

Code of Laws of South Carolina 1976 Annotated [Currentness](#)

Title 17. Criminal Procedures

▣ [Chapter 28](#). Post-Conviction DNA Testing and Preservation of Evidence

→ [Article 3](#). Preservation of Evidence ([Refs & Annos](#))

→ **§ 17-28-300. Citation of article.**

This article shall be cited as the “Preservation of Evidence Act”.

§ 17-28-310. Definitions.

- (1) “Biological material” means any blood, tissue, hair, saliva, bone, or semen from which DNA marker groupings may be obtained. This includes material catalogued separately on slides, swabs, or test tubes or present on other evidence including, but not limited to, clothing, ligatures, bedding, other household material, drinking cups, or cigarettes.
- (2) “Custodian of evidence” means an agency or political subdivision of the State including, but not limited to, a law enforcement agency, a solicitor's office, the Attorney General's Office, a county clerk of court, or a state grand jury that possesses and is responsible for the control of evidence during a criminal investigation or proceeding, or a person ordered by a court to take custody of evidence during a criminal investigation or proceeding.
- (3) “DNA” means deoxyribonucleic acid.
- (4) “DNA profile” means the results of any testing performed on a DNA sample.
- (5) “DNA record” means the tissue or saliva samples and the results of the testing performed on the samples.
- (6) “DNA sample” means the tissue, saliva, blood, or any other bodily fluid taken at the time of arrest from which identifiable information can be obtained.
- (7) “Incarceration” means serving a term of confinement in the custody of the South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice and does not include a person on probation, parole, or under a community supervision program.
- (8) “Law enforcement agency” means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.

(9) “Physical evidence” means an object, thing, or substance that is or is about to be produced or used or has been produced or used in a criminal proceeding related to an offense enumerated in [Section 17-28-320](#), and that is in the possession of a custodian of evidence.

§ 17-28-320. Offenses for which evidence preserved; conditions and duration of preservation.

(A) A custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for at least one of the following offenses:

- (1) murder ([Section 16-3-10](#));
- (2) killing by poison ([Section 16-3-30](#));
- (3) killing by stabbing or thrusting ([Section 16-3-40](#));
- (4) voluntary manslaughter ([Section 16-3-50](#));
- (5) homicide by child abuse ([Section 16-3-85\(A\)\(1\)](#));
- (6) aiding and abetting a homicide by child abuse ([Section 16-3-85\(A\)\(2\)](#));
- (7) lynching in the first degree ([Section 16-3-210](#));
- (8) killing in a duel ([Section 16-3-430](#));
- (9) spousal sexual battery ([Section 16-3-615](#));
- (10) criminal sexual conduct in the first degree ([Section 16-3-652](#));
- (11) criminal sexual conduct in the second degree ([Section 16-3-653](#));
- (12) criminal sexual conduct in the third degree ([Section 16-3-654](#));
- (13) criminal sexual conduct with a minor ([Section 16-3-655](#));
- (14) arson in the first degree resulting in death ([Section 16-11-110\(A\)](#));

- (15) burglary in the first degree for which the person is sentenced to ten years or more ([Section 16-11-311\(B\)](#));
 - (16) armed robbery for which the person is sentenced to ten years or more ([Section 16-11-330\(A\)](#));
 - (17) damaging or destroying a building, vehicle, or property by means of an explosive incendiary resulting in death ([Section 16-11-540](#));
 - (18) abuse or neglect of a vulnerable adult resulting in death ([Section 43-35-85\(F\)](#));
 - (19) sexual misconduct with an inmate, patient, or offender ([Section 44-23-1150](#));
 - (20) unlawful removing or damaging of an airport facility or equipment resulting in death ([Section 55-1-30 \(3\)](#));
 - (21) interference with traffic-control devices or railroad signs or signals resulting in death ([Section 56-5-1030\(B\)\(3\)](#));
 - (22) driving a motor vehicle under the influence of alcohol or drugs resulting in death ([Section 56-5-2945](#));
 - (23) obstruction of railroad resulting in death ([Section 58-17-4090](#)); or
 - (24) accessory before the fact ([Section 16-1-40](#)) to any offense enumerated in this subsection.
- (B) The physical evidence and biological material must be preserved:
- (1) subject to a chain of custody as required by South Carolina law;
 - (2) with sufficient documentation to locate the physical evidence and biological material; and
 - (3) under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material.
- (C) The physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or nolo contendere plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the of-

fense enumerated in subsection (A), whichever comes first.

