
HOUSE BILL 1138

State of Washington**65th Legislature****2017 Regular Session****By Representative Klippert**

1 AN ACT Relating to expanding collection of offender DNA samples;
2 amending RCW 43.43.753, 43.43.754, 46.63.110, and 43.43.690; adding a
3 new section to chapter 43.43 RCW; adding a new section to chapter
4 70.48 RCW; creating a new section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds there is a critical
7 need to provide law enforcement officers and agencies with the latest
8 scientific technology available for accurately and expeditiously
9 identifying and prosecuting criminal offenders. Although every state
10 maintains a DNA database for felony convictions, there is a growing
11 trend toward expanding DNA databases to include DNA from offenders
12 prior to conviction. Studies indicate that collection of DNA at an
13 earlier point in the process contributes to the solution of cold
14 cases, saves lives by identifying recidivist offenders, reduces rates
15 of criminality, and increases the rate of successful prosecutions.
16 The legislature further finds that collecting DNA prior to conviction
17 is cost-effective. Early identification of offenders reduces costs by
18 focusing investigations and eliminating suspects, prevents costs
19 associated with recidivist offenders, and prevents property loss. The
20 legislature therefore finds that collecting DNA from adults who have
21 been charged with an offense, or who have been arrested for an

1 offense when there has been a judicial determination of probable
2 cause, is necessary to solve cold cases, prevent recidivist acts, and
3 lower the cost of criminal investigations. The legislature further
4 finds that DNA samples can be collected, analyzed, and stored in a
5 way that only minimally impacts privacy concerns. The sample,
6 typically collected via oral swab, is analyzed only with regard to
7 forensic loci, a small percentage of the arrestee's genetic code,
8 which allows identification but does not reveal other genetic
9 information, other than gender. Arrestee samples will not be
10 collected unless a probable cause determination has been made. Once
11 analyzed, the profile is stored without any personally identifying
12 information, only a sample number and agency identifiers. The DNA
13 profile and sample is accessible only to qualified laboratory
14 personnel. If a hit is made between a stored sample and the forensic
15 profile developed from a crime scene, the laboratory will notify the
16 law enforcement agency, which must follow certain procedures to
17 confirm the hit. Innocent individuals are further protected through
18 expungement procedures, which allow removal of their samples and
19 profiles if convictions are not made or are overturned.

20 **Sec. 2.** RCW 43.43.753 and 2008 c 97 s 1 are each amended to read
21 as follows:

22 The legislature finds that recent developments in molecular
23 biology and genetics have important applications for forensic
24 science. It has been scientifically established that there is a
25 unique pattern to the chemical structure of the deoxyribonucleic acid
26 (DNA) contained in each cell of the human body. The process for
27 identifying this pattern is called "DNA identification."

28 The legislature further finds that DNA databases are important
29 tools in criminal investigations, in the exclusion of individuals who
30 are the subject of investigations or prosecutions, and in detecting
31 recidivist acts. It is the policy of this state to assist federal,
32 state, and local criminal justice and law enforcement agencies in
33 both the identification and detection of individuals in criminal
34 investigations and the identification and location of missing and
35 unidentified persons. Therefore, it is in the best interest of the
36 state to establish a DNA database (~~and DNA data bank~~) containing
37 DNA samples submitted by persons convicted of felony offenses and
38 other crimes, as well as by adults charged for any criminal offense
39 or arrested for any criminal offense when there has been a judicial

1 determination of probable cause, as specified in RCW 43.43.754. DNA
2 samples necessary for the identification of missing persons and
3 unidentified human remains shall also be included in the DNA
4 database.

5 The legislature further finds that the DNA identification system
6 used by the federal bureau of investigation and the Washington state
7 patrol has no ability to predict genetic disease or predisposal to
8 illness. Nonetheless, the legislature intends that biological samples
9 collected under RCW 43.43.754, and DNA identification data obtained
10 from the samples, be used only for purposes related to criminal
11 investigation, identification of human remains or missing persons, or
12 improving the operation of the system authorized under RCW 43.43.752
13 through (~~43.43.758~~) 43.43.759, and section 4 of this act.

14 The legislature further finds that the DNA collection, testing, and
15 storage process is minimally invasive to privacy based on the
16 following features:

17 (1) Biological samples for DNA testing are routinely collected by
18 an oral swab as part of the legitimate police identification
19 procedure;

20 (2) A DNA profile is stored in a database accessible only to
21 qualified laboratory personnel and does not appear in an individual's
22 criminal history record;

23 (3) Entries in the DNA database contain only DNA markers
24 necessary to human identification, which are a small part of a
25 person's total genetic information; and

26 (4) Personally identifying information does not appear in the DNA
27 database.

