
SENATE BILL 5095

State of Washington 60th Legislature 2007 Regular Session

By Senators McCaslin and Delvin

Read first time 01/10/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to expanding the DNA identification system to
2 include DNA samples from persons arrested on criminal charges; and
3 amending RCW 43.43.735 and 43.43.754.

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

5 **Sec. 1.** RCW 43.43.735 and 2006 c 294 s 6 are each amended to read
6 as follows:

7 (1) It shall be the duty of the sheriff or director of public
8 safety of every county, and the chief of police of every city or town,
9 and of every chief officer of other law enforcement agencies duly
10 operating within this state, to cause the photographing and
11 fingerprinting of all adults and juveniles lawfully arrested for the
12 commission of any criminal offense constituting a felony or gross
13 misdemeanor. (a) When such juveniles are brought directly to a
14 juvenile detention facility, the juvenile court administrator is also
15 authorized, but not required, to cause the photographing,
16 fingerprinting, and record transmittal to the appropriate law
17 enforcement agency; and (b) a further exception may be made when the
18 arrest is for a violation punishable as a gross misdemeanor and the
19 arrested person is not taken into custody.

1 (2)(a) It is the duty of the sheriff or director of public safety
2 of every county, and the chief of police of every city or town, and of
3 every chief officer of other law enforcement agencies duly operating
4 within the state, to cause the collection of biological samples for DNA
5 identification analysis from all adults and juveniles lawfully arrested
6 for the commission of any criminal offense constituting a felony or
7 gross misdemeanor.

8 (b) Biological samples collected under this subsection shall be:

9 (i) Collected using the same technique biological samples are
10 collected under RCW 43.43.754;

11 (ii) Forwarded to the state patrol for inclusion in the DNA
12 identification system established under RCW 43.43.752 through
13 43.43.759; and

14 (iii) Used solely for the purpose of inclusion in the DNA
15 identification system established under RCW 43.43.752 through
16 43.43.759.

17 (c) This subsection applies to all adults and juveniles who are
18 arrested on or after the effective date of this section.

19 (3) It shall be the right, but not the duty, of the sheriff or
20 director of public safety of every county, and the chief of police of
21 every city or town, and every chief officer of other law enforcement
22 agencies operating within this state to photograph and record the
23 fingerprints of all adults lawfully arrested.

24 ~~((+3))~~ (4) Such sheriffs, directors of public safety, chiefs of
25 police, and other chief law enforcement officers, may record, in
26 addition to photographs and fingerprints, the palmprints, soleprints,
27 toeprints, or any other identification data of all persons whose
28 photograph and fingerprints are required or allowed to be taken under
29 this section when in the discretion of such law enforcement officers it
30 is necessary for proper identification of the arrested person or the
31 investigation of the crime with which he is charged.

32 **Sec. 2.** RCW 43.43.754 and 2002 c 289 s 2 are each amended to read
33 as follows:

34 (1) Every adult or juvenile individual convicted of a felony,
35 stalking under RCW 9A.46.110, harassment under RCW 9A.46.020,
36 communicating with a minor for immoral purposes under RCW 9.68A.090, or
37 adjudicated guilty of an equivalent juvenile offense must have a

1 biological sample collected for purposes of DNA identification analysis
2 unless a biological sample has already been collected from the adult or
3 juvenile under RCW 43.43.735(2). The biological sample shall be
4 collected in the following manner:

5 (a) For persons convicted of such offenses or adjudicated guilty of
6 an equivalent juvenile offense who do not serve a term of confinement
7 in a department of corrections facility, and do serve a term of
8 confinement in a city or county jail facility, the city or county shall
9 be responsible for obtaining the biological samples either as part of
10 the intake process into the city or county jail or detention facility
11 for those persons convicted on or after July 1, 2002, or within a
12 reasonable time after July 1, 2002, for those persons incarcerated
13 before July 1, 2002, who have not yet had a biological sample
14 collected, beginning with those persons who will be released the
15 soonest.

16 (b) For persons convicted of such offenses or adjudicated guilty of
17 an equivalent juvenile offense who do not serve a term of confinement
18 in a department of corrections facility, and do not serve a term of
19 confinement in a city or county jail facility, the local police
20 department or sheriff's office is responsible for obtaining the
21 biological samples after sentencing on or after July 1, 2002.

22 (c) For persons convicted of such offenses or adjudicated guilty of
23 an equivalent juvenile offense, who are serving or who are to serve a
24 term of confinement in a department of corrections facility or a
25 department of social and health services facility, the facility holding
26 the person shall be responsible for obtaining the biological samples
27 either as part of the intake process into such facility for those
28 persons convicted on or after July 1, 2002, or within a reasonable time
29 after July 1, 2002, for those persons incarcerated before July 1, 2002,
30 who have not yet had a biological sample collected, beginning with
31 those persons who will be released the soonest.

32 (2) Any biological sample taken pursuant to RCW 43.43.735 or
33 43.43.752 through 43.43.758 may be retained by the forensic laboratory
34 services bureau, and shall be used solely for the purpose of providing
35 DNA or other tests for identification analysis and prosecution of a
36 criminal offense or for the identification of human remains or missing
37 persons. Nothing in this section prohibits the submission of results

1 derived from the biological samples to the federal bureau of
2 investigation combined DNA index system.

3 (3) The director of the forensic laboratory services bureau of the
4 Washington state patrol shall perform testing on all biological samples
5 collected under subsection (1) of this section, to the extent allowed
6 by funding available for this purpose. The director shall give
7 priority to testing on samples collected from those adults or juveniles
8 convicted of a felony or adjudicated guilty of an equivalent juvenile
9 offense that is defined as a sex offense or a violent offense in RCW
10 9.94A.030.

11 (4) This section applies to all adults who are convicted of a sex
12 or violent offense after July 1, 1990; and to all adults who were
13 convicted of a sex or violent offense on or prior to July 1, 1990, and
14 who are still incarcerated on or after July 25, 1999. This section
15 applies to all juveniles who are adjudicated guilty of a sex or violent
16 offense after July 1, 1994; and to all juveniles who were adjudicated
17 guilty of a sex or violent offense on or prior to July 1, 1994, and who
18 are still incarcerated on or after July 25, 1999. This section applies
19 to all adults and juveniles who are convicted of a felony other than a
20 sex or violent offense, stalking under RCW 9A.46.110, harassment under
21 RCW 9A.46.020, or communicating with a minor for immoral purposes under
22 RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,
23 on or after July 1, 2002; and to all adults and juveniles who were
24 convicted or adjudicated guilty of such an offense before July 1, 2002,
25 and are still incarcerated on or after July 1, 2002.

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

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

1 NEW SECTION. **Sec. 3.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

--- END ---