

**Overview of A Survey on the Preservation
of Biological Evidence**

A Component of the SJR 29 Study

Prepared for the
Law and Justice Interim Committee
by David D. Bohyer and Sheri Heffelfinger

February 2010

Published By



*Legislative
Services
Division*

Overview of A Survey on the Preservation of Biological Evidence

A Component of the SJR 29 Study

Prepared for the Law and Justice Interim Committee

by

Dave Bohyer and Sheri Heffelfinger
Legislative Services Division

February 2010

INTRODUCTION

The 61st Legislature approved Senate Joint Resolution No. 29 requesting a study of the retention and preservation of biological evidence by state and local law enforcement agencies. The SJR 29 study was assigned to the Law and Justice Interim Committee (LJIC) in June 2009. At the August 3, 2009, meeting of the Committee, the members reviewed a primer for the study, *Background and Study Tasks for the Study of the Retention and Preservation of Biological Evidence*¹, and adopted a plan to conduct the study.²

Among the first tasks to be undertaken as part of the SJR 29 study is a survey of state and local law enforcement entities to gather information "... identifying current practices and challenges of state and local law enforcement agencies and other entities charged with preserving biological evidence". To that end, LJIC staff prepared a survey instrument composed of some 30 questions bearing on the storing and handling of "biological evidence".³

THE SURVEY AND FINDINGS

This Overview presents information compiled from the survey, which was conducted during January 2010. The survey was distributed electronically to 116 local law enforcement jurisdictions and was constructed to allow respondents to reply through the Internet. As of February 1, 2010, the deadline for submitting a response, 27 enforcement jurisdictions had responded to the survey. The complete results of the survey are included in Appendix A.

¹ Prepared by Sheri Heffelfinger, Legislative Services Division, July 2009.

² See *Proposed Work Plan Priorities and Meeting Schedule*, by Sheri Heffelfinger, Legislative Services Division, July 2009.

³ Pursuant to section 46-21-111(3)(a), MCA, "'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."

Geographic Representation of Respondents

Unfortunately, the number of survey responses is insufficient to conclude very much about the handling and storage of biological evidence on a statewide basis. Although law enforcement entities from the eastern, central, and western parts of the state responded to the survey, there were far more responses from entities in the western half of the state⁴ than the eastern half. Notably, the entities that did respond have jurisdictions that cover the bulk of the state's population.⁵

About 56% of the respondents represent counties, while another third represent municipalities. The remainder are either joint jurisdictions or special entities.

Facility Control

Some 87% of the respondents have their own evidence storage facility, while the remainder share with another entity.

Facility Staffing

Among the entities responding, two report fewer than one FTE that directly supports the agency's evidence storage facility and only one agency assigns 10 or more FTE to evidence storage. Most of the respondents (19 of 27) indicate that two or fewer FTE directly support evidence storage functions.

Evidence Storage -- Training

Over one-half (15) of the respondents indicate that their evidence storage

⁴ For the purposes of this Overview, the "western half" of the state includes municipalities and counties that fall west of a line running generally north-south through Havre, Lewistown, and Billings or Hill, Fergus, and Yellowstone Counties.

⁵ Representatives of responding jurisdictions include: Butte-Silver Bow Law Enforcement Department; Yellowstone County Sheriff's Office; Gallatin County Sheriff's Office; Helena Police Dept; Great Falls Police Department; Lewis & Clark County Sheriff's Office; Missoula County Office of the Sheriff & Coroner; Kalispell Police Department. For a complete list, see Appendix XXX.

personnel receive special training relevant to their responsibilities, and four of those entities also state that their evidence storage personnel are certified.⁶

Evidence Storage Facilities -- Certification

None of the survey respondents reported that the evidence storage facilities used by the respondent's agency is certified or accredited.

Evidence Storage Procedures -- General

About three-quarters of the respondents have established procedures for handling and storing biological evidence that are different from their procedures for handling and storing other evidence. For example, 70% of respondents state that their procedures call for segregating biological evidence from other, non-biological evidence.

Less than one-quarter of respondents (6 of 27) say their jurisdiction has written policies concerning how long biological evidence is to be stored and when and how it may be destroyed. The other 78% do not have written policies.

Just under one-half of the respondents have different evidence-retention policies or practices for evidence in a case where a conviction has been obtained versus a case in which a conviction has not been obtained.

Evidence Storage Procedures -- Felony Conviction Obtained

For felony criminal cases in which a conviction has been obtained:

- 28% of respondents report they retain biological evidence based on the statute of limitations for the crime involved;
- 20% of respondents report they retain biological evidence for a minimum of 3 years after the conviction becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction becomes final;
- 36% of respondents report they retain biological evidence indefinitely; and
- of the remaining respondents, 16% of the total, the duration of biological

⁶ The four entities whose personnel are certified cite the International Association for Property and Evidence, Inc., as the certifying authority. According to the IAPE website, "The International Association of Property and Evidence, Inc. is a non-profit organization created by and for law enforcement professionals to help establish recommended standards for all property and evidence departments. IAPE is dedicated and committed to provide education and training pertaining to all aspects of the handling, storage, maintenance and disposal of law enforcement held property and evidence."

evidence retention ranges from 0 years to 100 years (or indefinitely) for convictions of homicide (0 to 100 years), sexual assault or rape (0 to 15 years), or other sex offenses (0 to 15 years/statutory limit).

Evidence Storage Procedures -- No Conviction

For biological evidence in felony criminal cases in which a conviction has not been obtained:

- approximately 58 % of respondents follow a retention schedule that is based on the statute of limitations for the crime involved;
- approximately 39% of respondents retain the evidence indefinitely; and
- approximately 4% of the respondents (one entity) retains the evidence for 40 years for homicides, 10 years for sexual assault or rape, or 5 years for other sex crimes.

Evidence Storage -- Factors Considered When Conviction Obtained

Law enforcement entities consider various factors when deciding how long to keep biological evidence in felony criminal cases in which a conviction has been obtained. The percentage of respondents that consider the factors listed below as "very important" or "somewhat important" include:

- 96% when the factor is the type of crime committed;
- 92% when the factor is whether the evidence has been tested;
- 82% when the factor is the statute of limitations for the crime committed;
- 74% when the factor is the length of the sentence imposed for the conviction;
- 70% when the factor is the physical size of the evidence.

