

HOUSE COMMITTEE OF REFERENCE AMENDMENT
Committee on Judiciary.

HB25-1275 be amended as follows:

- 1 Amend printed bill, page 4, line 1, strike "LIBERALLY CONSTRUED" and
- 2 substitute "INTERPRETED".
- 3 Page 4, line 8, after the period add ""CRIME LABORATORY" DOES NOT
- 4 INCLUDE A LABORATORY OPERATED BY A COUNTY CORONER'S OFFICE.".
- 5 Page 4, after line 14 insert:
6 "(4) "FINAL REPORT" MEANS THE FINAL REPORT PREPARED BY A
7 CRIME LABORATORY DIRECTOR FOLLOWING AN INVESTIGATION OF
8 ALLEGED WRONGFUL ACTION, DESCRIBED IN SECTION 16-12-305 (4)(c)".
- 9 Renumber succeeding subsections accordingly.
- 10 Page 4, line 26, strike "OR MANIPULATION".
- 11 Page 5, line 17, strike "FOURTEEN" and substitute "SEVEN".
- 12 Page 6, line 7, strike "(a)".
- 13 Page 6, line 12, after "SHALL" insert "FORTHWITH" and strike "THE".
- 14 Page 6, strike lines 13 through 27.
- 15 Strike page 7.
- 16 Page 8, strike lines 1 through 9.
- 17 Page 8, line 10, strike "(a)".
- 18 Page 8, line 13, strike "(I)" and substitute "(a)".
- 19 Page 8, line 15, strike "(II)" and substitute "(b)".
- 20 Page 8, line 16, strike "(III)" and substitute "(c)".
- 21 Page 8, line 19, strike "(IV)" and substitute "(d)".
- 22 Page 8, line 22, strike "AND".
- 23 Page 8, line 23, strike "(V)" and substitute "(e)".

1 Page 8, strike lines 24 through 27 and substitute "OCCURRED; AND
2 (f) IDENTIFYING AND COMPILING A LIST OF ALL CASES THAT THE
3 CRIME LABORATORY EMPLOYEE WORKED ON IN AN OFFICIAL CAPACITY AT
4 THE CRIME LABORATORY. THE INVESTIGATION NEED NOT INCLUDE A
5 REVIEW OF THE CASE WORK ON ANY CASE INCLUDED ON THE LIST UNLESS
6 THE CRIME LABORATORY DIRECTOR DETERMINES THAT A REVIEW IS
7 WARRANTED.

8 (3) (a) WHEN AN INVESTIGATION IS OF ALLEGED WRONGFUL
9 ACTION IN A PENDING CASE, THE CRIME LABORATORY DIRECTOR SHALL,
10 WITHIN SEVEN DAYS OF BEGINNING THE INVESTIGATION, NOTIFY THE
11 DISTRICT ATTORNEY WITH JURISDICTION OVER EACH PENDING CRIMINAL
12 CASE THAT IS SUBJECT TO THE INVESTIGATION ABOUT THE INVESTIGATION.

13 (b) THE NOTICE TO THE DISTRICT ATTORNEY MUST INCLUDE:

14 (I) THE NAME OF THE CRIME LABORATORY EMPLOYEE;
15 (II) THE NATURE OF THE ALLEGATION; AND

16 (III) A LIST OF THE CASES IDENTIFIED IN THE INITIAL
17 INVESTIGATION PURSUANT TO SUBSECTION (1) OF THIS SECTION IN WHICH
18 THERE IS AN ALLEGED WRONGFUL ACTION OR THAT ARE BEING REVIEWED
19 AS PART OF INVESTIGATION TO INTO THE ALLEGED WRONGFUL ACTION.

20 (4) (a) WITHIN NINETY-ONE DAYS OF THE REPORT OF WRONGFUL
21 ACTION TO THE CRIME LABORATORY DIRECTOR, THE DIRECTOR SHALL
22 COMPLETE THE INVESTIGATION OF A WRONGFUL ACTION AND DETERMINE
23 WHETHER WRONGFUL ACTION OCCURRED IN A CASE IDENTIFIED IN THE
24 INITIAL INVESTIGATION NOTICE TO THE DISTRICT ATTORNEY MADE
25 PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION.

26 (b) (I) IF THE INVESTIGATION CANNOT BE COMPLETED WITHIN
27 NINETY-ONE DAYS, THE CRIME LABORATORY DIRECTOR SHALL PROVIDE
28 NOTICE OF THE INVESTIGATION TO EACH DISTRICT ATTORNEY WHO HAS
29 JURISDICTION OVER ANY CASE THE CRIME LABORATORY EMPLOYEE
30 WORKED ON IN AN OFFICIAL CAPACITY, INCLUDING CASES SUBJECT TO THE
31 NOTICE REQUIRED PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION.

