

SHB 1069 - S COMM AMD

By Committee on Law & Justice

ADOPTED 4/8/2015

1 Strike everything after the enacting clause and insert the
2 following:

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

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

13 (b) Where a defendant has been convicted and sentenced under RCW
14 9.94A.507 in connection with the case, the DNA work product must be
15 maintained for ninety-nine years or until the death of the defendant,
16 whichever is sooner; and

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

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

30 (3) For purposes of this section:

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

1 (b) "DNA work product" means (i) product generated during the
2 process of scientific analysis of such material, except amplified
3 DNA, material that had been subjected to DNA extraction, and DNA
4 extracts from reference samples; or (ii) any material contained on a
5 microscope slide, swab, in a sample tube, cutting, DNA extract, or
6 some other similar retention method used to isolate potential
7 biological evidence that has been collected by law enforcement as
8 part of its investigation and prepared for scientific analysis,
9 whether or not it is submitted for scientific analysis and derived
10 from:

- 11 (A) The contents of a sexual assault examination kit;
- 12 (B) Blood;
- 13 (C) Semen;
- 14 (D) Hair;
- 15 (E) Saliva;
- 16 (F) Skin tissue;
- 17 (G) Fingerprints;
- 18 (H) Bones;
- 19 (I) Teeth; or
- 20 (J) Any other identifiable human biological material or physical
21 evidence.

22 Notwithstanding the foregoing, "DNA work product" does not
23 include a reference sample collected unless it has been shown through
24 DNA comparison to associate the source of the sample with the
25 criminal case for which it was collected.

26 (c) "Governmental entity" means any general law enforcement
27 agency or any person or organization officially acting on behalf of
28 the state or any political subdivision of the state involved in the
29 collection, examination, tracking, packaging, storing, or disposition
30 of biological material collected in connection with a criminal
31 investigation relating to a felony offense.

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

35 (4) The failure of a law enforcement agency to preserve DNA work
36 product does not constitute grounds in any criminal proceeding for
37 challenging the admissibility of other DNA work product that was
38 preserved in a case, and any evidence offered may not be excluded by
39 a court on those grounds. The court may not set aside the conviction
40 or sentence or order the reversal of a conviction under this section

1 on the grounds that the DNA work product is no longer available.
2 Unless the court finds that DNA work product was destroyed with
3 malicious intent to violate this section, a person accused of
4 committing a crime against a person has no cause of action against a
5 law enforcement agency for failure to comply with the requirements of
6 this section. If the court finds that DNA work product was destroyed
7 with malicious intent to violate this section, the court may impose
8 appropriate sanctions. Nothing in this section may be construed to
9 create a private right of action on the part of any individual or
10 entity against any law enforcement agency or any contractor of a law
11 enforcement agency.

12 NEW SECTION. **Sec. 2.** (1) Nothing in this chapter precludes the
13 trial court from ordering the destruction of DNA reference samples
14 contributed by a defendant who was charged and acquitted or whose
15 conviction was overturned in connection with a violent or sex offense
16 as defined in RCW 9.94A.030.

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

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

26 NEW SECTION. **Sec. 3.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act constitute a
31 new chapter in Title 5 RCW."

SHB 1069 - S COMM AMD
By Committee on Law & Justice

ADOPTED 4/8/2015

1 On page 1, line 1 of the title, after "product;" strike the
2 remainder of the title and insert "and adding a new chapter to Title
3 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.

--- END ---