Eight of the respondents also indicated that other factors were also important when considering how long to store the evidence.⁷

⁷ The other factors mentioned by the eight respondents who indicated that "other" factors were also important included: (1) retention is affected if the conviction is based upon a plea agreement [that] would allow for disposal of the evidence. Otherwise, evidence is retained until appeals are exhausted. (2) indefinitely for a homicide; (3) based on whether an appeal is pending, on case-by-case review, or the integrity of the evidence; (4) state law; (5) through clearance from the county attorney. If there is a possibility of an appeal, the evidence is retained. (6) the impact that the case had on families and/or the community; (7) storage requirements.

Evidence Storage -- Factors Considered When Conviction Not Obtained

Law enforcement entities also consider various factors when deciding how long to keep biological evidence in felony criminal cases in which a conviction has not been obtained. The percentage of respondents that consider the factors listed below as "very important" or "somewhat important" in cases without a conviction include:

- 100% when the factor is the statute of limitations for the crime committed;
- 96% when the factor is the type of crime committed;
- 92% when the factor is whether the evidence has been tested;
- 69% when the factor is the physical size of the evidence;

- 55% when the factor is the potential length of the sentence if a conviction is obtained.

Seven of the respondents also indicated that other factors were also important when considering how long to store evidence in cases where no one has been convicted.⁸

Evidence Storage -- Physical Factors

Most survey respondents (22 or 82%) report that the physical size of evidence storage facilities is 2,000 square feet or less. Four respondents (15%) report an evidence storage facility that is at least 2,000 square feet but less than 5,000 square feet. Only one respondent reports a facility that is larger than 5,000 square feet, and none reported a facility larger than 10,000 square feet.⁹

The survey responses indicate that more than two-fifths of evidence storage facilities are between 50% and 100% of capacity, while another 36% are at or over capacity. Only five respondents (19%) state that their facilities are at less than 50% capacity.

⁸ The other factors mentioned by the six respondents who indicated that "other" factors were also important included: (1) indefinitely for a homicide; (2) the integrity of the evidence; (3) projected advances in forensic examination and analysis capabilities; (4) the impact that the case had on families and/or the community; (5) storage requirements.

⁹ For comparative purposes, a regulation college basketball court is 4,700 square feet; 94 feet long by 50 feet wide. Some high school courts are somewhat smaller at 4,200 square feet; 84 feet long by 50 feet wide.

Evidence Disposal

Approximately 44% of respondents report that they notify some party when evidence is destroyed.

Nearly all respondents (96%) report that they keep records of the destruction of evidence. Only one respondent does not keep records of evidence destroyed.

Evidence Record Keeping

Almost three-fourths of the respondents state report they keep a computerized inventory of specific evidentiary items that are stored and of specific items that have been destroyed. The other one-fourth of respondents apparently do not keep computerized records, but may keep some other records.¹⁰

Evidence Inventory and Audits

Not quite one-third of the respective respondents (30%) indicate they inventory or audit their evidence and records on an annual basis, the most often cited frequency of inventory and audit. About one in ten respondents reports inventory and audit occurs biennially. Law enforcement entities that inventory and audit semi-annually (three respondents) barely outnumber the entities (two respondents) that inventory and audit only once every 5 years. The remainder of respondents (12 or 44%) conduct inventory and audits at other intervals.¹¹

Evidence Budgets

The amounts that respondents reported they spent annually for preservation and storage vary considerably, both among the entities responding and among budget categories.

¹⁰ The question, No. 22, asked was, "Do you keep a computerized inventory of specific evidentiary items you store and what you have destroyed? A "yes" response would have to meet all three conditions of the question, i.e., that the computerized records kept are specific to items stored and items destroyed. Therefore, the appropriate is necessarily "no" if any of the three conditions is not met.

¹¹ Responses include: "never"; "on occasion"; "inspections are required four times a year"; "monthly partial audit with a complete annual"; and "each officer is responsible for his own evidence storage and records. There is no current audit system in place".

Fourteen of nineteen respondents reported \$0 annual expenditures for rent, while one entity reported rental expense of \$16,820 and another reported expenses of \$11,214.

Eight respondents said that \$0 annually were spent for operations and maintenance, while the other 11 respondents to the question reported expenditures ranging from \$500 at the low end to \$13,200 at the high end.

Annual expenditures for personal services were generally higher among respondents than expenditures for either space rental or maintenance and operations. Personal services expenditures also varied widely, from \$0 at the low end to \$95,220 at the high end.

Adequacy and Standards Regarding Evidence Storage

Twelve of 27 respondents (45%) reported their respective evidence storage facilities are adequate and will likely continue to be adequate in the foreseeable future. The other 15 respondents (55%) indicated their respective evidence storage facilities are not adequate and will likely continue to be inadequate in the foreseeable future.

The agencies' evidence storage policies and practices are clear and sufficient for two-thirds of the respondents (18 of 27), but the other one-third of respondents (9) reply that their respective policies and practices are not clear and sufficient.

And although 2 out of 3 respondents say their own policies and practices are clear and sufficient, over three-quarters of the entities responding (21 of 27) agree at some level that their own agency would support statewide standards concerning the preservation and storage of biological evidence in felony criminal cases.

Over three-quarters of respondents (20 of 26) also indicate that establishing policies and standards regarding the preservation and storage of biological evidence in felony criminal cases is a state and local issue that requires collaboration.

Funding for Evidence Storage

Perhaps not surprisingly, 60% of the respondents believe that the financial responsibility for preserving and storing biological evidence in felony criminal cases should be shared by local governments and the state. Still, fully one-quarter of the respondents believe the responsibility should fall to the state only.

The remaining 15% of respondents (4) feel the costs should be borne locally only.

Challenges Regarding Evidence Preservation

Adequate and sufficient physical space for storing and handling biological evidence was identified as far and away the biggest challenge among the respondents. Space issues, ranked most challenging by over half the respondents, are clearly problematic for many local law enforcement entities.

