

FINAL BILL REPORT

ESHB 2318

C 26 L 20
Synopsis as Enacted

Brief Description: Advancing criminal investigatory practices.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Orwall, Lovick, Slatter, Morgan, Wylie, Mosbrucker and Pollet).

House Committee on Public Safety
House Committee on Appropriations
Senate Committee on Law & Justice

Background:

The Washington State Patrol (WSP) Crime Laboratory provides forensic DNA analysis services to local law enforcement agencies, assistance to law enforcement officials and prosecutors in the preparation and utilization of DNA evidence for presentation in court, and expert testimony in court on DNA evidentiary issues. The WSP also maintains the state Combined DNA Index System (CODIS), which is composed of different indexes of samples, including the Offender Index and Forensic Index. The Offender Index contains DNA profiles of persons convicted of certain crimes in Washington, where as the Forensic Index contains profiles generated from crime scene evidence, including sexual assault kits. Profiles uploaded into the CODIS are automatically searched against other indexes and may result in an investigative lead for the submitting agency.

Offender DNA for Entry into CODIS.

State law requires the collection of biological samples from certain convicted offenders for Biological samples must be collected from certain convicted offenders for the purposing of entering a profile into the CODIS Offender Index. Various entities are responsible for collecting the samples. For a person who is sentenced to a term of confinement at a state or local correctional or rehabilitative facility, the facility collects the sample. For a person who will not serve any term of confinement, the court must order the person to report to the local police department or sheriff's office and provide a sample by a deadline established by the court. A person who willfully refuses to comply with a legal request for a sample is guilty of a gross misdemeanor.

DNA Work Product.

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.

In any felony case, a sentencing court may order the preservation of biological material or other evidence. In the absence of a court order, preservation practices generally vary across the state. However, in 2015 the state established preservation requirements for DNA work product secured in connection with certain types of criminal cases.

DNA work product includes: product generated during the process of scientific analysis of material, with some exceptions; and any material catalogued on a microscope slide, swab, in a sample tube, cutting, DNA extract, or some other similar retention method used to isolate potential biological evidence collected by law enforcement as part of its investigation and prepared for scientific analysis, whether or not it is submitted for analysis and derived from the contents of a sexual assault kit (SAK), blood, semen, hair, saliva, skin tissue, fingerprints, bones, teeth, or any other identifiable human biological material or physical evidence.

Agencies must preserve DNA work product collected in any felony case initially charged as a violent or sex offense. The mandated period for preservation depends upon whether a defendant has been identified, charged, and convicted, and it varies from the length of a sentence to 99 years.

Sexual Assault Kits.

After a person has been the victim of a sexual assault, the person may undergo a forensic examination for the purpose of collecting evidence left behind during the assault. The doctor or nurse conducting the examination preserves the evidence using an SAK, also commonly referred to as a rape kit. In recent years, several requirements have been established pertaining to the preservation, tracking, and testing of SAKs. However, the term SAK is not defined and what is or is not included in the SAK is not specified for the purposes of the requirements.

Mandatory Testing. A law enforcement agency is required to submit a request for testing to the WSP Crime Laboratory within 30 days of receiving a SAK, provided that the victim has consented to the testing. Consent is not a condition of submission if the SAK was collected from a non-emancipated minor. Beginning May 1, 2022, the WSP must complete testing of an SAK within 45 days of receiving the request.

Tracking. The WSP operates the Statewide SAK Tracking System for the purpose of tracking the location and status of all SAKs from the point of collection and then throughout the criminal justice process. Local law enforcement agencies, prosecutors, hospitals, and the WSP are required to participate in the system. The system also allows sexual assault survivors to anonymously track their SAKs.

Unreported SAKs. An "unreported SAK" refers to a SAK collected from an adult or emancipated minor victim who has consented to the collection of the SAK but who has not reported the alleged crime to law enforcement. In 2019 temporary storage and preservation requirements for unreported SAKs were established. Unreported SAKs collected prior to April 23, 2019, must be stored and preserved by the entity responsible for the collection, while those collected on or after that date must be stored and preserved by the WSP Crime Laboratory. These requirements expire June 30, 2020.

Retention and Storage of Found Property.

When a person finds property without a known owner, the finder must report to the local law enforcement agency. If the property value is \$100 or less, then the finder may retain the property. However, if the property value exceeds \$100, then the finder must surrender the property to the agency to be stored for at least 60 days. Certain steps must be taken to locate the owner. If the owner is not located, then the finder may claim the property. In circumstances where neither the owner nor finder claim the property, the agency may sell, retain, or destroy the property according to certain requirements.

Summary:

Offender DNA for Entry into CODIS.

Certain requirements are modified with respect to convicted offenders who will not immediately be taken into custody and who are required to provide a biological sample. If the local police department or sheriff's office has a protocol for collecting the sample in the courtroom, the court must order the person to immediately provide the sample before leaving the presence of the court. Otherwise, the court must order the person to report to the local police department or sheriff's office.

DNA Work Product.

The requirements for preserving DNA work product in forensic cases are modified. DNA work product also includes the same materials collected by forensic nurses. Law enforcement agencies must also preserve criminal investigatory records related to DNA work product.

Screening byproducts are exempt from DNA work product preservation requirements. A screening byproduct is a product or waste generated during examination of DNA evidence, or the screening process of such evidence, that is not intended for long-term storage.

Sexual Assault Kits.

"Sexual assault kit," as it relates to state law on DNA work product and SAK preservation, testing, and tracking, is defined as including all evidence collected during a sexual assault medical forensic examination, effectively applying existing requirements to the entire contents of the SAK.

Tracking and Testing. The Statewide SAK Tracking System must include information as to whether a particular SAK contains materials collected for forensic toxicological analysis. The requirements for mandatory testing of SAKs does not include toxicological analysis. Law enforcement agencies retain discretion to determine whether to request toxicological analysis.

Unreported SAKs. Beginning June 30, 2020, any unreported SAK must be transported from the collecting entity to the applicable local law enforcement agency. By January 1, 2021,

unreported SAKs currently being stored by the WSP must also be transported to the applicable local law enforcement agency.

The local law enforcement agency is responsible for conducting the transport of the unreported SAK from the collecting entity to the agency, and it must store and preserve the unreported SAK for 20 years from the date of collection.

Retention and Storage of Found Property.

Local governments are provided with flexibility to designate an alternate entity to store found property for the express purpose of allowing law enforcement agencies to prioritize storage space for evidence and potential evidence in criminal investigations.

A city or county may designate an alternate department or entity to accept, store, retain, and dispose of found property. If a city or county exercises this option, then it must establish procedures for ensuring that the following types of property continue to be directed to the law enforcement agency: bank cards; charge and credit cards; cash; government-issued documents, financial documents, and legal documents; firearms; evidence in any judicial or other official proceeding; and any items that are not legal for finders to possess. An alternate department or entity designated to accept, store, retain, or dispose of other found property must comply with the same retention and disposition requirements as would apply to the law enforcement agency.

Case Reviews.

Subject to a specific appropriation, the Criminal Justice Training Commission (CJTC) must develop a proposal for a case review program. The CJTC is required to research, design, and develop case review strategies designed to optimize outcomes in sexual assault investigations through improved training and investigatory practices. The CJTC must consult with specified entities and may form a multidisciplinary work group. The CJTC must submit a report with its proposal to the Governor and Legislature by December 1, 2020.

Votes on Final Passage:

House	92	4	
Senate	47	0	(Senate amended)
House	96	1	(House concurred)

Effective: June 11, 2020
June 30, 2020 (Section 3)