§ 17-28-330. Registration as custodian of evidence.

(A) After a person is convicted or adjudicated for at least one of the offenses enumerated in [Section 17-28-320](#), a custodian of evidence shall register with the South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice, as applicable, as a custodian of evidence for physical evidence or biological material related to the person's conviction or adjudication.

(B) The South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice, as applicable, shall notify a custodian of evidence registered pursuant to subsection (A) if the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in [Section 17-28-320](#).

§ 17-28-340. Petition for destruction of evidence prior to expiration of required time period.

(A) After a person is convicted or adjudicated for at least one of the offenses enumerated in [Section 17-28-320](#), a custodian of evidence may petition the general sessions court or family court in which the person was convicted or adjudicated for an order allowing for disposition of the physical evidence or biological material prior to the period of time described in [Section 17-28-320](#) if:

(1) the physical evidence or biological material must be returned to its rightful owner, is of such size, bulk, or physical character as to make retention impracticable, or is otherwise required to be disposed of by law; or

(2) DNA evidence was previously introduced at trial, was found to be inculpatory, and all appeals and post-conviction procedures have been exhausted.

(B) The petition must:

(1) be made on such form as prescribed by the Supreme Court;

(2) identify the proceedings in which the person was convicted or adjudicated;

(3) give the date of the entry of the judgment and sentence;

(4) specifically set forth the physical evidence or biological material to be disposed of; and

(5) specifically set forth the reason for the disposition.

(C) The clerk of court shall file the petition upon its receipt and promptly bring it to the attention of the court and deliver a copy to the convicted or adjudicated person and the solicitor or Attorney General, as applicable. The victim shall be notified of the petition pursuant to Article 15, Chapter 3, Title 16.

(D) The convicted or adjudicated person and the solicitor or Attorney General, as applicable, shall have one hundred and eighty days to respond to the petition. The victim may respond within one hundred and eighty days in accordance with the provisions of Article 15, Chapter 3, Title 16.

(E) After a hearing, the court may order that the custodian of evidence may dispose of the physical evidence or biological material if the court determines by preponderance of evidence that:

(1) the physical evidence or biological material must be returned to its rightful owner, is of such size, bulk, or physical character as to make retention impracticable, or is otherwise required to be disposed of by law, or DNA evidence was previously introduced at trial, was found to be inculpatory, and all appeals and post-conviction procedures have been exhausted;

(2) the convicted or adjudicated person, the solicitor or Attorney General, as applicable, and the victim have been notified of the petition for an order to dispose of the physical evidence or biological material;

(3) the convicted or adjudicated person did not file an affidavit declaring, under penalty of perjury, the person's intent to file an application for post-conviction DNA testing of the physical evidence or biological material pursuant to Article 1, Chapter 28, Title 17 within ninety days followed by the actual filing of the application;

(4) the solicitor or the Attorney General, as applicable, and the victim have not filed a response requesting that the physical evidence or biological material not be disposed of; and

(5) no other provision of federal or state law, regulation, or court rule requires preservation of the physical evidence or biological material.

(F) If the court issues an order for the disposition of the physical evidence or biological material, the court may require a custodian of evidence to take reasonable measures to remove and preserve portions of the physical evidence or biological material in a quantity sufficient to:

(1) permit future DNA testing or other scientific analysis; or

(2) for other reasons, upon request and good cause shown, by the solicitor or Attorney General, as applicable, or the victim.

§ 17-28-350. Wilful destruction.

A person who wilfully and maliciously destroys, alters, conceals, or tampers with physical evidence or biological material that is required to be preserved pursuant to this article with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars for a first offense, and not more than five thousand dollars or imprisoned for not more than one year, or both, for each subsequent violation.

§ 17-28-360. Failure to preserve; cause of action against responsible entity; right to release.

Unless there is an act of gross negligence or intentional misconduct this article may not be construed to give rise to a claim for damages against the State of South Carolina, a political subdivision of the State, an employee of the State, or a political subdivision of the State. Failure of a custodian of evidence to preserve physical evidence or biological material pursuant to this article does not entitle a person to any relief from conviction or adjudication but does not prohibit a person from presenting this information at a subsequent hearing or trial.

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