

A Clerk's Guide to the
Preservation, Storage,
and Disposal of

Biological Evidence

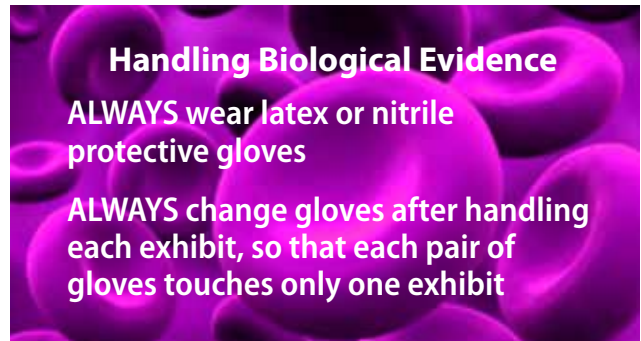
G.S. 15A-268(a) defines "biological evidence" as "the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingerprints, or other identifiable human biological material that may reasonably be used to incriminate or exculpate any person in the criminal investigation, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or any other item of evidence."

Preserving Biological Evidence

When Is a Clerk Bound to Preserve Evidence as Biological Evidence?

The presiding judge in a criminal proceeding is required to ask the prosecutor and defense counsel (1) if each item of physical evidence offered or admitted into evidence is reasonably likely to contain biological evidence and (2) if that biological evidence is relevant to establishing the identity of the perpetrator in the case. If either party asserts that a piece of evidence may have biological evidentiary value, and if the court finds that the evidence may have biological evidentiary value, then the evidence should be designated as biological and must be preserved as biological evidence. G.S. 15A-268(a3).

The clerk may want to **preserve as biological evidence** any piece of evidence that falls under the definition of that term in G.S. 15A-268(a), even if the court does not make a finding that the exhibit is biological evidence. G.S. 15A-268(a1) requires a custodial agency to “preserve any physical evidence, regardless of the date of collection, that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.”



Storing Biological Evidence

Liquid blood (blood used as an individual’s DNA standard) not already submitted to the N.C. State Bureau of Investigation’s Crime Laboratory (Crime Lab) and blood-alcohol kits (BAKs) or blood vials collected in DWI or non-DWI toxicology testing should be stored in a refrigerator.

Liquid DNA extracts (created by the Crime Lab between October 2013 and December 2016), DNA evidence that has human tissue attached to it, urine, and feces should be stored in a non-frost-free freezer (a freezer that does not use a defrost cycle).

Biological evidence should not be packaged in plastic for storage unless it is a urine, feces, or liquid-blood specimen which is inside a specimen container. These specimen containers should be wrapped in plastic bags for storage in a non-frost-free freezers. All other biological evidence should be packaged in paper bags, cardboard boxes, or envelopes for storage.

How Long Must the Clerk Preserve Biological Evidence?

Case Type	Preservation Period
Sentence of death was imposed	Until the time of execution
Sentence of life without parole was imposed	Until the death of the convicted person
Conviction for any homicide, sex offense, assault, kidnapping, burglary, robbery, arson, or burning for which a Class B1–E felony punishment was imposed	If the person was convicted following a plea of guilty, the preservation period is the earlier of <ul style="list-style-type: none">• three years from the date of conviction or• until the person’s release If conviction did not follow a plea of guilty, the preservation period is the period of incarceration and mandatory supervised release, including sex offender registration

Any biological evidence not required to be stored in a refrigerator or freezer should be stored in a climate-controlled room, maintained at between 60 and 75 degrees and at a relative humidity of no more than 60 percent.

