

# Chain-of-Custody Considerations

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Chain-of-custody is the ability to give an accurate accounting in a court of law as to the manner in which evidence was acquired, maintained, transported, examined, etc., by whom, when, where, and for what purpose.

Chain-of-custody describes a process as testified to by an individual who offers real evidence in a court of law and can account for the evidence from the moment it reached his/her custody until it is offered as evidence in court.

Chain-of-custody bears on the weight of the evidence, not its admissibility. Just because you don't have a chain-of-custody process doesn't mean that the evidence is inadmissible. Admissibility is determined by the manner in which the evidence was acquired. (It must be legally obtained! "Fruit of the poisoned tree," etc.)

**The emphasis is on the individual, not the process.** A process alone does not create chain-of-custody. Any documentation merely supports the person's testimony with respect to the handling of the evidence.

Chain-of-custody can be perfect, or imperfect. Even if the process is faulty, a chain-of-custody could still be established.

**Chain-of-custody is more of a concept than a precise formula.** ("It's all about believability!")

Technically, chain-of-custody only applies to sworn law enforcement officers. However, if a laboratory is assisting law enforcement in an investigation, the laboratory could be construed by the court as an “agent” of law enforcement.

There is no law, code, regulation, or other legal formula which gives specific guidance that can be followed to achieve chain-of-custody. Rather, the courts have established certain minimum standards for chain-of-custody through case law. Any action by law enforcement, or their agents, can be challenged by defense counsel.

Various agencies have implemented written protocols dealing with chain-of-custody issues to insure consistency, conformity, and compliance with accepted standards for maintaining chain-of-custody.

It is strongly recommended that a written policy be drafted to address chain-of-custody issues for your laboratory and that this policy be rigorously followed by all lab personnel.

However, having a written policy can be a double-edged sword. On the one hand, it demonstrates sound chain-of-custody. On the other, breach of your own policy can be problematic for the prosecution.

**Having a written policy and not following it can be fatal to a successful prosecution, even though your actions meet the minimum standards for maintaining chain-of-custody.** Defense counsel can use non-compliance with written policy as a means to try to impeach any subsequent testimony, no matter how otherwise credible.

**If you don't think you are going to scrupulously follow your written chain-of-custody policy, don't write one!**

However, be prepared to testify in court as to who did what with the evidence and why. As long as your actions meet certain minimum standards, the items in question can be entered into evidence.

Consideration should be given to designating one person at your laboratory as the “Evidence Custodian.” Ideally, this one person will control the storage of the evidence, document all access to it, and be in a position to testify in court as to the condition, security, and custody of the evidence.

The Evidence Custodian should be someone who will be perceived as credible by a jury, is accustomed to speaking in public, and would not be easily unnerved by defense counsel.

Also, designating one person as the “Evidence Custodian” may lessen the potential impact of a trial on your facility. The testimony of the “Evidence Custodian,” not the entire laboratory staff, may be sufficient to establish proper chain-of-custody if this becomes an issue at trial.

A written record (“Chain-of-Custody Form”) should be made of the receipt or release of any potential evidence and should include a detailed description of the potential evidence. (This detailed description can be used to refute any assertions by defense counsel that the evidence was tampered with while being tested at the laboratory.)

This Chain-of-Custody Form should be maintained in a secure location by the Evidence Custodian to insure that it is not altered or otherwise tampered with.

**The original Chain-of-Custody Form should be maintained by the facility that generated it** during their handling of the evidence. A copy should be attached to the evidence it

describes when that evidence is turned over to another agency/facility.

If you are called to testify as to the handling of evidence at your facility, you want to have the original Chain-of-Custody Form available to you. (The prosecution may require it at some point.)

**Evidence should be maintained in a secure (locked) location and in a manner that will not alter the physical properties of the evidence.** (temperature, light, moisture, cross contamination, etc.) (Don't keep your lunch in the same refrigerator where the evidence is maintained!)

**Access to the facility in which the evidence is stored should be strictly controlled** (one key) and limited only to those with a legitimate interest in the evidence.

There should be strict accountability of everyone who accesses the evidence and the Chain-of-Custody Form should be amended whenever the evidence is removed from the evidence storage facility, regardless of the reason.

The Chain-of-Custody Form should capture the identity (name & signature) of the person removing the evidence from the evidence storage facility, as well as the time, date, and purpose of the removal.

Everyone who has legitimate access to the evidence does not have to sign the Chain-of-Custody Form, only the person who removes it from the evidence storage facility.

However, everyone who comes in contact with the evidence, for any reason whatsoever, should be prepared to testify in court as to their actions.

## Other C-o-C Considerations

Detailed records should be kept of all testing, regardless of the results. Exculpatory information must be documented and is discoverable. Also, negative results can be just as important as positive results. (cyanide / meat example)

Test documentation should also indicate everyone who participated in the testing.

If it appears the prosecution has a solid case otherwise, only two areas are open to legal challenge by defense counsel: chain-of-custody and tampering. (Tampering can be alleged to have been purposeful manipulation or negligent handling.)

Bear in mind during the testing of evidence at your laboratory that subsequent forensic testing for fingerprints, DNA, hairs & fibers, etc., may be done at another facility (crime lab). Try not to do anything that might inhibit this process. If in doubt, consult with the criminalist through the FBI. (e.g., “Extreme Micro” at CDC)

The US Postal Service (i.e., Registered Mail) and reputable courier services (e.g., FedEx, UPS, DHL, etc.) that utilize a reliable package tracking system to insure the integrity of the shipment can be used to ship evidence from place to place.

If you ship evidence, make sure you follow all applicable shipping regulations! (proper packaging, labeling, forms, documentation, etc.)