In rank order of most challenging to least challenging, the respondents ranked other issues as follows:

2. Equipment (computers/refrigerators/etc.). Identified by 28% of responders as most challenging and by another 20% as second most challenging.
3. Staffing. Identified by 26% of responders as second most challenging and by 22% as third most challenging. No respondent identified staffing as the biggest challenge regarding evidence storage.
4. Training. Forty-four percent of the respondents rated training as the fourth most challenging issue, while 4% rated it most challenging, 11% rated it second most challenging, and 26% rated it third most challenging.
5. Standards and guidelines. Nineteen percent of responders ranked standards and guidelines as the least challenging issue they face regarding evidence storage and handling and another 31% rated standards as next to least challenging. Still nearly 40% rated this issue as among the top three challenges they face.
6. Internal accountability. With 40% of respondents ranking accountability least challenging and another 24 % rating it next to least challenging, the survey's respondents appear to be relatively unchallenged by internal accountability issues. Fewer than one in three rated internal accountability among the three most challenging issues.

CONCLUSION

The information received from respondents to the survey suggests that local law enforcement entities view and administer the storage and handling of biological evidence in varied ways. Physical space for storing evidence, and presumably the associated cost of obtaining and maintaining the space is the

biggest challenge to survey respondents. Beyond space concerns, the challenges cited by law enforcement are more or less specific to each law enforcement entity.

In general, the responding local law enforcement entities are satisfied with their own policies and practices regarding the preservation of biological evidence, but would be amendable to establishing and, presumably, following statewide standards developed collaboratively by the state and local law enforcement entities. In conjunction with state standards, local law enforcement also can envision a financial role for the state, specifically, to share the cost incurred by local law enforcement to store or handle biological evidence.

The unorchestrated consensus among law enforcement entities responding to the survey implies that the challenge presented by limited physical space for storing evidence, the willingness to collaborate on establishing statewide standards for the storage and handling of evidence, and the substantial agreement that the costs associated with the storing and handling of evidence should be a shared state-local responsibility provides a foundation from which options for legislative consideration may be identified and upon which new or revised policies for the storage and handling of evidence may ultimately be based.

Appendix A

Summary of Responses
to
A Survey on the Preservation of Biological Evidence

Prepared for the Law and Justice Interim Committee

by
Dave Bohyer and Sheri Heffelfinger
Legislative Services Division

February 2010

Legislative Survey on Preservation of Biological Evidence

1. Please provide the name of your agency and the name and phone number of the primary point of contact for your agency if there are questions about this survey.

		Response Percent	Response Count
Agency	<input type="text"/>	100.0%	28
Name	<input type="text"/>	96.4%	27
Phone Number	<input type="text"/>	96.4%	27
		<i>answered question</i>	28
		<i>skipped question</i>	0

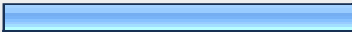
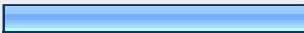
2. What type of agency are you?

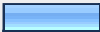
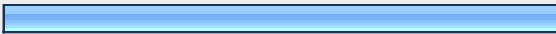
		Response Percent	Response Count
County Sheriff's Office	<input type="text"/>	53.6%	15
City or Municipal Police Department	<input type="text"/>	35.7%	10
Other (please identify in the comment section below)	<input type="text"/>	10.7%	3
		<i>answered question</i>	28
		<i>skipped question</i>	0

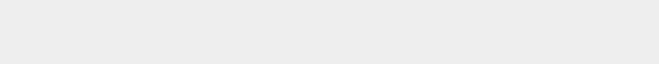
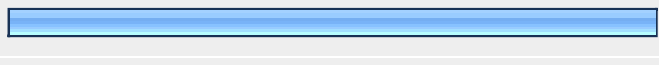
3. Does your agency share an evidence storage facility with another agency?

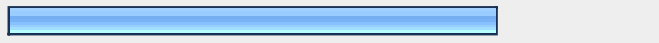
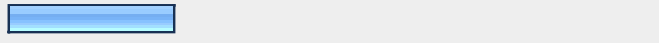
		Response Percent	Response Count
No, we have our own	<input type="text"/>	85.7%	24
Yes, we share with (please identify the agency with which you share)	<input type="text"/>	14.3%	4
		<i>answered question</i>	28
		<i>skipped question</i>	0

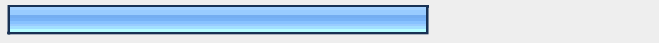
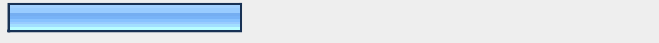
4. How many evidence storage personnel directly support your agency's evidence storage facility? (numerical answers only - part-time staff may be expressed as a decimal)		
		Response Count
		28
<i>answered question</i>		28
<i>skipped question</i>		0

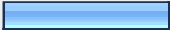
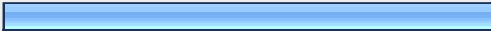
5. a. Do your evidence storage personnel receive special training?			
		Response Percent	Response Count
Yes		53.6%	15
No		46.4%	13
b. If so, who provides the training?			15
<i>answered question</i>			28
<i>skipped question</i>			0


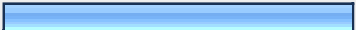
6. a. Are your evidence storage personnel certified?			
		Response Percent	Response Count
Yes		14.3%	4
No		85.7%	24
b. If so, by what entity?			6
<i>answered question</i>			28
<i>skipped question</i>			0

7. a. Is your evidence storage facility certified or accredited?			
		Response Percent	Response Count
Yes		0.0%	0
No		100.0%	28
b. If so, by what entity?			2
<i>answered question</i>			28
<i>skipped question</i>			0


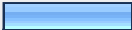
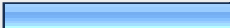
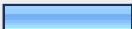
8. Are your procedures for handling and storing biological evidence different than for handling and storing other evidence?			
		Response Percent	Response Count
Yes		75.0%	21
No		25.0%	7
<i>answered question</i>			28
<i>skipped question</i>			0

9. Is biological evidence segregated from other evidence?			
		Response Percent	Response Count
Yes		64.3%	18
No		35.7%	10
<i>answered question</i>			28
<i>skipped question</i>			0

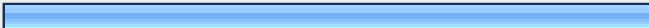

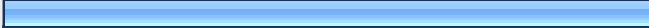
10. Does your agency have written policies concerning how long biological evidence is to be stored and when and how it may be destroyed?			
		Response Percent	Response Count
Yes		25.0%	7
No		75.0%	21
		<i>answered question</i>	28
		<i>skipped question</i>	0

11. Do you have different evidence retention policies or practices for evidence in a case where a conviction has been obtained versus a case in which a conviction has not been obtained?			
		Response Percent	Response Count
Yes		46.4%	13
No		53.6%	15
		<i>answered question</i>	28
		<i>skipped question</i>	0

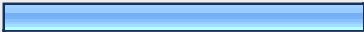


12. How long does your agency store biological evidence in felony criminal cases in which a conviction has been obtained? Please choose the option that best describes your policy or practice.

