

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. § 133.715

133.715. Procedure on motion to preserve biological evidence; factors considered

Currentness

- (1) Upon receipt of a timely motion to preserve biological evidence under [ORS 133.709 \(3\)](#), the court shall:
- (a) Conduct a hearing to resolve the motion; or
 - (b) Enter an order directing the custodian to preserve the biological evidence.
- (2)(a) In determining whether to order the preservation of biological evidence, the court shall consider, in addition to other factors the court considers appropriate, the following factors:
- (A) Whether the identification of the offender was a disputed issue;
 - (B) Whether other biological evidence in the case contains DNA in an amount that is sufficient to develop a DNA profile and will not be disposed of;
 - (C) If the biological evidence has not previously been tested, whether it is possible to perform testing on the biological evidence;
 - (D) Whether the defendant has served all of the sentence imposed; and
 - (E) Whether the defendant has exhausted the defendant's appellate or post-conviction rights.
- (b) If the defendant has not exhausted the defendant's appellate and post-conviction rights, there is a presumption that the biological evidence should be preserved.
- (c) In making the determination described in this subsection, except as otherwise provided in paragraph (b) of this

subsection, the court may assign the weight the court deems appropriate to the factors described in paragraph (a) of this subsection and to any other factor the court determines is appropriate.

(d) For purposes of subparagraph (2)(a)(A) of this section, the court need not presume that identification of the offender is not a disputed issue solely because the defendant has pleaded guilty or no contest to the crime, has confessed to the crime or has made an admission.

(3) If the court enters an order authorizing the disposal of biological evidence, the order may not authorize disposal to occur sooner than 45 days after the date the order is entered. The court shall provide a copy of the order to the custodian, the district attorney and the defendant.

(4) Either the state or the defendant may appeal from an order entered under this section in the manner provided in ORS chapter 19 for appeals from judgments. Notwithstanding [ORS 19.330](#), the filing of a notice of appeal automatically stays an order entered under this section.

Credits

Added by [Laws 2011, c. 275, § 4, eff. June 7, 2011](#), operative Jan. 1, 2012.

O. R. S. § 133.715, OR ST § 133.715

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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