

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2468

57th Legislature
2002 Regular Session

Passed by the House March 12, 2002
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 4, 2002
Yeas 44 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2468** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2468

AS AMENDED BY THE SENATE

Passed Legislature - 2002 Regular Session

State of Washington 57th Legislature 2002 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Miloscia, O'Brien and Wood; by request of Governor Locke)

Read first time 02/05/2002. Referred to Committee on .

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, harassment under RCW 9A.46.020,
24 communicating with a minor for immoral purposes under RCW 9.68A.090, or
25 adjudicated guilty of an equivalent juvenile offense (~~defined as a sex~~
26 offense under RCW 9.94A.030(33)(a) or a violent offense as defined in
27 RCW 9.94A.030 shall have a blood sample drawn)) must have a biological
28 sample collected for purposes of DNA identification analysis(~~(-)~~) in
29 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 local police
10 department or sheriff's office is responsible for obtaining the
11 biological samples after sentencing on or after the effective date of
12 this act.

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

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

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

1 convicted of a felony or adjudicated guilty of an equivalent juvenile
2 offense that is defined as a sex offense or a violent offense in RCW
3 9.94A.030.

4 (4) This section applies to all adults who are convicted of a sex
5 or violent offense after July 1, 1990; and to all adults who were
6 convicted of a sex or violent offense on or prior to July 1, 1990, and
7 who are still incarcerated on or after July 25, 1999. This section
8 applies to all juveniles who are adjudicated guilty of a sex or violent
9 offense after July 1, 1994; and to all juveniles who were adjudicated
10 guilty of a sex or violent offense on or prior to July 1, 1994, and who
11 are still incarcerated on or after July 25, 1999. This section applies
12 to all adults and juveniles who are convicted of a felony other than a
13 sex or violent offense, stalking under RCW 9A.46.110, harassment under
14 RCW 9A.46.020, or communicating with a minor for immoral purposes under
15 RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,
16 on or after the effective date of this act; and to all adults and
17 juveniles who were convicted or adjudicated guilty of such an offense
18 before the effective date of this act and are still incarcerated on or
19 after the effective date of this act.

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

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

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

33 The Washington state patrol shall consult with the forensic
34 investigations council and adopt rules to implement RCW 43.43.752
35 through 43.43.758. The rules shall prohibit the use of DNA
36 identification data for any research or other purpose that is not
37 related to a criminal investigation, to the identification of human
38 remains or missing persons, or to improving the operation of the system

1 authorized by RCW 43.43.752 through 43.43.758. The rules must also
2 identify appropriate sources and collection methods for biological
3 samples needed for purposes of DNA identification analysis.

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

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

17 NEW SECTION. Sec. 5. A new section is added to chapter 43.43 RCW
18 to read as follows:

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

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

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

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

33 (i) Unless another term of confinement applies, the court shall
34 impose a sentence within the standard sentence range established in RCW
35 9.94A.510;

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

1 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;
2 (iv) RCW 9.94A.545, relating to community custody for offenders
3 whose term of confinement is one year or less;
4 (v) RCW 9.94A.570, relating to persistent offenders;
5 (vi) RCW 9.94A.540, relating to mandatory minimum terms;
6 (vii) RCW 9.94A.650, relating to the first-time offender waiver;
7 (viii) RCW 9.94A.660, relating to the drug offender sentencing
8 alternative;
9 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
10 alternative;
11 (x) RCW 9.94A.712, relating to certain sex offenses;
12 (xi) RCW 9.94A.535, relating to exceptional sentences;
13 (xii) RCW 9.94A.589, relating to consecutive and concurrent
14 sentences.

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

25 (3) If the court imposes a sentence requiring confinement of thirty
26 days or less, the court may, in its discretion, specify that the
27 sentence be served on consecutive or intermittent days. A sentence
28 requiring more than thirty days of confinement shall be served on
29 consecutive days. Local jail administrators may schedule court-ordered
30 intermittent sentences as space permits.

31 (4) If a sentence imposed includes payment of a legal financial
32 obligation, it shall be imposed as provided in RCW 9.94A.750,
33 9.94A.753, ~~((and))~~ 9.94A.760, and section 4 of this act.

34 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
35 court may not impose a sentence providing for a term of confinement or
36 community supervision, community placement, or community custody which
37 exceeds the statutory maximum for the crime as provided in chapter
38 9A.20 RCW.

1 (6) The sentencing court shall give the offender credit for all
2 confinement time served before the sentencing if that confinement was
3 solely in regard to the offense for which the offender is being
4 sentenced.

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

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

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

21 (10) In any sentence of partial confinement, the court may require
22 the offender to serve the partial confinement in work release, in a
23 program of home detention, on work crew, or in a combined program of
24 work crew and home detention.

25 (11) In sentencing an offender convicted of a crime of domestic
26 violence, as defined in RCW 10.99.020, if the offender has a minor
27 child, or if the victim of the offense for which the offender was
28 convicted has a minor child, the court may, as part of any term of
29 community supervision, community placement, or community custody, order
30 the offender to participate in a domestic violence perpetrator program
31 approved under RCW 26.50.150.

32 NEW SECTION. **Sec. 7.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

36 NEW SECTION. **Sec. 8.** Section 1 of this act is added to chapter
37 43.43 RCW.

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

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