

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To require law enforcement agencies to retain case jackets, crime scene examination case files, and evidence from open homicide investigations for 65 years, to require law enforcement agencies to retain case jackets, crime scene examination case files, and evidence from open sexual assault and other violent crime cases for a period of time equal to their statute of limitations, to require that law enforcement agencies retain case jackets and crime scene examination case files for as long as evidence from those investigations is preserved pursuant to the Innocence Protection Act of 2001, to provide for certain requirements related to the disposal of evidence, to establish penalties for violations of this act, and to require the Metropolitan Police Department to issue a records retention schedule consistent with this act; to amend the Establishment of the Office of the Chief Medical Examiner Act of 2000 to require the Chief Medical Examiner to retain evidence, records, and files for prescribed periods of time; and to amend the District of Columbia Theft and White Collar Crimes Act of 1982 and An act providing a permanent form of government for the District of Columbia to conform with this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Millicent Allewelt Amendment Act of 2004".

TITLE I. PRESERVATION OF CRIME INVESTIGATION RECORDS, FILES, AND EVIDENCE

Sec. 101. Definitions.

For the purposes of this title, the term:

(1) "Biological material" means a sexual assault forensic examination kit, semen, vaginal fluid, blood, saliva, observable skin tissue, or hair which apparently derived from the perpetrator of a crime or, under circumstances that may be probative of the perpetrator's identity, apparently derived from the victim of a crime.

(2) "Case jacket" means the primary file for an investigation of a crime which contains all of the investigative reports, papers, and documents specific to the investigation, including notes, transcripts of interviews, witness statements, photos, and audio and video tapes.

(3)(A) "Closed investigation" means the investigation of a crime:

(i) In which the suspect or, in a case with multiple suspects, each of the suspects:

(I) Has been found or pled guilty and judgment has been entered;

(II) Has been found not guilty by reason of insanity;

(III) Has been found incompetent to stand trial and is not

likely to regain competency before the expiration of the statute of limitations;

(IV) Is incarcerated and serving a sentence of either life without release or a term of years that is equivalent to life without release for a crime other than the crime being investigated; or

(V) Has died; or

(ii) In which the United States Attorney for the District of Columbia or the Corporation Counsel for the District of Columbia has declined prosecution on grounds that permanently eliminate all possibility of prosecution and has authorized the return of evidence to the rightful owner.

(B) A law enforcement agency shall consider a crime closed under subparagraph (A)(i)(IV) or (V) of this paragraph only if the United States Attorney for the District of Columbia or the Corporation Counsel for the District of Columbia has certified, for investigations under the prosecutorial jurisdiction of each, that there would be sufficient evidence to prosecute the suspect or suspects if the suspect or suspects were alive or not incarcerated, and declines prosecution on the grounds that the suspect or suspects are dead or incarcerated.

(4) "Crime scene examination case file" means the primary file for an investigation's crime scene which contains investigative documents and reports; toxicology, DNA testing, and other forensic examination results; evidence reports; photographs; and other documents pertaining to the investigation.

(5) "DNA" means deoxyribonucleic acid.

(6) "DNA testing" means forensic DNA analysis of biological material.

(7) "Domestic partner" has the same meaning as contained in section 2(3) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3)).

(8) "Family" means:

(A) A homicide victim's spouse, spouse's parents, domestic partner, children, including biological, step, and adopted, grandchildren, parents, grandparents, stepparents, nieces, nephews, siblings, or half siblings;

(B) A person who is a survivor of a homicide victim and who was primarily dependent upon the victim for care and support at the time of the commission of the homicide, including a child of the victim born after the victim's death; or

(C) A person who is a survivor of a homicide victim and upon whom the victim was primarily dependent for care and support at the time of the commission of the homicide.

