

West's Oregon Revised Statutes Annotated
Title 14. Procedure in Criminal Matters Generally
Chapter 133. Arrest and Related Procedures; Search and Seizure; Extradition
Search and Seizure
(Preservation of Biological Evidence)

O.R.S. § 133.707

133.707. Duties of custodian; effect of inability to produce in judicial proceeding; rules

Currentness

(1) A custodian shall preserve biological evidence in accordance with [ORS 133.705](#) to [133.717](#) if the evidence:

(a) Is collected as part of a criminal investigation into a covered offense; or

(b) Is otherwise in the possession of the custodian and reasonably may be used to incriminate or exculpate any person for a covered offense.

(2) When a custodian is required to preserve biological evidence under subsection (1) of this section, the custodian shall preserve the evidence in an amount and manner that is sufficient to develop a DNA profile. Except as otherwise provided in [ORS 133.705](#) to [133.717](#), the biological evidence must be preserved:

(a) If the covered offense is aggravated murder, murder, rape in the first degree, sodomy in the first degree or unlawful sexual penetration in the first degree, for 60 years from the date each person is convicted of the offense or until each person convicted of the offense has died, whichever is earlier.

(b) If the covered offense is aggravated vehicular homicide, manslaughter in the first degree or manslaughter in the second degree, until each person convicted of the offense has served the person's sentence.

(c) If no person is convicted of the covered offense or the law enforcement agency investigating the covered offense closes the case for a reason other than the conviction of a person, until the expiration of the statute of limitations.

(3) A custodian is not required to preserve physical evidence solely because the physical evidence contains biological evidence if the physical evidence is of such a size, bulk or physical character as to render retention impracticable. When the retention of physical evidence is impracticable, the custodian shall remove and preserve portions of the physical evidence likely to contain biological evidence in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

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(4) Upon the conclusion of any trial or hearing involving a covered offense, the court shall return any biological evidence in the possession of the court to the custodian responsible for preserving the biological evidence under [ORS 133.705 to 133.717](#), unless the evidence was collected by the defense. If the evidence was collected by the defense, the court shall return the evidence to the attorney for the defendant.

(5) If a custodian is required to preserve biological evidence under [ORS 133.705 to 133.717](#) and the custodian is unable to produce the evidence in a judicial proceeding, the individual to whom the custodian has delegated the duty to preserve the evidence shall prepare, sign and file with the court a sworn affidavit that indicates that the custodian is unable to produce the evidence and describes the efforts taken to locate the evidence.

(6) If a court finds that biological evidence was destroyed in violation of [ORS 133.705 to 133.717](#), the court, after determining whether the evidence was destroyed maliciously, may impose appropriate sanctions and order appropriate remedies. The court may not order the reversal of a conviction under this subsection on the sole grounds that the biological evidence is no longer available.

(7)(a) The Attorney General shall adopt rules establishing:

(A) Standards for the proper collection, retention, preservation and cataloging of biological evidence applicable to criminal investigations into, and criminal prosecutions for, covered offenses; and

(B) A standard form for use by custodians in providing the written notice described in [ORS 133.709 \(1\)](#).

(b) The Attorney General shall consult with the Department of State Police and custodians before adopting rules under this subsection.

Credits

Added by [Laws 2009, c. 489, § 1, eff. June 24, 2009](#). Amended by [Laws 2011, c. 275, § 1, eff. June 7, 2011, operative Jan. 1, 2012](#).

O. R. S. § 133.707, OR ST § 133.707

Current with emergency legislation through Ch. 112 of the 2012 Reg. Sess. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication. End of Document

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