

# HOUSE BILL REPORT

## SHB 1069

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### As Passed Legislature

**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.

House Concurred.

Passed House: 4/20/15, 91-3.

Passed Legislature.

### Brief Summary of Substitute Bill

- Requires the preservation of deoxyribonucleic acid (DNA) products secured in connection with a felony violent or sex offense to be preserved:
  - throughout the length of the defendant's sentence when the defendant has been convicted in connection with the case;
  - for 99 years or until the death of the defendant when the defendant has been convicted and sentenced to a determinate plus sentence in connection with the case;
  - for 99 years or throughout the period of the statute of limitations when the defendant has been found not guilty in connection with the case; or
  - for 99 years or throughout the period of the statute of limitations in any case where the identity of the perpetrator is not known.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

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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.*

**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:**

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. 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.

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, there is in place an absolute bar to prosecution.

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 for the crimes of Vehicular Assault, Hit and Run injury-accident, or Arson, if death results. If no period of limitation is statutorily declared for a 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 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 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;
- been 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
- been 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 including any sexual assault examination kit, secured in connection with the case, must be maintained for 99 years or throughout the period of the statute of limitations, whichever period is sooner.

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 DNA work product is destroyed with malicious intent, the court may impose sanctions. 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.

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. 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.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on April 20, 2015.

**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.