

HOUSE BILL NO. HB0172

Evidence preservation.

Sponsored by: Representative(s) Eklund

A BILL

for

1 AN ACT relating to criminal procedure; requiring
2 preservation of sexual assault biological evidence as
3 specified; conforming provisions; and providing for an
4 effective date.

5

6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 6-2-309(n), 7-2-105(p)(intro) and (r)
9 and 7-19-402(c) are amended to read:

10

11 **6-2-309. Medical examination of victim; costs; use of**
12 **report; minors; rights of victims; reimbursement.**

13

14 (n) No evidence, record, report or other examination
15 results or analysis collected or created under subsection
16 (a) of this section shall be destroyed until all applicable

1 ~~statutes of limitation have expired or a court orders the~~
2 ~~destruction~~ a minimum of ten (10) years have elapsed and
3 thereafter upon the death of the person whose evidence was
4 collected or fifty (50) years from the collection date,
5 whichever first occurs.

6

7 **7-2-105. Disposition and appraisal of property seized**
8 **or held; notice and order to show cause; judgment.**

9

10 (p) For purposes of this section, seized property
11 that is not subject to W.S. 35-7-1049 may be summarily
12 destroyed, except as specified in subsection (r) of this
13 section, provided the lawful owner has been contacted and
14 has declined to take possession of the property, including:

15

16 (r) Law enforcement agencies shall preserve
17 biological material:

18

19 (i) That was seized or recovered as evidence in
20 the investigation or prosecution that resulted in a
21 conviction or adjudication as a delinquent for a crime of
22 violence and not consumed in previous DNA testing. The
23 biological material shall be preserved ~~for five (5) years~~

1 ~~or, except as provided in this section,~~ for as long as any
2 person incarcerated in connection with the case or
3 investigation remains in custody, ~~whichever is longer.~~
4 ~~Notwithstanding any provisions to the contrary in this~~
5 ~~section, effective July 1, 2008~~ except as specified in this
6 paragraph and except as specified in paragraph (ii) of this
7 subsection. A law enforcement agency may dispose of the
8 biological material after five (5) years if the law
9 enforcement agency notifies any person who remains
10 incarcerated in connection with the investigation or
11 prosecution and any counsel of record for ~~such~~ that person,
12 or if there is no counsel of record, the state public
13 defender, of the intention to dispose of the evidence and
14 the law enforcement agency affords the person not less than
15 one hundred eighty (180) days after the notification to
16 file a motion for DNA testing or preservation of the
17 biological material; ~~The law enforcement agency shall not~~
18 ~~be required to preserve~~

19
20 (ii) That is sexual assault biological material
21 according to W.S. 6-2-309(n). As used in this paragraph,
22 "sexual assault biological material" includes material
23 seized, recovered or held under this section, evidence,

1 records and reports gathered or created during an
2 examination conducted under W.S. 6-2-309 and DNA samples
3 collected under W.S. 7-19-402;
4

5 (iii) Except evidence that is required to be,
6 and has been, returned to its rightful owner, or is of such
7 a size, bulk or physical character as to render retention
8 impracticable; ~~If practicable, the law enforcement agency~~
9

10 (iv) And shall remove and preserve
11 representative portions of the biological material
12 sufficient to permit future DNA testing before returning or
13 disposing of the material.
14

15 **7-19-402. DNA database created; uses of information**
16 **restricted.**
17

18 (c) The state DNA database, including test
19 procedures, laboratory equipment, supplies and computer
20 software shall be compatible with that utilized by the FBI.
21 Local criminal justice agencies that establish or operate a
22 DNA identification record system shall ensure that such
23 system is compatible with the state DNA database and that

1 the local system is equipped to receive and answer
2 inquiries from the state DNA database and transmit DNA
3 records to the state DNA database. Procedures and rules for
4 the collection, analysis, storage, expungement and use of
5 DNA identification data shall be uniform throughout the
6 state DNA database. Sexual assault biological evidence
7 shall be preserved according to W.S. 6-2-309(n).

8

9 **Section 2.** This act is effective immediately upon
10 completion of all acts necessary for a bill to become law
11 as provided by Article 4, Section 8 of the Wyoming
12 Constitution.

13

14

(END)