

SENATE BILL REPORT

SB 5576

As of January 27, 2023

Title: An act relating to sexual assault procedures.

Brief Description: Concerning sexual assault procedures.

Sponsors: Senators Dhingra, Kuderer, Lovelett, Nobles, Saldaña, Trudeau, Valdez and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/30/23.

Brief Summary of Bill

- Requires jail and prison facilities to collect biological samples before a convicted person required to provide a sample is released from confinement.
- Requires persons required to provide a biological sample who will not be confined in a jail or prison facility, to be administratively booked at a city or county jail facility for the sole purpose of providing a biological sample.
- Requires sentencing courts to create and implement biological sample collection protocols, and to collect biological samples at the time of sentencing.
- Limits the ability of a defendant accused of sex offenses to introduce evidence of a victim's past sexual behavior on a victim's social media account to attack the victim's credibility, or to prove the victim's consent.

SENATE COMMITTEE ON LAW & JUSTICE

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.

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Background: Biological Samples. The Washington State Patrol (WSP) operates and maintains a deoxyribonucleic acid (DNA) identification system. The purpose of the system is to aid in criminal investigations, and to identify human remains or missing persons. The Forensic Laboratory Services Bureau of the WSP is responsible for testing biological samples for inclusion in the DNA database.

Biological samples must be collected from any person who has been convicted of a felony, any person who is required to register as a sex offender or kidnapping offender, or any person convicted of the following list of specified misdemeanors or gross misdemeanors:

- assault in the fourth degree where domestic violence was pleaded and proven;
- 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 person;
- harassment;
- patronizing a prostitute;
- sexual misconduct with a minor in the second degree;
- stalking;
- indecent exposure; and
- violation of a sexual assault protection order.

Collection of Biological Samples. County and city jails are responsible for collecting biological samples for DNA analysis from persons incarcerated in their facilities. The Department of Corrections (DOC) and the Department of Children, Youth, and Families (DCYF) are responsible for collecting biological samples for DNA analysis from persons incarcerated in a state facility. Local police departments and sheriff's offices are responsible for collecting biological samples for DNA analysis from registered sex offenders and kidnapping offenders and convicted persons who do not serve any term of confinement.

Refusal to Provide a Sample. A person who willfully refuses to comply with a legal request for a DNA sample is guilty of the crime of refusal to provide DNA. Refusal to provide DNA is a gross misdemeanor.

Evidence of Victim's Past Sexual History. In a prosecution for a sex offense, evidence of a victim's past sexual behavior is generally inadmissible to attack the credibility of the victim and to prove the victim's consent. When the perpetrator and victim engaged in sexual intercourse with each other in the past, and when the behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense. In a prosecution for the crime of rape, trafficking, or an offense related to commercial sexual abuse of a minor, such evidence is admissible on the issue of consent if certain procedures are followed, except when prohibited in the underlying criminal offense.

Summary of Bill: Collection of Biological Samples. County and city jails, DOC, and DCYF are responsible for collecting biological samples for DNA analysis from persons required to provide a biological sample who are incarcerated in their facilities. If the biological samples are not collected prior to the person's release from confinement, a compliance hearing must be scheduled by the sentencing court within five days of the person's release to ensure that the biological samples have been collected.

A sentencing court is no longer required to order a convicted person required to provide a biological sample, who will not serve a term of confinement, to report to a local police department or sheriff's office to provide a biological sample. Instead, a sentencing court must order a convicted person to be administratively booked at a city or county jail for the sole purpose of providing a biological sample if the convicted person will not serve any term of confinement.

The sentencing court must create and implement a biological sample collection protocol. The sentencing court shall obtain the biological samples at the time of sentencing. If the biological samples are not collected at the time of sentencing, then they must be collected by county and city jails, DOC, DCYF, and local police departments and sheriff's offices. The sentencing court must schedule a compliance hearing within five days of the sentence to ensure that biological samples have been collected.

Evidence of a Victim's Past Sexual History. Inadmissible evidence of a victim's past sexual behavior includes a victim's social media account, including any text, image, video, or picture, which depict sexual content, history, activity, or communications.

Appropriation: None.

Fiscal Note: Requested on January 25, 2023.

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

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