		Response Percent	Response Count
Our retention schedule is based on the statute of limitations for the crime involved		26.9%	7
For a minimum of 3 years after the conviction becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction becomes final		19.2%	5
Indefinitely		34.6%	9
Other (if you select this answer, please answer the next question)		19.2%	5
	<i>answered question</i>		26
	<i>skipped question</i>		2

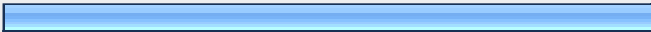
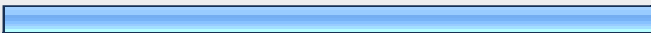
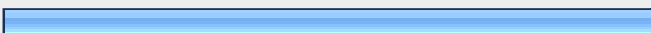
13. If you answered "Other" to question 12: How many years does your agency store biological evidence in the following types of cases in which a conviction has been obtained? (whole number answers only)

		Response Percent	Response Count
a. Homicide		100.0%	5
b. Sexual assault/rape		100.0%	5
c. Other sex offenses		100.0%	5
	<i>answered question</i>		5
	<i>skipped question</i>		23

14. How long does your agency store biological evidence in felony criminal cases in which a conviction has not been obtained? Please choose the option that best describes your policy or practice.

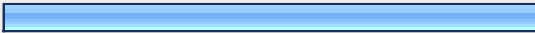
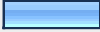

		Response Percent	Response Count
Our retention schedule is based on the statute of limitations for the crime involved		55.6%	15
Indefinitely		40.7%	11
Other (if you select this answer, please answer the next question)		3.7%	1
		<i>answered question</i>	27
		<i>skipped question</i>	1

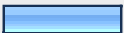

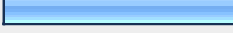
15. If you answered "Other" to question 14: How many years does your agency store biological evidence in the following types of cases in which a conviction has not been obtained? (whole number answers only)

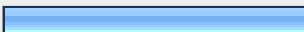
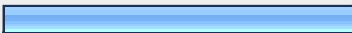
		Response Percent	Response Count
a. Homicide		100.0%	1
b. Sexual assault/rape		100.0%	1
c. Other sex offenses		100.0%	1
		<i>answered question</i>	1
		<i>skipped question</i>	27

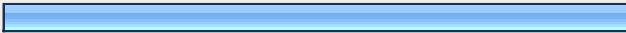

16. How important are the following factors when considering how long to keep biological evidence in felony criminal cases in which a conviction has been obtained?						
	Very Important	Somewhat Important	Less Important	Not Important	Rating Average	Response Count
Length of sentence	25.0% (7)	50.0% (14)	10.7% (3)	14.3% (4)	2.14	28
Statute of limitations	53.6% (15)	28.6% (8)	10.7% (3)	7.1% (2)	1.71	28
Type of crime	81.5% (22)	14.8% (4)	0.0% (0)	3.7% (1)	1.26	27
Whether the evidence has been tested	67.9% (19)	25.0% (7)	3.6% (1)	3.6% (1)	1.43	28
Size of the evidence	46.4% (13)	25.0% (7)	14.3% (4)	14.3% (4)	1.96	28
Other	75.0% (6)	25.0% (2)	0.0% (0)	0.0% (0)	1.25	8
				Describe "Other"		7
				answered question		28
				skipped question		0



17. How important are the following factors when considering how long to keep biological evidence in felony criminal cases in which a conviction has not been obtained?						
	Very Important	Somewhat Important	Less Important	Not Important	Rating Average	Response Count
Length of sentence	18.5% (5)	33.3% (9)	18.5% (5)	29.6% (8)	2.59	27
Statute of limitation	77.8% (21)	22.2% (6)	0.0% (0)	0.0% (0)	1.22	27
Type of crime	77.8% (21)	18.5% (5)	0.0% (0)	3.7% (1)	1.30	27
Whether the evidence has been tested	74.1% (20)	18.5% (5)	3.7% (1)	3.7% (1)	1.37	27
Size of evidence	40.7% (11)	29.6% (8)	14.8% (4)	14.8% (4)	2.04	27
Other	71.4% (5)	14.3% (1)	0.0% (0)	14.3% (1)	1.57	7
				Describe "Other"		5
				answered question		27
				skipped question		1


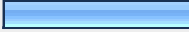


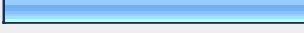
18. What is the estimated total square footage of your storage space for all evidence?			
		Response Percent	Response Count
less than 2,000 square feet		82.1%	23
2,000 to 5,000 square feet		14.3%	4
5,000 to 10,000 square feet		3.6%	1
more than 10,000 square feet		0.0%	0
		answered question	28
		skipped question	0

19. How full is your evidence storage facility?			
		Response Percent	Response Count
Less than 50 percent capacity		17.9%	5
Between 50 and 100 percent capacity		46.4%	13
At or over capacity		35.7%	10
		answered question	28
		skipped question	0

20. When evidence is destroyed, are any parties notified?			
		Response Percent	Response Count
Yes		46.4%	13
No		53.6%	15
		answered question	28
		skipped question	0

21. Are evidence disposal records kept?				
			Response Percent	Response Count
Yes		96.4%	27	
No		3.6%	1	
			<i>answered question</i>	28
			<i>skipped question</i>	0

