

1 AN ACT relating to DNA evidence.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 524.140 is amended to read as follows:

4 (1) As used in this section:

5 (a) **"Biological evidence" means:**

- 6 **1. The contents of a sexual assault evidence collection kit; or**
 7 **2. Any item, or representative sample taken from an item, that contains**
 8 **blood, saliva, sperm, hair, tissue, bones, teeth, or other bodily fluids**
 9 **that was collected as part of a criminal investigation and that**
 10 **reasonably may be used to incriminate or exculpate any person from**
 11 **an offense or delinquent act;**

12 (b) "Defendant" means a person charged with a:

- 13 1. Capital offense, Class A felony, Class B felony, or Class C felony; or
 14 2. Class D felony under KRS Chapter 510; and

15 (c)~~(b)~~ "Following trial" means after:

- 16 1. The first appeal authorized by the Constitution of Kentucky in a criminal
 17 case has been decided; or
 18 2. The time for the first appeal authorized by the Constitution of Kentucky
 19 in a criminal case has lapsed without an appeal having been filed.

20 (2) No item of **biological** evidence gathered by law enforcement, prosecutorial, or
 21 defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence
 22 testing and analysis in order **to assist federal, state, and local criminal justice and**
 23 **law enforcement agencies within and outside the Commonwealth in the**
 24 **identification, detection, or exclusion of individuals who are subjects of**
 25 **investigation or prosecution, or** to confirm the guilt or innocence of a criminal
 26 defendant, shall be disposed of prior to **a criminal** trial ~~of a criminal defendant~~
 27 unless:

- 1 (a) The evidence has been in custody not less than fifty (50) years; or
- 2 (b) The evidence has been in custody not less than ten (10) years; and
- 3 1. The prosecution has determined that the defendant will not be tried for
- 4 the criminal offense; and
- 5 2. The prosecution has made a motion, before the court in which the case
- 6 would have been tried, to destroy the evidence.
- 7 (3) No item of ***biological*** evidence gathered by law enforcement, prosecutorial, or
- 8 defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence
- 9 testing and analysis in order to confirm the guilt or innocence of a criminal
- 10 defendant shall be disposed of following the trial unless:
- 11 (a) The evidence, together with DNA evidence testing and analysis results, has
- 12 been presented at the trial, and the defendant has been found guilty, pled
- 13 guilty, or entered an Alford plea at the trial;
- 14 (b) The evidence was not introduced at the trial, or if introduced at the trial was
- 15 not the subject of DNA testing and analysis, and the defendant has been found
- 16 guilty, pled guilty, or entered an Alford plea at the trial, and the trial court has
- 17 ordered the destruction of the evidence after an adversarial hearing conducted
- 18 upon motion of either the prosecution or the defendant;
- 19 (c) The trial resulted in the defendant being found not guilty or the charges were
- 20 dismissed after jeopardy attached, whether or not the evidence was introduced
- 21 at the trial or was subject to DNA testing and analysis or not, and the trial
- 22 court ordered the destruction of the evidence after an adversarial hearing
- 23 conducted upon motion of either the prosecution or the defendant; or
- 24 (d) The trial resulted in the dismissal of charges against the defendant, and the
- 25 defendant may be subject to retrial, in which event the evidence shall be
- 26 retained until after the retrial, which shall be considered a new trial for the
- 27 purposes of this section.

1 (4) The burden of proof for a motion to destroy ***biological*** evidence that may be subject
2 to DNA testing and analysis shall be upon the party making the motion, and the
3 court may permit the destruction of the evidence under this section upon good cause
4 shown favoring its destruction.

5 (5) It is recognized by the General Assembly that the DNA evidence laboratory testing
6 and analysis procedure consumes and destroys a portion of the evidence or may
7 destroy all of the evidence if the sample is small. The consuming and destruction of
8 evidence during the laboratory analysis process shall not result in liability for its
9 consumption or destruction if the following conditions are met:

10 (a) The Department of Kentucky State Police laboratory uses a method of testing
11 and analysis which preserves as much of the biological material or other
12 evidence tested and analyzed as is reasonably possible; or

13 (b) If the Department of Kentucky State Police laboratory knows or reasonably
14 believes that the entire sample of evidence to be tested and analyzed that the
15 laboratory, prior to the testing or analysis of the evidence, notifies in writing
16 the court which ordered the testing and analysis and counsel for all parties:

17 1. That the entire sample of evidence may be destroyed by the testing and
18 analysis;

19 2. The possibility that another laboratory may be able to perform the
20 testing and analysis in a less destructive manner with at least equal
21 results;

22 3. The name of the laboratory capable of performing the testing and
23 analysis, the costs of testing and analysis, the advantages of sending the
24 material to that other laboratory, and the amount of biological material
25 or other evidence which might be saved by alternative testing and
26 analysis; and

27 4. The Department of Kentucky State Police laboratory follows the

- 1 directive of the court with regard to the testing and analysis; or
- 2 (c) If the Department of Kentucky State Police laboratory knows or reasonably
- 3 believes that so much of the biological material or evidence may be consumed
- 4 or destroyed in the testing and analysis that an insufficient sample will remain
- 5 for independent testing and analysis that the laboratory follows the procedure
- 6 specified in paragraph (b) of this subsection.
- 7 (6) Destruction of evidence in violation of this section shall be a violation of KRS
- 8 524.100.
- 9 (7) Subject to KRS 422.285(9), the appropriate governmental entity shall retain any
- 10 biological material secured in connection with a criminal case for the period of time
- 11 that any person remains incarcerated in connection with that case. The
- 12 governmental entity shall have the discretion to determine how the evidence is
- 13 retained pursuant to this section, provided that the evidence is retained in a
- 14 condition suitable for DNA testing and analysis.