
HOUSE BILL 2341

State of Washington 64th Legislature 2016 Regular Session

By Representatives Orwall, Kilduff, Fitzgibbon, Kirby, Goodman, Jinkins, and Tarleton

Prefiled 01/05/16. Read first time 01/11/16. Referred to Committee on Public Safety.

1 AN ACT Relating to DNA biological samples; and amending RCW
2 43.43.754.

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

4 **Sec. 1.** RCW 43.43.754 and 2015 c 261 s 10 are each amended to
5 read as follows:

6 (1) A biological sample must be collected for purposes of DNA
7 identification analysis from:

8 (a) Every adult or juvenile individual convicted of a felony, or
9 any of the following crimes (or equivalent juvenile offenses):

10 (i) Assault in the fourth degree with sexual motivation (RCW
11 9A.36.041, 9.94A.835);

12 (ii) Communication with a minor for immoral purposes (RCW
13 9.68A.090);

14 (iii) Custodial sexual misconduct in the second degree (RCW
15 9A.44.170);

16 (iv) Failure to register (~~((RCW 9A.44.130 for persons convicted~~
17 ~~on or before June 10, 2010, and RCW 9A.44.132 for persons convicted~~
18 ~~after June 10, 2010))) (chapter 9A.44 RCW);~~

19 (v) Harassment (RCW 9A.46.020);

20 (vi) Patronizing a prostitute (RCW 9A.88.110);

1 (vii) Sexual misconduct with a minor in the second degree (RCW
2 9A.44.096);

3 (viii) Stalking (RCW 9A.46.110);

4 (ix) Violation of a sexual assault protection order granted under
5 chapter 7.90 RCW; (~~and~~))

6 (b) Every adult or juvenile individual who is required to
7 register under RCW 9A.44.130; and

8 (c) Every person lawfully arrested for or charged with an offense
9 if that person has previously been convicted of a violent offense.

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

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

15 (a) For persons convicted of any offense listed in subsection
16 (1)(a) of this section or adjudicated guilty of an equivalent
17 juvenile offense who do not serve a term of confinement in a
18 department of corrections facility or a department of social and
19 health services facility, and (~~do—serve~~) are serving a term of
20 confinement in a city or county jail facility, the city or county
21 shall be responsible for obtaining the biological samples immediately
22 after sentencing in the city or county jail facility. If the person
23 is not taken into custody, the person must be ordered by the court to
24 immediately report to the city or county jail facility to provide a
25 biological sample. The person must receive a warning that the court
26 may issue a warrant for the person's arrest if the person fails to
27 provide a biological sample as ordered by the court.

28 (b) The local police department or sheriff's office shall be
29 responsible for obtaining the biological samples for:

30 (i) Persons convicted of any offense listed in subsection (1)(a)
31 of this section or adjudicated guilty of an equivalent juvenile
32 offense who do not serve a term of confinement in a department of
33 corrections facility or a department of social and health services
34 facility, and do not serve a term of confinement in a city or county
35 jail facility; (~~and~~))

36 (ii) Persons who are required to register under RCW 9A.44.130;
37 and

38 (iii) Persons who are arrested that have previously been
39 convicted of a prior violent offense.

1 (c) For persons convicted of any offense listed in subsection
2 (1)(a) of this section or adjudicated guilty of an equivalent
3 juvenile offense, who are serving or who are to serve a term of
4 confinement in a department of corrections facility or a department
5 of social and health services facility, the facility holding the
6 person shall be responsible for obtaining the biological samples as
7 part of the intake process. (~~For those persons incarcerated before~~
8 ~~June 12, 2008, who have not yet had a biological sample collected,~~
9 ~~priority shall be given to those persons who will be released the~~
10 ~~soonest.~~)

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

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

29 (6) This section applies to:

30 (a) All adults and juveniles (~~to whom this section applied prior~~
31 ~~to June 12, 2008;~~

32 ~~(b) All adults and juveniles to whom this section did not apply~~
33 ~~prior to June 12, 2008, who:~~

34 ~~(i)) who are or were convicted ((on or after June 12, 2008,)) of~~
35 ~~an offense listed in subsection (1)(a) of this section, regardless of~~
36 ~~the date of the conviction; ((or~~

37 ~~(ii) Were convicted prior to June 12, 2008, of an offense listed~~
38 ~~in subsection (1)(a) of this section and are still incarcerated on or~~
39 ~~after June 12, 2008;)) and~~

1 ~~((e))~~ (b) All adults and juveniles who are required to register
2 under ~~((RCW 9A.44.130 on or after June 12, 2008, whether convicted~~
3 ~~before, on, or after June 12, 2008))~~ chapter 9A.44 RCW.

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

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

16 (9) A person commits the crime of refusal to provide DNA if the
17 person has a duty to register under RCW 9A.44.130 and the person
18 willfully refuses to comply with a legal request for a DNA sample as
19 required under this section. The refusal to provide DNA is a gross
20 misdemeanor.

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