

HOUSE BILL REPORT

HB 2341

As Reported by House Committee On:
Public Safety
General Government & Information Technology

Title: An act relating to DNA biological samples.

Brief Description: Concerning DNA biological samples.

Sponsors: Representatives Orwall, Kilduff, Fitzgibbon, Kirby, Goodman, Jinkins and Tarleton.

Brief History:

Committee Activity:

Public Safety: 1/12/16, 1/22/16 [DPS];

General Government & Information Technology: 2/5/16 [DP2S(w/o sub PS)].

Brief Summary of Second Substitute Bill

- Authorizes law enforcement to submit biological samples of deceased offenders to the Washington State Patrol for purposes of a deoxyribonucleic acid (DNA) identification analysis to help solve cold cases.
- Requires all state and local correctional facilities that are responsible for holding offenders to collect a biological sample from convicted offenders as part of the intake process.
- Requires the courts to order convicted offenders that are not taken directly or immediately into custody following sentencing to submit a DNA sample to local law enforcement or the local jail.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Griffey, Moscoso and Wilson.

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

Staff: Yvonne Walker (786-7841).

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 purposes of the system are to assist with criminal investigations and identify human remains and missing persons.

Offenders From Whom a Biological Sample Must be Collected.

Biological samples must be collected from any person convicted of a felony, any person who is required to register as a sex or kidnapping offender, and any person convicted of the following misdemeanors and 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 as a sex or kidnapping offender;
- Harassment;
- Patronizing a Prostitute;
- Sexual Misconduct with a Minor in the second degree;
- Stalking; and
- violation of a Sexual Assault protection order.

If a DNA sample already exists from the offender in question, another biological sample does not have to be collected.

Testing Biological Samples.

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

Collection of DNA.

County and city jails are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. The Department of Corrections (DOC) and the Department of Social and Health Services (DSHS) are responsible for collecting biological samples for DNA analysis from offenders incarcerated in a state facility. Local police departments and sheriff's offices are responsible for collecting biological samples for DNA analysis from registered sex and kidnapping offenders and convicted offenders who do not serve any term of incarceration.

Summary of Substitute Bill:

In an effort to solve cold cases, law enforcement agencies are authorized to submit lawfully obtained biological samples within their control from deceased offenders to the WSP Forensic Laboratory for purposes of DNA identification analysis. The samples may be from deceased offenders who were previously convicted (before, on, or after July 1, 1990) of a felony or other statutorily authorized offense in which a biological sample may be collected.

The court must order a defendant, at arraignment or at the bail hearing, to submit a biological sample if that person is charged with any new offense and he or she has previously been convicted of a violent felony offense.

All correctional facilities (including city and county jails, the DOC, and the DSHS) that are responsible for holding offenders must collect a biological sample from convicted offenders as part of the intake process.

Local jails are responsible for obtaining a biological sample immediately after sentencing from a convicted offender serving a term of incarceration in jail. If the person is not taken into custody immediately after sentencing or has served his or her entire term of confinement, the person must be ordered by the court to immediately report to the city or county jail facility to provide a biological sample.

The DOC and the DSHS is responsible for obtaining a biological sample from a convicted offender as part of their intake process. If the person is not taken into custody immediately after sentencing, the person must be ordered by the court to immediately report to the local police department or sheriff's office to provide a biological sample.

In any case where a convicted offender is not taken into custody immediately after sentencing, the court must establish a status hearing to take place within 14 days to ensure the convicted offender has complied with the court order. If the court receives documentation that the offender has complied with the court order by submitting a biological sample, the status hearing may be canceled.

Other technical corrections and clarifications are made in the act including eliminating the provision that requires the Director to give priority to testing certain samples.

Substitute Bill Compared to Original Bill:

A provision was eliminated that required a DNA sample to be collected from any person arrested for or charged with any new offense. Instead, the act requires that after a person has been charged, the courts must order the person, at arraignment or at the bail hearing, to submit a DNA sample if that person is charged with any new offense and he or she has previously been convicted of a violent felony offense.

A provision was eliminated that required offenders that are not taken into custody following sentencing to immediately report to the jail facility to provide a biological DNA sample otherwise a warrant for his or her arrest may be issued for failing to provide a DNA sample. Instead, the act requires all correctional facilities that are responsible for holding offenders to collect a biological sample from convicted offenders as part of the intake process. If the person is not taken into custody immediately after sentencing, the person must be ordered by the court to immediately report to the local law enforcement agency or jail to provide a biological sample.

