
HOUSE BILL 2331

State of Washington

65th Legislature

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By Representatives Orwall, Griffey, Goodman, Jinkins, Muri, Kilduff, Klippert, Fey, Kagi, Lovick, Appleton, and Doglio

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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 2017 c 272 s 4 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), or an
10 equivalent municipal offense where the municipal prosecuting
11 authority certifies at the time of sentencing that the municipal
12 offense conviction is equivalent to the following crimes:

13 (i) Assault in the fourth degree where domestic violence as
14 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
15 9.94A.030);

16 (ii) Assault in the fourth degree with sexual motivation (RCW
17 9A.36.041, 9.94A.835);

18 (iii) Communication with a minor for immoral purposes (RCW
19 9.68A.090);

20 (iv) Custodial sexual misconduct in the second degree (RCW
21 9A.44.170);

1 (v) Failure to register (RCW 9A.44.130 for persons convicted on
2 or before June 10, 2010, and RCW 9A.44.132 for persons convicted
3 after June 10, 2010);

4 (vi) Harassment (RCW 9A.46.020);

5 (vii) Patronizing a prostitute (RCW 9A.88.110);

6 (viii) Sexual misconduct with a minor in the second degree (RCW
7 9A.44.096);

8 (ix) Stalking (RCW 9A.46.110);

9 (x) Violation of a sexual assault protection order granted under
10 chapter 7.90 RCW; and

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

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

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

18 (a) For persons convicted of any offense listed in subsection
19 (1)(a) of this section or an equivalent municipal offense, or
20 adjudicated guilty of an equivalent juvenile offense, who do not
21 serve a term of confinement in a department of corrections facility,
22 and do serve a term of confinement in a city or county jail facility,
23 the city or county shall be responsible for obtaining the biological
24 samples.

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

27 (i) Persons convicted of any offense listed in subsection (1)(a)
28 of this section or an equivalent municipal offense, or adjudicated
29 guilty of an equivalent juvenile offense, who do not serve a term of
30 confinement in a department of corrections facility, and do not serve
31 a term of confinement in a city or county jail facility; and

32 (ii) Persons who are required to register under RCW 9A.44.130.

33 (c) For persons convicted of any offense listed in subsection
34 (1)(a) of this section or an equivalent municipal offense, or
35 adjudicated guilty of an equivalent juvenile offense, who are serving
36 or who are to serve a term of confinement in a department of
37 corrections facility or a department of social and health services
38 facility, the facility holding the person shall be responsible for
39 obtaining the biological samples. For those persons incarcerated
40 before June 12, 2008, who have not yet had a biological sample

1 collected, priority shall be given to those persons who will be
2 released the soonest.

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

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

21 (6) This section applies to:

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

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

26 (i) Are convicted on or after June 12, 2008, of an offense listed
27 in subsection (1)(a) of this section or of an equivalent municipal
28 offense; or

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

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

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

39 (8) The detention, arrest, or conviction of a person based upon a
40 database match or database information is not invalidated if it is

1 determined that the sample was obtained or placed in the database by
2 mistake, or if the conviction or juvenile adjudication that resulted
3 in the collection of the biological sample was subsequently vacated
4 or otherwise altered in any future proceeding including but not
5 limited to posttrial or postfact-finding motions, appeals, or
6 collateral attacks. No cause of action may be brought against the
7 state based upon the analysis of a biological sample authorized to be
8 taken pursuant to a municipal ordinance if it is later determined
9 that the sample was obtained or placed in the database by mistake, or
10 if the conviction or adjudication that resulted in the collection of
11 the biological sample was subsequently vacated or otherwise altered
12 in any future proceeding including, but not limited to, posttrial or
13 postfact-finding motions, appeals, or collateral attacks.

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

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