

Preservation of Evidence Statutes

	A	B	D	E	F	G	H
1	STATE	Statute/Case Law	Crime Categories	Duration of preservation period articulated	Process for Retention & Destruction	Sanctions	Miscellaneous
2	ARIZONA	A.R.S. § 13-4221 (2008)	felony sexual offenses or homicides	Incarceration or completion or supervised release (cold cases 55 years or conviction/release)	Gov't may establish bulk/sample retention process; including approval from DA/AG, notice to victim; additional process		
3	ARKANSAS	A.C.A. § 12-12-104 (2001)	sex offense or violent offense or felony (different retention periods for each)	Permanent for violent offenses, 25 yrs for sex offenses, 7 yrs other felonies where def's DNA taken for state database	Documentation for locating evidence; Early destruction: petition Court & notice; Proponderance of evidence: no value, bulk/sample retention process; def allowed to take steps to preserve portions	Yes: purposefully fail to comply is Class A Misdemeanor	
4	CALIFORNIA	Penal Code § 1417.9 (2001)	all criminal cases	Length of incarceration	Early destruction: notice to defendant, counsel, DA, AG, retention for testing; intent to seek testing; declaration of innocence. Notice is absolute, no waiver as part of plea.		
5	COLORADO	C.R.S.A. § 18-1-1101, et seq. (2009)	Felonies and sex offenses; cold cases for SOL	Life of defendant	General rule: Retain amount/manner consistent with scientific practices; bulk/sample allowed; Mandatory retention (cold cases, Class 1 felony/certain sex offenses) Early destruction (Notice to DA who can deny; if authorizes, notice to defendant, motion to court, detailed process)	Yes. Affidavit by custodian under penalty of prejury steps taken to locate; Court determines if violated defendants DP rights and can order appropriate remedy	Law very detailed in process. Victim may request evidence be returned from DA; process and notification
6	CONNECTICUT	C.G.S.A. § 54-102jj (2003)	Capitol offenses and upon conviction of any crime after trial	Length of incarceration	Early destruction: application to court, court gives notice, hearing, court grants if Conn S Ct has decided appeal and defendant doesn't seek preservation		
7	DISTRICT OF COLUMBIA	DC ST § 22-4134 (2002)	Crimes of violence	5 years or as long as any person incarcerated in connection with that case or investigation remains in custody, whichever is longer.	General rule: allows bulk/sample process; After 5 years may seek early destruction with notice, opportunity for testing	Yes, willful, malicious destruction, tamper, etc subject to 5 years in prison/\$100k fine	

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8	FLORIDA	F.S.A. § 925.11 (2004)	Felony crimes	Lengthy of sentence; in cases of death sentence, 60 days after execution	Mandatory retention -- no early destruction		
9	GEORGIA	Ga. Code Ann. § 17-5-56 (2008)	Violent felonies and sex offenses	In death sentences until execution; serious violent felony and sex crimes 10 years after judgment	Mandatory retention -- no early destruction		
10	HAWAII	HRS § 844D-126 (2005)	All crimes	Whichever is later: appeal exhaustion or completion of sentence or parole/probation	Mandatory retention -- no early destruction		AG to establish state-wide protocols and procedures for collecting and
11	ILLINOIS	725 ILCS 5/116-4 (2001)	Homicide, bodily harm, sex offenses, attempts	Permanent for death sentences; remainder: until completion of sentence including supervision. (All other felonies where defendant's DNA taken for database, 7 years following conviction)	Early destruction (non-death sentence): petition court, notice to defendant, court determines: no scientific value, return/destroy or bulk sample process, death of defendant; defendant allowed to remove/preserve)		
12	KENTUCKY	Ky. Rev. Stat. Ann. § 524.140 (2007)	Capitol offense, felonies	Length of incarceration	Law is confusing: different process depending on whether evidence introduced at trial, ultimately requires hearing, burden of proof on party who wants to destroy	If destroyed in violation of law, subject to crime of tampering with evidence	
13	MAINE	15 M.R.S.A. § 2138 (2006)	crimes for which any person may file a postjudgment of conviction motion for DNA analysis	Length of incarceration	Mandatory retention -- no early destruction		
14	MARYLAND	MD Code of Crim. Proc. § 8-201 (2009)	Murders, manslaughter, rapes and sex offenses	Length of sentence	Early destruction: may destroy w/notice to defendant, attys, opportunity to object; court may order destruction if defendant allowed to obtain samples prior to destruction		

