

BEST PRACTICES MANUAL FOR EVIDENCE COLLECTION, HANDLING, STORAGE, AND RETENTION IN MASSACHUSETTS

Contributors/ Authors

Committee for Public Counsel Services Innocence Program
New England Innocence Project
Middlesex County District Attorney's Office
Suffolk County District Attorney's Office
Boston Police Department Crime Laboratory
Massachusetts State Police Crime Laboratory
Middlesex Superior Court Clerk's Office

June 2015

Background and Scope of this Manual:

This manual is intended as a guide for anyone responsible for dealing with evidence collected during the investigation of a crime in Massachusetts, but was written with police evidence custodians and court personnel in mind. The manual was also written to help agencies comply with the newly enacted M.G.L. Ch. 278A. It was drafted by the members of the Massachusetts Chapter 278A Working Group. Numerous other experts and agencies were consulted throughout this drafting process.

The agencies that created this manual are supported in part by Grant No. 2014-DY-BX-K003 and Grant No. 2013-DY-BX-K006 awarded by the National Institute of Justice. The National Institute of Justice is a component of the Office of Justice Program, which also includes the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the authors and do not represent the official position or policies of the United States Department of Justice.

Table of Contents

Definitions.....	1
Guidelines for Collection and Packaging of Evidence	2
Evidence Storage Recommendations.....	6
Recommendations for Documenting Evidence Chain of Custody	8
Evidence Tracking System	9
Inventory & Audit Procedures	10
Security	13
Training.....	13
Retention.....	13
Destruction.....	15
Other	16

Definitions

Audit – An inspection of the paper and electronic tracking of a random sampling of in-custody evidence sufficient to evaluate the integrity of the evidence tracking and storage system.

Biological evidence -- The phrase biological evidence refers to samples of biological materials (e.g. buccal swabs, swabs taken with sexual assault kits, blood, saliva, semen, fingernails or fingernail scrapings, tissue samples, skin cells, bodily fluids) and/or evidence items that may contain biological material (see definition below). Examples of items of evidence that may contain biological material include, but are not limited to:

1. Baseball bat, knife, firearm, or other weapon
2. Hat, bandana, mask, eyeglasses, dirty laundry, or other clothing
3. Facial tissue or cotton swab
4. Toothpick
5. Used cigarette
6. Stamp or envelope
7. Tape or ligature
8. Bottle, can, or glass
9. Used condom
10. Blanket, pillow, sheet
11. Any item that contains a visible bite mark
12. Eating utensils
13. Fabric on the seat or in the trunk of a car believed to be involved in a crime

** This list is not intended to be exclusive. In addition, it should be noted that biological material can be, and often is, invisible to the naked eye.**

Biological material – Biological material is defined by Mass. Gen. Laws Ch. 278A as “a sexual assault forensic examination kit, semen, blood, saliva, hair, skin tissue or other identified biological substance.” Biological material recovered from crime scenes commonly appears in the form of hair, tissue, bones, teeth, blood, semen, or other bodily fluids.

Chain of custody – The chronological documentation of the seizure, custody, control, transfer (temporary or permanent), and disposition or destruction of evidence.

Frozen -- Temperature is maintained at or below –10°C (14°F).

Inventory – An accounting of every item of property in the evidence custodian’s custody, its location, and storage condition (physical condition of evidence/packaging).

Refrigerated -- Temperature is maintained between 2°C and 8°C (36°F and 46°F) with less than 25% humidity.

Room temperature -- Temperature that is equal to the ambient surroundings; storage area may lack temperature and humidity control methods.¹

Temperature controlled -- Temperature is maintained between 60°F and 75°F and with less than 60% humidity.²

Guidelines for Collection and Packaging of Evidence

- ***Use of gloves***
 - Use a new pair of disposable (latex or nitrile) gloves to collect and handle each item of evidence.
 - Change gloves between the collection of each item of evidence to reduce the possibility of secondary transfer of DNA.
 - Avoid touching other objects while handling evidence.
 - Avoid blowing into gloves prior to putting them on.
 - For safety, it should be assumed that ALL items are contaminated with blood borne pathogens.

- ***Storage of smaller packaged items***
 - Small items should be individually packaged
 - Small items that are individually packaged may be stored together in a larger secondary container in layers, depending on the circumstances. For example, if clothing from a victim and clothing from a suspect are collected, it is acceptable to store the individual packages of the victim's clothing in one larger container (e.g. box), and to store all of the individual packages of the suspect's clothing in another larger container. However, the victim's clothing and the suspect's clothing should be stored in separate secondary containers.

¹ *See id.*

² *National Institute of Standards and Technology*, Technical Working Group on Biological Evidence Preservation, "The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers."

