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TO: DIRECTOR, DIVISION OF CRIMINAL JUSTICE
ALL COUNTY PROSECUTORS
ALL POLICE CHIEFS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: PAULA T. DOW, ATTORNEY GENERAL

DATE: January 6, 2011

SUBJECT: ATTORNEY GENERAL GUIDELINES FOR THE RETENTION OF EVIDENCE

On March 9, 2010, I issued Law Enforcement Directive 2010-1, promulgating Guidelines for the Retention of Evidence. During the first year of the implementation of this program, questions have arisen concerning sections of the guidelines that require clarification. Therefore, I am reissuing the directive and guidelines, with necessary amendments to address the questions that have arisen regarding the original guidelines. This Directive and the Attached Guidelines supersede and replace Law Enforcement Directive 2010-1.

The primary duty of the Prosecutor is not to convict, but to ensure that justice is done. *State v. Ramseur*, 106 N.J. 123 (1987); *State v. Zola*, 112 N.J. 384 (1988). In keeping with this trust, the Attorney General and the County Prosecutors hereby intend to provide for the retention of evidence in criminal cases to protect public safety and the interests of crime victims and their families, and to afford to those who are serving a sentence for a crime the opportunity to challenge their convictions, in appropriate cases.

The attached *Attorney General Guidelines for the Retention of Evidence* in criminal cases have been jointly formulated by the Attorney General and the County Prosecutors and are promulgated pursuant to the *Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq.*, which recognizes the importance of public confidence in the administration of criminal justice and provides



for the general supervision of the County Prosecutors by the Attorney General as chief law enforcement officer of the State.

THEREFORE, I, Paula Dow, Attorney General, pursuant to the authority granted to the Attorney General of the State of New Jersey by the Criminal Justice Act of 1970, *N.J.S.A. 52:17B-97 et seq.*, hereby issue the attached Guidelines to all County Prosecutors, Police Chiefs and Law Enforcement Chief Executives in the State of New Jersey, to be applied in accordance with the terms of this Directive:

1. Adoption of Guidelines

The "*Attorney General Guidelines for the Retention of Evidence*" attached to this Directive and incorporated by reference into this Directive are formally adopted, with the purpose of providing the basis for procedures to be established to govern the retention of evidence in criminal cases throughout the State of New Jersey by law enforcement agencies.

2. Implementation

Each County Prosecutor's Office shall develop and follow its own Evidence Destruction Authorization Policy and Procedures, in accordance with the attached Guidelines, which shall include procedures to be followed both for evidence held by the County Prosecutor's Office and for evidence being held by local law enforcement agencies within the jurisdiction.

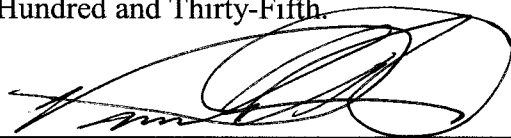
3. Questions and Controversies

Questions regarding the content of this Directive or the interpretation, implementation or utilization of these Guidelines should be addressed to the Prosecutors Supervision and Coordination Bureau, Division of Criminal Justice, at (609) 984-2814.

4. Effective Date

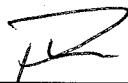
This Law Enforcement Directive shall take effect immediately and shall remain in force and effect, unless and until repealed, amended or superseded by order of the Attorney General.

Given under my hand and seal, this 6th day of January, in the year Two Thousand and Eleven, and of the Independence of the United States, the Two Hundred and Thirty-Fifth.



Paula T. Dow
Attorney General

Attest:



Phillip Kwon
First Assistant Attorney General

ATTORNEY GENERAL GUIDELINES FOR THE RETENTION OF EVIDENCE



PAULA T. DOW
ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
AND
THE NEW JERSEY COUNTY PROSECUTORS ASSOCIATION

REVISED JANUARY 2011
TRENTON, NEW JERSEY

Attorney General Guidelines for the Retention of Evidence

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Attorney General Guidelines for the Retention of Evidence

Introduction

Law enforcement agencies have schedules in place for the retention of criminal case files and other documentary records that are maintained by their agencies. These records retention schedules are promulgated by the Division of Archives and Records Management (hereinafter DARM) in the Department of State.¹ However, these records retention schedules govern only documentary records such as case files, logbooks, etc. These schedules do not govern the retention of criminal case evidence.

Until now, there has been little direction on the topic of retention of evidence and, as a result, most law enforcement agencies have used the documentary records retention schedules for evidence retention. As criminal forensic science has improved, the volume of evidence gathered at crime scenes has grown exponentially. For many law enforcement agencies, this has created a looming evidence storage crisis.

