

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
Conforming amendments	<b>Disposition of recovered or seized property</b>  <b>Sections 1 &amp; 2</b> <b>12.36.020 &amp; 12.36.090</b> Clarifies that retention of evidence in this bill takes precedence over existing provisions that address disposition of evidence in various circumstances		
Crimes covered under the retention requirements	<b>Preservation of Evidence</b>  <b>Section 3</b> <b>AS 12:36:200(a)(1)</b> Homicide; sexual assault in first and second degree	<b>Preservation of Evidence</b>  <b>Section 1:</b> <b>AS 12:36:200(a)(1)</b> Same	
Retention time for evidence (other than biological material)	<b>Preservation of Evidence</b>  <b>Section 3</b> <b>AS 12:36.200(a)(1)</b> <b>(A)</b> 18 months after conviction of a crime <b>(B)</b> If appealed, one year after final judgment by conclusion of direct review <b>(C)</b> If a timely application of post-conviction relief is filed under <b>(A) &amp; (B)</b> , the date that a judgment dismissing or denying the application becomes final	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12:36.200(a)(1)</b> For the period of time that the crime remains unsolved	
Retention of biological material or evidence	<b>Preservation of Evidence</b>  <b>Section 3</b> <b>AS 12:36:200(a)(2)</b> Until a person is unconditionally discharged for crime; or until the retention periods for physical evidence expires, whichever is longer	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.36.200(a)(2)</b> While the person remains a prisoner in the custody of the Department of Corrections or subject to registration as a sex offender	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.72.220(d)</b> For the period of time that person is incarcerated in connection with the case

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
Disposal of evidence that is that is of a size, bulk, quantity , or physical character that makes preservation impractical or hazardous	<b>Preservation of Evidence</b>  <b>Section 3</b> <b>AS 12.36.200(b)</b> Agencies retain samples of evidence through written policies on removal and preservation of samples	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.36.200(b)</b> Similar, but does not include the word, "hazardous"	
Requesting an inventory of the evidence and biological material that has been preserved	<b>Preservation of Evidence</b>  <b>Section 3</b> <b>AS 12.36.200(c)&amp;(d)</b>  Upon the written request of a person convicted of a crime, an agency shall provide an inventory of evidence preserved in connection with the person's conviction. The person shall pay reasonable costs incurred in the retrieval of evidence	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.36.200(c)&amp;(d)</b>  Upon the written request of a convicted prisoner or registered sex offender, an agency shall prepare an inventory of evidence preserved in connection with the person's criminal case.	
Procedure for disposal of evidence or biological material before expiration of time period for preservation	<b>Preservation of Evidence</b>  <b>Section 3</b> <b>AS 12.36.200(e)</b>  Allowed after notice to the parties and attorneys, if no party objects. If there is an objection, the agency can make a request to the court to allow disposal	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.36.200(d)</b>  Similar, but also includes notice to the Public Defender Agency	
Remedies if evidence is destroyed in violation of this section	<b>Preservation of Evidence</b>  <b>Section 3</b> <b>AS 12.36.200(h)</b> The court may order the remedy it determines appropriate. However, the court may not reverse or vacate a conviction	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.36.200(g)</b> The court may order the remedy it determines appropriate.	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.72.220(a)</b> Applicant is not entitled to relief on an allegation that a law enforcement agency failed to preserve biological evidence

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
Civil immunity for failure to comply with this section	<b>Preservation of Evidence</b>  <b>Section 3</b> <b>AS 12.36.200(i)</b> A person may not bring civil action for damages for any good faith failure to comply	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.36.200(h)</b> A person may not bring civil action for damages for any unintentional failure to comply	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.72.220(c)</b> This section does not create a liability on the part of a law enforcement agency for failure to preserve evidence
Definitions	<b>Preservation of Evidence</b>  <b>Section 3</b> <b>AS 12.36.200(k)</b> Definitions include: “agency” “biological material” “DNA” “unconditionally discharged”	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.36.200(k)</b> Definitions include: “agency” “biological evidence” “DNA” “prisoner”	
A person convicted or sentenced for a crime seeking post-conviction relief by DNA testing	<b>Scope of post-conviction relief</b>  <b>Section 4</b> <b>AS 12.72.010(4)</b> The person’s exclusive method for obtaining DNA testing to support a claim of innocence is an application under AS 12.73, proposed in the bill		
Who can apply for post-conviction DNA testing of evidence	<b>Application for post-conviction DNA testing</b>  <b>Section 6</b> <b>AS 12.73.010(a)</b> A person convicted of a felony under AS 11.41 who has not been unconditionally discharged		<b>Procedure for application for DNA testing; appointment of counsel</b>  <b>Section 1</b> <b>AS 12.72.200(a)</b> After conviction, an incarcerated person

