

West's Wisconsin Statutes Annotated
Police Regulations (Ch. 163 to 177)
Chapter 165. Department of Justice

W.S.A. 165.81

165.81. Disposal of evidence

Effective: November 1, 2011

Currentness

(1) Whenever the department is informed by the submitting officer or agency that physical evidence in the possession of the laboratories is no longer needed the department may, except as provided in sub. (3) or unless otherwise provided by law, destroy the evidence, retain it in the laboratories, return it to the submitting officer or agency, or turn it over to the University of Wisconsin upon the request of the head of any department of the University of Wisconsin. If the department returns the evidence to the submitting officer or agency, any action taken by the officer or agency with respect to the evidence shall be in accordance with s. 968.20. Except as provided in sub. (3), whenever the department receives information from which it appears probable that the evidence is no longer needed, the department may give written notice to the submitting agency and the appropriate district attorney, by registered mail, of the intention to dispose of the evidence. If no objection is received within 20 days after the notice was mailed, it may dispose of the evidence.

(2) Any electric weapon, as defined in s. 941.295(1c)(a), in the possession of the laboratories shall either be destroyed or be turned over to an agency authorized to have electric weapons under s. 941.295(2).

(3)(a) In this subsection:

1. "Custody" has the meaning given in s. 968.205(1)(a).

2. "Discharge date" has the meaning given in s. 968.205(1)(b).

(b) Except as provided in par. (c), if physical evidence that is in the possession of the laboratories includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, a delinquency adjudication, or commitment under s. 971.17 or 980.06 and the biological material is from a victim of the offense that was the subject of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense, the laboratories shall preserve the physical evidence until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date.

(bm) The laboratories shall retain evidence to which par. (b) applies in an amount and manner sufficient to develop a deoxyribonucleic acid profile, as defined in s. 939.74(2d)(a), from the biological material contained in or included on the evidence.

(c) Subject to par. (e), the department may destroy evidence that includes biological material before the expiration of the time period specified in par. (b) if all of the following apply:

1. The department sends a notice of its intent to destroy the evidence to all persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment, and to either the attorney of record for each person in custody or the state public defender.

2. No person who is notified under subd. 1 does either of the following within 90 days after the date on which the person received the notice:

a. Files a motion for testing of the evidence under s. 974.07(2).

b. Submits a written request for retention of the evidence to the department.

3. No other provision of federal or state law requires the department to retain the evidence.

(d) A notice provided under par. (c)1. shall clearly inform the recipient that the evidence will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for testing of the evidence is filed under s. 974.07(2) or a written request for retention of the evidence is submitted to the department.

(e) If, after providing notice under par. (c)1. of its intent to destroy evidence, the department receives a written request for retention of the evidence, the department shall retain the evidence until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under s. 974.07(7), (9)(a), or (10)(a)5., unless the court orders destruction or transfer of the evidence under s. 974.07(9)(b) or (10)(a)5.

(f) Unless otherwise provided in a court order issued under s. 974.07(9)(a) or (b) or (10)(a)5., nothing in this subsection prohibits the laboratories from returning evidence that must be preserved under par. (b) or (e) to the agency that submitted the evidence to the laboratories. If the laboratories return evidence that must be preserved under par. (b) or (e) to a submitting agency, any action taken by the agency with respect to the evidence shall be in accordance with s. 968.205.

Credits

<<For credits, see Historical Note field.>>

W. S. A. 165.81, WI ST 165.81
Current through 2015 Act 1, published 3/10/2015

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.