
SUBSTITUTE SENATE BILL 5041

State of Washington

64th Legislature

2015 Regular Session

By Senate Law & Justice (originally sponsored by Senators O'Ban, Fain, and Dammeier)

READ FIRST TIME 02/20/15.

1 AN ACT Relating to sexual exploitation; amending RCW 9A.88.150,
2 9A.88.110, 9A.88.130, 9A.88.140, 43.43.754; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that human
6 trafficking is modern day slavery, which often takes the form of
7 forced sexual exploitation. The potential to make significant
8 financial gains is what motivates sex traffickers to use force,
9 coercion, and physical violence to require victims to engage in sex
10 acts for profit. The legislature finds that both children and adults
11 are forced daily to sell themselves for the profit of others. It is
12 the intent of the legislature that the buyers of sex are held
13 responsible for their participation in this form of modern day
14 slavery. Local governments and law enforcement agencies must have the
15 effective tools necessary to focus on the buyers of sex in order to
16 deter the demand for sexual exploitation. Providing law enforcement
17 with the ability to seize and forfeit the property of buyers who use
18 that property to commit the crime of sexual exploitation will hold
19 these individuals responsible for actions that perpetuate human sex
20 trafficking in our state.

1 **Sec. 2.** RCW 9A.88.150 and 2014 c 188 s 4 are each amended to
2 read as follows:

3 (1) The following are subject to seizure and forfeiture and no
4 property right exists in them:

5 (a) Any property or other interest acquired or maintained in
6 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
7 the investment of funds, and any appreciation or income attributable
8 to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
9 9A.88.070;

10 (b) All conveyances, including aircraft, vehicles, or vessels,
11 which are used, or intended for use, in any manner to facilitate a
12 violation of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or
13 9A.88.110, except that:

14 (i) No conveyance used by any person as a common carrier in the
15 transaction of business as a common carrier is subject to forfeiture
16 under this section unless it appears that the owner or other person
17 in charge of the conveyance is a consenting party or privy to a
18 violation of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or
19 9A.88.110;

20 (ii) No conveyance is subject to forfeiture under this section by
21 reason of any act or omission established by the owner thereof to
22 have been committed or omitted without the owner's knowledge or
23 consent;

24 (iii) A forfeiture of a conveyance encumbered by a bona fide
25 security interest is subject to the interest of the secured party if
26 the secured party neither had knowledge of nor consented to the act
27 or omission; and

28 (iv) When the owner of a conveyance has been arrested for a
29 violation of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or
30 9A.88.110, the conveyance in which the person is arrested may not be
31 subject to forfeiture unless it is seized or process is issued for
32 its seizure within ten days of the owner's arrest;

33 (c) Any property, contractual right, or claim against property
34 used to influence any enterprise that a person has established,
35 operated, controlled, conducted, or participated in the conduct of,
36 in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

37 (d) All proceeds traceable to or derived from an offense defined
38 in RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable
39 instruments, securities, and other things of value significantly used

1 or intended to be used significantly to facilitate commission of the
2 offense;

3 (e) All books, records, and research products and materials,
4 including formulas, microfilm, tapes, and data which are used, or
5 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
6 9A.88.070;

7 (f) All moneys, negotiable instruments, securities, or other
8 tangible or intangible property of value furnished or intended to be
9 furnished by any person in exchange for a violation of RCW 9.68A.100,
10 9.68A.101, (~~(e)~~) 9A.88.070, or 9A.88.110, all tangible or intangible
11 personal property, proceeds, or assets acquired in whole or in part
12 with proceeds traceable to an exchange or series of exchanges in
13 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys,
14 negotiable instruments, and securities used or intended to be used to
15 facilitate any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A
16 forfeiture of money, negotiable instruments, securities, or other
17 tangible or intangible property encumbered by a bona fide security
18 interest is subject to the interest of the secured party if, at the
19 time the security interest was created, the secured party neither had
20 knowledge of nor consented to the act or omission. No personal
21 property may be forfeited under this subsection (1)(f), to the extent
22 of the interest of an owner, by reason of any act or omission, which
23 that owner establishes was committed or omitted without the owner's
24 knowledge or consent; and

25 (g) All real property, including any right, title, and interest
26 in the whole of any lot or tract of land, and any appurtenances or
27 improvements which are being used with the knowledge of the owner for
28 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
29 been acquired in whole or in part with proceeds traceable to an
30 exchange or series of exchanges in violation of RCW 9.68A.100,
31 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
32 violation and the real property. However:

33 (i) No property may be forfeited pursuant to this subsection
34 (1)(g), to the extent of the interest of an owner, by reason of any
35 act or omission committed or omitted without the owner's knowledge or
36 consent;

37 (ii) A forfeiture of real property encumbered by a bona fide
38 security interest is subject to the interest of the secured party if
39 the secured party, at the time the security interest was created,
40 neither had knowledge of nor consented to the act or omission.

