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Guidelines for Preservation and
Retention of Biological Evidence
November 2010

Released by the Preservation of
Biological Evidence Task Force

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November 2010

Dear Colleague,

The passage of Senate Bill 77 earlier this year has created new requirements for the collection, retention and cataloging of biological evidence in many types of cases. These new legal mandates apply to law enforcement, prosecutors, courts, public hospitals, crime laboratories, coroners and other governmental entities responsible for the collection, storage or retrieval of biological evidence.

I appreciate the work of members of the Preservation of Biological Evidence Task Force who examined the law and developed this document, which presents accepted best practices regarding evidence collection, handling, storage, retention and cataloging. It is important to remember that because of the unique nature of every investigation, the methods discussed in this document may not be applicable or practical in every field circumstance. The specific crimes for which these requirements must be applied also are clearly outlined in the report.

The Ohio Peace Officer Training Academy will administer and conduct training programs for law enforcement officers and other employees charged with preserving and cataloging biological evidence. I encourage you to monitor the academy's online course catalog for updates. Both traditional and online courses are planned. Details on all course offerings will be posted at www.OhioAttorneyGeneral.gov/OPOTA.

Thank you for the work you do every day to keep our communities safe.

Sincerely,

A handwritten signature in black ink that reads "Richard Cordray". The signature is written in a cursive, flowing style.

Richard Cordray
Ohio Attorney General

Introduction

The Preservation of Biological Evidence Task Force was created pursuant to Ohio Revised Code § 109.561, which was enacted as part of Senate Bill 77 and amended by Senate Bill 58 during the 128th General Assembly.

Pursuant to Ohio Revised Code § 2933.82(C), the task force was charged with establishing a system regarding the proper preservation of biological evidence in Ohio. In establishing the system, the task force was required to:

- Devise standards regarding the proper collection, retention and cataloging of biological evidence for ongoing investigations and prosecutions.
- Recommend practices, protocols, models and resources for cataloging and making accessible preserved biological evidence already in the possession of governmental evidence-retention entities.

In consultation with the task force, the Ohio Peace Officer Training Academy will administer and conduct training programs for law enforcement officers and other employees who are charged with preserving and cataloging biological evidence.

The standards presented in this document are not intended to be all-inclusive. They are set forth as required by SB 77 and are recommended for the crimes outlined in ORC § 2933.82. The standards also may be applied to the investigation of other alleged violations of the Ohio Criminal Code.

Models and resources recommended by the task force represent accepted industry standards. The recommendations do not expand a governmental evidence-retention entity's responsibility to collect evidence nor do they require a forensic laboratory to determine what items may contain biological evidence. Due to the unique nature of every investigation, the methods discussed here may not be applicable or practical in every field circumstance. Advances in technology also may alter what are currently considered to be industry best practices.

ORC § 2933.82: When to Apply Standards

The standards in this document for the collection, retention and cataloging of biological evidence are recommended primarily for crimes covered under ORC § 2933.82. These are:

2903.01	Aggravated murder
2903.02	Murder
2903.03	Voluntary manslaughter
2903.04	Involuntary manslaughter, if a felony of the first or second degree
2903.06	Aggravated vehicular homicide, if a felony of the first or second degree
2903.06	Vehicular homicide, if a felony of the first or second degree
2903.06	Vehicular manslaughter, if a felony of the first or second degree
2907.02	Rape
2923.02/2907.02	Attempted rape
2907.03	Sexual battery
2907.05	Gross sexual imposition: division (A)(4) or (B)

Who is Responsible for Retaining Biological Evidence?

Senate Bill 77 defines which types of agencies are responsible for maintaining and retaining biological evidence. The statute refers to those responsible as “governmental evidence-retention entity.” A governmental evidence-retention entity means all of the following:

- Law enforcement agency
- Prosecutor’s office
- Court
- Public hospital
- Crime laboratory
- Other governmental or public entity or individual within Ohio charged with the collection, storage or retrieval of biological evidence (such as a coroner’s office or other agency performing autopsies).

A governmental evidence-retention entity that possesses biological evidence is required to retain the biological evidence in the amount and manner sufficient to develop a DNA profile from the biological material contained in or included on the evidence.

