

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1069

64th Legislature
2015 Regular Session

Passed by the House April 20, 2015
Yeas 91 Nays 3

Speaker of the House of Representatives

Passed by the Senate April 8, 2015
Yeas 47 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1069** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1069

AS AMENDED BY THE SENATE

Passed Legislature - 2015 Regular Session

State of Washington 64th Legislature 2015 Regular Session

By House Public Safety (originally sponsored by Representatives Orwall, Appleton, Kagi, Gregerson, Reykdal, Carlyle, Stanford, Sawyer, Fitzgibbon, Jinkins, Hudgins, Goodman, Clibborn, Moeller, Moscoso, Farrell, and Fey)

READ FIRST TIME 01/23/15.

1 AN ACT Relating to preservation of DNA work product; and adding a
2 new chapter to Title 5 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

10 (3) For purposes of this section:

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

13 (b) "DNA work product" means (i) product generated during the
14 process of scientific analysis of such material, except amplified
15 DNA, material that had been subjected to DNA extraction, and DNA
16 extracts from reference samples; or (ii) any material contained on a
17 microscope slide, swab, in a sample tube, cutting, DNA extract, or
18 some other similar retention method used to isolate potential
19 biological evidence that has been collected by law enforcement as
20 part of its investigation and prepared for scientific analysis,
21 whether or not it is submitted for scientific analysis and derived
22 from:

23 (A) The contents of a sexual assault examination kit;

24 (B) Blood;

25 (C) Semen;

26 (D) Hair;

27 (E) Saliva;

28 (F) Skin tissue;

29 (G) Fingerprints;

30 (H) Bones;

31 (I) Teeth; or

32 (J) Any other identifiable human biological material or physical
33 evidence.

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

38 (c) "Governmental entity" means any general law enforcement
39 agency or any person or organization officially acting on behalf of
40 the state or any political subdivision of the state involved in the

1 collection, examination, tracking, packaging, storing, or disposition
2 of biological material collected in connection with a criminal
3 investigation relating to a felony offense.

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

7 (4) The failure of a law enforcement agency to preserve DNA work
8 product does not constitute grounds in any criminal proceeding for
9 challenging the admissibility of other DNA work product that was
10 preserved in a case, and any evidence offered may not be excluded by
11 a court on those grounds. The court may not set aside the conviction
12 or sentence or order the reversal of a conviction under this section
13 on the grounds that the DNA work product is no longer available.
14 Unless the court finds that DNA work product was destroyed with
15 malicious intent to violate this section, a person accused of
16 committing a crime against a person has no cause of action against a
17 law enforcement agency for failure to comply with the requirements of
18 this section. If the court finds that DNA work product was destroyed
19 with malicious intent to violate this section, the court may impose
20 appropriate sanctions. Nothing in this section may be construed to
21 create a private right of action on the part of any individual or
22 entity against any law enforcement agency or any contractor of a law
23 enforcement agency.

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

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

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

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

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

--- END ---