

1 SENATE BILL NO. 58

2 INTRODUCED BY L. MOSS

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT LENGTHENING THE TIME PERIOD FOR WHICH BIOLOGICAL
6 EVIDENCE MUST BE PRESERVED AFTER A CONVICTION HAS BEEN OBTAINED FOR CERTAIN FELONY
7 CRIMINAL OFFENSES; PROVIDING A MINIMUM TIME PERIOD FOR WHICH BIOLOGICAL EVIDENCE MUST
8 BE PRESERVED IN CERTAIN FELONY CRIMINAL INVESTIGATIONS WHEN A CONVICTION HAS NOT BEEN
9 OBTAINED; AUTHORIZING THE DISPOSAL OF EVIDENTIARY ITEMS THAT ARE IMPRACTICAL TO STORE
10 IF PORTIONS OF THE ITEMS SUFFICIENT TO PERMIT FUTURE DNA TESTING ARE PRESERVED;
11 AMENDING SECTION 46-21-111, MCA; AND PROVIDING AN APPLICABILITY DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 46-21-111, MCA, is amended to read:

16 **"46-21-111. Preservation and disposal of biological evidence obtained in felony criminal**
17 **proceeding.** (1) (a) A law enforcement agency shall preserve biological evidence that the agency has reason
18 to believe contains DNA material and that is obtained in connection with an investigation of an offense that could
19 result in a felony for which a conviction is obtained.

20 (b) (i) The After a felony conviction is obtained, the agency shall preserve the evidence for a minimum
21 of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a
22 court order issued within 3 years after the conviction in the case becomes final.

23 (ii) Within 3 years after a conviction becomes final, the defendant may request that the biological evidence
24 available in the person's case be preserved for the time period in the statute of limitations for the crime involved
25 or for 30 years, whichever is less, if the conviction is for one of the following offenses:

26 (A) deliberate homicide under 45-5-102;

27 (B) mitigated deliberate homicide under 45-5-103;

28 (C) negligent homicide under 45-5-104;

29 (D) vehicular homicide while under the influence under 45-5-106;

30 (E) sexual assault under 45-5-502; or

1 (F) sexual intercourse without consent under 45-5-503.

2 (iii) The right to have biological evidence preserved under this subsection (1)(b) may not be waived or
3 forfeited.

4 (c) When a conviction has not been obtained for a felony criminal offense listed in subsection (1)(b)(ii),
5 the agency shall preserve the evidence for the time period in the statute of limitations for the crime involved or
6 for 30 years, whichever is less.

7 ~~(b)(2)~~ (a) An agency may propose to dispose of biological evidence before the expiration of the time
8 period described in subsection (1)~~(a)~~ if:

9 (i) with respect to biological evidence obtained in an investigation of a felony criminal offense for which
10 a conviction has been obtained, the agency notifies the convicted person, unless the person is deceased, makes
11 a reasonable attempt to notify the attorney of record for the convicted person, and notifies the Montana chief
12 public defender;

13 (ii) with respect to biological evidence obtained in an investigation of a felony criminal offense for which
14 a conviction has not been obtained, the agency notifies the county attorney and makes a reasonable attempt to
15 notify the victim or, if the victim is deceased, the victim's immediate family.

16 (b) The notification must include a description of the biological evidence, a statement that the agency
17 will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service
18 of the notification in the court that entered the judgment, and the name and mailing address of the court where
19 an objection may be filed. If an objection to the disposition of the evidence is not filed within the 120-day period,
20 the agency may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and
21 against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall
22 issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice
23 system.

24 (c) If a party objects to the disposition of the biological evidence, the agency has the burden of proving
25 by a preponderance of the evidence that the evidence should be disposed of.

26 (3) Nothing in this section requires an agency to store an item of such size, bulk, or physical character
27 as to render retention impractical. If retention is impractical because of an item's size, bulk, or physical character,
28 the agency may remove and preserve a portion or portions of the item sufficient to permit future testing for DNA.
29 Destruction of evidence pursuant to this subsection must follow the process established in subsection (2).

30 ~~(2)~~(4) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division

1 of the department of justice shall permanently preserve under laboratory control any remaining biological
2 evidence collected from items submitted to it.

3 ~~(3)~~(5) For purposes of this section, the following definitions apply:

4 (a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail
5 scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault
6 examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate
7 or exculpate any person of an offense.

8 (b) "DNA" means deoxyribonucleic acid."
9

10 NEW SECTION. **Section 2. Applicability.** [This act] applies to crimes committed on or after [the
11 effective date of this act].

12 - END -



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2013 Biennium

Bill # SB0058

Title: Lengthen time DNA evidence must be preserved in certain cases

Primary Sponsor: Moss, Lynda

Status: As Introduced-Revised

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: This bill has no fiscal impact to the state.

Effect on County or Other Local Revenues or Expenditures:

1. SB 58 would require local law enforcement officials to preserve biological evidence obtained in connection with an investigation of an offense that could result in a felony conviction, resulting in the potential for additional evidence to be maintained by local law enforcement.
2. SB 58 could require a local law enforcement agency to store biological evidence for a period of up to 30 years.
3. The potential increased storage requirements and reporting requirements would have a significant fiscal impact to local law enforcement agencies.