(9) "Law enforcement agencies" means the Metropolitan Police Department, the Corporation Counsel for the District of Columbia, prosecutors, or any other governmental agency, with the exception of the Office of the Chief Medical Examiner, that has the authority to investigate, make arrests for, or prosecute or adjudicate District of Columbia criminal or delinquency offenses. The term "law enforcement agencies" shall include law enforcement agencies that have entered into cooperative agreements with the Metropolitan Police Department pursuant to Section 11712 of the Balanced Budget Act of 1997, approved August 5, 1997 (111 Stat. 783; D.C. Official Code § 5-133.17), to the extent the law enforcement agency is acting pursuant to such a cooperative agreement.

(10) "Open investigation" means the investigation of a crime other than those considered to be closed investigations as described in paragraph (3) of this section.

(11) "Records retention schedule" means a document listing all of the records

originating in the Metropolitan Police Department, specifying series of records to be retained permanently, and authorizing on a continued basis the destruction of other series of records after a specified time period has elapsed.

(12) "Statute of limitations" means the time limitations imposed on actions for criminal violations pursuant to D.C. Official Code § 23-113.

Sec. 102. Retention of records and preservation of evidence from open homicide, sexual assault, and violent crime investigations.

(a) In open homicide investigations, law enforcement agencies shall retain case jackets, crime scene examination case files, and any evidence collected during the course of the investigation for 65 years from the date the crime is first reported to the law enforcement agency.

(b) In open investigations of the following crimes, law enforcement agencies shall retain case jackets, crime scene examination case files, and any evidence collected during the course of the investigation for the length of each crime's statute of limitations:

- (1) Assault with intent to kill;
- (2) Aggravated assault;
- (3) Assault on a police officer with a dangerous weapon;
- (4) Burglary;
- (5) Mayhem;
- (6) Malicious disfigurement;
- (7) Sexual abuse and sex offenses; and
- (8) Any crime of violence, as that term is defined in section 1 of An Act To

control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe the rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Official Code § 22-4501) ("Act"), that is committed while armed, as that term is described in section 2 of the Act.

(c) Evidence preserved pursuant to subsections (a) and (b) of this section shall be preserved in such a manner, including if necessary by refrigeration, as to maintain the ability to conduct forensic testing, including DNA testing.

(d) Law enforcement agencies shall not be required to preserve evidence pursuant to subsections (a) and (b) of this section that is of such a size, bulk, or physical character as to render retention impracticable. If practicable, law enforcement agencies shall remove and preserve portions of evidence if such portions contain sufficient evidence to permit future DNA or other forensic testing. When it is not practicable to preserve evidence pursuant to this subsection, law enforcement agencies shall photograph the evidence before disposing of it. When it is not practicable to preserve evidence in its entirety but portions of it are preserved pursuant to this subsection, law enforcement agencies shall photograph the evidence:

- (1) Prior to removing portions of the evidence; and
- (2) After removing portions of the evidence and before disposing of it.

(e) Photographs of evidence created pursuant to subsection (d) of this section shall be retained in the crime scene examination case files of the corresponding investigation.

(f) In closed investigations of the following crimes, law enforcement agencies shall retain case jackets and crime scene examination case files for as long as evidence is preserved for those investigations pursuant to the Innocence Protection Act of 2001, effective May 17, 2002 (D.C. Law 14-134; D.C. Official Code § 22-4031 *et seq.*):

- (1) Homicides;

- (2) Assault with intent to kill;
- (3) Aggravated assault;
- (4) Burglary;
- (5) Assault on a police officer with a dangerous weapon;
- (6) Mayhem;
- (7) Malicious disfigurement;
- (8) Sexual abuse and sex offenses; and
- (9) Any crime of violence, as that term is defined in section 1 of An Act To

control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe the rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Official Code § 22-4501) (“Act”), that is committed while armed, as that term is described in section 2 of the Act.

(g) Case jackets, crime scene examination case files, and evidence from open and closed homicide investigations shall not, under any circumstance, be destroyed or disposed of without the written approval of the Chief or the Property Clerk of the Metropolitan Police Department and without prior written approval of the United States Attorney for the District of Columbia, for investigations under the prosecutorial jurisdiction of the United States Attorney, and the Corporation Counsel for the District of Columbia, for investigations under the prosecutorial jurisdiction of the Corporation Counsel.

