



Jurisprudence Section - 2015

F39 **Biological Evidence Storage and Disposition: A Discussion of Legal Implications, Trends, and Policy Recommendations**

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After attending this presentation, attendees will be aware of the recent deliberations of the Technical Working Group on Biological Evidence Preservation in developing recommendations to policy makers regarding the issue of biological evidence storage and disposition.

This presentation will impact the forensic science community by providing insight on the legal and policy considerations in the improvement of biological evidence storage and management.

In August of 2011, the National Institute of Justice and the National Institute of Standards and Technology's Law Enforcement Standards Office convened the first meeting of the Technical Working Group on 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; however, a key dimension to the work of the group is the legal and legislative landscape of biological evidence retention. Following the publication of *The Handbook on Biological Evidence* in 2013, the group agreed to produce additional recommendations geared specifically toward policy makers to facilitate the implementation of best practices within law enforcement agencies. The purpose of this presentation is to bring awareness to these issues and introduce the preliminary recommendations 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.

Most states have laws that provide guidance for the evidence storage and 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 of 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 denial of access to biological evidence are also issues under consideration by the working group based on its analyses.

Evidence, Policy, DNA