

CHAPTER 223

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 08-1397

BY REPRESENTATIVE(S) Jahn and King, Green, Labuda, Looper, Madden, McFadyen, Mitchell V., Rice, Rose, Carroll M., Fischer, Frangas, Stafford, Stephens, and Todd;
also SENATOR(S) Kopp and Gordon, Boyd, Gibbs, Groff, Kester, Penry, Schultheis, Spence, and Tupa.

AN ACT

CONCERNING THE DISPOSITION OF EVIDENCE COLLECTED IN CRIMINAL CASES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) The use of DNA evidence as a tool for investigation, prosecution, and defense of a criminal matter has dramatically changed the criminal justice system;

(b) DNA evidence allows the criminal justice system to identify the perpetrator of a crime with a level of certainty not previously possible;

(c) With technological advancements in DNA profile development, the retention of evidence that may contain DNA has become important for both the prosecution and defense;

(d) The need to retain evidence that may contain DNA has created storage issues for law enforcement agencies throughout the state and questions for the criminal justice community regarding best practices regarding evidence collection, retention, and disposition.

(2) Therefore, the general assembly finds that it is necessary to create a uniform process for the disposition of evidence in criminal cases in Colorado and further finds that it is necessary to collect data regarding the types of evidence that are part of most criminal cases in Colorado so that a comprehensive scheme may be developed to address evidence collection, testing, retention, and disposition in the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

future.

SECTION 2. Article 1 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 11
PRESERVATION OF EVIDENCE

18-1-1101. Definitions. AS USED IN THIS PART 11, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CONVICTION" OR "CONVICTED" MEANS A CONVICTION BY A JURY OR BY A COURT AND SHALL ALSO INCLUDE A DEFERRED JUDGMENT AND SENTENCE AGREEMENT, A DEFERRED PROSECUTION AGREEMENT, A DEFERRED ADJUDICATION AGREEMENT, AN ADJUDICATION, AND A PLEA OF GUILTY OR NOLO CONTENDERE.

(2) "DNA" MEANS DEOXYRIBONUCLEIC ACID.

(3) "DNA PROFILE" MEANS AN IDENTIFIER OBTAINED AS A RESULT OF A SPECIFIC DNA ANALYSIS.

18-1-1102. Preservation of evidence in class 1 felonies and indeterminate sentencing cases - procedures. (1) (a) ALL REASONABLE AND RELEVANT EVIDENCE THAT MAY CONTAIN DNA THAT IS COLLECTED IN RELATION TO THE CONVICTION OF A CLASS 1 FELONY OR A SEX OFFENSE THAT CARRIES THE POSSIBILITY OF AN INDETERMINATE SENTENCE PURSUANT TO SECTION 18-1.3-1004 SHALL BE PRESERVED FOR THE LIFE OF THE DEFENDANT. AT THE END OF THE LIFE OF THE DEFENDANT, THE CUSTODIAN OF THE EVIDENCE MAY DISPOSE OF THE EVIDENCE.

(b) IF THE EVIDENCE REQUIRED TO BE PRESERVED PURSUANT TO THIS SUBSECTION (1) IS PROCESSED FOR THE DEVELOPMENT OF A DNA PROFILE, THE DNA PROFILE SHALL BE PRESERVED BY THE ACCREDITED LABORATORY IN COLORADO THAT DEVELOPS THE DNA PROFILE. IF THE DNA PROFILE IS NOT DEVELOPED BY AN ACCREDITED LABORATORY IN COLORADO, THE LABORATORY THAT PREPARES THE DNA PROFILE SHALL SEND THE DNA PROFILE TO AN ACCREDITED LABORATORY IN COLORADO FOR PRESERVATION.

(c) ALL OTHER REASONABLE AND RELEVANT EVIDENCE THAT MAY CONTAIN DNA THAT IS NOT PRESERVED BY AN ACCREDITED LABORATORY SHALL BE PRESERVED BY THE LAW ENFORCEMENT AGENCY THAT COLLECTS IT.

