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5 A BILL

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7 15-34

8  
9 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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13  
14 To require law enforcement agencies to retain case jackets, crime scene examination files, and  
15 evidence from open homicide investigations for 100 years, to require law enforcement  
16 agencies to retain case jackets, crime scene examination files, and evidence from open  
17 sexual assault, and other violent crime cases for a period of time equal to their statute of  
18 limitations; to require that law enforcement agencies retain case jackets and crime scene  
19 examination files for as long as evidence from those investigations is preserved pursuant  
20 to the Innocence Protection Act of 2001; to provide for certain requirements related to the  
21 disposal of evidence; to provide for penalties for violations of this act; to provide the  
22 Metropolitan Police Department to issue a records retention schedule consistent with this  
23 act; and to amend An act providing a permanent form of government for the District of  
24 Columbia to conform with this act.

25  
26 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
27 act may be cited as the "Millicent Allewelt Act of ~~2002~~ 2003".

28 Sec. 2. Definitions.

29 For the purposes of this act, the term:

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

34 (2) "Case jacket" means the primary file for an investigation which contains all of  
35 the investigative reports, papers, and documents specific to the investigation, including notes,

1 transcripts of interviews, witness statements, photos, and audio and video tapes.

2 (3) “Closed investigation” means the investigation of a crime:

3 (a) In which the suspect:

4 (1) has been found or pled guilty and judgment has been entered; or

5 (2) has been found not guilty by reasons of insanity; or

6 (3) has been found incompetent to stand trial and is not likely to regain  
7 competency before the expiration of the statute of limitations; or

8 (4) is incarcerated and serving a sentence of either life without release or a  
9 term of years that is equivalent to life without release; or

10 (5) has died; or

11 (6) in a case with multiple suspects, the case against each of the suspects  
12 has been resolved by one of the foregoing dispositions; or

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

17 (c) If the suspect is incarcerated and serving a sentence of either life without  
18 release or a term of years that is equivalent to life without release, has died, or in a case with  
19 multiple suspects, the case against each of the suspects has been resolved by one of the foregoing  
20 dispositions, the case shall be considered closed pursuant to this Act only if the United States  
21 Attorney for the District of Columbia or the District of Columbia Corporation Counsel has  
22 certified, for investigations under the prosecutorial jurisdiction of each, that there would be  
23 sufficient evidence to prosecute the suspect or suspects if the suspect or suspects were alive or

1 not incarcerated.

2 ~~wherein the suspect or, in a case with multiple suspects, all of the suspects, have:~~

3

4 ~~(A) Been arrested, charged with the commission of the crime, and convicted by a~~  
5 ~~court of law; or~~

6 ~~(B) Been arrested, charged with the commission of the crime, and pleaded guilty~~  
7 ~~of committing the crime.~~

8 (4) “Crime scene examination case file” means the primary file for an  
9 investigation’s crime scene which contains investigative documents and reports; toxicology,  
10 DNA testing, and other forensic examination results; evidence reports; photographs; and other  
11 documents pertaining to the investigation.

12 (5) “DNA” means deoxyribonucleic acid.

13 (6) “DNA testing” means forensic DNA analysis of biological material.

14 (7) “Law enforcement agencies” means the Metropolitan Police Department, the  
15 Corporation Counsel for the District of Columbia, prosecutors, or any other governmental  
16 agency that has the authority to investigate, make arrests for, or prosecute or adjudicate District  
17 of Columbia criminal or delinquency offenses. The term “law enforcement agencies” shall  
18 include law enforcement agencies that have entered into cooperative agreements with the  
19 Metropolitan Police Department pursuant to Section 11712 of the Balanced Budget Act of  
20 1997, approved August 5, 1997 (111 Stat. 783; D.C. Official Code § 5-133.17), to the extent the  
21 law enforcement agency is acting pursuant to such a cooperative agreement.

22 (8) “Open investigation” means the investigation of a crime other than those  
23 considered to be closed investigations as described in paragraph 3. ~~wherein there is the~~

1 possibility of a prosecution of the individual or individuals responsible and no suspect or, in a  
2 case with multiple suspects, not all of the suspects, have:

3 ~~—— (A) Been arrested, charged with the commission of the crime, and been convicted~~  
4 ~~by a court of law; or~~

5 ~~—— (B) Been arrested, charged with the commission of the crime, and pleaded guilty~~  
6 ~~of committing the crime.~~

7 (9) “Records retention schedule” means a document listing all of the records  
8 originating in the Metropolitan Police Department, specifying series of records to be retained  
9 permanently, and authorizing on a continued basis the destruction of other series of records after  
10 a specified time period has elapsed.

11 (10) “Statute of limitations” as used in this Act means the time limitations  
12 imposed on actions for criminal violations pursuant to D.C. Official Code §23-113.