Although this problem exists in most types of cases, it is most severe for homicide cases, for which an entire room may be required to hold the evidence from just one case. The DARM documentary records retention schedules for law enforcement agencies such as police departments, county prosecutors and county sheriffs provide that homicide records are "permanent." This standard, which can be met for documents through the use of microfilming and destruction of the original documents, is wholly impractical when applied to physical evidence. Although DARM's documentary records retention schedule was not promulgated for application to evidence, agencies adopted it for evidence retention in the absence of other guidance. It is the intention of the Attorney General and the County Prosecutors to promulgate these standards in order to remedy this problem.

Amendments

As with any new policy, unanticipated questions have arisen since the issuance of these Guidelines. Therefore, I am reissuing the directive and guidelines, with necessary amendments to address the questions that have arisen regarding the original guidelines.

¹These records retention schedules can be found online at:
<http://www.njarchives.org/links/retention.html>



Retention Schedule for Evidence

General Provisions

Scope of the Guidelines – Applicability to Municipal Court Cases

These Guidelines apply to all indictable offenses handled in Superior Court. Evidence relating to cases disposed of in Municipal Court, where there is no companion Superior Court case, is not covered by these Guidelines. Evidence from Municipal Court cases, other than DUI cases, may be destroyed one year after the disposition of the Municipal Court case. Evidence used in DUI cases shall be retained for ten years following the disposition of the case. It shall be the responsibility of the law enforcement agency holding the evidence to determine that the municipal court case has been disposed of, and the date of disposition. Once that determination has been made, the law enforcement agency shall not be required to obtain authorization from a County Prosecutor or Municipal Prosecutor prior to destroying the evidence.

Development of Evidence Destruction Policy

The following timeframes for Evidence Destruction Authorization are suggested for statewide usage by all County Prosecutor's Offices. Each County Prosecutor's Office shall develop and follow its own Evidence Destruction Policy and Procedures. The County Prosecutor may impose additional requirements, if necessary.

Authorization Requirement

The mere fact that an item of evidence may satisfy the qualifications for being subject to destruction does not mean that it is automatically destroyed. The appropriate Prosecutor's Office must review and provide authorization pursuant to their respective Policy and Procedures, before any destruction is to take place. The reference to "Prosecutor" contained herein shall include and also refer to the Director of the Division of Criminal Justice for purposes of this document. A County Prosecutor or the Director of the Division of Criminal Justice may designate one or more Assistant Prosecutors or Deputy Attorneys General to authorize evidence destruction on their behalf.

Completion of Sentence

For the purposes of these Guidelines, the expiration of a sentence shall include any post-incarceration supervision or other supervision such as community supervision for life (CSL) or parole supervision for life (PSL).

Items Not Needed for Prosecution

Nothing in these Guidelines shall require the retention of items or portions of seized items that are not required for prosecution of a case. Furthermore, if the evidentiary portion of an object can be removed, the entire object need not be retained. Examples of such items are not limited to



but may include the hard drive of a computer, the “black box” in a vehicle or a bloodstained section of a carpet or a piece of furniture.

Educational Use

The County Prosecutor or the Director of the Division of Criminal Justice may authorize the use of property, otherwise meeting the criteria for destruction, for a bona fide law enforcement educational purpose or for preservation as a historical object.

Timeframes for Evidence Destruction

1. Homicide Evidence

a. In all cases where all defendants have been charged and all of the defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants expiration of sentence, whichever is later, a request for destruction authorization may be submitted.

c. In cases where no suspects have been identified but a DNA profile has been obtained and submitted to CODIS, or fingerprint evidence that has been submitted to AFIS, or there is no statute of limitations, the evidence shall be retained indefinitely. Only the Prosecutor or their designee, may authorize the destruction of this evidence.

2. Sex Crimes Evidence

a. In all cases where all of the defendants have been charged and all of the defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants expiration of sentence, whichever is later, a request for destruction authorization may be submitted.

c. In all cases where the defendants have been admitted into the Pre-Trial Intervention Program (PTI), have successfully completed PTI, and have been discharged, upon the court’s signing an order dismissing the case as to all parties, and upon the expiration of the longest sentence of any co-defendants not admitted into PTI, a request for destruction authorization may be submitted.



d. In cases where no suspects have been identified but a DNA profile has been obtained and submitted to CODIS, or in the case of fingerprint evidence that has been submitted to AFIS, or in cases where there is no statute of limitations, the evidence shall be retained indefinitely. Only the Prosecutor or their designee, may authorize the destruction of this evidence.

e. In cases where the victim has signed a waiver of prosecution, has not contacted the police/prosecutor's office indicating a desire to pursue a prosecution, or has reported as a "Jane Doe" pursuant to the *Standards for Providing Services to Victims of Sexual Assault*, the evidence shall not be authorized for destruction for a minimum of 90 days from the date of the collection of said evidence.

f. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.