(d) AN ENTITY HAVING CUSTODY OF EVIDENCE SUBJECT TO PRESERVATION PURSUANT TO THIS SUBSECTION (1) SHALL PRESERVE THE EVIDENCE IN AN AMOUNT AND MANNER SUFFICIENT TO DEVELOP A DNA PROFILE, BASED ON THE BEST SCIENTIFIC PRACTICES AT THAT TIME, FROM THE BIOLOGICAL MATERIAL CONTAINED IN OR INCLUDED ON THE EVIDENCE. IF EVIDENCE CONTAINING BIOLOGICAL MATERIAL IS OF SUCH A SIZE, BULK, OR PHYSICAL CHARACTER AS TO RENDER RETENTION IMPRACTICABLE, THE ENTITY SHALL REMOVE AND PRESERVE PORTIONS OF THE EVIDENCE LIKELY TO CONTAIN BIOLOGICAL MATERIAL RELATED TO THE OFFENSE IN A QUANTITY SUFFICIENT, BASED ON THE BEST SCIENTIFIC PRACTICES AT THAT TIME, TO PERMIT FUTURE DNA TESTING. THE ENTITY MAY THEN RETURN OR

DISPOSE OF THE REMAINDER OF THE EVIDENCE.

(2) EVIDENCE THAT MAY CONTAIN DNA THAT IS COLLECTED FOR AN INVESTIGATION IN WHICH CHARGES ARE NOT FILED SHALL BE PRESERVED FOR THE LENGTH OF THE STATUTE OF LIMITATIONS FOR THE CRIME THAT WAS INVESTIGATED.

(3) IF AN ENTITY IS ASKED TO PRODUCE EVIDENCE THAT IS REQUIRED TO BE PRESERVED UNDER THE PROVISIONS OF THIS SECTION, AND CANNOT PRODUCE THE EVIDENCE, THE CHIEF EVIDENCE CUSTODIAN OF THE ENTITY THAT HAD THE DUTY TO PRESERVE THE EVIDENCE SHALL PROVIDE AN AFFIDAVIT IN WHICH HE OR SHE DESCRIBES, UNDER PENALTY OF PERJURY, THE EFFORTS TAKEN TO LOCATE THE EVIDENCE AND AFFIRMS THAT THE EVIDENCE COULD NOT BE LOCATED.

(4) IF EVIDENCE THAT IS REQUIRED TO BE PRESERVED PURSUANT TO THIS SECTION IS DESTROYED, THE COURT SHALL DETERMINE WHETHER THE DESTRUCTION VIOLATED THE DEFENDANT'S DUE PROCESS RIGHTS, AND, IF SO, THE COURT SHALL ORDER AN APPROPRIATE REMEDY.

18-1-1103. Destruction of evidence - procedures. (1) (a) PRIOR TO DISPOSING OF ANY EVIDENCE THAT MAY CONTAIN DNA THAT IS NOT SUBJECT TO THE PROVISIONS OF SECTION 18-1-1102, COLLECTED THROUGH A CRIMINAL INVESTIGATION IN THIS STATE THAT CULMINATED IN A CONVICTION, THE CUSTODIAN OF THE EVIDENCE SHALL PROVIDE NOTICE TO THE DISTRICT ATTORNEY'S OFFICE THAT PROSECUTED THE CRIME INVOLVING THE EVIDENCE.

(b) (I) UPON RECEIPT OF THE NOTICE FROM THE EVIDENCE CUSTODIAN DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1), THE DISTRICT ATTORNEY SHALL DETERMINE WHETHER THE EVIDENCE SHOULD BE DESTROYED. THE DETERMINATION MAY INDICATE THAT SOME OF THE EVIDENCE MAY BE DESTROYED AND SOME OF THE EVIDENCE SHALL BE PRESERVED.

