

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SENATE BILL 1412

AN ACT

AMENDING TITLE 13, CHAPTER 38, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3890; CHANGING THE DESIGNATION OF TITLE 13, CHAPTER 38, ARTICLE 28, ARIZONA REVISED STATUTES, TO "RETENTION AND PRESERVATION OF BIOLOGICAL EVIDENCE"; AMENDING TITLE 13, CHAPTER 38, ARTICLE 28, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4221; RELATING TO THE RETENTION AND PRESERVATION OF EVIDENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 13, chapter 38, article 7, Arizona Revised Statutes,
3 is amended by adding section 13-3890, to read:

4 13-3890. Fingerprinting at time of arrest; order for
5 fingerprints; retention

6 A. A PERSON WHO IS ARRESTED FOR AN OFFENSE LISTED IN SECTION 41-1750,
7 SUBSECTION C SHALL BE FINGERPRINTED IN LEGIBLE FORM BY THE ARRESTING
8 AUTHORITY OR THE CUSTODIAL AGENCY.

9 B. THE COURT SHALL ORDER AN ARRESTED PERSON TO APPEAR AT A DESIGNATED
10 TIME AND PLACE FOR FINGERPRINTING ON PETITION OF THE ARRESTING AUTHORITY OR
11 CUSTODIAL AGENCY STATING THAT THE PERSON REFUSED TO PROVIDE FINGERPRINTS IN A
12 LEGIBLE FORM.

13 C. FINGERPRINTS RECEIVED PURSUANT TO THIS SECTION SHALL BE RETAINED
14 INDEFINITELY.

15 Sec. 2. Heading change

16 The article heading of title 13, chapter 38, article 28, Arizona
17 Revised Statutes, is changed from "ARSON REWARD FUND" to "RETENTION AND
18 PRESERVATION OF BIOLOGICAL EVIDENCE".

19 Sec. 3. Title 13, chapter 38, article 28, Arizona Revised Statutes, is
20 amended by adding section 13-4221, to read:

21 13-4221. Preservation of biological evidence; retention period;
22 definitions

23 A. NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE GOVERNMENTAL ENTITY
24 SHALL RETAIN ALL IDENTIFIED BIOLOGICAL EVIDENCE THAT IS SECURED IN CONNECTION
25 WITH A FELONY SEXUAL OFFENSE OR HOMICIDE FOR:

26 1. THE PERIOD OF TIME THAT A PERSON WHO WAS CONVICTED OF A FELONY
27 SEXUAL OFFENSE OR HOMICIDE REMAINS INCARCERATED FOR THAT OFFENSE OR UNTIL THE
28 COMPLETION OF THE PERSON'S SUPERVISED RELEASE.

29 2. A COLD CASE, FIFTY-FIVE YEARS OR UNTIL A PERSON IS CONVICTED OF THE
30 CRIME AND REMAINS INCARCERATED OR UNDER SUPERVISED RELEASE FOR THAT OFFENSE.

31 B. THE GOVERNMENTAL ENTITY SHALL PRESERVE THE EVIDENCE FOR THE PERIOD
32 OF TIME PRESCRIBED IN SUBSECTION A OF THIS SECTION IN A CONDITION THAT IS
33 SUITABLE FOR DEOXYRIBONUCLEIC ACID TESTING.

34 C. EVIDENCE RETAINED PURSUANT TO THIS SECTION SHALL BE MADE AVAILABLE
35 FOR DEOXYRIBONUCLEIC ACID TESTING PURSUANT TO SECTION 13-4240.

36 D. THE GOVERNMENT ENTITY THAT INVESTIGATES THE CRIME MAY ESTABLISH
37 PROCEDURES FOR RETAINING PROBATIVE SAMPLES OF THE BIOLOGICAL EVIDENCE AND
38 DISPOSING OF BULK EVIDENCE THAT DO NOT AFFECT THE SUITABILITY OF THE
39 PROBATIVE SAMPLE FOR DEOXYRIBONUCLEIC ACID TESTING. THE GOVERNMENT ENTITY
40 RESPONSIBLE FOR RETAINING THE SAMPLES SHALL OBTAIN APPROVAL FROM THE COUNTY
41 ATTORNEY OR ATTORNEY GENERAL BEFORE DISPOSAL OF ANY BULK EVIDENCE. BEFORE
42 THE DISPOSAL OF ANY BULK EVIDENCE, REASONABLE EFFORTS SHALL BE MADE TO
43 PROVIDE WRITTEN NOTICE TO THE VICTIM.

44 E. THIS SECTION DOES NOT PRECLUDE A GOVERNMENTAL ENTITY FROM DISPOSING
45 OF EVIDENCE IN A CASE IN WHICH A CONVICTION HAS BEEN OBTAINED AFTER THE

1 EXPIRATION OF THE DEFENDANT'S SENTENCE. UNDER ANY OTHER CIRCUMSTANCE, THE
2 GOVERNMENTAL ENTITY MAY DISPOSE OF PHYSICAL EVIDENCE AFTER THE CONCLUSION OF
3 THE CONVICTED DEFENDANT'S DIRECT APPEAL AND FIRST POSTCONVICTION RELIEF
4 PROCEEDING OR AFTER THE TIME FOR INITIATING THE DIRECT APPEAL AND FIRST
5 POSTCONVICTION RELIEF PROCEEDING HAS EXPIRED, WITH THE AGREEMENT OF THE
6 COUNTY ATTORNEY OR THE ATTORNEY GENERAL AND THEN, UPON WRITTEN NOTICE TO THE
7 DEFENDANT, ANY COUNSEL OF RECORD AND THE VICTIM IF NO OTHER LAW REQUIRES THAT
8 BIOLOGICAL EVIDENCE BE PRESERVED OR RETAINED.

9 F. THIS SECTION DOES NOT LIMIT A GOVERNMENTAL ENTITY'S DISCRETION
10 CONCERNING THE CONDITIONS UNDER WHICH BIOLOGICAL EVIDENCE IS RETAINED,
11 PRESERVED OR TRANSFERRED AMONG DIFFERENT ENTITIES IF THE EVIDENCE IS RETAINED
12 IN A CONDITION THAT IS SUITABLE FOR DEOXYRIBONUCLEIC ACID TESTING.

13 G. FOR THE PURPOSES OF THIS SECTION:

14 1. "BIOLOGICAL EVIDENCE" INCLUDES A SEXUAL ASSAULT FORENSIC
15 EXAMINATION KIT, SEMEN, BLOOD, SALIVA, HAIR, SKIN TISSUE OR OTHER IDENTIFIED
16 BIOLOGICAL MATERIAL.

17 2. "COLD CASE" MEANS A HOMICIDE OR A FELONY SEXUAL OFFENSE THAT
18 REMAINS UNSOLVED FOR ONE YEAR OR MORE AFTER BEING REPORTED TO A LAW
19 ENFORCEMENT AGENCY AND THAT HAS NO VIABLE AND UNEXPLORED INVESTIGATORY LEADS.

20 Sec. 4. Effective date

21 This act is effective from and after December 31, 2008.