13 Sec. 3. Retention of records and preservation of evidence from open homicide, sexual  
14 assault, and violent crime investigations.

15 (a) In open homicide investigations, law enforcement agencies shall retain case  
16 jackets, crime scene examination case files, and for 100 years from the date the crime is first  
17 reported to the law enforcement agency. ~~Law enforcement agencies shall retain for 50 years~~  
18 ~~from the date the crime is first reported to the law enforcement agency the case jackets and crime~~  
19 ~~scene examination case files for open investigations of:~~

20 (1) ~~Homicides;~~

21 (2) ~~Sexual assaults;~~

22 (3) ~~Assaults with intent to kill where there is biological material evidence;~~

23 (4) ~~Aggravated assaults where there is biological material evidence; and~~

1 ~~(5) Assaults with a deadly weapon where there is biological material evidence;~~

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

5 (1) Assault with intent to kill;

6 (2) Aggravated assault;

7 (3) Assault on a police officer with a dangerous weapon;

8 (4) Burglary;

9 (5) Mayhem;

10 (6) Malicious disfigurement;

11 (7) Sexual abuse and sex offenses; and

12 (8) Any armed crime of violence defined in D.C. Official Code § 22-4501

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

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

1 (1) Prior to removing portions of the evidence; and

2 (2) After removing portions of the evidence and before disposing of it.

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

5 (f) In closed investigations of the following crimes, law enforcement agencies shall retain case  
6 jackets and crime scene examination case files for as long as evidence is preserved for those  
7 investigations pursuant to the Innocence Protection Act of 2001, for investigations of the  
8 following crimes:

9 (1) Homicides;

10 (1) Assault with intent to kill;

11 (2) Aggravated assault;

12 (5) Assault on a police officer with a dangerous weapon;

13 (6) Mayhem;

14 (7) Malicious disfigurement;

15 (8) Sexual abuse and sex offenses; and

16 (9) Any armed crime of violence defined in D.C. Official Code § 22-4501

17 ~~Law enforcement agencies shall retain the case jackets and crime scene examination case~~  
18 ~~files for 25 years after the case is closed and pursuant to the Innocence Protection Act of 2001~~  
19 ~~for closed investigations of:~~

20 ~~(1) Homicides;~~

21 ~~(2) Sexual assaults;~~

22 ~~(3) Assaults with intent to kill where there is biological material evidence;~~

23 ~~(4) Aggravated assaults where there is biological material evidence; and~~

1           ~~(5) Assaults with a deadly weapon where there is biological material evidence.~~

2           ~~(f) Law enforcement agencies shall retain and preserve evidence from closed~~  
3 ~~investigations pursuant to the Innocence Protection Act of 2001.~~

4           (h) ~~Records~~ Case jackets, crime scene examination case files, and evidence from open  
5 and closed homicide investigations ~~cases~~ shall not, under any circumstance, be destroyed or  
6 disposed of without the written approval of the chief of the Metropolitan Police Department and  
7 without prior ~~consultation between the Metropolitan Police Department and~~ written approval of  
8 the United States Attorney for the District of Columbia, for investigations under the  
9 prosecutorial jurisdiction of the United States Attorney, and the District of Columbia  
10 Corporation Counsel, for investigations under the prosecutorial jurisdiction of the District of  
11 Columbia Corporation Counsel.

12           Sec. 4. Penalties; private right of action.

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

16           (1) Administrative sanctions, if the individual is an employee of the District of  
17 Columbia government, up to and including termination; and

18           (2) A fine of \$5,000, imprisonment for one year or both.

19           (b) Whoever willfully or maliciously destroys, alters, conceals, or tampers with evidence  
20 or records that are being required to be preserved and retained in accordance with this act may be  
21 the subject of a civil action [language coming: against the individual, and the DC government if  
22 a pattern is established] brought by the family [to be defined] of a victim or by the victim of a  
23 crime enumerated in Section 3 in the Superior Court of the District of Columbia.

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

4           Sec. 5. Records retention schedule.

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

7           Sec. 6.

8           “D.C. Official Code §22-723 (b) is amended to read as follows:

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

11          Sec. 7. Conforming amendment.

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

15          “All records of the Metropolitan Police Department shall be preserved, except that the  
16 Mayor, upon recommendation of the chief of the Metropolitan Police Department and only  
17 pursuant to the Millicent Allewelt Act of ~~2002~~ 2003, may cause records which it considers to be  
18 obsolete or of no further value to be destroyed.”.

19          Sec. 8. Fiscal impact statement.

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

23          Sec. 9. Effective date.

1           This act shall take effect following approval by the Mayor (or in the event of a veto by  
2 the Mayor, action by the Council to override the veto), a 60-day period of Congressional review  
3 as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December  
4 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of  
5 Columbia Register.