Forensic Science Oversight Board:
Chain of Custody Protocol

(M.G.L. c. 6 sec. 184A (i): The Board shall develop protocols to ensure proper chain of custody of evidence)

1. Executive Summary:

Pursuant to M.G.L c. 6 sec. 184A (i), the Forensic Science Oversight Board ("FSOB") "shall develop protocols to ensure proper chain of custody of evidence." Chain of custody of evidence is an important element in establishing the reliability of evidence and optimizing the utility of forensic testing of evidence in the criminal justice system. Persons and entities who are links in the chain of custody include, but are not limited to: law enforcement officers who collect evidence; law enforcement officials who serve as custodians of evidence; accredited forensic laboratories, including but not limited to the Massachusetts State Police Crime Laboratory and the Boston Police Crime Laboratory and their personnel, who examine and analyze evidence; prosecutors and defense attorneys who handle evidence in the course of trial preparation and/or presentation of a case to a fact-finder; and court personnel who accept items of evidence admitted during court proceedings, including jury trials, and assume custody of items of evidence admitted as exhibits. These various individuals and entities have differing expertise in optimal chain of custody practices and differing access to resources that constitute optimal methods of storage and handling of evidence. Although optimal standards are not necessarily required for evidence to be probative and admissible in adjudicating criminal cases, best practices should be implemented whenever possible.

A definition of "chain of custody" is found in NIST – Glossary, "The Biological Evidence Preservation Handbook," and is codified in 515 CMR 7:02, as follows: "identification of the person or agency having custody of evidence and the place where the evidence is kept, in chronological order, from the time the evidence is collected to its destruction. A formal written process that records the persons having custody from the initial point of receipt or custody by a representative of a law enforcement agency to its final disposition by the agency. The record also reflects the dates and reasons evidence is transferred from one location or person to another."

In order to maximize the value of forensic evidence gathered in criminal investigations it is imperative that all stakeholders and all links in the chain of custody understand and adhere to best practices and have a common understanding of terms. The goal of this protocol is to ensure, to the extent possible, consistency at each stage of an item's chain of custody, security of the evidence item at each stage, and practices that will ensure the preservation and integrity of evidence as it is maintained throughout the various stages of a criminal case in the Commonwealth, from the collection of evidence to its ultimate disposition. It is intended

to serve as a guide for those handling evidence, including first responders, medical personnel, law enforcement officers, laboratory personnel, attorneys, and court personnel.

Agencies performing forensic testing will have their own protocols and procedures for the packaging and submission of evidence to their laboratory. This protocol explicitly does not supplant accredited forensic science providers protocols promulgated in compliance with their accreditation. Rather, this protocol references the guidelines in place in forensic laboratory settings and incorporates them, where appropriate, for use and implementation by non-forensic laboratory participants in the chain of custody of evidence. Evidence custodians should familiarize themselves with the requirements of the specific laboratory being utilized by the agency as to the manner in which evidence is to be submitted to that laboratory.

Non-laboratory personnel who have a role in the handling of evidence throughout the chain of custody should be familiar with codified chain of custody protocols and guidelines in place at the forensic laboratory utilized by their agency. This protocol relies on the experience and expertise of the forensic science community and reference materials prepared by those experts with the goal of providing direction to the non-forensic scientist chain of custody community. It is aimed at providing guidance on proper chain of custody procedures for evidence in Massachusetts.

2. Definitions

a. Evidence - Property that may be related to a crime and/or that may implicate a person in or clear a person of a crime.[1] It may be an object, such as a gun or a bottle or a knife, it may be a biological sample found on such an item or at a scene, or a latent print on an item, or a cell phone or computer and the like.

b. Evidence Collector - The person who initially took possession, custody or control of an item for evidentiary purposes.[2]

c. Evidence Custodian - The person who is responsible for evidence processing in a given location (e.g., property and evidence room, hospital, court, crime laboratory). This person can be an evidence collector or handler as well.[3]

[1] Source: NIST-Glossary, "The Biological Evidence Preservation Handbook," (https://www.nist.gov/system/files/documents/forensics/NIST-IR-7928.pdf). The Board acknowledges that the NIST OSAC Standards Development Initiative began in 2014 and they have a lexicon for terms. As Forensic Science standards, best practices, and guidance documents are being drafted for all forensic service providers, it is appropriate to consult those definitions from the OSAC lexicon. (https://lexicon.forensicosac.org).
[2] See id. at 58
[3] Id.

d. Evidence Handler - Any person who has had evidence in his or her possession at any given time. A record of this handler must be kept in the chain-of-custody record.[4]

e. Evidence Management - Evidence management is a critical facet of the criminal justice system. At every stage, handlers of evidence must ensure that it has not been compromised, contaminated, or degraded and that its chain of custody is tracked. The criminal justice system's growing reliance on forensic evidence in casework adds complexity to the already difficult job of managing vast inventories of property and evidence held by law enforcement agencies.[5]

f. Evidence Packaging - The manner in which items with potential evidentiary value are wrapped, bagged, or boxed to be preserved, documented, and labeled.[6]

