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DNA retention policies unclear, unwritten

[By Chuck Plunkett](#)

[Denver Post Staff Writer](#)

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Sixteen years after DNA testing emerged as a major crime-fighting tool, most police department evidence rooms lack written policies that dictate how long DNA samples should be kept for cases involving the most violent crimes, a review of evidence-room manuals suggests.

Even after embarrassing discoveries in Colorado Springs, Houston and Los Angeles that DNA samples and rape kits had been thrown away before they were analyzed — a mistake detectives blamed on unclear policies — it is the rare agency that has developed comprehensive guidelines regarding the storage of this critical investigative tool.

Also, many states haven't passed clear laws on the issue, and no national standard or set of guidelines regarding DNA storage has been developed for evidence rooms at accreditation or training associations.

Adding to the problem is the fact that many evidence rooms are overcrowded and often managed by disgruntled, undertrained police, experts say.

"If you look at it, it's a new science and nobody has stepped up to the plate and said, 'This is the way it has to be,'" said Joseph Latta, who directs the International Association for Property and Evidence and trains and consults evidence-room technicians.

The Denver Post reviewed evidence room policies at 30 Colorado jurisdictions picked from five size categories, and reviewed 30 additional policies randomly selected from small, medium and large U.S. cities.

Police were asked to supply the policies their evidence-room technicians keep at their desks that describe how long DNA samples are maintained for the crimes of murder, rape and kidnapping and for missing-persons cases.

Of the Colorado policies, only Denver's specifically addresses DNA storage, saying that DNA samples are to be placed in "long-term" storage. But even Denver's policy doesn't define what it means by "long-term." The department says it means "indefinitely."

Even in California and Texas, where new laws were passed that address DNA disposal after the discoveries of purges in Los Angeles and Houston, jurisdictions surveyed there still didn't specifically address the retention of DNA evidence in their policies.

Most jurisdictions reviewed said they treated DNA evidence the same way they treat other evidence. Generally, that means evidence rooms keep evidence in cases where crimes have been solved until the convicted have exhausted the appeals process.

For unsolved crimes, evidence generally is kept indefinitely in murder cases, indefinitely in missing-persons cases unless the person has been found, and kept until the statute of limitations has passed for rape.

And like in Colorado Springs, where DNA samples were among hundreds of items of evidence purged accidentally this year, several evidence-room policies allow evidence to be disposed of simply at the discretion of the detective assigned to the case, regardless of whether a case has reached the end of the time limit the statute of limitations allows for prosecution.

Many detectives question whether DNA should be thrown away in unsolved rapes, because so many rapists are repeat offenders who sometimes become murderers.

And because the policies don't specifically address DNA samples, evidence-room technicians aren't given guidance about whether DNA evidence in rapes is to be thrown out before it has been analyzed and entered into the national database known as CODIS. That's the Combined DNA Index System, which is maintained by the FBI and used by agencies use to tie suspects to crimes.

Some police experts argue that the lack of specific policies isn't a problem.

Sylvester Daughtry Jr., the executive director of the Commission on the Accreditation of Law Enforcement Agencies, says evidence-room managers and technicians know they aren't authorized to destroy or dispose of evidence unless authorized by a range of people, from investigators to prosecutors to the courts

"Most agencies have a very comprehensive or closely scrutinized disposal process," Daughtry said.

But victim advocates who have seen firsthand the devastation of more than 1,100 rape kits destroyed in Los Angeles say guidance is a must.

"The bureaucracy of the police department is challenging at times," said Patti Giggans, who directs Peace Over Violence, formerly known as the Los Angeles Commission on Violence Against Women. "You assume they are organized and disciplined in a way, that everyone is paying attention. But that is not always the case."

In fact, assuming that evidence rooms are organized and disciplined runs counter even to the expectations of evidence-room employees.

At a regional conference of evidence-room technicians held in Glenwood Springs last fall, evidence-room manager and speaker Dennis Davenport bemoaned the fact that many agencies place problem officers at the helm of evidence rooms.

And Latta says he knows of no police academy that offers even one course in evidence-room management. Technicians learn on the job, he said, and turnover of management is often high.

Running the rooms is considered a poor assignment among officers, Latta said, leading him and others to suggest that experienced civilians be hired to run the rooms.

Evidence rooms generally are "kind of broken," Latta said. "They really are."

Staff writer Chuck Plunkett can be reached at 303-954-1333 or cplunkett@denverpost.com.

