

SENATE BILL REPORT

SHB 1069

As Reported by Senate Committee On:
Law & Justice, March 31, 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, 3/31/15 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

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

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.

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.

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 (Recommended Amendments): In cases where a person has been charged and convicted, DNA work product must be maintained throughout the length of the offender's sentence until final discharge. If the offense for which the offender is sentencing is a sex offense, the DNA work product must be maintained for 99 years or until the death of the defendant.

In cases where a person has been charged but has not been convicted, DNA work product must be maintained for 99 years or throughout the period of the statute of limitations for the crime, whichever is sooner. In cold cases where the identification of the person is not known, DNA work product, including the sexual assault examination kit, must be maintained for 99 years or throughout the period of the statute of limitations for the crime, whichever is sooner.

It is clarified that nothing precludes a trial court from ordering the destruction of DNA reference samples contributed by a defendant who was charged and subsequently acquitted or whose conviction was overturned in connection with a violent or sex offense. WSP, upon application from the person, must expunge the person's collected DNA reference sample in cases where the charges are dismissed with prejudice or the person is found not guilty.

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, 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 to preserve it. If the court finds that DNA work product was destroyed with malicious intent, the court may impose sanctions. The act does not 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.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments): In cases where a person has been charged and convicted, DNA work product must be maintained throughout the length of the offender's sentence until final discharge. If

the offense for which the offender is sentencing is a sex offense, the DNA work product must be maintained for 99 years or until the death of the defendant.

In cases where a person has been charged but has not been convicted, DNA work product must be maintained for 99 years or throughout the period of the statute of limitations for the crime, whichever is sooner. In cold cases where the identification of the person is not known, DNA work product, including the sexual assault examination kit, must be maintained for 99 years or throughout the period of the statute of limitations for the crime, whichever is sooner.

It is clarified that nothing precludes a trial court from ordering the destruction of DNA reference samples contributed by a defendant who was charged and subsequently acquitted or whose conviction was overturned in connection with a violent or sex offense.

WSP, upon application from the person, must expunge the person's collected DNA reference sample in cases where the charges are dismissed with prejudice or the person is found not guilty.

If DNA work product is destroyed with malicious intent, the court may impose sanctions. No private cause of action may be brought against the law enforcement agency or contractor of a law enforcement agency for destroying DNA work product.

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 on Substitute House Bill: 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.