

HOUSE BILL REPORT

HB 1111

As Reported by House Committee On:
Public Safety

Title: An act relating to DNA biological samples.

Brief Description: Concerning DNA biological samples.

Sponsors: Representatives Orwall, Klippert, Goodman, Hayes, Stanford, Jinkins, Fey, Muri, Gregerson and Kilduff.

Brief History:

Committee Activity:

Public Safety: 1/23/17, 2/2/17 [DPS].

Brief Summary of Substitute Bill

- Requires deoxyribonucleic acid (DNA) collection from offenders upon conviction for indecent exposure.
- Requires DNA collection from persons convicted under a municipal ordinance that is equivalent to a state criminal statute for which DNA is collected upon conviction.
- Authorizes law enforcement to submit biological samples obtained from certain deceased offenders to the Washington State Patrol for purposes of a DNA identification analysis.
- Outlines additional processes and procedures for collection of DNA samples.
- Expands the crime of Refusal to Provide a DNA sample to apply to any person lawfully required to provide a sample, rather than only persons required to register as sex or kidnapping offenders.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

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: Omeara Harrington (786-7136).

Background:

The Washington State Patrol (WSP) operates and maintains a deoxyribonucleic acid (DNA) identification system. The purposes of the system are to assist with criminal investigations and identify human remains and missing persons.

Offenders from Whom a Biological Sample Must be Collected.

Biological samples must be collected from any person convicted of a felony, any person who is required to register as a sex or kidnapping offender, and any person convicted of the following misdemeanors and gross misdemeanors:

- 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 as a sex or kidnapping offender;
- Harassment;
- Patronizing a Prostitute;
- Sexual Misconduct with a Minor in the second degree;
- Stalking; and
- Violation of a Sexual Assault protection order.

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

Testing Biological Samples.

The Forensic Laboratory Services Bureau of the WSP is responsible for testing the biological samples that are submitted for inclusion in the DNA database. The Director of the Forensic Laboratory Services Bureau (Director) must give priority to testing samples from persons convicted of sex and violent offenses. Duplicate biological samples may be excluded from testing, unless the Director deems testing necessary or advisable.

Collection of Biological Samples.

County and city jails are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. The Department of Corrections (DOC) and the Department of Social and Health Services (DSHS) are responsible for collecting biological samples for DNA analysis from offenders incarcerated in a state facility. Local police departments and sheriff's offices are responsible for collecting biological samples for DNA analysis from registered sex and kidnapping offenders and convicted offenders who do not serve any term of incarceration.

Refusal to Provide a Sample.

A person who has a duty to register as a sex or kidnapping offender who willfully refuses to comply with a legal request for a DNA sample is guilty of the crime of Refusal to Provide DNA. Refusal to Provide DNA is a gross misdemeanor.

Indecent Exposure.

A person is guilty of Indecent Exposure if he or she intentionally makes any open and obscene exposure of his or her person, or another person, knowing that such conduct is likely to cause reasonable affront or alarm. Indecent Exposure is generally a misdemeanor; however, a first offense of Indecent Exposure is a gross misdemeanor if the offender exposes himself or herself to a person under the age of 14 years, and Indecent Exposure is a class C felony upon a second or subsequent offense, or if the offender has prior sex offense conviction.

Summary of Substitute Bill:

Jennifer and Michella's Law is enacted.

The circumstances under which biological samples are collected and submitted for the purposes of DNA identification analysis are expanded:

1. Indecent Exposure is added to the list of nonfelony crimes for which DNA is collected upon conviction.
2. Law enforcement agencies are authorized to submit to the WSP any lawfully obtained biological samples within their control from deceased offenders with previous felony convictions or convictions for other crimes for which biological samples are collected. A qualifying deceased offender's sample may be submitted regardless of the date of the prior offense.
3. Samples for DNA analysis must be collected from persons convicted under a municipal ordinance when the prosecutor certifies at sentencing that the municipal ordinance is equivalent to a state criminal offense statute for which DNA is collected upon conviction. In addition, the DNA collection and analysis law applies to all adult convictions under an equivalent municipal ordinance after June 12, 2008, for which a sample was collected as a requirement of the municipal ordinance.

