Stiaes (HB 116) **Act No. 250**

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

New law retains existing 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 new 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 Dept. of Public Safety and Corrections.

New 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 existing 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.

Existing 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.

New law applies existing law limitation of liability and exceptions to provisions of new law.

Effective July 1, 2011.

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