

July 26, 2019

## MEMORANDUM

**To:** Gender Equity, Safe Communities, New Americans, and Education Committee  
**From:** Greg Doss, Council Central Staff  
**Subject:** Council Bill 119589 – Conforming the Seattle Municipal Code to state law for sex-related crimes that require DNA submission to the State of Washington

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The Gender Equity, Safe Communities, New Americans and Education (GESCNA-Ed) Committee will hold a hearing on [Council Bill \(CB\) 119589](#) on July 31, 2019. The Committee Chair has not indicated whether a motion to forward the legislation to Council will be requested.

CB 1195890 would conform the Seattle Municipal Code (SMC) to state law for eleven serious or sex-related crimes that require the submission of DNA to the Washington State Patrol (WSP) Crime Lab.

Historically, the WSP Crime Lab processed and entered into the federal Combined DNA Index System (CODIS) database all DNA from Seattle misdemeanor offenders convicted of serious or sex-related crimes as defined in the SMC. In 2014, WSP's Crime Lab informed the City Attorney's Office (CAO) that it would no longer accept DNA samples from Seattle because Seattle defendants had been convicted of Seattle Municipal Code misdemeanors and not the corresponding RCW misdemeanors.

A recent state Attorney General's Office (AG) opinion noted that the WSP Crime Lab is bound to process Seattle misdemeanor DNA if the SMC definitions are conformed to state law (RCW definitions). WSP staff indicated that such a change would provide a long-term solution authorizing the processing of Seattle DNA. In the nearer term, the Washington State Legislature passed [House Bill 1326](#) this past session, allowing the WSP Crime Lab to accept DNA samples for Seattle misdemeanors through December 31, 2019.

The CAO transmitted CB 119589 to comply with the AG opinion and concluded that the proposed legislation does not substantively change the elements for any of the eleven crimes.

### **Background:**

In 2008, the Washington Legislature enacted [House Bill 2713](#), which required collection of DNA samples from defendants convicted of all felonies and certain serious or sex-related misdemeanors (see list below).<sup>1</sup> DNA samples are collected post-conviction and, once entered into the CODIS database, are available to be matched with DNA from crime scene evidence, including rape kits, for the purpose of solving crimes.

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<sup>1</sup> The corresponding RCW section for these crimes is RCW 43.43.754(1).

### Misdemeanors that require the State to collect DNA:

- Assault in the fourth degree where domestic violence is 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 offender
- Harassment
- Patronizing a prostitute
- Sexual misconduct with a minor in the second degree
- Stalking
- Indecent exposure
- Violation of a sexual assault protection order granted under chapter [7.90 RCW](#)

In 2008, the Council passed [Ordinance 122789](#), which updated the SMC to require collection of DNA from defendants convicted of Seattle misdemeanors equivalent to those listed in the RCW. As noted above, the WSP Crime Lab stopped accepting DNA samples taken from Seattle offenders in mid-2014. Nonetheless, the City continues to collect DNA and currently stores approximately 650 DNA samples in the Seattle Police Department (SPD) Evidence Unit.

### **Processing Backlogged DNA Samples:**

According to staff at WSP Crime Lab, there is a backlog of DNA samples yet to be entered into the CODIS system - work that must be done before Seattle misdemeanor DNA information can be entered. WSP Crime Lab staff estimate that the misdemeanor DNA samples will be entered sometime next year. However, law enforcement agencies can request to expedite specific offender DNA processing.

When DNA is entered into CODIS, a Federal Bureau of Investigation (FBI) algorithm will detect within 24 hours a match to any other DNA in the data base. When the algorithm gets a "hit," the FBI immediately notifies the WSP Crime Lab which in turn notifies the appropriate local law enforcement agency (in this case SPD).

**Race and Social Justice Initiative (RSJI) and Privacy Issues:**

As this bill relates to the City's RSJI, the CAO staff indicated that the proposed legislation would not lead to any new processes; the City currently collects DNA from offenders for the sex-related crimes currently defined in the SMC that the proposed legislation would conform to the RCW. However, it is unknown whether the legislation would have impacts on race and social justice or whether a Racial Equity Tool Kit was used to evaluate the legislation.

Staff from the ACLU of Washington indicated that the collection and storing of DNA represents an intrusion of privacy and presents risks of misuse which will disproportionately impact people of color (who are also disproportionately represented in the criminal justice system).

cc: Kirstan Arestad, Central Staff Director  
Dan Eder, Deputy Director