

Regular Session, 2014

SENATE BILL NO. 565

BY SENATOR DORSEY-COLOMB

CRIMINAL PROCEDURE. Provides relative to the testing and preservation of DNA evidence in capital cases. (8/1/14)

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AN ACT

To enact Chapter 7 of Title XIII of the Code of Criminal Procedure, to be comprised of Article 501, relative to information and indictment; to require testing of DNA evidence prior to trial of capital cases; to provide definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 7 of Title XIII of the Code of Criminal Procedure, to be comprised of Article 501, is hereby enacted to read as follows:

**CHAPTER 7. DNA TESTING IN CAPITAL CASES**

**Art. 501. Capital cases; DNA testing required; remedy**

**A. Before a defendant is tried for a capital offense in which the prosecution is seeking the death penalty, subject to Paragraph B of this Article, the prosecution shall require either the Department of Public Safety and Corrections, office of state police, through one of its laboratories, or a laboratory that is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) in forensic DNA analysis, to perform DNA testing, in accordance with the laboratory's**

1           capabilities at the time the testing is performed, on any biological evidence that  
2           was collected as part of an investigation of the offense and that is in the  
3           possession of the prosecution. The laboratory that performs the DNA testing  
4           shall pay for all DNA testing performed in accordance with this Paragraph.

5           B. As soon as practicable after the defendant is charged with a capital  
6           offense, or on motion of the prosecution or the defendant, unless the prosecution  
7           has affirmatively waived the death penalty in writing, the court shall order the  
8           prosecution and the defendant to meet and confer about which biological  
9           materials collected as part of an investigation of the offense qualify as biological  
10          evidence that is required to be tested under Paragraph A of this Article.

11          (1) If the prosecution and the defendant agree on which biological  
12          materials constitute biological evidence, the biological evidence shall be tested  
13          in accordance with Paragraph A of this Article.

14          (2) If the prosecution and the defendant do not agree on which biological  
15          materials qualify as biological evidence, the prosecution or the defendant may  
16          request that the court hold a hearing to determine the issue. On receipt of a  
17          request for a hearing under this Subparagraph, the court shall set a date for the  
18          hearing and provide written notice of the hearing date to the prosecution and  
19          the defendant. At the hearing, there is a rebuttable presumption that the  
20          biological material that the defendant requests to be tested constitutes biological  
21          evidence that is required to be tested under Paragraph A of this Article.

22          (3) This Paragraph shall not prohibit the prosecution from testing  
23          biological evidence in its possession.

24          C. If an item of biological evidence is destroyed or lost as a result of DNA  
25          testing performed under Paragraph A of this Article, then the laboratory that  
26          tested the evidence shall provide to the defendant any work product generated  
27          during DNA analysis by the laboratory that is related to the testing of the  
28          evidence and the results of that testing.

29          D.(1) The defendant's exclusive remedy for testing that was not

1 performed as required under Paragraphs A or B of this Article is to seek a writ  
2 of mandamus from the court of appeal at any time on or before the date an  
3 appeal is due to be filed in the defendant's case under Code of Criminal  
4 Procedure Article 930.8. An application for a writ of mandamus under this  
5 Paragraph does not toll or interrupt any time limitation applicable to an appeal  
6 under state law or to a habeas petition under federal law. The defendant is  
7 entitled to only one application for a writ of mandamus under this Paragraph.

8 (2) At any time after an appeal is filed in the defendant's case, the  
9 defendant may file one additional motion for DNA testing under Code of  
10 Criminal Procedure Article 926.1.

11 E.(1) A defendant may have another laboratory accredited by the  
12 ASCLD/LAB in forensic DNA analysis perform additional testing of any  
13 biological evidence required to be tested under Paragraph A of this Article.

14 (2) On an ex parte showing of good cause to the court, a defendant may  
15 have a laboratory accredited by the ASCLD/LAB in forensic DNA analysis  
16 perform testing of any biological material that is not required to be tested under  
17 Paragraph A of this Article.

18 (3) The defendant is responsible for the cost of any testing performed  
19 under this Paragraph.

