
SUBSTITUTE HOUSE BILL 2748

State of Washington

59th Legislature

2006 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Miloscia, O'Brien and Ericks)

READ FIRST TIME 2/3/06.

1 AN ACT Relating to the collection of biological samples for
2 criminal investigations; and amending RCW 43.43.753, 43.43.754,
3 43.43.7541, and 43.43.756.

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

5 **Sec. 1.** RCW 43.43.753 and 2002 c 289 s 1 are each amended to read
6 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 DNA data bases are important
14 tools in criminal investigations, in the exclusion of individuals who
15 are the subject of investigations or prosecutions, and in detecting
16 recidivist acts. It is the policy of this state to assist federal,
17 state, and local criminal justice and law enforcement agencies in both
18 the identification and detection of individuals in criminal
19 investigations and the identification and location of missing and

1 unidentified persons. Therefore, it is in the best interest of the
2 state to establish a DNA data base and DNA data bank containing DNA
3 samples submitted by persons convicted of felony offenses and other
4 crimes as specified in RCW 43.43.754. DNA samples necessary for the
5 identification of missing persons and unidentified human remains will
6 also be included in the DNA data base.

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

16 **Sec. 2.** RCW 43.43.754 and 2002 c 289 s 2 are each amended to read
17 as follows:

18 (1) Every adult or juvenile individual convicted (~~(of a felony,~~
19 ~~stalking under RCW 9A.46.110, harassment under RCW 9A.46.020,~~
20 ~~communicating with a minor for immoral purposes under RCW 9.68A.090,))
21 (or adjudicated guilty of an equivalent juvenile offense) of any of the
22 following crimes must have a biological sample collected for purposes
23 of DNA identification analysis (~~(in the following manner))~~):~~

- 24 Any felony;
- 25 Aiming or discharging firearms, dangerous weapons (RCW 9.41.230);
- 26 Animal cruelty in the second degree (RCW 16.52.207);
- 27 Assault in the fourth degree (RCW 9A.36.041);
- 28 Coercion (RCW 9A.36.070);
- 29 Communication with a minor for immoral purposes (RCW 9.68A.090);
- 30 Criminal impersonation in the second degree (RCW 9A.60.045);
- 31 Custodial sexual misconduct in the second degree (RCW 9A.44.170);
- 32 Cyberstalking (RCW 9.61.260);
- 33 Dangerous weapons (RCW 9.41.250);
- 34 Domestic violence-any misdemeanor or gross misdemeanor crime
35 committed by one family or household member against another (RCW
36 10.99.020(5));
- 37 Escape in the third degree (RCW 9A.76.130);

1 Harassment (RCW 9A.46.020);
2 Indecent exposure (RCW 9A.88.010);
3 Making or having burglar tools (RCW 9A.52.060);
4 Patronizing a prostitute (RCW 9A.88.110);
5 Possession of another's identification (RCW 9A.56.330);
6 Prostitution (RCW 9A.88.030);
7 Reckless burning in the second degree (RCW 9A.48.050);
8 Reckless endangerment (RCW 9A.36.050);
9 Registration of sex offenders and kidnapping offenders (RCW
10 9A.44.130);
11 Sexual misconduct with a minor in the second degree (RCW
12 9A.44.096);
13 Stalking (RCW 9A.46.110);
14 Telephone harassment (RCW 9.61.230);
15 Unlawful harboring of a minor (RCW 13.32A.080);
16 Vehicle prowling in the second degree (RCW 9A.52.100);
17 Violation involving weapon apparently capable of producing bodily
18 harm (RCW 9.41.270);
19 Violation of civil antiharassment orders (RCW 10.14.170);
20 Violation of court orders issued under chapter 26.50, 10.99, 26.09,
21 26.26, or 74.34 RCW, and foreign protection orders as defined in RCW
22 26.52.020 (RCW 26.50.110).

23 If the Washington state patrol crime laboratory already has a DNA
24 sample from an individual for a qualifying offense, a subsequent
25 submission should not be submitted. The following applies to the
26 collection and analysis processes:

27 (a) For persons convicted of such offenses or adjudicated guilty of
28 an equivalent juvenile offense who do not serve a term of confinement
29 in a department of corrections facility, and do serve a term of
30 confinement in a city or county jail facility, the city or county shall
31 be responsible for obtaining the biological samples either as part of
32 the intake process into the city or county jail or detention facility
33 for those persons convicted on or after July 1, 2002, or within a
34 reasonable time after July 1, 2002, for those persons incarcerated
35 before July 1, 2002, who have not yet had a biological sample
36 collected, beginning with those persons who will be released the
37 soonest.