3. Overview and Basic Premises of Chain of Custody[7]

a. Physical evidence is located, collected and analyzed for the investigation and prosecution of a criminal act. It is also retained to help eliminate uninvolved parties and exonerate the wrongfully convicted.
b. The value of physical evidence can be affected if it is not properly documented, handled and analyzed. It must be stored in a manner that seeks to retain and preserve the integrity of the evidence items. It must also be stored in a manner such that it can be easily located when and as needed and can be accounted for at all times. It requires labeling that clearly identifies the case and item/items is/are associated with and other important identifiers to be outlined below. It also requires that documentation be kept and maintained identifying all persons who have custody of evidence, and all the places were the evidence has been kept from collection to destruction. It should include a brief explanation for the transfer of custody during the pendency of the case, (e.g., delivery to laboratory, viewing of evidence by counsel, viewing of videotape by investigating detective).
c. It is recommended that access to the evidence storage facility or location be limited and that strict security measures, including tamper proof packaging, be implemented to assure that items of evidence cannot be switched or tampered with while being held throughout the chain of custody.
d. There is no technology that can resurrect evidence that has degraded because it has not been properly handled through its life cycle. However, even if evidence was previously stored in less-than-ideal conditions, it may be possible to repackage the evidence and store it appropriately in order to prevent any further deleterious changes. In such a situation, it should be documented that the item

[4] Id.
[5]Source – NIST.com (https://www.nist.gov/topics/forensic-science/interdisciplinary-topics/evidence-management)
[6] Source: NIST – Glossary, "The Biological Evidence Handbook" https://www.nist.gov/system/files/documents/forensics/NIST-IR-7928.pdf)
[7] This overview and several of the premises used in this protocol were taken from "Evidence Handling, and Tracking," a presentation by Greg Matheson (Director of Training, California Forensic Science Institute) at the National Commission on Forensic Science – Evidence Retention and Preservation on April 30, 2015. (Link to the presentation on the USDOJ website: https://www.justice.gov/archives/ncfs/page/file/451306/download)

has been repackaged. Such action will not reverse what has already happened, but it can prevent further degradation of the evidence.

e. Since evidence travels to multiple locations in the life cycle of a criminal case (as pictured below), it is essential that evidence collectors, handlers and custodians follow the best possible chain of custody and evidence management practices to ensure the preservation and integrity of the evidence. Documentation is critical in establishing chain of custody.

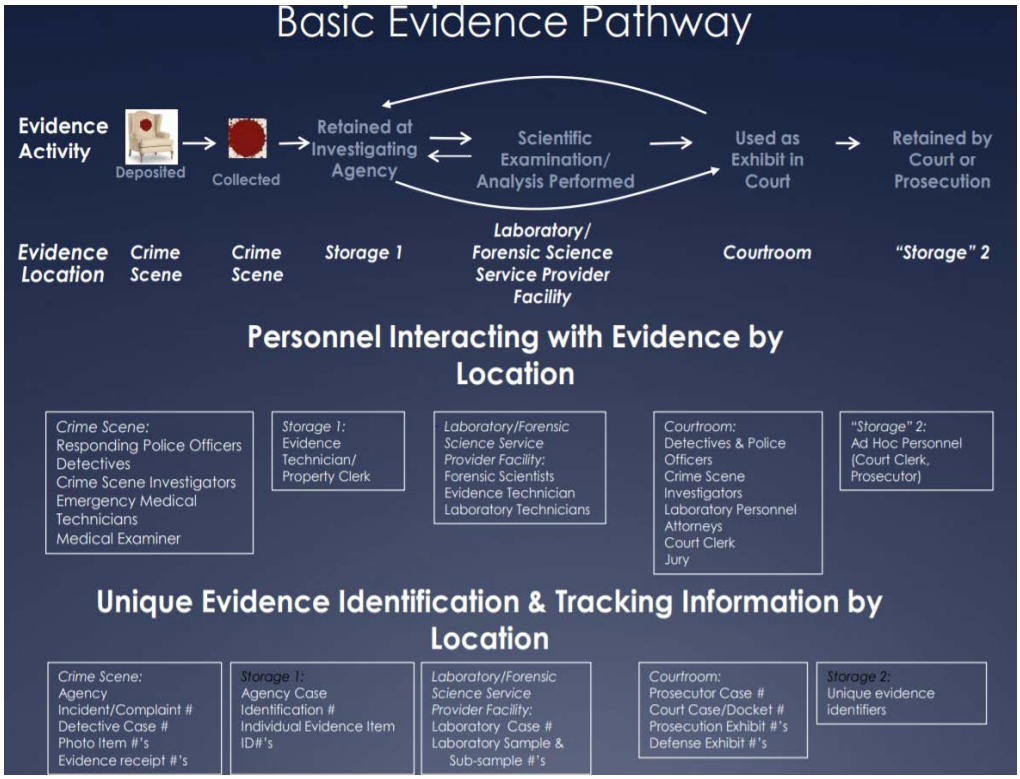

Chart of Basic Evidence Pathway, Evidence Handling, Processing and Tracking Presentation to the National Commission on Forensic Science[8]

