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MODEL LEGISLATION, 2011 STATE LEGISLATIVE SESSIONS

AN ACT TO CREATE A TASK FORCE TO RECOMMEND PROCEDURES AND PRACTICES TO IMPROVE THE PRESERVATION OF BIOLOGICAL EVIDENCE

SECTION 1. LEGISLATIVE INTENT

The legislature finds that:

- A. The value of properly preserved biological evidence has been enhanced by the discovery of modern DNA testing methods, which, coupled with a comprehensive system of DNA databases that store crime scene and offender profiles, allow law enforcement to improve its crime-solving potential;
- B. Tapping the potential of preserved biological evidence requires the proper identification, collection, preservation, storage, cataloging and organization of such evidence;
- C. Law enforcement agencies indicate that “cold” case investigations are hindered by an inability to access biological evidence that was collected in connection with criminal investigations;
- D. Innocent people mistakenly convicted of the serious crimes for which biological evidence is probative cannot prove their innocence if such evidence is not accessible for testing in appropriate circumstances;
- E. It is well established that the failure to update preservation policies squanders valuable law enforcement resources, manpower hours and storage space;
- F. Simple but crucial enhancements to protocols for properly preserving biological evidence can solve old crimes, enhance public safety and settle claims of innocence; and

G. It would benefit [State] to create a Task Force for the Preservation of Biological Evidence to identify and recommend policies and procedures to improve the preservation and cataloguing of biological evidence statewide.

SECTION 2. DEFINITIONS

For the purposes of this Act:

A. “Biological evidence” means the contents of a sexual assault examination kit; and any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. This definition applies whether that material is catalogued separately (e.g., on a slide, swab or in a test tube) or is present on other evidence (including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, cigarettes, etc.)

B. “DNA” means deoxyribonucleic acid.

C. “Statewide” refers to any governmental or public entity within [State] (including all private entities within any city, county, or other locality that perform such functions) and its officials or employees, including but not limited to law enforcement agencies, prosecutors’ offices, courts, hospitals, crime laboratories, and any other entity or individual charged with the collection, storage and/or retrieval of biological evidence.



SECTION 3. TASK FORCE COMPOSITION

The presiding Chief Justice of the [state] Supreme Court shall convene a Task Force for the Preservation of Biological Evidence.

A. The Task Force for the Preservation of Biological Evidence is composed of seventeen members:

1. One member shall be designated by the Governor and shall serve as presiding officer;
2. Four members shall be representatives of law enforcement with experience in evidence handling, collection and retention:
 - a. One of whom must be a representative of the State Police;
 - b. One of whom must be a law enforcement officer from a local police department from a large metropolitan jurisdiction;
 - c. One of whom must be a law enforcement officer from a local police department from a small jurisdiction; and
 - d. One of whom shall be a sheriff or representative of a sheriff's department, with knowledge and experience in evidence handling, collection and retention;
3. One of whom shall be a representative of the state's court clerks association, with knowledge and experience in evidence handling, collection and retention;
4. One of whom shall be a crime lab director, with knowledge and experience in evidence handling, collection and retention;



5. One of whom shall be appointed by the Attorney General and shall have knowledge and experience in evidence handling, collection and retention;
6. One of whom shall be appointed by the [State] District and County Attorneys Association, who must be a prosecutor;
7. One of whom shall be appointed by the [State] Criminal Defense Lawyers Association, who must be a criminal defense lawyer;
8. One of whom shall be appointed by the [State] Bar Association;
9. One of whom shall be a representative of an organization dedicating to investigating post-conviction claims of innocence;
10. One of whom shall be a representative of a victims rights organization;
11. One of whom shall be a member of the Legislature, who shall be appointed from the Judiciary/Criminal Justice Committee of the Senate;
12. One of whom shall be a member of the Legislature, who shall be appointed from the Judiciary/Criminal Justice Committee of the House of Representatives;
13. One of whom shall be appointed by the Chief Justice of the Supreme Court; and
14. One of whom shall be appointed by the chancellor of the [State University system] who shall have expertise in criminology.

SECTION 4. DUTIES

The Task Force for the Preservation of Biological Evidence shall:

- A. Establish statewide standards regarding proper identification, collection, preservation, storage, cataloguing and organization of biological evidence.



B. Recommend essential components of training programs for law enforcement officers and other relevant employees that are charged with preserving and retrieving biological evidence regarding the methods and procedures referenced in this Act.

C. Issue recommendations regarding the creation of a centralized tracking system through which laboratories, facilities and other related entities may locate biological evidence connected to felony cases, which include:

1. Protocol for the retrieval of biological evidence for cases that have already resulted in felony convictions; and
2. Protocol for the retrieval of biological evidence for unsolved felony cases; and
3. Recommend practices, protocols, models and resources for the cataloguing and accessibility of preserved biological evidence already in the possession of local, county, and state entities that preserve such evidence.
4. Program for ensuring that all evidence custodians in [State] are notified of the protocols that are ultimately developed by the Task Force.

SECTION 5. REIMBURSEMENT

A member of the Task Force for the Preservation of Biological Evidence may not receive compensation, but is entitled to reimbursement for the member's travel expenses as provided by (provide source of state-specific compensation), Government Code, and the General Appropriations Act.



SECTION 6. REPORTING

Not later than [date], the Task Force for the Preservation of Biological Evidence shall submit a report, which shall also be made available to the public on [state website], regarding the findings and recommendations for future practice. Minority reports may also be issued. These reports shall be presented to the Governor, the Chief Justice, the Speaker of the House, the Senate President, and the Chairs of the standing committees of the Legislature having cognizance of matters relating to criminal law and procedure, in accordance with [the appropriate provisions] of the general statutes. The Task Force for the Preservation of Biological Evidence shall terminate on the date that it submits such report or [date], whichever is later.