Sponsor's Initials

Date

Budget Director's Initials

Date

SPONSOR'S REBUTTAL TO FISCAL NOTE

Bill Number: SB 58

Date Prepared: February 8, 2011

Short Title: Lengthen time DNA evidence must be preserved in certain cases

Sponsor: Lynda Moss, Jim Shockley

Fiscal Note Version and Date: Version 2 2/7/11

Generally, why do you disagree with the fiscal note?

SB 58 includes provisions that will mitigate storage costs of biological evidence by law enforcement agencies. SB 58 was requested by the Interim Law and Justice Committee as a consensus bill that would specifically address the concerns of storage costs for biological evidence by enabling agencies to preserve a clipping or clippings from bulk items. SB 58 does not include any requirements for cataloging evidence or climate control in storage facilities and it establishes provisions for agencies to dispose of evidence.

Specifically, what in the fiscal note do you feel is flawed?

[Describe specific assumptions, calculations, technical issues, etc.]

Effect on County or local revenue or expenditures #3

Mitigating facts that offset the burden of the new requirement are:

1. Longer term preservation would only be required in cases where someone initiates a request AND the judge orders the preservation. Under current law, a judge can already order longer preservation. The new language makes it clear that individuals can request longer preservation in certain crimes.
2. In addition to existing language that allows departments to request early disposal of evidence, the bill adds the provision that departments do not need to keep bulk items if they keep small clippings.
3. The release processes allowing to dispose of evidence remains in statue and are enhanced by Section 1 (3)

What is your estimate of the fiscal impact?

It is recognized there will be costs; however, as stated previously, the intent of SB 58 is to mitigate those costs to local law enforcement agencies. In addition to the provisions in SB 58, the Montana Forensic Science Division State Crime Lab will be providing training on evidence collection for law enforcement agencies this spring.

SB 58

Montana
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Montana Legislature

Detailed Bill Information



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Bill Draft Number: LC0364

Current Bill Text: [HTML](#) [PDF](#)

Bill Type - Number: SB 58

[Fiscal Note](#) [Sponsor FN Rebuttal](#)

Short Title: Lengthen time DNA evidence must be preserved in certain cases

Primary Sponsor: Lynda Moss


[All Available Audio for this Bill](#)

Bill Actions - Current Bill Progress: Probably Dead

Bill Action Count: 42

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Action - Most Recent First	Date	Votes Yes	Votes No	Committee <i>(What's New?)</i>
(H) Died in Standing Committee	04/28/2011			
(H) Tabled in Committee	03/10/2011			(H) Judiciary
(H) Hearing	03/09/2011			(H) Judiciary (Audio)
(H) Referred to Committee	03/03/2011			(H) Judiciary
(H) First Reading	03/03/2011			
(S) Transmitted to House	02/15/2011			
(S) 3rd Reading Passed	02/15/2011	27	23	
(S) Scheduled for 3rd Reading	02/15/2011			
(S) 2nd Reading Passed	02/14/2011	33	17	Audio
(S) Scheduled for 2nd Reading	02/14/2011			
(S) Sponsor Rebuttal to Fiscal Note Printed	02/09/2011			
(S) Sponsor Rebuttal to Fiscal Note Signed	02/09/2011			
(S) Sponsor Rebuttal to Fiscal Note Received	02/09/2011			
(S) Revised Fiscal Note Printed	02/09/2011			
(S) Sponsor Rebuttal to Fiscal Note Requested	02/07/2011			
(S) Revised Fiscal Note Received	02/07/2011			
(S) Revised Fiscal Note Requested	02/04/2011			

(S) Committee Report--Bill Passed	02/02/2011			(S) Judiciary
(S) Committee Executive Action--Bill Passed	02/02/2011	8	4	(S) Judiciary
(S) Hearing	01/11/2011			(S) Judiciary (Audio)
(S) Sponsor List Modified	01/06/2011			
(S) Hearing Canceled	01/05/2011			(S) Judiciary
(S) Fiscal Note Printed	01/05/2011			
(S) Fiscal Note Signed	01/05/2011			
(S) Fiscal Note Received	01/04/2011			
(S) First Reading	01/03/2011			
(S) Referred to Committee	12/27/2010			(S) Judiciary
(S) Fiscal Note Requested	12/15/2010			
(C) Introduced Bill Text Available Electronically 	12/13/2010			
(S) Introduced	12/13/2010			
(C) Pre-Introduction Letter Sent	12/10/2010			
(C) Pre-Introduction Letter Sent	11/10/2010			
(C) Pre-Introduction Letter Sent	11/08/2010			
(C) Draft in Assembly/Executive Director Review	11/04/2010			
(C) Draft in Final Drafter Review	11/01/2010			
(C) Bill Draft Text Available Electronically	10/28/2010			
(C) Draft in Input/Proofing	10/28/2010			
(C) Draft to Drafter - Edit Review [JLN]	10/28/2010			
(C) Draft in Legal Review	09/17/2010			
(C) Draft to Requester for Review	09/17/2010			
(C) Fiscal Note Probable	09/14/2010			
(C) Draft Request Received	09/14/2010			

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Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Law and Justice Interim Committee		
Drafter	Scurr	Sheri	
By Request Of	Law and Justice Interim Committee		
Primary Sponsor	Moss	Lynda	

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Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Criminal Procedure (see also: Law Enforcement)		Simple	CRP

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Additional Bill Information

Fiscal Note Probable: Yes

Preintroduction Required: Y

Session Law Ch. Number:

DEADLINE

Category: General Bills

Transmittal Date: 02/24/2011

Return (with 2nd house amendments) Date: 04/01/2011

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