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**SUBSTITUTE HOUSE BILL 1069**

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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, Jenkins, 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.

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