

West's Alaska Statutes Annotated Currentness

Title 12. Code of Criminal Procedure

↖ [Chapter 36](#). Disposition of Recovered or Seized Property; Preservation of Evidence ([Refs & Annos](#))

↖ [Article 2](#). Preservation of Evidence ([Refs & Annos](#))

→ **§ 12.36.200. Preservation of evidence**

(a) Notwithstanding [AS 12.36.010--12.36.090](#), the Department of Law, the Department of Public Safety, the Alaska Court System, or a municipal law enforcement agency shall preserve

(1) all evidence that is obtained in relation to an investigation or prosecution of a crime under [AS 11.41.100--11.41.130](#), [11.41.410](#), or [11.41.434](#) for the period of time that the crime remains unsolved or 50 years, whichever ends first;

(2) biological evidence in an amount and manner that is sufficient to develop a DNA profile from any material contained in or included on the evidence that was obtained in relation to the prosecution of a person convicted of, or adjudicated a delinquent for, a crime under [AS 11.41.100--11.41.130](#), a person convicted of a crime after being indicted under [AS 11.41.410](#) or [11.41.434](#) while the person remains a prisoner in the custody of the Department of Corrections or subject to registration as a sex offender, or a person adjudicated a delinquent for a crime after the filing of a petition alleging a violation of [AS 11.41.410](#) or [11.41.434](#) while the person remains committed to a juvenile facility or subject to registration as a sex offender.

(b) Under (a) of this section, an agency is not required to preserve physical evidence of a crime that is of a size, bulk, quantity, or physical character that renders preservation impracticable. When preservation of evidence of a crime is impracticable, the agency shall, before returning or disposing of the evidence, remove and preserve portions of the material likely to contain relevant evidence related to the crime in a quantity sufficient to permit future DNA testing. In making decisions under this section, an agency shall follow written policies on evidence retention.

(c) Upon written request of a person convicted of a crime and a prisoner, adjudicated delinquent for a crime and committed, or subject to registration as a sex offender, an agency shall prepare or provide an inventory of biological evidence that has been preserved under (a)(2) of this section in connection with the person's criminal case.

(d) An agency required to preserve biological evidence under (a) of this section may destroy biological evidence before the expiration of the time period in (a)(2) of this section if

(1) the agency is not required to maintain the evidence under another provision of state or federal law;

(2) the agency sends, by certified mail with proof of delivery, notice of its intent to destroy evidence to

(A) each person who remains a prisoner or committed or subject to registration as a sex offender for the crime for which the evidence was preserved under (a)(2) of this section;

(B) the attorneys of record, if known, for each person listed in (A) of this paragraph;

(C) the Public Defender Agency;

(D) the district attorney responsible for prosecuting the crime; and

(3) no person who is notified under (2) of this subsection, within 120 days after receiving the notice,

(A) files a motion for testing of the evidence; or

(B) submits a written request for continued preservation of the evidence.

(e) Upon receipt of a request for continued preservation of biological evidence under (d)(3)(B) of this section, an agency may petition the court for permission to destroy the evidence. The court may grant the petition if the court finds that the request is without merit or that the evidence has no significant value for biological material.

(f) When an agency is required to produce biological evidence required to be preserved under this section and the agency is unable to locate the evidence, the chief evidence custodian of that agency shall submit an affidavit, executed under penalty of perjury, describing the evidence that could not be located and detailing the efforts taken to locate the evidence.

(g) If a court finds that evidence was destroyed in violation of the provisions of this section, the court may order remedies the court determines to be appropriate.

(h) A person may not bring a civil action for damages against the state or a political subdivision of the state, their officers, agents, or employees, or a law enforcement agency, its officers, or employees for any unintentional failure to comply with the provisions of this section.

(i) In this section,

(1) "agency" means the Department of Law, the Department of Public Safety, the Alaska Court System, or a municipal law enforcement agency;

(2) “biological evidence” means

- (A) the contents of a sexual assault forensic examination kit;
- (B) semen, blood, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable human bodily material collected as part of a criminal investigation;
- (C) a slide, swab, or test tube containing material described in (B) of this paragraph; and
- (D) swabs or cuttings from items that contain material described in (B) of this section;

(3) “DNA” means deoxyribonucleic acid;

(4) “prisoner” has the meaning given in [AS 33.30.901](#).

CREDIT(S)

Added by [SLA 2010, ch. 20, § 3](#), eff. July 1, 2010.

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