Overview of Biological Evidence

Definitions of Biological Evidence and Biological Material

“Biological evidence” was defined in Senate Bill 77, ORC § 2933.82, as follows:

- 1) The contents of a sexual assault examination kit.
- 2) 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.

The definition of “biological evidence” 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.

“Biological material” is defined in ORC § 2953.71 as any product of a human body containing DNA.

Important note for coroners: A coroner is required to collect and retain a known DNA standard (blood, oral swab) during autopsy for crimes covered under ORC § 2933.82.

Items to Consider as Sources of Biological Evidence or Materials

The following list is meant only as a general guide for use in the investigation of crimes in which biological evidence and materials may have evidentiary value. These are:

- Sexual assault examination kits, both victim and suspect kits
- Slides, swabs, test tubes or the proximate container for each from sexual assault examination kits, autopsies or skin stains
- Clothing, hats, masks, eyeglasses, jewelry, gloves from any involved individuals
- Ligatures such as rope, belts, tape and cords
- Bedding such as sheets, blankets, comforters, pillow cases, pillows and mattress pads
- Other household materials such as towels, used tissues, toilet paper and paper towels
- Drinking containers such as cups, cans and bottles
- Cigarette butts or other smoking devices
- Drug paraphernalia such as pipes and syringes
- Handled items such as weapons and tools

- Licked items such as envelopes and stamps
- Samples of items retained by a coroner or forensic or toxicology laboratory
- Biological reference standards from known individuals such as buccal swabs from a victim, suspect, consent partner or elimination standards
- Secondary reference standards from missing persons such as a toothbrush or hair brush

The above list is not exhaustive. There are many other possible sources of biological evidence or materials.

Training on these and other topics can provide further insight as to the item types and locations of possible biological material.

Evidence Collection and Handling Safety Concerns

Universal Precautions

Universal precautions provide the first line of defense against risk of exposure to bloodborne pathogens and must be consistently followed for all activities involving contacts with blood, tissue, body fluids or other potentially infectious materials.

These are work practices that help prevent contact with blood and other body fluids that might spread disease. To be effective, universal precautions must be practiced in every situation in which there is a possibility of exposure.

All body fluids, tissues and body fluid stains must be treated as if they are contaminated with a bloodborne pathogen. It is not possible to determine by observation if a body fluid or stain is contaminated. Individuals should be conscious of possible contact with tools or items such as scissors, pens and tape measures as well as contaminated surfaces.

Personal protective equipment (PPE) — such as disposable gloves, disposable coveralls, lab coats, masks and eye protection — helps prevent contact with bloodborne pathogens.

- PPE should be used when there is a reasonable chance of contact with blood or other potentially infectious materials. Gloves should be worn when providing first aid or medical care, handling soiled materials or equipment, and cleaning up spills of risky materials. Protective clothing should be worn when splashes or spills are likely and also when working with unsafe materials. Face protectors such as splash goggles should be worn to protect against items that may splash, splatter or spray.
- PPE must be clean and in good repair. PPE that is torn, punctured or has lost its ability to function as an effective barrier should not be used. Disposable PPE should not be reused under any circumstances. While using PPE, individuals should not touch their eyes or nose with gloves.
- Do not assume that dried blood or other potentially infectious materials that are dry are safe. PPE should be used when handling these items.
- For cleanup of wet material, cover the area containing blood or other potentially infectious materials with paper towels or rags, pour a disinfectant solution over the towels, leave for at least ten (10) minutes and remove. When finished, place materials in a waste disposal bag. Appropriate PPE should be used throughout this process.

Common Bloodborne Diseases

Hepatitis B (HBV), Hepatitis C (HCV) and Human Immunodeficiency Virus (HIV) are the most common bloodborne-caused diseases to which a person may be exposed.

HBV, HCV and HIV are the most concerning diseases because of the potential for lifelong infection once exposed and, more importantly, because of the risk of death associated with infection.

