

HOUSE BILL REPORT

HB 2588

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: 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 History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/24/12, 1/31/12 [DPS].

Brief Summary of Substitute Bill

- Mandates collection of deoxyribonucleic acid samples from all adults arrested for a ranked felony or a gross misdemeanor violation of a court order.
- Prohibits analysis of samples until a judicial 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.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Armstrong, Hope, Kirby and Ross.

Minority Report: Do not pass. Signed by 3 members: Representatives Appleton, Goodman and Moscoso.

Staff: Sarah Koster (786-7303).

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:

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.

Offenders from Whom a Biological Sample Must be Collected.

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.

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 Laboratory must give priority to testing samples from persons convicted of sex and violent offenses.

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 Substitute 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:

- prohibits acts or threats of violence against, or stalking of, a protected party;
- prohibits contact with a protected party;
- excludes the person from a residence, workplace, school, or daycare;
- prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location;
- 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
- 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 before a person is released from custody. The sample will be sent to the Laboratory of the WSP in a sealed envelope. Once an employee of the Laboratory determines that a judicial probable cause determination has been made and probable cause found, the sample will be analyzed. Otherwise, the sample will be destroyed untested.

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

Expungement.

A person may request expungement of his or her 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) 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 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.

Effective Date.

Authorizes law enforcement officers to collect DNA samples from arrestees beginning January 1, 2013. Beginning July 1, 2013, it will be their duty to do so.

Substitute Bill Compared to Original Bill:

The substitute bill:

- clarifies that a judicial finding of probable cause is required prior to analysis of the sample, instead of a police officer's determination of probable cause;
- delays the date when arrestee samples will begin to be taken until January 1, 2013;
- eliminates the requirement that police determine if an individual was convicted of a felony (and thus likely to have already given a sample) before collecting a new sample;
- changes time of collection from "time of booking" to "prior to release;"
- eliminates the requirement that the sample be sent before the end of the business day;
- changes sample transfer procedures to comply with the Laboratory procedures and capacity;
- limits state's liability risk by removing punitive damages and restricting recovery to instances of willful or negligent failure to destroy a sample;
- amends notice provisions for clarity and to comply with current procedure; and
- amends descriptions of qualifying offenses to be consistent with overall bill policy.

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) Two-thirds of the states and the federal government have this law. Testing of DNA is used to exonerate those falsely convicted; it can also be used to prevent false convictions and prevent crime. This bill will stop serial offenders sooner and save investigation costs. Many identifiable characteristics are already collected from arrestees. Seventy percent of hits in the Combined DNA Identification System (known as "CODIS") are from samples collected from minor offenses; these are precursor crimes. The use of DNA removes bias from the investigation process.

(Information only) There have been no incidents of security breach with the DNA database. The loci used for the database, called "junk DNA" do not reveal very much information about an individual.

(Opposed) This bill lacks the individualized finding by a judge constitutionally required for a search. Fundamentally, DNA is different from other kinds of evidence. A sample reveals a great deal of information about us and our families. Expungement should be automatic to be fair and effective. Hanging the collection of DNA on the arrest process, the most disparate part of the criminal justice system, exacerbates overall disparity. Testing more samples could result in Laboratory backlog and mistakes.

Persons Testifying: (In support) Representative Darneille, prime sponsor; Mark Lindquist, Pierce County Prosecutor's Office; Charisa Nicholas; Dan Satterberg, King County Prosecutor's Office; Jason Berry, Washington State Patrol; Don Pierce, Washington Association of Sheriffs and Police Chiefs; Brian Moran, Office of the Attorney General; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

(Information only) Jean Johnston, Washington State Patrol.

(Opposed) Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.