

FINAL BILL REPORT

SHB 1069

C 221 L 15
Synopsis as Enacted

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).

House Committee on Public Safety
Senate Committee on Law & Justice

Background:

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.

DNA Preservation. 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.

Outside of a motion made in court requesting the preservation of DNA evidence 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.

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.

Statute of Limitations. Statutes of limitations are legislative declarations of the period after the commission or discovery of an offense within which actions may be brought on certain claims, or during which certain crimes may be prosecuted. Once a statute of limitations has expired, prosecution is barred.

Statutes of limitations vary according to the crime. In general, simple misdemeanors must be prosecuted within one year, gross misdemeanors must be prosecuted within two years, and felony offenses must be prosecuted within three years of the commission of the crime. However, the limitation period may be varied by statute, and there is no limitation on the time within which a prosecution must commence for the crimes of Murder, Homicide by Abuse, Vehicular Homicide, or the following crimes if death results: Vehicular Assault, Hit and Run injury-accident, and Arson. If no period of limitation is statutorily declared for a particular felony offense, no prosecution may be commenced more than three years after its commission.

Determinate Plus Sentences. Some offenders convicted of certain sex offenses are sentenced to a "determinate plus" sentence. Such an offender will receive a minimum term and a maximum term as imposed by the judge. Once the person reaches the end of his or her minimum sentence, the Indeterminate Sentence Review Board determines if release and supervision are appropriate.

Summary:

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 a defendant has been:

- charged and convicted in connection with the case, the DNA work product must be maintained throughout the length of the defendant's sentence, including any period of community custody extending through final discharge;
- convicted and sentenced to a determinate plus sentence in connection with the case, the DNA work product must be maintained for 99 years or until the death of the defendant, whichever is sooner; and
- found not guilty, where no conviction has been made in connection with the case, the DNA work product must be maintained for 99 years or throughout the period of the statute of limitations, whichever period is sooner.

In any case where the identity of the offender is not known and law enforcement has probable cause to believe the elements of a violent or sex offense has been committed, the DNA work product secured in connection with a the case, including any sexual assault examination kit, must be maintained for 99 years or throughout the period of the statute of limitations, whichever period is shorter.

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 any case where the charges are dismissed with prejudice or the person is found not guilty, upon application from the person and upon meeting any criteria established in law or by rule, the WSP must expunge the person's collected DNA reference sample.

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 on the grounds that the DNA work product is no longer available. If any DNA work product is destroyed with malicious intent, the court may impose sanctions. However, no private cause of action may be brought against a law enforcement agency or contractor of a law enforcement agency for destroying DNA work product.

DNA work product includes: (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. 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.

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.

Votes on Final Passage:

House	77	20	
Senate	47	1	(Senate amended)
House	91	3	(House concurred)

Effective: July 24, 2015