

A-Engrossed
Senate Bill 310

Ordered by the Senate April 29
Including Senate Amendments dated April 29

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for American Civil Liberties Union)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires custodian to preserve biological evidence related to criminal activity [*until certain conditions are met*] **in amount and manner sufficient to develop DNA profile.** [*Provides that court may impose sanctions or order other remedies for unauthorized destruction.*]

[*Creates Task Force on DNA Retention to devise standards for collection of biological evidence.*]

Sunsets [*task force*] on January 2, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to deoxyribonucleic acid; and declaring an emergency.

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

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

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

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

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

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

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

19 (4) **As used in this section:**

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

25 (b) **"Convicted" includes a finding of guilty or responsible except for insanity, or a finding**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 that a person is within the jurisdiction of the juvenile court under ORS 419C.005.

2 (c) "Covered offense" means:

3 (A) Aggravated murder;

4 (B) Murder;

5 (C) Manslaughter in the first or second degree;

6 (D) Criminally negligent homicide;

7 (E) Aggravated vehicular homicide; or

8 (F) A sex crime listed in ORS 181.594.

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

13 (e) "DNA" means deoxyribonucleic acid.

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

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

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

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