

# Senate Bill 72

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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**.

Modifies period of time between entry of court order authorizing disposal of certain biological evidence and execution of order.

## A BILL FOR AN ACT

1  
2 Relating to evidence; amending ORS 133.715.

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

4 **SECTION 1.** ORS 133.715 is amended to read:

5 133.715. (1) Upon receipt of a timely motion to preserve biological evidence under ORS 133.709  
6 (3), the court shall:

7 (a) Conduct a hearing to resolve the motion; or

8 (b) Enter an order directing the custodian to preserve the biological evidence.

9 (2)(a) In determining whether to order the preservation of biological evidence, the court shall  
10 consider, in addition to other factors the court considers appropriate, the following factors:

11 (A) Whether the identification of the offender was a disputed issue;

12 (B) Whether other biological evidence in the case contains DNA in an amount that is sufficient  
13 to develop a DNA profile and will not be disposed of;

14 (C) If the biological evidence has not previously been tested, whether it is possible to perform  
15 testing on the biological evidence;

16 (D) Whether the defendant has served all of the sentence imposed; and

17 (E) Whether the defendant has exhausted the defendant's appellate or post-conviction rights.

18 (b) If the defendant has not exhausted the defendant's appellate and post-conviction rights, there  
19 is a presumption that the biological evidence should be preserved.

20 (c) In making the determination described in this subsection, except as otherwise provided in  
21 paragraph (b) of this subsection, the court may assign the weight the court deems appropriate to the  
22 factors described in paragraph (a) of this subsection and to any other factor the court determines  
23 is appropriate.

24 (d) For purposes of subparagraph (2)(a)(A) of this section, the court need not presume that  
25 identification of the offender is not a disputed issue solely because the defendant has pleaded guilty  
26 or no contest to the crime, has confessed to the crime or has made an admission.

27 (3) If the court enters an order authorizing the disposal of biological evidence, the order may  
28 not authorize disposal to occur sooner than [45] **40** days after the date the order is entered. The  
29 court shall provide a copy of the order to the custodian, the district attorney and the defendant.

30 (4) Either the state or the defendant may appeal from an order entered under this section in the

**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 manner provided in ORS chapter 19 for appeals from judgments. Notwithstanding ORS 19.330, the  
2 filing of a notice of appeal automatically stays an order entered under this section.

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