1 (2) Real or personal property subject to forfeiture under this
2 section may be seized by any law enforcement officer of this state
3 upon process issued by any superior court having jurisdiction over
4 the property. Seizure of real property shall include the filing of a
5 lis pendens by the seizing agency. Real property seized under this
6 section shall not be transferred or otherwise conveyed until ninety
7 days after seizure or until a judgment of forfeiture is entered,
8 whichever is later: PROVIDED, That real property seized under this
9 section may be transferred or conveyed to any person or entity who
10 acquires title by foreclosure or deed in lieu of foreclosure of a
11 security interest. Seizure of personal property without process may
12 be made if:

13 (a) The seizure is incident to an arrest or a search under a
14 search warrant;

15 (b) The property subject to seizure has been the subject of a
16 prior judgment in favor of the state in a criminal injunction or
17 forfeiture proceeding; or

18 (c) The law enforcement officer has probable cause to believe
19 that the property was used or is intended to be used in violation of
20 RCW 9.68A.100, 9.68A.101, (~~(e)~~) 9A.88.070, or 9A.88.110.

21 (3) In the event of seizure pursuant to subsection (2) of this
22 section, proceedings for forfeiture shall be deemed commenced by the
23 seizure. The law enforcement agency under whose authority the seizure
24 was made shall cause notice to be served within fifteen days
25 following the seizure on the owner of the property seized and the
26 person in charge thereof and any person having any known right or
27 interest therein, including any community property interest, of the
28 seizure and intended forfeiture of the seized property. Service of
29 notice of seizure of real property shall be made according to the
30 rules of civil procedure. However, the state may not obtain a default
31 judgment with respect to real property against a party who is served
32 by substituted service absent an affidavit stating that a good faith
33 effort has been made to ascertain if the defaulted party is
34 incarcerated within the state, and that there is no present basis to
35 believe that the party is incarcerated within the state. Notice of
36 seizure in the case of property subject to a security interest that
37 has been perfected by filing a financing statement, or a certificate
38 of title, shall be made by service upon the secured party or the
39 secured party's assignee at the address shown on the financing
40 statement or the certificate of title. The notice of seizure in other

1 cases may be served by any method authorized by law or court rule
2 including, but not limited to, service by certified mail with return
3 receipt requested. Service by mail shall be deemed complete upon
4 mailing within the fifteen day period following the seizure.

5 (4) If no person notifies the seizing law enforcement agency in
6 writing of the person's claim of ownership or right to possession of
7 items specified in subsection (1) of this section within forty-five
8 days of the service of notice from the seizing agency in the case of
9 personal property and ninety days in the case of real property, the
10 item seized shall be deemed forfeited. The community property
11 interest in real property of a person whose spouse or domestic
12 partner committed a violation giving rise to seizure of the real
13 property may not be forfeited if the person did not participate in
14 the violation.

15 (5) If any person notifies the seizing law enforcement agency in
16 writing of the person's claim of ownership or right to possession of
17 items specified in subsection (1) of this section within forty-five
18 days of the service of notice from the seizing agency in the case of
19 personal property and ninety days in the case of real property, the
20 person or persons shall be afforded a reasonable opportunity to be
21 heard as to the claim or right. The notice of claim may be served by
22 any method authorized by law or court rule including, but not limited
23 to, service by first-class mail. Service by mail shall be deemed
24 complete upon mailing within the forty-five day period following
25 service of the notice of seizure in the case of personal property and
26 within the ninety day period following service of the notice of
27 seizure in the case of real property. The hearing shall be before the
28 chief law enforcement officer of the seizing agency or the chief law
29 enforcement officer's designee, except where the seizing agency is a
30 state agency as defined in RCW 34.12.020(4), the hearing shall be
31 before the chief law enforcement officer of the seizing agency or an
32 administrative law judge appointed under chapter 34.12 RCW, except
33 that any person asserting a claim or right may remove the matter to a
34 court of competent jurisdiction. Removal of any matter involving
35 personal property may only be accomplished according to the rules of
36 civil procedure. The person seeking removal of the matter must serve
37 process against the state, county, political subdivision, or
38 municipality that operates the seizing agency, and any other party of
39 interest, in accordance with RCW 4.28.080 or 4.92.020, within
40 forty-five days after the person seeking removal has notified the

