

Southern Oregon High-Tech Crimes Task Force  
Digital Evidence Forensics Laboratory  
Administrative Policy Manual / Quality Assurance Manual

## **POLICY 202**

Subject: Evidence Retention and Destruction  
Issuing Authority: Sergeant Josh Moulin – Task Force Commander  
Effective Date: January 1<sup>st</sup> 2009  
Revised:

### **202.1 PURPOSE AND SCOPE**

This policy defines how evidence will be retained within the forensics lab, the length of evidence retention, evidence destruction, and responsibilities.

### **202.2 EVIDENCE RETENTION**

#### **202.2.1 IN-HOUSE EVIDENCE**

Original Evidence seized by the Task Force will be maintained pursuant to Oregon Revised Statutes and held until the case is adjudicated and the appeal period has passed. Certain cases may need to be kept for longer periods of time depending on the type of crime. Forensic images and other digital files from original evidence will also be maintained for the same amount of time as the original evidence.

#### **202.2.2 OUTSIDE AGENCY EVIDENCE**

Original evidence delivered by outside agencies will only be maintained in the property/evidence room until it is no longer needed by the forensic examiner. At the time the forensic examiner is finished with the original evidence it shall be returned to that agency for storage.

Forensic image files and other digital files from the original evidence shall be maintained by the Task Force until the original agency indicates in writing that the evidence is no longer needed. The support specialist is responsible for tracking evidence stored by the Task Force as well as obtaining written permission from case agents when evidence may be destroyed.

### **202.3. RETENTION SCHEDULE**

Original evidence seized by the Task Force and digital image files and other related evidence from outside agencies shall be retained pursuant to the following schedule:

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202.3.1 CASES IN WHICH NO CHARGES HAVE BEEN FILED BECAUSE NO SUSPECT HAS BEEN IDENTIFIED

In cases where evidence has been submitted to the lab, but no suspect has been identified and no charges have been filed by a prosecutor the evidence shall be maintained pursuant to the statute of limitations as set forth in ORS 131.105 – 131.155 This information is set forth below:

**ORS 131.105 Timeliness of criminal actions.** A criminal action must be commenced within the period of limitation prescribed in ORS 131.125 to 131.155. [1973 c.836 §5]

**ORS 131.125 Time limitations.** (1) A prosecution for aggravated murder, murder, attempted murder or aggravated murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of manslaughter may be commenced at **any time** after the commission of the attempt, conspiracy or solicitation to commit aggravated murder or murder, or the death of the person killed.

(2) A prosecution for any of the following felonies may be commenced within **six years** after the commission of the crime or, if the victim at the time of the crime was under **18 years of age, anytime before the victim attains 30 years of age or within 12 years** after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- (a) Criminal mistreatment in the first degree under ORS 163.205.
- (b) Rape in the third degree under ORS 163.355.
- (c) Rape in the second degree under ORS 163.365.
- (d) Rape in the first degree under ORS 163.375.
- (e) Sodomy in the third degree under ORS 163.385.
- (f) Sodomy in the second degree under ORS 163.395.
- (g) Sodomy in the first degree under ORS 163.405.
- (h) Unlawful sexual penetration in the second degree under ORS 163.408.
- (i) Unlawful sexual penetration in the first degree under ORS 163.411.
- (j) Sexual abuse in the second degree under ORS 163.425.
- (k) Sexual abuse in the first degree under ORS 163.427.
- (L) Using a child in a display of sexual conduct under ORS 163.670.
- (m) Encouraging child sexual abuse in the first degree under ORS 163.684.
- (n) Incest under ORS 163.525.
- (o) Promoting prostitution under ORS 167.012.
- (p) Compelling prostitution under ORS 167.017.
- (q) Luring a minor under ORS 167.057.

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(3) A prosecution for any of the following misdemeanors may be commenced within **four years** after the commission of the crime or, if the victim at the time of the crime was **under 18 years of age, anytime before the victim attains 22 years of age or within four years after the offense is reported** to a law enforcement agency or the Department of Human Services, whichever occurs first:

- (a) Sexual abuse in the third degree under ORS 163.415.
- (b) Furnishing sexually explicit material to a child under ORS 167.054.
- (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- (d) Displaying obscene materials to minors under ORS 167.080.

(4) In the case of crimes described in subsection (2)(L) of this section, the victim is the child engaged in sexual conduct. In the case of the crime described in subsection (2)(n) of this section, the victim is the party to the incest other than the party being prosecuted. In the case of crimes described in subsection (2)(o) and (p) of this section, the victim is the child whose acts of prostitution are promoted or compelled.

(5) A prosecution for **arson in any degree** may be commenced within **six years** after the commission of the crime.

