

SENATE BILL REPORT

SHB 1326

As of April 9, 2019

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: Passed House: 3/06/19, 97-0.

Committee Activity: Law & Justice: 3/21/19, 3/28/19 [DPA-WM].

Ways & Means: 4/09/19.

Brief Summary of Amended Bill

- Requires collection of a biological sample from persons convicted of indecent exposure.
- Authorizes law enforcement to submit biological samples previously obtained from certain deceased offenders for DNA testing and entry into the Combined DNA Index System.
- Authorizes a municipal jurisdiction to submit any biological sample to the the Washington State Patrol for DNA analysis under certain conditions.
- Requires a court to order a person to immediately provide a biological sample where the individual is convicted of certain offenses, but will not be taken into custody or serve a term of confinement.
- Expands the crime of refusal to provide DNA to include any person lawfully required to provide a biological sample.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer and Salomon.

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.

Staff: Tim Ford (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Claire Goodwin (786-7736)

Background: Mandatory Collection of Biological Samples. A biological sample must be collected for purposes of DNA identification analysis from every adult or juvenile convicted of a felony, or any of the following crimes—or equivalent juvenile offenses:

- assault in the fourth degree with sexual motivation;
- communication with a minor for immoral purposes;
- custodial sexual misconduct in the second;
- failure to register;
- harassment;
- patronizing a prostitute;
- sexual misconduct with a minor in the second degree;
- stalking; and
- violation of a sexual assault protection order.

A biological sample must also be collected from every adult or juvenile required to register for a sex offense or kidnapping offense.

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 offenders convicted of the crimes listed above or who are required to register as a sex offender or a kidnapping offender and who do not serve any term of confinement in a jail or prison.

Testing of Biological Samples. The Washington State Patrol (WSP) Crime Laboratory provides forensic services for criminal justice agencies including DNA testing and identification analysis. Priority is given to testing samples of offenders convicted of a sex offense or a violent offense. Every biological sample is retained in the lab after DNA typing. Upon confirmation of the match between an offender sample and a casework sample, identifying information of the convicted offender is released to the submitting agency. This may be used as evidence in court. The process for receiving and testing for DNA identification is strictly regulated by procedures established by the FBI.

Agency Collection. A biological sample is collected from a qualifying offender by law enforcement and mailed to the WSP Crime Laboratory.

WSP Administrative Processing. The offender sample is assigned a unique lab number and entered in an administrative database.

DNA Typing. The sample is processed, analyzed, and peer reviewed to obtain a DNA profile.

Combined DNA Index System Entry. The profile is entered into the state Combined DNA Index System (CODIS) database and searched against all casework profiles. A hit occurs when an offender profile matches a forensic profile. Hits occur at the state or national level.

No names or personal identifiers of offenders are stored. When an offender sample is entered into CODIS, only the following information is included:

- the DNA profile;
- the CODIS laboratory agency identifier;
- a numerical identification number assigned to the sample upon receipt in the CODIS laboratory; and
- the CODIS laboratory personnel associated with the DNA analysis.

State law prohibits the use of convicted offender DNA samples for anything other than specific authorized uses. DNA samples may only be used for purposes related to criminal investigation, identification of human remains or missing persons, or improving the operation of the system authorized law.

Crime of Refusal to Provide DNA. A person commits the crime of refusal to provide DNA if the person has a duty to register as a sex or kidnapping offender and willfully refuses to comply with a legal request for a DNA sample. The offense is a gross misdemeanor.

Indecent Exposure. A person is guilty of indecent exposure if the person intentionally makes any open and obscene exposure of their person, or another person, knowing that such conduct is likely to cause reasonable affront or alarm. Breastfeeding is not indecent exposure. Indecent exposure is generally a misdemeanor; however, a first offense of indecent exposure is a gross misdemeanor if the offender exposes themselves to a person under the age of fourteen 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 Amended Bill: A biological sample must be collected for purposes of DNA identification analysis from individuals convicted of indecent exposure.

For purposes of DNA identification analysis, law enforcement may submit a biological sample of a deceased offender to the WSP forensic laboratory.

A municipal jurisdiction may submit any biological sample to the WSP for DNA analysis (1) upon conviction of a municipal offense and the municipal ordinance does not adopt the relevant state statute by reference but is otherwise equivalent, (2) collection of the biological sample was required, and (3) the sample was collected on or after June 12, 2008, and before January 1, 2020. The municipal jurisdiction must sign an affidavit specifying the state crime for which the municipal offense is equivalent. No cause of action may be brought against the state based on a municipal conviction that is later vacated or altered.

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 report within one

business day to a DOC, DCYF, or city or county jail facility to provide a 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.

DOC and 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 WSP to prioritize testing of certain offender samples are removed.

The crime of refusal to provide DNA is expanded to include a broader group of potential offenders. Currently only offenders required to register can be guilty of the crime if they willfully refuse to provide a biological sample. The bill expands the group to include any person lawfully required to provide a biological sample and who willfully refuses.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Authorizes a municipal jurisdiction to submit any biological sample to the WSP for DNA analysis under certain conditions.
- Requires the municipal jurisdiction to sign an affidavit specifying the state crime for which the municipal offense is equivalent.
- Bars causes of action against the state based on a municipal conviction that is later vacated or altered.
- For persons confined in a city or county jail facility, the jail facility is responsible for obtaining the sample.
- For persons convicted but not confined, the court must order the individual to report within one business day to a DOC, DCYF, or city or county jail facility to provide a sample.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: Last week a 20 year old murder case was solved by DNA evidence. This is extremely valuable evidence that will help catch perpetrators and prevent them from committing other crimes. This bill will help law enforcement solve more violent crimes including sexual assault cases and homicides by ensuring DNA samples are collected properly and entered into the CODIS system. DNA forensic evidence is perhaps the most effective crime fighting tool, dollar for dollar. The expansion of the collection to those convicted of indecent exposure will help

solve crimes and reduce crimes in the future. There have been problems in the past collecting DNA from those adjudicated, but not confined. This bill requires collection of their DNA.

Persons Testifying (Law & Justice): PRO: Representative Brad Klippert, Prime Sponsor; Lindsey Wade, Senior Investigator Analyst, Washington State Attorney General's Office; James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on the Bill as Amended by Law & Justice (Ways & Means): PRO: DNA is the single most effective crime fighting tool. It condemns the guilty and exonerates the innocent. This ensures DNA is collected properly and entered into the database. DNA collection resulted in two, 32-year old cold cases being solved. There are parents and victims waiting for answers. This bill will deter future crimes because criminals will know they will be caught. This bill pushes for public safety by getting DNA tested. The local government provision will advance DNA evidence forward.

OTHER: DOC requests clarifying language related to testing at DOC facilities.

Persons Testifying (Ways & Means): PRO: James McMahan, Washington Association of Sheriffs & Police Chiefs; Lindsey Wade, Attorney General's Office; Pattie Bastian, citizen; Andrea Piper-Wentland, City of Seattle.

OTHER: Alex MacBain, DOC.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.