32 (II) THE NOTICE TO THE DISTRICT ATTORNEY ABOUT AN ONGOING
33 INVESTIGATION MADE PURSUANT TO SUBSECTION (4)(b)(I) OF THIS
34 SECTION MUST INCLUDE:

35 (A) THE NAME OF THE CRIME LABORATORY EMPLOYEE;
36 (B) THE NATURE OF THE ALLEGATION;
37 (C) A WRITTEN UPDATE THAT ADDRESSES THE STATE OF THE
38 INVESTIGATION, THE REASON FOR THE DELAY AND THE ANTICIPATED
39 TIMELINE FOR COMPLETING THE INVESTIGATION; AND
40 (D) THE LIST OF CASES DESCRIBED IN SUBSECTION (2)(f) OF THIS
41 SECTION.

42 (III) AFTER NOTIFYING A DISTRICT ATTORNEY ABOUT AN ONGOING
43 INVESTIGATION PURSUANT TO SUBSECTION (4)(b)(I) OF THIS SECTION, THE

1 CRIME LABORATORY DIRECTOR SHALL PROVIDE WRITTEN UPDATES ABOUT
2 THE STATUS OF THE INVESTIGATION TO THE DISTRICT ATTORNEY AT LEAST
3 EVERY THIRTY-FIVE DAYS THEREAFTER UNTIL THE INVESTIGATION IS
4 COMPLETE.

5 (c) AT THE CONCLUSION OF THE INVESTIGATION, THE CRIME
6 LABORATORY DIRECTOR SHALL PREPARE A WRITTEN FINAL REPORT
7 DESCRIBING THE INVESTIGATION AND DETERMINATIONS ON THE CASES IN
8 WHICH THERE IS AN ALLEGED WRONGFUL ACTION BY A CRIME
9 LABORATORY EMPLOYEE. IF THE INVESTIGATION DETERMINES THAT THE
10 CRIME LABORATORY EMPLOYEE ENGAGED IN WRONGFUL ACTION, THE
11 FINAL REPORT MUST INCLUDE THE LIST OF CASES DESCRIBED IN
12 SUBSECTION (2)(f) OF THIS SECTION AND THE RELEASE OF THE FINAL
13 REPORT IS GOVERNED BY SECTION 24-72-303 (4)(a.5).

14 (5) (a) IF THE INVESTIGATION DETERMINES THAT THE CRIME
15 LABORATORY EMPLOYEE DID NOT ENGAGE IN WRONGFUL ACTION, NO
16 FURTHER ACTION IS REQUIRED BY THE CRIME LABORATORY DIRECTOR;
17 EXCEPT THAT:

18 (I) THE DIRECTOR SHALL DELIVER FORTHWITH THE FINAL REPORT
19 OF THE INVESTIGATION TO EACH DISTRICT ATTORNEY WHO RECEIVED A
20 NOTICE OF THE INVESTIGATION PURSUANT TO SUBSECTIONS (3) AND (4) OF
21 THIS SECTION; AND

22 (II) THE DIRECTOR SHALL DELIVER FORTHWITH THE FINAL REPORT
23 OF THE INVESTIGATION TO EACH DISTRICT ATTORNEY WITH JURISDICTION
24 OVER ANY CASE THAT WAS SUBJECT TO INVESTIGATION PURSUANT TO
25 SUBSECTION (1) OF THIS SECTION.

26 (b) IF THE INVESTIGATION DETERMINES THAT THE CRIME
27 LABORATORY EMPLOYEE ENGAGED IN WRONGFUL ACTION, THE CRIME
28 LABORATORY DIRECTOR SHALL:

29 (I) DELIVER FORTHWITH THE FINAL REPORT OF THE
30 INVESTIGATION, WHICH INCLUDES THE LIST OF CASES DESCRIBED IN
31 SUBSECTION (2)(f) OF THIS SECTION, TO EACH DISTRICT ATTORNEY WHO
32 HAS JURISDICTION OVER ANY CASE THAT THE CRIME LABORATORY
33 EMPLOYEE WORKED ON IN AN OFFICIAL CAPACITY; AND

34 (II) PROVIDE THE DISTRICT ATTORNEY ALL MATERIALS
35 DISCOVERABLE BY THE DEFENDANT PURSUANT TO SECTION 16-12-309 ON
36 A TIMELY AND ONGOING BASIS THROUGH THE CONCLUSION OF
37 POST-CONVICTION PROCEEDINGS. THE DIRECTOR SHALL RESPOND TO ANY
38 REQUESTS FOR DISCOVERABLE MATERIAL FROM THE DISTRICT ATTORNEY
39 BY PROVIDING THE REQUESTED MATERIALS OR BY RESPONDING IN WRITING
40 WITHIN TWENTY-FOUR DAYS AFTER RECEIVING THE REQUEST THAT THE
41 REQUESTED MATERIALS DO NOT EXIST.