1 seizing law enforcement agency of the person's claim of ownership or
2 right to possession. The court to which the matter is to be removed
3 shall be the district court when the aggregate value of personal
4 property is within the jurisdictional limit set forth in RCW
5 3.66.020. A hearing before the seizing agency and any appeal
6 therefrom shall be under Title 34 RCW. In all cases, the burden of
7 proof is upon the law enforcement agency to establish, by a
8 preponderance of the evidence, that the property is subject to
9 forfeiture.

10 The seizing law enforcement agency shall promptly return the
11 article or articles to the claimant upon a determination by the
12 administrative law judge or court that the claimant is the present
13 lawful owner or is lawfully entitled to possession thereof of items
14 specified in subsection (1) of this section.

15 (6) In any proceeding to forfeit property under this title, where
16 the claimant substantially prevails, the claimant is entitled to
17 reasonable attorneys' fees reasonably incurred by the claimant. In
18 addition, in a court hearing between two or more claimants to the
19 article or articles involved, the prevailing party is entitled to a
20 judgment for costs and reasonable attorneys' fees.

21 (7) When property is forfeited under this chapter, the seizing
22 law enforcement agency may:

23 (a) Retain it for official use or upon application by any law
24 enforcement agency of this state release the property to that agency
25 for the exclusive use of enforcing this chapter or chapter 9.68A RCW;

26 (b) Sell that which is not required to be destroyed by law and
27 which is not harmful to the public; or

28 (c) Request the appropriate sheriff or director of public safety
29 to take custody of the property and remove it for disposition in
30 accordance with law.

31 (8)(a) When property is forfeited, the seizing agency shall keep
32 a record indicating the identity of the prior owner, if known, a
33 description of the property, the disposition of the property, the
34 value of the property at the time of seizure, and the amount of
35 proceeds realized from disposition of the property.

36 (b) Each seizing agency shall retain records of forfeited
37 property for at least seven years.

38 (c) Each seizing agency shall file a report including a copy of
39 the records of forfeited property with the state treasurer each
40 calendar quarter.

1 (d) The quarterly report need not include a record of forfeited
2 property that is still being held for use as evidence during the
3 investigation or prosecution of a case or during the appeal from a
4 conviction.

5 (9)(a) By January 31st of each year, each seizing agency shall
6 remit to the state treasurer an amount equal to ten percent of the
7 net proceeds of any property forfeited during the preceding calendar
8 year. Money remitted shall be deposited in the prostitution
9 prevention and intervention account under RCW 43.63A.740.

10 (b) The net proceeds of forfeited property is the value of the
11 forfeitable interest in the property after deducting the cost of
12 satisfying any bona fide security interest to which the property is
13 subject at the time of seizure; and in the case of sold property,
14 after deducting the cost of sale, including reasonable fees or
15 commissions paid to independent selling agents, and the cost of any
16 valid landlord's claim for damages under subsection (12) of this
17 section.

18 (c) The value of sold forfeited property is the sale price. The
19 value of destroyed property and retained firearms or illegal property
20 is zero.

21 (10) Net proceeds not required to be paid to the state treasurer
22 shall be used for payment of all proper expenses of the investigation
23 leading to the seizure, including any money delivered to the subject
24 of the investigation by the law enforcement agency, and of the
25 proceedings for forfeiture and sale, including expenses of seizure,
26 maintenance of custody, advertising, actual costs of the prosecuting
27 or city attorney, and court costs. Money remaining after payment of
28 these expenses shall be retained by the seizing law enforcement
29 agency for the exclusive use of enforcing the provisions of this
30 chapter or chapter 9.68A RCW.

31 (11) Upon the entry of an order of forfeiture of real property,
32 the court shall forward a copy of the order to the assessor of the
33 county in which the property is located. Orders for the forfeiture of
34 real property shall be entered by the superior court, subject to
35 court rules. Such an order shall be filed by the seizing agency in
36 the county auditor's records in the county in which the real property
37 is located.

38 (12) A landlord may assert a claim against proceeds from the sale
39 of assets seized and forfeited under subsection (9) of this section,
40 only if:

1 (a) A law enforcement officer, while acting in his or her
2 official capacity, directly caused damage to the complaining
3 landlord's property while executing a search of a tenant's residence;

4 (b) The landlord has applied any funds remaining in the tenant's
5 deposit, to which the landlord has a right under chapter 59.18 RCW,
6 to cover the damage directly caused by a law enforcement officer
7 prior to asserting a claim under the provisions of this section:

8 (i) Only if the funds applied under (b) of this subsection are
9 insufficient to satisfy the damage directly caused by a law
10 enforcement officer, may the landlord seek compensation for the
11 damage by filing a claim against the governmental entity under whose
12 authority the law enforcement agency operates within thirty days
13 after the search;

14 (ii) Only if the governmental entity denies or fails to respond
15 to the landlord's claim within sixty days of the date of filing, may
16 the landlord collect damages under this subsection by filing within
17 thirty days of denial or the expiration of the sixty day period,
18 whichever occurs first, a claim with the seizing law enforcement
19 agency. The seizing law enforcement agency must notify the landlord
20 of the status of the claim by the end of the thirty day period.
21 Nothing in this section requires the claim to be paid by the end of
22 the sixty day or thirty day period; and

23 (c) For any claim filed under (b) of this subsection, the law
24 enforcement agency shall pay the claim unless the agency provides
25 substantial proof that the landlord either:

26 (i) Knew or consented to actions of the tenant in violation of
27 RCW 9.68A.100, 9.68A.101, (~~(e)~~) 9A.88.070, or 9A.88.110; or

28 (ii) Failed to respond to a notification of the illegal activity,
29 provided by a law enforcement agency under RCW 59.18.075, within
30 seven days of receipt of notification of the illegal activity.

31 (13) The landlord's claim for damages under subsection (12) of
32 this section may not include a claim for loss of business and is
33 limited to:

34 (a) Damage to tangible property and clean-up costs;

35 (b) The lesser of the cost of repair or fair market value of the
36 damage directly caused by a law enforcement officer;

37 (c) The proceeds from the sale of the specific tenant's property
38 seized and forfeited under subsection (9) of this section; and

39 (d) The proceeds available after the seizing law enforcement
40 agency satisfies any bona fide security interest in the tenant's

1 property and costs related to sale of the tenant's property as
2 provided by subsection (12) of this section.

3 (14) Subsections (12) and (13) of this section do not limit any
4 other rights a landlord may have against a tenant to collect for
5 damages. However, if a law enforcement agency satisfies a landlord's
6 claim under subsection (12) of this section, the rights the landlord
7 has against the tenant for damages directly caused by a law
8 enforcement officer under the terms of the landlord and tenant's
9 contract are subrogated to the law enforcement agency.

10 **Sec. 3.** RCW 9A.88.110 and 1988 c 146 s 4 are each amended to
11 read as follows:

12 (1) A person is guilty of (~~(patronizing a prostitute)~~) sexual
13 exploitation if:

14 (a) Pursuant to a prior understanding, he or she pays a fee to
15 another person as compensation for such person or a third person
16 having engaged in sexual conduct with him or her; or

17 (b) He or she pays or agrees to pay a fee to another person
18 pursuant to an understanding that in return therefor such person will
19 engage in sexual conduct with him or her; or

20 (c) He or she solicits or requests another person to engage in
21 sexual conduct with him or her in return for a fee.

22 (2) For purposes of this section, "sexual conduct" has the
23 meaning given in RCW 9A.88.030.

24 (3) (~~(Patronizing a prostitute)~~) Sexual exploitation is a
25 misdemeanor.

26 **Sec. 4.** RCW 9A.88.130 and 2012 c 136 s 2 are each amended to
27 read as follows:

28 (1) When sentencing or imposing conditions on a person convicted
29 of, or receiving a deferred sentence or deferred prosecution for,
30 violating RCW 9A.88.110 or 9.68A.100, the court must impose a
31 requirement that the offender:

32 (a) Not be subsequently arrested for (~~(patronizing a prostitute)~~)
33 sexual exploitation or commercial sexual abuse of a minor;

34 (b) Remain outside the geographical area, prescribed by the
35 court, in which the person was arrested for violating RCW 9A.88.110
36 or 9.68A.100, unless such a requirement would interfere with the
37 person's legitimate employment or residence or otherwise be
38 infeasible; and

1 (c) Fulfill the terms of a program, if a first-time offender,
2 designated by the sentencing court, designed to educate offenders
3 about the negative costs of (~~(prostitution)~~) sexual exploitation.

4 (2) This requirement is in addition to the penalties set forth in
5 RCW 9A.88.110, 9A.88.120, and 9.68A.100.

6 **Sec. 5.** RCW 9A.88.140 and 2013 c 121 s 6 are each amended to
7 read as follows:

8 (1)(a) Upon an arrest for a suspected violation of (~~(patronizing~~
9 ~~a prostitute)~~) sexual exploitation, promoting prostitution in the
10 first degree, promoting prostitution in the second degree, promoting
11 travel for prostitution, the arresting law enforcement officer may
12 impound the person's vehicle if (i) the motor vehicle was used in the
13 commission of the crime; (ii) the person arrested is the owner of the
14 vehicle or the vehicle is a rental car as defined in RCW 46.04.465;
15 and (iii) either (A) the person arrested has previously been
16 convicted of one of the offenses listed in this subsection or (B) the
17 offense was committed within an area designated under (b) of this
18 subsection.

19 (b) A local governing authority may designate areas within which
20 vehicles are subject to impoundment under this section regardless of
21 whether the person arrested has previously been convicted of any of
22 the offenses listed in (a) of this subsection.

23 (i) The designation must be based on evidence indicating that the
24 area has a disproportionately higher number of arrests for the
25 offenses listed in (a) of this subsection as compared to other areas
26 within the same jurisdiction.

27 (ii) The local governing authority shall post signs at the
28 boundaries of the designated area to indicate that the area has been
29 designated under this subsection.

30 (2) Upon an arrest for a suspected violation of commercial sexual
31 abuse of a minor, promoting commercial sexual abuse of a minor, or
32 promoting travel for commercial sexual abuse of a minor, the
33 arresting law enforcement officer shall impound the person's vehicle
34 if (a) the motor vehicle was used in the commission of the crime; and
35 (b) the person arrested is the owner of the vehicle or the vehicle is
36 a rental car as defined in RCW 46.04.465.

37 (3) Impoundments performed under this section shall be in
38 accordance with chapter 46.55 RCW and the impoundment order must
39 clearly state "prostitution hold."

1 (4)(a) Prior to redeeming the impounded vehicle, and in addition
2 to all applicable impoundment, towing, and storage fees paid to the
3 towing company under chapter 46.55 RCW, the owner of the impounded
4 vehicle must pay a fine to the impounding agency. The fine shall be
5 five hundred dollars for the offenses specified in subsection (1) of
6 this section, or two thousand five hundred dollars for the offenses
7 specified in subsection (2) of this section.

8 (b) Upon receipt of the fine paid under (a) of this subsection,
9 the impounding agency shall issue a written receipt to the owner of
10 the impounded vehicle.

11 (c) Fines assessed under this section shall be collected by the
12 clerk of the court and remitted to the treasurer of the county where
13 the offense occurred for deposit in the county general fund, except
14 in cases in which the offense occurred in a city or town that
15 provides for its own law enforcement, in which case these amounts
16 shall be remitted to the treasurer of the city or town for deposit in
17 the general fund of the city or town. Revenue from the fines must be
18 used for local efforts to reduce the commercial sale of sex
19 including, but not limited to, increasing enforcement of commercial
20 sex laws.

21 (i) At least fifty percent of the revenue from fines imposed
22 under this section must be spent on prevention, including education
23 programs for offenders, such as john school, and rehabilitative
24 services for victims, such as mental health and substance abuse
25 counseling, parenting skills, training, housing relief, education,
26 vocational training, drop-in centers, and employment counseling.

27 (ii) Two percent of the revenue from fines imposed under this
28 section shall be remitted quarterly to the department of commerce,
29 together with a report detailing the fees assessed, the revenue
30 received, and how that revenue was spent.

31 (iii) Revenues from these fees are not subject to the
32 distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040,
33 10.82.070, or 35.20.220.

34 (5)(a) In order to redeem a vehicle impounded under this section,
35 the owner must provide the towing company with the written receipt
36 issued under subsection (4)(b) of this section.

37 (b) The written receipt issued under subsection (4)(b) of this
38 section authorizes the towing company to release the impounded
39 vehicle upon payment of all impoundment, towing, and storage fees.