- ***Drying wet evidence***

- Any wet evidence should be dried completely prior to packaging, including evidence wet from environmental exposure such as rain.
- In particular, wet evidence potentially containing biological material should be dried completely before being stored (examples: blood-soaked garment, semen or urine stained clothing).
- Although plastic should never be used to store evidence containing biological material, if necessary, wet evidence may be transported to the drying area in plastic. Once dry, the evidence should be packaged and stored as described below.
- ***Low-tech drying methods:***
 - If an agency does not have equipment specifically for drying evidence, it can use an isolated and secure area (locker, shower stall, small room) that is designated specifically for this purpose.
 - The drying area should be temperature controlled, and not in direct sunlight.
 - The drying area should have surfaces that allow for easy decontamination.
 - The drying area should be decontaminated before and after each item is dried. Examples of appropriate cleaning solutions are those consisting of 10% bleach or 70% alcohol.
 - Items from different cases or from different people (e.g., victim and suspect, or suspect 1 and suspect 2) should not be dried in the same area or on the same surface at the same time. Every effort should be made to separate evidence from different sources.
 - Hangers should be decontaminated prior to use and should not be reused.
 - Wet garments should hang with clean paper (examination or kraft paper) beneath and between them to minimize the possibility of contamination.

- When placing items in the drying area, evidence handlers should place clean paper under the item to capture any trace evidence.
 - After the items are dry, the paper should be packaged separately and submitted with the garment.
 - *High-tech drying methods:*
 - A commercially manufactured drying cabinet is the preferred method for drying evidence.
 - When placing items in a drying cabinet, evidence handlers should place clean paper under the item to capture any trace evidence.
 - Wet garments or other hanging items should hang with clean paper beneath and between them to minimize the danger of contamination.
 - After the garments or other hanging items are dry, the paper should be packaged separately and submitted with the item.
 - The drying cabinet should be decontaminated before and after each item is dried.
 - Hangers should be decontaminated prior to use and should not be reused.
 - *Note: Long term storage of potential biological evidence should never be exposed to direct sunlight or heat.*
- *How to package biological evidence:*
 - All biological evidence should be labeled as such so that it can be tracked and stored appropriately.
 - *Determining whether evidence contains biological material.*
 - If the collecting officer is unsure if an evidence item contains biological material, he or she should consult with an official familiar with the particular case (e.g. investigating detective, Assistant District Attorney, crime scene technician).

- If this is impractical, the officer should package the item as if it contains biological material.
- ***Recommended packaging materials.***
 - DO NOT use plastic to store biological evidence.
 - Always use paper to package evidence items containing biological material.
 - Examples of appropriate storage containers for biological evidence include:
 - paper bags
 - manila envelopes
 - glassine envelopes
 - coin envelopes
 - butcher paper
 - cardboard boxes
- Individual items should be sealed in separate packages and separately labeled.
- ***Sealing and labeling***
 - Packages should be sealed with tamper-resistant evidence tape indicating the date and initials of the individual packing the evidence. The seal should be such that the individual's initials extend from the tape on to the packaging margin. This makes repositioning the tape difficult after opening, thereby demonstrating if tampering has occurred.
 - Additionally, the exterior packaging of all items should be labeled at the time of initial packaging with the following information:
 - Date collected
 - Location of evidence collected
 - Date entered into agency tracking system
 - Officer who entered item into tracking system

- Name of suspect(s) or defendant(s) (if known, including aliases)
- Name of victim(s) (if known)
- Type of crime (if known)
- Docket numbers (if known)
- Agency case numbers (police, lab, etc.)
- Property number (if different)
- Item description
- Whether item contains biological material

Evidence Storage Recommendations

- ***Shelf conditions***
 - In order to prevent items from being lost or misplaced, if you store multiple items of evidence from different cases on one shelf, these should be placed in bins or marked in an identifiable manner.
- ***Environmental controls***
 - All evidence should be kept out of direct sunlight.
 - All evidence should be stored in a temperature controlled environment. Room temperature storage is acceptable for non-biological evidence when necessary.
 - Biological evidence should be maintained in accordance with ideal storage conditions. It is important to note that the ideal storage condition varies for different types of biological evidence (see Evidence Storage Condition Charts below).
 - If uncertain as to whether an item contains biological evidence, store as if biological evidence is present.

- *Short-term Evidence Storage Condition Chart (up to 72 hours)*³

Type of Evidence	Frozen	Refrigerated	Temperature Controlled	Room Temperature
Liquid Blood	Never	Best	Less than 24 hours	
Urine	Best	Less than 24 hours		
Dry Biological Stained Item			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

- *Long-term Evidence Storage Condition Chart (more than 72 hours)*

Type of Evidence	Frozen	Refrigerated	Temperature Controlled	Room Temperature
Liquid Blood	Never	Best		
Urine	Best			
Dry Biological Stained Item			Best	
Bones	Acceptable		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)	

³ Source: The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers. NISTIR 7928. (2013). A blank entry on the chart means that further validation studies of these conditions are required. For the types of biological evidence listed above, it is recommended that only methods prescribed by the entries on the chart be used.