3. Narcotic Evidence

a. In all cases where all of the defendants in the case have been charged and all of the defendants are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants' expiration of sentence, whichever is later, a request for destruction authorization may be submitted.

c. In all cases where the defendants have been admitted into the Pre-Trial Intervention Program (PTI), have successfully completed PTI, and have been discharged, upon the court's signing an order dismissing the case as to all parties, and upon the expiration of the longest sentence of any co-defendants not admitted into PTI, a request for destruction authorization may be submitted.

d. Where a controlled buy or an undercover buy has taken place and the investigation has been officially closed by the investigating agency with no prosecution having been instituted against anyone, after a period of one year and one day, a request for destruction authorization may be submitted.

e. In cases where a controlled dangerous substance has been submitted to a Forensic Laboratory for analysis and has not been connected to any suspect or defendant and has been submitted as Found Property, a request for destruction authorization may be submitted one year and one day after it has been submitted to the laboratory upon verification by the submitting agency that no prosecution has been instituted relating to the evidence.



f. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.

g. Notwithstanding the provisions above, the County Prosecutor or the Director of the Division of Criminal Justice may authorize the use of samples of controlled dangerous substances taken from evidence, for the purpose of training K-9s, provided such use will not compromise any pending criminal prosecution or appeal.

4. Firearms Evidence

a. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of the conviction or upon the defendants' expiration of sentence, whichever comes later, a destruction authorization may be submitted. If there is a legal owner of the firearm who is not a defendant in the case and is not otherwise legally disqualified from possessing the firearm, pursuant to any provision of Chapter 58 of the New Jersey Criminal Code, rather than destroying the weapon it should be returned to the owner, if said owner is in possession of necessary permits.

b. Prior to any destruction authorization being granted, no firearms evidence shall be considered for destruction until all necessary tracing tests and IBIS submissions have been completed.

c. In all cases where all defendants have been charged and all defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

d. If the weapon is related to a Homicide case in addition to this section, see Section 1 above.

e. If the weapon is related to a Sex Crimes case, in addition to this section, see Section 2 above.

f. If the weapon is related to a Narcotics case, in addition to this section, see Section 3 above.

g. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.



h. For any firearm that has not been connected to any suspect or defendant and which has been submitted as found property, a request for destruction authorization may be submitted one year and one day after any necessary attempts to trace ownership of the weapon and upon verification that no prosecution has been instituted relating to the evidence.

5. Other Evidence

a. In all cases where all defendants have been charged and all of the defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants expiration of sentence, whichever comes later, a request for destruction authorization may be submitted. If there is a legal owner of said evidence who is not a defendant, no forfeiture proceedings are pending or have been concluded and there are no appeals of said forfeiture action pending and the ownership has not been granted to a law enforcement agency by court order, said property shall be returned to the legal owner of same, rather than being authorized for destruction.

g. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.

6. Special Circumstances

a. In cases where the only defendant has been determined by a Court to be Incompetent to stand trial, the evidence must be retained until the defendant has become competent to stand trial, has died, or the Prosecutor of that respective county has made a determination to not proceed with the prosecution of the defendant.

b. In cases where there is an acquittal of the only defendant or there is a finding of Not Guilty By Reason of Insanity of the only defendant, then the evidence may be authorized for destruction by the Prosecutor of that county, in a timeframe to be determined by the Prosecutor of that county.



Other Requirements Not Superseded by this Directive

Nothing in this policy is intended to require that a law enforcement office retain evidence in circumstances where such evidence would ordinarily be destroyed, returned to its rightful owner, forfeited, or otherwise disposed of pursuant to existing statutes or policies.

Examples include, but are not limited to:

1. *N.J.S.A. 2C:65-1 et seq.* Disposition of Stolen Property and Documentary Exhibits
2. *N.J.S.A. 2C:64-1 et seq.* Seized or Forfeited Property
3. *N.J.S.A. 2C:35-21* Destruction of Bulk Seizures of Controlled Dangerous Substances
4. *N.J.S.A. 52:4B-36 (1.)* Crime Victims Bill of Rights, Prompt Return of Property When No Longer Needed as Evidence

