
SUBSTITUTE HOUSE BILL 1326

State of Washington

66th Legislature

2019 Regular Session

By House Public Safety (originally sponsored by Representatives Klippert and Goodman)

READ FIRST TIME 02/18/19.

1 AN ACT Relating to the collection of DNA biological samples for
2 entry into the combined DNA index system; amending RCW 43.43.754 and
3 9A.44.132; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** This act may be known and cited as
6 Jennifer and Michella's law.

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

19 In an effort to solve cold cases and unsolved crimes, to provide
20 closure to victims and their family members, and to support efforts

1 to exonerate the wrongly accused or convicted, the legislature finds
2 that procedural improvements and measured expansions to the
3 collection and analysis of lawfully obtained DNA biological samples
4 are both appropriate and necessary.

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

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

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

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

14 (ii) Assault in the fourth degree with sexual motivation (RCW
15 9A.36.041, 9.94A.835);

16 (iii) Communication with a minor for immoral purposes (RCW
17 9.68A.090);

18 (iv) Custodial sexual misconduct in the second degree (RCW
19 9A.44.170);

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

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

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

25 (viii) Sexual misconduct with a minor in the second degree (RCW
26 9A.44.096);

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

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

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

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

33 (2) Law enforcement may submit to the forensic laboratory
34 services bureau of the Washington state patrol, for purposes of DNA
35 identification analysis, any lawfully obtained biological sample
36 within its control from a deceased offender who was previously
37 convicted of an offense under subsection (1)(a) of this section,
38 regardless of the date of conviction.

1 (3) 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))~~ (4) Biological samples shall be collected in the
5 following 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 or a department of children,
10 youth, and families facility, and ~~((do serve))~~ are serving a term of
11 confinement in a city or county jail facility, the city or county
12 shall be responsible for obtaining the biological samples.

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

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

20 ~~(ii))~~ persons who are required to register under RCW 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))~~ children, youth, and families
26 facility, the facility holding the person shall be responsible for
27 obtaining the biological samples as part of the intake process. If
28 the facility did not collect the biological sample during the intake
29 process, then the facility shall collect the biological sample as
30 soon as is practicable. For those persons incarcerated before June
31 12, 2008, who have not yet had a biological sample collected,
32 priority shall be given to those persons who will be released the
33 soonest.

34 ~~((4))~~ (d) For persons convicted of any offense listed in
35 subsection (1)(a) of this section or adjudicated guilty of an
36 equivalent juvenile offense, who are not immediately taken into the
37 custody of a department of corrections facility, department of
38 children, youth, and families facility, or a city or county jail
39 facility, or who will not otherwise serve a term of confinement, the
40 court shall order the person to immediately provide a biological

1 sample. For a person who is not immediately taken into custody, the
2 biological sample must be taken prior to the person leaving the
3 presence of the court by the local police department or sheriff's
4 office, or other entity designated by the court. Courts shall develop
5 protocols to ensure the proper and efficient collection and transfer
6 of biological samples required under this subsection.

7 (5) 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))~~ (6) 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 this
18 section, to the extent allowed by funding available for this purpose.
19 ~~((The director shall give priority to testing on samples collected~~
20 ~~from those adults or juveniles convicted of a felony or adjudicated~~
21 ~~guilty of an equivalent juvenile offense that is defined as a sex~~
22 ~~offense or a violent offense in RCW 9.94A.030.))~~ Known duplicate
23 samples may be excluded from testing unless testing is deemed
24 necessary or advisable by the director.

25 ~~((6))~~ (7) 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; 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.

38 ~~((7))~~ (8) This section creates no rights in a third person. No
39 cause of action may be brought based upon the noncollection or

1 nonanalysis or the delayed collection or analysis of a biological
2 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

3 ~~((+8))~~ (9) The detention, arrest, or conviction of a person
4 based upon a database match or database information is not
5 invalidated if it is determined that the sample was obtained or
6 placed in the database by mistake, or if the conviction or juvenile
7 adjudication that resulted in the collection of the biological sample
8 was subsequently vacated or otherwise altered in any future
9 proceeding including but not limited to posttrial or postfact-finding
10 motions, appeals, or collateral attacks.

11 ~~((+9))~~ (10) A person commits the crime of refusal to provide DNA
12 if the person ~~((has a duty to register under RCW 9A.44.130 and the
13 person))~~ willfully refuses to comply with a legal request for a DNA
14 sample as required under this section. The refusal to provide DNA is
15 a gross misdemeanor.

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

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

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

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

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

29 (b) If a person has been convicted of a felony failure to
30 register as a sex offender in this state or pursuant to the laws of
31 another state, or pursuant to federal law, on two or more prior
32 occasions, the failure to register under this subsection is a class B
33 felony.

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

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

5 (a) If the person has a duty to register for a felony kidnapping
6 offense, the failure to register as a kidnapping offender is a class
7 C felony.

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

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

16 ~~(5))~~ Unless relieved of the duty to register pursuant to RCW
17 9A.44.141 and 9A.44.142, a violation of this section is an ongoing
18 offense for purposes of the statute of limitations under RCW
19 9A.04.080.

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