1 (c) A towing company that relies on a forged receipt to release a
2 vehicle impounded under this section is not liable to the impounding
3 authority for any unpaid fine under subsection (4)(a) of this
4 section.

5 (6)(a) In any proceeding under chapter 46.55 RCW to contest the
6 validity of an impoundment under this section where the claimant
7 substantially prevails, the claimant is entitled to a full refund of
8 the impoundment, towing, and storage fees paid under chapter 46.55
9 RCW and the five hundred dollar fine paid under subsection (4) of
10 this section.

11 (b) If the person is found not guilty at trial for a crime listed
12 under subsection (1) of this section, the person is entitled to a
13 full refund of the impoundment, towing, and storage fees paid under
14 chapter 46.55 RCW and the fine paid under subsection (4) of this
15 section.

16 (c) All refunds made under this section shall be paid by the
17 impounding agency.

18 (d) Prior to receiving any refund under this section, the
19 claimant must provide proof of payment.

20 **Sec. 6.** RCW 43.43.754 and 2008 c 97 s 2 are each amended to read
21 as follows:

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

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

26 Assault in the fourth degree with sexual motivation (RCW
27 9A.36.041, 9.94A.835)

28 Communication with a minor for immoral purposes (RCW 9.68A.090)

29 Custodial sexual misconduct in the second degree (RCW 9A.44.170)

30 Failure to register (RCW (~~9A.44.130~~)) 9A.44.132)

31 Harassment (RCW 9A.46.020)

32 (~~Patronizing a prostitute~~) Sexual exploitation (RCW 9A.88.110)

33 Sexual misconduct with a minor in the second degree (RCW
34 9A.44.096)

35 Stalking (RCW 9A.46.110)

36 Violation of a sexual assault protection order granted under
37 chapter 7.90 RCW; and

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

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

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

6 (a) For persons convicted of any offense listed in subsection
7 (1)(a) of this section or adjudicated guilty of an equivalent
8 juvenile offense who do not serve a term of confinement in a
9 department of corrections facility, and do serve a term of
10 confinement in a city or county jail facility, the city or county
11 shall be responsible for obtaining the biological samples.

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

14 (i) Persons convicted of any offense listed in subsection (1)(a)
15 of this section or adjudicated guilty of an equivalent juvenile
16 offense who do not serve a term of confinement in a department of
17 corrections facility, and do not serve a term of confinement in a
18 city or county jail facility; and

19 (ii) Persons who are required to register under RCW (~~9A.44.030~~)
20 9A.44.130.

21 (c) For persons convicted of any offense listed in subsection
22 (1)(a) of this section or adjudicated guilty of an equivalent
23 juvenile offense, who are serving or who are to serve a term of
24 confinement in a department of corrections facility or a department
25 of social and health services facility, the facility holding the
26 person shall be responsible for obtaining the biological samples. For
27 those persons incarcerated before June 12, 2008, who have not yet had
28 a biological sample collected, priority shall be given to those
29 persons who will be released the soonest.

30 (4) Any biological sample taken pursuant to RCW 43.43.752 through
31 43.43.758 may be retained by the forensic laboratory services bureau,
32 and shall be used solely for the purpose of providing DNA or other
33 tests for identification analysis and prosecution of a criminal
34 offense or for the identification of human remains or missing
35 persons. Nothing in this section prohibits the submission of results
36 derived from the biological samples to the federal bureau of
37 investigation combined DNA index system.

38 (5) The forensic laboratory services bureau of the Washington
39 state patrol is responsible for testing performed on all biological
40 samples that are collected under subsection (1) of this section, to

1 the extent allowed by funding available for this purpose. The
2 director shall give priority to testing on samples collected from
3 those adults or juveniles convicted of a felony or adjudicated guilty
4 of an equivalent juvenile offense that is defined as a sex offense or
5 a violent offense in RCW 9.94A.030. Known duplicate samples may be
6 excluded from testing unless testing is deemed necessary or advisable
7 by the director.

8 (6) This section applies to:

9 (a) All adults and juveniles to whom this section applied prior
10 to June 12, 2008;

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

13 (i) Are convicted on or after June 12, 2008, of an offense listed
14 in subsection (1)(a) of this section; or

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

18 (c) All adults and juveniles who are required to register under
19 RCW 9A.44.130 on or after June 12, 2008, whether convicted before,
20 on, or after June 12, 2008.

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

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

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