

Effective 5/1/2024

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77-11c-401 Preservation of biological evidence -- Procedures -- Inventory request.

- (1) Except as provided in Section 77-11c-402, an evidence collecting or retaining entity shall preserve biological evidence of a violent felony offense in accordance with this part.
- (2) An evidence collecting or retaining entity shall preserve biological evidence of a violent felony offense:
 - (a) for the longer of:
 - (i) the length of the statute of limitations for the violent felony offense if:
 - (A) no charges are filed for the violent felony offense; or
 - (B) the violent felony offense remains unsolved;
 - (ii) the length of time that any individual convicted of the violent felony offense, or a lesser included offense, remains in custody;
 - (iii) one year after the day on which all direct appeals of the judgment for any individual convicted of the violent felony offense, or a lesser included offense, are exhausted;
 - (iv) the length of time that a petition for postconviction relief, and any appeal of the petition, is pending if an individual convicted of the violent felony offense files the petition within the one-year time period described in Subsection (2)(a)(iii); or
 - (v) 20 years from the day on which the biological evidence is collected if the biological evidence is the contents of a sexual assault kit; or
 - (b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution of the violent felony offense resulted in an acquittal or dismissal.
- (3) An evidence collecting or retaining entity shall ensure that biological evidence under Subsection (2) is:
 - (a) preserved in an amount and manner sufficient to:
 - (i) develop a DNA profile; and
 - (ii) if practicable, allow for independent testing of the biological evidence by a defendant; and
 - (b) subject to a continuous chain of custody.
- (4)
 - (a) Upon request by a defendant under Title 63G, Chapter 2, Government Records Access and Management Act, the evidence collecting or retaining entity shall prepare an inventory of the biological evidence preserved in connection with the defendant's criminal case.
 - (b) If the evidence collecting or retaining entity cannot locate biological evidence requested under Subsection (4)(a), the custodian for the entity shall provide a sworn affidavit to the defendant that:
 - (i) describes the efforts taken to locate the biological evidence; and
 - (ii) affirms that the biological evidence could not be located.
- (5)
 - (a) If the evidence collecting or retaining entity intends to dispose of biological evidence of a violent felony offense before the day on which the period described in Subsection (2) expires, the evidence collecting or retaining entity shall send a notice of intent to dispose of the biological evidence that:
 - (i) is sent by certified mail, return receipt requested, or a delivery service that provides proof of delivery, to:
 - (A) an individual who remains in custody based on a criminal conviction related to the biological evidence;
 - (B) the private attorney or public defender of record for each individual described in Subsection (5)(a)(i)(A);

- (C) the entity that employed the private attorney or public defender at the time of the criminal conviction;
- (D) if applicable, the prosecuting agency responsible for the prosecution of each individual described in Subsection (5)(a)(i)(A); and
- (E) the Utah attorney general; and
- (ii) explains that the party receiving the notice may:
 - (A) file a motion for testing of biological evidence under Section 78B-9-301 if the party is the individual convicted of the violent felony offense; or
 - (B) submit a written request that the evidence collecting or retaining entity retain the biological evidence.
- (b) An individual must file a motion, or submit a written request, described in Subsection (5)(a)(ii) within 180 days after the day on which the evidence collecting or retaining entity receives proof of delivery under Subsection (5)(a).
- (c) An evidence collecting or retaining entity shall send a notice of intent to dispose of biological evidence that is the contents of a sexual assault kit to a victim in accordance with Section 53-10-905.
- (6) The evidence collecting or retaining entity may not dispose of biological evidence of a violent felony offense before the day on which the time period described in Subsection (2) expires if:
 - (a) the evidence collecting or retaining entity is required by federal or state law to preserve the biological evidence; or
 - (b)
 - (i) the evidence collecting or retaining entity sends notice in accordance with:
 - (A) Subsection (5); and
 - (B) Section 53-10-905 if the biological evidence is the contents of a sexual assault kit; and
 - (ii) an individual notified under Subsection (5)(a) or Section 53-10-905:
 - (A) files a motion for testing of the biological evidence under Section 78B-9-301 within the 180-day period described in Subsection (5)(b); or
 - (B) submits a written request for retention of the biological evidence within the 180-day period described in Subsection (5)(b) or Section 53-10-905.
- (7)
 - (a) Subject to Subsections (7)(b) and (c), if the evidence collecting or retaining entity receives a written request to retain the biological evidence, the evidence collecting or retaining entity shall retain the biological evidence for the time period described in Subsection (2).
 - (b) Subject to Subsection (7)(c), the evidence collecting or retaining entity may only return or dispose of physical evidence as described in Part 3, Retention of Evidence for Felony Offenses.
 - (c) If the evidence collecting or retaining entity is not required to retain physical evidence of the violent felony offense under Part 3, Retention of Evidence for Felony Offenses, before returning or disposing of the physical evidence, the evidence collecting or retaining entity shall:
 - (i) remove the portions of the physical evidence likely to contain biological evidence related to the violent felony offense; and
 - (ii) preserve the removed biological evidence in a quantity sufficient to permit future DNA testing.
- (8) To comply with the preservation requirements described in this section, a law enforcement agency or a court may:
 - (a) retain the biological evidence; or

- (b) if a continuous chain of custody can be maintained, return the biological evidence to the custody of the other law enforcement agency that originally provided the biological evidence to the law enforcement agency.