(II) IF THE DISTRICT ATTORNEY DETERMINES THE EVIDENCE SHOULD NOT BE DESTROYED, THE DISTRICT ATTORNEY SHALL PROVIDE NOTICE TO THE EVIDENCE CUSTODIAN THAT THE EVIDENCE SHALL BE PRESERVED. UPON THE RECEIPT OF THE NOTICE FROM THE DISTRICT ATTORNEY TO PRESERVE THE EVIDENCE, THE EVIDENCE CUSTODIAN SHALL PRESERVE THE EVIDENCE UNTIL SUCH TIME AS HE OR SHE IS PERMITTED BY THE DISTRICT ATTORNEY OR A COURT ORDER TO DESTROY THE EVIDENCE.

(III) IF THE DISTRICT ATTORNEY DETERMINES THAT ALL OR A PORTION OF THE EVIDENCE MAY BE DESTROYED, HE OR SHE SHALL SEND NOTICE TO THE DEFENDANT'S ATTORNEY OF RECORD, OR TO THE DEFENDANT IF THE DEFENDANT DOES NOT HAVE AN ATTORNEY OF RECORD, AND TO THE EVIDENCE CUSTODIAN REGARDING THE EVIDENCE THE DISTRICT ATTORNEY DETERMINES SHOULD BE DESTROYED.

(IV) IF THE EVIDENCE CUSTODIAN DOES NOT RECEIVE A NOTICE FROM THE DISTRICT ATTORNEY AS DESCRIBED IN SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH (b) WITHIN A REASONABLE AMOUNT OF TIME OR RECEIVES A NOTICE FROM THE DISTRICT ATTORNEY OBJECTING TO THE DESTRUCTION OF THE EVIDENCE, THE EVIDENCE CUSTODIAN MAY FILE A MOTION ASKING FOR A COURT ORDER TO DESTROY THE EVIDENCE. A COPY OF THE MOTION SHALL BE PROVIDED

CONTEMPORANEOUSLY WITH THE FILING OF THE MOTION TO THE DISTRICT ATTORNEY AND THE DEFENDANT'S ATTORNEY OF RECORD, OR THE DEFENDANT, IF THE DEFENDANT DOES NOT HAVE AN ATTORNEY. THE MOTION SHALL SPECIFY THE EVIDENCE THE EVIDENCE CUSTODIAN SEEKS TO DESTROY AND SHALL STATE THE GROUNDS FOR THE DESTRUCTION. THE EVIDENCE CUSTODIAN SHALL NOT DESTROY THE EVIDENCE UNLESS HE OR SHE RECEIVES A COURT ORDER PERMITTING THE DESTRUCTION. THE DEFENDANT OR DISTRICT ATTORNEY SHALL HAVE NINETY DAYS FROM THE DATE THE MOTION IS FILED TO FILE AN OBJECTION TO THE MOTION. THE COURT SHALL HAVE LIMITED JURISDICTION TO HEAR A MOTION FILED PURSUANT TO THIS SUBPARAGRAPH (IV). IF AN OBJECTION IS FILED, THE COURT SHALL FOLLOW THE PROCESS DESCRIBED IN PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION FOR CONSIDERATION OF AN OBJECTION TO A REQUEST TO DESTROY EVIDENCE. IF NO OBJECTION IS FILED WITHIN THE NINETY DAY PERIOD, THE COURT MAY ISSUE AN ORDER FOR THE DESTRUCTION OF THE EVIDENCE. THE COURT SHALL PROVIDE A COPY OF THE ORDER TO DESTROY THE EVIDENCE TO THE DEFENDANT, DISTRICT ATTORNEY, AND EVIDENCE CUSTODIAN.

