

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

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