

# HOUSE BILL REPORT

## ESSB 6488

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**As Reported by House Committee On:**  
Public Safety & Emergency Preparedness

**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:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala, Hargrove, Brandland, Stevens, Rasmussen, Delvin, Benton and Kilmer; by request of Governor Gregoire).

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 2/25/08, 2/27/08 [DPA].

**Brief Summary of Engrossed Substitute Bill**  
**(As Amended by House Committee)**

- 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.

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**HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS**

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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:** Do pass as amended. Signed by 6 members: Representatives O'Brien, Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Kirby.

**Staff:** Jim Morishima (786-7191).

**Background:**

The Washington State Patrol (WSP) operates and maintains a deoxyribonucleic acid (DNA) database. The purpose of the database 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.

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.

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**Summary of Amended Bill:**

I. Offenders from Whom a Biological Sample Must be Collected

All registered sex and kidnapping offenders must have a biological sample collected for inclusion in the DNA database. In addition, persons convicted of the following misdemeanors and gross misdemeanors must have a biological sample collected for inclusion in the DNA database:

- any misdemeanor, or gross misdemeanor, with sexual motivation;
- Custodial Sexual Misconduct in the second degree;
- Failure to Register;
- Patronizing a Prostitute;
- Permitting Commercial Sexual Abuse of a Minor;
- Permitting Prostitution;
- Prostitution;
- Sexual Misconduct with a Minor in the second degree; and
- violations of sexual assault protection orders.

A special allegation process is created for use by courts of limited jurisdiction to determine whether a misdemeanor or gross misdemeanor is committed with sexual motivation. The process may be initiated by the prosecutor, who has the burden of proving beyond a reasonable doubt to a jury (or a judge if a jury is waived) that the offense was committed with sexual motivation. The prosecutor may not withdraw a special allegation of sexual motivation without the approval of the court.

If the WSP already has a biological sample for an offender, 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.

### **Amended Bill Compared to Engrossed Substitute Bill:**

The amended bill expands the types of persons included in the DNA database by adding persons convicted of the following offenses: any misdemeanor, or gross misdemeanor, with

sexual motivation; Permitting Commercial Sexual Abuse of a Minor; or Permitting Prostitution. The amended bill creates a special allegation process for use by courts of limited jurisdiction to determine whether a misdemeanor or gross misdemeanor was committed with sexual motivation. The amended bill clarifies that all adults and juveniles who were included in the DNA database prior to the effective date of the act will continue to be included after the effective date of the act.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill is one of the recommendations of the Governor's Sex Offender Task Force. It will allow the collection of DNA samples from registered sex and kidnapping offenders who do not already have a DNA sample in the DNA database. In all other respects, the bill does not apply retroactively, but prospectively to persons convicted or in custody on or after the effective date of the act. This bill only applies to persons who have been convicted and does not apply to persons who have only been arrested for these offenses.

(Opposed) None.

**Persons Testifying:** Russ Hauge and Tom McBride, Washington Association of Prosecuting Attorneys; and John Lane, Office of the Governor.

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