42 (6) A CRIME LABORATORY MUST ADOPT POLICIES AND
43 PROCEDURES GOVERNING:

(a) PROCEDURES NEEDED TO COMPLY WITH THE MANDATES OF THIS ARTICLE 12, AND

(b) THE PRESERVATION OF RECORDS RELATED TO WRONGFUL ACTION REPORTS RECEIVED BY THE CRIME LABORATORY DIRECTOR AND THE DIRECTOR'S INVESTIGATION AND INVESTIGATORY REPORTS. THE POLICIES MUST REQUIRE THAT ALL RECORDS ARE PRESERVED AT LEAST THROUGH THE FINAL RESOLUTION OF LITIGATION OR POTENTIAL LITIGATION IN ALL AFFECTED CASES AND ANY RELATED CIVIL CASES.

22 (8) ALL RECORDS RELATED TO AN INVESTIGATION, INCLUDING
23 NOTICES AND REPORTS, ARE CRIMINAL JUSTICE RECORDS AS DEFINED IN
24 SECTION 24-72-302. EXCEPT AS PROVIDED IN THIS SECTION, RELEASE OF
25 THE RECORDS IS GOVERNED BY PART 3 OF ARTICLE 72 OF TITLE 24.

26 **16-12-306. Prosecution duty to notify defendants and**
27 **defendant's counsel - content of notice.** (1) A DISTRICT ATTORNEY WHO
28 RECEIVES A NOTICE FROM A CRIME LABORATORY DIRECTOR PURSUANT TO
29 SECTION 16-12-305 (3)(a) THAT AN INVESTIGATION OF WRONGFUL ACTION
30 WAS INITIATED SHALL NOTIFY THE DEFENDANT IN THE CASE THAT IS
31 SUBJECT TO THE INVESTIGATION AS SOON AS PRACTICABLE BUT NO LATER
32 THAN NINETY-ONE DAYS AFTER RECEIVING THE NOTICE OF THE INITIATION
33 OF THE INVESTIGATION, UNLESS COURT RULES, COURT ORDER OR LAW
34 REQUIRES AN EARLIER DEADLINE FOR DISCLOSURE.

35 (2) (a) A DISTRICT ATTORNEY WHO RECEIVES A FINAL REPORT OF
36 AN INVESTIGATION PURSUANT TO SECTION 16-12-305 (5)(b) OR (7) THAT
37 DETERMINES THAT A CRIME LABORATORY EMPLOYEE ENGAGED IN
38 WRONGFUL ACTION IN A CASE SHALL NOTIFY THE DEFENDANT IN THAT
39 CASE, AND EACH DEFENDANT WHOSE CASE WAS REVIEWED AS PART OF THE
40 INVESTIGATION, OF THE DETERMINATION OF WRONGFUL ACTION IN THE
41 CASE THAT IS SUBJECT TO THE INVESTIGATION AS SOON AS PRACTICABLE
42 BUT NO LATER THAN NINETY-ONE DAYS AFTER THE RECEIPT OF THE FINAL
43 REPORT.

21 (4) IN ADDITION TO THE INFORMATION REQUIRED IN A NOTICE
22 PURSUANT TO THIS SUBSECTION (4), THE NOTICE TO THE DEFENDANT MADE
23 PURSUANT TO SUBSECTION (2) OF THIS SECTION MUST STATE THAT THERE
24 IS A FINAL REPORT OF WRONGFUL ACTION BY A CRIME LABORATORY
25 EMPLOYEE INVOLVED IN THE DEFENDANT'S CASE. THE NOTICE MADE TO A
26 DEFENDANT PURSUANT TO THIS SECTION MUST INCLUDE:".

27 Strike pages 9 and 10.

28 Page 11, strike lines 1 through 18.

29 Renumber succeeding subsections accordingly.

30 Page 12, line 26, strike "(3)(c)" and substitute "(5)(c)".

31 Page 13, line 7, strike "(3)(c)" and substitute "(5)(c)".

32 Page 13, strike lines 12 through 24.

33 Page 13, lines 26 and 27, strike "OF WRONGFUL ACTION COMMITTED BY A
34 CRIME LABORATORY EMPLOYEE" and substitute "THAT A CRIME
35 LABORATORY EMPLOYEE ENGAGED IN WRONGFUL ACTION".

