
ENGROSSED SUBSTITUTE SENATE BILL 6488

State of Washington

60th Legislature

2008 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Regala, Hargrove, Brandland, Stevens, Rasmussen, Delvin, Benton, and Kilmer; by request of Governor Gregoire)

READ FIRST TIME 02/07/08.

1 AN ACT Relating to DNA identification of convicted sex offenders
2 and other persons; and amending RCW 43.43.753, 43.43.754, 43.43.7541,
3 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 databases 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 database 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 shall
6 also be included in the DNA database.

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) A biological sample must be collected for purposes of DNA
19 identification analysis from:

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

- 27 Assault in the fourth degree with sexual motivation (RCW 9A.36.041,
28 9.94A.835)
- 29 Communication with a minor for immoral purposes (RCW 9.68A.090)
- 30 Custodial sexual misconduct in the second degree (RCW 9A.44.170)
- 31 Failure to register (RCW 9A.44.130)
- 32 Harassment (RCW 9A.46.020)
- 33 Patronizing a prostitute (RCW 9A.88.110)
- 34 Prostitution (RCW 9A.88.030)
- 35 Sexual misconduct with a minor in the second degree (RCW 9A.44.096)
- 36 Stalking (RCW 9A.46.110)

1 Violation of a sexual assault protection order granted under
2 chapter 7.90 RCW; and

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

5 (2) If the Washington state patrol crime laboratory already has a
6 DNA sample from an individual for a qualifying offense, a subsequent
7 submission is not required to be submitted.

8 (3) Biological samples shall be collected in the following manner:

9 (a) For persons convicted of ((such offenses)) any offense listed
10 in subsection (1)(a) of this section or adjudicated guilty of an
11 equivalent juvenile offense who do not serve a term of confinement in
12 a department of corrections facility, and do serve a term of
13 confinement in a city or county jail facility, the city or county shall
14 be responsible for obtaining the biological samples ((either as part of
15 the intake process into the city or county jail or detention facility
16 for those persons convicted on or after July 1, 2002, or within a
17 reasonable time after July 1, 2002, for those persons incarcerated
18 before July 1, 2002, who have not yet had a biological sample
19 collected, beginning with those persons who will be released the
20 soonest)).

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 ((such offenses)) any offense listed in
24 subsection (1)(a) of this section or adjudicated guilty of an
25 equivalent juvenile offense who do not serve a term of confinement in
26 a department of corrections facility, and do not serve a term of
27 confinement in a city or county jail facility((, the local police
28 department or sheriff's office is responsible for obtaining the
29 biological samples after sentencing on or after July 1, 2002)); and

30 (ii) Persons who are required to register under RCW 9A.44.030.

31 (c) For persons convicted of ((such offenses)) any offense listed
32 in subsection (1)(a) of this section or adjudicated guilty of an
33 equivalent juvenile offense, who are serving or who are to serve a term
34 of confinement in a department of corrections facility or a department
35 of social and health services facility, the facility holding the person
36 shall be responsible for obtaining the biological samples ((either as
37 part of the intake process into such facility for those persons
38 convicted on or after July 1, 2002, or within a reasonable time after

1 ~~July 1, 2002,)).~~ For those persons incarcerated before (~~July 1,~~
2 ~~2002))~~ the effective date of this section, who have not yet had a
3 biological sample collected, (~~beginning with~~) priority shall be given
4 to those persons who will be released the soonest.

5 ((~~2~~)) (4) Any biological sample taken pursuant to RCW 43.43.752
6 through 43.43.758 may be retained by the forensic laboratory services
7 bureau, and shall be used solely for the purpose of providing DNA or
8 other tests for identification analysis and prosecution of a criminal
9 offense or for the identification of human remains or missing persons.
10 Nothing in this section prohibits the submission of results derived
11 from the biological samples to the federal bureau of investigation
12 combined DNA index system.

