

SHB 1326 - S AMD 778
By Senator Pedersen

ADOPTED 04/28/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This act may be known and cited as
4 Jennifer and Michella's law.

5 NEW SECTION. **Sec. 2.** The legislature finds that the state of
6 Washington has for decades routinely required collection of DNA
7 biological samples from certain convicted offenders and persons
8 required to register as sex and kidnapping offenders. The resulting
9 DNA data has proven to be an invaluable component of forensic
10 evidence analysis. Not only have DNA matches focused law enforcement
11 efforts and resources on productive leads, assisted in the
12 expeditious conviction of guilty persons, and provided identification
13 of recidivist and cold case offenders, DNA analysis has also played a
14 crucial role in absolving wrongly suspected and convicted persons and
15 in providing resolution to those who have tragically suffered
16 unimaginable harm.

17 In an effort to solve cold cases and unsolved crimes, to provide
18 closure to victims and their family members, and to support efforts
19 to exonerate the wrongly accused or convicted, the legislature finds
20 that procedural improvements and measured expansions to the
21 collection and analysis of lawfully obtained DNA biological samples
22 are both appropriate and necessary.

23 **Sec. 3.** RCW 43.43.754 and 2017 c 272 s 4 are each amended to
24 read as follows:

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

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

29 (i) Assault in the fourth degree where domestic violence as
30 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
31 9.94A.030);

1 (ii) Assault in the fourth degree with sexual motivation (RCW
2 9A.36.041, 9.94A.835);

3 (iii) Communication with a minor for immoral purposes (RCW
4 9.68A.090);

5 (iv) Custodial sexual misconduct in the second degree (RCW
6 9A.44.170);

7 (v) Failure to register (~~((RCW 9A.44.130 for persons convicted on~~
8 ~~or before June 10, 2010, and RCW 9A.44.132 for persons convicted~~
9 ~~after June 10, 2010)) chapter 9A.44 RCW);~~

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

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

12 (viii) Sexual misconduct with a minor in the second degree (RCW
13 9A.44.096);

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

15 (x) Indecent exposure (RCW 9A.88.010);

16 (xi) Violation of a sexual assault protection order granted under
17 chapter 7.90 RCW; and

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

20 (2) (a) A municipal jurisdiction may also submit any biological
21 sample to the laboratory services bureau of the Washington state
22 patrol for purposes of DNA identification analysis when:

23 (i) The sample was collected from a defendant upon conviction for
24 a municipal offense where the underlying ordinance does not adopt the
25 relevant state statute by reference but the offense is otherwise
26 equivalent to an offense in subsection (1)(a) of this section;

27 (ii) The equivalent offense in subsection (1)(a) of this section
28 was an offense for which collection of a biological sample was
29 required under this section at the time of the conviction; and

30 (iii) The sample was collected on or after June 12, 2008, and
31 before January 1, 2020.

32 (b) When submitting a biological sample under this subsection,
33 the municipal jurisdiction must include a signed affidavit from the
34 municipal prosecuting authority of the jurisdiction in which the
35 conviction occurred specifying the state crime to which the municipal
36 offense is equivalent.

37 (3) Law enforcement may submit to the forensic laboratory
38 services bureau of the Washington state patrol, for purposes of DNA
39 identification analysis, any lawfully obtained biological sample
40 within its control from a deceased offender who was previously

1 convicted of an offense under subsection (1)(a) of this section,
2 regardless of the date of conviction.

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

6 ~~((3))~~ (5) Biological samples shall be collected in the
7 following manner:

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

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

18 (i) Persons convicted of any offense listed in subsection (1)(a)
19 of this section or adjudicated guilty of an equivalent juvenile
20 offense, who do not serve a term of confinement in a department of
21 corrections facility, ~~((and do not serve a term of confinement in))~~
22 department of children, youth, and families facility, or a city or
23 county jail facility; and

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

25 (c) For persons convicted of any offense listed in subsection
26 (1)(a) of this section or adjudicated guilty of an equivalent
27 juvenile offense, who are serving or who are to serve a term of
28 confinement in a department of corrections facility or a department
29 of ~~((social and health services))~~ children, youth, and families
30 facility, the facility holding the person shall be responsible for
31 obtaining the biological samples as part of the intake process. If
32 the facility did not collect the biological sample during the intake
33 process, then the facility shall collect the biological sample as
34 soon as is practicable. For those persons incarcerated before June
35 12, 2008, who have not yet had a biological sample collected,
36 priority shall be given to those persons who will be released the
37 soonest.

38 ~~((4))~~ (6) For persons convicted of any offense listed in
39 subsection (1)(a) of this section or adjudicated guilty of an
40 equivalent juvenile offense, who will not serve a term of

1 confinement, the court shall order the person to report to the local
2 police department or sheriff's office as provided under subsection
3 (5)(b)(i) of this section within a reasonable period of time
4 established by the court in order to provide a biological sample. The
5 court must further inform the person that refusal to provide a
6 biological sample is a gross misdemeanor under this section.