(6) Except as provided in subsection (7) of this section or as otherwise expressly provided by law, prosecutions for other offenses must be commenced within the following periods of limitations after their commission:

- (a) For any other felony, three years.** *(Departments could consider reviews after two years for evidence purging guidelines)*
- (b) For any misdemeanor, two years.** *(Consider review after 1 year for evidence purging)*
- (c) For a violation, six months.** *(Consider review after 3 months for evidence purging)*

(7) If the period prescribed in subsection (6) of this section has expired, a prosecution nevertheless may be commenced as follows:

(a) If the **offense has as a material element either fraud or the breach of a fiduciary obligation, prosecution may be commenced within one year after discovery of the offense** by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is not a party to the offense, but in no case shall the period of limitation otherwise applicable be extended by more than three years;

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(b) If the offense is based upon misconduct in office by a public officer or employee, prosecution may be commenced at any time while the defendant is in public office or employment or within two years thereafter, but in no case shall the period of limitation otherwise applicable be extended by more than three years; or

(c) If the offense is an invasion of personal privacy under ORS 163.700, prosecution may be commenced within one year after discovery of the offense by the person aggrieved by the offense, by a person who has a legal duty to represent the person aggrieved by the offense or by a law enforcement agency, but in no case shall the period of limitation otherwise applicable be extended by more than three years.

**(8) Notwithstanding subsection (2) of this section, a prosecution for rape in the first or second degree, sodomy in the first or second degree, unlawful sexual penetration in the first or second degree or sexual abuse in the first degree may be commenced within 25 years after the commission of the crime if the defendant is identified after the period described in subsection (2) of this section on the basis of DNA (deoxyribonucleic acid) sample comparisons.**

(9) Notwithstanding subsection (8) of this section, if a prosecution for a felony listed in subsection (8) of this section would otherwise be barred by subsection (2) of this section, the prosecution must be commenced within two years of the DNA-based identification of the defendant. [1973 c.836 §6; 1989 c.831 §1; 1991 c.386 §5; 1991 c.388 §1; 1991 c.830 §5; 1995 c.768 §8; 1997 c.427 §1; 1997 c.697 §3; 1997 c.850 §5; 2001 c.375 §1; 2005 c.252 §1; 2005 c.839 §1; 2007 c.840 §1; 2007 c.869 §6]

**131.135 When prosecution commenced.** A prosecution is commenced when a warrant or other process is issued, provided that the warrant or other process is executed without unreasonable delay. [1973 c.836 §7]

**131.145 When time starts to run; tolling of statute.** (1) For the purposes of ORS 131.125, time starts to run on the day after the offense is committed.

(2) Except as provided in ORS 131.155, the period of limitation does not run during:

(a) Any time when the accused is not an inhabitant of or usually resident within this state; or

(b) Any time when the accused hides within the state so as to prevent process being served upon the accused.

(3) If, when the offense is committed, the accused is out of the state, the action may be commenced within the time provided in ORS 131.125 after the coming of the accused into the state. [1973 c.836 §8; 1987 c.158 §19]

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**131.155 Tolling of statute; three-year maximum.** Notwithstanding ORS 131.145, in no case shall the period of limitation otherwise applicable be extended by more than three years. [1973 c.836 §9]

#### 202.3.2 CASES IN WHICH A SUSPECT HAS BEEN IDENTIFIED AND A REPORT SENT TO A PROSECUTOR

In cases where a suspect has been identified and a report filed with the prosecutor's office, the following timelines apply:

1. If the prosecutor determines that no charges will be filed on a case the evidence may be released at that time.
2. For cases that have been filed, which are pending in the courts or have outstanding warrants should be held until the case has been adjudicated, or the warrant recalled and case dismissed.
3. In cases where charges were filed and the defendant(s) plead guilty:
  - a. Misdemeanors and felonies: 30-45 days after the defendant(s) have been sentenced.
  - b. Measure 11 cases: 2 years and after determining that no appeals or post conviction relief is pending.
  - c. Homicide cases: Always check with the prosecutor.
4. In cases where charges were filed and the defendant went to trial, hold all remaining evidence until the court releases the evidence in its custody (if any), at which time all evidence may be disposed of.

Always consider appeal periods (ORS 138.020, 138.510 and 138.690). In homicide cases always check with the prosecutor before disposing of anything.

#### 202.4 DOCUMENTATION

The support specialist will occasionally inquire with outside agencies about the status of cases to determine if the Task Force can purge digital evidence. The support specialist will send case agents either electronically or via traditional mail a "Case Disposition Status Request" memorandum. All returned forms, regardless of the status indicated shall be scanned and placed within the digital case file for the respective case. The case disposition status request form must be signed by the case agent or someone of authority from the originating agency. If

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a case disposition status request form is returned indicating that evidence can be purged, it shall be forwarded to the Task Force Commander for review.

### **202.5 EVIDENCE DESTRUCTION**

If the Task Force Commander reviews the case disposition status request form and everything appears to be in order, s/he may authorize the destruction of digital evidence. This may include the deletion of forensic image files, exported data, FTK case information and any other evidence taken from the originally submitted evidence.

If any evidence is destroyed, the following shall be documented on the corresponding incoming evidence form:

1. Person who destroyed evidence
2. Date/time evidence was destroyed
3. Method of destruction (deletion, physical, etc.)

### **202.6 RETENTION OF CASE REPORTS**

All case reports and information contained within the “Master Case File” shall be retained forever. This information is also backed up to tape on a daily basis.