

SENATE BILL NO. 110

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY SENATOR FRENCH

Introduced: 2/17/09

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the preservation of evidence."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 12.36 is amended by adding a new section to read:

4 **Article 2. Preservation of Evidence.**

5 **Sec. 12.36.200. Preservation of evidence.** (a) Notwithstanding AS 12.36.010 -
6 12.36.090, the Department of Law, the Department of Public Safety, the Alaska Court
7 System, or a municipal law enforcement agency shall preserve

8 (1) all evidence that is obtained in relation to an investigation or
9 prosecution of a crime under AS 11.41.100 - 11.41.130, 11.41.410, or 11.41.434 for
10 the period of time that the crime remains unsolved;

11 (2) biological evidence in an amount and manner that is sufficient to
12 develop a DNA profile from any material contained in or included on the evidence
13 that was obtained in relation to the prosecution of a person convicted of a crime under
14 AS 11.41.100 - 11.41.130 or convicted of a crime after being indicted under
15 AS 11.41.410 or 11.41.434 while the person remains a prisoner in the custody of the

1 Department of Corrections or subject to registration as a sex offender.

2 (b) Under (a) of this section, an agency is not required to preserve physical
3 evidence of a crime that is of a size, bulk, quantity, or physical character that renders
4 preservation impracticable. When preservation of evidence of a crime is impracticable,
5 the agency shall, before returning or disposing of the evidence, remove and preserve
6 portions of the material likely to contain relevant evidence related to the crime in a
7 quantity sufficient to permit future DNA testing.

8 (c) Upon written request of a person convicted of a crime and a prisoner or
9 subject to registration as a sex offender, an agency shall prepare or provide an
10 inventory of biological evidence that has been preserved under (a)(2) of this section in
11 connection with the person's criminal case.

12 (d) An agency required to preserve biological evidence under (a) of this
13 section may destroy biological evidence before the expiration of the time period in
14 (a)(2) of this section if

15 (1) the agency is not required to maintain the evidence under another
16 provision of state or federal law;

17 (2) the agency mails a certified delivery of notice of intent to destroy
18 evidence to

19 (A) each person who remains a prisoner or subject to
20 registration as a sex offender for the crime for which the evidence was
21 preserved under (a)(2) of this section;

22 (B) the attorney of record for each person listed in (A) of this
23 paragraph;

24 (C) the Public Defender Agency;

25 (D) the district attorney responsible for prosecuting the crime;

26 (3) no person who is notified under (2) of this subsection, within 120
27 days after receiving the notice,

28 (A) files a motion for testing of the evidence; or

29 (B) submits a written request for continued preservation of the
30 evidence.

31 (e) Upon receipt of a request for continued preservation of biological evidence

1 under (d)(3)(B) of this section, an agency may petition the court for permission to
 2 destroy the evidence. The court may grant the petition if the court finds that the
 3 request is without merit or that the evidence has no significant value for biological
 4 material.

5 (f) When an agency is required to produce biological evidence required to be
 6 preserved under this section and the agency is unable to locate the evidence, the chief
 7 evidence custodian of that agency shall submit an affidavit, executed under penalty of
 8 perjury, describing the evidence that could not be located and detailing the efforts
 9 taken to locate the evidence.

10 (g) If a court finds that evidence was destroyed in violation of the provisions
 11 of this section, the court may order remedies the court determines to be appropriate.

12 (h) In this section,

13 (1) "agency" means the Department of Law, the Department of Public
 14 Safety, the Alaska Court System, or a municipal law enforcement agency;

15 (2) "biological evidence" means

16 (A) the contents of a sexual assault forensic examination kit;

17 (B) semen, blood, hair, saliva, skin tissue, fingernail scrapings,
 18 bone, bodily fluids, or other identifiable human bodily material, collected as
 19 part of a criminal investigation;

20 (C) a slide, swab, or test tube containing material described in
 21 (B) of this paragraph; and

22 (D) swabs or cuttings from items that contain material
 23 described in (B) of this section;

24 (3) "DNA" means deoxyribonucleic acid;

25 (4) "prisoner" has the meaning given in AS 33.30.901.

26 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
 27 read:

28 TASK FORCE ON STANDARDS AND TRAINING OF EVIDENCE
 29 TECHNICIANS. (a) The Task Force on Standards and Training of Evidence Technicians is
 30 created in the Department of Law. The task force consists of the following persons appointed
 31 by the governor:

- 1 (1) the attorney general;
- 2 (2) the public defender;
- 3 (3) the director of the office of public advocacy;
- 4 (4) a chief of a municipal police department not on the state's interconnected
- 5 road system;
- 6 (5) the commissioner of public safety;
- 7 (6) a chief of a municipal police department; and
- 8 (7) a representative of the Alaska Innocence Project.

9 (b) There shall be four ex officio members of the task force as follows:

- 10 (1) the chief justice of the Alaska Supreme Court;
- 11 (2) a member of House Judiciary Committee selected by the speaker of the
- 12 house of representatives;
- 13 (3) a member of the Senate Judiciary Committee selected by the president of
- 14 the senate; and
- 15 (4) the victims' advocate.

16 (c) Persons appointed under (a) of this section or identified under (b) of this section
 17 may select a designee from the same agency or organization to act on the person's behalf as a
 18 member of the task force.

19 (d) Not later than December 31, 2010, the task force shall

- 20 (1) devise standards regarding the proper collection, retention, and cataloging
- 21 of evidence, for ongoing investigations and prosecutions;
- 22 (2) recommend practices, protocols, models, and resources for the cataloging
- 23 and accessibility of preserved evidence.

24 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 **APPLICABILITY.** AS 12.36.200, enacted in sec. 1 of this Act, applies to all evidence
 27 in the possession of an agency listed in AS 12.36.200(a) on the effective date of this Act for
 28 crimes committed before the effective date of this Act and all evidence collected on or after
 29 the effective date of this Act.

30 * **Sec. 4.** Section 2 of this Act is repealed January 1, 2011.