

# HOUSE BILL REPORT

## SSB 5026

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**As Reported by House Committee On:**  
Public Safety & Emergency Preparedness

**Title:** An act relating to the collection of biological samples for DNA identification analysis from individuals whose convictions are the result of a plea agreement.

**Brief Description:** Regarding the collection of biological samples for DNA identification analysis from individuals whose convictions are the result of a plea agreement.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala and Brandland).

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 3/17/09, 3/24/09 [DP].

**Brief Summary of Substitute Bill**

- Expands the deoxyribonucleic acid (DNA) identification system to include information from all adults convicted pursuant to a plea agreement if the original charge was a crime for which samples are currently collected upon conviction, and the court finds probable cause for the original charge.

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** Do pass. Signed by 7 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Goodman, Kirby and Ross.

**Staff:** Lara Zarowsky (786-7123)

**Background:**

The Washington State Patrol (WSP) operates and maintains a deoxyribonucleic acid (DNA) identification system. The purpose of the system is to help with criminal investigations and to identify human remains or missing persons. County and city jails are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities.

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*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.*

The Department of Corrections and the Department of Social and Health Services are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. Local police and sheriff's departments are responsible for collecting biological samples for DNA analysis from offenders who do not serve any term of incarceration.

Biological samples must be collected from any person convicted of a felony, sex and kidnapping offenders required to register on or after June 2008, and any person convicted of the following misdemeanors and gross misdemeanors:

- assault in the fourth degree with sexual motivation;
- communicating with a minor for immoral purposes;
- custodial sexual misconduct in the second degree;
- failure to register;
- harassment;
- patronizing a prostitute;
- sexual misconduct with a minor in the second degree; and
- violation of a sexual assault protection order.

If a DNA profile is already included in the database from the offender in question, another biological sample need not be collected.

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#### **Summary of Bill:**

A biological sample must be collected from all adult offenders convicted pursuant to a plea agreement, provided that the crime originally charged was one for which a biological sample must currently be collected upon conviction, and the court finds probable cause for the original charge.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

#### **Staff Summary of Public Testimony:**

(In support) It can be difficult to find enough evidence to charge recidivist offenders. This bill is narrowly drawn to require those who take a plea agreement to provide a biological sample for DNA analysis if probable cause exists to find them guilty of the crime with which they were originally charged.

(Opposed) The intent behind this bill is good, and all can agree that DNA is a powerful tool. However, use of this tool must be tempered with privacy protections. The DNA data is the

most private information a person has. This bill attempts to expand DNA collection to cases in which there is very little basis to collect DNA. This goes to the difference between a probable cause standard, which is a measure of whether an officer at the time of arrest has sufficient information to believe the person committed the crime, and the beyond a reasonable doubt standard, which is much more robust. If you're going to subject someone to a search as extensive as the taking of DNA, it requires a standard higher than probable cause. Some kind of judicial check should be included if the bill goes forward. For example, discretion could be left to the sentencing judge to determine whether the taking of a DNA sample is appropriate. If someone pleads to a lesser charge, there may be a concern that there is a lack of nexus between the taking of the DNA and the crime of conviction.

**Persons Testifying:** (In support) Senator Regala, prime sponsor; and Tom McBride, Washington Association of Prosecuting Attorneys.

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

**Persons Signed In To Testify But Not Testifying:** None.