

## 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 unless pursuant to a court order or a minimum~~  
3 ~~of ten (10) years have elapsed and thereafter upon the~~  
4 ~~death of the victim whose evidence was collected or fifty~~  
5 ~~(50) years from the collection date, whichever first~~  
6 ~~occurs.~~

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

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

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

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

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

20  
21 (ii) That is sexual assault biological material  
22 according to W.S. 6-2-309(n). As used in this paragraph,  
23 "sexual assault biological material" includes material

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

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

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

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

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

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

9

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

14

15

(END)