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
Information that must be included in an application for post-conviction DNA testing	<p><b>Application for post-conviction DNA testing</b></p> <p><b>Section 6</b>  <b>AS 12.73.010(b)</b>  <b>(1)</b> An affidavit that states:  <b>(A)</b> that the applicant did not commit the crime for which he was convicted or any less included offense  <b>(B)</b> that the applicant did not solicit another person to commit, or aid or abet another person in planning or committing, the offense or any lesser included offense  <b>(C)</b> that the applicant did not admit or concede guilt for the offense in any official proceeding  <b>(2)</b> An affidavit by the applicant or applicant's lawyer stating the results of each DNA test already performed on evidence in the prosecution of the defendant  <b>(3)</b> An affidavit by the applicant or applicant's lawyer describing previous efforts to obtain DNA testing  <b>(4)</b> An affidavit by the applicant's lawyer stating the reason the DNA testing was not requested at the trial level, and or an affidavit stating efforts taken to obtain this affidavit</p>		<p><b>Procedure for application for DNA testing; appointment of counsel</b></p> <p><b>Section 1</b>  <b>AS 12.72.200(b)</b>  <b>(1)</b> The results of all prior DNA tests, regardless of whether a test was performed by the defense or the prosecution  <b>(2)</b> An affidavit sworn to by the applicant:  <b>(A)</b> describing all prior efforts to obtain DNA testing  <b>(B)</b> describing any prior application filed under this section  <b>(C)</b> stating that the applicant is innocent of the crimes for which the applicant was convicted and any lesser included offense  <b>(3)</b> An affidavit from trial counsel stating the reasons DNA testing, or more discriminating DNA testing, was not sought before trial, or a statement by the applicant explaining why the affidavit was not obtained</p>
<p>If the court determines the applicant is indigent</p> <p>Representation of an indigent person</p>	<p><b>Application for post-conviction DNA testing</b></p> <p><b>Section 6</b>  <b>AS 12.73.010(d)</b>  Filing fees must be paid under the provisions of AS 09.19 and counsel shall be appointed under the provisions of AS 18.85.100</p> <p><b>Right to representation, services and facilities</b></p>		<p><b>Procedure for application for DNA testing; appointment of counsel</b></p> <p><b>Section 1</b>  <b>AS 12.72.200(d)</b>  The court shall appoint the public defender or the office of public advocacy</p>

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
	<b>Sec 7</b> <b>AS 18.85.100(g)</b> An indigent applicant is entitled to representation by the Public Defender Agency in bringing an application for post-conviction DNA testing		
Findings and/or standards for when a court may order post-conviction DNA testing	<b>Findings required for post-conviction DNA testing orders</b>  <b>Section 6</b> <b>AS 12.73.020</b> The court shall order post-conviction DNA testing if: <b>(1)</b> The applicant was convicted of a felony under AS 11.41 <b>(2)</b> Completion of the affidavits required by AS 12.73.010 have been submitted <b>(3)</b> The applicant has not admitted or conceded guilt in an official proceeding <b>(4)</b> the evidence was obtained as part of an investigation of the crime <b>(5)</b> Either: <b>(A)</b> The evidence has not been tested or the right to test the evidence was not waived for tactical reasons; or <b>(B)</b> the evidence has been previously tested, the applicant is requesting a more probative test, and the applicant did not waive for tactical reasons a similarly probative test <b>(6)</b> The evidence has been retained under conditions that ensure that it has not changed in a way that would undermine the accuracy of the test		<b>Standards for DNA testing</b>  <b>Section 1</b> <b>AS 12.72.210</b> A court may not order DNA testing unless the applicant shows: <b>(1)</b> by clear and convincing evidence, that the results of the DNA testing could establish a reasonable doubt as to the applicant's guilt of the crime for which the applicant was convicted <b>(2)</b> that there is reason to believe that a law enforcement agency collected biological evidence pertaining to the offense and retains actual or constructive possession of the evidence that allows for DNA testing <b>(3)</b> that the applicant did not secure DNA testing before the applicant's conviction because DNA testing was not reasonably available or for reasons that constitute justifiable excuse, ineffective assistance of counsel, or excusable neglect <b>(4)</b> that the applicant consents to provide a biological sample for DNA testing

