

HOUSE BILL REPORT

HB 2331

As Reported by House Committee On:
Public Safety

Title: An act relating to DNA biological samples.

Brief Description: Addressing collection of DNA biological samples.

Sponsors: Representatives Orwall, Griffey, Goodman, Jinkins, Muri, Kilduff, Klippert, Fey, Kagi, Lovick, Appleton and Doglio.

Brief History:

Committee Activity:

Public Safety: 1/9/18, 2/1/18 [DPS].

Brief Summary of Substitute Bill

- Requires deoxyribonucleic acid (DNA) collection and analysis from persons convicted under a municipal ordinance that is equivalent to a state criminal statute for which DNA is collected upon conviction.
- Authorizes municipal jurisdictions to submit previously collected biological samples to the Washington State Patrol for DNA analysis under certain circumstances.

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.

Staff: Omeara Harrington (786-7136).

Background:

A DNA Identification System.

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

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.

and identify human remains and missing persons. The Forensic Laboratory Services Bureau of the WSP is responsible for testing the biological samples that are submitted for inclusion in the DNA database.

Biological samples for DNA identification analysis 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;
- Assault in the fourth degree when Domestic Violence was pleaded and proven;
- 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.

Municipal Ordinance Violations.

Misdemeanor and gross misdemeanor criminal convictions may be based either on a violation of a state criminal statute or a local criminal ordinance. Offenses based on municipal ordinance are tried in municipal courts. Some municipalities incorporate the state law criminal provisions into local code by reference to the applicable state code provisions. Others adopt their own local criminal code provisions.

Summary of Substitute Bill:

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. Additionally, municipalities may submit previously collected biological samples to the WSP for purposes of DNA analysis if all of the following criteria are met:

- the sample was collected upon conviction for a municipal offense that is equivalent to a state offense for which a collection of a sample is required;
- the equivalent state offense is an offense for which collection of a sample was required under state law at the time of the municipal conviction; and
- the sample was collected as a requirement of the relevant municipal offense on or after June 12, 2008.

When a municipality submits a sample to the WSP for testing, it must include an affidavit from the prosecuting authority certifying that the ordinance of conviction is equivalent to a state statute for which collection of a biological sample is required upon conviction.

No cause of action may be brought against the state based on an analysis of a sample taken pursuant to a municipal ordinance conviction that is later vacated or otherwise altered in a future proceeding.

Substitute Bill Compared to Original Bill:

Municipalities may submit previously collected biological samples to the WSP for DNA analysis under the following circumstances:

- the sample was collected upon conviction for a municipal offense that is equivalent to a state offense for which a collection of a sample is required;
- the equivalent state offense is an offense for which collection of a sample was required under state law at the time of the municipal conviction; and
- the sample was collected as a requirement of the relevant municipal offense on or after June 12, 2008.

When submitting a sample to the WSP for testing, a municipality must include an affidavit from the municipal prosecuting authority certifying that the ordinance of conviction is equivalent to a state statute for which collection of a biological sample is required upon conviction.

The provision is removed stating that no cause of action may be brought against the state if it is later determined that a sample originating from a municipal ordinance conviction was obtained or placed in the database by mistake.

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) The use of DNA is an important tool for law enforcement to identify persons who have committed a crime and to exonerate the innocent. A lot of sexually motivated crimes occur in a pattern. Government should have a small footprint, and the circumstances under which DNA is collected should give pause. This is a situation, however, in which a little bit of intrusion goes a long way in terms of protecting society against sexual predators. These individuals are the most likely to reoffend and target and harass the community.

This bill is about treating city misdemeanors as state code misdemeanors are treated. Seattle has unsubmitted DNA due to the fact that it does not prosecute under state code provisions, and instead prosecutes under the municipal code which has provisions that are essentially the same as state law. The WSP has decided it cannot legally test these samples under state law

because the code provisions are different. This will match up every local jurisdiction with what is already provided in state law. No new types of offenses will require DNA testing under the bill. An amendment should be included to allow testing of the backlog of previously unsubmitted samples.

There is another issue with offenses that are entered under municipal codes not showing up in state background checks. That is a separate issue that applies to all offenses, not just DNA required offenses.

(Opposed) This bill evokes concerns related to privacy, over-incarceration, and reentry issues. It is unnecessary and brings a wide range of municipalities into a well-controlled system. If a municipality thinks DNA collection is necessary, it should prosecute under state law. It is unclear whether this could apply retroactively and should be prospective only.

(Other) A signed affidavit would be beneficial. There are issues with state criminal records, and what information can be seen by non-law enforcement agencies. When a record is queried, all that shows is a municipal code violation and the offense is unknown. There is no way to know if the offense is a DNA-qualifying offense.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Representative Griffey; Representative Irwin; Sam Meyer, District and Municipal Court Judges Association; and John Schochet, City of Seattle.

(Opposed) Elisabeth Smith, American Civil Liberties Union of Washington.

(Other) Monica Alexander, Washington State Patrol.

Persons Signed In To Testify But Not Testifying: None.