28 **Sec. 3.** RCW 43.43.754 and 2015 c 261 s 10 are each amended to
29 read as follows:

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

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

34 Assault in the fourth degree with sexual motivation (RCW
35 9A.36.041, 9.94A.835)

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

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

1 Failure to register (RCW 9A.44.130 for persons convicted on or
2 before June 10, 2010, and RCW 9A.44.132 for persons convicted after
3 June 10, 2010)

4 Harassment (RCW 9A.46.020)

5 Patronizing a prostitute (RCW 9A.88.110)

6 Sexual misconduct with a minor in the second degree (RCW
7 9A.44.096)

8 Stalking (RCW 9A.46.110)

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

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

13 (c) Every adult charged with a criminal offense or lawfully
14 arrested for a criminal offense when there has been a judicial
15 determination of probable cause. If the person will not be detained
16 in a city or county jail facility following the arraignment or
17 probable cause hearing, the court must make the collection of a
18 biological sample a condition of release.

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

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

24 (a) The city or county shall be responsible for obtaining the
25 biological samples at the time of transfer to a city or county jail
26 facility for:

27 (i) Persons convicted of any offense listed in subsection (1)(a)
28 of this section or adjudicated guilty of an equivalent juvenile
29 offense who do not serve a term of confinement in a department of
30 corrections facility, and do serve a term of confinement in a city or
31 county jail facility(~~(, the city or county shall be responsible for~~
32 obtaining the biological samples)); and

33 (ii) Persons charged with any criminal offense or lawfully
34 arrested for any criminal offense when there has been a judicial
35 determination of probable cause as identified in subsection (1)(c) of
36 this section, when the person is detained in a city or county jail
37 facility.

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

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

6 (ii) Persons who are required to register under RCW 9A.44.130;
7 and

8 (iii) Persons charged with any criminal offense or lawfully
9 arrested for any criminal offense when there has been a judicial
10 determination of probable cause as identified in subsection (1)(c) of
11 this section and the person is not detained in a city or county jail
12 facility.

13 (c) For persons convicted of any offense listed in subsection
14 (1)(a) of this section or adjudicated guilty of an equivalent
15 juvenile offense, who are serving or who are to serve a term of
16 confinement in a department of corrections facility or a department
17 of social and health services facility, the facility holding the
18 person shall be responsible for obtaining the biological samples at
19 the time of transfer to the facility. For those persons incarcerated
20 before June 12, 2008, who have not yet had a biological sample
21 collected, priority shall be given to those persons who will be
22 released the soonest.

23 (d) An entity collecting a biological sample from an adult
24 charged with a criminal offense or lawfully arrested for a criminal
25 offense when there has been a judicial determination of probable
26 cause, as required in this section, must provide the person with a
27 notice of the rights to expungement and destruction as required by
28 section 5 of this act.

29 (4) Any biological sample taken pursuant to RCW 43.43.752 through
30 (~~43.43.758~~) 43.43.759 may be retained by the forensic laboratory
31 services bureau, and must be analyzed by the forensic laboratory
32 services bureau unless a complete DNA profile for the person has
33 previously been entered in the DNA database.

34 (5) Any biological sample taken pursuant to RCW 43.43.752 through
35 43.43.759 shall be used solely for the purpose of providing DNA or
36 other tests for identification analysis and prosecution of a criminal
37 offense or for the identification of human remains or missing
38 persons. Nothing in this section prohibits the submission of results
39 derived from the biological samples to the federal bureau of
40 investigation combined DNA index system.

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

11 (~~(6)~~) (7) This section applies to:

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

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

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

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

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

24 (d) All adults charged with a criminal offense or lawfully
25 arrested for a criminal offense when there has been a judicial
26 determination of probable cause on or after the effective date of
27 this section.

28 (~~(7)~~) (8) This section creates no rights in a third person. No
29 cause of action may be brought based upon the noncollection or
30 nonanalysis or the delayed collection or analysis of a biological
31 sample authorized to be taken under RCW 43.43.752 through
32 (~~(43.43.758)~~) 43.43.759.

