

# HOUSE BILL REPORT

## SHB 1326

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### As Amended by the Senate

**Title:** An act relating to the collection of DNA biological samples for entry into the combined DNA index system.

**Brief Description:** Collecting DNA samples.

**Sponsors:** House Committee on Public Safety (originally sponsored by Representatives Klippert and Goodman).

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 2/4/19, 2/14/19 [DPS].

##### **Floor Activity:**

Passed House: 3/6/19, 97-0.

Senate Amended.

Passed Senate: 4/15/19, 45-1.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 4/28/19, 48-1.

#### **Brief Summary of Substitute Bill**

- Requires persons convicted of Indecent Exposure to provide biological samples for DNA testing and entry into the state Combined DNA Index System (CODIS).
- Authorizes law enforcement to submit biological samples previously obtained from certain deceased offenders for DNA testing and entry into CODIS.
- Modifies procedures for collecting biological samples from persons convicted of qualifying offenses who are not immediately taken into custody.
- Expands the crime of Refusal to Provide DNA to apply to any person lawfully required to provide a sample, rather than only to persons required to register as sex or kidnapping offenders.

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#### **HOUSE COMMITTEE ON PUBLIC SAFETY**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Appleton, Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

**Staff:** Kelly Leonard (786-7147).

**Background:**

The Washington State Patrol (WSP) maintains the state Combined DNA Index System (CODIS), which is composed of different indexes of samples, including:

- *Offender Index:* deoxyribonucleic acid (DNA) profiles of persons convicted of certain crimes in Washington;
- *Forensic Index:* DNA profiles generated from crime scene evidence;
- *Missing Persons Index:* DNA records of missing persons and deduced missing persons;
- *Relatives of Missing Persons Index:* DNA records from the biological relatives of persons reported missing; and
- *Unidentified Humans Index:* DNA records from recovered living persons and recovered deceased persons whose identities are unknown.

Samples eligible for upload to the state CODIS database are automatically searched against the appropriate indexes and may result in an investigative lead for the submitting agency. Investigative leads may be due to a profile in the Forensic Index matching another Forensic Index profile (a forensic hit) or matching a profile in the Offender Index (an offender hit).

All 50 states, the District of Columbia, the United States Army Criminal Investigation Laboratory, and Puerto Rico submit eligible DNA profiles to the Federal Bureau of Investigation-sponsored National DNA Index System (NDIS). Searches against the appropriate indexes are regularly conducted at NDIS, resulting in hits between Washington DNA profiles and profiles submitted by other NDIS-participating laboratories across the nation.

*Submission of Biological Samples for the Offender Index.* State law requires the collection of biological samples for DNA analysis to be collected from any person convicted of a felony, any person who is required to register as a sex or kidnapping offender, and any person convicted of the following misdemeanors and gross misdemeanors:

- Assault in the fourth degree with Sexual Motivation;
- Assault in the fourth degree when Domestic Violence was pleaded and proven;
- Communication with a Minor for Immoral Purposes;
- Custodial Sexual Misconduct in the second degree;
- Failure to Register as a sex or kidnapping offender;
- Harassment;
- Patronizing a Prostitute;
- Sexual Misconduct with a Minor in the second degree;
- Stalking; and
- violation of a Sexual Assault protection order.

*Collection and Testing of Biological Samples.* County and city jails are responsible for collecting biological samples for DNA analysis from offenders incarcerated in jails. The Department of Corrections (DOC) and the Department of Social and Health Services (DSHS) are responsible for collecting biological samples for DNA analysis from adult and juvenile offenders incarcerated in state facilities. On July 1, 2019, state facilities where juveniles are incarcerated will shift from DSHS to the Department of Children, Youth, and Families (DCYF).

Local police departments and sheriffs' offices are responsible for collecting biological samples for DNA analysis from registered sex and kidnapping offenders and convicted offenders who do not serve any term of incarceration.

The WSP Crime Laboratory tests offender biological samples and enters relevant information into CODIS. The WSP Crime Laboratory must prioritize the testing of samples from persons convicted of sex offenses and violent offenses.