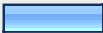

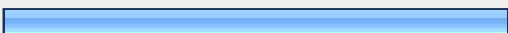
22. Do you keep a computerized inventory of specific evidentiary items you store and what you have destroyed?				
			Response Percent	Response Count
Yes		71.4%	20	
No		28.6%	8	
			<i>answered question</i>	28
			<i>skipped question</i>	0

23. How often do you audit the records and inventory the items in your evidence room?				
			Response Percent	Response Count
Twice a year		7.1%	2	
Annually		28.6%	8	
Every two years		10.7%	3	
Every five years		7.1%	2	
Other		46.4%	13	
			(comments optional)	12
			<i>answered question</i>	28
			<i>skipped question</i>	0



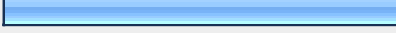
24. What is your approximate annual budget, in dollars, for evidence preservation and storage? (numeric whole numbers only, no characters or commas)				
			Response Percent	Response Count
Annual rent (if any)		82.6%	19	
Operations and maintenance		82.6%	19	
Personnel		78.3%	18	
Other		52.2%	12	
			<i>answered question</i>	23
			<i>skipped question</i>	5

25. Please rate the following statements:						
	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	Response Count	
a. My agency's evidence storage facilities are adequate and will likely continue to be adequate in the foreseeable future.	14.3% (4)	28.6% (8)	21.4% (6)	35.7% (10)	28	
b. My agency's evidence storage policies and practices are clear and sufficient.	25.0% (7)	42.9% (12)	21.4% (6)	10.7% (3)	28	
c. My agency would support statewide standards concerning the preservation and storage of biological evidence in felony criminal cases.	32.1% (9)	46.4% (13)	7.1% (2)	14.3% (4)	28	
Comments (optional):					7	
					<i>answered question</i>	28
					<i>skipped question</i>	0

26. Please choose which of the following options best represents your agency's opinion in the following area:
Policies and standards regarding the preservation and storage of biological evidence in felony criminal cases should be:

		Response Percent	Response Count
a local issue		14.8%	4
a statewide issue		7.4%	2
a state and local issue requiring collaboration		77.8%	21
		<i>answered question</i>	27
		<i>skipped question</i>	1

27. Please choose which of the following options best represents your agency's opinion in the following area:
Funding for preservation and storage of biological evidence in felony criminal cases should be:

		Response Percent	Response Count
a local responsibility		14.3%	4
a state responsibility		25.0%	7
a shared responsibility		60.7%	17
		<i>answered question</i>	28
		<i>skipped question</i>	0

28. Please rank the following issues by what is most challenging to your agency and least challenging to your agency with 1 being the most challenging and 6 being the least challenging with respect to the storage and preservation of biological evidence (you may not use the same rank twice):

	most challenging 1	2	3	4	5	least challenging 6	Response Count
Storage space	51.9% (14)	18.5% (5)	3.7% (1)	11.1% (3)	7.4% (2)	7.4% (2)	27
Equipment (computers/refrigerators/etc.)	28.0% (7)	20.0% (5)	20.0% (5)	16.0% (4)	4.0% (1)	12.0% (3)	25
Staffing	0.0% (0)	28.6% (8)	21.4% (6)	10.7% (3)	17.9% (5)	21.4% (6)	28
Training	3.7% (1)	11.1% (3)	25.9% (7)	44.4% (12)	14.8% (4)	0.0% (0)	27
Internal accountability	7.7% (2)	3.8% (1)	15.4% (4)	7.7% (2)	23.1% (6)	42.3% (11)	26
Standards and guidelines	14.8% (4)	14.8% (4)	11.1% (3)	11.1% (3)	29.6% (8)	18.5% (5)	27
	<i>answered question</i>						28
	<i>skipped question</i>						0

29. OPTIONAL: What additional comments, if any, would you like to offer to the Law and Justice Interim Committee as it examines state and local policy on the preservation and storage of biological evidence in felony criminal cases?

	Response Count
	7
	<i>answered question</i>
	7
	<i>skipped question</i>
	21

Appendix B

Summary of Responses for Individual Questions
for
A Survey on the Preservation of Biological Evidence

Prepared for the Law and Justice Interim Committee

by
Dave Bohyer and Sheri Heffelfinger
Legislative Services Division

February 2010

Legislative Survey on Preservation of Biological Evidence

Please provide the name of your agency and the name and phone number of the primary point of contact for your agency if there are questions about this survey.

Answer Options	Response Percent	Response Count
Agency Name	100.0%	28
Phone Number	96.4%	27
	96.4%	27
	<i>answered question</i>	28
	<i>skipped question</i>	0

