

# SENATE BILL REPORT

## SHB 1069

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As of March 20, 2015

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

**Committee Activity:** Law & Justice: 3/19/15.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Aldo Melchiori (786-7439)

**Background:** 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. 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 WSP.

For appeals 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. There is currently no statute prescribing the length of time biological material collected for DNA testing must be preserved in connection with a criminal investigation case.

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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.*

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 Bill:** A government entity must preserve DNA work product collected in any felony case initially charged as a violent or sex offense. In a case, when 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, if 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.

DNA work product means 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 any material catalogued on a microscope slide or swab, or 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 or other identifiable human biological material or physical evidence. 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.

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.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill is about seeking justice for crime victims and those wrongfully convicted. The work product will help solve cold cases. This standard should have been provided a long time ago. The fiscal note indicates a minimal impact to make sure justice happens. DNA evidence has the power to vindicate the innocent and convict the guilty. Public safety will be enhanced if the correct person is convicted.

CON: Preservation of the DNA work product is not justified in cases that are not charged. The bill should only provide for the retention of post-conviction DNA work product.

**Persons Testifying:** PRO: Representative Orwall, prime sponsor; Bob Cooper, WA Defender Assn., WA Assn. of Criminal Defense Lawyers; Lara Zarowsky, Brandon Skyles, Innocence Project NW.

CON: James McMahon, WA Assn. of Sheriffs and Police Chiefs.

**Persons Signed in to Testify But Not Testifying:** No one.