Hepatitis B (HBV)

Hepatitis is an inflammation of the liver. It is the most prevalent bloodborne pathogen hazard facing law enforcement and health care professionals on the job. A person infected with HBV may feel no symptoms or may suffer from flu-like symptoms so severe that hospitalization is required. However, it may take up to nine (9) months before symptoms become noticeable.

Blood, semen or other body fluids, especially those containing blood, may be infectious. HBV can survive in dried blood for up to seven (7) days, making it a significant concern.

A Hepatitis B vaccination is available and also can be effective after exposure.

Hepatitis C (HCV)

Like HBV, Hepatitis C (HCV) is a virus that affects the liver. Nearly 4 million Americans are infected with HCV. However, only 25% are diagnosed. On average, 75% of patients with HCV infection later develop chronic hepatitis, cirrhosis or liver cancer. HCV can be chronic and fatal. It is responsible for 8,000 to 10,000 deaths annually.

Unlike HBV, there is no effective vaccine to prevent HCV.

Human Immunodeficiency Virus (HIV)

This virus attacks the body's immune system, causing Acquired Immune Deficiency Syndrome (AIDS). An individual infected with this virus can carry it for several years without developing symptoms, but eventually will develop AIDS. A person infected may suffer from flu-like symptoms, fatigue, fever and diseases that normally could be fought by the immune system. Although HIV can be transmitted through blood and some body fluids, it is not transmitted by touching, feeding or working with individuals who carry the disease.

HIV survives for a shorter period of time on a dry surface than HBV and HCV, but it is more life threatening.

There is no vaccine to prevent HIV or AIDS, nor is there a cure.

Transmission of Bloodborne Pathogens

The pathogens that transmit these diseases may be present in body fluids such as blood, semen, blood-contaminated saliva and vaginal secretions. Pathogens also can be present in cerebrospinal, synovial, amniotic and any other body fluids that are contaminated with blood. Tissue and body organ material that is deposited on evidence also may be a source of pathogens.

These pathogens can enter and infect the human body through openings in the skin, including lacerations, abrasions and dermatitis or acne. Infections also may occur via punctures or cuts caused by sharp contaminated objects such as syringe needles, scalpels, broken glass or other objects sharp enough to penetrate the skin. Infections also can enter the body through mucous membranes of the eyes, nose or mouth when these areas are touched with contaminated hands or implements.

Activities Involving Possible Exposure to Bloodborne Pathogens

The following activities may put a person at risk of exposure to bloodborne pathogens:

- The collection, storage, examination and processing of physical evidence that contains blood, semen or other potentially infectious agents
- The act of cleaning possibly contaminated work areas and/or work surfaces, including vehicles
- The preparation and packaging of blood, semen or other potentially contaminated items for presentation in court or shipment
- The handling of stains/standards containing blood or biological extracts that are utilized for testing procedures
- The collection and packaging of physical evidence containing blood, semen or other potentially contaminated evidence from crime scenes
- Searches of people and locations for weapons and/or contraband
- The handling of biological stains/standards obtained from suspects and victims

Evidence Collection

Biological evidence and materials should be collected in a manner that prevents contamination and degradation and ensures integrity during all phases of the investigation and litigation. To avoid contamination, sample collection tools and materials must be free from human DNA. The incidental presence of microorganisms does not harm properly stored human DNA samples. Disposable latex examination gloves, individually wrapped swabs or other individually wrapped items are free of human DNA by virtue of the process of sterilization.

Not all germicidal treatments destroy DNA. Alcohol and hydrogen peroxide, for instance, do not destroy DNA. The most effective way to clean collection equipment is to wipe it with a fresh 10% bleach solution of 10:1 water to bleach. (Any commercially available bleach is adequate for this purpose.)

