

CS FOR SENATE BILL NO. 110(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/7/09

Referred: Finance

Sponsor(s): SENATOR FRENCH

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the preservation of evidence and to the DNA identification system."**

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, or
14 adjudicated a delinquent for, a crime under AS 11.41.100 - 11.41.130, a person
15 convicted of a crime after being indicted under AS 11.41.410 or 11.41.434 while the

1 person remains a prisoner in the custody of the Department of Corrections or subject
2 to registration as a sex offender, or a person adjudicated a delinquent for a crime after
3 the filing of a petition alleging a violation of AS 11.41.410 or 11.41.434 while the
4 person remains committed to a juvenile facility or subject to registration as a sex
5 offender.

6 (b) Under (a) of this section, an agency is not required to preserve physical
7 evidence of a crime that is of a size, bulk, quantity, or physical character that renders
8 preservation impracticable. When preservation of evidence of a crime is impracticable,
9 the agency shall, before returning or disposing of the evidence, remove and preserve
10 portions of the material likely to contain relevant evidence related to the crime in a
11 quantity sufficient to permit future DNA testing. In making decisions under this
12 section, an agency shall follow written policies on evidence retention.

13 (c) Upon written request of a person convicted of a crime and a prisoner,
14 adjudicated delinquent for a crime and committed, or subject to registration as a sex
15 offender, an agency shall prepare or provide an inventory of biological evidence that
16 has been preserved under (a)(2) of this section in connection with the person's criminal
17 case.

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

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

23 (2) the agency mails a certified delivery of notice of intent to destroy
24 evidence to

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

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

30 (C) the Public Defender Agency;

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

1 and

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

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

5 (B) submits a written request for continued preservation of the
6 evidence.

7 (e) Upon receipt of a request for continued preservation of biological evidence
8 under (d)(3)(B) of this section, an agency may petition the court for permission to
9 destroy the evidence. The court may grant the petition if the court finds that the
10 request is without merit or that the evidence has no significant value for biological
11 material.

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

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

19 (h) A person may not bring a civil action for damages against the state or
20 political subdivision of the state, their officers, agents, or employees, or a law
21 enforcement agency, its officers, or employees for any unintentional failure to comply
22 with the provisions of this section.

23 (i) In this section,

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

26 (2) "biological evidence" means

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

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

31 (C) a slide, swab, or test tube containing material described in

1 (B) of this paragraph; and

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

4 (3) "DNA" means deoxyribonucleic acid;

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

6 * **Sec. 2.** AS 44.41.035(g) is amended to read:

7 (g) A person from whom a sample has been collected under this section

8 **(1) may inspect and obtain a copy of the identification data regarding**
9 **the person contained within the DNA identification registration system; and**

10 **(2) may request the Department of Public Safety to destroy the**
11 **material in the system regarding the person under the provisions described in (i)**
12 **of this section.**

13 * **Sec. 3.** AS 44.41.035(i) is amended to read:

14 (i) The Department of Public Safety shall [, UPON RECEIPT OF A COURT
15 ORDER,] destroy the material in the system relating to a person **or minor on the**
16 **written request of the person or minor, if the request is accompanied by a**
17 **certified copy of a court order making the written findings required by this**
18 **subsection.** The court **may** [SHALL] issue **an** [THE] order **under this subsection** if
19 the person's or minor's DNA was included in the system under

20 (1) (b)(1) or (2) of this section, and the court **order establishes**
21 [DETERMINES] that

22 (A) the conviction or adjudication that subjected the person to
23 having a sample taken under this section **was** [IS] reversed; and

24 (B) the person

25 (i) **was** [IS] not retried, readjudicated, or convicted or
26 adjudicated for another crime that requires having a sample taken under
27 this section; or

28 (ii) after retrial, **was** [IS] acquitted of the crime or, after
29 readjudication for the crime, **was** [IS] not found to be a delinquent, and
30 **was** [IS] not convicted or adjudicated for another crime that requires a
31 sample under this section;

1 (2) (b)(6) of this section, and the court **order establishes**
 2 [DETERMINES] that

3 (A) the person arrested was released without being charged;
 4 [OR]

5 (B) the criminal complaint, indictment, presentment, or
 6 information for the offense for which the person was arrested was dismissed,
 7 and a criminal complaint, indictment, presentment, or information for an
 8 offense requiring submission of a DNA sample **was** [IS] not refiled; **or**

9 **(C) the person was found by the trier of fact to be not guilty**
 10 **of the offense for which the person was arrested and was not convicted of**
 11 **another offense requiring submission of a DNA sample under (b)(1) or (2)**
 12 **of this section.**

13 * **Sec. 4.** AS 44.41.035 is amended by adding a new subsection to read:

14 (r) A DNA sample collected or placed in the DNA identification registration
 15 system, that was taken or retained in good faith, may be used as provided by law in a
 16 criminal investigation. Evidence obtained from a match from a data collection system
 17 may be used in a criminal prosecution if the DNA sample was taken or retained in
 18 good faith, even if the DNA sample is later removed from the DNA identification
 19 registration system.

20 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
 21 read:

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

- 26 (1) the attorney general;
 27 (2) the public defender;
 28 (3) the director of the office of public advocacy;
 29 (4) a chief of a municipal police department not on the state's interconnected
 30 road system;
 31 (5) the commissioner of public safety;

- 1 (6) a chief of a municipal police department;
2 (7) a representative of the Alaska Innocence Project; and
3 (8) a representative of the state crime lab.

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

- 5 (1) a member of the House Judiciary Committee selected by the speaker of the
6 house of representatives;
7 (2) a member of the Senate Judiciary Committee selected by the president of
8 the senate; and
9 (3) the victims' advocate.

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

13 (d) Not later than December 31, 2011, the task force shall

- 14 (1) devise standards regarding the proper collection, retention, and cataloging
15 of evidence, for ongoing investigations and prosecutions;
16 (2) recommend practices, protocols, models, and resources for the cataloging
17 and accessibility of preserved evidence.

18 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

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

24 * **Sec. 7.** Section 5 of this Act is repealed January 1, 2012.