- ***Documentation of environmental controls***
 - Logs documenting temperature and humidity of storage areas should be kept and updated at least once a month. Frequent monitoring is recommended so that if there is an issue with temperature or humidity, it can be addressed as quickly as possible.
 - Any deviation of temperature or humidity beyond the established range of that storage area should be documented, as should any corrective actions taken.

Recommendations for Documenting Evidence Chain of Custody

- All agencies with custody of evidence (pre or post-trial) should document its chain of custody.
- Chain of custody documentation should include:
 - Name of defendant(s) (if known, including aliases)
 - Type of crime (if known)
 - Docket numbers (trial court; appeals court)
 - Agency case numbers (police, lab, etc.)
 - Property number (if different)
 - Item description
 - Whether item contains biological material
 - Where and by whom the evidence was collected
 - Where and by whom the evidence was stored/accepted (including location w/in agency)
 - Who accessed the evidence (clerk, attorney, evidence custodian, police officer)

- Reason the evidence was accessed (lab analysis, trial, review by attorney, request by appellate court, etc.)
- Date/time/personnel information any time the evidence is viewed or moved
- Location of storage
- Any time evidence is moved internally or to an outside agency, this movement should be logged in the tracking system.
- Logs of evidence movement should include the following information:
 - name of the receiving party
 - new location
 - date and time moved
 - reason moved
- The agency or individual receiving the item should sign an electronic or paper receipt.
- All records relating to chain of custody should be maintained for, at a minimum, the period of time equal to the retention of the evidence as described below.

Evidence Tracking System

- All agencies are encouraged to use an automated computerized management and tracking software system that can rapidly conduct the following tasks with respect to any item that is or has been in the agency's custody:
 - Search for evidence by:
 - Date collected
 - Officer who entered the evidence
 - Name of suspect(s)/ defendant(s)/ co-defendant(s) (including aliases if known)
 - Name of alleged victim(s) (if known)
 - Type of crime
 - Docket number (trial court; appeals court)

- Agency case/ incident number (police, lab, etc.)
 - Property number (if different)
 - Item description
- Identify the current location of evidence, including location within specific agency.
- Provide chain of custody information for the evidence.
- Provide a record of the final disposition of the evidence, including the identity of the person who authorized destruction/disposal as well as the person who completed disposal, the date/time of destruction/disposal, the reason for destruction/disposal, and whether and to whom advance notice of destruction was given. (See Destruction section, below.).
- Ideally, the evidence tracking system should use a barcode scanning system to identify and label packages, as well as track when evidence leaves and enters the storage area.
- *Note: Even if the agency does not use an electronic tracking system, or uses a hybrid or duplicative paper/electronic evidence tracking system, the agency's record keeping should still identify the above information.*

Inventory & Audit Procedures

- All agencies with custody of evidence (pre or post-trial) should perform an initial inventory of this evidence in order to determine their compliance with these suggested best practices and with the requirements of Gen. Laws Ch. 278A.
- The inventory process should be performed in accordance with the following guidelines. For agencies with evidence tracking software already in place, the inventory process should be done in tandem with any necessary updates to this software. For agencies lacking evidence tracking software, the inventory process should ideally be done in tandem with implementing a tracking system such as the one described herein.
- ***External inspection of evidence packaging***
 - The individual conducting an inventory should visually inspect the packaging of each item of evidence in the agency's possession for damage or deterioration.

- Packaging and seals should not be broken or opened during the visual inspection.
- If an item has already been packaged in accordance with the above “Collection and Packaging” guidelines, and there is no obvious damage or deterioration to the packaging (such as holes or tears), the evidence need only be added to the tracking system.
- If an item has *not* been packaged according to above guidelines, or if deterioration or damage to the packaging or evidence is evident from the visual inspection, the individual conducting the inventory should:
 - Make a notation in the inventory indicating the item’s current condition;
 - Ensure that relevant parties are notified including law enforcement and a representative from the District Attorney’s office and from the Committee for Public Counsel Services (CPCS);
 - Repackage and store item(s) according to above “Collection and Packaging” guidelines. If you are unsure of the proper packaging scheme for a piece(s) of evidence, call the Massachusetts State Police Lab or the Boston Police Lab at the numbers listed below.
- ***Information collected during inventory***
 - The individual conducting the inventory should record in the tracking system the following information about each item inventoried, where such information can be determined from a visual inspection of the item’s exterior (e.g. from exterior of box/ envelope):
 - Name of defendant(s) (if known, including aliases)
 - Name of alleged victim(s) (if known)
 - Type of crime
 - Docket number (trial court; appeals court)
 - Agency case numbers (police, lab, etc.)
 - Property number (if different)