Clean Collection Practices

Here are examples of ways to prevent contamination and degradation of biological evidence:

1. Use disposable latex gloves to handle evidence rather than uniform/tactical gloves. Do not touch the outside of gloves to face or hands, and change gloves after contact with potential biological evidence.
2. When field testing evidence, swab the stain and test the swab rather than directly testing the stain. If the stain is small, consider testing it in a lab rather than in the field.
3. Fingerprint powder and brushes may carry biological material from one item to the next. Collect DNA samples before powdering or use disposable brushes and sterile powder.
4. Clean tools between samples. For example, dip forceps in a fresh 10% bleach solution of 10:1 water to bleach and thoroughly dry prior to reuse.
5. When it is necessary to dampen a swab to collect a dried stain, any source of water that does not contain human DNA is acceptable. Sterile water, distilled water, saline solution and tap water meet this definition.
6. Dry damp items and swabs. When it is not practical to thoroughly dry the item, packaging such as paper bags will allow the drying process to continue.
7. Wet items may be dried by hanging or by laying out on a clean surface indoors away from the scene.

8. Package each item separately.

9. The use of personal protective equipment (disposable clothing, gloves, masks, etc.) both protects the individual from biohazard exposure and prevents transfer of the investigator's DNA to the evidence.

To implement these provisions, these tools are useful:

- Latex or similar gloves
- Sterile swabs
- Water
- Paper containers such as bags, envelopes, boxes
- Tape
- A permanent marker

Packaging

These are best practices to keep in mind when packaging biological evidence at a crime scene:

- Package evidence and seal the container to protect it from loss, cross transfer, contamination and/or deleterious change.
- Seal the package in such a manner that opening it causes obvious damage or alteration to the container or its seal.
- Package evidence for safety by using boxes or breathable tubes for sharp items, marking items and informing the laboratory if a biohazard is present.
- Package firearms in clean, unused boxes when submitting them for biological analysis. Mark the packaging and inform the laboratory if a biohazard is present.
- Use paper bags, envelopes, boxes and similar materials for all biological evidence.
- Avoid plastic packaging as an inner or outer package.
- Avoid the use of pill tins due to possible rust.
- Ensure that all swabs and evidence are dry.
- Package each item separately; avoid commingling items to prevent cross contamination.
- Swabs collected from a single item may be packaged in the same container.
- Mark each package with a detailed description that includes the item, location where it was collected, name of the person who collected it and date of collection.

- Seal each package with tape. (For safety reasons, do not use staples.) All seals must be marked to identify the person making the seal. Mark through the seal with name or initials and date.
- The integrity of the item often is maintained through the package's documentation. That documentation includes all markings, seals, tags and labels that have been used by all of the involved agencies. Therefore, it is critical to preserve or document all packaging and labels received by or returned to your agency.

Note: If an item (such as a used condom or fetus/product of conception) cannot be dried, it may be placed in plastic and frozen. The laboratory should be contacted as soon as possible for further guidance.

Document Evidence

During the collection process, it can be useful to record the location of evidence collected at a crime scene. These are effective methods to do this:

- Use photographs and placards to document the location of each item.
- Develop detailed documentation that describes the item, location where it was collected, name of the person who collected it and date of collection.
- Make a sketch of the scene that includes distances and a legend.

Contamination Prevention

To limit the potential for outside contamination of evidence prior to and during the collection process, consider these steps:

- Secure and limit the scene to essential personnel.
- Change disposable gloves if there is contact with biological material.
- Avoid glove-to-skin contact that can occur by rubbing eyes or nose or wiping perspiration.
- Avoid talking, coughing, sneezing, perspiring on or over evidence.
- Avoid walking on or over evidence.
- Avoid hair loss at scene from head, arms or face.
- Leave the scene if you become injured. Do not return until any blood loss has been stopped and clothing is clean.
- Do not eat, drink, chew gum or use tobacco at a scene.
- Consider the use of disposable personal protective equipment (PPE) such as gloves, masks, shoe covers, coveralls and hair covers when appropriate.
- Avoid skin and oral contact with investigatory tools such as measuring tapes or pens that may have contacted contaminated surfaces.

Storage of Biological Evidence (Short-Term)

The storage of biological evidence in this section pertains to the short-term storage that is necessary during all phases of investigation and litigation.

Each governmental evidence-retention entity should establish a policy for all evidence control that includes designating a secured location as the property room.

A case numbering system should be used. The system should utilize numbers that include both unique case identifiers and unique property identifiers. A case number might include such elements as the year of the offense, county of jurisdiction, governmental evidence-retention entity identifier and sequential number such as 10-48-1-0001. If agencies do not have a case numbering system, one system that can be used by multiple agencies within a county may be practical.

