

SENATE BILL REPORT

SSB 5710

As Passed Senate, February 9, 2022

Title: An act relating to reducing contamination in the state toxicology laboratory.

Brief Description: Reducing contamination in the state toxicology laboratory.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden and Wilson, L.).

Brief History:

Committee Activity: Law & Justice: 1/24/22, 1/27/22 [DPS].

Floor Activity: Passed Senate: 2/9/22, 49-0.

Brief Summary of First Substitute Bill

- Requires the Bureau of Forensic Laboratory Services to adopt rules for the state toxicology laboratory regarding sampling and testing for contamination in its laboratories and other work areas.
- Requires the State Forensic Investigations Council to study and adopt recommendations for reducing contamination and implementing required legal disclosures.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5710 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Honeyford, Kuderer, Pedersen, Salomon and Wagoner.

Staff: Joe McKittrick (786-7287)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Washington State Patrol Toxicology Laboratory. The Washington State Toxicology Laboratory was established in 1963 and performs drug and alcohol testing for coroners, medical examiners, law enforcement agencies, prosecuting attorneys, and the State Liquor and Cannabis Board, in all 39 Washington counties.

The laboratory receives approximately 16,000 cases per year of which approximately 65 percent are law enforcement driving under the influence cases and 35 percent are coroner or medical examiner cases. Forensic scientists perform analysis of samples submitted to the laboratory and provide court testimony as experts on alcohol and drugs, and their effects.

Washington State Patrol Crime Laboratory Division. The Crime Laboratory Division (CLD) operates five multi-service crime laboratories in Seattle, Tacoma, Marysville, Spokane, Vancouver, and limited-service crime laboratories including the Kennewick and Tumwater Laboratories, and the combined DNA index system laboratory in Seattle. The laboratories provide forensic services for criminal justice agencies within the state of Washington. At the Seattle location, CLD scientists previously synthesized controlled substances, including methamphetamine, to better understand how individuals make those substances on the streets.

Toxicology Lab Contamination. Between October 2018 and June 2019, in three separate cases where evidence was processed by the Washington State Toxicology Laboratory, confirmation results for methamphetamine were not comparable to the initial positive screening results. A second round of confirmation testing verified the negative methamphetamine results in those three cases.

In June 2019, while procuring services to test the facility for environmental methamphetamine contamination, five additional cases were identified as having the same discrepancy. Further investigation determined that in all eight cases, the sample preparation for one or more of the analyses was performed by a scientist occupying lab and office areas at the Seattle laboratory location previously used for chemical and materials analysis work by CLD. These annex lab and office areas had been acquired for use by the Toxicology Laboratory Division (TLD) in 2018. TLD has disclosed that multiple cases where testing was conducted in the main Seattle laboratory, across the hall from the annex lab and office areas, have also produced false positives for methamphetamine.

Summary of First Substitute Bill: By April 1, 2023, the Bureau of Forensic Laboratory Services, in consultation with the Washington State Forensic Investigations Council, must adopt rules for the state toxicology laboratory requiring the laboratory to conduct sampling and testing for contamination in laboratories and other work areas at least annually per fiscal year, and coordinate a periodic environmental sampling to be conducted by the National Institute of Standards and Technology of the United States Department of Commerce which must include a corrective action report for noted deficiencies.

The Bureau of Forensic Laboratory Services must complete an annual report of the

environmental sampling findings and provide this report to the Washington State Forensic Investigations Council to be shared with the Senate Law and Justice Committee and the House Public Safety Committee.

Appropriation: None.

Fiscal Note: Available.

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: This bill should be extended to create a task force to address the issues created at the Washington State toxicology lab. The lab became aware of the contamination in 2018 but didn't disclose the issues until 14 months later. Of the thousands of tests compromised by the contamination, we have no way of knowing how many were utilized to convict people prior to the disclosure. There is a need to appoint counsel to represent convicted individuals who may have been affected by the lab contamination.

This bill should include the creation of a task force to address the issues that arose because of the lab contamination. These issues continue to affect individuals in custody who are trying to determine if they should delay their trials to further investigate if the contamination impacts their cases as well as those who have already pleaded guilty. The length of time it took the toxicology lab to disclose these issues, and the manner by which they did disclose these issues, created wide-ranging logistical issues for defense attorneys and their clients who had to decide between further investigation or sitting in jail. There is a real chance individuals who are affected by the lab contamination will not have access to this information or how it impacts their cases.

OTHER: Reliable third-party testing as required by this bill may not exist. Testing for worker and workplace safety does exist. Currently the risk of further contamination is minimal to non-existent. The Washington State Patrol is already stretched beyond its budget and any further tasking should be accompanied by an appropriate level of funding. This could also affect the workflow output of the toxicology lab and requiring further testing could delay lab output even longer than it already is. Furthermore, the lab is relocating to a space in Federal Way where drug testing has not been previously conducted, making the possibility of further contamination minimal to non-existent. The issue should be tabled to determine if this relocation of the toxicology lab has ameliorated the contamination issues.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Magda Baker, Washington Defender Association and Washington Association of Criminal Defense

Lawyers; Bruce Adsero, WACDL/WDA.

OTHER: James Kennedy, Jefferson County Prosecuting Attorney's Office.

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