*Refusal to Provide a Sample.* A person who has a duty to register as a sex or kidnapping offender who willfully refuses to comply with a legal request for a DNA sample is guilty of the crime of Refusal to Provide DNA. Refusal to Provide DNA is a gross misdemeanor.

*Indecent Exposure.* A person is guilty of Indecent Exposure if he or she intentionally makes any open and obscene exposure of his or her person, or another person, knowing that such conduct is likely to cause reasonable affront or alarm. Indecent Exposure is generally a misdemeanor; however, a first offense of Indecent Exposure is a gross misdemeanor if the offender exposes himself or herself to a person under the age of 14 years, and Indecent Exposure is a class C felony upon a second or subsequent offense, or if the offender has a prior sex offense conviction.

#### **Summary of Substitute Bill:**

*Submission of Biological Samples for the Offender Index.* A person convicted of Indecent Exposure is required to provide a biological sample for DNA testing and entry into CODIS. In addition, law enforcement agencies are authorized to submit any lawfully obtained biological samples within their control from deceased offenders with previous felony convictions or convictions for other crimes for which biological samples are collected. A qualifying deceased offender's sample may be submitted regardless of the date of the prior conviction.

*Collection and Testing of Biological Samples.* For convicted offenders who are not immediately taken into custody, or who will not otherwise serve a term of confinement, the court must order the person to immediately provide a biological sample. The biological sample must be taken prior to the person leaving the presence of the court by the local police department, sheriff's office, or other entity designated by the court. Courts must develop protocols to ensure the proper and efficient collection and transfer of biological samples.

References to "DSHS facilities" are changed to "DCYF facilities."

The DOC and the DCYF must collect samples as part of the offender intake process. If a sample is not taken during the intake process, then it must be taken as soon as is practicable.

The requirements for the WSP to prioritize testing of certain offender samples are removed.

*Refusal to Provide a Sample.* The crime of Refusal to Provide DNA is expanded to apply to any person lawfully required to provide a sample who refuses to do so.

#### **EFFECT OF SENATE AMENDMENT(S):**

The requirement for a biological sample to be collected from certain convicted persons prior to those persons leaving the courtroom is removed. The striking amendment restores current law with respect to the entities responsible for collecting biological samples from persons who are not immediately taken into custody or who will not otherwise serve a term of confinement. Instead, the court is required to order a person who will not serve a term of confinement to report to local law enforcement within a "reasonable period of time established by the court" in order to provide a biological sample. In addition, the court is required to inform those persons that refusal to provide a biological sample is a gross misdemeanor.

- Provisions are added relating to municipal jurisdictions. A municipal jurisdiction may submit any biological sample to the Washington State Patrol (WSP) for purposes of DNA identification analysis if all of the following conditions are met: (1) the sample was collected from a defendant upon conviction for a municipal offense where the underlying ordinance does not adopt the relevant state statute by reference but the offense is otherwise equivalent to a state offense for which collection of a sample is required; (2) the equivalent offense was an offense for which collection of a biological sample was required at the time of the conviction; and (3) the sample was collected on or after June 12, 2008, and before January 1, 2020. The municipal jurisdiction must include a signed affidavit from the municipal prosecuting authority of the jurisdiction in which the conviction occurred specifying the state crime to which the municipal offense is equivalent when submitting a biological sample to the WSP.

- No cause of action may be brought against the state based on an analysis of a sample taken pursuant to a municipal ordinance conviction that is later vacated or otherwise altered in a future proceeding.

- Corrections are made to the applicability provision in the underlying statute.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) People are sexually assaulted every day in Washington, and law enforcement needs effective tools to respond to and prevent those assaults. By collecting DNA from convicted offenders, law enforcement can catch more perpetrators.

There is an increase of forensic samples being entered into CODIS because of the testing of sexual assault kits. Improving the effectiveness of the procedures to collect convicted offender DNA is essential to investigating those cases.

(Opposed) None.

**Persons Testifying:** Representative Klippert, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** None.