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A call to save evidence

A HALT TO DESTRUCTION: State legislators push to have DNA and other forensic specimens kept for decades. **LAWS WITH TEETH:** Tough sanctions are sought against authorities who discard biological evidence.

[By Miles Moffeit and Susan Greene Denver Post Staff Writers](#)

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Colorado lawmakers and criminal-justice advocates called Wednesday for law enforcement officials statewide to halt destruction of biological evidence in major felony cases while legislative leaders pursue new laws to protect crime-scene specimens.

"We've got to make sure we've got the right people in prison and that victims can get justice," said state Rep. Cheri Jahn, D-Wheat Ridge, who is crafting a bill to preserve DNA and other forensic samples in murders and rapes for decades and provide penalties for trashing it.

Added state Sen. Ken Gordon, D-Denver: "We just can't tolerate negligence in this area." Colorado law governing DNA testing does not create a "duty" to preserve evidence, but it has language developed by prosecutors and considered by many legal experts to be among the most vague in the nation.

A four-day investigative series in The Denver Post this week detailed how the destruction and loss of forensic evidence in the state and nationwide have undermined investigations in unsolved cases, as well as thwarted innocence bids by prisoners.

House Judiciary Committee members support Jahn's effort as she researches approaches to taking the discretion to toss evidence out of the hands of district attorneys and police, she said. She is considering ideas to retain biological evidence as long as 100 years or perhaps as long as an inmate is alive.

"It's shameful that the DAs have not brought forward legislation to make sure that law changes," said Rep. Rosemary Marshall, D-Denver, a Judiciary Committee member who supports strong safeguards for evidence. "Accurate evidence is absolutely imperative to convict the right individual."

Leaders with the Colorado District Attorneys' Council, prosecutors' main lobbying group, did not respond to an interview request Wednesday. Denver District Attorney Mitch Morrissey, who offered suggestions on the state's "no duty" law, told The Post that the law simply recognizes that the system is a human one.

The previous Denver district attorney, Gov. Bill Ritter, is studying the issue, according to his spokesman, Evan Dreyer.

"The governor has been reading the Denver Post series," Dreyer said. "We are aware of the issues that it has raised. And we'll be having conversations about that as we go forward."

Karen Steinhauser, a former deputy prosecutor under Ritter, counters the position of Morrissey and others, stressing that evidence preservation helps guarantee that justice is served.

"Our duty is to do justice first and foremost," Steinhauser said. "I don't understand how any prosecutor could live with themselves knowing that the possibility exists that the wrong person is in jail and knowing that the means existed ... but that those means were not preserved."

Before a new law can take shape, Jahn stressed, police must back off any destruction schedules to purge DNA, no matter how old the crime.

"I would implore them to look at their policies, and if they have a policy that allows the destruction of evidence, make it cease immediately so we can get our arms around this issue," Jahn said.

She also wants an enforceable law. Some other states with retention regulations, such as Arkansas, make it a misdemeanor to purge evidence. "It's not just about bringing light to the issue, but putting teeth into it, about sanctioning. I understand that we need to sit down with experts on both sides first, because that's where we'll start seeing fireballs from the opposition," Jahn said.

Meanwhile, support for change is building in criminal-justice advocacy circles, including with medical providers who often assist in prosecutions. They favor strong protections for evidence, such as rape kits, that drifts into hospitals' hands.

"I think it's wise to develop a mechanism for saving it," said Valerie Sievers, the state's coordinator for training nurses in rape exams. "It's just another way to create a better opportunity for victims" to prosecute.

Said Christie Donner, head of the Colorado Criminal Justice Reform Coalition: "It's shocking that something as vital to the administration of justice as evidence can be treated with such frivolity in some evidence rooms. It's not like it's an option not to preserve - like the decision to put cheese on a burger."

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Rep calls for protection of criminal evidence

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Colorado Rep. Cheri Jahn called Sunday for a standardized system of preserving criminal evidence statewide, saying Tim Masters is the poster child for inconsistent police practices that can lead to "inconsistent justice."

Jahn, D-Wheat Ridge, said she was outraged by the methods Fort Collins police used to convict Masters in 1999 of murder - in the absence of physical evidence, they relied on a psychological theory - and the fact that they lost and destroyed evidence that could be tested for DNA.

Coupled with Colorado Springs' purging of evidence in more than 500 cases last year, Jahn said state leaders must work toward a law that protects vital evidence in major criminal cases. The goal: to take decisions on the fate of evidence out of the hands of individual law-enforcement authorities who have wide latitude to destroy it.

Currently, the Colorado statute addressing DNA testing provides "no duty" to preserve evidence and shields authorities from liability if they trash it.

Jahn said she will introduce legislation in January and call for a series of hearings to investigate the depth of the problem.

"The guidelines for keeping evidence are carved in candle-wax," Jahn said in a news release. "They can be molded to fit anyone's agenda or ambition."

She was motivated to change the law by The Denver Post's investigation of Masters' conviction, published Sunday.

The story detailed how investigators targeted a 15-year-old boy as the killer of 37-year-old Peggy Hettrick, basing their case largely on his horror sketches.

They lost two hair strands found on her body and photos of 13 fingerprints found on her purse - all possibly the killer's but not belonging to Hettrick or Masters. They also purged a massive amount of crime-scene items collected against another suspect.

Three former Fort Collins detectives and a former Colorado Bureau of Investigation lab director say they believe Masters was wrongly convicted and that the evidence at his trial was distorted to fit a police theory.

One former investigator says he futilely protested plans to destroy evidence.

"It appears that a 15-year-old kid was railroaded so they could say they solved the crime," Jahn says of Masters, who was convicted a dozen years after the crime

occurred. "I'm outraged by all the facts and evidence that were not all conveniently introduced or just disappeared."

Masters' attorney Maria Liu credits Jahn with seeing the big picture behind the Masters case.

"It's so critical in this day and age when DNA resolves so many unsolved crimes and exonerates so many wrongfully convicted people to have a uniform method protecting evidence," Liu said.

Jahn said her eight years as a victim advocate taught her that while police often do excellent work, sometimes they are misguided.

"I've seen what can happen," she said. "Sometimes the system creates two victims. If we preserve evidence, we can help avoid that."

Jahn sits on the House Judiciary Committee and has been influential in passing legislation that eases stiff penalties - such as life without parole - given to juveniles.