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As of: July 28, 2010 (2:06pm)

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**** Bill No. ****
Introduced By *****
By Request of the *****

NOTE: This bill is an amended version of the bill draft presented by Sen. Moss as a starting point for committee discussion. The amended version incorporates changes proposed by Sen. Shockley. Changes that are new language are indicated in CAPITOL LETTERS.

A Bill for an Act entitled: "An Act extending 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 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; and amending section 46-21-111, MCA."

WHEREAS CLAUSES DELETED

1
2 Be it enacted by the Legislature of the State of Montana:

3
4 **Section 1.** Section 46-21-111, MCA, is amended to read:

5 **"46-21-111. Preservation and disposal of biological**
6 **evidence obtained in felony criminal proceeding.** (1) (a) A law
7 enforcement agency shall preserve as provided in this section
8 biological evidence that the agency has reason to believe
9 contains DNA material and that is obtained in connection with an
10 investigation of an offense that could result in a felony for
11 which a conviction is obtained.

12 (b) The After a conviction is obtained, the agency shall:

13 (i) except as provided in subsection (b)(ii), preserve the
14 evidence for a minimum of 3 years after the conviction in the
15 case becomes final or for any period beyond 3 years that is
16 required by a court order issued within 3 years after
17 the conviction in the case becomes final.

18 (ii) ~~preserve the evidence for at least the term of~~
19 ~~convicted person's incarceration~~ WITHIN 3 YEARS AFTER A
20 CONVICTION BECOMES FINAL, THE DEFENDANT MAY REQUEST THAT THE
21 BIOLOGICAL EVIDENCE AVAILABLE IN THE PERSON'S CASE BE PRESERVED
22 FOR THE TIME PERIOD IN THE STATUTE OF LIMITATIONS FOR THE CRIME,
23 OR 30 YEARS, WHICHEVER IS LESS, if the conviction is for one of
24 the following offenses:

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

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

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

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1 (D) VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE UNDER 45-
2 5-106

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

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

5 (III) THE RIGHT TO HAVE BIOLOGICAL EVIDENCE PRESERVED UNDER
6 SUBSECTION (1) (B) (II) CANNOT BE THE SUBJECT OF A PLEA AGREEMENT,
7 OR ANY OTHER UNDERSTANDING BETWEEN THE PROSECUTION AND THE
8 DEFENSE. THE CONVICTED PERSON'S ATTORNEY HAS A DUTY TO REPRESENT
9 THE PERSON WITH REGARD TO BIOLOGICAL EVIDENCE PRESERVATION UNDER
10 SUBSECTION (1) (B) (II) UNTIL THE 3-YEAR PERIOD PROVIDED FOR IN
11 SUBSECTION (1) (B) (I) EXPIRES.

12 (c) When a conviction has not been obtained for a felony
13 criminal offense listed in subsection (2) (b) (ii), the agency
14 shall preserve the evidence for ~~at least the time period~~
15 ~~prescribed in the statutes of limitation applicable to the~~
16 ~~offense~~ AS LONG AS THE STATUTE OF LIMITATIONS FOR THE CRIME
17 INVOLVED, OR 30 YEARS, WHICHEVER IS LESS.

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

21 (i) with respect to biological evidence obtained in an
22 investigation of a felony criminal offense for which a conviction
23 has been obtained, the agency notifies the convicted person, the
24 attorney of record for the convicted person, and the Montana
25 chief public defender.

26 (ii) with respect to biological evidence obtained in an
27 investigation of a felony criminal offense for which a conviction

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1 has not been obtained, the agency notifies ~~the victim and the~~
2 county attorney AND MAKES A REASONABLE ATTEMPT TO NOTIFY THE
3 VICTIM, OR IF THE VICTIM IS DECEASED, THE VICTIM'S IMMEDIATE
4 FAMILY.

5 (b) The notification must include a description of the
6 biological evidence, a statement that the agency will dispose of
7 the evidence unless a party files an objection in writing within
8 120 days from the date of service of the notification in the
9 court that entered the judgment, and the name and mailing address
10 of the court where an objection may be filed. If an objection to
11 the disposition of the evidence is not filed within the 120-day
12 period, the agency may dispose of the evidence. If a written
13 objection is filed, the court shall consider the reasons for and
14 against disposition of the evidence, may hold a hearing on the
15 proposed disposition of the evidence, and shall issue an order
16 ruling on the matter as required by the interests of justice and
17 the integrity of the criminal justice system.

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

21 (3) Nothing in this section requires an agency to store an
22 item of such size, bulk, or physical character as to render
23 retention impractical. If retention is impractical because of an
24 item's size, bulk, or physical character, the agency may remove
25 and preserve a portion or portions of the item sufficient to
26 permit future DNA testing. THE CONVICTED PERSON MUST BE GIVEN
27 NOTICE OF EVIDENCE DESTRUCTION PROPOSED UNDER THIS SECTION AND

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1 PROVIDED WITH AN OPPORTUNITY TO OBJECT TO THE DESTRUCTION.

2 ~~(2)~~(4) Upon completion of laboratory analysis, the
3 laboratory operated by the forensic sciences division of the
4 department of justice shall permanently preserve under laboratory
5 control any remaining biological evidence collected from items
6 submitted to it.

7 ~~(3)~~(5) For purposes of this section, the following
8 definitions apply:

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

16 (b) "DNA" means deoxyribonucleic acid."

17 {Internal References to 46-21-111: None.}

18 - END -

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