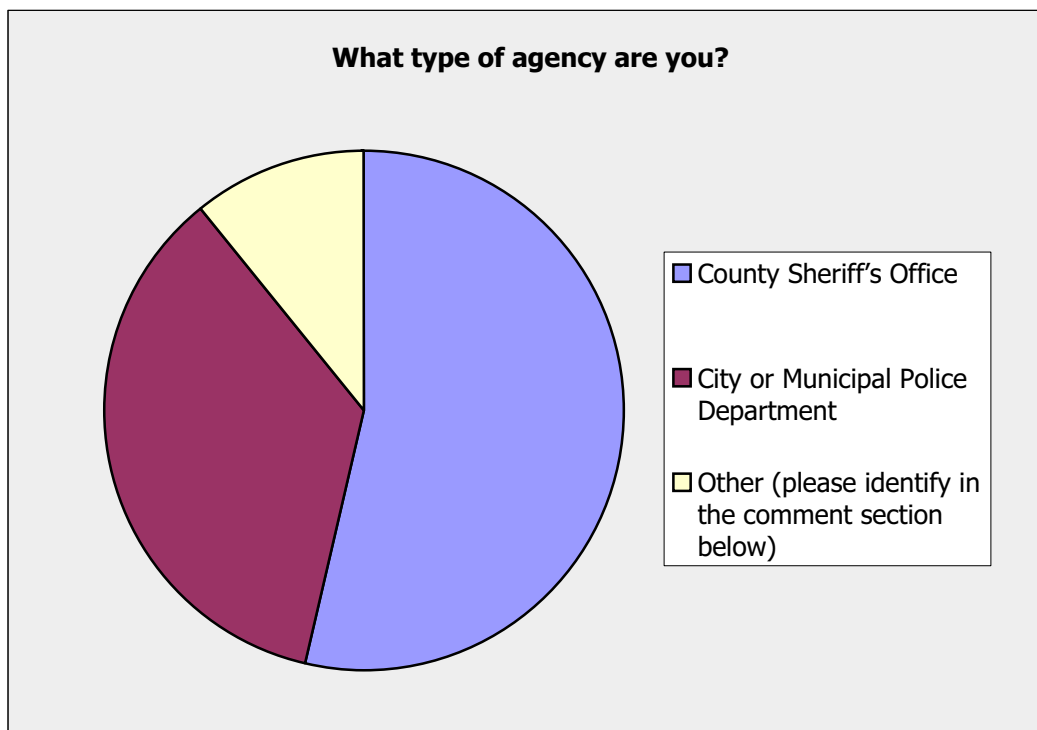
Number	Agency	Name
1	Polson Police Department	Alan Booth
2	Rosebud County Sheriff's Office	Sheriff Randy Allies
3	Musselshell County Sheriff's Office	Woodrow Weitzel
4	Stillwater County Office of Sheriff/Coroner	Tammie Mullikin
5	Petroleum County Sheriff's Office	Glen Gillett
6	Kalispell Police Department	Evidence Custodian Susie Phillips
7	Lewistown Police Department	Brad Doney
8	Darby Police Department	Larry Rose
9	Thompson Falls Police Department	Chris Nichols
10	Whitefish Police Department	Bill Dial, Chief of Police
11	Missoula County Office of the Sheriff & Coroner	Michael R. ("Mike") McMeekin
12	Madison County Sheriff's Office	David Schenk
13	Lewis & Clark County Sheriff's Office	Leo Dutton
14	MSU Billings Police	Scott Forshee
15	Broadwater County Sheriff's Office	Brenda K. Ludwig
16	Great Falls Police Department	LT.Robert Moccasin
17	Carter County Sheriff's Office	Rusty Jardee
18	Helena Police Dept	Anne Jacobson
19	Gallatin County Sheriff's Office	Tom Weightman
20	Beaverhead County Sheriff	Jay T. Hansen
21	Yellowstone County Sheriff's Office	Lt. Ron Wilson
22	Butte-Silver Bow Law Enforcement Department	Jan Stepan
23	McCone County Sheriff's Office	Dave I. Harris
24	Montana State University Police Department	Mark Lachapelle
25	Ennis Police Department	Scott Newell
26	Hill County Sheriff's Office	Don Brostrom
27	Blaine County Sheriff's Department	Glenn Huestis
28	Red Lodge Police	

Legislative Survey on Preservation of Biological Evidence

What type of agency are you?

Answer Options	Response Percent	Response Count
County Sheriff's Office	53.6%	15
City or Municipal Police Department	35.7%	10
Other (please identify in the comment section below)	10.7%	3
answered question		28
skipped question		0

Number	Other (please identify in the comment section below)
1	University Police Department
2	Consolidated City/County Law Enforcement Department
3	University Police



Legislative Survey on Preservation of Biological Evidence

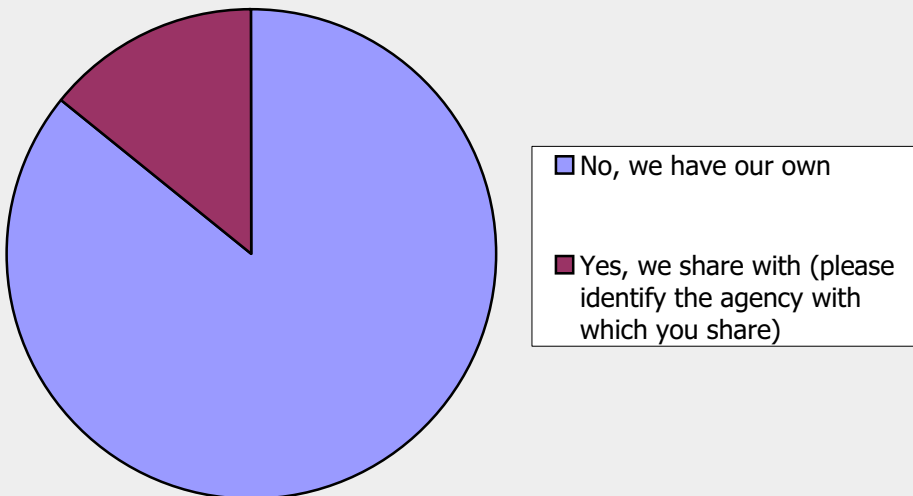
Does your agency share an evidence storage facility with another agency?

Answer Options	Response Percent	Response Count
No, we have our own	85.7%	24
Yes, we share with (please identify the agency with	14.3%	4
<i>answered question</i>		28
<i>skipped question</i>		0

Number Yes, we share with (please identify the agency with which you share)

- 1 Montana Highway Patrol
- 2 Billings Police Department Box 1178 Billings, MT 59108
- 3 Bozeman Police Department
- 4 We have our own and could utilize Bozeman/Gallatin County evidence on a major case.

Does your agency share an evidence storage facility with another agency?



Legislative Survey on Preservation of Biological Evidence

How many evidence storage personnel directly support your agency's evidence storage facility? (numerical answers only - part-time staff may

Answer Options	Response Count
	28
<i>answered question</i>	28
<i>skipped question</i>	0

