

SENATE BILL REPORT

SB 6314

As of February 11, 2014

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: Senators Darneille, Pearson, Fraser, Keiser, Angel, Eide, Cleveland, Mullet, McAuliffe and Conway.

Brief History:

Committee Activity: Law & Justice: 1/31/14.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

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 sheriffs' 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: (1) assault in the fourth degree with sexual motivation; (2) communication with a minor for immoral purposes; (3) custodial sexual misconduct in the second degree; (4) failure to register; (5) harassment; (6) patronizing a prostitute; (7) sexual misconduct with a minor in the second degree; (8) stalking; and (9) violation of a sexual assault protection order. Additionally, a sample must be collected from any person required to register as a sex offender.

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.

Testing Biological Samples. The Forensic Laboratory Services Bureau (forensic laboratory) of WSP must 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.

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. DNA samples must be collected from all adults lawfully arrested for a ranked felony offense, excluding drug offenses, or for gross misdemeanor violations of a court order. The gross misdemeanor offenses 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 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. From January 1, 2015, to June 30, 2015, it is the right, but not the duty, of the sheriff, director of public safety, or chief of police to collect the DNA samples and forward them to the forensic laboratory. After June 30, 2015, it is their duty to do so. The DNA samples are 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.

All samples are sent to the forensic laboratory of WSP in a sealed container. The container is not 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 is destroyed untested. All samples not destroyed are analyzed unless a complete DNA profile for that person is already in the database. If the laboratory negligently or willfully 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. At the time of booking, the person must 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. A person may request expungement of their sample and DNA records if the person is not charged with a qualifying offense within one year, is found not guilty or acquitted, or has that conviction reversed and the case dismissed.

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;
 - b. a certified copy of a final court order establishing that the qualifying charge was dismissed or resulted in an acquittal; or
 - c. a certified copy of a final court order reversing the conviction that required the collection of the sample.

When the request for expungement is received by the forensic laboratory, WSP gives priority to analyzing the sample and searching the DNA database for a match. If the person has a prior conviction or pending charge for which collection is authorized, the sample will not be expunged.

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 \$0.50 is imposed on every person found to have committed a traffic infraction, with revenues deposited in the state DNA Database Account.

The \$100 crime laboratory fee imposed on a convicted person, when a crime laboratory analysis was performed, may not be suspended or waived.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Concerns about the privacy rights of individuals have been outweighed by the facts and stories of victims. This is just an additional tool to help law enforcement identify and apprehend the true offenders. Twenty-eight states have already implemented this law. We will be able to solve cold cases. DNA swabbing is not an intrusive procedure. Our Supreme Court will ultimately need to decide whether this is acceptable under the Washington State Constitution. It will also help exonerate innocent people. The probable cause requirement provides the neutral third party oversight. The sample is anonymous until it matches with a crime. This will help prevent additional people from becoming crime victims. This is a fair and thoughtful use of technology. It will help in cases where children are victims and they are unable to testify.

CON: There is no evidence that this would improve public safety. The fiscal impact is prohibitive. The money would be better spent on other criminal justice efforts. People of color would likely be disproportionately impacted. Expungement could be expensive and out

of reach for some people. The Washington State Constitution provides greater protections than the United State Constitution. Probable cause is not enough to justify this DNA sampling. Why not just collect everyone's DNA at birth?

Persons Testifying: PRO: Senator Darneille, prime sponsor; Mark Lindquist, Pierce County Prosecuting Attorney; Laura Weinmann, AGO; Rob Huss, WSP; James McMahan, WA Assn. of County Officials; Chief Steve Strachan, WA Assn. of Sheriffs and Police Chiefs; Laura Niblack, Georgia Cuddeback, Charisa Nicholas, citizens.

CON: Paul Strophy, WA Assn. of Criminal Defense Lawyers; Shakar Narayan, American Civil Liberties Union of WA; Jaime Garcia, Consejo; Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs; Priya Rai, API Chaya.