

HB 2309 STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Patricia Pascone, LPRO Analyst

Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 3/23, 3/30

WHAT THE MEASURE DOES:

Requires law enforcement to immediately obtain a blood or buccal sample of a person arrested for a person felony, a sex crime, or burglary in the first degree, unless the law enforcement agency or the Oregon State Police (OSP) previously obtained an adequate sample from the person, or if it would create a substantial and unreasonable risk to the health of the person. A buccal sample may be taken by law enforcement personnel, but only specified health care professionals may draw a blood sample. Requires that the law enforcement agency transmit the sample to OSP. Permits OSP to adopt rules to carry out the measure. Specifies that deviations from procedure in collecting sample which do not affect the reliability of the test do not make the test or opinions on the test inadmissible in a court proceeding. Immunizes persons obtaining a sample. Removes existing directive to process samples by priority of listed crimes in the event of insufficient funds to process all samples. Allocates money for the collection of samples under the measure with funds from the Criminal Fines Account. Provides process for the person to request destruction of the sample if the person is acquitted, the charges are dismissed, a conviction is subsequently reversed, or a prosecution is not commenced within the statute of limitations period. Requires a district attorney to submit a sworn affidavit to OSP stating that authority to retain the sample has been rescinded, if no prosecution commenced with the statute of limitations period. Adds samples obtained under this measure to blood and buccal samples that are not a 'record' for purposes of juvenile expunction statutes. Takes effect 91st day following adjournment sine die.

REVENUE: No revenue impact

FISCAL: Fiscal impact issued

ISSUES DISCUSSED:

- Bill is a re-draft of Senator Jackie Winter's Senate Bill 881 (2011)
- California and 18 states swab for all felonies
- There is currently one forensic scientist at Coffee Creek Facility intake
- Oregon state police reports it would need additional staff
- How to handle cite-and-release practice for burglary in first degree

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

In Oregon, blood or buccal sample collection is currently authorized by statute upon conviction of certain crimes or when bodily fluid is exchanged as part of a crime and the crime victim requests the sample, among other requirements. DNA collection otherwise generally requires a search warrant or must qualify as an exception to the warrant requirement, such as exigency of obtaining evidence at risk of destruction. An example of exigency is when there is probable cause for an officer to believe a person is driving under the influence of intoxicants and the substances in a person's blood or bodily fluids will likely dissipate before a warrant can be obtained.

The United States Supreme Court has held that collection of DNA with a cheek swab upon arrest on assault charges did not violate the U.S. Constitution, when DNA obtained from the defendant was then matched to an

HB 2309 STAFF MEASURE SUMMARY

unsolved rape case and the defendant was convicted of that crime. *Maryland v. King*, 569 U.S. 435 (2013).

HB 2309 would require law enforcement to obtain a blood or buccal sample of a person arrested for a person felony, a sex crime, or burglary in the first degree.

PRELIMINARY