Biological evidence that has been dried should be stored, if possible, in a facility that minimizes extreme heat and humidity, which can cause DNA to degrade.

Biological evidence that cannot feasibly be dried should be stored frozen. However, items returned to the law enforcement governmental evidence-retention entity after laboratory analysis that are no longer frozen may be stored as dry material in a designated property room with little fluctuation in temperature and humidity.

All packages should be stored in a sealed condition that does not allow for cross contamination, loss or deleterious change. All seals must be marked to identify the person making the seal.

Packages from the same case should be stored in the fewest number of containers using boxes or large bags. For both storage and retention, boxes provide the most efficient use of space.

Retention of Biological Evidence (Long-Term)

Retention of biological evidence and/or material pertains to long-term storage of evidence from inactive cases, cold cases or after litigation.

Long-term evidence retention should be part of the governmental evidence-retention entity's evidence control policy.

Whenever possible, all evidence from a case should be retained by one governmental evidence-retention entity.

All packages should be stored in a sealed condition that does not allow for cross contamination, loss or deleterious change. All seals must be marked to identify the person making the seal.

Packages from the same case should be stored in the fewest number of containers possible, such as boxes or large bags needed for that case, with care taken to avoid contamination of evidence. For storage and retention, boxes provide the most efficient use of space.

Items that are dried and extremely odorous may be retained in a sealed plastic bag.

Agency case numbers and identifiers must never be removed by another agency unless documented.

A container such as a box or bag containing multiple items or packages must only be used to store evidence from a single case and should be marked to reflect the contents of that container.

Any governmental evidence-retention entity retaining biological evidence must be able to produce an inventory of the evidence. It is best to maintain an evidence inventory in a computer management system that can be backed up. In the absence of such a system, an inventory based on chain-of-custody records must be maintained. It must list the item and its current location as well as document receipt and transfer of the evidence. It is recommended that the original investigating agency maintain the inventory for each case.

Biological Evidence Retention Timeline

The retention schedule provided in ORC § 2933.82 uses a very specific definition of “in custody” as that term pertains to the offenses listed in § 2933.82. Any time the term “in custody” is used in this document, it refers to the following conditions (unless otherwise noted).

“In custody” includes any or all of the following:

1. Incarcerated (adult or any juvenile facility), or
2. Under community control sanction, or
3. Under any order of disposition for the offense, or
4. Under judicial or supervised release for the offense, or
5. On probation or parole for the offense, or
6. Under post-release control for the offense, or
7. Involved in civil litigation in connection with that offense or act, or
8. Subject to any kind of sex offender registration and other duties imposed as required by ORC §§ 2950.04, 2950.041, 2950.05, 2950.06.

It is important to note that the following retention schedules apply to both adult and juvenile offenders.

Important Note for Coroners: Blood, vitreous and urine specimens collected by a coroner during autopsy and used for diagnostic purposes are not considered DNA standards and may be destroyed per the coroner’s approved retention schedule.

The retention schedules for biological evidence and materials related to SB 77 crimes are provided below.

UNSOLVED CRIMES:

- ORC §§ 2903.01 Aggravated murder or 2903.02 Murder — Must secure evidence for as long as the crime remains unsolved
- All other SB 77 unsolved crimes — Must secure the evidence for a period of thirty (30) years. This 30-year retention timeframe includes ORC §§:
 - 2903.03 Voluntary manslaughter
 - 2903.04 Involuntary manslaughter, if a felony of the first or second degree
 - 2903.06 Aggravated vehicular homicide, if a felony of the first or second degree
 - 2903.06 Vehicular homicide, if a felony of the first or second degree
 - 2903.06 Vehicular manslaughter, if a felony of the first or second degree
 - 2907.02 Rape*
 - 2923.02/2907.02 Attempted rape*
 - 2907.03 Sexual battery*
 - 2907.05(A)(4) or (B) Gross sexual imposition*

