

SPECIAL ORDER



DISTRICT OF COLUMBIA

Subject
Records Retention and Evidence Preservation (Millicent Allewelt Act of 2004)

Series	Number
06	03

Effective Date
March 29, 2006

Related to
General Order 205.3 (Records Retention and Disposition, Effective Date July 9, 1978)

Amends
Page 15, Items E-07 and E-08, in attached Schedule to Special Order 79-80 (Records Disposition and Retention Schedule, Number 2-J, Second Edition) Effective Date October 1, 1979

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I. BACKGROUND

The Millicent Allewelt Act of 2004 (D.C. Law 15-174; D.C. Official Code § 5-113.31 *et seq.*), hereinafter referred to as the Act, became effective July 15, 2004. The purpose of the Act is to require the Metropolitan Police Department (MPD) and other law enforcement agencies in the District of Columbia (D.C.) to retain records and evidence from open homicide cases for 65 years, and from other serious and violent crimes consistent with the relevant statute of limitations. (CALEA 4.2.2.1-c and CALEA 82.1.2) It also creates requirements related to the disposal of evidence.

The law provides for criminal and administrative penalties for violations of the Act, including a right of civil action by victims or their families against D.C. Government employees and the City.

This law is related to earlier legislation, the Innocence Protection Act of 2001 (D.C. Official Code § 22-4131 *et seq.*), which established criteria for the preservation of biological evidence for the benefit of reviewing convictions of allegedly “innocent” defendants through improved DNA testing technology. (CALEA 42.2.1-c)

II. DEFINITIONS

When used in this directive, the following terms shall have the meanings designated:

1. **Biological material** – A sexual assault forensic examination kit, semen, vaginal fluid, blood, saliva, observable skin tissue, or hair that apparently derived from the perpetrator of a crime or, under circumstances that may be probative of the perpetrator’s identity, apparently derived from the victim of a crime.

2. Case jacket – The primary file for an investigation of a crime that contains all of the investigative reports, papers, and documents specific to the investigation, including notes, transcripts of interviews, witness statements, photos, and audio and video tapes.
3. Closed Investigation – The investigation of a crime:
 - a. In which the suspect or, in a case with multiple suspects, each of the suspects:
 - (1) Has been found, or pled guilty, and judgment has been entered;
 - (2) Has been found not guilty by reason of insanity;
 - (3) Has been found incompetent to stand trial, and is not likely to regain competency before the expiration of the statute of limitations;
 - (4) Is incarcerated and serving a sentence of either life without release, or a term of years that is equivalent to life without release, for a crime other than the crime being investigated; or
 - (5) Has died; or
 - (6) In which the United States Attorney for the District of Columbia (USAO), or the Office of the Attorney General for the District of Columbia (OAG) has declined prosecution on adequate grounds that permanently eliminate all possibility of prosecution and has authorized the return of evidence to the rightful owner.
 - b. A law enforcement agency shall consider a crime closed under Section II.3.a.4-5, only if the USAO, or the OAG, has certified, for investigations under the prosecutorial jurisdiction of each, that there would be sufficient evidence to prosecute the suspect or suspects if the suspect or suspects were alive or not incarcerated, and declines prosecution on the grounds that the suspect or suspects are dead or incarcerated.
4. Crime scene examination case file – The primary file for an investigation's crime scene that contains investigative documents and reports; toxicology, DNA testing, and other forensic examination results; evidence reports; photographs; and other documents pertaining to the investigation.

5. Open investigation – The investigation of a crime other than those considered closed investigations.
6. Records Retention Schedule – A document listing all of the records originating in MPD, specifying series of records to be retained permanently, and authorizing on a continued basis the destruction of other series of records after a specified time period has elapsed.

III. PROCEDURAL GUIDELINES

- A. In **open homicide** investigations, the Department shall retain case jackets, crime scene examination case files, and any evidence collected during the course of the investigation, for 65 years from the date the crime is first reported to the law enforcement agency. (CALEA 82.1.2)
- B. In **open** investigations of the following crimes, the Department shall retain case jackets, crime scene examination case files, and any evidence collected during the course of the investigation for the length of each crime's statute of limitations: (CALEA 82.1.2)
 1. Assault with intent to kill (6 years);
 2. Aggravated assault (6 years);
 3. Assault on a police officer with a dangerous weapon (6 years);
 4. Burglary (6 years);
 5. Mayhem (6 years);
 6. Malicious Disfigurement (6 years);
 7. Sexual abuse and sex offenses (10-15 years depending on the offense); and
 8. Any crime of violence, as defined by D.C. Official Code § 22-4501 (Weapons and Possession of Weapons) that is committed while armed (statute of limitations depends on the actual crime committed).
- C. In **closed** investigations, the Department shall retain case jackets and crime scene examination case files for as long as evidence is preserved for those investigations pursuant to the "Innocence Protection Act of 2001." (CALEA 82.1.2)
 1. Biological material, case jackets, and crime scene examination case files that are used, or result in the conviction or adjudication as a delinquent for a crime of violence and not consumed in previous DNA testing, shall be preserved for five (5) years, or as long as any person

incarcerated in connection with that case or investigation remains in custody, whichever is longer.