(c) (I) THE ATTORNEY OF RECORD OR THE DEFENDANT SHALL HAVE NINETY DAYS AFTER RECEIPT OF THE NOTICE DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1) TO FILE AN OBJECTION WITH THE COURT THAT ENTERED THE CONVICTION IN THE CASE IN WHICH THE EVIDENCE WAS COLLECTED. THE EVIDENCE CUSTODIAN SHALL NOT DISPOSE OF THE EVIDENCE DURING THAT NINETY-DAY PERIOD. IF THE ATTORNEY OF RECORD OR THE DEFENDANT DOES NOT FILE AN OBJECTION DURING THE NINETY-DAY PERIOD, THE EVIDENCE CUSTODIAN MAY DISPOSE OF THE EVIDENCE. THE DEFENDANT, THROUGH LEGAL COUNSEL, SHALL HAVE A REASONABLE RIGHT TO REVIEW THE EVIDENCE DURING THE NINETY-DAY PERIOD.

(II) THE COURT SHALL HAVE LIMITED JURISDICTION TO HEAR AN OBJECTION FILED PURSUANT TO THIS PARAGRAPH (c). THE OBJECTION SHALL SPECIFY THE EVIDENCE THAT THE ATTORNEY OR THE DEFENDANT SEEKS TO PRESERVE AND SHALL SPECIFY THE GROUNDS FOR PRESERVATION. A COPY OF THE OBJECTION SHALL BE FILED WITH THE EVIDENCE CUSTODIAN WHO SHALL NOT DESTROY THE EVIDENCE UNLESS HE OR SHE RECEIVES A COURT ORDER AUTHORIZING THE DESTRUCTION. IF, UPON REVIEW OF THE OBJECTION, THE COURT FINDS THE OBJECTION FAILS TO STATE SPECIFIC GROUNDS UPON WHICH THE COURT MAY ORDER PRESERVATION OF THE EVIDENCE, THE COURT MAY DENY THE OBJECTION WITHOUT HOLDING A HEARING. IN SUCH CASE, THE COURT SHALL ISSUE AN ORDER FOR DESTRUCTION OF THE EVIDENCE AND PROVIDE A COPY OF THE ORDER TO THE DISTRICT ATTORNEY, DEFENDANT, AND EVIDENCE CUSTODIAN. IF THE COURT FINDS THERE ARE GROUNDS TO ORDER THE PRESERVATION, IT SHALL SET A HEARING ON THE OBJECTION UNLESS THE DISTRICT ATTORNEY AND THE DEFENDANT STIPULATE THAT A HEARING IS NOT NECESSARY.

(III) IN CONSIDERING AN OBJECTION FILED PURSUANT TO THIS PARAGRAPH (c), THE COURT SHALL CONSIDER THE FOLLOWING FACTORS IN DETERMINING WHETHER TO ORDER PRESERVATION OF THE EVIDENCE:

- (A) WHETHER IDENTIFICATION WAS AN ISSUE AT TRIAL;
- (B) WHETHER THE EVIDENCE CONTAINS KNOWN DNA;

(C) WHETHER IT IS POSSIBLE TO PERFORM A SEROLOGY TEST ON THE EVIDENCE THAT HAS NOT PREVIOUSLY BEEN PERFORMED;

(D) WHETHER THE DEFENDANT HAS SERVED ALL OF HIS OR HER SENTENCE; AND

(E) WHETHER THE DEFENDANT HAS STATE APPELLATE OR COLLATERAL ATTACK RIGHTS THAT HAVE NOT BEEN EXHAUSTED.

(IV) IN CONSIDERING AN OBJECTION FILED PURSUANT TO THIS PARAGRAPH (c), THERE SHALL BE A PRESUMPTION THAT THE EVIDENCE SHOULD BE PRESERVED IF THE DEFENDANT HAS STATE APPELLATE OR COLLATERAL ATTACK RIGHTS THAT HAVE NOT BEEN EXHAUSTED AND IT IS POSSIBLE TO PERFORM A SEROLOGY TEST ON THE EVIDENCE THAT HAS NOT PREVIOUSLY BEEN PERFORMED.

(V) THE COURT SHALL ORDER EITHER THAT THE EVIDENCE BE DESTROYED OR PRESERVED. IF THE COURT ORDERS PRESERVATION OF THE EVIDENCE, THE COURT MAY INCLUDE IN THE ORDER THE LENGTH OF TIME FOR WHICH THE EVIDENCE SHALL BE PRESERVED. THE COURT SHALL PROVIDE A COPY OF THE ORDER TO THE DEFENDANT, DISTRICT ATTORNEY, AND EVIDENCE CUSTODIAN.

