ENROLLED

Regular Session, 2011

HOUSE BILL NO. 116

BY REPRESENTATIVE STIAES AND SENATOR GUILLORY

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

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 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

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liable for the unavailability or deterioration of any such evidence to the extent that adequate or proper testing cannot be performed on the evidence.

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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.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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