4. Collection of Evidence

Locating and collecting evidence must be done in a way that doesn't run the risk of altering it in any way or cause the alteration of other evidence items around it.[9] It should be noted that many laboratories have their own Collection Manuals that they make available to their clients and employees, and in some circumstances evidence may require collection by a trained individuals. In such instances, the collection methods in the manuals should be adhered to

[8] Evidence Handling, and Tracking," a presentation by Greg Matheson (Director of Training, California Forensic Science Institute) at the National Commission on Forensic Science – Evidence Retention and Preservation on April 30, 2015. (Link to the presentation on the USDOJ website: https://www.justice.gov/archives/ncfs/page/file/451306/download)

[9] Id.

although it is anticipated that these protocols can be implemented in conjunction with those methods. As a general matter, the following procedures should be adhered to:

a. Use of gloves and personal protective equipment - All persons handling evidence at any stage of a case, e.g., investigation, pretrial, trial, and post-trial, should use gloves and other personal protective equipment for the safety of the person handling the evidence and to prevent contamination of the evidence.
b. Drying wet evidence prior to packaging – To avoid degradation of the evidence is imperative that evidence items that are wet or damp when collected be dried prior to packaging. Air-drying is recommended.
c. Packaging evidence – Depending on the type of evidence being submitted as well as the size of the evidence, individual items should be separately packaged to avoid the potential for cross-contamination. Additionally, different types of evidence may require specialized packaging to assure the safety of the evidence handler; to assure that any trace evidence on specific evidence items do not commingle with and thereby contaminate other evidence in the case; and to assure the preservation of any biological or trace evidence on the specific evidence item or items subject to testing and analysis.[10]
d. Derivative evidence – Evidence derived from primary samples, such as DNA extracts from a laboratory analysis; should also have its own chain of custody maintained to the same extent as the original evidence. It should be numbered, possibly as a subset of the original item number to identify it as a separate item that was once part of the original item.
e. Special Considerations for Evidence Collected by Hospital Medical Personnel and Emergency Medical Personnel - Often times, emergency medical personnel such as emergency medical technicians, paramedics, and hospital personnel will be the first individuals who come in contact with injured victims and/or suspects. Paramount for their purposes is the treatment of the patient. However, actions that they take concerning forensic evidence that might be found on the persons or clothing of those patients can have critical consequences for the investigation of violent crimes. Therefore, it is critically important that hospital and emergency medical personnel be familiar with identification of potential items or sources of forensic evidence, proper collection and packaging methods, and chain of custody documentation issues. If contamination of the evidence occurs in the medical/hospital setting its utility as evidence can be greatly undermined.

[10] For example, the Massachusetts State Police Crime Laboratory Information Papers on Evidence Packaging; Drug Evidence Submission Procedures; Arson and Explosives Unit Information Paper; Trace Evidence (Hair Samples) Information Paper; Trace Evidence (Paint Samples) Information Paper; and Sexual Assault Evidence Collection Kit Information Paper are accessible on their website and provide useful information concerning proper packaging of various types of evidence. https://www.mass.gov/how-to/submit-evidence-to-the-crime-lab and associated links. As noted above, biological evidence such as blood or urine for impairment cases, should be stored in appropriate collection vessels following proper procedures of the forensic service provider.

Considerations for the collection of such evidence include the authority for the gathering of such evidence, such as consent of the patient or their guardian, plain view, and search warrant. Such authority will be fact-specific for individual cases. Regardless of the method by which evidence is ultimately turned over to law enforcement, the same principles as are applicable to law enforcement and crime scene personnel collecting and packaging evidence, documentation of chain of custody and security of the items apply equally to medical and hospital personnel. For example, wet items should be air-dried and packaged in separate paper bags or containers (not plastic) and should be marked identifying when, where and by whom the item was collected. Items such as spent bullets or cartridge casings or trace evidence such as hairs and fibers should be packaged separately in individual specimen cups or envelopes with markings identifying when, where and by whom such items were collected. Run sheets and/or medical records should contain documentation of what items were collected, when, where and by whom such items were collected and who took custody of those items. Those persons who do collect or handle evidence will potentially be necessary chain of custody witnesses at any subsequent prosecution and, to the extent possible, the number of people who are involved in the collection and packaging should be minimized. In certain circumstances, if these steps of collection and packaging are done in the presence of law enforcement personnel who are at the hospital, the law enforcement representative could be the chain of custody witness in place of hospital personnel.

f. Special Considerations in Sexual Assault Cases

1) Sexual Assault Evidence – The MA Sexual Assault Nurse Examiner (SANE) Program website contains detailed protocols regarding collection of evidentiary specimens by SANEs and Emergency Room Clinicians from patients who have reported sexual assault.[11] These protocols include a step-by-step description of how to use a MA Sexual Assault Evidence Collection Kit (MSAECK);[12] as well as special considerations for collection of sexual assault evidence from adolescent victims,[13] victims who are children,[14] victims who suffer from Intellectual/Developmental Disabilities (I/DD) and/or Physical Disabilities,[15] and victims who are incarcerated.[16]

