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West's Montana Code Annotated [Currentness](#)

Title 46. Criminal Procedure

▢ [Chapter 21. Postconviction Hearing \(Refs & Annos\)](#)

▢ [Part 1. Initiating Proceedings](#)

→ **46-21-111. Preservation and disposal of biological evidence obtained in criminal proceeding**

(1)(a) A law enforcement agency shall preserve biological evidence that the agency has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The agency shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

(b) An agency may propose to dispose of biological evidence before the expiration of the time period described in subsection (1)(a) if the agency notifies the convicted person, the attorney of record for the convicted person, and the Montana chief public defender. The notification must include a description of the biological evidence, a statement that the agency will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within the 120-day period, the agency may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice system.

(c) If a party objects to the disposition of the biological evidence, the agency has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

(2) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division of the department of justice shall permanently preserve under laboratory control any remaining biological evidence collected from items submitted to it.

(3) For purposes of this section, the following definitions apply:

(a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense.

(b) "DNA" means deoxyribonucleic acid.

CREDIT(S)

Enacted by [Laws 2003, ch. 79, § 2](#); amended by [Laws 2009, ch. 221, § 1](#), eff. Oct. 1, 2009.

Current through all 2009 legislation

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