



Legislative Background Brief
for the
Law and Justice Interim Committee

December 2011

**Storage of Biological Evidence:
Legislative History of SB 58 and Decision Points**

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Bill summary

Senate Bill No. 58, which lengthened the time period for which biological evidence must be preserved, was requested by the 2009-2010 Law and Justice Interim Committee (LJIC) and carried by Sen. Lynda Moss during the 2011 Session.

The bill provided that:

- biological evidence not yet tested for DNA that was collected in felony criminal cases must be preserved for the period of time in the statute of limitations for the crime, or for 30 years, whichever is less;
- biological evidence not yet tested for DNA would only have to be kept for this longer period of time after a conviction if the crime was deliberate homicide, mitigated deliberate homicide, negligent homicide, vehicular homicide while under the influence, sexual assault, or sexual intercourse without consent; and
- biological evidence not yet tested for DNA may be disposed of earlier if it is large or bulky and a smaller piece of the evidence containing the biological material is preserved or if a court authorized the disposal.

Fiscal note

The fiscal note showed no fiscal impact to the state but estimated that the bill would have a significant fiscal impact to local law enforcement agencies because of the potential increased storage requirements. The sponsor did not agree with the fiscal note's assumptions, so provided a sponsor's fiscal note.

The sponsor's fiscal note stated that the fiscal note from the budget office failed to account for provisions in the bill that would mitigate costs for local law enforcement agencies.

These mitigating factors included:

- the provision allowing for the disposal of large bulky items of evidence if smaller samples were kept;
- the longer preservation requirements were limited to very specific types of cases;
- the longer preservation requirement was only triggered if the defendant requested the preservation and only if the judge orders the longer preservation; and
- the bill kept in tact and enhanced the provision allowing a law enforcement agency to petition the court in order to dispose of any evidence earlier if preservation of the material was creating a burden to the agency.

Summary of actions

SB 58 was initially heard in Senate Judiciary and passed out of committee on an 8 to 4 vote. The bill passed second reading in the Senate on a 33 to 17 vote, but was tabled in House Judiciary after a do concur motion failed 6 to 14.

Proponents

Proponents argued that:

- if the timetable in current law (3 years) was followed and critical biological evidence was disposed of, innocent people could still be wrongfully incarcerated or executed;
- current law does not currently address preservation of biological evidence in cold cases to help identify the real perpetrators;
- the new requirements would only apply in serious cases of homicide and rape;
- many counties are already retaining this evidence but there are no statewide standards so evidence preservation standards vary county by county making it a hit or miss situation; and
- concessions were made to mitigate costs for counties.

Proponents who testified at either the senate or house hearing or both were:

Jessie McQuillan, Montana Innocense Project
Ron Waterman, Defense Attorney

Kelsen Young, Montana Coalition Against Domestic and Sexual Violence
Sen. Larry Jent (D), SD32 Bozeman
Nikki Zupanic, ACLU
Kirk Bloodsworth, self, former death row inmate, first person exonerated by
DNA evidence in the United States

Opponents

Opponents argued that the bill:

- shifted what should be state costs and responsibilities to the counties;
- that after an investigation has been completed, it should be the state's responsibility to preserve and store untested biological evidence;
- that funding and technical assistance should be provided to the counties if the state expected counties to keep untested biological evidence; and
- that proper DNA testing of biological evidence should be done before an investigation is complete and that full funding of the state crime lab to accomplish that should be provided for in the bill.

Opponents who testified at either the senate hearing or the house hearing or both were:

Sheryl Wood and Harold Blattie, Montana Association of Counties
Bob Gilbert, Rosebud County, Dawson County, Musselshell County
Jim Smith, Montana Sheriffs and Peace Officers Association
Michael Sehestedt, self
Mark Murphy, Montana County Attorney's Association

Informational testimony

Informational witnesses at either the senate or house hearing or both were:

Mark Murphy, Montana County Attorney's Association
Ali Bovingdon, Assistant Attorney General, Department of Justice
Phil Kinsey, DNA section supervisor, State Crime Lab

Executive action

Senate Judiciary

Motion to DO PASS passed:

Yes votes: 8 Murphy (R), Shockley(R), Blewitt (D), Augare (D), Hutton
(R), Jent (D), Larson (D), Moss (D)

No votes: 4 Hinkle (R), proxies - Essmann (R), Vincent (R), Peterson (R)

House Judiciary

Motion to DO CONCUR failed:

Yes votes 6: Driscoll (D), Hill (D), MacDonald (D), Pease-Lopez (D),
Wagner (R), Warburton (R)

No votes: 14 Peterson (R), Kerns (R), Bangerter (R), Hansen (R), Harris
(R), Loney (R), Read (R), Regier (R), Skattum (R), - proxies
for Sands (D), Menahan (D), Howard (R), O'Hara (R),
More (R)

Decision points for the LJIC

1. Does the LJIC want to consider a committee bill for the 2013 session concerning preservation and storage of biological evidence?
2. If the LJIC wants to proceed with a committee bill, should the bill be based on SB 58 or a new bill? If a new bill, what direction does the committee have for staff when developing a new bill for further discussion?
3. What research questions, if any,, does the committee have for staff?

Attachments

A - SB 58, fiscal note, sponsor's fiscal note, and history of bill actions, 2011 Session

B - Extract from LJIC final report on SJR 29 study and final recommendation

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