In any case where a convicted offender is not taken into custody immediately after sentencing, the court must establish a status hearing to take place to ensure the convicted offender has complied with the court order.

A provision is added to authorize law enforcement agencies to submit lawfully obtained biological samples within their control to the WSP Forensic Laboratory for purposes of DNA identification analysis for deceased offenders in an effort to solve cold cases.

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) Several people in our state have been exonerated by DNA. It is a tool for law enforcement and it can help solve cold cases. In trying to close some holes in our system, one of the issues that needs to be resolved is collecting DNA from felony offenders who were convicted prior to the DNA statutes going into effect. The goal is to collect the DNA at their point of entry back into the criminal justice system. Although there are some logistical issues to implementing this bill, DNA technology is one of the best tools that exists today.

(Opposed) There are several concerns with this bill. First, this bill impacts those people who were convicted of a violent offense and released before DNA collection started. There would be a constitutional concern in that you would be imposing a law that did not exist at the time they were convicted. Secondly, there is the other group of people whose DNA should have been collected but were released without it being collected. This bill could impact people of color. Also the collection of DNA upon arrest could invite potential litigation. Lastly, there is a question as to whether this legislation would be the best use of state dollars.

(Other) There are some logistical concerns but the concept of the bill is well supported. The big question that this bill raises is whether DNA can be collected upon arrest. There was a court case where a person was arrested and his DNA was collected without a warrant. The Washington Supreme Court ruled that DNA can only be taken pursuant to a warrant.

There is a person whose DNA was collected through an image. It was collected by a spy from China. These spies have been controlling the Internet for years.

Persons Testifying: (In support) Representative Orwall, prime sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; and Monica Alexander, Washington State Patrol.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington.

(Other) Bob Cooper, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Qui Min Ji, Stop the Spy.

Persons Signed In To Testify But Not Testifying: None.

**HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION
TECHNOLOGY**

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 6 members: Representatives Hudgins, Chair; Kuderer, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Morris and Senn.

Staff: Meghan Morris (786-7119).

Summary of Recommendation of Committee On General Government & Information Technology Compared to Recommendation of Committee On Public Safety:

A provision was eliminated requiring a person to submit a DNA sample, at arraignment or at the bail hearing, if that person is charged with a new offense and has a history of being previously convicted of a violent felony offense.

This bill requires the courts to confirm that an offender has submitted a biological sample at his or her next scheduled hearing date instead of requiring the courts to schedule a specific status hearing to ensure the offender's compliance.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second 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) Deoxyribonucleic acid (DNA) is a powerful tool and quickly becoming one of the most effective crime-fighting techniques available. When we have evidence, investigators should have all the tools necessary to solve cold cases. An estimated 10,000 people in our state have been convicted of violent crimes such as sexual assaults and homicides, but their DNA is not in our system. Substitute House Bill (SHB) 2341 closes some of those loop holes to help solve cold cases. Some offenders were supposed to have their DNA taken, but did not for a variety of reasons. This bill tries to clarify the procedures with the courts. There are also cases where deceased violent offenders may be linked to cold cases. Testing DNA of deceased offenders can help close cases and give families closure. Another category of people are those convicted of crimes prior to the DNA requirement who then come back into the system. There is a strong serial nature to a lot of these crimes and SHB 2341 will provide the tools to solve those cases.

For the proposed amendment regarding status hearings, we should question whether or not every offender has a next hearing date. This language may continue to leave gaps in DNA collection, particularly for offenders who are sentenced to time served and there is not a follow-up hearing date. More work should be done on that language.

(Opposed) Substitute House Bill 2341 should be rejected for three reasons: (1) the main objection is to the new requirement of people having to submit DNA samples when they are arrested for a new offense. The vast majority of people convicted of violent offenses have already submitted DNA samples and are already in the DNA index system. Substitute House Bill 2341 is redundant and will result in duplicate samples; (2) the bill is unconstitutional. The court already affirms that taking a DNA sample is a search and seizure, which requires a warrant or a court order if taken prior to conviction. A preconviction collection is a completely new and different thing, which will bring litigation as to whether this seizure is constitutional; and (3) the bill is expensive because of duplicative samples being entered into the DNA database. The state crime laboratories cannot currently keep up with the levels of data and workload. For smaller jails who do not currently collect samples, there will be additional costs for training to avoid cross-contamination and provide safe custody of the samples until they are transported to the appropriate agency. There are already 5,000 samples waiting to be tested.

Persons Testifying: (In support) James McMahan, Washington Association of Sheriffs and Police.

(Opposed) Mark Muenster, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.