
**Public Safety & Emergency Preparedness
Committee**

HB 2588

Brief Description: Asserting that submission of DNA markers to a database be accessible only to qualified laboratory personnel.

Sponsors: Representatives Darneille, Hurst, Roberts, Miloscia, Kirby, McCoy, Ladenburg, Dammeier, Pearson and Tharinger.

Brief Summary of Bill

- Mandates collection of deoxyribonucleic acid (DNA) samples from all adults arrested for a ranked felony or a gross misdemeanor violation of a court order.
- Prohibits analysis of samples until a probable cause finding is made.
- Provides for expungement of the sample if charges are not filed, the individual is acquitted, or the conviction is ultimately reversed.

Hearing Date: 1/24/12

Staff: Sarah Koster (786-7303).

Background:

The Washington State Patrol (WSP) operates and maintains a deoxyribonucleic acid (DNA) identification system. The purpose of the system is to help with criminal investigations and to identify human remains or missing persons. County and city jails are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. The Department of Corrections and the Department of Social and Health Services are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. Local police and sheriff's departments are responsible for collecting biological samples for DNA analysis from offenders who do not serve any term of incarceration.

I. Offenders from Whom a Biological Sample Must be Collected.

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.

Biological samples must be collected from persons convicted of any felony or the following 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, Harassment, Patronizing a Prostitute, Sexual Misconduct With a Minor in the second degree, Stalking, Violation of a Sexual Assault Protection Order. Additionally, a sample must be collected from any person required to register as a sex offender.

II. Testing Biological Samples.

The Forensic Laboratory Services Bureau (laboratory) of the WSP is required to test the biological samples for inclusion in the DNA database. The director must give priority to testing samples from persons convicted of sex and violent offenses.

III. Funding.

A sentencing court must charge every offender convicted of an offense included in the database a fee of \$100 for collection of a DNA sample unless it would result in an undue hardship on the offender. Eighty percent of 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, and 20 percent is remitted to the agency responsible for collecting the sample.

Summary of Bill:

Applicable Offenses.

House Bill 2588 mandates the collection of DNA samples from all adults lawfully arrested for a felony or for gross misdemeanor violation of a court order, as described in RCW 26.50.110(1)(a). The gross misdemeanor offenses referenced here are violations of protection orders related to domestic violence, sexual assault, marital dissolution, child custody disputes, abuse of vulnerable adults or a foreign protection order. However, the violation of a protection order in those categories only qualifies as a gross misdemeanor under RCW 26.50.110(1)(a) if the provision of the order which was violated:

- i. prohibits acts or threats of violence against, or stalking of, a protected party;
- ii. prohibits contact with a protected party;
- iii. excludes the person from a residence, workplace, school, or daycare;
- iv. prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location;
- v. prohibits interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or
- vi. is a provision of a foreign protection order which specifically indicates that a violation will be a crime.

Procedure.

The DNA samples will be collected at the time of booking or, if no sample has been taken at the time of the first court appearance, before a person is released from custody. If the arrestee was convicted of a felony after July 25, 1999, (and thus can be presumed to already have a sample in the database), no sample will be collected.

All samples are sent to the laboratory of the WSP in a sealed container, identified only by a docket or case number. The container will not be opened, or the sample analyzed, until a technician confirms that there was a judicial finding of probable cause. If probable cause is not ultimately found, the sample will be destroyed untested.

If the laboratory fails to destroy the sample when required, the arrested individual may seek actual and punitive damages from the state, as well as attorney's fees and costs.

Timeline.

This bill authorizes law enforcement officers to collect DNA samples from arrestees immediately upon the bill becoming law. Beginning July 1, 2013, it will be their duty to do so.

Expungement.

Under House Bill 2588, a person may request expungement of their sample and DNA records if he or she is not charged with a qualifying offense within one year, is acquitted, or has his or her conviction reversed.

To request expungement, the person must submit to the laboratory:

1. a written request for expungement; and
2. proof that the person provided written notice of the request for expungement to the prosecuting attorney and either:
 - a. a sworn affidavit that no charges for an offense requiring collection of a biological sample have been filed within one year of arrest; or
 - b. a certified copy of a final court order establishing that the qualifying charge was dismissed or resulted in an acquittal.

When the request for expungement is received by the laboratory, the WSP will give priority to analyzing the sample and searching the DNA database for a match, if the sample had not yet been analyzed. Notwithstanding a request for expungement, if the person has a prior conviction or pending charge for which collection is authorized, the sample will not be expunged.

Notice.

House Bill 2588 requires that the person be provided, at the time of booking, with notice of the right to expungement of their sample and record, as well as the right to bring suit if the sample is not destroyed when required.

Fees.

The current fee of \$10 per infraction imposed on a person found to have committed a traffic infraction, and forwarded to the Washington Auto Theft Prevention Authority Account, is

reduced to \$9.50. A new fee of 50 cents is imposed on every person found to have committed a traffic infraction, with revenues to be deposited in the state DNA Database Account.

House Bill 2588 also amends the \$100 crime laboratory fee imposed on a convicted person, when a crime laboratory analysis was performed, so that the fee may not be suspended or waived.

Appropriation: None.

Fiscal Note: Available.

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