2. Notwithstanding Section III.C.1., MPD may dispose of biological material, case jackets, and crime scene examination case files after five (5) years, if MPD notifies any person who remains incarcerated in connection with the investigation or prosecution, and any counsel of record for such person (or, if there is no counsel of record, the Public Defender Service) of MPD's intention to dispose of the evidence, and that person is afforded not less than 180 days after the notification to make an application for DNA testing of the evidence.
- D. Case jackets, crime scene examination case files, and evidence from open and closed homicide investigations shall not, under any circumstance, be destroyed or disposed of without the written approval of the Chief of Police or his/her designee, and without prior written approval of the USAO or the OAG, in the form of a signed PD Form 81-C (Property Release Form), contingent upon prosecutorial jurisdiction.
- E. The Department may:
1. Combine case jackets and crime scene examination files into one file;
 2. Destroy duplicative copies of a record or document; or
 3. Store case jackets and crime scene examination files electronically, so long as electronic storage will not compromise the admissibility of the records or documents.
- F. There is no requirement that the Department collect a particular item of evidence, in whole or in part.
- G. Evidence shall be preserved, including DNA evidence, by refrigeration if necessary, in order to maintain the integrity of the evidence, and the ability to conduct forensic and DNA testing when necessary. (CALEA 42.1.3-c)
- H. The Department is not required to preserve evidence that is of such a size, bulk, or physical character as to render retention impracticable. The Department must, if practicable, remove and preserve portions of evidence if such portions contain sufficient evidence to permit future DNA or other forensic testing.
- I. Members of the Forensic Science Division, or the Evidence Control Branch, shall photograph evidence prior to disposal, when it is not practicable to preserve the evidence.

- J. When it is not practicable to preserve evidence in its entirety, but portions of it are preserved, the evidence shall be photographed:
 - 1. Prior to removing portions of the evidence and before disposing of it; and
 - 2. After removing portions of the evidence and before disposing of it.
- K. Photographs of evidence shall be retained in the crime scene examination case files of the corresponding investigation. (CALEA 42.1.3-c)
- L. Commanding Officers shall provide affected units with guidelines to ensure adherence to this directive.

IV. PENALTIES

- A. Employees who willfully or maliciously destroy, alter, conceal, or tamper with evidence or records that are being preserved and retained in accordance with the Act shall be subject to:
 - 1. Administrative sanctions up to, and including, termination; and
 - 2. A fine of not more than \$5,000, imprisonment for not more than one year, or both.
- B. Employees who willfully or maliciously destroy, alter, conceal, or tamper with evidence or records that are being preserved and retained in accordance with the Act, may be the subject of a civil action brought in the Superior Court of the District of Columbia. The civil action may be brought against the MPD employee or employees responsible, or against the District of Columbia if a pattern of violations of this section can be established.
- C. All members and civilian employees involved in the collection, handling, or processing of records or evidence, shall take appropriate steps to adopt and incorporate the procedures necessitated by this law and as required by this directive, until the contents of this order are incorporated into appropriate MPD directives, and the Records Disposition and Retention Schedule, dated October, 1979.

V. CROSS REFERENCES

- A. General Order 304.1 (Operation and Management of Criminal Investigations)
- B. General Order 304.6 (Investigation of Sex Crimes)
- C. General Order 304.8 (Collection of Physical Evidence; Utilization of the Crime Scene Examination Section and Crime Scene Search Officers)

- D. General Order 601.1 (Recording, Handling, and Disposition of Property Coming into the Custody of the Department)
- E. GO-SPT-601.02 (Preservation of Potentially Discoverable Material)
- F. SO-00-07 (Handling of Sexual Abuse Cases)
- G. SO-01-11 (Computer Crime and Forensic Unit)

//SIGNED//
Charles H. Ramsey
Chief of Police

CHR:NMJ:SOA:DAH:JAH:AFA:afa:mck