(2) IF AN ENTITY IS ASKED TO PRODUCE EVIDENCE THAT HAS BEEN REQUIRED TO BE PRESERVED PURSUANT TO THE PROCEDURES IN THIS SECTION, AND CANNOT PRODUCE THE EVIDENCE, THE CHIEF EVIDENCE CUSTODIAN OF THE ENTITY THAT HAD THE DUTY TO PRESERVE THE EVIDENCE SHALL PROVIDE AN AFFIDAVIT IN WHICH HE OR SHE DESCRIBES, UNDER PENALTY OF PERJURY, THE EFFORTS TAKEN TO LOCATE THE EVIDENCE AND AFFIRMS THAT THE EVIDENCE COULD NOT BE LOCATED.

(3) IF EVIDENCE THAT IS REQUIRED TO BE PRESERVED PURSUANT TO THE PROCEDURES IN THIS SECTION IS DESTROYED, THE COURT SHALL DETERMINE WHETHER THE DISPOSITION VIOLATED THE DEFENDANT'S DUE PROCESS RIGHTS, AND, IF SO, THE COURT SHALL ORDER AN APPROPRIATE REMEDY.

18-1-1104. Court data collection - DNA evidence cases - repeal. (1) WHEN THE COURT SENTENCES A PERSON FOR CONVICTION OF A FELONY, THE COURT SHALL MAKE THE FOLLOWING FINDINGS:

(a) WHETHER IDENTIFICATION OF THE PERPETRATOR WAS AN ISSUE IN THE CASE;

(b) WHETHER THE CASE INCLUDES EVIDENCE THAT CONTAINS KNOWN DNA;

(c) WHETHER IT IS POSSIBLE TO PERFORM A SEROLOGY TEST ON EVIDENCE IN THE CASE THAT HAS NOT PREVIOUSLY BEEN PERFORMED;

(d) THE CHARGES FILED AGAINST THE DEFENDANT AND THE CHARGES ON WHICH THE DEFENDANT WAS CONVICTED;

(e) WHETHER THE DEFENDANT WAS CONVICTED AT TRIAL OR PLED GUILTY; AND

(f) WHETHER THE CASE INCLUDES REASONABLE AND RELEVANT EVIDENCE CONTAINING DNA THAT SHOULD BE PRESERVED.

(2) THE COURT SHALL ENTER FINDINGS SPECIFIED IN SUBSECTION (1) OF THIS SECTION INTO THE INTEGRATED COLORADO ON-LINE NETWORK OF THE STATE JUDICIAL DEPARTMENT. THE STATE JUDICIAL DEPARTMENT SHALL PROVIDE THE FINDINGS ENTERED PURSUANT TO THIS SECTION TO THE DEPARTMENT OF PUBLIC SAFETY TO PREPARE THE REPORT REQUIRED IN SECTION 24-33.5-104.5, C.R.S.

(3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2010.

SECTION 3. Part 1 of article 33.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-33.5-104.5. Powers of executive director - DNA evidence issues - working group. (1) (a) THE EXECUTIVE DIRECTOR SHALL CONVENE A WORKING GROUP TO ADDRESS ISSUES RELATING TO EVIDENCE RETENTION. BEGINNING IN 2008, THE WORKING GROUP SHALL MEET AT LEAST ANNUALLY.

