



Jurisprudence Section - 2012

E3 Evidence Retention/Post-Conviction DNA Testing: Issues and Answers

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After attending this presentation, attendees will understand the challenges facing policymakers, police, defense attorneys, and prosecutors who must determine what evidence retention policies to put in place, in light of the role DNA testing plays in criminal cases.

This presentation will impact the forensic science community by illustrating the problems presented by evidence retention issues. Prosecutors, who employ new forensic techniques to develop cold cases, and defense attorneys, who hope to expand post-conviction testing, need a reliable system to maintain evidence. Police need to know what they need to save, for how long, and must find a way to do it all in an era of shrinking resources.

In light of the attention recent exonerations have brought to post-conviction DNA testing, significant efforts are being made to draft new evidence retention statutes in states that do not already have them. This presentation will discuss these efforts in light of the overall need for the statutes, the nature of previous exonerations, the infrequency of those exonerations, and the complicated legal issues that arise when legislators attempt to fashion remedies for defendants whose evidence is unavailable for testing.

Complicated issues abound. What is the scope of post-conviction testing? Should it be available only to those who are convicted after trial, or should defendants who plead guilty be entitled to post-conviction testing as well? And in what type of cases? Only in serious felonies like rapes and homicides? In all felonies? In misdemeanors? Only in cases where the defendant is still in jail? Should there be a statute of limitations on a defendant's right to request testing? Should he/she be allowed to request testing only where the results would be a "game changer," or should testing be permitted in every case?

Police agencies, which in most jurisdictions are responsible for maintaining evidence, have an enormous task. Policies differ - some agencies keep property through the final appeal, some keep homicide evidence and destroy the rest, and some discard evidence after the statute of limitations has run. Sexual assault evidence kits may be stored indefinitely, stored until tested, destroyed without testing depending on the investigator's opinion of the case, or destroyed if no arrest is made within a specific time.

Besides deciding what to store (guns and knives are an easy call, but what about cars and other vehicles?) must police departments build climate - controlled facilities to maintain biological evidence in case testing is ever requested? Who will pay for those facilities, or for the computerized, bar-coded or RFID systems to track the evidence? What remedies, if any, should be available to defendants whose evidence was destroyed in compliance with former or present-day policies?

Finally, who should make these decisions? Should policymakers rely only on advocates for defendants who hope to be exonerated or to have their sentences reduced, or should prosecutors, lab personnel and police be at the table?

Evidence, Retention, Exonerations