

Enrolled
Senate Bill 310

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CHAPTER

AN ACT

Relating to deoxyribonucleic acid; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) Except as provided in subsection (3) of this section, a custodian shall preserve biological evidence:

(a) That is collected as part of a criminal investigation into a covered offense; or

(b)(A) That reasonably may be used to incriminate or exculpate any person for a covered offense; and

(B) That is in the possession of the custodian before any person is convicted of a covered offense.

(2) A custodian shall preserve biological evidence described in subsection (1) of this section in an amount and manner that is sufficient to develop a DNA profile.

(3) A custodian is not required to preserve physical evidence solely because the physical evidence contains biological evidence if the physical evidence is of such a size, bulk or physical character as to render retention impracticable. When the retention of physical evidence is impracticable, the custodian shall remove and preserve portions of the physical evidence likely to contain biological evidence in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

(4) As used in this section:

(a) "Biological evidence" means a sample of an individual's blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identifiable biological material or an item that contains such material, whether the material or item is stored or cataloged separately or the material is present upon other evidence. "Biological evidence" includes the contents of a sexual assault forensic evidence kit.

(b) "Convicted" includes a finding of guilty or responsible except for insanity, or a finding that a person is within the jurisdiction of the juvenile court under ORS 419C.005.

(c) "Covered offense" means:

(A) Aggravated murder;

(B) Murder;

(C) Manslaughter in the first or second degree;

(D) Criminally negligent homicide;

(E) Aggravated vehicular homicide; or

(F) A sex crime listed in ORS 181.594.

(d) "Custodian" means a law enforcement agency as defined in ORS 131.550 or any other person or public body as defined in ORS 174.109 that is charged with the collection, storage or retrieval of biological evidence in connection with a criminal investigation or criminal prosecution. "Custodian" does not include a court.

(e) "DNA" means deoxyribonucleic acid.

(f) "DNA profile" means the unique identifier of an individual that is derived from DNA.

SECTION 2. Section 1 of this 2009 Act applies to biological evidence in the possession of a custodian, as defined in section 1 of this 2009 Act, on or after the effective date of this 2009 Act.

SECTION 3. This 2009 Act is repealed on January 2, 2012.

SECTION 4. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate May 4, 2009

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Secretary of Senate

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President of Senate

Passed by House June 10, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State