***Important note for public hospitals and other governmental evidence-retention entities handling biological evidence related to a sexual assault:** This thirty (30) year retention timeframe on unsolved crimes requires that any sexual assault kit (also known as a “rape kit”) that may contain biological evidence and is performed in response to an SB 77 crime (for example, rape or attempted rape) must be maintained for that entire time period. *This means if the crime was unsolved, the sexual assault kit must be retained for thirty (30) years.*

CONVICTIONS:

If a person accused of an SB 77 crime is convicted of that SB 77 crime, the biological evidence **must** be secured for the latest period of time that the offender is “in custody” (as defined above) or for thirty (30) years, whichever comes first. This means that if the person “in custody” is released from that form of “custody” prior to thirty (30) years, the governmental evidence-retention entity retaining the evidence may destroy it when “custody” has been completed, even if it is prior to thirty (30) years. It is important to keep in mind that if the crime was one which required the offender to register as a sex offender, any biological evidence must be retained for as long as the offender is required to register, which may mean his or her lifetime.

If the offender remains incarcerated after thirty (30) years, the biological evidence shall be secured until the person is released from incarceration or dies.

The conviction retention timeline applies to all SB 77 crimes:

- 2903.01 Aggravated murder
- 2903.02 Murder
- 2903.03 Voluntary manslaughter
- 2903.04 Involuntary manslaughter, if a felony of the first or second degree
- 2903.06 Aggravated vehicular homicide, if a felony of the first or second degree
- 2903.06 Vehicular homicide, if a felony of the first or second degree
- 2903.06 Vehicular manslaughter, if a felony of the first or second degree
- 2907.02 Rape*
- 2923.02/2907.02 Attempted rape*
- 2907.03 Sexual battery*
- 2907.05(A)(4) or (B) Gross sexual imposition*

Example 1: An offender is convicted of ORC § 2907.02 Rape. The offender is sentenced to serve (8) years in prison. The offender is released after serving seven (7) years and is placed on one (1) year of post-release control. Based upon the offender’s crime and classification, the offender must register as a sex offender for fifteen (15) years after his release. The biological evidence related to the offender’s crime must be retained for the entire fifteen (15) years after his release. Since the offender is a registered sex offender, the time served or post-release control does not factor into the retention schedule. The only time period that is important is the one that lasts the longest from the time of the conviction.

Example 2: An offender is convicted of 2903.06 Vehicular manslaughter as a felony of the second degree. The offender is sentenced to serve six (6) years in prison, but is released after four (4) years and placed on post-release control for the remainder of his sentence. Once post release control is complete, if there are no other court orders, the biological evidence related to this offender's case may be destroyed.

However, if in Example 2 there is a court order requiring the offender to pay restitution to the victim's family, until the restitution is complete, the biological evidence may not be destroyed. If it takes the offender four (4) additional years after his release to complete that restitution, the biological evidence must be retained for that entire time period while restitution is pending, even if all other court sanctions have been completed.

GUILTY PLEA OR NO CONTEST PLEA:

The governmental evidence-retention entity must secure the biological evidence for five (5) years after the plea **and** any appeals from the plea have been exhausted, **unless** the person who pleaded guilty or no contest, or the person's attorney, requests retention **and** a court finds good cause to retain the evidence.

In the case of a guilty or no contest plea, the person who pleaded guilty or no contest or their attorney **must notify** the following that they are requesting the evidence not be destroyed:

1. Each person who is "in custody" for a crime related to the biological evidence in question
2. The attorney of record for each person who is "in custody" related to the biological evidence in question
3. The state public defender
4. The office of the prosecutor of record in the case that resulted in the person being "in custody"
5. The attorney general

EXCEPTIONS TO RETENTION TIMELINE

Biological material may be destroyed prior to the time periods above **only** if all of the following procedures have been complied with:

1. Notice is sent by certified mail, return receipt requested, notifying of the intent to destroy the evidence. Notice must be sent to all of the following:
 - a. All persons who remain "in custody" as a result of a criminal conviction, delinquency adjudication or commitment related to the evidence in question
 - b. The attorney of record for each person who is in custody in any circumstance described above if the attorney of record can be located
 - c. The state public defender
 - d. The office of the prosecutor of record in the case that resulted in the custody of the person as described above
 - e. The attorney general

2. One (1) year after the latest date on which the person(s) described above in (a)-(e) receives the notice, the biological evidence may be destroyed, **ONLY IF**:
 - a. No motion has been filed for testing of evidence under ORC §§ 2953.71, 2953.81 or 2953.82, **AND**
 - b. No written request for retention of the evidence has been provided to the entity that sent the certified letter containing notification of its intent to destroy the biological evidence.