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
	<p><b>(7)</b> The proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices</p> <p><b>(8)</b> The applicant proposed a defense theory not inconsistent with the defense at trial, and that would establish innocence</p> <p><b>(9)</b> If the defendant was convicted at trial, the identity of the perpetrator was an issue</p> <p><b>(10)</b> There is a reasonable probability that the testing required will produce new evidence that would support the new defense theory and could conclusively establish innocence</p> <p><b>(11)</b> The applicant consents to give a DNA sample and to have that sample entered into the DNA identification system</p> <p><b>(11)</b> The application is timely as described in AS 12.73.040</p>		
Summary dismissal by the court	<p><b>Summary dismissal and response</b></p> <p><b>Section 6</b> <b>AS 12.73.030</b> Allows for dismissal if the application does not include information required. If not dismissed, prosecuting authority has 45 days to file a response</p>		
Timeliness of an application	<p><b>Timeliness</b></p> <p><b>Section 6</b> <b>AS 12.73.040</b> There is a presumption that an application filed within three years is timely. This may be rebutted by a finding that the applicant was incompetent or for any other good reason</p>		<p><b>Results of the DNA test</b></p> <p><b>Section 1</b> <b>AS 12.72.240(a)</b> Notwithstanding any law or rule of procedure that bars an application for post-conviction relief as untimely, an applicant may use the results of a DNA test ordered under 12.72.200 as the grounds for filing a motion for post-</p>

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
			conviction review
Collection of DNA sample	<b>Testing procedures</b>  <b>Section 6</b> <b>AS 12.73.050(a)</b> Samples taken from the applicant or a prisoner must be collected at a law enforcement of correctional facility.		<b>Testing; payment</b>  <b>Section 1</b> <b>AS 12.72.230(a)</b> Samples shall be collected at a law enforcement or correctional facility
Testing of DNA sample	<b>Testing procedures</b>  <b>Section 6</b> <b>AS 12.73.050(c)</b> DNA testing shall be performed at a laboratory operated or approved by the Department of Public Safety		<b>Testing; payment</b>  <b>Section 1</b> <b>AS 12.72.230(a)</b> DNA samples shall be tested at a laboratory operated or approved by the Department of Public Safety.
Costs of DNA testing	<b>Testing procedures</b>  <b>Section 6</b> <b>AS 12.73.050(c)</b> DNA testing ordered under this section shall be performed at state expense. The applicant shall pay the reasonable costs incurred in the retrieval from storage of material to be tested.		<b>Testing; payment</b>  <b>Section 1</b> <b>AS 12.72.230(a)</b> The applicant shall pay the costs of the collection and testing of the sample. If indigent and represented by court-appointed counsel, with approval of counsel, the costs of testing shall be paid by the Public Defender Agency of the office of public advocacy

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
DNA testing allowed without following the procedures in this bill	<b>Post-conviction testing by stipulation</b>  <b>Section 6</b> <b>AS 12.73.060</b> The prosecution and an applicant may stipulate to DNA testing without the person filing an application under this chapter		
Definitions for post-conviction DNA testing procedures	<b>Definitions</b>  <b>Section 6</b> <b>AS 12.73.900</b> Definitions include: “DNA” “innocence” or “innocent” “prisoner” “unconditionally discharged”		<b>Definitions</b>  <b>Section 1</b> <b>AS 12.72.250</b> Definitions include: “actual or constructive possession” “DNA” “incarcerated”
Disposal of DNA for person not guilty	<b>DNA identification system</b>  <b>Section 9&amp;10</b> <b>AS 44.41.035(g)&amp;(i)</b> Allows person to request disposal of DNA samples if not guilty of offense for which arrested and not convicted of another offense requiring DNA samples	<b>DNA identification system</b>  <b>Section 2&amp;3</b> <b>AS 44.41.035(g)&amp;(i)</b> Same	
Creation and Repeal of Task Force to consider and address standards and practices for proper collection and preservation of evidence	<b>Uncodified Law</b>  <b>Section 16&amp;18</b> Starts work no later than Dec. 31, 2012 Repealed Jan. 1, 2013  <b>Task Force members:</b> Attorney general DPS commissioner State crime cab rep. Municipal police chief Municipal police chief not on state’s interconnected road system State medical examiner Court system rep. Appointed victims’ advocate	<b>Uncodified Law</b>  <b>Section 5&amp;7</b> Starts work not later than Dec. 31, 2011 Repealed Jan. 1, 2012  <b>Task Force members:</b> Attorney general DPS commissioner State crime cab rep. Municipal police chief Municipal police chief not on state’s interconnected road system Public defender Public advocacy director Alaska Innocence Project	



