
**Community Safety, Justice, & Reentry
Committee**

ESSB 5576

Brief Description: Concerning sexual assault procedures.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Dhingra, Kuderer, Lovelett, Nobles, Saldaña, Trudeau, Valdez and Wilson, C.).

Brief Summary of Engrossed Substitute Bill

- Requires jail and prison facilities to collect biological samples before a convicted person required to provide a sample is released from confinement, and establishes procedures to collect biological samples if such samples are not collected prior to a person's release from confinement.
- Requires convicted persons who must provide a biological sample, who will not serve a term of confinement, to be administratively booked at a city or county jail to provide a biological sample.
- Requires sentencing courts to create and implement a biological sample collection protocol.
- Limits, in a prosecution for sex offenses, evidence of a victim's social media account depicting past sexual behavior to prove the victim's consent or attack the credibility of the victim.

Hearing Date: 3/14/23

Staff: Lena Langer (786-7192).

Background:

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

The Washington State Patrol (WSP) Crime Laboratory provides forensic DNA analysis services to local law enforcement agencies, assistance to law enforcement officials and prosecutors in the preparation and utilization of DNA evidence for presentation in court, and expert testimony in court on DNA evidentiary issues. The WSP also maintains the state Combined DNA Index System (CODIS), which assists with identifying suspects in criminal investigations as well as identifying human remains and missing persons.

Collection of Biological Samples.

State law requires the collection of biological samples from certain convicted offenders for the purpose of entering a DNA profile into the CODIS Offender Index. The profile is searched against other indexes and may result in investigative leads.

A biological sample must be collected for purposes of DNA identification analysis from any person who has been convicted of a felony, any person who is required to register as a sex offender or kidnapping offender, and any person convicted of the following list of specified misdemeanors or gross misdemeanors:

- Assault in the fourth degree where domestic violence was pleaded and proven;
- Assault in the fourth degree with sexual motivation;
- Communication with a Minor for Immoral Purposes;
- Custodial Sexual Misconduct in the second degree;
- Failure to Register;
- Harassment;
- Patronizing a Prostitute;
- Sexual Misconduct with a Minor in the second degree;
- Stalking;
- Indecent Exposure; and
- Violation of a Sexual Assault Protection Order.

Various entities are responsible for collecting the samples. County and city jails are responsible for collecting biological samples for DNA analysis from persons incarcerated in their facilities. The Department of Corrections (DOC) and the Department of Children, Youth, and Families (DCYF) are responsible for collecting biological samples for DNA analysis from persons incarcerated in a state facility. Local police departments and sheriff's offices are responsible for collecting biological samples for DNA analysis from registered sex offenders and kidnapping offenders and convicted persons who do not serve any term of confinement.

A person who willfully refuses to comply with a legal request for a DNA sample is guilty of a gross misdemeanor.

Evidence of a Victim's Past Sexual History.

In a prosecution for a sex offense, evidence of a victim's past sexual behavior is generally inadmissible to attack the credibility of the victim and to prove the victim's consent. When the perpetrator and victim engaged in sexual intercourse with each other in the past, and when the behavior is material to the issue of consent, evidence concerning the past behavior between the

perpetrator and the victim may be admissible on the issue of consent to the offense. In a prosecution for the crime of Rape, Trafficking, or an offense related to Commercial Sexual Abuse of a Minor, such evidence is inadmissible to attack the credibility of the victim but is admissible on the issue of consent if certain procedures are followed, except when prohibited in the underlying criminal offense.

Summary of Bill:

Collection of Biological Samples.

County and city jails, the DOC, and the DCYF are responsible for collecting biological samples for DNA analysis from persons required to provide a biological sample who are incarcerated in their facilities. If the biological sample is not collected prior to the person's release from confinement, the responsible city and county jail facility, DOC facility, or DCYF facility must notify the sentencing court within three business days of the person's release that it has released the person without collecting the person's biological sample. The sentencing court must schedule a compliance hearing within 10 days of receiving a notice that a person owing a biological sample was released from confinement. The local police department or sheriff's office must serve the person owing a biological sample with notice of the compliance hearing and file proof of service with the sentencing court. A representative of the local police department or sheriff's office must attend the compliance hearing and obtain the person's biological sample. Attorneys' fees and court costs associated with scheduling and attending the compliance hearing must be paid for by the facility that failed to collect the person's biological sample at the time of the person's confinement.

A sentencing court must order a convicted person required to provide a biological sample, who will not serve a term of confinement, to be administratively booked at a city or county jail to provide a biological sample, in lieu of ordering the convicted person to report to a local police department or sheriff's office to provide a sample.

The sentencing court must create and implement a biological sample collection protocol. The sentencing court must order the biological samples at the time of sentencing. If the biological sample is not collected at the time of sentencing, then the sample must be collected by county and city jails, the DOC, the DCYF, and local police departments and sheriff's offices. The sentencing court must schedule a compliance hearing within 10 days of the sentence to ensure that the biological sample has been collected.

Evidence of a Victim's Past Sexual History.

In a prosecution for sex offenses, evidence of a victim's social media account, including any text, image, video, or picture, which depict sexual content, history, activity, communications, or nudity, is inadmissible on the issue of credibility and inadmissible to prove the victim's consent except when the perpetrator and victim engaged in sexual intercourse with each other in the past, and when the behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense. In a prosecution for the crime of Rape, Trafficking, or an offense related to Commercial Sexual

Abuse of a Minor, evidence of a victim's social media account depicting past sexual behavior is inadmissible to attack the credibility of the victim but is admissible on the issue of consent if certain procedures are followed, except when prohibited in the underlying criminal offense.

Appropriation: None.

Fiscal Note: Available.

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