

# HOUSE BILL REPORT

## HB 1369

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

**Title:** An act relating to submission of DNA markers to a database accessible only to qualified laboratory personnel.

**Brief Description:** Addressing the submission of DNA markers to a database accessible only to qualified laboratory personnel.

**Sponsors:** Representatives Darneille, Roberts, Miloscia, Rolfes, Eddy, Klippert, Kirby and Hurst.

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 2/1/11, 2/11/11 [DPS].

**Brief Summary of Substitute Bill**

- Requires law enforcement to collect biological samples for deoxyribonucleic acid (DNA) testing from adults arrested for a violent offense or a sex offense.
- Permits a person to request expungement of his or her sample and records from the DNA database.
- Directs a 50 cent assessment on a traffic infraction to the DNA Database Account instead of the Auto Theft Prevention Authority Account.
- Prohibits suspension of the crime laboratory analysis fee.

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Armstrong, Hope, Kirby, Moscoso and Ross.

**Minority Report:** Do not pass. Signed by 1 member: Representative Goodman.

**Staff:** Alexa Silver (786-7190).

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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.*

**Background:**

*Deoxyribonucleic Acid (DNA) Sample Collection and Testing.* The Washington State Patrol (WSP) operates and maintains a DNA identification system. The purposes of the system are to assist with criminal investigations and identify human remains and missing persons.

Unless a sample has already been collected, biological samples must be collected from any person (adult or juvenile): (1) convicted of a felony; (2) required to register as a sex or kidnapping offender; or (3) convicted of certain specified misdemeanors and gross misdemeanors. Police and sheriff's departments collect samples from offenders who do not serve a term of incarceration. Jails, the Department of Corrections (DOC), and the Department of Social and Health Services (DSHS) collect samples from offenders incarcerated in their respective facilities.

The Forensic Laboratory Services Bureau (Laboratory) of the WSP is responsible for testing biological samples for inclusion in the DNA database. The Laboratory must give priority to testing samples from persons convicted of sex and violent offenses. Duplicate biological samples may be excluded from testing.

*Assessments, Fees, and the DNA Database Account.* Penalties for traffic infractions are set in statute and court rule and range from \$20 to \$750. In addition to the penalty, an assessment is added for: emergency medical services (\$5); auto theft prevention (\$10); traumatic brain injury (\$2); the General Fund (\$8.50); and other purposes (\$11.50).

When a person is convicted of an offense for which a crime laboratory analysis was performed, the court must levy a \$100 fee. The court may suspend payment of the fee if it finds the person does not have the ability to pay. This fee is forwarded to the General Fund to be used only for crime laboratories.

When a sentence is imposed under the Sentencing Reform Act for a felony offense, the court must levy a \$100 fee for any crime that requires collection of a DNA sample. Eighty percent of this fee is deposited in the DNA Database Account, which is used for the creation, operation, and maintenance of the DNA database.

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**Summary of Substitute Bill:**

*Findings.* The Legislature finds there is a critical need to provide law enforcement with the latest scientific technology available for accurately and expeditiously identifying and prosecuting adult violent offenders and sex offenders. The Legislature also finds that DNA collection and testing is minimally invasive to privacy.

*Biological Sample Collection and Testing.* If an adult is arrested for a violent offense or a sex offense, the sheriff or police chief is responsible for collecting a biological sample for DNA testing. Beginning January 1, 2013, law enforcement must collect samples, but from January 1, 2012 to December 31, 2012, law enforcement may collect the samples. If an adult is charged with a qualifying offense without being arrested, the court must order a law

enforcement agency to collect a sample, and submission of a sample must be a condition of pretrial release.

A sample must be collected from an arrestee at the time of booking into a city or county jail facility. A sample must be collected from a convict at the time of transfer to the jail or the facility operated by the DOC or the DSHS. The WSP must provide law enforcement agencies with the collection kits. Law enforcement must send samples to the Laboratory for the DNA database, and the collecting agency may not retain a sample. The Laboratory may retain the biological sample and must analyze the sample unless a complete profile is already in the system. The Laboratory need not prioritize testing samples from people convicted of sex or violent offenses.

*Expungement.* A person may request that his or her sample and records be expunged from the DNA database if: (1) he or she is not charged within one year of arrest; (2) he or she is found not guilty or is acquitted; or (3) the conviction is reversed and the case dismissed. To request expungement, the person must send a written request to the Laboratory along with supporting documentation. In addition, the person must provide written notice of the request for expungement to the county prosecutor.

When the Laboratory receives a request for expungement, it must prioritize analyzing the person's sample and searching the DNA identification system for a match if the sample has not already been analyzed. Once the Laboratory has analyzed the sample, searched the DNA identification system, and received all the necessary documents, it must expunge the person's sample and records unless the person has a qualifying prior conviction or pending charge.

*Assessments and Fees.* A person who has committed a traffic infraction is assessed 50 cents per infraction, which is deposited in the DNA Database Account. The assessment sent to the Auto Theft Prevention Authority Account is reduced from \$10 to \$9.50.

The court may not suspend or defer payment of the \$100 crime laboratory analysis fee.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill permits law enforcement to begin collecting biological samples from arrestees on January 1, 2012, rather than July 24, 2011. It requires collection of an arrestee's DNA at the time of booking into the county or city jail and requires collection of a convict's DNA at the time of transfer to a city or county jail. It also clarifies that the Laboratory may retain biological samples.

The Laboratory must expunge a person's sample and records only after the Laboratory has both analyzed the person's sample and searched the DNA identification system for a match.

The provision in the original bill requiring that the DNA collection fee be imposed regardless of whether a sample was collected is deleted in the substitute bill.

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**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) Collecting DNA at arrest will prevent violence against women and children, solve cold cases, and exonerate the innocent. Twenty-four states and the federal government collect DNA at arrest, and it has helped solve crimes and save lives because of reduced recidivism. In sexual assault cases, DNA makes a difference in getting to court and preventing future victims. Collecting DNA from arrestees is a natural progression as technology has improved. The DNA database is confidential. Only 13 DNA markers are included in the database, and the entries do not contain names or Social Security numbers and do not reveal medical or genetic information. When there is a match to crime scene DNA, the sample is re-tested and cross-referenced, and then the information is released only to law enforcement. The expungement process builds in protections. This bill does not address the backlog in the crime lab.

(With concerns) Cities would like to see provisions to address the situation where the suspect is uncooperative.

(Opposed) Washington is more protective of privacy than most states. Collection of DNA at conviction is compatible with the Washington Constitution because it is consistent with due process, the presumption of innocence, and proof beyond a reasonable doubt. Collection of DNA at arrest constitutes a suspicionless search and is not supported by judicial fact-finding. Collection of DNA affects privacy interests related to bodily intrusion and the information contained in DNA. The burden would be shifted to the innocent to expunge their DNA records, which is expensive, cumbersome, and time-consuming. Collection of DNA at arrest would also be inefficient and wasteful, because it would include many offenses where DNA is not an issue.

**Persons Testifying:** (In support) Representative Darneille, prime sponsor; Mike Whelan, Washington Association of Sheriffs and Police Chiefs; Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs; Tom McBride, Washington Association of Prosecuting Attorneys; and Jayanne Sepich, DNA Saves.

(With concerns) Candice Bock, Association of Washington Cities.

(Opposed) James Koenig, Washington Association of Criminal Defense Lawyers.

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