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

15 ~~((+5))~~ (8) The forensic laboratory services bureau of the
16 Washington state patrol is responsible for testing performed on all
17 biological samples that are collected under ~~((subsection (1) of))~~
18 this section, to the extent allowed by funding available for this
19 purpose. ~~((The director shall give priority to testing on samples~~
20 ~~collected from those adults or juveniles convicted of a felony or~~
21 ~~adjudicated guilty of an equivalent juvenile offense that is defined~~
22 ~~as a sex offense or a violent offense in RCW 9.94A.030.))~~ Known
23 duplicate samples may be excluded from testing unless testing is
24 deemed necessary or advisable by the director.

25 ~~((+6))~~ (9) This section applies to:

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

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

30 (i) Are convicted on or after June 12, 2008, of an offense listed
31 in subsection (1)(a) of this section on the date of conviction; or

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

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

38 (d) All samples submitted under subsections (2) and (3) of this
39 section.

1 ~~((7))~~ (10) This section creates no rights in a third person. No
2 cause of action may be brought based upon the noncollection or
3 nonanalysis or the delayed collection or analysis of a biological
4 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

5 ~~((8))~~ (11) The detention, arrest, or conviction of a person
6 based upon a database match or database information is not
7 invalidated if it is determined that the sample was obtained or
8 placed in the database by mistake, or if the conviction or juvenile
9 adjudication that resulted in the collection of the biological sample
10 was subsequently vacated or otherwise altered in any future
11 proceeding including but not limited to posttrial or postfact-finding
12 motions, appeals, or collateral attacks. No cause of action may be
13 brought against the state based upon the analysis of a biological
14 sample authorized to be taken pursuant to a municipal ordinance if
15 the conviction or adjudication that resulted in the collection of the
16 biological sample was subsequently vacated or otherwise altered in
17 any future proceeding including, but not limited to, posttrial or
18 postfact-finding motions, appeals, or collateral attacks.

19 ~~((9))~~ (12) A person commits the crime of refusal to provide DNA
20 if the person ~~((has a duty to register under RCW 9A.44.130 and the~~
21 ~~person))~~ willfully refuses to comply with a legal request for a DNA
22 sample as required under this section. The refusal to provide DNA is
23 a gross misdemeanor.

24 **Sec. 4.** RCW 9A.44.132 and 2015 c 261 s 5 are each amended to
25 read as follows:

26 (1) A person commits the crime of failure to register as a sex
27 offender if the person has a duty to register under RCW 9A.44.130 for
28 a felony sex offense and knowingly fails to comply with any of the
29 requirements of RCW 9A.44.130.

30 (a) The failure to register as a sex offender pursuant to this
31 subsection is a class C felony if:

32 (i) It is the person's first conviction for a felony failure to
33 register; or

34 (ii) The person has previously been convicted of a felony failure
35 to register as a sex offender in this state or pursuant to the laws
36 of another state, or pursuant to federal law.

37 (b) If a person has been convicted of a felony failure to
38 register as a sex offender in this state or pursuant to the laws of
39 another state, or pursuant to federal law, on two or more prior

1 occasions, the failure to register under this subsection is a class B
2 felony.

3 (2) A person is guilty of failure to register as a sex offender
4 if the person has a duty to register under RCW 9A.44.130 for a sex
5 offense other than a felony and knowingly fails to comply with any of
6 the requirements of RCW 9A.44.130. The failure to register as a sex
7 offender under this subsection is a gross misdemeanor.

8 (3) A person commits the crime of failure to register as a
9 kidnapping offender if the person has a duty to register under RCW
10 9A.44.130 for a kidnapping offense and knowingly fails to comply with
11 any of the requirements of RCW 9A.44.130.

12 (a) If the person has a duty to register for a felony kidnapping
13 offense, the failure to register as a kidnapping offender is a class
14 C felony.

15 (b) If the person has a duty to register for a kidnapping offense
16 other than a felony, the failure to register as a kidnapping offender
17 is a gross misdemeanor.

18 ~~(4) ((A person commits the crime of refusal to provide DNA if the
19 person has a duty to register under RCW 9A.44.130 and the person
20 willfully refuses to comply with a legal request for a DNA sample as
21 required under RCW 43.43.754(1)(b). The refusal to provide DNA is a
22 gross misdemeanor.~~

23 ~~(5))~~ Unless relieved of the duty to register pursuant to RCW
24 9A.44.141 and 9A.44.142, a violation of this section is an ongoing
25 offense for purposes of the statute of limitations under RCW
26 9A.04.080."

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27 On page 1, line 2 of the title, after "system;" strike the
28 remainder of the title and insert "amending RCW 43.43.754 and
29 9A.44.132; and creating new sections."

EFFECT: Restores current law relating to the local police or
sheriff's office being responsible for collecting samples from
persons who will not serve any term of confinement.

Removes the amendatory provisions relating to collecting samples
from persons who are not immediately taken into custody or will not
serve any term of confinement.

Requires the court to order those persons to report to the local police department or sheriff within a reasonable period of time established by the court in order to provide a biological sample.

Requires the court to inform those persons that refusal to provide a biological sample is a gross misdemeanor.

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