3. If any person who received the certified letter notifying him or her of intent to destroy the evidence files a motion for testing of evidence **OR** provides a written request to the entity sending the certified letter, the biological evidence must be retained while the person remains “in custody.”

Destruction of Retained Evidence

To augment the available storage space for retained biological or other evidence required by statute, it is recommended that each governmental evidence-retention entity routinely inventory its property room for evidence that could possibly be destroyed.

Evidence collected from crimes that are not enumerated in the statute (as listed below) is not required to be preserved under this law. Thus, if additional space is needed to preserve evidence, evidence from non-enumerated crimes should be considered for destruction unless preservation of such evidence is mandated from some other source, such as court order.

Evidence being held for cases on appeal should be referred to the county prosecutor for an updated status and the possibility of seeking a destruction order.

Cases that are open or unsolved should be referred to the county prosecutor to determine the statute of limitations and the possibility of future litigation or the possibility of seeking a destruction order.

Crimes that require adherence to the biological evidence retention standards are:

- 2903.01 Aggravated murder
- 2903.02 Murder
- 2903.03 Voluntary manslaughter
- 2903.04 Involuntary manslaughter, if a felony of the first or second degree
- 2903.06 Aggravated vehicular homicide, if a felony of the first or second degree
- 2903.06 Vehicular homicide, if a felony of the first or second degree
- 2903.06 Vehicular manslaughter, if a felony of the first or second degree
- 2907.02 Rape
- 2923.02/2907.02 Attempted rape
- 2907.03 Sexual battery
- 2907.05(A)(4) or (B) Gross sexual imposition

Cataloging of Retained Evidence

A governmental evidence-retention entity must have a system to catalog evidence so it is possible to locate any retained biological evidence.

A cataloging system would make use of a unique case numbering system, a documented procedure for property room organization and the evidence inventory developed for each case.

Evidence control should include a case numbering system. The case numbering system should include unique case identifiers with unique property identifiers. Those identifiers might include such elements as the year of the offense, county of jurisdiction, agency identifier and sequential number such as 10-48-1-0001. If agencies do not have a case numbering system, one system that can be used by multiple agencies within a county may be practical.

The organization of the property room should be determined by the governmental evidence-retention entity's ability to locate the evidence through a computerized barcode system or hand written record. A computerized barcode system will allow the evidence to be stored based on available locations within the property room. If a handwritten record is used, all evidence should be stored and maintained in chronological order by case number within the property room.

Evidence Control

Each governmental evidence-retention entity should have a policy on evidence control that includes case tracking and property room management.

Case Tracking

Each governmental evidence-retention entity should have a written policy regarding case tracking that includes how evidence is to be documented on agency-approved forms. It is recommended that any time evidence is collected, a chain of custody form be immediately initiated and follow that evidence item up to and including disposal or long-term retention.

To ensure the evidence and chain of custody form will be definitively linked, each item of evidence and chain of custody must be marked/labeled with the same unique identifier that includes the assigned case number. However, the evidence item and the original chain of custody form must never be stored together. Rather, the original chain of custody form and evidence must be stored in separate locations.

The chain of custody form should contain, at a minimum, the unique case identifier; a description of the corresponding evidence item; who collected it; when and where it was collected; and to whom, when and where it was transferred.

Property Room Management

Each governmental evidence-retention entity should have a policy regarding the management of its property room(s) that includes how and where evidence is to be stored and/or retained. The security of and access to the property rooms also are essential components to a successful policy.

Property rooms should be managed by a limited number of people who are granted access only by the governmental evidence-retention entity's executive officer. Individuals assigned to these duties should receive training in the area of property room management.