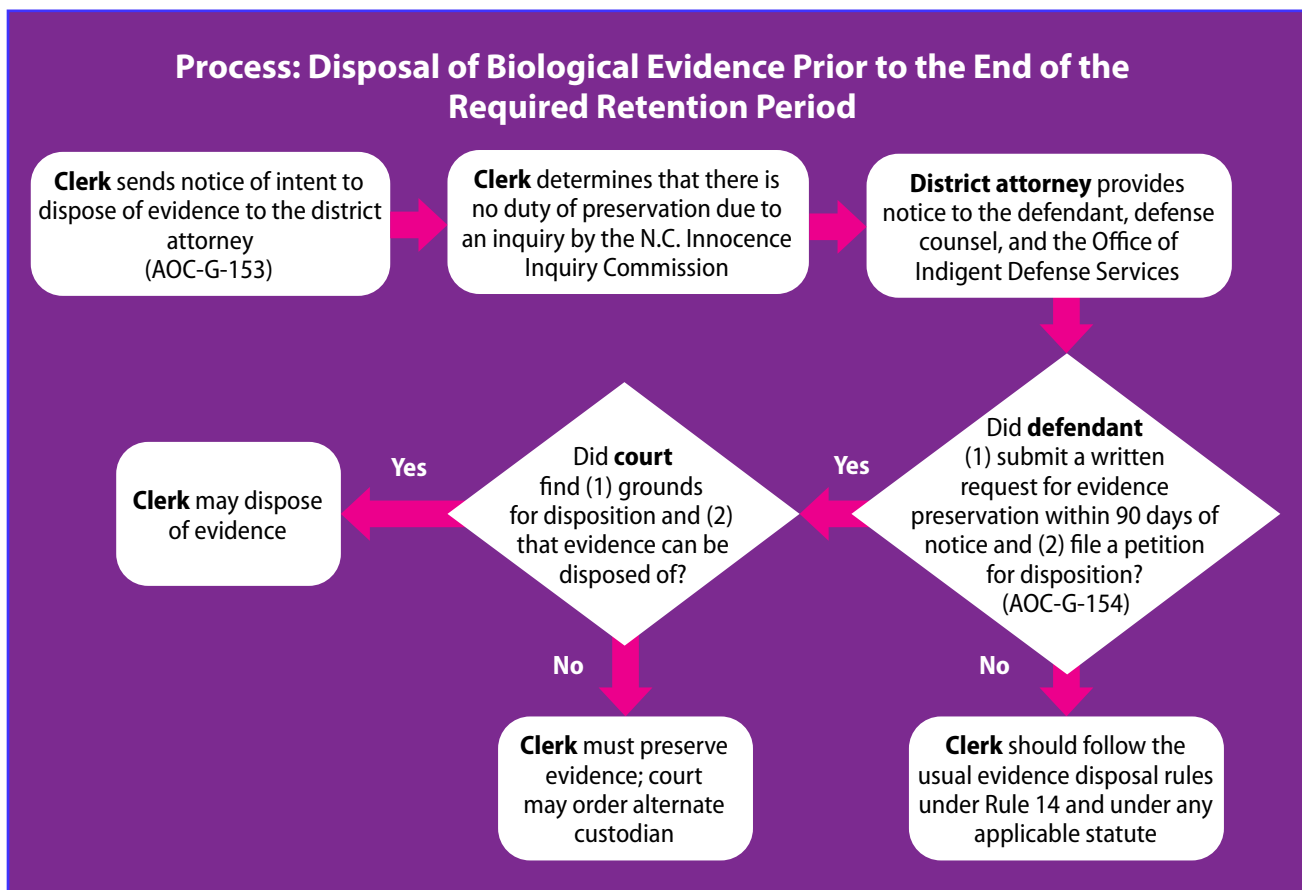
More guidance on the storage of biological evidence can be found in Appendix D, Post-Analysis Storage and Packaging Requirements of Biological and Non-Biological Evidence Exhibits (published by the Crime Lab and available at [insert link to this doc in the clerk’s manual]) in “Clerks Handling of Evidence,” Chapter 3 of the *Courtroom Procedures Manual*.

Remember: Under Rule 14, the court can always order an alternate custodian for any exhibit. If the clerk does not have the necessary storage capacity for an exhibit, it is prudent to ask the court to order an alternate custodian that does have the required capacity, such as the collecting agency.

Disposing of Biological Evidence (G.S. 15A-268(b)–(f))

The procedures set out in Rule 14, under which the clerk must return evidence to the offering party and the offering party must retrieve that evidence pursuant to certain timelines, apply to biological evidence with one exception. For biological evidence, the clerk must return the evidence to the collecting agency instead of to the offering party.

If the collecting agency does not retrieve the evidence under the procedures laid out in Rule 14, there are special timelines and rules that must be followed for the disposal of biological evidence in certain cases. For all other cases, the usual timelines and processes for evidence disposition under Rule 14 (including exceptions for deadly weapons, alcoholic beverages, and controlled substances) apply. See “Clerks Handling of Evidence,” Chapter 3 of the *Courtroom Procedures Manual*, for more guidance on these rules.





© 2020. School of Government. The University of North Carolina at Chapel Hill.
Use of this publication for commercial purposes or without acknowledgment of its source is prohibited.
Reproducing, distributing, or otherwise making available to a non-purchaser the entire publication,
or a substantial portion of it, without express permission, is prohibited. For permissions questions or
requests, email the School of Government at copyright_permissions@sog.unc.edu.