

DNA EVIDENCE

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting (5-4-105, MCA; [Chapter 309, Laws of 2017](#)). The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: DNA evidence (sometimes called biological evidence) plays a role in several parts of Montana’s criminal justice system. The state’s DNA repository is established in [Title 44, chapter 6, part 1, MCA](#). Also known as the DNA Index, it is a “computerized DNA identification index for the receipt, storage, and exchange of DNA records.” The part governs how what evidence must be collected in the index, how it must be submitted, who may access the information, and how the records are stored or removed.

According to section 44-6-102(2), MCA, the index must include:

“(a) DNA records for an individual convicted of a felony offense or a youth found under 41-5-1502 to have committed a sexual or violent offense;

(b) DNA records for a person upon order of a sentencing judge under 46-18-202; and

(c) analyses of DNA samples recovered from crime scenes, medical examinations, and unidentified human remains. For purposes of identification of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.”

Generally, DNA records in the index are considered confidential criminal justice information.

[Section 45-1-205, MCA](#), governs general time limitations for criminal prosecutions. Subsection (9) of that section provides that a prosecution may be commenced within 1 year after a suspect is conclusively identified by DNA evidence if the statute of limitations for that crime had already expired when the DNA testing was conducted.

[Section 46-21-110, MCA](#), provides a process for a person convicted of a felony to petition a court to allow DNA evidence related to the felony to be tested.

[Section 46-21-111, MCA](#), provides timelines for law enforcement agencies to preserve biological evidence.

Legislative Services Division Materials:

[2009-2010 Law and Justice Interim Committee Final Report](#) (includes SJR 29 Study of Preserving DNA Evidence, pg 99)

Other Materials:

[Montana Supreme Court Opinion in Tipton v 13th Judicial District](#), OP 17-0678, July 5, 2018

Introduced Legislation

2017

None

2015

[House Bill No. 516](#) -- Chapter Number Assigned -- AN ACT REVISING LAWS RELATING TO POSTCONVICTION DNA TESTING; AUTHORIZING A COURT TO ORDER THE STATE TO PRODUCE OR ASSIST IN THE LOCATION OF CERTAIN EVIDENCE; AUTHORIZING A COURT TO ORDER THE PRODUCTION OF CERTAIN LABORATORY DOCUMENTS RELATING TO THE ANALYSIS OF EVIDENCE; REVISING POSTCONVICTION DNA PROCEEDINGS WHEN THE TESTS RESULTS ARE FAVORABLE TO THE PETITIONER AND OTHER CONDITIONS ARE SATISFIED; AUTHORIZING A COURT TO ORDER A DNA PROFILE TO BE SUBMITTED TO CERTAIN DNA DATABASES; AUTHORIZING VICTIM SERVICES IN CERTAIN CASES; AMENDING SECTION 46-21-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

2013

None

2011

[House Bill No. 117](#) -- Chapter Number Assigned -- AN ACT REQUIRING CERTAIN ADULT OFFENDERS SUBJECT TO SUPERVISION BY THE DEPARTMENT OF CORRECTIONS PURSUANT TO THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION TO PROVIDE A BIOLOGICAL SAMPLE FOR DNA TESTING; AMENDING SECTION 44-6-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

[Senate Bill No. 58](#) -- (H) Died in Standing Committee -- AN ACT LENGTHENING THE TIME PERIOD FOR WHICH BIOLOGICAL EVIDENCE MUST BE PRESERVED AFTER A CONVICTION HAS BEEN OBTAINED FOR CERTAIN FELONY CRIMINAL OFFENSES; PROVIDING A MINIMUM TIME PERIOD FOR WHICH BIOLOGICAL EVIDENCE MUST BE PRESERVED IN CERTAIN FELONY CRIMINAL INVESTIGATIONS WHEN A CONVICTION HAS NOT BEEN OBTAINED; AUTHORIZING THE DISPOSAL OF EVIDENTIARY ITEMS THAT ARE IMPRACTICAL TO STORE IF PORTIONS OF THE ITEMS SUFFICIENT TO PERMIT FUTURE

DNA TESTING ARE PRESERVED; AMENDING SECTION 46-21-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

2009

[Senate Bill No. 447](#) -- Chapter Number Assigned -- AN ACT CLARIFYING PRACTICES RELATED TO THE PRESERVATION AND DISPOSAL OF BIOLOGICAL EVIDENCE IN FELONY CRIMINAL CASES; AND AMENDING SECTION 46-21-111, MCA.

[Senate Joint Resolution No. 29](#) -- (S) Filed with Secretary of State -- A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EXAMINE THE RETENTION AND PRESERVATION OF BIOLOGICAL EVIDENCE BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES.