

Toxicology Evidence – Storage and Retention Issues

Currently, due to resource shortages and ambiguity in code, evidence without evidentiary value remains within storage facilities, incurring significant storage and maintenance expenses.

Storage of toxicology evidence is governed by CCP 38.50. In 2015, the legislature enacted legislation that created separate retention and preservation procedures for toxicological evidence from other biological evidence. This was intended to address concerns regarding evidence rooms with blood and urine samples that no longer had any evidentiary value but could not be legally disposed of.

The law was ambiguous as to whether the court may issue the notice if the retention period has already expired. This meant that if the entity did not request the notice before the retention period expires, it may have to store toxicological evidence indefinitely.

Subsequently, section 1 paragraph (h) of 87(R)S.B. 335 has created an unintended requirement for the storing agency to seek written authorization from the relevant DA's office before disposing of this evidence. Due to the lack of resources in DA office and storage facilities statewide, the requests rarely occur and have resulted in significant storage costs by agencies having to retain toxicology samples long past expiration periods or when samples have any scientific value.

Updating the controlling state codes on evidence storage to account for modern needs and capabilities will reduce costs of storage and improve capacity to protect essential evidence.

For toxicology evidence the solution is the simple removal of paragraph (h):

(h) A prosecutor's office may require that an entity or individual charged with storing toxicological evidence seek written approval from the prosecutor's office before destroying toxicological evidence subject to the retention period under Subsection (c) (2) or (c) (3) for cases in which the prosecutor's office presented the indictment, information, or petition.

This would not change any of the requirements for retention or notification previously clarified by S.B. 335 while eliminating the unintended demand that DA offices provide written consent.

The process could be improved still further by **statutorily allowing the summary disposal of misdemeanor blood DUI samples after the prescribed date in the code.** This time is long after any statute of limitations plus any sentence that may be dependent on that evidence.

An explicit **authorization in the code allowing agencies to store tubes at room temperature after the lab result is reported** would allow agencies to help control expanding costs of storage.

Even estimating storage cost at \$1/sample/year means minimally hundreds of thousands of dollars per year in storage costs.

No agency has resources to manage the many hundreds of thousands of legacy tubes statewide that are long past any legal usefulness. Nor does the exercise in this authorization reduce the risk of a miscarriage of justice. In fact, the resources consumed in wasted storage costs and administrative overhead are then not available to better care for evidence that does risk case outcomes for victims and defendants alike.

150,000+

The number of DUI blood samples being held by just DPS, HPD and IFS, just in Harris County

70%

The percentage of those samples more than 4 years old

Majority of samples are from misdemeanor cases with a 2-year statute of limitations. Even with allowances for delays in court, samples over 4 years from the offense date will almost always have exceeded any storage requirement.

7 Years

The longest scientific stability studies. Showing significant decline in concentrations

35 Years

The oldest of samples in storage

20+year-old blood sample

