
SENATE BILL 6437

State of Washington

62nd Legislature

2012 Regular Session

By Senators Stevens, Schoesler, and Honeyford

Read first time 01/23/12. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to collecting biological samples for DNA analysis
2 from illegal aliens; and amending RCW 43.43.754.

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

4 **Sec. 1.** RCW 43.43.754 and 2008 c 97 s 2 are each amended to read
5 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):

10 Assault in the fourth degree with sexual motivation (RCW 9A.36.041,
11 9.94A.835)

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

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

14 Failure to register (RCW 9A.44.130)

15 Harassment (RCW 9A.46.020)

16 Patronizing a prostitute (RCW 9A.88.110)

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

18 Stalking (RCW 9A.46.110)

1 Violation of a sexual assault protection order granted under
2 chapter 7.90 RCW; (~~and~~)

3 (b) Every adult or juvenile individual who is required to register
4 under RCW 9A.44.130; and

5 (c) Any alien unlawfully present under federal immigration law.

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

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

10 (a) For persons convicted of any offense listed in subsection
11 (1)(a) of this section or adjudicated guilty of an equivalent juvenile
12 offense who do not serve a term of confinement in a department of
13 corrections facility, and do serve a term of confinement in a city or
14 county jail facility, the city or county shall be responsible for
15 obtaining the biological 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) of
19 this section or adjudicated guilty of an equivalent juvenile offense
20 who do not serve a term of confinement in a department of corrections
21 facility, and do not serve a term of confinement in a city or county
22 jail facility; and

23 (ii) Persons who are required to register under RCW (~~9A.44.030~~)
24 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 juvenile
27 offense, who are serving or who are to serve a term of confinement in
28 a department of corrections facility or a department of social and
29 health services facility, the facility holding the person shall be
30 responsible for obtaining the biological samples. For those persons
31 incarcerated before June 12, 2008, who have not yet had a biological
32 sample collected, priority shall be given to those persons who will be
33 released the soonest.

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

1 in this section prohibits the submission of results derived from the
2 biological samples to the federal bureau of investigation combined DNA
3 index system.

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

13 (6) This section applies to:

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

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

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

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

23 (c) All adults and juveniles who are required to register under RCW
24 9A.44.130 on or after June 12, 2008, whether convicted before, on, or
25 after June 12, 2008.

26 (7) 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 (8) The detention, arrest, or conviction of a person based upon a
31 database match or database information is not invalidated if it is
32 determined that the sample was obtained or placed in the database 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.

--- END ---