
Public Safety Committee

HB 2468

Brief Description: Clarifying the retention of biological material collected during criminal investigation.

Sponsors: Representatives Orwall, Kochmar, Appleton, Sells, Takko, Dahlquist, Roberts, Wylie, Goodman, Stonier, Moscoso, Springer, Jinkins, Fitzgibbon and Carlyle.

Brief Summary of Bill

- Establishes a temporary moratorium on the destruction of all biological material relating to a criminal investigation case.
- Creates a work group to study and make recommendations relating to establishing statewide standards for preserving biological material in felony cases.

Hearing Date: 1/29/14

Staff: Yvonne Walker (786-7841).

Background:

All deoxyribonucleic acid (DNA) testing is conducted by the Forensic Laboratory Services Bureau of the Washington State Patrol (WSP). The 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.

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 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. Evidence collected by law enforcement at a crime scene can include

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numerous items such trace evidence, hair and fibers, powder, and prints. Contents of a sexual assault kit or clothing worn by a victim or perpetrator might contain biological evidence that law enforcement may choose to document and preserve.

There is currently no state law specifically addressing the preservation of biological material for DNA testing in connection with criminal investigation cases. Some local law enforcement agencies maintain and preserve evidence relating to a criminal case indefinitely while other local agencies preserved evidence up to the statute of limitations for the crime.

Summary of Bill:

A temporary moratorium (until January 1, 2016) is established on the destruction of all biological material relating to a felony criminal case.

Effective July 1, 2014, it is prohibited for a law enforcement agency or any person involved in the collection, examination, tracking, packaging, storing, or disposition of biological material collected in connection with a criminal investigation or other felony case, to destroy any biological material collected or generated in connection with the case. The entity in possession of the biological material has discretion in determining how the material is retained, provided that it is retained in a condition suitable for DNA testing.

Nothing precludes an evidence technician or other person trained in handling biological material and acting on behalf of a governmental entity from documenting the location of biological material and then removing representative samples from large items of evidence and retaining only the parts containing biological material.

"Biological material" means the contents of a sexual assault examination kit or any blood, semen, hair, saliva, skin tissue, fingerprints, or any other identifiable human biological material or physical evidence that may reasonably be used to incriminate or exculpate any person in a felony criminal investigation, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on any item of evidence, including those that are alleged to have been touched or worn by the perpetrator of the felony offense.

Deoxyribonucleic Acid (DNA) Work Group.

A work group on Preservation of Evidence for Criminal Justice Purposes (Work Group) is established to study and make recommendations relating to establishing statewide standards for preserving biological material in felony cases in Washington. The Work Group consists of members representing the following entities: the Senate, the House of Representatives, the WSP, the Washington Association of Sheriffs and Police Chiefs, the Superior Court Judges' Association, the District and Municipal Court Judges' Association, the Washington Association of Counties, the Washington Association of Prosecuting Attorneys, the Washington Defender's Association or the Washington Association of Criminal Defense Lawyers, the Washington Association of Cities, the Washington Association of County Officials, the Washington State Forensic Investigations Council, and members who represent the community from the Innocence Network in Washington.

Members of the Work Group must select a chair and must research, review, and make recommendations on whether to:

- preserve all items of biological material relating to felony offenses;
- ensure biological material is not lost, destroyed, or contaminated;
- determine consistent specified time periods that biological material be retained and secured in connection with a felony criminal investigation;
- develop a model policy for the collection, tracking, packaging, storing, and disposition of biological material, including the length of time biological material should be retained by a governmental entity; and
- develop a statewide policy that provides clear direction for the disposal of recovered property from misdemeanor criminal investigations when storage of evidence is an issue for felony criminal investigations.

The Work Group must compile its findings and recommendations and submit a final report to the Governor and the appropriate committees of the Legislature by December 1, 2014.

Members of the Work Group must function within existing resources and no specific budget may be provided to complete the report. The participants are encouraged to donate their time to offset any costs.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.