



## Ohio Revised Code

### Section 2933.82 Retention of biological evidence.

Effective: March 23, 2015

Legislation: Senate Bill 316 - 130th General Assembly

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(A) As used in this section:

(1)(a) "Biological evidence" means any of the following:

(i) The contents of a sexual assault examination kit;

(ii) Any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or any other identifiable biological material that was collected as part of a criminal investigation or delinquent child investigation and that reasonably may be used to incriminate or exculpate any person for an offense or delinquent act.

(b) The definition of "biological evidence" set forth in division (A)(1)(a) of this section applies whether the material in question is cataloged separately, such as on a slide or swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups or containers, or cigarettes.

(2) "Biological material" has the same meaning as in section 2953.71 of the Revised Code.

(3) "DNA," "DNA analysis," "DNA database," "DNA record," and "DNA specimen" have the same meanings as in section 109.573 of the Revised Code.

(4) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(5) "Governmental evidence-retention entity" means all of the following:

(a) Any law enforcement agency, prosecutor's office, court, public hospital, crime laboratory, or other governmental or public entity or individual within this state that is charged with the collection, storage, or retrieval of biological evidence;



(b) Any official or employee of any entity or individual described in division (A)(5)(a) of this section.

(B)(1) Each governmental evidence-retention entity that secures any biological evidence in relation to an investigation or prosecution of a criminal offense or delinquent act that is a violation of section 2903.01, 2903.02, or 2903.03, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02 or 2907.03 or division (A)(4) or (B) of section 2907.05 of the Revised Code, or an attempt to commit a violation of section 2907.02 of the Revised Code shall secure the biological evidence for whichever of the following periods of time is applicable:

(a) For a violation of section 2903.01 or 2903.02 of the Revised Code, for the period of time that the offense or act remains unsolved;

(b) For a violation of section 2903.03, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02 or 2907.03 or of division (A)(4) or (B) of section 2907.05 of the Revised Code, or an attempt to commit a violation of section 2907.02 of the Revised Code, for a period of thirty years if the offense or act remains unsolved;

(c) If any person is convicted of or pleads guilty to the offense, or is adjudicated a delinquent child for committing the delinquent act, for the earlier of the following: (i) the expiration of the latest of the following periods of time that apply to the person: the period of time that the person is incarcerated, is in a department of youth services institution or other juvenile facility, is under a community control sanction for that offense, is under any order of disposition for that act, is on probation or parole for that offense, is under judicial release or supervised release for that act, is under post-release control for that offense, is involved in civil litigation in connection with that offense or act, or is subject to registration and other duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code or (ii) thirty years. If after the period of thirty years the person remains incarcerated, then the governmental evidence-retention entity shall secure the biological evidence until the person is released from incarceration or dies.

(2)(a) A law enforcement agency shall review all of its records and reports pertaining to its investigation of any offense specified in division (B)(1) of this section as soon as possible after the



effective date of this amendment. If the law enforcement agency's review determines that one or more persons may have committed or participated in an offense specified in division (B)(1) of this section or another offense committed during the course of an offense specified in division (B)(1) of this section and the agency is in possession of a sexual assault examination kit secured during the course of the agency's investigation, as soon as possible, but not later than one year after the effective date of this amendment, the agency shall forward the contents of the kit to the bureau of criminal identification and investigation or another crime laboratory for a DNA analysis of the contents of the kit if a DNA analysis has not previously been performed on the contents of the kit. The law enforcement agency shall consider the period of time remaining under section 2901.13 of the Revised Code for commencing the prosecution of a criminal offense related to the DNA specimens from the kit as well as other relevant factors in prioritizing the forwarding of the contents of sexual assault examination kits.

(b) If an investigation is initiated on or after the effective date of this amendment, and if a law enforcement agency investigating an offense specified in division (B)(1) of this section determines that one or more persons may have committed or participated in an offense specified in division (B)(1) of this section or another offense committed during the course of an offense specified in division (B)(1) of this section, the law enforcement agency shall forward the contents of a sexual assault examination kit in the agency's possession to the bureau or another crime laboratory within thirty days for a DNA analysis of the contents of the kit.

(c) A law enforcement agency shall be considered in the possession of a sexual assault examination kit that is not in the law enforcement agency's possession for purposes of divisions (B)(2)(a) and (b) of this section if the sexual assault examination kit contains biological evidence related to the law enforcement agency's investigation of an offense specified in division (B)(1) of this section and is in the possession of another government evidence-retention entity. The law enforcement agency shall be responsible for retrieving the sexual assault examination kit from the government evidence-retention entity and forwarding the contents of the kit to the bureau or another crime laboratory as required under divisions (B)(2)(a) and (b) of this section.

(d)(i) The bureau or a laboratory under contract with the bureau pursuant to division (B)(5) of section 109.573 of the Revised Code shall perform a DNA analysis of the contents of any sexual assault examination kit forwarded to the bureau pursuant to division (B)(2)(a) or (b) of this section as



soon as possible after the bureau receives the contents of the kit. The bureau shall enter the resulting DNA record into a DNA database. If the DNA analysis is performed by a laboratory under contract with the bureau, the laboratory shall forward the biological evidence to the bureau immediately after the laboratory performs the DNA analysis. A crime laboratory shall perform a DNA analysis of the contents of any sexual assault examination kit forwarded to the crime laboratory pursuant to division (B)(2)(a) or (b) of this section as soon as possible after the crime laboratory receives the contents of the kit and shall enter the resulting DNA record into a DNA database subject to the applicable DNA index system standards.