2) Chain of Custody involving MSAECKs at Hospitals
It should be noted that, while MSAECKs contain space for a handwritten chain of custody information on the outside of the kit (ie., name, city, who sealed the kit, who placed the kit in refrigeration at the hospital, who received the kit from the hospital, etc.), there is also a hospital Sexual Assault Evidence

[11] https://www.mass.gov/service-details/ma-sane-protocols-for-sanes-and-emergency-department-clinicians
[12] https://www.mass.gov/doc/sane-section-ix-sane-forensic-examination-0/download, at pp. 7-16.
[13] https://www.mass.gov/doc/sane-section-vi-caring-for-special-patient-populations-0/download, pp. 22-23.
[14] https://www.mass.gov/doc/sane-section-vi-caring-for-special-patient-populations-0/download, pp. 23-24.
[15] https://www.mass.gov/doc/sane-section-vi-caring-for-special-patient-populations-0/download, pp. 24-29.
[16] https://www.mass.gov/doc/sane-section-vi-caring-for-special-patient-populations-0/download, pp. 29-31.

Log ("SAEL"), which is a running log that is kept at the hospital, even when the kit is taken by police. This is an accepted protocol of the Massachusetts Sexual Assault Nurse Examiner Program, and the SAEL is maintained by the hospital indefinitely.

g. Considerations for Evidence Submitted by Other Third Parties – On occasion, evidence may be collected by non-law enforcement individuals and submitted by them to police. In those circumstances, the agency taking custody and control of the item should document the identity of persons submitting the evidence item and any other persons who may have had contact with the item[17], the circumstances in which the item came into that person's possession, custody or control, and the manner in which it was handled and stored from the time possession, custody or control of the item was assumed by that person and when submitted to the police. It should be noted how the item was packaged when submitted and, if it is necessary for the law enforcement agency to re-package the item submitted, that the original packaging the item was submitted in should be retained and submitted with the evidence item to the laboratory in addition to the re-packaged evidence item.

5. Documentation of Evidence

When evidence is submitted to the custody of the property and evidence section of an agency, an initial inventory or list of items being submitted should be prepared. During that process, items should be labeled identifying what the item is in order to determine the proper packaging material to use and the proper location within the property and evidence storage area where that type of evidence should be stored. Items should be tagged and/or labeled or both with the unique case identifier. Those items should be listed individually on a list as not all items associated with a case will be submitted to a laboratory for examination and analysis while other items will. Similarly, different types of evidence may be kept in different parts of the property and evidence storage facility given the nature of the specific items, for example, firearms and suspected narcotics may be kept in a more secure area of the storage location, while biological evidence, such as sexual assault evidence collection kits, blood samples, and the like, will be kept in a refrigerator until such time as they are transmitted to a laboratory facility.

The chain-of-custody record generated should document the chronological movement, location, and custodial status of physical evidence from the time it is collected through the final disposition. Each person involved with evidence collection, storage and handling must be able to attest to the condition of an evidence package (e.g., sealed/not sealed or damaged), and any changes made to the contents of that package, and the condition of all transfers. Every transfer of evidence between individuals and storage locations must be documented. As noted herein-above, the record should include the reason for the transfer of custody of the item, (e.g., delivery to laboratory, court hearing, examination of evidence by defense counsel or prosecutor). Chain-of-custody documentation identifies all persons who have had custody

[17] This is important to the extent that the item is subsequently submitted for DNA testing and exclusion DNA exemplars are needed.

of evidence and the places where the evidence has been kept from collection to destruction. When done properly, the chain should be an unbroken trail of the collection, custody, control, transfer and disposition of the evidence.

Chain of custody records may be maintained using a paper-based system, an electronic system, or any combination thereof. An agency that uses a manual system must include a means of tracking the transfer of evidence from person to person or person to storage location.

Chain of custody documentation should include the following:

- A description of the evidence
- Unique case identifier (e.g., case number)
- Where the evidence was collected (i.e., address)
- Where the evidence was stored
- Who was in possession of the evidence and for what purpose
- What was done to the evidence (e.g., analysis or repackaging)
- Date and time of incident
- Date and time of collection

Given the scarcity of storage space, consideration should be given to exploring the feasibility of the return of, for example, bulky or valuable evidence after the defendant has an opportunity to inspect the evidence and all possible evidence samples such as, e.g., fingerprints, biologicals, DNA, have been collected and preserved and the item itself has been photographed. The Court ruling on the motion can set forth all conditions that must be met before the evidence in returned to its owner. This can facilitate freeing up limited storage space and minimize liability for damage to valuable property while adhering to evidence retention laws.

Evidence must be retained long term in a variety of circumstances. For example, evidence collected in connection with a serious crime in which a perpetrator remains unidentified or at large for a significant length of time must be held until that case is solved which may <u>not</u> necessarily be limited by the statute of limitations for the particular crime, given various tolling provisions of the statute. M.G. L. c. 277, § 63. Therefore, as a general matter, evidence retention should not be limited by the statute of limitations.