(b) THE WORKING GROUP CONVENED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL INCLUDE THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, AND THE FOLLOWING PERSONS:

(I) THE STATE ATTORNEY GENERAL OR HIS OR HER DESIGNEE;

(II) THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION OR HIS OR HER DESIGNEE;

(III) THE DIRECTOR OF THE COLORADO DISTRICT ATTORNEYS' COUNCIL OR HIS OR HER DESIGNEE;

(IV) THE STATE PUBLIC DEFENDER OR HIS OR HER DESIGNEE;

(V) A DEFENSE ATTORNEY IN PRIVATE PRACTICE;

(VI) REPRESENTATIVES OF LOCAL LAW ENFORCEMENT AGENCIES SELECTED BY THE EXECUTIVE DIRECTOR;

(VII) TWO MEMBERS OF THE HOUSE OF REPRESENTATIVES, ONE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE OTHER BY THE MINORITY LEADER; AND

(VIII) TWO MEMBERS OF THE SENATE, ONE APPOINTED BY THE PRESIDENT OF THE SENATE AND THE OTHER BY THE MINORITY LEADER.

(2) THE DEPARTMENT OF PUBLIC SAFETY, IN CONJUNCTION WITH THE WORKING GROUP, SHALL PREPARE A REPORT REGARDING THE INFORMATION COLLECTED PURSUANT TO SECTION 18-1-1104, C.R.S. THE DEPARTMENT SHALL SUBMIT THE REPORT TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES, NO LATER THAN OCTOBER 1, 2010.

(3) AFTER COMPLETING THE REPORT REQUIRED IN SUBSECTION (2) OF THIS SECTION, THE WORKING GROUP SHALL CONVENE TO MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY FOR LEGISLATION ADDRESSING THE ISSUES OF DNA

EVIDENCE RETENTION AND STORAGE. THE RECOMMENDATIONS SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, STANDARDIZED TIME LINES FOR RETENTION OF REASONABLE AND RELEVANT DNA EVIDENCE, PROVISION OF STORAGE FACILITIES, AND BEST PRACTICES FOR EVIDENCE COLLECTION AND STORAGE. THE WORKING GROUP SHALL MAKE ITS RECOMMENDATIONS BY DECEMBER 1, 2010.

SECTION 4. Part 3 of article 31 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-31-311. DNA evidence - collection - retention. (1) THE TRAINING PROVIDED FOR PEACE OFFICERS SHALL INCLUDE PROPER COLLECTION AND RETENTION TECHNIQUES, PRACTICES, AND PROTOCOLS FOR EVIDENCE THAT MAY CONTAIN BIOLOGICAL OR DNA EVIDENCE. ON OR BEFORE AUGUST 1, 2009, THE P.O.S.T. BOARD SHALL CERTIFY THE CURRICULUM FOR THE TRAINING. AFTER AUGUST 1, 2009, THE TRAINING SHALL BE PROVIDED TO PERSONS WHO ENROLL IN A TRAINING ACADEMY FOR BASIC PEACE OFFICER TRAINING AND TO ALL PEACE OFFICERS DESCRIBED IN SECTION 16-2.5-101, C.R.S., WHO ARE CERTIFIED BY THE P.O.S.T. BOARD PURSUANT TO PART 3 OF ARTICLE 31 OF THIS TITLE PRIOR TO AUGUST 1, 2009.

(2) THE P.O.S.T. BOARD MAY DEVELOP A SPECIALIZED CERTIFICATION PROGRAM THAT CONCENTRATES ON THE PROPER TECHNIQUES, PRACTICES, AND PROTOCOLS FOR EVIDENCE COLLECTION WITH EMPHASIS ON EVIDENCE THAT MAY CONTAIN BIOLOGICAL OR DNA EVIDENCE.

SECTION 5. Appropriation - adjustments to the 2008 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of law, for allocation to the criminal justice and appellate division, for police officers standards and training board support, for the fiscal year beginning July 1, 2008, the sum of eighty-one thousand two hundred seven dollars (\$81,207), or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, the general fund appropriation to the controlled maintenance trust fund made in section 23 of the annual general appropriation act, for the fiscal year beginning July 1, 2008, shall be decreased by eighty-one thousand two hundred seven dollars (\$81,207).

SECTION 6. Applicability. Section 2 of this act shall apply to all evidence in the custody of a law enforcement agency in the state on the effective date of this act and all evidence collected after the effective date of this act.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 14, 2008