



HENRY McMASTER  
ATTORNEY GENERAL

October 12, 2010

The Honorable Gary Watts  
Coroner, Richland County  
P. O. Box 192  
Columbia, South Carolina 29202

Dear Coroner Watts:

In a letter to this office, referencing the recently-enacted "Preservation of Evidence Act" (hereinafter "the Act"), S.C. Code Ann. § 17-28-300 et seq., you have questioned whether the coroner's office is responsible for compensating the next of kin of a deceased individual if the personal belongings (i.e. jewelry, money, vehicles, etc.) of the deceased cannot be returned to them in a timely manner.

Pursuant to Section 17-28-320(A), "a custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for...(the designated offenses)..." (emphasis added)<sup>1</sup>. Subsection (B) of such provision states that

[t]he physical evidence and biological material must be preserved: (1) subject to a chain of custody as required by South Carolina law; (2) with sufficient documentation to locate the physical evidence and biological material; and (3) under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material. (emphasis added).

The term "biological material" is defined by subsection (1) of Section 17-28-310 as

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<sup>1</sup>Section 17-28-330(A) states that "[a]fter a person is convicted or adjudicated for at least one of the offenses enumerated in Section 17-28-320, a custodian of evidence shall register with the South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice, as applicable, as a custodian of evidence for physical evidence or biological material related to the person's conviction or adjudication."

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...any blood, tissue, hair, saliva, bone, or semen from which DNA marker groupings may be obtained. This includes material catalogued separately on slides, swabs, or test tubes or present on other evidence including, but not limited to, clothing, ligatures, bedding, other household material, drinking cups, or cigarettes.

The term "physical evidence" is defined pursuant to subsection (9) of such provision as

...an object, thing, or substance that is or is about to be produced or used or has been produced or used in a criminal proceeding related to an offense enumerated in Section 17-28-320, and that is in the possession of a custodian of evidence.

Section 17-28-310(2) defines the term "custodian of evidence" as used in the Act as

...an agency or political subdivision of the State including, but not limited to, a law enforcement agency, a solicitor's office, the Attorney General's office, a county clerk of court, or a state grand jury that possesses and is responsible for the control of evidence during a criminal investigation or proceeding, or a person ordered by a court to take custody of evidence during a criminal investigation or proceeding. (emphasis added).

Subsection (C) of Section 17-28-320 mandates that

[t]he physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or nolo contendere plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first.

Therefore, all physical evidence and biological material related to a criminal conviction, whether by trial or guilty plea, must be preserved as stated. As set forth in Section 17-28-320(B)(3), such evidence must be preserved "under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material." Moreover, Section 17-28-350 states that

[a] person who wilfully and maliciously destroys, alters, conceals, or tampers with physical evidence or biological material that is required to be preserved pursuant to this article with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding, is guilty of a misdemeanor and, upon

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conviction, must be fined not more than one thousand dollars for a first offense, and not more than five thousand dollars or imprisoned for not more than one year, or both, for each subsequent violation.

In an opinion dated September 15, 2010 this office concluded that a coroner's office would be included within the definition of "custodian of evidence" for purposes of the Act and its mandate for the preservation of physical evidence and biological material pursuant to Section 17-28-320(A).

This State has enacted legislation detailing the rights of a victim as set forth in S.C. Code Ann. § 16-3-1505 et seq. The term "victim" is defined by Section 16-3-1510(1) as

...any individual who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense..."Victim" also includes any individual's spouse, parent, child, or the lawful representative of a victim who is: (a) deceased; (b) a minor; (c) incompetent; or (d) physically or psychologically incapacitated.

Pursuant to Section 16-3-1535(E),

(a) law enforcement agency and the summary court must return to a victim personal property recovered or taken as evidence as expeditiously as possible, substituting photographs of the property and itemized lists of the property including serial numbers and unique identifying characteristics for use as evidence when possible.

However, again, as set forth by Subsection (C) of Section 17-28-320

[t]he physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or nolo contendere plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first.

Therefore, consistent with such mandate, all physical evidence and biological material related to a criminal conviction, whether by trial or guilty plea, must be preserved as stated.

While Section 16-3-1535(E) allows for the return of certain items "as expeditiously as possible", the mandate of Section 17-28-320(C) for preserving any physical or biological material is clear. Moreover, as stated in a prior opinion of this office dated October 31, 2005, pursuant to principles of statutory construction, when comparing statutory provisions applicable to a given

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situation, “[i]f an irreconcilable conflict exists, the statute later in time will prevail as the later expression of legislative will.” See also: Feldman v. S.C. Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943); Ops. Atty. Gen. dated June 13, 2003. Moreover, as stated in an opinion of this office dated April 29, 2003, “...specific laws prevail over general laws....” See also: Op. Atty. Gen. dated November 20, 1997. Furthermore, as set forth in a prior opinion of this office dated October 24, 2007, “...later specific statutes will prevail over earlier general ones.” See also: Langley v. Pierce, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993). Consistent with such, inasmuch Section 17-28-320(C) is the more specific and later in time statute, its mandate for preservation of evidence must prevail. Therefore, in the opinion of this office, consistent with the Act, a coroner’s office would not be responsible for compensating the next of kin of a deceased individual if the personal belongings cannot be returned more expeditiously than authorized by the Act.

With kind regards, I am,

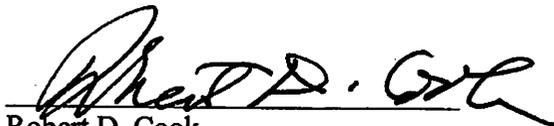
Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General