1 Page 15, strike line 14 and substitute "THAT A CRIME LABORATORY
2 EMPLOYEE WHO WORKED ON THEIR CASE IS THE SUBJECT OF AN
3 INVESTIGATION OF WRONGFUL ACTION,".

4 Page 15, line 26, strike "DISCOVERY" and substitute "DISCOVERY,
5 INCLUDING POST-CONVICTION DISCOVERY,"

6 Page 16, line 15, strike "(4)(c)," and substitute "(5)(b)(II),".

7 Page 17, line 2, after "LABORATORY," insert "INCLUDING AN UNREDACTED
8 COPY OF THE FINAL REPORT,".

9 Page 18, strike lines 11 through 15 and substitute:

10 " (5) (a) UNLESS IT IS IN CONFLICT WITH A SPECIFIC PROVISION OF
11 THIS SECTION, RULE 16 OF THE COLORADO RULES OF CRIMINAL
12 PROCEDURE APPLIES TO ANY POST-CONVICTION PROCEEDINGS UNDER THIS
13 SECTION.

14 (b) IN POST-CONVICTION PROCEEDINGS UNDER THIS SECTION, A
15 PROSECUTING ATTORNEY SHALL PERFORM THEIR OBLIGATIONS:

16 (I) PURSUANT TO SUBSECTIONS (2)(a), (2)(b), (2)(c), AND (2)(d) OF
17 THIS SECTION AS SOON AS PRACTICABLE, BUT NOT LATER THAN
18 FORTY-FIVE DAYS AFTER THE PROSECUTING ATTORNEY RECEIVES A VALID
19 DISCOVERY REQUEST OR COURT ORDER PURSUANT TO SUBSECTION (1)(c)
20 OF THIS SECTION; AND

21 (II) PURSUANT TO SUBSECTIONS (2)(e), (2)(f), (2)(g), AND (2)(h)
22 OF THIS SECTION AS SOON AS PRACTICABLE, BUT NOT LATER THAN
23 THIRTY-FIVE DAYS BEFORE THE EVIDENTIARY HEARING REGARDING THE
24 POST-CONVICTION PROCEEDING.".

25 Page 19, after line 9 insert:

26 " (7) (a) IF A DEFENDANT ALLEGES A CLAIM OF INEFFECTIVE
27 ASSISTANCE OF COUNSEL AS PART OF A CLAIM BROUGHT PURSUANT TO
28 THIS SECTION, THE PROVISIONS OF SECTION 18-1-417 REGARDING WAIVER
29 OF CONFIDENTIALITY APPLY.

30 (b) THE COUNSEL OF RECORD SHALL DISCLOSE ANY MATERIALS
31 FROM A PRIOR COUNSEL FILE THAT MUST BE DISCLOSED PURSUANT TO
32 SECTION 18-1-417 AS SOON AS PRACTICABLE UPON A REQUEST FROM THE
33 PROSECUTION AND NO LATER THAN THIRTY-FIVE DAYS FROM THE REQUEST
34 OF THE PROSECUTION. THE CUSTODIAN MAY FILE A MOTION WITH THE
35 COURT AND THE COURT MAY GRANT AN EXTENSION TO MAKE THE
36 DISCLOSURE UPON A SHOWING OF GOOD CAUSE.

37 (c) AFTER MAKING A REQUEST PURSUANT TO SECTION 18-1-417
38 UPON A SHOWING OF A GOOD FAITH BELIEF THAT MATERIAL EXISTS WITHIN

1 THE SCOPE OF A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL THAT HAS
2 NOT BEEN PRODUCED, THE PROSECUTION MAY FILE A MOTION WITH THE
3 COURT SEEKING IN CAMERA REVIEW OF MATERIAL SUBJECT TO A GOOD
4 FAITH DISPUTE. THE PROSECUTION SHALL SERVE ANY SUCH REQUEST UPON
5 THE CUSTODIAN OF THE RECORDS.