(h) Nothing in this section shall prohibit law enforcement agencies from:

- (1) Combining case jackets and crime scene examination files into one file;
- (2) Destroying duplicative copies of a record or document; or
- (3) Storing case jackets and crime scene investigation files electronically, so long

as electronic storage will not compromise the admissibility of the records or documents.

(i) Nothing in this section shall be construed as a requirement that a law enforcement agency shall collect a particular item of evidence, in whole or in part.

Sec. 103. Penalties; private right of action.

(a) Whoever willfully or maliciously destroys, alters, conceals, or tampers with evidence or records that are being preserved and retained in accordance with this title shall be subject to:

- (1) Administrative sanctions, if the individual is an employee of the District of Columbia government, up to and including termination; and
- (2) A fine of not more than \$5,000, imprisonment for not more than one year, or both.

(b) Whoever willfully or maliciously destroys, alters, conceals, or tampers with evidence or records that are being preserved and retained in accordance with this title may be the subject of a civil action brought in the Superior Court of the District of Columbia by the family of a victim of homicide or by the victim of a crime enumerated in section 102(b) or (f). The civil action may be brought against the District of Columbia government employee or employees responsible, or against the District of Columbia if a pattern of violations of this section can be established.

(c) Subsection (b) of this section shall only apply to the willful or malicious destruction, alteration, concealment, or tampering with evidence or records that occurs on or after the effective date of this title.

Sec. 104. Records retention schedule.

The Metropolitan Police Department shall issue a records retention schedule, in the form of a general order, consistent with this title.

**TITLE II. OFFICE OF CHIEF MEDICAL EXAMINER PRESERVATION OF RECORDS, FILES, AND EVIDENCE.**

Sec. 201. The Establishment of the Office of the Chief Medical Examiner Act of 2000, effective October 20, 2000 (D.C. Law 13-172; D.C. Official Code § 5-1401 *et seq.*), is amended as follows:

(a) Section 2909(a) (D.C. Official Code § 5-1408(a)) is amended by adding a new sentence at the end to read as follows:

“The regulations shall include requirements on the length of time evidence shall be preserved by the CME, and shall require that toxicology and histology specimens be preserved for periods of time consistent with the accreditation requirements of the National Association of Medical Examiners.”.

(b) Section 2913 (D.C. Official Code § 5-1412) is amended by adding a new subsection (a-1) to read as follows:

“(a-1) Records and files related to an open investigation of a homicide shall be retained for 65 years from the date the CME initiates its investigation of the homicide. Other records and files maintained under subsection (a) of this section shall be retained by the CME for periods of time established by regulations issued pursuant to section 2918. For the purposes of this subsection, the term “open investigation” shall have the same meaning as provided in section 101(10) of the Millicent Allewelt Amendment Act of 2004, passed on 2<sup>nd</sup> reading on March 2, 2004 (Enrolled version of Bill 15-34).”.

**TITLE III. CONFORMING AMENDMENTS**

Sec. 301. Section 503(b) of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-723(b)), is amended to read as follows:

“(b) Any person convicted of tampering with physical evidence shall be fined not more than \$5,000, imprisoned for not more than 3 years, or both.”.

Sec. 302. Section 6 of An act providing a permanent form of government for the District of Columbia, approved June 11, 1878 (20 Stat. 107; D.C. Official Code § 5-113.07), is amended to read as follows:

“All records of the Metropolitan Police Department shall be preserved, except that the Mayor, upon recommendation of the Chief of the Metropolitan Police Department and only pursuant to the Millicent Allewelt Amendment Act of 2004, passed on 2<sup>nd</sup> reading on March 2, 2004 (Enrolled version of Bill 15-34), may cause records which the Metropolitan Police Department considers to be obsolete or of no further value to be destroyed.”.

**TITLE IV. FISCAL IMPACT; EFFECTIVE DATE.**

Sec. 401. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

**ENROLLED ORIGINAL**

Sec. 402. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia