

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. § 133.709

133.709. Disposal of biological evidence; return of property to victim; motion to preserve biological evidence

Currentness

(1)(a) A custodian may seek to dispose of biological evidence before the period of time specified in [ORS 133.707 \(2\)](#), by providing written notice, in the form developed under [ORS 133.707 \(7\)](#), to the district attorney having jurisdiction over the prosecution of the covered offense. Upon receipt of the notice, the district attorney shall determine whether to object to the disposal of any of the biological evidence identified in the custodian's notice.

(b) If the district attorney objects to the disposal of any of the biological evidence identified in the custodian's notice, the district attorney shall provide written notice of the objection to the custodian that identifies the biological evidence that the district attorney determines must be preserved. The custodian shall preserve any biological evidence identified by the district attorney in the notice until the period of time specified in [ORS 133.707 \(2\)](#) has elapsed.

(c) If the district attorney does not object to the disposal of all or a portion of the biological evidence identified in the custodian's notice, the district attorney shall provide written notice of the intent to dispose of biological evidence, identifying the biological evidence that the district attorney has determined may be disposed of, to:

- (A) The defendant;
- (B) The most recent attorney of record for the defendant; and
- (C) The Department of Justice.

(2) If evidence that is subject to [ORS 133.707](#) is the property of the victim, the victim may request that the district attorney determine whether the property may be returned to the victim. The request must be in writing and must identify the property that the victim seeks to have returned. If the district attorney:

(a) Objects to the return of any of the property to the victim, the district attorney shall notify the victim of that determination.

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(b) Does not object to the return of all or a portion of the property, the district attorney shall provide written notice of the intent to dispose of biological evidence, identifying the property the district attorney has determined may be returned, to:

- (A) The victim;
- (B) The defendant;
- (C) The most recent attorney of record for the defendant; and
- (D) The Department of Justice.

(3)(a) Not later than 120 days after the date the district attorney provides written notice to the defendant under subsection (1)(c) or (2)(b) of this section, the defendant may file a motion to preserve biological evidence in the convicting court. The defendant shall provide a copy of the motion to the district attorney and the custodian. If the motion is timely filed, the court shall enter an order as provided in [ORS 133.715](#).

(b) If the defendant fails to file a motion to preserve biological evidence before the expiration of the 120-day period specified in paragraph (a) of this subsection, the district attorney shall file with the court a copy of the notice of intent to dispose of biological evidence sent to the defendant under subsection (1)(c) or (2)(b) of this section. Following the filing of the notice, the court shall, without hearing, enter an order authorizing the disposal of the biological evidence described in the notice. The court shall provide a copy of the order to the custodian, the district attorney and each person or entity described in subsection (1)(c) or (2)(b) of this section, as applicable.

(c) The 120-day period specified in this subsection begins on the date the notice is mailed.

**Credits**

Added by [Laws 2011, c. 275, § 3, eff. June 7, 2011](#), operative Jan. 1, 2012.

O. R. S. § 133.709, OR ST § 133.709

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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