

---

SUBSTITUTE HOUSE BILL 2341

---

State of Washington                      64th Legislature                      2016 Regular Session

By House Public Safety (originally sponsored by Representatives Orwall, Kilduff, Fitzgibbon, Kirby, Goodman, Jinkins, and Tarleton)

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 2015 c 261 s 10 are each amended to  
5 read as follows:

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

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

11            (A) Assault in the fourth degree with sexual motivation (RCW  
12 9A.36.041, 9.94A.835);

13            (B) Communication with a minor for immoral purposes (RCW  
14 9.68A.090);

15            (C) Custodial sexual misconduct in the second degree (RCW  
16 9A.44.170);

17            (D) Failure to register (~~((RCW 9A.44.130 for persons convicted on  
18 or before June 10, 2010, and RCW 9A.44.132 for persons convicted  
19 after June 10, 2010))~~) (chapter 9A.44 RCW);

20            (E) Harassment (RCW 9A.46.020);

21            (F) Patronizing a prostitute (RCW 9A.88.110);

1       (G) Sexual misconduct with a minor in the second degree (RCW  
2 9A.44.096);

3       (H) Stalking (RCW 9A.46.110);

4       (I) Violation of a sexual assault protection order granted under  
5 chapter 7.90 RCW; and

6       (~~(b)~~) (ii) Every adult or juvenile individual who is required  
7 to register under RCW 9A.44.130.

8       (b) In an effort to solve cold cases and unsolved crimes,  
9 provide closure to victims and their family members, and support  
10 efforts to exonerate the wrongly convicted, law enforcement may  
11 submit a lawfully obtained biological sample that is within their  
12 control to the forensic laboratory services bureau for purposes of  
13 DNA identification analysis for deceased offenders who were  
14 previously convicted before, on, or after July 1, 1990, of an offense  
15 under (a) of this subsection.

16       (c) At an arraignment or bail hearing, for any offense, the court  
17 shall order any person charged with any offense who has previously  
18 been convicted of a violent offense pursuant to RCW 9.94A.030,  
19 regardless of the date of conviction, to submit a biological sample  
20 pursuant to subsection (3)(d) of this section.

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

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

26       (a) For persons convicted of any offense listed in subsection  
27 (1)(a) of this section or adjudicated guilty of an equivalent  
28 juvenile offense who do not serve a term of confinement in a  
29 department of corrections facility or a department of social and  
30 health services facility, and (~~do—serve~~) are serving a term of  
31 confinement in a city or county jail facility, the city or county  
32 shall be responsible for obtaining the biological samples immediately  
33 after sentencing in the city or county jail facility. If the person  
34 is not taken into custody immediately after sentencing or has served  
35 his or her entire term of confinement, the person must be ordered by  
36 the court to immediately report to the city or county jail facility  
37 to provide a biological sample. The court shall establish a status  
38 hearing to take place within fourteen days to ensure the convicted  
39 offender has complied with the court order. If the court receives  
40 documentation that the offender has complied with the court order

1 requiring the submission of a biological sample, the status hearing  
2 may be canceled.

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

5 (i) Persons convicted of any offense listed in subsection (1)(a)  
6 of this section or adjudicated guilty of an equivalent juvenile  
7 offense who do not serve a term of confinement in a department of  
8 corrections facility or a department of social and health services  
9 facility, and do not serve a term of confinement in a city or county  
10 jail facility. Immediately after sentencing, such persons must be  
11 ordered by the court to immediately report to the local police  
12 department or sheriff's office pursuant to this subsection (3)(b) to  
13 provide a biological sample. The court shall establish a status  
14 hearing to take place within fourteen days to ensure the convicted  
15 offender has complied with the court order. If the court receives  
16 documentation that the offender has complied with the court order  
17 requiring the submission of a biological sample, the status hearing  
18 may be canceled; and

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

20 (c) For persons convicted of any offense listed in subsection  
21 (1)(a) of this section or adjudicated guilty of an equivalent  
22 juvenile offense, who are serving or who are to serve a term of  
23 confinement in a department of corrections facility or a department  
24 of social and health services facility, the facility holding the  
25 person shall be responsible for obtaining the biological samples as  
26 part of the intake process. (~~For those persons incarcerated before~~  
27 ~~June 12, 2008, who have not yet had a biological sample collected,~~  
28 ~~priority shall be given to those persons who will be released the~~  
29 ~~soonest)) If the person is not taken into custody immediately after  
30 sentencing, the person must be ordered by the court to immediately  
31 report to the local police or sheriff's office pursuant to (b) of  
32 this subsection to provide a biological sample. The court shall  
33 establish a status hearing to take place within fourteen days to  
34 ensure the convicted offender has complied with the court order. If  
35 the court receives documentation that the offender has complied with  
36 the court order requiring the submission of a biological sample, the  
37 status hearing may be canceled.~~

38 (d) Following an arraignment or bail hearing under subsection  
39 (1)(c) of this section, if the person:

1 (i) Is not taken into custody, the person must be ordered by the  
2 court to immediately report to the city or county jail facility to  
3 provide a biological sample. The court shall establish a status  
4 hearing to take place within fourteen days to ensure the defendant  
5 has complied with the court order. If the court receives  
6 documentation that the defendant has complied with the court order  
7 requiring the submission of a biological sample, the status hearing  
8 may be canceled; and

9 (ii) Is taken into custody, the city or county shall be  
10 responsible for obtaining the biological samples in the city or  
11 county jail facility as part of the intake process.

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

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

30 ~~(6) ((This section applies to:~~

31 ~~(a) All adults and juveniles to whom this section applied prior~~  
32 ~~to June 12, 2008;~~

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

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

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

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

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

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

16       ~~((9))~~ (8) A person commits the crime of refusal to provide DNA  
17 if the person has a duty to register under RCW 9A.44.130 and the  
18 person willfully refuses to comply with a legal request for a DNA  
19 sample as required under this section. The refusal to provide DNA is  
20 a gross misdemeanor.

--- END ---