



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

DNA COLLECTION AND RETENTION SUMMARY

In 2010, Ohio's 128th General Assembly enacted Senate Bill 77, which brought about major changes in the collection and preservation of biological evidence. Among other things, SB 77 amended Ohio Revised Code Section 2901.07 to require the collection of a DNA specimen from all adult felony arrestees beginning July 1, 2011. It also enacted RC 2933.82, which sets forth mandatory retention timelines for biological evidence and created within the Ohio Attorney General's Office the Biological Evidence Retention Task Force.

Under RC 2933.82(C), the task force was charged with devising standards for the collection, retention and cataloguing of biological evidence. It also was tasked with recommending best practices for handling biological evidence already in the possession of governmental evidence retention entities.

The task force finalized its Guidelines for Preservation and Retention of Biological Evidence in November 2010 and updated them in May 2011. These guidelines reflect the best practices for the collection, preservation and cataloguing of biological evidence and apply to the offenses listed in RC 2933.82. They are available on the Ohio Attorney General's website at www.OhioAttorneyGeneral.gov/BiologicalEvidence.

The Ohio Peace Officer Training Academy offers an online course that covers the guidelines, DNA specimen collection (per RC 2901.07), required paperwork, best practices and frequently asked questions. The eOPOTA course, titled CODIS Arrestee and Convicted Offender DNA Collections, can be accessed through the Ohio Law Enforcement Gateway or www.OhioAttorneyGeneral.gov/OPOTA at www.OHLEG.org.

ADULT FELONY DNA COLLECTION: RC 2901.07

The SB 77 amendments to RC 2901.07 expanded the list of offenders whom a DNA specimen sample must be taken from. It requires every person over the age of 18 arrested for a felony on or after July 1, 2011, to submit to a DNA specimen collection procedure administered by the "head of the arresting law enforcement agency" — which is defined as the county sheriff, the superintendent of the Ohio State Highway Patrol and the chief law enforcement officer of any other law enforcement agency (e.g., municipal police chief). The law requires that the sample be taken by the arresting law enforcement agency during the intake process at the jail, community-based correctional facility, detention facility or law enforcement agency or station to which the arrestee is taken.

While DNA sampling from all adult felony arrestees after July 1, 2011, is new, the DNA testing requirements that existed in RC 2901.07 prior to the passage SB 77 remain the same. Thus, anyone who is convicted of a felony or qualifying misdemeanor, regardless of the conviction date, must submit to a DNA specimen collection procedure by the Ohio Department of Rehabilitation and Correction, local jail or detention facility, county probation department or adult parole authority.

Any DNA specimen taken pursuant to RC 2901.07 must be sent to the Ohio Bureau of Identification and Investigation (BCI) no later than 15 days after it was taken. Free DNA collection

kits are available by e-mailing BCI's CODIS Unit at CODIS@OhioAttorneyGeneral.gov. While only qualified medical personnel may take a DNA specimen via a blood draw or other invasive procedure, anyone can collect a specimen by swabbing buccal (cheek) cells.

BIOLOGICAL EVIDENCE RETENTION: RC 2933.82

SB 77 also enacted RC 2933.82, which established mandatory retention timelines for biological evidence collected in connection with the investigation or prosecution of a criminal offense or delinquent act. The timelines mandated by RC 2933.82 apply to every “governmental evidence retention entity,” which is any public or private entity or individual charged with the collection, storage or retrieval of biological evidence. This includes, but is not limited to, law enforcement agencies, prosecutors’ offices, clerks of courts and public hospitals.

“Biological evidence” means the contents of a sexual assault kit, blood, semen, hair, saliva, tissue or any other biological material that was collected as part of a criminal investigation or delinquent child investigation that may be exculpatory or incriminatory. Such evidence must be retained in accordance with the timeline regardless of whether it is present separately (such as on a slide or a swab) or on other evidence (such as clothing, bedding or cigarettes).

The RC 2933.82 retention timelines and the guidelines apply to the following offenses (“covered offenses”):

- Aggravated murder 2903.01
- Murder 2903.02
- Voluntary manslaughter 2903.03
- Involuntary manslaughter 2903.04 (F1 or F2)
- Aggravated vehicular homicide 2903.06 (F1 or F2)
- Vehicular homicide 2903.06 (F1 or F2)
- Vehicular manslaughter 2903.06 (F1 or F2)
- Rape 2907.02
- Attempted rape 2923.02/§ 2907.02
- Sexual battery 2907.03
- Gross sexual imposition 2907.05(A)(4) or (B)

The timelines and guidelines apply whether the investigation or prosecution is for the commission of a criminal offense by an adult or a delinquent act committed by a juvenile.

Retention Timelines: Unsolved Cases

Biological evidence secured by a governmental evidence retention entity during the investigation of an aggravated murder or murder that remains unsolved must be retained as long as the offense remains unsolved. Biological evidence secured by a governmental evidence retention entity during an investigation of the remaining covered offenses must be retained for 30 years if the offense is unsolved.

Retention Timelines: Convictions and Delinquent Child Adjudications

Biological evidence secured by a governmental evidence retention entity during the investigation, prosecution or delinquent child adjudication of any of the covered offenses that result in a conviction must be retained for the period that the offender is “in custody” or for 30 years, whichever comes first. If the offender remains in custody more than 30 years, the evidence must be retained while the offender remains incarcerated or dies. “In custody” refers to any of the following:

- Incarcerated (adult or juvenile facility)
- Under community control sanction
- Under any disposition order of the court for the offense
- Under judicial or supervised release for the offense
- On probation or parole for the offense
- Under post-release control for the offense
- Involved in any civil litigation in connection with that offense or act
- Subject to any kind of sex offender registration and other duties

Exception to 30-Year or “In Custody” Timeline

Biological evidence retained after a conviction or delinquent child adjudication may be destroyed early if no other provision of state or federal law requires that it be secured and the notification procedure set forth in the statute is followed. The notification procedure requires that the governmental evidence retention entity provide notice, in writing¹, of its intention to destroy the evidence to the following individuals:

- All persons who remain “in custody” as a result of a criminal conviction, delinquency adjudication or commitment related to the evidence in question
- The attorney of record for all people listed in above, if they can be located
- The state public defender
- The prosecutor’s office for the case that resulted in the custody
- The Ohio attorney general

The notice must be sent via certified mail, return receipt requested. If, within one year after receiving the letter, **any** of the individuals files for testing of the evidence **and** submits a written request for retention, the evidence must be retained while the person remains in custody.

Retention Timeline: Guilty or No Contest Pleas

¹ A sample “Notice of Intent to Destroy Evidence” letter is available as an appendix to the guidelines.

Biological Evidence retained after a person **pleads** guilty or no contest to any one of the covered offenses may be destroyed after five years and all appeals have been exhausted. There is no exception to this timeline. However, a person who pled guilty or no contest may move the court to retain the evidence longer than required by statute. The offender must provide notice of the motion to the same people listed above. The biological evidence must be retained beyond the required period if the court finds good cause why it should be retained.