**1069-S AMS LAW S2761.2 - NOT FOR FLOOR USE**

**SHB 1069** - S COMM AMD

By Committee on Law & Justice

**ADOPTED 4/8/2015**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  (1) In any felony case initially charged as a violent or sex offense, as defined in RCW 9.94A.030, a governmental entity shall preserve any DNA work product that has been secured in connection with the criminal case according to the following guidelines:

(a) Except as provided in (b) of this subsection, where a defendant has been charged and convicted in connection with the case, the DNA work product must be maintained throughout the length of the sentence, including any period of community custody extending through final discharge;

(b) Where a defendant has been convicted and sentenced under RCW 9.94A.507 in connection with the case, the DNA work product must be maintained for ninety-nine years or until the death of the defendant, whichever is sooner; and

(c) Where no conviction has been made in connection with the case, the DNA work product must be maintained for ninety-nine years or throughout the period of the statute of limitations pursuant to RCW 9A.04.080, whichever is sooner.

(2) Notwithstanding subsection (1) of this section, in any felony case regardless of whether the identity of the offender is known and law enforcement has probable cause sufficient to believe the elements of a violent or sex offense as defined in RCW 9.94A.030 have been committed, a governmental entity shall preserve any DNA work product, including a sexual assault examination kit, secured in connection with the criminal case for ninety-nine years or throughout the period of the statute of limitations pursuant to RCW 9A.04.080, whichever is sooner.

(3) For purposes of this section:

(a) "Amplified DNA" means DNA generated during scientific analysis using a polymerase chain reaction.

(b) "DNA work product" means (i) 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 (ii) any material contained 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:

(A) The contents of a sexual assault examination kit;

(B) Blood;

(C) Semen;

(D) Hair;

(E) Saliva;

(F) Skin tissue;

(G) Fingerprints;

(H) Bones;

(I) Teeth; or

(J) Any other identifiable human biological material or physical evidence.

Notwithstanding the foregoing, "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.

(c) "Governmental entity" means 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.

(d) "Reference sample" means a known sample collected from an individual by a governmental entity for the purpose of comparison to DNA profiles developed in a criminal case.

(4) The failure of a law enforcement agency to preserve DNA work product does not constitute grounds in any criminal proceeding for challenging the admissibility of other DNA work product that was preserved in a case, and any evidence offered may not be excluded by a court on those grounds. The court may not set aside the conviction or sentence or order the reversal of a conviction under this section on the grounds that the DNA work product is no longer available. Unless the court finds that DNA work product was destroyed with malicious intent to violate this section, a person accused of committing a crime against a person has no cause of action against a law enforcement agency for failure to comply with the requirements of this section. If the court finds that DNA work product was destroyed with malicious intent to violate this section, the court may impose appropriate sanctions. Nothing in this section may be construed to create a private right of action on the part of any individual or entity against any law enforcement agency or any contractor of a law enforcement agency.

NEW SECTION. **Sec.**  (1) Nothing in this chapter precludes the trial court from ordering the destruction of DNA reference samples contributed by a defendant who was charged and acquitted or whose conviction was overturned in connection with a violent or sex offense as defined in RCW 9.94A.030.

(2)(a) A person may submit an application to the Washington state patrol to have his or her DNA reference sample data expunged from the Washington state patrol's DNA identification system in cases where: (i) The person's DNA reference sample was collected and entered into the system and (ii) the charges against the person were dismissed with prejudice or the person was found not guilty.

(b) The Washington state patrol must expunge the person's DNA reference sample data if he or she meets the criteria established in law or by rule.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  Sections 1 and 2 of this act constitute a new chapter in Title 5 RCW."

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On page 1, line 1 of the title, after "product;" strike the remainder of the title and insert "and adding a new chapter to Title 5 RCW."

EFFECT: (1) In cases where a person has been charged and convicted, requires DNA to be maintained:

(a) Throughout the length of the offender's sentence; or

(b) In cases where there is no statute of limitations, for 99 years or until the death of a defendant, whichever is sooner.

(2) In cases where a person has been charged but has not been convicted, requires DNA to be maintained for 99 years or throughout the period of the statute of limitations for the crime, whichever is sooner.

(3) In cold cases where the identification of the person is not known, requires DNA to be maintained for 99 years or throughout the period of the statute of limitations for the crime, whichever is sooner.

(4) Clarifies 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.

(5) Requires the WSP to expunge collected DNA in cases where the charges are dismissed or a person is found not guilty.

(6) Makes other technical amendments and clarifications.

(7) If DNA work product is destroyed with malicious intent, the court may impose sanctions. Does not create a private action.