
HOUSE BILL 2748

State of Washington

59th Legislature

2006 Regular Session

By Representatives Miloscia, O'Brien and Ericks

Read first time 01/12/2006. Referred to Committee on Criminal Justice & Corrections.

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 Malicious mischief in the third degree (RCW 9A.48.090);
5 Patronizing a prostitute (RCW 9A.88.110);
6 Possession of another's identification (RCW 9A.56.330);
7 Possession of stolen property in the third degree (RCW 9A.56.170);
8 Prostitution (RCW 9A.88.030);
9 Reckless burning in the second degree (RCW 9A.48.050);
10 Reckless endangerment (RCW 9A.36.050);
11 Registration of sex offenders and kidnapping offenders (RCW
12 9A.44.130);
13 Riot (RCW 9A.84.010);
14 Sexual misconduct with a minor in the second degree (RCW
15 9A.44.096);
16 Stalking (RCW 9A.46.110);
17 Telephone harassment (RCW 9.61.230);
18 Theft in the third degree (RCW 9A.56.050);
19 Unlawful harboring of a minor (RCW 13.32A.080);
20 Vehicle prowling in the second degree (RCW 9A.52.100);
21 Violation involving weapon apparently capable of producing bodily
22 harm (RCW 9.41.270);
23 Violation of civil antiharassment orders (RCW 10.14.170);
24 Violation of court orders issued under chapter 26.50, 10.99, 26.09,
25 26.26, or 74.34 RCW, and foreign protection orders as defined in RCW
26 26.52.020 (RCW 26.50.110);
27 Violation of duty in case of personal injury or death or damage to
28 attended vehicle or other property (RCW 46.52.020).

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

33 (a) For persons convicted of such offenses or adjudicated guilty of
34 an equivalent juvenile offense who do not serve a term of confinement
35 in a department of corrections facility, and do serve a term of
36 confinement in a city or county jail facility, the city or county shall
37 be responsible for obtaining the biological samples either as part of
38 the intake process into the city or county jail or detention facility

1 for those persons convicted on or after July 1, 2002, or within a
2 reasonable time after July 1, 2002, for those persons incarcerated
3 before July 1, 2002, who have not yet had a biological sample
4 collected, beginning with those persons who will be released the
5 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 July 1, 2002.

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 department of social and health services facility, the facility holding
16 the person shall be responsible for obtaining the biological samples
17 either as part of the intake process into such facility for those
18 persons convicted on or after July 1, 2002, or within a reasonable time
19 after July 1, 2002, for those persons incarcerated before July 1, 2002,
20 who have not yet had a biological sample collected, beginning with
21 those persons who will be released the soonest.

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

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

1 (4) This section applies to all adults who are convicted of a sex
2 or violent offense after July 1, 1990; and to all adults who were
3 convicted of a sex or violent offense on or prior to July 1, 1990, and
4 who are still incarcerated on or after July 25, 1999. This section
5 applies to all juveniles who are adjudicated guilty of a sex or violent
6 offense after July 1, 1994; and to all juveniles who were adjudicated
7 guilty of a sex or violent offense on or prior to July 1, 1994, and who
8 are still incarcerated on or after July 25, 1999. This section applies
9 to all adults and juveniles who are convicted of a felony other than a
10 sex or violent offense, stalking under RCW 9A.46.110, harassment under
11 RCW 9A.46.020, or communicating with a minor for immoral purposes under
12 RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,
13 on or after July 1, 2002; and to all adults and juveniles who were
14 convicted or adjudicated guilty of such an offense before July 1, 2002,
15 and are still incarcerated on or after July 1, 2002. This section
16 applies to all adults and juveniles who are convicted of a felony other
17 than a sex or violent offense and all additional crimes listed in
18 subsection (1) of this section or adjudicated guilty of an equivalent
19 juvenile offense, on or after the effective date of this act; and to
20 all adults and juveniles who were convicted or adjudicated guilty of
21 such an offense before the effective date of this act, and are still
22 incarcerated on or after the effective date of this act.

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

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

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

36 Every sentence imposed (~~under chapter 9.94A RCW,~~) for a
37 (~~felony~~) crime specified in RCW 43.43.754 that is committed on or

1 after July 1, 2002, 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
6 after 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 RCW 43.43.7532.

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

12 The Washington state patrol (~~(in consultation with the University~~
13 ~~of Washington school of medicine)~~) forensic laboratory services bureau
14 may:

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

17 (2) Provide assistance to law enforcement officials and prosecutors
18 in the preparation and utilization of DNA evidence for presentation in
19 court; and

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

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