Regular Session, 2011

HOUSE BILL NO. 116

BY REPRESENTATIVE STIAES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

LAW ENFORCE/CRIM JUS COM: Prohibits the destruction of biological evidence collected pursuant to the investigation of certain criminal offenses

AN ACT

To amend and reenact Code of Criminal Procedure Article 926.1(H)(6) and to enact R.S. 15:621, relative to evidence in criminal cases; to prohibit the destruction of biological evidence in certain criminal cases; to provide for definitions; to provide for applicability; to provide for a limitation of liability for failure to comply; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 15:621 is hereby enacted to read as follows:

§621. Prohibition on destruction of evidence; certain cases

A. Prior to December 31, 2012, no criminal justice agency or clerk of court shall destroy any biological evidence in its possession in relation to the investigation, prosecution, or adjudication of any of the following enumerated offenses or attempts to commit any of these offenses: homicide (R.S. 14:29), rape (R.S. 14:41), and armed robbery (R.S. 14:64).

B. The provisions of this Section shall apply only in cases in which an offender has been convicted at trial or has entered a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), and the offender is in the custody of the Department of Public Safety and Corrections.

C. Nothing in this Section should preclude any criminal justice agency or clerk of court from removing parts containing biological evidence from large items of evidence and retaining only the parts containing biological evidence.

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D. Failure by any criminal justice agency or clerk of court to comply with the provisions of this Section shall be governed by Code of Criminal Procedure Article 926.1(H)(6).

E. As used in this Section:

(1) "Biological evidence" means the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingerprints, or other identifiable human biological material that may reasonably be used to incriminate or exculpate any person in the criminal investigation, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or any other item of evidence, including those that are alleged to have been touched or worn by the perpetrator of the offense. Work product generated during DNA analysis shall not be considered biological evidence with the exception of the extracted DNA when the original biological evidence is consumed during analysis. In this event, the extracted DNA shall be retained.

(2) "Criminal justice agency" means any criminal justice agency as defined in R.S. 15:576(3).

Section 2. Code of Criminal Procedure Article 926.1(H)(6) is hereby amended and reenacted to read as follows:

Art. 926.1. Application for DNA testing

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H.

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(6) Except in the case of willful or wanton misconduct or gross negligence, no clerk of court or law enforcement officer or law enforcement agency, including but not limited to any district attorney, sheriff, the office of state police, local police agency, or crime laboratory which is responsible for the storage or preservation of

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any item of evidence in compliance with either the requirements of ~~Paragraph (H)~~ Subparagraph (3) of this Paragraph or R.S. 15:621 shall be held civilly or criminally liable for the unavailability or deterioration of any such evidence to the extent that adequate or proper testing cannot be performed on the evidence.

* * *

Section 3. This Act shall become effective on July 1, 2011; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2011, or on the day following such approval by the legislature, whichever is later.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Stiaes HB No. 116

Abstract: Prohibits the destruction of biological evidence prior to Dec. 31, 2012, in certain cases involving homicide, rape, or armed robbery.

Present law provides for the collection and use of DNA evidence in criminal investigations.

Proposed law retains present law and further provides that prior to Dec. 31, 2012, no criminal justice agency or clerk of court shall destroy any biological evidence in its possession collected in relation to the investigation, prosecution, or adjudication of a homicide, rape, or armed robbery.

Provides that proposed law applies only in cases in which an offender has been convicted at trial or has entered a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), and the offender is in the custody of the Dept. of Public Safety and Corrections.

Proposed law defines "biological evidence" as the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingerprints, or other identifiable human biological material that may reasonably be used to incriminate or exculpate any person in the criminal investigation, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or any other item of evidence, including those that are alleged to have been touched or worn by the perpetrator of the offense. Provides that work product generated during DNA analysis shall not be considered "biological evidence" with the exception of the extracted DNA when the original evidence is consumed during analysis; in such case, the extracted DNA shall be retained.

Present law provides for a limitation of liability for clerks of court or law enforcement agencies with respect to the unavailability or deterioration of evidence. Provides an exception for willful or wanton misconduct or gross negligence.

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Proposed law applies present law limitation of liability and exceptions to provisions of proposed law.

Effective July 1, 2011.

(Amends C.Cr.P. Art. 926.1(H)(6); Adds R.S. 15:621)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Added limitation to cases in which offender is convicted at trial or plead guilty pursuant to the U.S. Supreme Court case of *North Carolina v. Alford* and is in the custody of DPS&C.

House Floor Amendments to the engrossed bill.

1. Provided that work product generated during DNA analysis shall not be considered biological evidence except when the original evidence is consumed during analysis.

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