Additionally, G.L C. 278A (governing Post-Conviction Access to Forensic and Scientific Analysis) section 16(a) requires that in cases resulting in convictions "any governmental agency that is in possession of evidence or biological material that is collected during the investigation of a crime, the prosecution of which results in a conviction, shall retain and properly store such evidence or biological material for the period of time that a person remains in custody of the commonwealth or under parole or probation supervision in connection with the crime, without regard to whether the evidence or biological material was admitted at trial. Thus, for example, in cases involving convictions of first-degree murder where the penalty is life without the possibility of parole the evidence must be retained for the life of the person convicted.

This provision is (or should be) applicable to the court clerk's office during the time that evidence is held within their possession, custody, and control.

It is recommended that at the conclusion of the sentencing hearing, the record should reflect the statutory obligation of all governmental entities to retain the evidence pursuant to G.L. c. 278A, § 16(a). Doing so will ensure that all parties are on notice of how long the evidence will be retained and what will happen at the expiration of that statutory time period.

Chain of custody records must be kept so long as the evidence remains in the custody of a particular agency or entity. Moreover, even if evidence is destroyed by order of the court or returned to its lawful owner or lost, chain of custody records must be retained for a period of time despite the agency's loss of custody for whatever reason.

6. Storage of Evidence

   a. Temporary storage: includes any location where evidence may be stored short term, 72 hours or less, absent extenuating circumstances. Depending on the size of the law enforcement agency initially colleting the evidence and the timing of the collection of the evidence in relation to the operating hours of the property and evidence room of the agency, there may be times when evidence is collected, and the evidence room is not open for business. For those situations, the agency should have a means for temporary storage of the evidence in a secure and appropriate location until such time as it can be logged in to property and evidence custodians who will then be charged with storing that evidence until it is submitted for further examination or analysis or otherwise needed.

   b. Long term or a more permanent storage: includes any location where evidence may be stored for more than 72 hours. Long term storage must similarly have specific procedures in place to assure the proper storage of evidence in terms of temperature and humidity for the specific type of evidence involved as well as to strictly limit access to the evidence area to only necessary personnel of the property and evidence unit until the evidence is delivered to a laboratory or court or other approved destination.

   c. Special Considerations for Biological Evidence

      i. Short Term Storage[18] Short-term storage of evidence is defined as storage of evidence from the time collected to reception by property room personnel. The Technical Working Group on Biological Evidence Preservation recommends that temporary or short-term storage refer to any location that can hold evidence for up to 72 hours. The following table sets forth the different types of evidence and how they should be held in the short term.

[18] NIST The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers, pp. 18-19.

Type of Evidence[2]	Frozen	Refrigerated	Temperature Controlled	Room Temperature
Liquid Blood[3]	Never	Best	Less than 24 hours	
Urine	Best	Less than 24 hours		
Dry Biological Stained Item[4]			Best	Acceptable
Wet Bloody Items (if cannot be dried)	Best	Acceptable	Less than 24 hours	
Bones	Acceptable		Acceptable	Acceptable
Hair			Best	Acceptable
Swabs with Biological Material		Best (wet)	Best (dried)	
Vaginal Smears			Best	
Feces	Best			
Buccal Swabs			Best	Less than 24 hours

Table III-1: Short-Term Storage Conditions Matrix from NIST, "The Handbook of Biological Evidence[19]

The following definitions correlate to the above chart, as follows:

- Frozen: A storage condition in which the temperature is maintained thermostatically at or below –10°C (14°F). [20]
- Refrigerated: A storage condition in which the temperature is maintained thermostatically between 2° C and 8° C (36° F and 46° F) with less than 25% humidity.[21]
- Temperature Controlled: A storage condition in which temperature is maintained thermostatically between 15.5°C and 24°C (60°F and 75°F) with less than 60% humidity. [22]
- Room Temperature: A storage condition in which the temperature is equal to the ambient temperature of its surroundings; storage area may lack temperature and humidity control method.[23]

ii. Short Term Storage of MSAECKs at Hospitals – Although it differs from the above chart, an accepted protocol of the Massachusetts Sexual Assault Nurse Examiner Program is to refrigerate all evidence included in MSAECKs, which can include stained items, hair, vaginal smears and buccal swabs, until police come to pick the items up, which they are mandated by statute to do within 72 hours of a reported sexual assault.

[19] NIST The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers at 18.
[20] Id.
[21] Id.
[22] Id
[23] Id.

iii. Long Term Storage[24] Long-Term Storage of evidence is defined as a location that is designated to secure evidence or property items in the custody of an agency until the items are diverted, sold, released, or destroyed. The Technical Working Group on Biological Evidence Preservation recommends that long-term storage refer to any location where evidence may be stored for more than 72 hours.

Type of Evidence[2]	Frozen	Refrigerated	Temperature Controlled	Room Temperature
Liquid Blood	Never	Best		
Urine	Best			
Dry Biological Stained Items			Best	
Bones			Best	
Hair			Best	Acceptable
Swabs with Biological Material			Best (dried)	
Vaginal Smears			Best	
Feces	Best			
Buccal Swabs			Best	
DNA Extracts	Best (liquid)	Acceptable (liquid)	Acceptable (dried)	

Table III-2: Long-Term Storage Conditions Matrix. from NIST, "The Handbook of Biological Evidence[25]

The definitions for frozen, refrigerated, temperature controlled, and room temperature are the same as those for short term storage conditions in the preceding section.