1 (b) For persons convicted of such offenses or adjudicated guilty of
2 an equivalent juvenile offense who do not serve a term of confinement
3 in a department of corrections facility, and do not serve a term of
4 confinement in a city or county jail facility, the local police
5 department or sheriff's office is responsible for obtaining the
6 biological samples after sentencing on or after July 1, 2002.

7 (c) For persons convicted of such offenses or adjudicated guilty of
8 an equivalent juvenile offense, who are serving or who are to serve a
9 term of confinement in a department of corrections facility or a
10 department of social and health services facility, the facility holding
11 the person shall be responsible for obtaining the biological samples
12 either as part of the intake process into such facility for those
13 persons convicted on or after July 1, 2002, or within a reasonable time
14 after July 1, 2002, for those persons incarcerated before July 1, 2002,
15 who have not yet had a biological sample collected, beginning with
16 those persons who will be released the soonest.

17 (2) Any biological sample taken pursuant to RCW 43.43.752 through
18 43.43.758 may be retained by the forensic laboratory services bureau,
19 and shall be used solely for the purpose of providing DNA or other
20 tests for identification analysis and prosecution of a criminal offense
21 or for the identification of human remains or missing persons. Nothing
22 in this section prohibits the submission of results derived from the
23 biological samples to the federal bureau of investigation combined DNA
24 index system.

25 (3) The ~~((director of the))~~ forensic laboratory services bureau of
26 the Washington state patrol ~~((shall perform))~~ is responsible for
27 testing performed on all biological samples, excluding known duplicates
28 unless necessary, that are collected under subsection (1) of this
29 section, to the extent allowed by funding available for this purpose.
30 ~~((The director shall give priority to testing on samples collected from~~
31 ~~those adults or juveniles convicted of a felony or adjudicated guilty~~
32 ~~of an equivalent juvenile offense that is defined as a sex offense or~~
33 ~~a violent offense in RCW 9.94A.030.))~~

34 (4) This section applies to all adults who are convicted of a sex
35 or violent offense after July 1, 1990; and to all adults who were
36 convicted of a sex or violent offense on or prior to July 1, 1990, and
37 who are still incarcerated on or after July 25, 1999. This section
38 applies to all juveniles who are adjudicated guilty of a sex or violent

1 offense after July 1, 1994; and to all juveniles who were adjudicated
2 guilty of a sex or violent offense on or prior to July 1, 1994, and who
3 are still incarcerated on or after July 25, 1999. This section applies
4 to all adults and juveniles who are convicted of a felony other than a
5 sex or violent offense, stalking under RCW 9A.46.110, harassment under
6 RCW 9A.46.020, or communicating with a minor for immoral purposes under
7 RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,
8 on or after July 1, 2002; and to all adults and juveniles who were
9 convicted or adjudicated guilty of such an offense before July 1, 2002,
10 and are still incarcerated on or after July 1, 2002. This section
11 applies to all adults and juveniles who are convicted of a felony other
12 than a sex or violent offense and all additional crimes listed in
13 subsection (1) of this section or adjudicated guilty of an equivalent
14 juvenile offense, on or after the effective date of this act; and to
15 all adults and juveniles who were convicted or adjudicated guilty of
16 such an offense before the effective date of this act, and are still
17 incarcerated on or after the effective date of this act.

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

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

29 **Sec. 3.** RCW 43.43.7541 and 2002 c 289 s 4 are each amended to read
30 as follows:

31 Every sentence imposed (~~(under chapter 9.94A RCW,)~~) for a
32 (~~felony~~) crime specified in RCW 43.43.754 that is committed on or
33 after July 1, 2002, must include a fee of one hundred dollars for
34 collection of a biological sample as required under RCW 43.43.754,
35 unless the court finds that imposing the fee would result in undue
36 hardship on the offender. The fee is a court-ordered legal financial
37 obligation (~~(as defined in RCW 9.94A.030,)~~) payable by the offender

1 after payment of all other legal financial obligations included in the
2 sentence has been completed. The clerk of the court shall transmit
3 fees collected to the state treasurer for deposit in the state DNA data
4 base account created under RCW 43.43.7532.

5 **Sec. 4.** RCW 43.43.756 and 1989 c 350 s 5 are each amended to read
6 as follows:

7 The Washington state patrol (~~(in consultation with the University~~
8 ~~of Washington school of medicine)) forensic laboratory services bureau
9 may:~~

10 (1) Provide DNA analysis services to law enforcement agencies
11 throughout the state after July 1, 1990;

12 (2) Provide assistance to law enforcement officials and prosecutors
13 in the preparation and utilization of DNA evidence for presentation in
14 court; and

15 (3) Provide expert testimony in court on DNA evidentiary issues.

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