

SENATE BILL REPORT

SB 5186

As Reported by Senate Committee On:
Law & Justice, February 1, 2017

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 Pearson.

Brief History:

Committee Activity: Law & Justice: 1/25/17, 2/01/17 [DPS].

Brief Summary of Substitute Bill

- Defines forensic phlebotomist.
- Allows for a forensic phlebotomist or any person qualified by Department of Health (DOH) or out-of-state jurisdiction to withdraw blood for the purpose of determining its alcohol or drug content.
- Provides that it is not professional misconduct for person qualified by DOH to collect a blood sample without a person's consent under certain conditions.
- Requires any venous blood sample performed by a forensic phlebotomist to be done under certain conditions.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5186 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Melissa Van Gorkom (786-7491)

Background: Forensic Phlebotomy In General. The American Board of Forensic Toxicology defines forensic toxicology as the application of toxicology for the purposes of the law. Toxicology is the study of substances such as drugs, toxins, and poisons that are harmful to human beings.

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.

A phlebotomist is a person trained to draw blood from a person for clinical or medical testing, transfusions, donations, or research. A toxicologist then has the responsibility of detecting and identifying the presence of drugs and poisons in fluids, tissues, and organs. This is done using chemical and biomedical instrumentations capable of detecting small amounts of alcohol, drugs, or toxic material, positively identifying them, and accurately measuring how much is present.

Collection of Blood. The collection of forensic blood samples to determine a driver's alcohol content was originally authorized by the Legislature in 1969. The statute allowed qualified technicians to collect samples in addition to medical personnel until 2015. In 2015, the Legislature:

- removed qualified technicians and added a medical certified assistant-phlebotomist to the list of other medical professionals who are authorized to draw blood; and
- directed DOH to establish a new forensic credential for law enforcement or correctional employees.

The section of the bill which established a forensic credential for a law enforcement or correctional employee was vetoed, so under current law only those medical professions licensed by DOH are authorized to draw blood.

DOH Regulation. Under the Uniform Disciplinary Act, DOH regulates health professionals in 83 health professions. DOH investigates and prosecutes complaints against health care providers and facilities. The Secretary of DOH and various boards and commissions discipline health care providers that violate the law. The boards work with DOH to develop processes for receiving, investigating, and determining appropriate discipline for violations. Action can only be taken against providers that are required to be licensed, certified, or registered with DOH.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): A forensic phlebotomist is defined as a police officer, law enforcement officer, or corrections employee who meets the training and proficiency standards of their employer and collecting a venous blood sample for forensic testing pursuant to a search warrant, a waiver of the warrant requirement, or exigent circumstances.

A forensic phlebotomist or any person qualified by DOH or out-of-state jurisdiction whose scope of practice includes performing venous blood draws is authorized to withdraw blood for the purpose of determining its alcohol or drug content.

Any venous blood sample performed by a forensic phlebotomist is required to be done under certain conditions:

- if taken at the scene, it must be to be done in a licensed ambulance or aid service vehicle;
- the collection of blood samples must not interfere with the provision of essential medical care;
- the blood sample must be collected using sterile equipment and the skin area of puncture must be thoroughly cleansed and disinfected; and

- the person whose blood is collected shall either be seated, reclined or lying down when the blood is collected.

It is not professional misconduct for a person qualified by DOH to collect a blood sample without a person's consent when 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 a search warrant, a waiver of the search warrant requirement, or exigent circumstances. This does not relieve these professionals from 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 (First Substitute): Any venous blood sample performed by a forensic phlebotomist is required to be done under certain conditions:

- if taken at the scene, it must be to be done in a licensed ambulance or aid service vehicle;
- the collection of blood samples must not interfere with the provision of essential medical care;
- the blood sample must be collected using sterile equipment and the skin area of puncture must be thoroughly cleansed and disinfected; and
- the person whose blood is collected shall either be seated, reclined, or lying down when the blood is collected.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: The procedure identified in the bill is an easy blood draw to perform and training can be provided to staff to ensure that the draw can be done in a safe way. This bill places us back to the pre-2015 status which would allow for law enforcement and correctional staff to draw blood. The bill does not require that agencies participate but it allows for them to participate which could: shorten length of DUI investigation where blood draw is required; get officers back on patrol faster; decrease time interval between driving and testing; reduce the strain on emergency rooms and hospitals; and allow for blood collection to occur in communities where hospitals are declining to draw blood.

CON: This is a medical procedure because it punctures the skin and there is a reason that DOH has established training requirements to protect individuals. There are concerns with delegating this authority to law enforcement agencies and correctional facilities in Washington to create their own standards throughout the state. The current system to have

blood drawn is reasonable. DOH is the proper entity to oversee and promulgate rules regarding blood draws.

Persons Testifying: PRO: Pam Loginsky, Washington Association of Prosecuting Attorneys; Lisa Thatcher, Washington State Hospital Association.

CON: Jason Lantz, Washington Defender Association/Washington Association of Criminal Defense Lawyers; Arthur West, citizen.

Persons Signed In To Testify But Not Testifying: No one.