

# Senate Bill 310

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## 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 **as introduced**.

Requires custodian to preserve biological evidence related to criminal activity until certain conditions are met. 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 (4) or (5) of this section, a custodian**  
5 **shall preserve biological evidence:**

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

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

9 (B) **Is in the possession of the custodian before any person is convicted of the criminal**  
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. The evidence must**  
13 **be preserved until the later of:**

14 (a) **Every person convicted of the crime for which the evidence was collected has served**  
15 **the person's sentence;**

16 (b) **A person convicted of a sex crime as defined in ORS 181.594 is no longer required to**  
17 **report as a sex offender;**

18 (c) **A person convicted of aggravated murder or murder dies; or**

19 (d) **The law enforcement agency investigating the criminal case closes the case for a**  
20 **reason other than the conviction of the defendant.**

21 (3) **Upon written request by the defendant, the custodian shall prepare an inventory of**  
22 **biological evidence that has been preserved under this section.**

23 (4) **A custodian may destroy biological evidence prior to the period of time described in**  
24 **subsection (2) of this section if all of the following conditions are met:**

25 (a) **No other provision of state or federal law requires the custodian to preserve the evi-**  
26 **dence.**

27 (b) **The custodian sends notice of the intent to destroy the evidence via certified mail to:**

28 (A) **Each person described in subsection (2)(a) to (c) of this section;**

**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 (B) The attorney of record for the persons described in subsection (2)(a) to (c) of this  
2 section;

3 (C) The district attorney of the county in which the person described in subsection (2)(a)  
4 to (c) of this section was convicted;

5 (D) The public defense services executive director; and

6 (E) The Attorney General.

7 (c) Within 180 days following receipt of the notice, a person described in paragraph (b)  
8 of this subsection does not:

9 (A) File a motion described in ORS 138.690; or

10 (B) Provide the entity sending the notice with a written request to retain the evidence.

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

17 (6) If a custodian is required to preserve evidence under this section and the custodian  
18 is unable to produce the evidence in a judicial proceeding, the individual to whom the  
19 custodian has delegated the duty to preserve the evidence shall prepare, sign and file with  
20 the court a sworn affidavit that indicates that the custodian is unable to produce the evi-  
21 dence and describes the efforts taken to locate the evidence.

22 (7) If a court finds that biological evidence was destroyed in violation of this section, the  
23 court may impose appropriate sanctions and order appropriate remedies.

24 (8) As used in this section:

25 (a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin  
26 tissue, fingernail scrapings, bone, bodily fluids or other identifiable biological material,  
27 whether the item is stored or cataloged separately or is present upon other evidence. "Bi-  
28 ological evidence" includes the contents of a sexual assault forensic evidence kit.

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

31 (c) "Custodian" means any person or public body as defined in ORS 174.109 that is  
32 charged with the collection, storage or retrieval of biological evidence in connection with a  
33 criminal investigation or prosecution. "Custodian" includes law enforcement agencies as de-  
34 fined in ORS 131.550, courts, intergovernmental entities, hospitals and the Oregon Health and  
35 Science University.

36 (d) "DNA" means deoxyribonucleic acid.

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

38 (f) "Sentence" means a term of incarceration in a correctional or juvenile detention fa-  
39 cility, a period of probation, parole or post-prison supervision and the period of time a person  
40 is under the jurisdiction of the Psychiatric Security Review Board.

41 **SECTION 2.** (1) There is created the Task Force on DNA Retention consisting of 16  
42 members appointed as follows:

43 (a) The President of the Senate shall appoint two members from among the Senate. One  
44 member must be a member of the majority party and one must be a member of a minority  
45 party.

1       **(b) The Speaker of the House of Representatives shall appoint two members from among**  
 2 **members of the House of Representatives. One member must be a member of the majority**  
 3 **party and one must be a member of a minority party.**

4       **(c) The Governor shall appoint 12 members as follows:**

5       **(A) One member who is employed by the office of public defense services established**  
 6 **under ORS 151.216;**

7       **(B) One member who is employed by the Department of Justice;**

8       **(C) One member who is employed by the Judicial Department;**

9       **(D) One member who is a representative of the Oregon District Attorneys Association;**

10       **(E) One member who is a representative of the Oregon Criminal Defense Lawyers Asso-**  
 11 **ciation;**

12       **(F) One member who is a representative of the Oregon State Bar;**

13       **(G) One member who is a representative of the Forensic Services Division of the Oregon**  
 14 **State Police;**

15       **(H) One member who is a representative of the Oregon Association Chiefs of Police;**

16       **(I) One member who is a representative of the Oregon State Sheriffs' Association;**

17       **(J) One member who is a representative of the Oregon Association of Property and Evi-**  
 18 **dence Officers;**

19       **(K) One member who is a representative of an organization that advocates for victims**  
 20 **of crime; and**

21       **(L) One member who is a representative of the American Civil Liberties Union.**

22       **(2) The task force shall:**

23       **(a) Devise standards for the proper collection, retention and cataloging of biological evi-**  
 24 **dence applicable to criminal investigations and prosecutions; and**

25       **(b) Recommend practices, protocols, models and resources for the cataloging and acces-**  
 26 **sibility of preserved biological evidence in the possession of a custodian as defined in section**  
 27 **1 of this 2009 Act.**

28       **(3) A majority of the members of the task force constitutes a quorum for the transaction**  
 29 **of business.**

30       **(4) Official action by the task force requires the approval of a majority of the members**  
 31 **of the task force.**

32       **(5) The task force shall elect one of its members to serve as chairperson.**

33       **(6) If there is a vacancy for any cause, the appointing authority shall make an appoint-**  
 34 **ment to become immediately effective.**

35       **(7) The task force shall meet at times and places specified by the call of the chairperson**  
 36 **or of a majority of the members of the task force.**

37       **(8) The task force may adopt rules necessary for the operation of the task force.**

38       **(9) The task force shall report its findings, and may include recommendations for legis-**  
 39 **lation, to an interim committee related to the judiciary and in the manner provided by ORS**  
 40 **192.245 no later than October 1, 2010. The report shall include a recommendation as to**  
 41 **whether the task force should be allowed to sunset under section 4 of this 2009 Act.**

42       **(10) The Department of Justice shall provide staff support to the task force.**

43       **(11) Members of the task force who are not members of the Legislative Assembly are not**  
 44 **entitled to compensation or reimbursement and serve as volunteers on the task force.**

45       **(12) All agencies of state government, as defined in ORS 174.111, are directed to assist**

1 the task force in the performance of its duties and, to the extent permitted by laws relating  
2 to confidentiality, to furnish such information and advice as the members of the task force  
3 consider necessary to perform their duties.

4 **SECTION 3.** Section 1 of this 2009 Act applies to biological evidence that first comes into  
5 the possession of a custodian, as defined in section 1 of this 2009 Act, on or after the effec-  
6 tive date of this 2009 Act.

7 **SECTION 4.** Section 2 of this 2009 Act is repealed on January 2, 2012.

8 **SECTION 5.** This 2009 Act being necessary for the immediate preservation of the public  
9 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect  
10 on its passage.

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