

SENATE BILL REPORT

ESSB 6488

As Passed Senate, February 15, 2008

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: Human Services & Corrections: 1/25/08, 2/5/08 [DPS, w/oRec].
Passed Senate: 2/15/08, 49-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6488 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Marr and McAuliffe.

Minority Report: That it be referred without recommendation.

Signed by Senator Carrell.

Staff: Shani Bauer (786-7468)

Background: The Forensic Laboratory Services Bureau with the Washington State Patrol (WSP) operates and maintains the DNA identification system. The system contains DNA information on: (1) all adults convicted of felony sex offenses and felony violent offenses after July 1, 1990; (2) all juveniles convicted of such offenses after July 1, 1994; and (3) all persons incarcerated for such offenses as of July 25, 1999.

In 2002 the law was changed to direct that DNA samples be collected for an adult or juvenile convicted of (1) any felony; (2) stalking; (3) harassment; or (4) communicating with a minor for immoral purposes. The law requires samples to be taken from those convicted after 2002 and those who were incarcerated at that time.

A county or city is responsible for collecting samples from offenders who serve their terms of confinement in a county or city facility. The Department of Corrections and the Department of Social and Health Services (Juvenile Rehabilitation Administration) are responsible for

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collecting samples from offenders who serve their terms of confinement in their respective facilities. The local police department or sheriff's office is responsible for collecting samples from individuals who do not serve any term of confinement.

The WSP must test the samples to the extent of available funding. Samples from persons convicted of felony sex offenses or felony violent offenses must be given priority. The samples may be retained by the WSP and may be submitted to the Federal Bureau of Investigation's combined DNA index system.

DNA samples must be used for providing DNA or other blood grouping tests for identification analysis and prosecuting sex or violent offenses, or the identification of human remains or missing persons. The DNA identification data cannot be used for any purpose other than criminal investigation or improving the operation of the system.

A sentencing court must charge every offender convicted of any felony committed on or after July 1, 2002, a fee of 1 hundred dollars 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.

The Sex Offender Task Force, convened by the Governor in 2007, recommended collecting DNA samples from sex offenders currently required to register who are not already in the DNA database.

Summary of Engrossed Substitute Bill: The following misdemeanors and gross misdemeanors are added to the list of crimes for which a biological sample must be collected upon conviction:

- assault in the fourth degree with sexual motivation;
- custodial sexual misconduct;
- failure to register as a sex offender;
- patronizing a prostitute;
- prostitution;
- sexual misconduct with a minor in the second degree;
- violation of a sexual assault protection order granted under Chapter 7.90 RCW.

A biological sample must be collected from an adult or juvenile who is currently required to register as a sex or kidnapping offender, whether convicted before, on, or after the effective date of this section.

If a DNA sample already exists from the offender in question, another biological sample does not have to be collected. Likewise, once a sample is submitted to the WSP, duplicate biological samples may be excluded from testing unless the testing is deemed necessary or advisable by the Director of the WSP Forensic Laboratory Services Bureau.

A court must levy the one hundred dollar fee upon a conviction for any crime included in the database regardless of when it was committed and regardless of whether the fee 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.

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

Appropriation: None.

Fiscal Note: Available

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: Terapon Adhan, the offender who raped and murdered Zina Linnick, had been convicted of a sex offense only a few months prior to implementation of the law that required DNA collection for anyone convicted of a felony sex offense. If Adhan's DNA had been collected at the time of his conviction, or later as a result of his requirement to register as a sex offender, this tragedy could have been prevented. The list of crimes proposed to be added to the law come from the state crime lab and are indicators for sexual assault in the future. This law will help us get people off the street and arrested earlier. DNA has assisted law enforcement in solving old cases. It has also helped to exonerate individuals when they were in the wrong place at the wrong time. This is not a significant privacy intrusion.

CON: We understand the rationale for collection of DNA for registered sex offenders and do not have an objection. However, it is hard to believe that the majority of those convicted of Assault 4 will commit another offense. A juvenile can get his or her records sealed for a juvenile conviction, but will not be able to get his or her DNA back. It isn't fair to require them to give up their privacy rights.

Persons Testifying: PRO: John Lane, Governor's Office; Russ Hauge, Washington Association of Prosecuting Attorneys, Sentencing Guidelines Commission; Dan Kimball, Thurston County Sheriff; David Boerner, Sentencing Guidelines Commission; Tom McBride, Washington Association of Prosecuting Attorneys.

CON: Jennifer Shaw, American Civil Liberties Union of Washington.