7. Tracking the Chain of Custody:[26]

Scientific and technological advancements have made many more objects available as potential sources of forensic evidence than in the past. The ability to obtain forensic evidence from such sources as blood and other bodily fluids, digital information, and fibers has expanded the pool of evidentiary sources. These evidence categories require special treatment and conditions of storage to prevent deterioration, loss, theft, contamination, mishandling, and improper destruction.

[24] Id.
[25] NIST, The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers at 19.
[26] NIST, The Biological Evidence Preservation Handbook, pp. 25-39.

Specific and accurate recordkeeping is essential to knowing the circumstances of the storage, testing, transport, and procedures used in dealing with each category of evidence. Recordkeeping includes not only chain of custody but can also include security and quality assurance programs. Records must document how evidence is stored and all persons who have reviewed or had custody of it during storage, such as representatives of the defense, the prosecutor, or law enforcement officials.

The system for tracking evidence must have measures of quality control, must ensure the accuracy of all recordkeeping, and must make it simple to retrieve items from storage. When selecting a tracking system, an agency should consider that it may need to store the evidence for an extended period of time and that the personnel associated with the case and responsible for the storage and tracking of it may change.

Documentation of all persons who have had custody of evidence and the places where that evidence has been kept in chronological order from collection to destruction must be kept. Tracking systems may be electronic, may utilize bar-code technology or a manual, paper evidence tracking system or a hybrid or duplicative paper/electronic evidence tracking system.

Whatever system an agency uses, it should be able to account for the following:

- Chain of custody
  - date/time/identity of individual who collected the evidence
  - any person(s) in possession of the evidence at scene and during transport
  - date/time/identity of person who submitted the evidence
  - date/time/identity of property/evidence custodian who accepted or received the evidence
  - date/time/identity of any person to whom the evidence was released and who returned it and reason for its release
  - date/time of the incident
- Unique item identification
  Each item of evidence must have a unique identifier, which can take a variety of forms: numeric, alphabetical, a combination of both numbers and letters, or a barcode. The key to any such system is that an identifier can never be duplicated and that the item of evidence can be correctly associated with a specific case.
  Evidence items created from analysis or separated from the original evidence item, e.g., DNA from a bloodstain on clothing, a fingerprint on a piece of glass, can correctly be associated with a specific case and item.
- Location of item in property/evidence storage room or other external locations(s), such as court, a crime laboratory, or another investigative agency
  - location (e.g., shelf number or bin) where evidence is stored
  - date/time/identity of person who stored the evidence

Every item of evidence must have a chain of custody. Whatever tracking system is utilized, it is recommended that it have the capability of generating a report accounting for all evidence.

It is expected that some of the evidence in the possession of a property and evidence custodian pre-date a labeling system mirroring this guidance. The labeling system for this evidence should be updated as needed on a case-by-case basis. On occasion, evidence items are located that no longer have a label affixed to them. Any item found without a label should be labeled when found and a report documenting the circumstances of the discovery of the unlabeled item and actions taken to label same and retain it.

8. Inventory and Audit Procedures:[27]

   a. Inventories – All agencies with custody of evidence (pre- and post-trial) should perform an initial inventory of this evidence in order to determine their compliance with these suggested best practices and in the post-conviction context with the requirements of Gen. Laws Ch. 278A.

      The inventory process should be performed in accordance with the terms of any accreditation that the law enforcement entity holds. Each agency should have a standard procedure that governs operation of the property room. This standard procedure should include specific instructions for how and when an inventory should take place as well as who should conduct it. It is recommended that inventories be conducted by a person or persons who are not assigned to the property and evidence department.

      It is recommended that yearly inventories should be conducted to verify that the evidence in the property room is present and is in its specified location.

      The removal and return of evidence from storage should also be outlined in an agency's standard operating procedures. A quality property management system would ideally include a means to identify overdue items or evidence that has not been returned according to the agency's policy

   b. Audits[28] - All agencies with custody of evidence should conduct annual audits to assess accuracy of records and ensure that all items are logged into the most updated tracking system in use within the agency.

      Agencies with custody of evidence should maintain a log of annual audits, and the log should include a section for comments in which to record any discrepancies in its inventory and tracking records.

      If possible, the audit should be conducted by a neutral party, e.g., by qualified personnel from another department on a reciprocal basis.

      It is recommended that a full audit be conducted when there is a change in property and evidence custodian.

[27] Best Practices Manual for Evidence Collection, Handling, Storage and Retention in Massachusetts, pp. 11-12.
[28] Id.

Audit records should be kept in a manner that is both secure and readily accessible for future inventories, requests for information, or upon subpoenas or court orders.

9. Facility Security and Safety:[29]

Part of a secure chain of custody is providing a safe facility that limits access to vulnerable evidence. Firearms and narcotics and controlled substances should be secured in a separate space from other evidence and access to same should be strictly enforced and supervised.