- Packaging description (e.g. manila envelope, cardboard box)
- In addition, the individual conducting the inventory should record the following information about the inventory process as a whole:
 - Current location of evidence, including location within specific agency
 - Dates of inventory
 - Individual (s) involved in inventory
 - Storage location
 - Total number of items inventoried
 - Total number of items re-packaged
 - Total number of damaged or deteriorated items
 - Total number of missing items (i.e. those listed in the current tracking system which at inventory cannot be physically located). If evidence cannot be found, make a clear notation of these items. Also, research and document to the degree possible what may have happened to the evidence.
 - Total number of items that have little or no identifying information
 - Any corrective actions taken (e.g. repackaging, resealing, relabeling, etc.)
- ***Periodic audits***
 - 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.
 - 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. For example, if a tracking record indicates that an item is present at a particular location and it cannot be located in that location, this discrepancy should be noted in the annual audit log.

- 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.

Security

- Access to evidence storage areas should be limited to personnel designated by the agency as evidence custodians.
- Any time an individual enters the storage area, this should be documented in a manual log or other established security system.
- Any time an individual accesses a specific item of evidence, this should be documented in the evidence tracking system (where available) or in a manual log.
- Security and evidence access logs should be maintained for, at a minimum, the period of time equal to the retention of the evidence as described below.

Training

- Anyone responsible for handling evidence should attend an appropriate training on proper techniques for evidence collection, handling, packaging, and management/tracking.
- Records of attendance at evidence handler trainings should be maintained by each agency.

Retention

- All agencies with custody of evidence must retain that evidence for the period of time that a defendant remains incarcerated or under parole or probation supervision in connection with the crime, whichever is longer, without regard to whether the evidence or biological material was introduced at trial.
 - Ideally, biological evidence should be retained in the custody of a crime lab or police department capable of storing the evidence in the appropriate conditions,

and subject to the chain of custody and electronic tracking requirements, set forth in the sections above.

- Evidence custodians should develop a communication plan with prosecutors' offices, clerks' offices, sheriffs' offices, and the Probation Department to allow for a fast and reliable determination of the custody status of defendants.
- Evidence custodians must keep a record of the steps taken to determine the custody or parole/probation status of a defendant.
- If an item of evidence is too large or bulky to store, or has other physical characteristics that make long-term storage impracticable, prior to disposing of the item:
 - Check with other Commonwealth agencies with responsibility for maintaining evidence (e.g. District Attorney's Office, Crime Laboratory, Clerk's Office, all relevant police departments) to determine if the item can be transferred and stored elsewhere.
 - Consult with the relevant laboratory (Boston Police Department/ Massachusetts State Police Crime Laboratory) in order to determine how best to obtain a representative sample from the larger item.
- If neither of the above alternatives is feasible, the evidence custodian shall document why storage was impracticable, any efforts to find alternate custodians, and any efforts to determine whether a smaller sample could be retained in lieu of the item.
 - Documentation must be completed prior to destruction of evidence.
 - In addition, in the case of serious violent felonies, destruction should not occur without first notifying the District Attorney's Office and CPCS, and notice should be made at least 180 days prior to the destruction of evidence.
- Destruction of evidence must be handled in accordance with the below Evidence Destruction guidelines and in accordance with Gen. Laws Chapter 278A §16(a) and all other applicable laws.
- Documentation of the destruction of evidence should be retained with the case file and any other evidence items that remain in storage by the agency with custody.

- Security logs and temperature control logs for evidence storage areas should be retained indefinitely in an accessible electronic format.

Destruction

- Chapter 278A permits destruction of evidence under certain narrow circumstances, as outlined in Section 16(a) of that statute. Other statutes further define the obligation to retain evidence in criminal cases. Destruction may only occur in accordance with these laws.
- For all serious violent felonies, at least 180 days prior to the destruction of evidence, the agency with custody of the item to be destroyed should give notice via certified mail to the District Attorney's office and CPCS.
- When an evidence item is destroyed, the agency responsible for the destruction shall fill out a memorandum that includes, at a minimum, the following information:
 - A description of the item destroyed, including any identifying number(s) associated with that evidence (e.g. exhibit number; trial/ appeals court docket number(s); agency case/incident number; property number).
 - The date of the destruction.
 - The reason for the destruction.
 - All measures taken to identify alternatives to destruction.
 - All measures taken to provide the required notice prior to destruction.
- Destruction memos should be retained for at least 20 years beyond the release of the defendant from custody, parole or probation supervision in connection with the Massachusetts crime to which the evidence relates, or 20 years beyond the destruction of the evidence, whichever is longer.

Other

- For general evidence handling or packaging questions contact the Massachusetts State Police Evidence Control Unit at 508-358-3155, the Maynard Crime Lab at 978-451-3300, or the Boston Police Crime Lab at (617) 343-4690.