

# HOUSE BILL REPORT

## SHB 1069

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### As Amended by the Senate

**Title:** An act relating to preservation of DNA work product.

**Brief Description:** Concerning preservation of DNA work product.

**Sponsors:** House Committee on Public Safety (originally sponsored by Representatives Orwall, Appleton, Kagi, Gregerson, Reykdal, Carlyle, Stanford, Sawyer, Fitzgibbon, Jinkins, Hudgins, Goodman, Clibborn, Moeller, Moscoso, Farrell and Fey).

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 1/14/15, 1/20/15 [DPS].

##### **Floor Activity:**

Passed House: 2/19/15, 77-20.

Senate Amended.

Passed Senate: 4/8/15, 47-1.

#### **Brief Summary of Substitute Bill**

- Requires the preservation of deoxyribonucleic acid products secured in connection with a felony offense to be preserved either throughout the length of the sentence if a person has been convicted for the offense, or throughout the period of the statute of limitations for the crime in cases where no person has been convicted.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

**Staff:** Yvonne Walker (786-7841).

#### **Background:**

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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.*

Chain of custody for evidence at a crime scene usually starts with the collection of evidence done by an investigator or technician. When collecting evidence from a crime scene for deoxyribonucleic acid (DNA) analysis, there are several main goals: to reconstruct the crime; to identify the perpetrator; to preserve the evidence for analysis; and to collect the evidence in a way that will make it admissible in court.

The Washington State Patrol (WSP) operates and maintains a DNA identification system to help with criminal investigations and to identify human remains or missing persons. The WSP also provides DNA analysis services to local law enforcement agencies, provides assistance to law enforcement officials and prosecutors in the preparation and utilization of DNA evidence for presentation in court, and provides expert testimony in court on DNA evidentiary issues. Most DNA testing is conducted by the Forensic Laboratory Services Bureau of the WSP.

Under the Washington Criminal Appeals statute, in a felony case, upon a motion of the defense counsel or the court, a sentencing court may order that biological material or evidence samples secured in connection with a particular criminal case be preserved in accordance with any court rule adopted for the preservation of evidence. In those cases, the court must specify the samples to be maintained and the length of time the samples must be preserved. However, there is currently no uniform state law automatically prescribing the length of time biological material collected for DNA testing must be preserved in connection with a criminal investigation case.

Outside of a motion made in court requesting the preservation of DNA evidence, generally the length of time that DNA biological material is maintained in felony cases varies. Some local law enforcement agencies maintain and preserve evidence relating to a criminal case indefinitely while other local agencies preserve evidence up to the statute of limitations for the crime.

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

A government entity must preserve DNA work product collected in any felony case initially charged as a violent or sex offense. In such case, where an offender has been charged or convicted in connection with the case, the governmental entity must maintain the DNA work product throughout the length of the offender's sentence including any period of community custody extending through final discharge. In other cases where no person has been charged or convicted in connection with the case, the DNA work product must be maintained throughout the statute of limitations for the crime.

For purposes of DNA preservation requirements under this act, "DNA work product" does not include a reference sample collected unless it has been shown, through DNA comparison, to associate the source of the sample with the criminal case for which it was collected.

The court may impose sanctions if it finds that DNA work product was intentionally destroyed. The court may not order the reversal of a conviction based solely on the grounds that the DNA product is no longer available.

The term "DNA work product" is defined as: (1) product generated during the process of scientific analysis of such material, except amplified DNA, material that had been subjected to DNA extraction, and DNA extracts from reference samples; or (2) any material catalogued on a microscope slide, swab, in a sample tube, cutting, DNA extract, or some other similar retention method used to isolate potential biological evidence that has been collected by law enforcement as part of its investigation and prepared for scientific analysis, whether or not it is submitted for scientific analysis and derived from the contents of a sexual assault examination kit, blood, semen, hair, saliva, skin tissue, fingerprints, bones, teeth, or any other identifiable human biological material or physical evidence.

A "governmental entity" includes any general law enforcement agency or any person or organization officially acting on behalf of the state or any political subdivision of the state involved in the collection, examination, tracking, packaging, storing, or disposition of biological material collected in connection with a criminal investigation relating to a felony offense.

#### **EFFECT OF SENATE AMENDMENT(S):**

The amendment adds provisions that require in those cases where:

- a person has been charged and convicted, but there is no statute of limitations for that crime, law enforcement must maintain the DNA for 99 years or until the death of a defendant, whichever is sooner;
- a person has been charged but not convicted, the DNA must be maintained for 99 years or throughout the period of the statute of limitations for the crime, whichever is sooner; and
- the offender of the crime is not known, the DNA must be maintained for 99 years or throughout the period of the statute of limitations for the crime, whichever is sooner.

It is clarified that nothing precludes a trial court from ordering the destruction of DNA contributed by a defendant who was charged and subsequently acquitted or whose conviction was overturned in connection with a violent or sex offense.

In cases where the charges are dismissed with prejudice or the person is found not guilty, upon application from the person, the Washington State Patrol must expunge the person's collected DNA reference sample. If DNA work product is destroyed with malicious intent, the court may impose sanctions. No private cause of action may be brought against the law enforcement agency or contractor of a law enforcement agency for destroying DNA work product.

Other technical amendments and clarifications were also made.

**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 of substitute bill) Although 35 states have a standard protocol for preserving DNA evidence, the State of Washington does not. This bill is a result of a workgroup that met throughout the summer. Although the bill requires jurisdictions to preserve DNA in cold cases, this legislation is still pretty conservative compared to what other states are doing.

Although under current law there is a procedure by which someone can petition the court to preserve evidence, there is no procedure, uniform statute, or rule that requires automatic preservation. The current system does not work well and has proven not to be an effective way to preserve evidence. Nationally there have been 325 exonerations. Every case of wrongful conviction is a case where the actual perpetrator was not brought to justice.

(In support of substitute bill with amendment) There is support of the substitute bill and the workgroup that met this summer worked on several of the issues on the original version of the bill. The only issue that may have to be considered is that there may be some workload increases on law enforcement and potentially the state crime lab. However, this version of the bill is much better. There may also be an issue relating to what are commonly referred to as "determinate plus sex offenders" which receive an indeterminate sentence. Depending on the crime committed, their sentence could run up to the stationary maximum, which could be life.

(Opposed) None.

(Other) There was a lot of work put into this bill and, although it may need a little word smithing, overall it is liked.

**Persons Testifying:** (In support of substitute bill) Representative Orwall, prime sponsor; Karen Fossum and Lara Zarowsky, Innocence Project Northwest; and Amanda Lee, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

(In support of substitute bill with amendment) Tom McBride, Washington Association of Prosecuting Attorneys.

(Other) Mitch Barker, Washington Association of Sheriffs and Police Chiefs.

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