

Unofficial Draft Copy

As of: August 19, 2010 (1:10pm)

LCdna3

1 **** Bill No. ****
2 Introduced By *****
3 By Request of the *****
4

5 **NOTE: This bill is the draft as approved by the DNA Subcommittee**
6 **at its conference call meeting on August 3rd, with some staff**
7 **corrections to internal references, style, punctuation, and**
8 **outlining. Changes from the initial draft, LCdna1, are shown in**
9 **CAPITOL LETTERS.**

10
11 A Bill for an Act entitled: "An Act extending the time period for
12 which biological evidence must be preserved after a conviction
13 has been obtained for certain felony criminal offenses; providing
14 a minimum time period for which biological evidence must be
15 preserved in felony criminal investigations when a conviction has
16 not been obtained; authorizing the disposal of evidentiary items
17 that are impractical to store if portions of the items sufficient
18 to permit future DNA testing are preserved; and amending section
19 46-21-111, MCA."

20
21 **WHEREAS CLAUSES DELETED**

22
23 Be it enacted by the Legislature of the State of Montana:

24
25 **Section 1.** Section 46-21-111, MCA, is amended to read:

26 **"46-21-111. Preservation and disposal of biological**
27 **evidence obtained in felony criminal proceeding. (1) (a) A law**

Unofficial Draft Copy

As of: August 19, 2010 (1:10pm)

LCdna3

1 enforcement agency shall preserve as provided in this section
2 biological evidence that the agency has reason to believe
3 contains DNA material and that is obtained in connection with an
4 investigation of an offense that could result in a felony for
5 which a conviction is obtained.

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

11 (ii) WITHIN 3 YEARS AFTER A CONVICTION BECOMES FINAL, THE
12 DEFENDANT MAY REQUEST THAT THE BIOLOGICAL EVIDENCE AVAILABLE IN
13 THE PERSON'S CASE BE PRESERVED FOR THE TIME PERIOD IN THE STATUTE
14 OF LIMITATIONS FOR THE CRIME, OR 30 YEARS, WHICHEVER IS LESS, IF
15 THE CONVICTION IS FOR ONE OF THE FOLLOWING OFFENSES:

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

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

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

19 (D) VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE UNDER 45-
20 5-106

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

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

23 (iii) THE RIGHT TO HAVE BIOLOGICAL EVIDENCE PRESERVED UNDER
24 THIS SUBSECTION (1) (B) CANNOT BE WAIVED OR FORFEITED.

25 (c) When a conviction has not been obtained for a felony
26 criminal offense listed in subsection (1) (b) (ii), the agency
27 shall preserve the evidence for AS LONG AS THE STATUTE OF

Unofficial Draft Copy

As of: August 19, 2010 (1:10pm)

LCdna3

1 LIMITATION FOR THE CRIME INVOLVED, OR 30 YEARS, WHICHEVER IS
2 LESS.

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

6 (i) with respect to biological evidence obtained in an
7 investigation of a felony criminal offense for which a conviction
8 has been obtained, the agency notifies the convicted person, the
9 attorney of record for the convicted person, and the Montana
10 chief public defender.

11 (ii) with respect to biological evidence obtained in an
12 investigation of a felony criminal offense for which a conviction
13 has not been obtained, the agency notifies the county attorney
14 AND MAKES A REASONABLE ATTEMPT TO NOTIFY THE VICTIM, OR IF THE
15 VICTIM IS DECEASED, THE VICTIM'S IMMEDIATE FAMILY.

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

Unofficial Draft Copy

As of: August 19, 2010 (1:10pm)

LCdna3

1 the integrity of the criminal justice system.

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

5 (3) Nothing in this section requires an agency to store an
6 item of such size, bulk, or physical character as to render
7 retention impractical. If retention is impractical because of an
8 item's size, bulk, or physical character, the agency may remove
9 and preserve a portion or portions of the item sufficient to
10 permit future testing for DNA. IF THE EVIDENCE TO BE DISPOSED OF
11 UNDER THIS SUBSECTION (3) RELATES TO A CRIME FOR WHICH A
12 CONVICTION HAS BEEN OBTAINED, THE CONVICTED PERSON MUST BE GIVEN
13 NOTICE OF THE PROPOSED EVIDENCE DESTRUCTION AND PROVIDED WITH AN
14 OPPORTUNITY TO OBJECT TO THE DESTRUCTION.

15 ~~(2)~~(4) Upon completion of laboratory analysis, the
16 laboratory operated by the forensic sciences division of the
17 department of justice shall permanently preserve under laboratory
18 control any remaining biological evidence collected from items
19 submitted to it.

20 ~~(3)~~(5) For purposes of this section, the following
21 definitions apply:

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

Unofficial Draft Copy

As of: August 19, 2010 (1:10pm)

LCdna3

1 offense.

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

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

4 - END -

5 {Name : Sheri S. Heffelfinger
6 Title : Research Analyst
7 Agency : Legislative Services Division
8 Phone : 444-3596
9 E-Mail : sheffelfinger@mt.gov}