall consult with the forensic
26 investigations council and adopt rules to implement RCW 43.43.752
27 through 43.43.758. The rules shall prohibit the use of DNA
28 identification data for any research or other purpose that is not
29 related to a criminal investigation, to the identification of human
30 remains or missing persons, or to improving the operation of the system
31 authorized by RCW 43.43.752 through 43.43.758. The rules must also
32 identify appropriate sources and collection methods for biological
33 samples needed for purposes of DNA identification analysis.

34 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.43 RCW
35 to read as follows:

36 Every sentence imposed under chapter 9.94A RCW, for a felony
37 specified in RCW 43.43.754 that is committed on or after the effective

1 date of this act, must include a fee of one hundred dollars for
2 collection of a biological sample as required under RCW 43.43.754,
3 unless the court finds that imposing the fee would result in undue
4 hardship on the offender. The fee is a court-ordered legal financial
5 obligation as defined in RCW 9.94A.030, payable by the offender after
6 payment of all other legal financial obligations included in the
7 sentence has been completed. The clerk of the court shall transmit
8 fees collected to the state treasurer for deposit in the state DNA data
9 base account created under section 5 of this act.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.43 RCW
11 to read as follows:

12 The state DNA data base account is created in the custody of the
13 state treasurer. All receipts under section 4 of this act must be
14 deposited into the account. Expenditures from the account may be used
15 only for creation, operation, and maintenance of the DNA data base
16 under RCW 43.43.754. Only the chief of the Washington state patrol or
17 the chief's designee may authorize expenditures from the account. The
18 account is subject to allotment procedures under chapter 43.88 RCW, but
19 an appropriation is not required for expenditures.

20 **Sec. 6.** RCW 9.94A.505 and 2001 2nd sp.s. c 12 s 312 are each
21 amended to read as follows:

22 (1) When a person is convicted of a felony, the court shall impose
23 punishment as provided in this chapter.

24 (2)(a) The court shall impose a sentence as provided in the
25 following sections and as applicable in the case:

26 (i) Unless another term of confinement applies, the court shall
27 impose a sentence within the standard sentence range established in RCW
28 9.94A.510;

29 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

30 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

31 (iv) RCW 9.94A.545, relating to community custody for offenders
32 whose term of confinement is one year or less;

33 (v) RCW 9.94A.570, relating to persistent offenders;

34 (vi) RCW 9.94A.540, relating to mandatory minimum terms;

35 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

36 (viii) RCW 9.94A.660, relating to the drug offender sentencing
37 alternative;

1 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
2 alternative;

3 (x) RCW 9.94A.712, relating to certain sex offenses;

4 (xi) RCW 9.94A.535, relating to exceptional sentences;

5 (xii) RCW 9.94A.589, relating to consecutive and concurrent
6 sentences.

7 (b) If a standard sentence range has not been established for the
8 offender's crime, the court shall impose a determinate sentence which
9 may include not more than one year of confinement; community service
10 work; until July 1, 2000, a term of community supervision not to exceed
11 one year and on and after July 1, 2000, a term of community custody not
12 to exceed one year, subject to conditions and sanctions as authorized
13 in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations.
14 The court may impose a sentence which provides more than one year of
15 confinement if the court finds reasons justifying an exceptional
16 sentence as provided in RCW 9.94A.535.

17 (3) If the court imposes a sentence requiring confinement of thirty
18 days or less, the court may, in its discretion, specify that the
19 sentence be served on consecutive or intermittent days. A sentence
20 requiring more than thirty days of confinement shall be served on
21 consecutive days. Local jail administrators may schedule court-ordered
22 intermittent sentences as space permits.

23 (4) If a sentence imposed includes payment of a legal financial
24 obligation, it shall be imposed as provided in RCW 9.94A.750,
25 9.94A.753, ~~((and))~~ 9.94A.760, and section 4 of this act.

26 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
27 court may not impose a sentence providing for a term of confinement or
28 community supervision, community placement, or community custody which
29 exceeds the statutory maximum for the crime as provided in chapter
30 9A.20 RCW.

31 (6) The sentencing court shall give the offender credit for all
32 confinement time served before the sentencing if that confinement was
33 solely in regard to the offense for which the offender is being
34 sentenced.

35 (7) The court shall order restitution as provided in RCW 9.94A.750
36 and 9.94A.753.

37 (8) As a part of any sentence, the court may impose and enforce
38 crime-related prohibitions and affirmative conditions as provided in
39 this chapter.

1 (9) The court may order an offender whose sentence includes
2 community placement or community supervision to undergo a mental status
3 evaluation and to participate in available outpatient mental health
4 treatment, if the court finds that reasonable grounds exist to believe
5 that the offender is a mentally ill person as defined in RCW 71.24.025,
6 and that this condition is likely to have influenced the offense. An
7 order requiring mental status evaluation or treatment must be based on
8 a presentence report and, if applicable, mental status evaluations that
9 have been filed with the court to determine the offender's competency
10 or eligibility for a defense of insanity. The court may order
11 additional evaluations at a later date if deemed appropriate.

12 (10) In any sentence of partial confinement, the court may require
13 the offender to serve the partial confinement in work release, in a
14 program of home detention, on work crew, or in a combined program of
15 work crew and home detention.

16 (11) In sentencing an offender convicted of a crime of domestic
17 violence, as defined in RCW 10.99.020, if the offender has a minor
18 child, or if the victim of the offense for which the offender was
19 convicted has a minor child, the court may, as part of any term of
20 community supervision, community placement, or community custody, order
21 the offender to participate in a domestic violence perpetrator program
22 approved under RCW 26.50.150.

23 NEW SECTION. **Sec. 7.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 8.** Section 1 of this act is added to chapter
28 43.43 RCW.

29 NEW SECTION. **Sec. 9.** This act takes effect July 1, 2002.

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