20 F.(1) For purposes of this Article, "biological evidence" means the  
21 contents of a sexual assault examination kit or any item that contains blood,  
22 semen, hair, saliva, skin tissue, fingerprints, or other identifiable human  
23 biological material that may reasonably be used to incriminate or exculpate any  
24 person in the criminal investigation, whether that material is catalogued  
25 separately on a slide or swab, in a test tube, or some other similar method, or  
26 is present on clothing, ligatures, bedding, other household materials, drinking  
27 cups, cigarettes, or any other item of evidence, including those that are alleged  
28 to have been touched or worn by the perpetrator of the offense.

29 (2) Work product generated during DNA analysis shall not be considered

1           **biological evidence with the exception of the extracted DNA when the original**  
 2           **biological evidence is consumed during analysis, in which event the extracted**  
 3           **DNA shall be retained.**

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

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#### DIGEST

Dorsey-Colomb (SB 565)

Proposed law provides that before a defendant is tried for a capital offense in which the prosecution is seeking the death penalty, the prosecution must have either the Dept. of Public Safety and Corrections, office of state police, through one of its laboratories, or a laboratory that is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) in forensic DNA analysis, perform DNA testing, in accordance with the laboratory's capabilities at the time the testing is performed, on any biological evidence that was collected as part of an investigation of the offense and that is in the possession of the prosecution. Proposed law further provides that the laboratory that performs the DNA testing is to pay for all DNA testing performed in accordance with proposed law.

Proposed law provides that, as soon as practicable after the defendant is charged with a capital offense, or on motion of the prosecution or the defendant, unless the prosecution has affirmatively waived the death penalty in writing, the court is to order the prosecution and the defendant to meet and confer about which biological materials collected as part of an investigation of the offense qualify as biological evidence that is required to be tested under proposed law.

Proposed law provides that if the prosecution and the defendant agree on which biological materials constitute biological evidence, the biological evidence is to be tested in accordance with proposed law. Proposed law further provides that if the prosecution and the defendant do not agree on which biological materials qualify as biological evidence, the prosecution or the defendant may request that the court hold a hearing to determine the issue. Proposed law further provides that on receipt of a request for a hearing, the court is to set a date for the hearing and provide written notice of the hearing date to the prosecution and the defendant. Proposed law further provides that at the hearing, there is a rebuttable presumption that the biological material that the defendant requests to be tested constitutes biological evidence that is required to be tested under proposed law. Proposed law does not prevent the prosecution from testing biological evidence in its possession.

Proposed law provides that if an item of biological evidence is destroyed or lost as a result of DNA testing, then the laboratory that tested the evidence must provide to the defendant any work product generated during DNA analysis by the laboratory that is related to the testing of the evidence and the results of that testing.

Proposed law provides that the defendant's exclusive remedy for testing that was not performed as required under proposed law is to seek a writ of mandamus from the court of appeal at any time on or before the date an appeal is due to be filed in the defendant's case under present law. Proposed law further provides that an application for a writ of mandamus under proposed law does not toll or interrupt any time limitation applicable to an appeal under present law or to a habeas petition under federal law. Proposed law provides that the defendant is entitled to only one application for a writ of mandamus under proposed law.

Proposed law provides that at any time after an appeal is filed in the defendant's case, the defendant may file one additional motion for DNA testing under present law relative to DNA

testing as part of post-conviction relief.

Proposed law provides that a defendant, at his expense, may have another laboratory accredited by the ASCLD/LAB in forensic DNA analysis perform additional testing of any biological evidence required to be tested under proposed law. Proposed law further provides that on an ex parte showing of good cause to the court, a defendant, at his expense, may have a laboratory accredited by the ASCLD/LAB in forensic DNA analysis perform testing of any biological material that is not required to be tested under proposed law.

Proposed law defines "biological evidence" as the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingerprints, or other identifiable human biological material that may reasonably be used to incriminate or exculpate any person in the criminal investigation, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or any other item of evidence, including those that are alleged to have been touched or worn by the perpetrator of the offense. Proposed law further provides that any work product generated during DNA analysis is not considered "biological evidence", with the exception of the extracted DNA when the original biological evidence is consumed during analysis, in which event the extracted DNA must be retained.

Effective August 1, 2014.

(Adds C.Cr.P. Art. 501)