

HOUSE BILL REPORT

HB 2468

As Reported by House Committee On:
Public Safety

Title: An act relating to the retention of biological material collected during criminal investigations.

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 History:

Committee Activity:

Public Safety: 1/29/14, 2/5/14 [DPS].

Brief Summary of Substitute Bill

- Creates a work group to study and make recommendations relating to establishing statewide standards for preserving biological material in felony cases.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Klippert, Ranking Minority Member; Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

Minority Report: Do not pass. Signed by 2 members: Representatives Roberts, Vice Chair; Appleton.

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

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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 numerous items such as 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 Substitute Bill:

Deoxyribonucleic Acid (DNA) Work Group.

A work group on the Preservation of Evidence for Criminal Justice Purposes (Work Group) is established to study and make recommendations for 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, and one county or city employed evidence room technician, persons representing victims of crimes, 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.

Substitute Bill Compared to Original Bill:

The substitute bill eliminates the 18-month temporary moratorium on the destruction of all biological material relating to a criminal investigation case.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Deoxyribonucleic Acid evidence has provided for several criminal cases to be overturned for persons that have been wrongly convicted. On the national level there have been 312 exonerees based on DNA evidence and in 49 percent of those cases, DNA has helped to catch the real perpetrators. The moratorium provision of the bill is to help protect DNA evidence which may become important evidence that can be used later.

Wrongful convictions are extremely rare but they do happen. During the last year, in Washington, there were 25 out of 70 cases where DNA was collected and of those 25 cases, 36 percent had evidence that was lost or destroyed. There is no consistent statewide policy for the handling of DNA evidence. Washington is one out of 16 states that does not have a law to preserve DNA evidence. Biological material can be extremely valuable at the trial level but its importance does not diminish at the appeal level. This bill is intended to preserve the integrity of law enforcement's work. This bill imposes no penalties and is not intended to interfere with current law enforcement procedures. The moratorium on DNA evidence that was in statute several years ago did not impose an undue burden on local law enforcement agencies. This bill could not only help with the potential exoneration of convicted offenders, but will also help to remedy the inconsistency and access to justice.

(Opposed) The Work Group provision of the bill is supported but there is opposition to the moratorium piece of the bill. It is true that there is no statewide retention schedule for the preservation of evidence, but in most cases evidence is saved until the appeal is final. The definition of evidence in the bill is very broad and furthermore, the bill states that all

evidence, including any item that may have a touch of DNA, must be preserved. There are two types of evidence: (1) evidence that we know about; and (2) evidence that we don't know about. The proposal requires resources to be spent to maintain all items as potential sources of touched DNA. Only those items that are significant at the time the evidence is being evaluated should be tested and preserved. Current law is better than any moratorium and investigated items should be kept where they cannot get contaminated.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Lara Zarowsky, Karen Fossum, and Tim Kahn, Innocence Project Northwest; Andrea Piper, Washington Coalition of Sexual Assault Programs; and Chris Kaasa, American Civil Liberties Union of Washington.

(Opposed) Tom McBride, Washington Association of Prosecuting Attorneys; Don Pierce, Washington Association of Sheriffs and Police Chiefs; and James McMahan, Washington Association of County Officials.

Persons Signed In To Testify But Not Testifying: None.