

HOUSE BILL REPORT

2SHB 2713

As Amended by the Senate

Title: An act relating to DNA identification of convicted sex offenders and other persons.

Brief Description: Providing for broader collection of biological samples for the DNA identification of convicted sex offenders and other persons.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Seaquist, Hurst, Lantz, Pearson, Conway, Morrell, Miloscia, Priest, Kenney, Schual-Berke, Haler, McDonald, Loomis, Smith, Bailey, Kristiansen, Hudgins, McCune, Simpson, VanDeWege, Ericks, Kelley, Ormsby and Rolfes; by request of Governor Gregoire).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/23/08, 1/28/08 [DPS];
Appropriations: 2/5/08, 2/6/08 [DP2S(w/o sub PSEP)].

Floor Activity:

Passed House: 2/18/08, 80-15.
Senate Amended.
Passed Senate: 3/7/08, 48-0.

Brief Summary of Second Substitute Bill

- Expands the deoxyribonucleic acid (DNA) identification system to include information from persons required to register as sex or kidnapping offenders.
- Expands the DNA identification system to include information from persons convicted of certain gross misdemeanors and misdemeanors.
- Changes the manner in which biological samples are collected and tested.
- Changes the manner in which fees connected with the DNA identification system are levied and disbursed.
- Removes the requirement that the Washington State Patrol consult with the University of Washington School of Medicine when providing certain DNA-related services.

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.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern and Goodman.

Staff: Jim Morishima (786-7191).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety & Emergency Preparedness. Signed by 34 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Kretz, Linville, McDonald, McIntire, Morrell, Pettigrew, Priest, Ross, Schmick, Schual-Berke, Seaquist, Sullivan and Walsh.

Staff: Alex MacBain (786-7288).

Background:

The Washington State Patrol (WSP) operates and maintains a deoxyribonucleic acid (DNA) identification system. The purpose of the system is to help with criminal investigations and to identify human remains or missing persons. County and city jails are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. The Department of Corrections and the Department of Social and Health Services are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. Local police and sheriff's departments are responsible for collecting biological samples for DNA analysis from offenders who do not serve any term of incarceration.

I. Offenders from Whom a Biological Sample Must be Collected

Biological samples must be collected from persons convicted of any felony and the following gross misdemeanors: Stalking, Harassment, and Communicating with a Minor for Immoral Purposes.

II. Testing Biological Samples

The Director of the Forensic Laboratory Services Bureau of the WSP (Director) is required to test the biological samples for inclusion in the DNA database. The Director must give priority to testing samples from persons convicted of sex and violent offenses.

III. Funding

A sentencing court must charge every offender convicted of any felony committed on or after July 1, 2002, a fee of \$100 for collection of a DNA sample unless it would result in an undue hardship on the offender. The fee must be deposited in the DNA Database Account, expenditures from which may only be used for the creation, operation, and maintenance of the DNA database.

IV. Other DNA-Related Services Provided by the WSP

The WSP, in consultation with the University of Washington School of Medicine, may provide DNA analysis services to law enforcement agencies, provide assistance to law enforcement officials and prosecutors in the preparation and utilization of DNA evidence for presentation in court, and provide expert testimony in court on DNA evidentiary issues.

Summary of Second Substitute Bill:

I. Offenders from Whom a Biological Sample Must be Collected

Sex and kidnapping offenders required to register before, on, or after the effective date of the legislation must have a biological sample collected for inclusion in the DNA identification system. In addition, the following misdemeanors and gross misdemeanors are added to the list of crimes for which a biological sample must be collected pursuant to conviction:

- Animal Cruelty in the second degree;
- Assault in the fourth degree;
- Custodial Sexual Misconduct in the second degree;
- Failure to Register;
- Indecent Exposure;
- Patronizing a Prostitute;
- Permitting Commercial Sexual Abuse of a Minor;
- Permitting Prostitution;
- Prostitution;
- Sexual Misconduct with a Minor in the second degree;
- Unlawful Harboring of a Minor; and
- Violation of certain protection orders.

If a DNA sample already exists from the offender in question, another biological sample does not have to be collected.

II. Testing Biological Samples

The Forensic Laboratory Services Bureau of the WSP itself, rather than its Director, is responsible for testing biological samples for inclusion in the DNA database. Duplicate biological samples may be excluded from testing unless the testing is deemed necessary or advisable by the Director.

III. Funding

A court must levy the \$100 fee upon a conviction for any crime included in the database regardless of when it was committed. The fee must be imposed regardless of whether it would

be a hardship to the offender. Eighty percent of the fee must be transmitted to the DNA database account while 20 percent must be transmitted to the agency responsible for collecting the biological sample.

IV. Other DNA-Related Services Provided by the WSP

The requirement that the WSP consult with the University of Washington School of Medicine when providing various DNA-related services is eliminated.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment removes the following crimes from the list of crimes being added to the DNA Database:

Animal Cruelty in the second degree; Assault in the fourth degree without sexual motivation (Assault in the fourth degree with sexual motivation remains on the list); Indecent Exposure; Permitting Commercial Sexual Abuse of a Minor; Permitting Prostitution; Prostitution; Unlawful Harboring of a Minor; and violations of protection orders other than sexual assault protection orders (violations of sexual assault protection orders remain on the list).

The Senate amendment also makes a variety of non-substantive changes, including removing obsolete date references and clarifying the types of people to whom the DNA collection requirements apply.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony: (Public Safety & Emergency Preparedness)

(In support) This bill expands the DNA database, which will help law enforcement find perpetrators and will also help exonerate the innocent. Expansion of the DNA database will help prevent future crimes by helping to catch dangerous offenders more rapidly. The new crimes being added to the list all have a connection to more serious offenses. This bill applies to people convicted of these crimes, not people who are merely arrested. This bill will also ensure that all persons required to register as sex or kidnapping offenders will have samples in the database.

(Opposed) Including persons convicted of misdemeanors in the DNA database may have constitutional implications. The inclusion of persons convicted of Assault in the fourth degree, which encompasses a wide range of behavior, casts too broad a net. This bill applies to people who may never commit another crime. There should be provisions that allow misdemeanants to remove their information from the database. Your DNA is the most private thing about you. Once a sample is in the database, it is shared with the federal government and the state loses control over how it is used. The amount of information included in the database should therefore be limited.

Staff Summary of Public Testimony: (Appropriations)

The bill comes out of the Governor's Sex Offender Task Force from last summer.

Persons Testifying: (Public Safety & Emergency Preparedness) (In support) Representative Seaquist, prime sponsor; John Lane, Governor's Policy Office; Dan Kimball, Thurston County Sheriff; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Mark Prothero, Washington Association of Criminal Defense Lawyers; and Jennifer Shaw, American Civil Liberties Union of Washington.

Persons Testifying: (Appropriations) John Lane, Office of the Governor.

Persons Signed In To Testify But Not Testifying: (Public Safety & Emergency Preparedness) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.