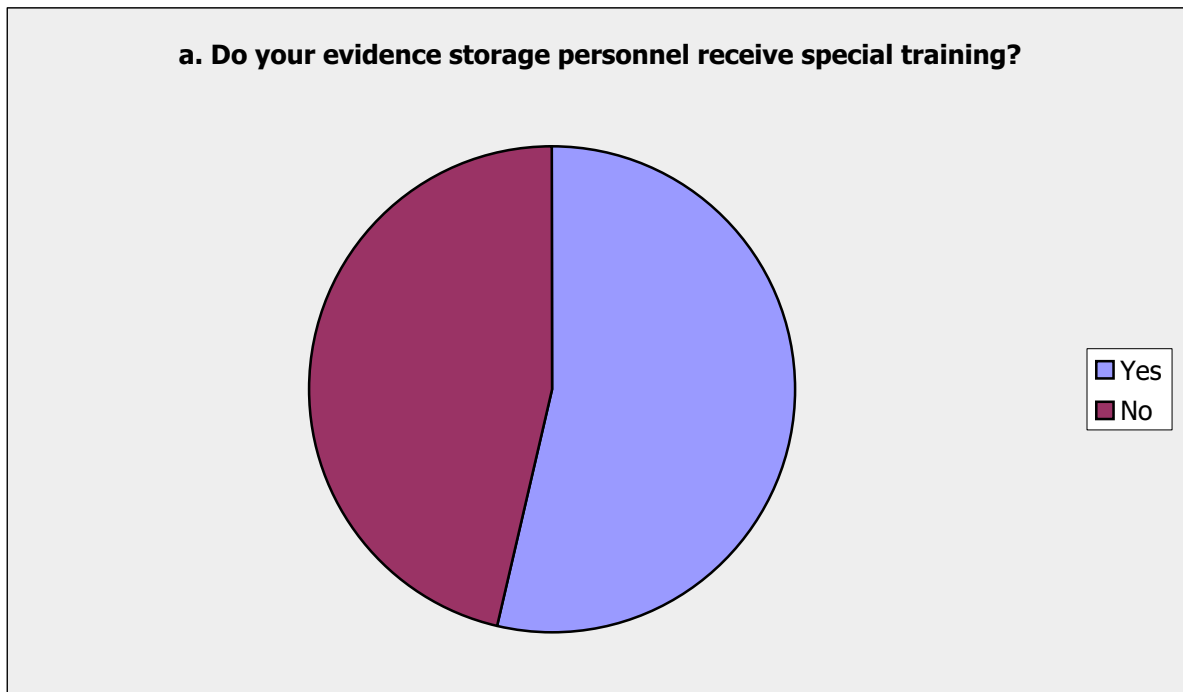
Number	Response Text
1	1
2	0
3	11
4	1
5	2
6	1
7	2
8	2
9	3.5
10	2
11	1
12	3
13	1
14	0
15	2
16	2
17	3
18	1
19	1
20	3
21	1.3
22	1.5
23	4
24	3
25	1
26	2
27	9
28	2

Legislative Survey on Preservation of Biological Evidence

a. Do your evidence storage personnel receive special training?		
Answer Options	Response Percent	Response Count
Yes	53.6%	15
No	46.4%	13
b. If so, who provides the training?		15
answered question		28
skipped question		0

Number b. If so, who provides the training?

- 1 Montana Law Enforcement Academy and or other specialized groups
- 2 IAPE
- 3 Varies---MT State Crime Lab, International Assoc. for Property and Evidence, Inc. (IAPE)
- 4 MLEA
- 5 FBI, DOJ and other specialized training firms.
- 6 International Association for Property & Evidence (IAPE)
- 7 The classes are private companies- International Evidence Technician. There are others we have not sent the person to as of yet.
- 8 N/A
- 9 MLEA-Evidence Coll & Preservation
- 10 Montana State Crime Lab, International Association of Property and Evidence (IAPE)
- 11 Montana Law Enforcement Academy; Montana State Crime Lab; International Association of Property and Evidence
- 12 Various professional training opportunities
- 13 In proces of re-structuring.
- 14 The International Association for Property and Evidence, Inc.
- 15 MLEA



Legislative Survey on Preservation of Biological Evidence

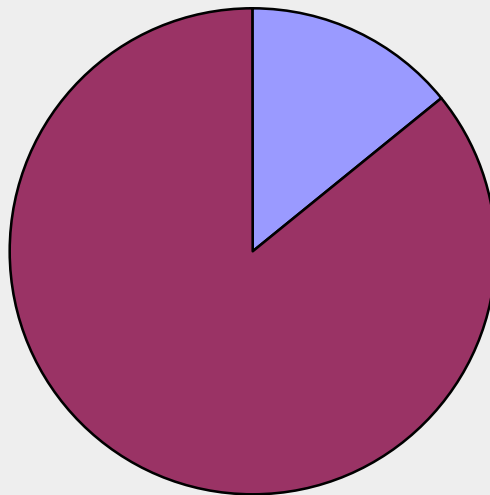
a. Are your evidence storage personnel certified?

Answer Options	Response Percent	Response Count
Yes	14.3%	4
No	85.7%	24
b. If so, by what entity?		6
<i>answered question</i>		28
<i>skipped question</i>		0

Number b. If so, by what entity?

- 1 IAPE
- 2 N/A
- 3 IAPE
- 4 Could if we paid a fee, otherwise not cost effective for just getting a certificate.
- 5 Storage personnel are sworn law enforcement.
- 6 The International Association for Property and Evidence, Inc.

a. Are your evidence storage personnel certified?



Yes
 No

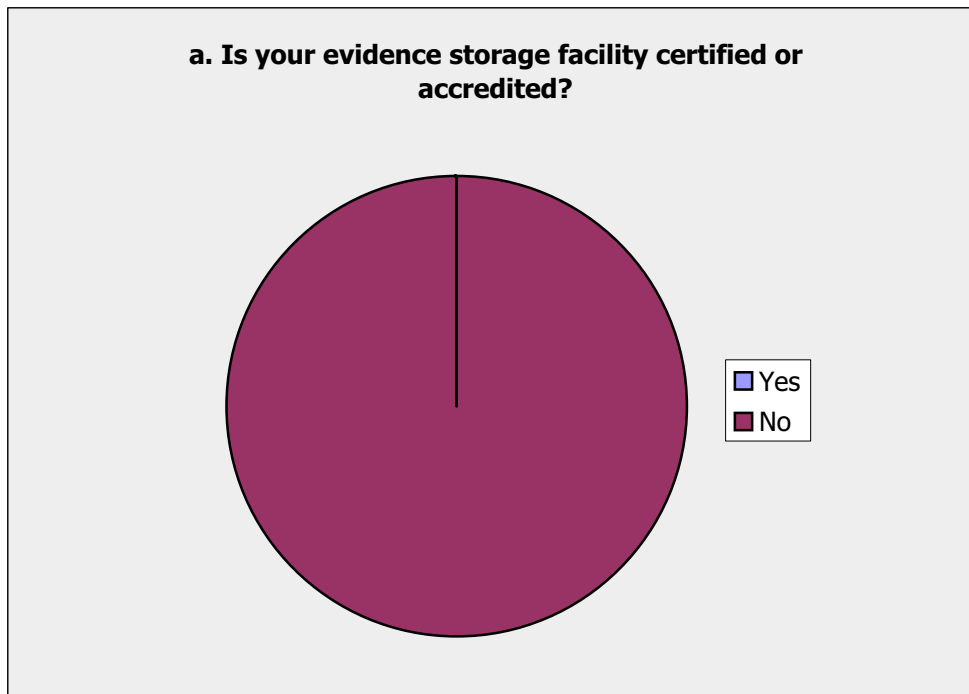
Legislative Survey on Preservation of Biological Evidence

a. Is your evidence storage facility certified or accredited?

