

CHAPTER 322

CRIMINAL LAW AND PROCEDURE

SENATE BILL 08-205

BY SENATOR(S) Gordon and Mitchell S., Bacon, Boyd, Brophy, Cadman, Gibbs, Groff, Hagedorn, Isgar, Johnson, Keller, Kester, Morse, Romer, Schwartz, Shaffer, Tapia, Tochtrop, Williams, and Windels;
also REPRESENTATIVE(S) King and Jahn, Stafford, Benefield, Borodkin, Buescher, Butcher, Carroll M., Carroll T., Casso, Curry, Ferrandino, Fischer, Frangas, Gagliardi, Gallegos, Green, Hodge, Kefalas, Kerr A., Kerr J., Labuda, Levy, Looper, Madden, Marostica, Marshall, Massey, May M., McFadyen, McGihon, McKinley, McNulty, Merrifield, Middleton, Mitchell V., Peniston, Pommer, Primavera, Rice, Roberts, Rose, Scanlan, Solano, Sonnenberg, Todd, Weissmann, White, and Witwer.

AN ACT**CONCERNING JUDICIAL REMEDIES WHEN A LAW ENFORCEMENT AGENCY FAILS TO PRESERVE EVIDENCE THAT IS SUBJECT TO A JUDICIAL ORDER.**

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) Since DNA evidence is a powerful tool for both the prosecution and defense in a criminal matter, law enforcement agencies should make every effort to preserve evidence that may contain DNA evidence since it may lead to future prosecution of a crime or allow a wrongfully convicted person to be set free;

(d) Post-conviction remedies involving DNA evidence should not be seen as a criticism of law enforcement practices or procedures but rather a reflection that any system is susceptible to human error; and

(e) When human error occurs in a criminal proceeding regarding the preservation of evidence, the defendant may be provided an equitable remedy to ensure that

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

justice is served.

SECTION 2. 18-1-414 (2) and (3), Colorado Revised Statutes, are amended to read:

18-1-414. Preservation of evidence. (2) (a) A court granting a motion for hearing pursuant to section 18-1-412 shall order the appropriate law enforcement agency to preserve existing biological evidence for DNA testing.

(b) IF A LAW ENFORCEMENT AGENCY, THROUGH NEGLIGENCE, DESTROYS, LOSES, OR OTHERWISE DISPOSES OF BIOLOGICAL EVIDENCE THAT IS THE SUBJECT OF AN ORDER PURSUANT TO THIS SUBSECTION (2) BEFORE THE EVIDENCE MAY BE TESTED, THE COURT SHALL SET A HEARING TO DETERMINE WHETHER A REMEDY IS WARRANTED. IF THE COURT DETERMINES THAT A REMEDY IS WARRANTED, THE COURT MAY ORDER WHATEVER REMEDY THE COURT FINDS IS JUST, EQUITABLE, AND APPROPRIATE. NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO LIMIT OR ELIMINATE THE COURT'S AUTHORITY TO ORDER ANY REMEDY OTHERWISE AVAILABLE UNDER LAW FOR THE DESTRUCTION, LOSS, OR DISPOSAL OF EVIDENCE.

(c) FOR THE PURPOSES OF THIS SUBSECTION (2), "NEGLIGENCE" MEANS A DEPARTURE FROM THE ORDINARY STANDARD OF CARE.

(3) ~~Notwithstanding the provisions of~~ EXCEPT AS PROVIDED IN subsection (2) of this section, this section does not create a duty to preserve biological evidence. ~~nor does it~~ NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, THIS SECTION DOES NOT create a liability on the part of a law enforcement agency for failing to preserve biological evidence.

SECTION 3. 24-4.1-302 (2) (r) and (2) (s), Colorado Revised Statutes, are amended, and the said 24-4.1-302 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-4.1-302. Definitions. As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(2) "Critical stages" means the following stages of the criminal justice process:

(r) Any petition by a sex offender to terminate sex offender registration; ~~and~~

(s) The execution of an offender in a capital case; AND

(t) A HEARING HELD PURSUANT TO SECTION 18-1-414 (2) (b), C.R.S.

SECTION 4. Effective date - applicability. This act shall take effect upon passage and shall apply to persons convicted or evidence destroyed, lost, or otherwise disposed of prior to, on, or after said date.

SECTION 5. 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 28, 2008