Trashing the Truth: Experts call for change

SOLUTIONS PURSUED | Start with strong preservation laws, then revamp the way authorities manage tiny samples of human biology. Justice rides on it, experts say.

By Miles Moffeit and Susan Greene
Denver Post Staff Writers

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Given the truth-bearing power of DNA and other forensic advances, how can biological evidence from major criminal cases still go missing or be destroyed?

That is the question posed by scientists and legal experts who are calling for uniform oversight to protect the rights of victims and the wrongfully convicted.

They want a common definition for biological evidence and a more informed, deliberate approach to saving DNA and cataloguing it.

Some suggest storing evidence in warehouses run independently of police and prosecutors who often are pressed politically to solve crimes and uphold convictions.

Most believe the same computerized bar-coding used to track breath mints at drugstores should be used to log valuable crime-scene items in evidence rooms.

And they want strong laws - with teeth - that take discretion to trash DNA out of the hands of district attorneys and other authorities.

"It ought to be pursued - to get a statute that will actually facilitate and preserve harvested DNA evidence," said former FBI Director William Sessions, who witnessed the power of DNA to clear a third of suspects nationwide during a pilot program early on in his tenure.

Added Chris Mumma, a member of the North Carolina Chief Justice's Criminal Justice Study Commission: "People are recognizing that evidence preservation is becoming more of an issue. Here in North Carolina, there's been a lot of talk about how we don't know how to fix the problem, how we can't keep anything, how we don't have the money. But we're out of time with that type of approach. Now it's time for everyone to put their heads together for solutions."

Twenty years after DNA analysis first was used in a U.S. courtroom, most states still don't have laws requiring preservation of evidence from the outset of major crime investigations until a suspect completes his sentence.

The contrasts can be stark. While Illinois requires police to save biological material from major crimes, Colorado goes to the opposite extreme, saying authorities have "no duty" to preserve it. About 24 states require biological evidence to be saved, embedding the mandates in statutes addressing post-conviction DNA testing, according to an analysis by the New England Innocence Project and the Goodwin Procter law firm.

But those laws vary widely on when the retention requirement is triggered, and most do not enforce their provisions. Many have loopholes allowing evidence to be discarded early on.

Cynthia Jones, a Georgetown University law professor who has studied the lack of protections for evidence nationwide, said laws are the most basic layer of protection to start with.

"If you start imposing a legal obligation on somebody where they previously didn't, you can start getting some results," she said.

Congress passed its Justice For All Act in 2004, requiring preservation of evidence in federal cases. But efforts to extend a requirement to state cases failed, in part because of arguments that such a law would infringe on states' rights.

Such sovereignty issues would have to be overcome, but advocates argue that a prisoner's constitutional rights to a fair trial and post-conviction appeal trump states' need for autonomy on the issue.

"There are a lot of things states cannot do because of our Constitution," and destroying evidence ought to be one of them, said Mark Agrast, a senior fellow at the Center for American Progress in Washington.

Strong laws are only a starting point to broad reform in evidence preservation.

Across the country, some intriguing efforts already are afoot, bringing together experts of various pursuits and political stripes.

The North Carolina-based American Judicature Society - a coalition of lawyers and scientists led by former U.S. Attorney General Janet Reno, among others - has embarked on a national research project investigating the inner sanctums of evidence rooms to determine what is done right and what should be improved.

The New York-based Innocence Project has created model legislation for states seeking to enforce evidence preservation so inmates who may be wrongfully convicted have a shot at testing evidence to prove their innocence.

In Arizona, defense attorney Larry Hammond tours that state in partnership with state prosecutors lecturing about the failings of Arizona vs. Youngblood. That's the U.S. Supreme Court ruling that predates the widespread use of DNA yet justifies negligence in evidence handling.

In Virginia, Max Houck, a former forensic scientist with the FBI who now heads a forensic research program at West Virginia University, is experimenting with radio-frequency tracking to pinpoint evidence from any location in a room.

Whether it's a tracking system or a preservation policy, it's time for the public to take a stand to protect evidence, Houck said.

"You've got three clashing cultures at work - the attorneys, law enforcement and the forensic agencies - so you've got at least three handoffs where something can go wrong with the evidence," Houck said. "Then there's the culture of agency politics that overlaps all of these, and it can trump the best of intentions."

Staff writer Miles Moffeit can be reached at 303-954-1415 or mmoffeit@denverpost.com.

Staff writer Susan Greene can be reached at 303-954-1589 or sgreene@denverpost.com