Additional processes regarding collection of biological samples are outlined. Correctional facilities that are responsible for collecting biological samples from convicted offenders must make the collection part of the intake process. Local jails that are responsible for obtaining biological samples from convicted offenders serving a term of incarceration in jail must collect the samples immediately following sentencing. The court must order a person who is not taken into custody after sentencing to immediately report to the appropriate facility to provide a biological sample. The court must establish a status hearing to take place within 14 days to ensure the offender has complied with the court order. If the court receives documentation that the offender has complied with the court order by submitting a biological sample, the status hearing may be canceled.

Any entity submitting a DNA sample that was collected pursuant to a conviction under a municipal ordinance must include a signed affidavit from the prosecutor with the sample when it is submitted to the WSP. No cause of action may be brought against the state based on an analysis of a sample taken pursuant to a municipal ordinance that is obtained or placed in the database by mistake, or if the conviction is overturned.

The crime of Refusal to Provide DNA is expanded to apply to any person who willfully refuses to comply with a legal request for a DNA sample, rather than only to persons who have a duty to register as a sex or kidnapping offender.

Other technical corrections and clarifications are made, including eliminating the provision that requires the WSP to give priority to testing certain samples.

Substitute Bill Compared to Original Bill:

The provision is removed that would have required a court, following an arraignment or bail hearing, to order a person charged with any offense to submit a biological sample for DNA analysis when that person has a previous conviction for a violent offense. Provisions are added requiring DNA collection and analysis based on conviction under a municipal ordinance that is equivalent to a qualifying state criminal offense provision, and outlining related procedural requirements. Certain provisions of current law that were stricken in the underling bill are reinstated. These provisions allow DNA collection and analysis from: (1) all adults and juveniles who were convicted prior to June 12, 2008, of a qualifying offense, and are still incarcerated; and (2) all adults and juveniles required to register as a sex or kidnapping offender on or after June 12, 2008, whether convicted before, on, or after June 12, 2008.

All other provisions of the underlying bill are retained.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Deoxyribonucleic acid is a powerful tool for law enforcement that solves crimes, prevents serial offenses, and also contributes to exonerations. There are people who have been found guilty of a violent or sex offense and their DNA is not included in the database. Though expanding the database to include any person arraigned for any criminal offense is a big change, a person is not prejudiced by being in the database unless they offend again. The DNA database is confidential. With respect to cold cases, and collection from deceased offenders, it is very healing for a family to know who committed a crime. Additionally, indecent exposure is a good inclusion because it is a repeat crime, and can escalate.

There are measures in the bill to improve the system of collection once a DNA sample is required, and these measures close holes in the current system that allow some persons required to provide samples to fall through the cracks. The bill also institutes processes to follow-up with individuals that have failed to provide samples.

There is no constitutional issue with collecting upon arraignment or at a bail hearing because the collection is based on a new offense with a prior conviction history. The triggering event occurs after the effective date of the law.

Some additional discussion may be warranted to work through the particulars of the bill to align with how the crime laboratory works. It may be advantageous to reinstate some of the stricken language regarding priority of testing certain samples for persons convicted before 2008. It is possible that all of these cases have been tested, but some are up for clemency and pardon releases, so that should be verified.

(Opposed) There are serious constitutional issues with this bill. Case law has established that a warrant is required to take DNA, and that there must be suspicion that a crime has been committed. In addition to probable cause, there must be an oath that the search will reveal desired evidence connected to a case. Here, the court is not making a finding of probable cause that taking the DNA will lead to evidence of another crime. Under the bill, even if a person is appearing for a misdemeanor, if they have a prior violent offense they have to give DNA. This represents a huge expansion of police power.

Article 1, section 7 of the state Constitution guarantees a more expansive right to privacy than the federal Constitution. Vermont recently invalidated a law allowing the collection of DNA on arrest. This bill would invite a wave of litigation. There is no indication that this kind of DNA collection reduces crime. It will have, at most, a minimal deterrent effect. There will also be racial disparities, and this type of collection will skew the database.

There are a number of practical concerns with this bill. The district and municipal courts will have to screen all defendants to see if they have a requisite criminal record. The useful information that ultimately comes of this will be vanishingly small.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Monica Alexander, Washington State Patrol; James McMahan, Washington Association of Sheriffs and Police Chiefs; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Mark Muenster, Washington Association of Criminal Defense Lawyers; and Elisabeth Smith, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.