6 (8) SUBJECT TO CONSTITUTIONAL LIMITATIONS, THE COURT SHALL
7 SET A DEADLINE AT LEAST THIRTY-FIVE DAYS PRIOR TO THE EVIDENTIARY
8 HEARING FOR THE PARTIES TO:

9 (a) EXCHANGE THE NAME AND ADDRESS OF EACH WITNESS A
10 PARTY MAY CALL AT THE HEARING AND TO DESIGNATE WITNESSES WHO
11 ARE LIKELY TO BE CALLED; AND

12 (b) DESIGNATE A WITNESS AS AN EXPERT AND DESIGNATE THE
13 AREA IN WHICH THE PARTY WILL SEEK TO QUALIFY THE EXPERT. SUBJECT
14 TO CONSTITUTIONAL LIMITATIONS, THE COURT SHALL ORDER THE PARTIES
15 TO PROVIDE A REPORT FROM THE DESIGNATED EXPERT OR SUMMARY OF
16 THE EXPERT'S TESTIMONY THAT ALLOWS THE OPPONDING PARTY TO PREPARE
17 TO RESPOND TO THE EXPERT'S TESTIMONY.".

18 Page 22, line 16, strike "OF:" and substitute "OF JUSTIFIABLE EXCUSE OR
19 EXCUSABLE NEGLECT.".

20 Page 22, strike lines 17 through 19.

21 Page 23, strike lines 18 through 27.

22 Page 24, strike lines 1 and 2.

23 Page 24, line 3, strike "(b)" and substitute "(2)".

24 Page 24, line 7 and 8, strike "THIS SUBSECTION (2)." and substitute "ANY
25 DEADLINES OR OTHER DISCOVERY REQUIREMENTS.".

26 Page 24, strike lines 21 through 27 and substitute:

27 (5) (a) FOR THE PURPOSES OF THIS SECTION, WRONGFUL ACTION
28 IS MATERIAL TO THE CASE IF, WHEN CONSIDERED IN THE TOTALITY OF THE
29 CASE:

30 (I) THE EVIDENCE TESTED BY THE CRIME LABORATORY EMPLOYEE
31 OR THE RESULTS OF TESTING OR TESTIMONY OF THE CRIME LABORATORY
32 EMPLOYEE IS SIGNIFICANT AND IMPORTANT EVIDENCE IN THE CASE;

33 (II) (A) A FACT OR INFERENCE IN FAVOR OR GUILT THAT RESULTED
34 FROM TESTING OR TESTIMONY ABOUT EVIDENCE TESTED BY THE CRIME
35 LABORATORY EMPLOYEE WAS NOT ALSO ESTABLISHED BY INDEPENDENT,
36 RELIABLE EVIDENCE; OR

5 (III) THERE IS A REASONABLE PROBABILITY THAT, BUT FOR THE
6 WRONGFUL ACTION, THE RESULTS OF THE PROCEEDING WOULD HAVE BEEN
7 DIFFERENT, WHICH IS SATISFIED WHEN THERE IS EVIDENCE SUFFICIENT TO
8 UNDERMINE CONFIDENCE IN THE VERDICT OR GUILTY PLEA.

9 (b) AS LONG AS THE REQUIREMENTS OF SUBSECTION (5)(a) OF THIS
10 SECTION ARE SATISFIED, WRONGFUL ACTION MAY BE MATERIAL TO THE
11 CASE IF THE WRONGFUL ACTION SIGNIFICANTLY IMPEACHES OR CASTS
12 DOUBT UPON THE ACCURACY OF PHYSICAL EVIDENCE TESTING, THE
13 PRESENTATION OF TEST RESULTS, TESTIMONY ABOUT THE TESTING OR
14 PHYSICAL EVIDENCE BY A CRIME LABORATORY EMPLOYEE OR OTHER
15 WITNESS.".

16 Page 25, strike lines 1 through 5.

17 Page 25, after line 15 insert:

18 **SECTION 3.** In Colorado Revised Statutes, 24-72-303, add
19 (4)(a.5) as follows:

20 **24-72-303. Records of official actions required - open to**
21 **inspection - applicability.** (4) (a.5) UPON COMPLETION OF A FINAL
22 REPORT WHICH CONCLUDES A CRIME LABORATORY EMPLOYEE ENGAGED
23 IN WRONGFUL ACTION, AS DESCRIBED IN SECTION 16-12-305 (5)(b), THE
24 FINAL REPORT IS OPEN FOR PUBLIC INSPECTION, AND IF THE REQUESTER
25 REQUESTS ACCESS TO REPORT, THE CUSTODIAN SHALL PROVIDE ACCESS TO
26 THE FINAL REPORT SUBJECT TO THE PROVISIONS OF SUBSECTIONS (4)(b),
27 (4)(c), AND (4)(d) OF THIS SECTION. ".

28 Renumber succeeding sections accordingly.

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