10. Training:[30]

All evidence collectors, handlers and custodians should attend applicable trainings on approved techniques for collection, packaging, handling and tracking evidence as well as legal requirements for preservation and retention of evidence. This training should be offered on a regular basis to law enforcement personnel, attorneys who handle evidence, and court personnel who have custody of evidence during the pendency of a case. Ideally, this training would be made available electronically through the Forensic Science Oversight Board website and would be provided by trained forensic science personnel and experienced evidence custodians.

Training attendance records of personnel handling property and evidence should be maintained by each agency.

11. Evidence Retention:[31]

As noted herein, evidence must be retained long term in a variety of circumstances. Pursuant to c. 278A section 16(a) evidence, regardless of whether it was admitted as an exhibit at trial, must be retained for the duration of a convicted person's sentence and the parole and/or probation term. The Massachusetts Trial Court also has a policy entitled: "Retaining and Transferring Exhibits after Criminal Trials. [32]Additionally, evidence gathered in serious crimes that are not solved in the immediate aftermath of a crime must be retained in the event that the case is solved sometime in the future. The development of DNA and expansion of CODIS databases has led to crimes being solved decades after the crime and retention of evidence in such cases is critical to this process.

The Court Clerk's Office is responsible for retention of exhibits post-conviction unless a judge orders otherwise. *Dist. Atty. for Northern District v. Superior Court Dept.*, 482 Mass. 336, 339 (2019). See also Mass. R.A.P 8(a); and M.R.A.P. 9(a) and 9(b). The "Superior Court clerks' offices are responsible for maintaining exhibits post trial unless a clerk's office

[29] EMI Standards and Best Practices, Chapter 3; Best Practices Manual for Evidence Collection, Handling, Storage and Retention in Massachusetts, p. 13
[30] Best Practices Manual for Evidence Collection, Handling, Storage and Retention in Massachusetts, p.13.
[31] Id.at 13-14.
[32] https://www.mass.gov/doc/massachusetts-trial-court-policy-on-retaining-and-transferring-exhibits-after-criminal-trials/download

satisfies a judge that there is good cause to believe retention would be impracticable. Impracticability includes, but is not limited to, whether transfer is necessary for exhibit preservation. If there is good cause to believe retention in the clerk's office would be impracticable, then a judge may order the exhibits transferred." 482 Mass. at 341. The good cause standard may be met by submission of a proffer or an affidavit, and possibly rebutted by counter affidavit. The judge is required to provide a short statement of factual findings and reasons for the ruling on the motion. The good cause standard does not apply to exhibits transferred by agreement, including motions for return of evidence, and where exhibits are transferred pursuant to statute. *Id*. There is no blanket rule that firearms are impracticable to store. *Id*. at 342.

In *Dist. Atty. for Northern Dist. v. Superior Court Dept.*, 482 Mass. at 344, the Court noted that, for the court's part, staff training can be improved and working to identify capital improvements within court houses to "enhance[e] the court's capacity to maintain exhibits safely" can be explored. However, the legislative branch and the executive branch also share responsibility for finding solutions to the problem, e.g., appropriating funds for a state-of-the-art storage facility and ordering it to be built. *Id.*

Since not all police departments, laboratories, courthouses or state agencies have adequate space or facilities to accommodate biological evidence and any other evidence requiring temperature control and/or heightened security, this Board recommends that the Commonwealth explore the possibility of designating a centralized location set up regionally for the storage of such evidence.

Additionally, when evidence is being held in the custody of a courtroom clerk during the course of a trial or other judicial proceeding care should be taken that the evidence is supervised by a designated court employee unless secured in a locked location within a court room or clerk's lobby adjacent to the courtroom. This could be a locked closet (within the office or a freestanding locked closet or locker within the courtroom or clerk's courtroom lobby.) This would be considered short-term storage while the matter is actively being heard by the Court. Once the motion is resolved or the case adjudicated, it would be transferred as appropriate to the Clerk's Office itself or returned to designated parties. Handling of exhibits and disposition of evidence items should be noted in the clerk's minutes or so other method deemed appropriate by the judicial branch.

12. Related MA Statutes, Regulations, Rules and Policies

M.G.L. c. 278A: Post-Conviction Access to Forensic and Scientific Analysis

i. Section 16: Retention and preservation of evidence or biological material by governmental entities; regulations – (https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleII/Chapter278A/Section16)
ii. Section 17: Civil or criminal liability of governmental officials; willful or wanton misconduct or gross negligence by governmental entities resulting in deterioration or destruction of evidence; damages –

(https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleII/Chapter278A/Section17)

M.G.L. c. 41, sec 97B: Rape Reporting and Prosecution Units within Police Departments; Training and Funding; Personnel; Retention and Preservation of Forensic Evidence. - (https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41/Section97b).