13 ((~~3~~)) (5) The (~~director of the~~) forensic laboratory services
14 bureau of the Washington state patrol (~~shall perform~~) is responsible
15 for testing performed on all biological samples that are collected
16 under subsection (1) of this section, to the extent allowed by funding
17 available for this purpose. The director shall give priority to
18 testing on samples collected from those adults or juveniles convicted
19 of a felony or adjudicated guilty of an equivalent juvenile offense
20 that is defined as a sex offense or a violent offense in RCW 9.94A.030.
21 Known duplicate samples may be excluded from testing unless testing is
22 deemed necessary or advisable by the director.

23 ((~~4~~) ~~This section applies to all adults who are convicted of a sex~~
24 ~~or violent offense after July 1, 1990; and to all adults who were~~
25 ~~convicted of a sex or violent offense on or prior to July 1, 1990, and~~
26 ~~who are still incarcerated on or after July 25, 1999. This section~~
27 ~~applies to all juveniles who are adjudicated guilty of a sex or violent~~
28 ~~offense after July 1, 1994; and to all juveniles who were adjudicated~~
29 ~~guilty of a sex or violent offense on or prior to July 1, 1994, and who~~
30 ~~are still incarcerated on or after July 25, 1999. This section applies~~
31 ~~to all adults and juveniles who are convicted of a felony other than a~~
32 ~~sex or violent offense, stalking under RCW 9A.46.110, harassment under~~
33 ~~RCW 9A.46.020, or communicating with a minor for immoral purposes under~~
34 ~~RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,~~
35 ~~on or after July 1, 2002; and to all adults and juveniles who were~~
36 ~~convicted or adjudicated guilty of such an offense before July 1, 2002,~~
37 ~~and are still incarcerated on or after July 1, 2002.))~~ (6) This section
38 applies to all adults and juveniles who:

1 (a) Are convicted or adjudicated guilty of an offense listed in
2 subsection (1)(a) of this section on or after the effective date of
3 this section and to all adults and juveniles who were convicted or
4 adjudicated guilty of such an offense before the effective date of this
5 section, and who are still incarcerated on or after the effective date
6 of this section; or

7 (b) Are currently required to register under RCW 9A.44.130, whether
8 convicted before, on, or after the effective date of this section.

9 ~~((+5+))~~ (7) This section creates no rights in a third person. No
10 cause of action may be brought based upon the noncollection or
11 nonanalysis or the delayed collection or analysis of a biological
12 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

13 ~~((+6+))~~ (8) The detention, arrest, or conviction of a person based
14 upon a database match or database information is not invalidated if it
15 is determined that the sample was obtained or placed in the database by
16 mistake, or if the conviction or juvenile adjudication that resulted in
17 the collection of the biological sample was subsequently vacated or
18 otherwise altered in any future proceeding including but not limited to
19 posttrial or postfact-finding motions, appeals, or collateral attacks.

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

22 Every sentence imposed under chapter 9.94A RCW~~((7))~~ for a
23 ~~((felony))~~ crime specified in RCW 43.43.754 ~~((that is committed on or~~
24 ~~after July 1, 2002,))~~ must include a fee of one hundred dollars ~~((for~~
25 ~~collection of a biological sample as required under RCW 43.43.754,~~
26 ~~unless the court finds that imposing the fee would result in undue~~
27 ~~hardship on the offender))~~. The fee is a court-ordered legal financial
28 obligation as defined in RCW 9.94A.030, payable by the offender after
29 payment of all other legal financial obligations included in the
30 sentence has been completed. The clerk of the court shall transmit
31 eighty percent of the fee~~((s))~~ collected to the state treasurer for
32 deposit in the state DNA database account created under RCW 43.43.7532,
33 and shall transmit twenty percent of the fee collected to the agency
34 responsible for collection of a biological sample from the offender as
35 required under RCW 43.43.754.

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

3 The Washington state patrol (~~(in consultation with the University~~
4 ~~of Washington school of medicine)~~) forensic laboratory services bureau
5 may:

6 (1) Provide DNA analysis services to law enforcement agencies
7 throughout the state (~~(after July 1, 1990)~~);

8 (2) Provide assistance to law enforcement officials and prosecutors
9 in the preparation and utilization of DNA evidence for presentation in
10 court; and

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

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