

SENATE BILL REPORT

2SHB 2713

As Reported By Senate Committee On:
Human Services & Corrections, February 28, 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: 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: Passed House: 2/18/08, 80-15.

Committee Activity: Human Services & Corrections: 2/28/08 [DPA].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

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

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 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.

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.

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 \$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.

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 Bill (Recommended Amendments): 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;
- 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.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): Changes assault in the fourth degree to

assault in the fourth degree with sexual motivation. Removes the crimes of animal cruelty in the second degree, indecent exposure, prostitution, permitting commercial sexual abuse of a minor, permitting prostitution, and unlawful harboring of a minor. Limits the violation of a protection order to violation of a sexual assault protection order granted under chapter 7.90. Clarifies that DNA must be collected from sex offenders who are currently required to register whether convicted before, on, or after the effective date of this act. Removes obsolete date references. Clarifies that adults and juveniles who were subject to the DNA collection and testing requirements prior to the effective date of the act will continue to be subject to those requirements after the effective date of the act.

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 Second Substitute Bill: PRO: The inclusion of registered sex offenders is a result of the recommendations of the Sex Offender Task Force. The additional list of minor crimes are those that have been shown to be related to later sexual crimes. Prostitution is included as a result of cases that have made it difficult to identify victims. This bill is one small preventative step toward preventing further sex crimes. There is no prejudice from being included in the database. The DNA results are unlabeled and unnamed.

CON: We oppose the bill as written and urge adoption of the amendments to SB 6488. Inclusion of indecent exposure will lead to unintended consequences. Some oppose expanding the DNA database as a general proposition to include further misdemeanors and gross misdemeanors, particularly prostitution. A conviction for prostitution is not a precursor to a future sex crime and it is therefore not appropriate for that crime to be included here.

Persons Testifying: PRO: Representative Seaquist, prime sponsor; John Lane, Governor's Office; Tom McBride, WA Association of Prosecuting Attorneys.

CON: Steve Hubbard, Shirley Gauthier, American Association for Nude Recreation; Jennifer Shaw, ACLU-WA; Lonnie Johns-Brown, WA Coalition of Sexual Assault Programs; Mark Prothero, WA Association of Criminal Defense Lawyers.