33 (~~(8)~~) (9) The detention, arrest, or conviction of a person
34 based upon a database match or database information is not
35 invalidated if it is determined that the sample was obtained or
36 placed in the database by mistake, if the sample is subject to
37 expungement pursuant to this chapter, or if the conviction or
38 juvenile adjudication that resulted in the collection of the
39 biological sample was subsequently vacated or otherwise altered in

1 any future proceeding including but not limited to posttrial or
2 postfact-finding motions, appeals, or collateral attacks.

3 ((+9)) (10) A person commits the crime of refusal to provide DNA
4 if the person has a duty to register under RCW 9A.44.130 and the
5 person willfully refuses to comply with a legal request for a DNA
6 sample as required under this section. The refusal to provide DNA is
7 a gross misdemeanor.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.43
9 RCW to read as follows:

10 (1) A person may request expungement of the person's sample and
11 DNA records from the DNA identification system if:

12 (a) The person was required to provide a sample under RCW
13 43.43.754(1)(c) based on an arrest and a judicial determination of
14 probable cause, but is not charged with an offense based upon the
15 arrest within one year of the arrest;

16 (b) The person has been found not guilty, has been acquitted, or
17 has had the charges dismissed for an offense requiring the collection
18 of a biological sample under RCW 43.43.754(1)(c); or

19 (c) The underlying conviction or adjudication requiring the
20 collection of a biological sample under RCW 43.43.754 has been
21 reversed and the case dismissed.

22 (2) To request expungement, the person must submit the following
23 documents to the forensic laboratory services bureau:

24 (a) A written request for expungement;

25 (b) Proof that the person has provided written notice of the
26 request for expungement to the prosecuting attorney of the county in
27 which he or she was arrested, charged, convicted, or adjudicated; and

28 (c)(i) A sworn affidavit that no charges following an arrest
29 requiring the collection of a biological sample under RCW
30 43.43.754(1)(c) have been filed within one year of arrest;

31 (ii) A certified copy of a final court order establishing that a
32 charge for an offense requiring the collection of a biological sample
33 under RCW 43.43.754(1)(c) has been dismissed or has resulted in an
34 acquittal; or

35 (iii) A certified copy of a final court order reversing the
36 conviction that required the collection of a biological sample under
37 RCW 43.43.754.

38 (3)(a) Upon receipt of a written request for expungement, if the
39 forensic laboratory services bureau has not previously analyzed the

1 person's sample, the Washington state patrol must give priority to
2 analyzing the person's sample and searching the DNA identification
3 system for a match.

4 (b) Once the forensic laboratory services bureau has analyzed the
5 person's sample, searched the DNA identification system for a match,
6 and received the documents required by subsection (2) of this
7 section, the forensic laboratory services bureau must expunge the
8 person's sample and DNA records from the DNA identification system.

9 (c) The forensic laboratory services bureau may not expunge a
10 person's sample and DNA records from the DNA identification system if
11 the person has a prior conviction or a pending charge for which the
12 collection of a sample is authorized under RCW 43.43.754.

13 (4) The forensic laboratory services bureau must provide
14 information regarding the rights to expungement and destruction on
15 the Washington state patrol's official web site. The information must
16 include the procedures for requesting expungement.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.48
18 RCW to read as follows:

19 (1) The jail administrator or his or her designee or chief law
20 enforcement executive or his or her designee must provide notice of
21 the requirements of RCW 43.43.740, 43.43.754, and section 4 of this
22 act to jail staff who perform booking procedures and other staff who
23 may be collecting DNA samples pursuant to RCW 43.43.754.

24 (2) Notice of the rights to expungement and destruction must be
25 provided, at the time a biological sample for DNA testing is taken,
26 to all adults who have been charged with a criminal offense or who
27 have been arrested for a criminal offense and a judicial
28 determination of probable cause has been made. The notice must be in
29 substantially the following form:

30 "Washington law requires the collection of a biological sample
31 for DNA testing from all adults charged with a criminal offense or
32 arrested for a criminal offense when a judicial determination of
33 probable cause has been made.

34 THE LABORATORY MUST EXPUNGE YOUR DNA SAMPLE AND RECORDS IF: (1)
35 YOU ARE NOT CHARGED WITHIN ONE YEAR OF AN ARREST PURSUANT TO WHICH A
36 SAMPLE WAS REQUIRED; (2) YOU ARE FOUND NOT GUILTY; OR (3) YOUR
37 CONVICTION IS REVERSED AND THE CASE DISMISSED.

38 For more information regarding your rights to expungement and
39 destruction, see RCW 43.43.754 and section 4 of this act."