Each evidence item within a property room must be packaged to ensure its integrity and to prevent contamination, and marked or labeled with a unique identifier.

If possible, separate locations for the short-term storage of active cases and long-term storage for retained evidence are advisable. Also, within each long-term and short-term storage location(s), it is preferable to have separate secured areas for drugs and firearms evidence.

A property room should have sufficient capacity and shelving to facilitate the storage, inventory and retrieval of evidence items.

Audits of property rooms should be conducted on a scheduled basis to ensure routine compliance with the governmental evidence-retention entity's property room policy. Unannounced audits also should be conducted.

Task Force Members

Statutory Members

- Ohio Attorney General's Office
 - D. Steven Greene, Bureau of Criminal Identification and Investigation (BCI) Laboratory, Chair
- Ohio Prosecuting Attorneys Association
 - Jonathan Blanton, Jackson County Prosecutor
- Ohio State Coroners Association
 - Ken Betz, Montgomery County Coroner's Office
- Ohio Association of Chiefs of Police
 - Tony Tambasco, Mansfield Police Department
- Office of the Ohio Public Defender (in consultation with Ohio Innocence Project)
 - Professor Mark Godsey, University of Cincinnati
- Ohio Department of Public Safety, Office of Criminal Justice Services
 - Nicole Scozzie, Chief Policy Advisor
- Buckeye State Sheriffs' Association
 - Detective Sergeant Chris Slayman, Licking County Sheriff's Office

Non-Statutory Members

- Cleveland Police Department
 - Deputy Chief Edward Tomba
- Montgomery County Prosecutor's Office
 - Erin Claypoole, Assistant Prosecuting Attorney
- Ohio Attorney General's Office
 - Bridget Coontz, Task Force Parliamentarian
 - Pam Reay, Task Force Secretary
 - Todd Dieffenderfer, Special Advisor to the Ohio Attorney General
 - Elizabeth Benzinger, BCI Laboratory
 - Michael Velten, BCI Laboratory
- Ohio Clerk of Courts Association
 - Gregory A. Brush, Montgomery County Clerk of Courts
 - Daniel M. Horrigan, Summit County Clerk of Courts
- Ohio Department of Public Safety
 - James Luebbers, Office of Criminal Justice Services
 - Michael McCann, Office of Criminal Justice Services
 - Captain J.D. Brink, Ohio State Highway Patrol Crime Laboratory
- Ohio Innocence Project
 - Jodi Shorr, Administrative Coordinator and Policy Analyst

Resources

Ohio Attorney General's Office

<http://www.ohioattorneygeneral.gov/>

Ohio Law Enforcement Gateway

<http://www.ohioattorneygeneral.gov/OHLEG>

Ohio Peace Officer Training Academy

<http://www.ohioattorneygeneral.gov/OPOTA>

<http://www.ohioattorneygeneral.gov/Enforcement/OPOTA/Course-Catalog/Course-Categories/Crime-Scene-Courses>

Ohio Revised Code

<http://codes.ohio.gov/>

<http://codes.ohio.gov/orc/2901.07>

<http://codes.ohio.gov/orc/2933.82>

<http://codes.ohio.gov/orc/2950.01>

<http://codes.ohio.gov/orc/2953.71>

National Institute of Justice

<http://www.ojp.usdoj.gov/nij/>

<http://www.ojp.usdoj.gov/nij/training/welcome.htm>

<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>

DNA Initiative

<http://www.dna.gov/>

<http://www.dna.gov/training/resources/>

<http://www.dna.gov/audiences/investigators/know/>

International Association for Property and Evidence

<http://iape.org/>

<http://iape.org/resourcesPages/downloads.html>

Occupational Safety and Health Programs

<http://osha.gov/>

<http://osha.gov/Publications/osha3186.html>

Centers for Disease Control and Prevention

<http://www.cdc.gov/>

<http://www.cdc.gov/ncidod/dhqp/bp.html>

Ohio Department of Health

<http://www.odh.ohio.gov/odhPrograms/hpr/sadv/sadvprev1.aspx>

<http://www.odh.ohio.gov/odhPrograms/hpr/sadv/sadvprot.aspx>