

## HB 2309 STAFF MEASURE SUMMARY

### House Committee On Judiciary

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**Sub-Referral To:** Joint Committee On Ways and Means

**Meeting Dates:** 3/23, 4/3

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#### 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. Permits law enforcement to take a buccal sample, but only specified health care professionals may draw a blood sample. Requires law enforcement to transmit the sample to OSP. Permits OSP to adopt rules to carry out the measure. 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. Specifies a test or opinion on the test of a sample is not inadmissible in a court proceeding due to a deviation from sample collection procedure which does not affect the reliability of the test. Immunizes persons obtaining a sample. Provides a process for the arrested 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 if no prosecution is commenced with the statute of limitations period, stating that authority to retain the sample has been rescinded. Specifies that samples are not 'records' 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 criteria. DNA collection otherwise generally requires a search warrant or an exception to the warrant requirement, such as exigency of obtaining evidence at risk of destruction. 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 that DNA was then matched to an 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.