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15	MICHIGAN	Mich. Comp. Laws Ann. § 770.16 (2009)	All felonies	Length of incarceration	Mandatory retention -- no early destruction	no	
16	MINNESOTA	M.S.A. § 590.10 (2005)	All	Length of sentence	Retain only portion to obtain accurate sample; early destruction only if defendant or atty do not object	Yes, if intentionally destroyed court may order appropriate sanctions	
17	MISSISSIPPI	§99-49-1 (2009)	Felonies and sexual assaults	Period of incarceration and parole/registration up to 5 years; unsolved crimes	Early destruction: certified notice to all; request to test or to retain; bulk sample process	Yes, affidavit for efforts to locate; sanction: if destroyed in violation, court may order appropriate sanctions & remedies	
18	MISSOURI	V.A.M.S. 650.056 (2001)	Felonies	Not specified	Mandatory retention -- no early destruction		
19	MONTANA	Mont. Code Ann. §46-21-111 (Senate Bill 447) (2009)	felonies where conviction obtained	Minimum of 3 years, longer with court order issued within 3 years after conviction becomes final	Early destruction: notice, opportunity for hearing; if objection, burden on agency wanting to destroy; if testing done, lab must permanently preserve any remaining evidence		
20	NEBRASKA	Neb.Rev.St. § 29-4125 (2007)	Criminal cases	Period of incarceration	Early destruction: notice, opportunity to file motion to test or take possession for retention		
21	NEW HAMPSHIRE	N.H. Rev. Stat. § 651-D:3 (2004)	a criminal or delinquency investgation or prosecution	Length of incarceration or 5 years, whichever is longer	Early destruction: after 5 years even if incarcerated, notice to all, may destroy unless court order preventing or motion to perserve for testing		
22	NEW MEXICO	N.M. Stat. Ann. §31-1A-2(L-N) (2005)	Felonies	At minimum, for period or incarceration or supervision	Early destruction if it must be returned to owner, size/bulk is issue, and state takes reasonable efforts to preserve portion to permit future testing	Yes, intentional desctrution, court may impose appropriate sanctions including dismissal of conviction	

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23	NORTH CAROLINA	N.C.G.S.A. § 15A-268 (HB 1190, SB 220) (2009)	All crimes	Different for categories: death or life sentence (til execution/ death); felonies (through supervision/ registration); cold cases until solved	Defendant may request inventory list; Early destruction: notice to all, appeal, post conviction ongoing, testing requested; bulk sample process	Affidavit to locate; court can order sanctions & remedies; criminal sanctions if destruction intentional	
24	OKLAHOMA	22 Okl. St. Ann. § 1372 (2001)	Violent felony offenses	Length of incarceration	Early destruction: with notification to all and no written objections filed		
25	RHODE ISLAND	Gen.Laws 1956, § 10-9.1-11 (2002)	All crimes	Length of incarceration	Early destruction: petition to court, notice, hearing and grant only if S Ct. appeal done and defendant doesn't seek preservation		
26	SOUTH CAROLINA	SC Code 1976 § 17-28-310 (2008)	Lengthy list (homicides, sex offenses, burglary, robbery)	Until released, dies while incarcerated, executed (unless plea, then 7 years from sentence, release, execution)	Evidence gets registered by custodian. Early destruction: petition to court, notice, hearing: if it must be returned to owner, is bulk, introduced at trial, inculpatory & all appeals exhausted; court may require sample preserved	Willful destruction person is subject to criminal sanctions	
27	TEXAS	Texas C.C.P. Art. 38.43 (2009)	Criminal cases	Until executed, dies, completes sentence, released on parole or supervision	Early destruction: notice to all and no wirtten objection filed		
28	VIRGINIA	Va. Code Ann. § 19.2-270.4:1 (2005)	Death sentences; all others upon motion by defendant for felony conviction	In death sentences, until execution. All others up 15 yrs from conviction unless court orders longer time	In any proceeding, court upon finding may use bulk sample preservation		
29	WISCONSIN	W.S.A. §§ 165.81, 757.54, 968.205, 978.08 (2005)	evidence in connection with a criminal investigation	Until everyone in custody connected has been released	Early destrution: notice to all, retain if motion to test or request to retain		