1 **Sec. 6.** RCW 46.63.110 and 2012 c 82 s 1 are each amended to read
2 as follows:

3 (1) A person found to have committed a traffic infraction shall
4 be assessed a monetary penalty. No penalty may exceed two hundred and
5 fifty dollars for each offense unless authorized by this chapter or
6 title.

7 (2) The monetary penalty for a violation of (a) RCW 46.55.105(2)
8 is two hundred fifty dollars for each offense; (b) RCW 46.61.210(1)
9 is five hundred dollars for each offense. No penalty assessed under
10 this subsection (2) may be reduced.

11 (3) The supreme court shall prescribe by rule a schedule of
12 monetary penalties for designated traffic infractions. This rule
13 shall also specify the conditions under which local courts may
14 exercise discretion in assessing fines and penalties for traffic
15 infractions. The legislature respectfully requests the supreme court
16 to adjust this schedule every two years for inflation.

17 (4) There shall be a penalty of twenty-five dollars for failure
18 to respond to a notice of traffic infraction except where the
19 infraction relates to parking as defined by local law, ordinance,
20 regulation, or resolution or failure to pay a monetary penalty
21 imposed pursuant to this chapter. A local legislative body may set a
22 monetary penalty not to exceed twenty-five dollars for failure to
23 respond to a notice of traffic infraction relating to parking as
24 defined by local law, ordinance, regulation, or resolution. The local
25 court, whether a municipal, police, or district court, shall impose
26 the monetary penalty set by the local legislative body.

27 (5) Monetary penalties provided for in chapter 46.70 RCW which
28 are civil in nature and penalties which may be assessed for
29 violations of chapter 46.44 RCW relating to size, weight, and load of
30 motor vehicles are not subject to the limitation on the amount of
31 monetary penalties which may be imposed pursuant to this chapter.

32 (6) Whenever a monetary penalty, fee, cost, assessment, or other
33 monetary obligation is imposed by a court under this chapter, it is
34 immediately payable and is enforceable as a civil judgment under
35 Title 6 RCW. If the court determines, in its discretion, that a
36 person is not able to pay a monetary obligation in full, and not more
37 than one year has passed since the later of July 1, 2005, or the date
38 the monetary obligation initially became due and payable, the court
39 shall enter into a payment plan with the person, unless the person
40 has previously been granted a payment plan with respect to the same

1 monetary obligation, or unless the person is in noncompliance of any
2 existing or prior payment plan, in which case the court may, at its
3 discretion, implement a payment plan. If the court has notified the
4 department that the person has failed to pay or comply and the person
5 has subsequently entered into a payment plan and made an initial
6 payment, the court shall notify the department that the infraction
7 has been adjudicated, and the department shall rescind any suspension
8 of the person's driver's license or driver's privilege based on
9 failure to respond to that infraction. "Payment plan," as used in
10 this section, means a plan that requires reasonable payments based on
11 the financial ability of the person to pay. The person may
12 voluntarily pay an amount at any time in addition to the payments
13 required under the payment plan.

14 (a) If a payment required to be made under the payment plan is
15 delinquent or the person fails to complete a community restitution
16 program on or before the time established under the payment plan,
17 unless the court determines good cause therefor and adjusts the
18 payment plan or the community restitution plan accordingly, the court
19 may refer the unpaid monetary penalty, fee, cost, assessment, or
20 other monetary obligation for civil enforcement until all monetary
21 obligations, including those imposed under subsections (3) and (4) of
22 this section, have been paid, and court authorized community
23 restitution has been completed, or until the court has entered into a
24 new time payment or community restitution agreement with the person.
25 For those infractions subject to suspension under RCW 46.20.289, the
26 court shall notify the department of the person's failure to meet the
27 conditions of the plan, and the department shall suspend the person's
28 driver's license or driving privileges.

29 (b) If a person has not entered into a payment plan with the
30 court and has not paid the monetary obligation in full on or before
31 the time established for payment, the court may refer the unpaid
32 monetary penalty, fee, cost, assessment, or other monetary obligation
33 to a collections agency until all monetary obligations have been
34 paid, including those imposed under subsections (3) and (4) of this
35 section, or until the person has entered into a payment plan under
36 this section. For those infractions subject to suspension under RCW
37 46.20.289, the court shall notify the department of the person's
38 delinquency, and the department shall suspend the person's driver's
39 license or driving privileges.