Code of Massachusetts Regulations Title 515 (Massachusetts State Police Regulations)

515 CMR 1.00: Collection, submission, receipt, identification, storage, and disposal of DNA samples – https://www.mass.gov/regulations/515-CMR-100-collection-submission-receipt-identification-storage-and-disposal-of-dna)

515 CMR 2.00: Testing and analysis, quality assurance, computerized storage, retrieval, and dissemination for the state DNA database – (https://www.mass.gov/regulations/515-CMR-200-testing-and-analysis-quality-assurance-computerized-storage-retrieval-and)

515 CMR 7.00: Long term retention and preservation of evidence by governmental entities – (https://www.mass.gov/regulations/515-CMR-700-long-term-retention-and-preservation-of-evidence-by-governmental-entities)

Massachusetts Trial Court Policy

Retaining and Transferring Exhibits after Criminal Trials, https://www.mass.gov/doc/massachusetts-trial-court-policy-on-retaining-and-transferring-exhibits-after-criminal-trials/download

Resources on Evidence Retention

For best practices on evidence retention see "Best Practices Manual for Evidence Collection, Handling, Storage and Retention in Massachusetts," p.13-14. Please also reference "Preservation of Evidence."[33]
For best practices on *courthouse* evidence retention, see NIST "The Biological Evidence Preservation Handbook" p.33-34.[34]

13. Resources for Best Practices

The following publications are forensic resources for evidence collection, management tracking and preservation for all types of evidence described above. While this protocol attempts to summarize best practices, please refer to the links below for more thorough guidance on specific issues.

[33] Innocence Project, "Preservation of Evidence" (https://innocenceproject.org/preservation-of-evidence/)
[34] NIST, The Biological evidence Preservation Handbook

All evidence:

Best Practices Manual for Evidence Collection, Handling, Storage and Retention in Massachusetts, (https://www.publiccounsel.net/pc/wp-content/uploads/sites/4/2014/09/Best-Practices-Manual-for-Evidence-Collection-Handling-Storage-and-Retention-in-Massachusetts-FINAL-VERSION-2.pdf)

FBI 2019 Handbook of Forensic Services (https://www.fbi.gov/file-repository/handbook-of-forensic-services-pdf.pdf/view)

Evidence Management Institute (EMI), EMI Standards and Best Practices (https://evidencemanagement.com/resources/emi-standards-and-best-practices/chapter-4-technology-and-digital-evidence/)

Biological Evidence:

National Institute of Standards and Technology (NIST) – ***The Biological Evidence Preservation Handbook*** (https://nvlpubs.nist.gov/nistpubs/ir/2013/NIST.IR.7928.pdf)

NIST – Biological Evidence Preservation – Considerations for Policy Makers (https://nvlpubs.nist.gov/nistpubs/ir/2015/NIST.IR.8048.pdf)

This is to be distinguished from biological toxicological evidence, which is most often collected by health care /medical professionals and stored and submitted by law enforcement for submission to the testing laboratory. Storage of such materials prior to submission to the laboratory for toxicological testing is critical to the viability of subsequent analysis.

Digital Evidence:

Massachusetts Digital Evidence Consortium (MDEC) - ***Digital Evidence Guide for First Responders (2015)*** (https://www.iacpcybercenter.org/wp-content/uploads/2015/04/digitalevidence-booklet-051215.pdf)

US Department of Homeland Security/ US Secret Service – ***Best Practices for Seizing Electronic Evidence (2015)*** (https://www.crime-scene-investigator.net/PDF/best-practices-for-seizing-electronic-evidence-v4.pdf)

Scientific Working Group on Digital Evidence (SWGDE)(complete list of SWDGE publications: https://www.swgde.org/documents/published)

1. ***Best Practices for Mobile Device Evidence Collection & Preservation, Handling and Acquisition (2020)*** (https://drive.google.com/file/d/1nyVg7DSwO4lQYYpV9ufyVGI7pHCKVjHj/view)
2. ***Best Practices for Digital Evidence Collection (2018)*** (https://drive.google.com/file/d/1zP4OgpRrjt9sVGNcqndqIgsemq7u5XQ/view)
3. ***Best Practices for Digital Evidence Acquisition from Cloud Service Providers (2020)*** (https://drive.google.com/file/d/1j_0HoVGdRigyqy-DKna4AoasIQUDw0Va/view)

Evidence Retention:

Innocence Project – ***Preservation of Evidence*** (https://innocenceproject.org/preservation-of-evidence/)
Innocence Project – ***Conviction Integrity Unity Best Practices(***https://www.innocenceproject.org/wp-content/uploads/2016/09/Conviction-Integrity-Unit.pdf)

Packaging Evidence[35]
For best practices on packaging small items, see p.2 of "Best Practices Manual for Evidence Collection, Handling, Storage and Retention in Massachusetts."
For best practices on packaging biological evidence, see p.2 of "Best Practices Manual for Evidence Collection, Handling, Storage and Retention in Massachusetts."
For information on additional packaging considerations see, NIST "The Biological Evidence Handbook" p.16.

Sealing and labeling[36]
For recommendations on sealing and labeling small items, see p.5-6 of "Best Practices Manual for Evidence Collection, Handling, Storage and Retention in Massachusetts."

[35] Id.
[36] Id.