

# SENATE BILL REPORT

## SB 5066

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As Reported by Senate Committee On:  
Law & Justice, February 5, 2015

**Title:** An act relating to the collection of blood samples for forensic testing.

**Brief Description:** Concerning the collection of blood samples for forensic testing.

**Sponsors:** Senators Padden and Darneille.

**Brief History:**

**Committee Activity:** Law & Justice: 1/20/15, 2/05/15 [DPS].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5066 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

**Staff:** Aldo Melchiori (786-7439)

**Background:** The American Board of Forensic Toxicology defines forensic toxicology as the application of toxicology for the purposes of the law. Forensic, used as an adjective, means pertaining to the courts of justice, or to the administration of justice. Forensic phlebotomists draw blood from patients for laboratory testing. The toxicologist then identifies and quantifies the presence of drugs and chemicals in blood and tissue samples. This is done using chemical and biomedical instrumentation capable of detecting small amounts of alcohol, drugs, or toxic material, positively identifying them, and accurately measuring how much is present. This may include investigations of impaired driving, vehicular assault and homicide, drug-facilitated crimes including sexual assault, and aircraft, motor vehicle, and maritime collision investigations.

Under the Health Professions Disciplinary Act, the Washington State Department of Health (Department) regulates and supports more than 404,000 health professionals in 83 health professions, and 7000 health groups and programs. The Department investigates and prosecutes complaints against health care providers and facilities. The Secretary of the Department and 14 boards and commissions discipline health care providers that violate the law. The boards work with the Department to develop processes for receiving, investigating

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and determining appropriate discipline for violations. Action can only be taken against providers that are required to be licensed, certified, or registered with the Department.

**Summary of Bill (Recommended Substitute):** A forensic phlebotomist is defined as a police officer, law enforcement officer, or corrections employee who has completed a venipuncture training program and who is collecting a blood sample for forensic testing. The Secretary of the Department, in consultation with other health profession boards and commissions, the Washington Criminal Justice Training Commission (WSCJTC), and the Washington State Patrol, must establish rules, administrative procedures, and requirements for the licensing, certification, and registration of forensic phlebotomists. This includes establishing, monitoring, and enforcing qualifications for licensure, scope or standards of practice, continuing competency mechanisms, and discipline unless this authority is otherwise authorized in statute to a health profession board or commission or to WSCJTC. The license, certification, and registration may be for a period of up to four years.

It is not professional misconduct for a physician, registered nurse, licensed practical nurse, nursing assistant, physician assistant, first responder, emergency medical technician, health care assistant, or any technician trained in withdrawing blood, to collect a blood sample without a person's consent when these professionals are directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant or exigent circumstances. The identified professionals are not subject to civil or criminal liability for withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of the a search warrant or exigent circumstances or a waiver of the search warrant requirement.

A refusal to draw blood by a health care professional, other than a forensic phlebotomist, does not constitute refusal to obey a law enforcement officer or obstruction of a law enforcement investigation and does not subject the person to criminal or civil liability. This does not relieve these professionals from professional discipline or liability arising from the use of improper procedures or from failing to exercise the required standard of care.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Substitute):** A refusal to draw blood by a health care professional, other than a forensic phlebotomist, does not constitute refusal to obey a law enforcement officer or obstruction of a law enforcement investigation and does not subject the person to criminal or civil liability.

**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 on Original Bill:** PRO: In some jurisdictions, there is up to a five-hour delay in acquiring an authorized blood sample. This will help reduce the strain on other medical professionals. The Department of Health already has phlebotomist

rules, so the rulemaking process should be easier. The refusal rate for blood tests in Idaho dropped from 98 percent to 20 percent after adoption of similar legislation.

CON: Taking blood is a significant invasion of privacy. The convenience offered by this bill is outweighed by the need for accuracy. When non-alcohol intoxicants are involved, there is a diminished need for taking the sample quickly.

OTHER: This does not require a special relationship with a physician as other phlebotomists must have. The Department of Health is concerned about their disciplinary authority over forensic phlebotomists. There are currently over 10,000 phlebotomists in the state that could be utilized. There is not adequate time to implement the required new rules.

**Persons Testifying:** PRO: Senator Padden, prime sponsor; Pam Loginsky, WA Assn. of Prosecuting Attorneys; Sgt. Matt Pavelek, Nampa Police Dept., Idaho.

CON: Mark Muenster, WA Assn. of Criminal Defense Lawyers.

OTHER: Martin Mueller, WA Dept. of Health.