(ii) Upon the completion of the DNA analysis by the bureau or a crime laboratory under contract with the bureau under this division, the bureau shall return the contents of the sexual assault examination kit to the law enforcement agency. The law enforcement agency shall secure the contents of the sexual assault examination kit in accordance with division (B)(1) of this section, as applicable.

(e) The failure of any law enforcement agency to comply with any time limit specified in this section shall not create, and shall not be construed as creating, any basis or right to appeal, claim for or right to postconviction relief, or claim for or right to a new trial or any other claim or right to relief by any person.

(3) This section applies to evidence likely to contain biological material that was in the possession of any governmental evidence-retention entity during the investigation and prosecution of a criminal case or delinquent child case involving a violation of section 2903.01, 2903.02, or 2903.03, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02 or 2907.03 or of division (A)(4) or (B) of section 2907.05 of the Revised Code, or an attempt to commit a violation of section 2907.02 of the Revised Code.

(4) A governmental evidence-retention entity that possesses biological evidence shall retain the biological evidence in the amount and manner sufficient to develop a DNA record from the biological material contained in or included on the evidence.

(5) Upon written request by the defendant in a criminal case or the alleged delinquent child in a delinquent child case involving a violation of section 2903.01, 2903.02, or 2903.03, a violation of



section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02 or 2907.03 or of division (A)(4) or (B) of section 2907.05 of the Revised Code, or an attempt to commit a violation of section 2907.02 of the Revised Code, a governmental evidence-retention entity that possesses biological evidence shall prepare an inventory of the biological evidence that has been preserved in connection with the defendant's criminal case or the alleged delinquent child's delinquent child case.

(6) Except as otherwise provided in division (B)(8) of this section, a governmental evidence-retention entity that possesses biological evidence that includes biological material may destroy the evidence before the expiration of the applicable period of time specified in division (B)(1) of this section if all of the following apply:

- (a) No other provision of federal or state law requires the state to preserve the evidence.
- (b) The governmental evidence-retention entity, by certified mail, return receipt requested, provides notice of intent to destroy the evidence to all of the following:
  - (i) All persons who remain in custody, incarcerated, in a department of youth services institution or other juvenile facility, under a community control sanction, under any order of disposition, on probation or parole, under judicial release or supervised release, under post-release control, involved in civil litigation, or subject to registration and other duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code as a result of a criminal conviction, delinquency adjudication, or commitment related to the evidence in question;
  - (ii) The attorney of record for each person who is in custody in any circumstance described in division (B)(6)(b)(i) of this section if the attorney of record can be located;
  - (iii) The state public defender;
  - (iv) The office of the prosecutor of record in the case that resulted in the custody of the person in custody in any circumstance described in division (B)(6)(b)(i) of this section;
  - (v) The attorney general.



(c) No person who is notified under division (B)(6)(b) of this section does either of the following within one year after the date on which the person receives the notice:

(i) Files a motion for testing of evidence under sections 2953.71 to 2953.81 or section 2953.82 of the Revised Code;

(ii) Submits a written request for retention of evidence to the governmental evidence-retention entity that provided notice of its intent to destroy evidence under division (B)(6)(b) of this section.

(7) Except as otherwise provided in division (B)(8) of this section, if, after providing notice under division (B)(6)(b) of this section of its intent to destroy evidence, a governmental evidence-retention entity receives a written request for retention of the evidence from any person to whom the notice is provided, the governmental evidence-retention entity shall retain the evidence while the person referred to in division (B)(6)(b)(i) of this section remains in custody, incarcerated, in a department of youth services institution or other juvenile facility, under a community control sanction, under any order of disposition, on probation or parole, under judicial release or supervised release, under post-release control, involved in civil litigation, or subject to registration and other duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code as a result of a criminal conviction, delinquency adjudication, or commitment related to the evidence in question.

(8) A governmental evidence-retention entity that possesses biological evidence that includes biological material may destroy the evidence five years after a person pleads guilty or no contest to a violation of section 2903.01, 2903.02, or 2903.03, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02, 2907.03, division (A)(4) or (B) of section 2907.05, or an attempt to commit a violation of section 2907.02 of the Revised Code and all appeals have been exhausted unless, upon a motion to the court by the person who pleaded guilty or no contest or the person's attorney and notice to those persons described in division (B)(6)(b) of this section requesting that the evidence not be destroyed, the court finds good cause as to why that evidence must be retained.

(9) A governmental evidence-retention entity shall not be required to preserve physical evidence



pursuant to this section that is of such a size, bulk, or physical character as to render retention impracticable. When retention of physical evidence that otherwise would be required to be retained pursuant to this section is impracticable as described in this division, the governmental evidence-retention entity that otherwise would be required to retain the physical evidence shall remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of that physical evidence.

(C)(1) The preservation of biological evidence task force established within the bureau of criminal identification and investigation under section 109.561 of the Revised Code shall establish a system regarding the proper preservation of biological evidence in this state. In establishing the system, the task force shall do all of the following:

(a) Devise standards regarding the proper collection, retention, and cataloging of biological evidence for ongoing investigations and prosecutions;

(b) Recommend practices, protocols, models, and resources for the cataloging and accessibility of preserved biological evidence already in the possession of governmental evidence-retention entities.

(2) In consultation with the preservation of biological evidence task force described in division (C)(1) of this section, the office of the attorney general shall administer and conduct training programs for law enforcement officers and other relevant employees who are charged with preserving and cataloging biological evidence regarding the methods and procedures referenced in this section.