1 (c) If the payment plan is to be administered by the court, the
2 court may assess the person a reasonable administrative fee to be
3 wholly retained by the city or county with jurisdiction. The
4 administrative fee shall not exceed ten dollars per infraction or
5 twenty-five dollars per payment plan, whichever is less.

6 (d) Nothing in this section precludes a court from contracting
7 with outside entities to administer its payment plan system. When
8 outside entities are used for the administration of a payment plan,
9 the court may assess the person a reasonable fee for such
10 administrative services, which fee may be calculated on a periodic,
11 percentage, or other basis.

12 (e) If a court authorized community restitution program for
13 offenders is available in the jurisdiction, the court may allow
14 conversion of all or part of the monetary obligations due under this
15 section to court authorized community restitution in lieu of time
16 payments if the person is unable to make reasonable time payments.

17 (7) In addition to any other penalties imposed under this section
18 and not subject to the limitation of subsection (1) of this section,
19 a person found to have committed a traffic infraction shall be
20 assessed:

21 (a) A fee of five dollars per infraction. Under no circumstances
22 shall this fee be reduced or waived. Revenue from this fee shall be
23 forwarded to the state treasurer for deposit in the emergency medical
24 services and trauma care system trust account under RCW 70.168.040;

25 (b) A fee of ten dollars per infraction. Under no circumstances
26 shall this fee be reduced or waived. Revenue from this fee shall be
27 forwarded to the state treasurer for deposit in the Washington auto
28 theft prevention authority account; (~~and~~)

29 (c) A fee of two dollars per infraction. Revenue from this fee
30 shall be forwarded to the state treasurer for deposit in the
31 traumatic brain injury account established in RCW 74.31.060; and

32 (d) A fee of two dollars per infraction. One dollar of the
33 revenue from each fee assessed under this subsection (7)(d) must be
34 forwarded to the state treasurer for deposit in the state DNA
35 database account established in RCW 43.43.7532 and one dollar must be
36 retained by the collecting jurisdiction to offset administrative
37 costs.

38 (8)(a) In addition to any other penalties imposed under this
39 section and not subject to the limitation of subsection (1) of this
40 section, a person found to have committed a traffic infraction other

1 than of RCW 46.61.527 or 46.61.212 shall be assessed an additional
2 penalty of twenty dollars. The court may not reduce, waive, or
3 suspend the additional penalty unless the court finds the offender to
4 be indigent. If a court authorized community restitution program for
5 offenders is available in the jurisdiction, the court shall allow
6 offenders to offset all or a part of the penalty due under this
7 subsection (8) by participation in the court authorized community
8 restitution program.

9 (b) Eight dollars and fifty cents of the additional penalty under
10 (a) of this subsection shall be remitted to the state treasurer. The
11 remaining revenue from the additional penalty must be remitted under
12 chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted
13 under this subsection to the state treasurer must be deposited in the
14 state general fund. The balance of the revenue received by the county
15 or city treasurer under this subsection must be deposited into the
16 county or city current expense fund. Moneys retained by the city or
17 county under this subsection shall constitute reimbursement for any
18 liabilities under RCW 43.135.060.

19 (9) If a legal proceeding, such as garnishment, has commenced to
20 collect any delinquent amount owed by the person for any penalty
21 imposed by the court under this section, the court may, at its
22 discretion, enter into a payment plan.

23 (10) The monetary penalty for violating RCW 46.37.395 is: (a) Two
24 hundred fifty dollars for the first violation; (b) five hundred
25 dollars for the second violation; and (c) seven hundred fifty dollars
26 for each violation thereafter.

27 **Sec. 7.** RCW 43.43.690 and 2015 c 265 s 30 are each amended to
28 read as follows:

29 (1) When an adult offender has been adjudged guilty of violating
30 any criminal statute of this state and a crime laboratory analysis
31 was performed by a state crime laboratory, in addition to any other
32 disposition, penalty, or fine imposed, the court shall levy a crime
33 laboratory analysis fee of one hundred dollars for each offense for
34 which the person was convicted. (~~Upon a verified petition by the~~
35 ~~person assessed the fee, the court may suspend payment of all or part~~
36 ~~of the fee if it finds that the person does not have the ability to~~
37 ~~pay~~) The court may not suspend, reduce, or defer payment of the fee.

38 (2) All crime laboratory analysis fees assessed under this
39 section shall be collected by the clerk of the court and forwarded to

1 the state general fund, to be used only for crime laboratories. The
2 clerk may retain five dollars to defray the costs of collecting the
3 fees.

4 NEW SECTION. **Sec. 8.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

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