



E16 Biological Evidence Storage and Disposition: A Discussion of Legal Implications and Trends

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After attending this presentation, attendees will learn about the legal considerations and trends regarding biological evidence storage. Further, this presentation will provide an overview of Technical Working Group on the Preservation of Biological Evidence activities to date and preliminary recommendations.

This presentation will impact the forensic science community by bringing awareness to legal and policy issues in evidence storage and the solutions being proposed by the working group. Recent headlines have highlighted significant problems with the storage of potentially exculpatory biological evidence in property and evidence storage units across the country. Court orders for the location of evidence have demonstrated inadequacies in the packaging, storage, and tracking process of some evidence. Investigations into these inadequacies reveal underlying factors such as: capacity of the storage facility; laboratory backlog; materials available for packaging; geographic distance between the collecting and storage facility; and, the selected tracking system. While preserving and readily retrieving biological evidence from adjudicated and unsolved cases is a goal and has clear benefits for all members of the criminal justice system, the management of retaining and eventually disposing of biological evidence requires that each state and jurisdiction consider the relevant legal and policy issues.

In August of 2011, the National Institute of Justice (NIJ) and the National Institute of Standards and Technology's Law Enforcement Standards Office (OLES) convened the first meeting of the *Technical Working Group on the Preservation of Biological Evidence Preservation*. The primary objective of the working group is to establish best practices, based in science, to reduce the premature destruction and degradation of biological evidence, thus ensuring its availability for future analysis. A key dimension to the work of the group is the legal and legislative landscape of biological evidence retention. The purpose of this presentation is bring awareness to these issues and introduce the preliminary recommendations being proposed by the working group.

Most states have laws that provide guidance for the evidence disposition process but these laws vary widely. This process may include getting a court order, district attorney approval, notification of the law enforcement agency, or notification of the defendant/defense attorney or attorneys of record. Recent Supreme Court decisions including *Melendez-Diaz v. Massachusetts* and more recently *Bullcoming v. New Mexico* set out the importance chain of custody documentation and the importance of evaluating the integrity of evidence and the circumstances of testing. Creating the appropriate sanctions for evidence destroyed in violation of relevant policy and ensuring remedies for the wrongly convicted are also issues under consideration by the working group based on its analyses.

The group's key deliverables will include a report on legislative considerations, a handbook outlining best practices and standardized protocols for property and evidence clerks, a report discussing current technological trends and possible applications, and a web-based clearinghouse for biological evidence handlers in the property rooms, courts, and law enforcement agencies.

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