Answer Options	Response Percent	Response Count
Yes	0.0%	0
No	100.0%	28
b. If so, by what entity?		2
<i>answered question</i>		28
<i>skipped question</i>		0

Number b. If so, by what entity?

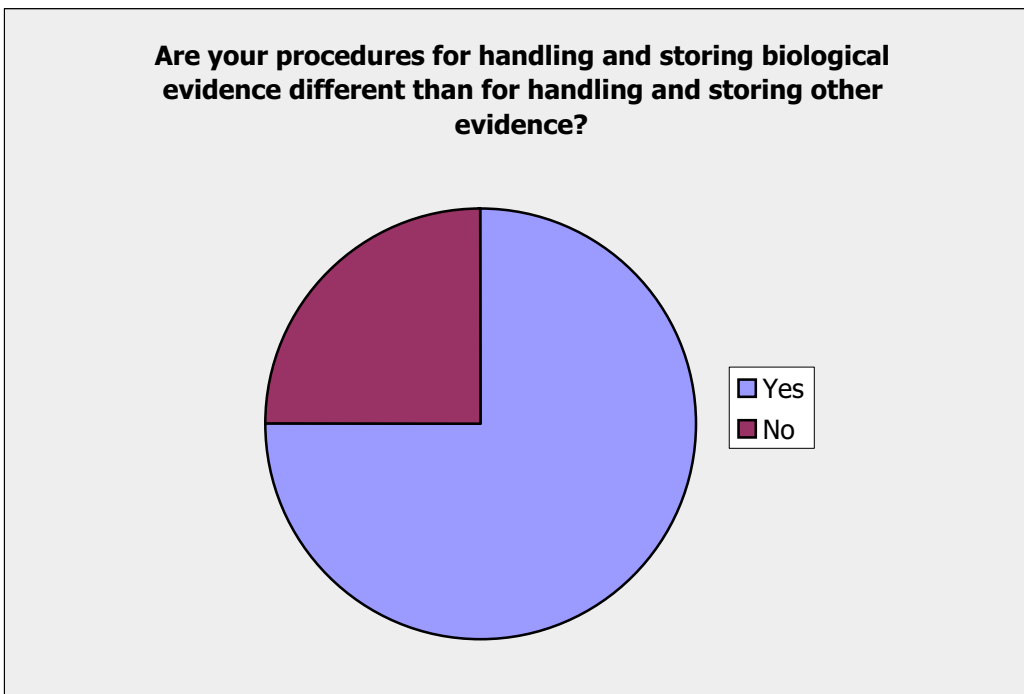
- 1 N/A
- 2 Didn't know we had to be.



Legislative Survey on Preservation of Biological Evidence

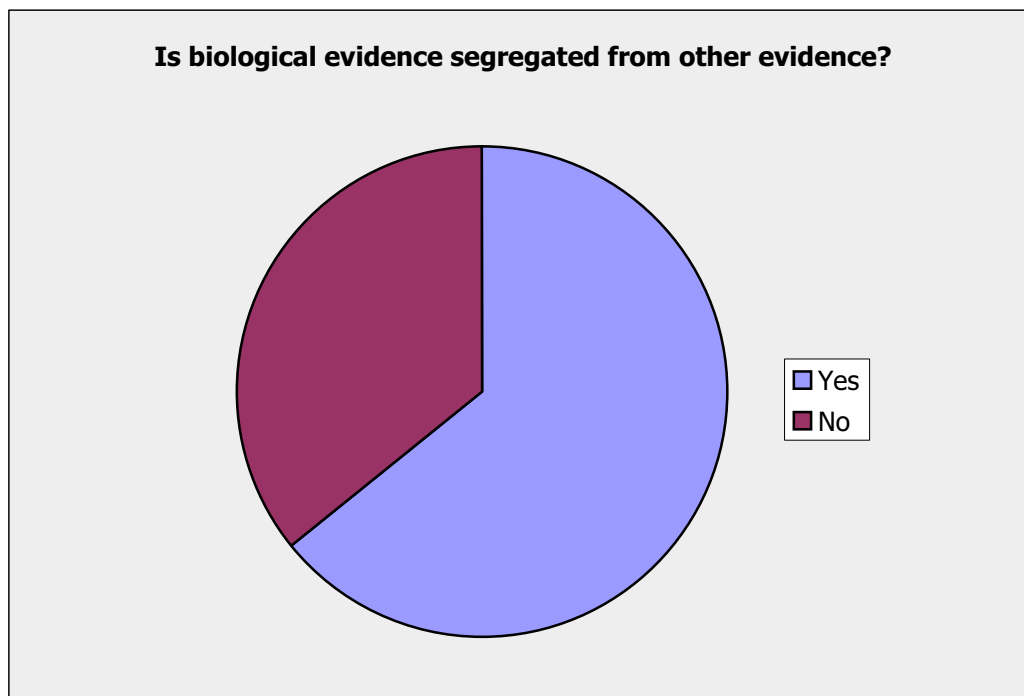
Are your procedures for handling and storing biological evidence different than for handling and storing other evidence?

Answer Options	Response Percent	Response Count
Yes	75.0%	21
No	25.0%	7
<i>answered question</i>		28
<i>skipped question</i>		0



Legislative Survey on Preservation of Biological Evidence

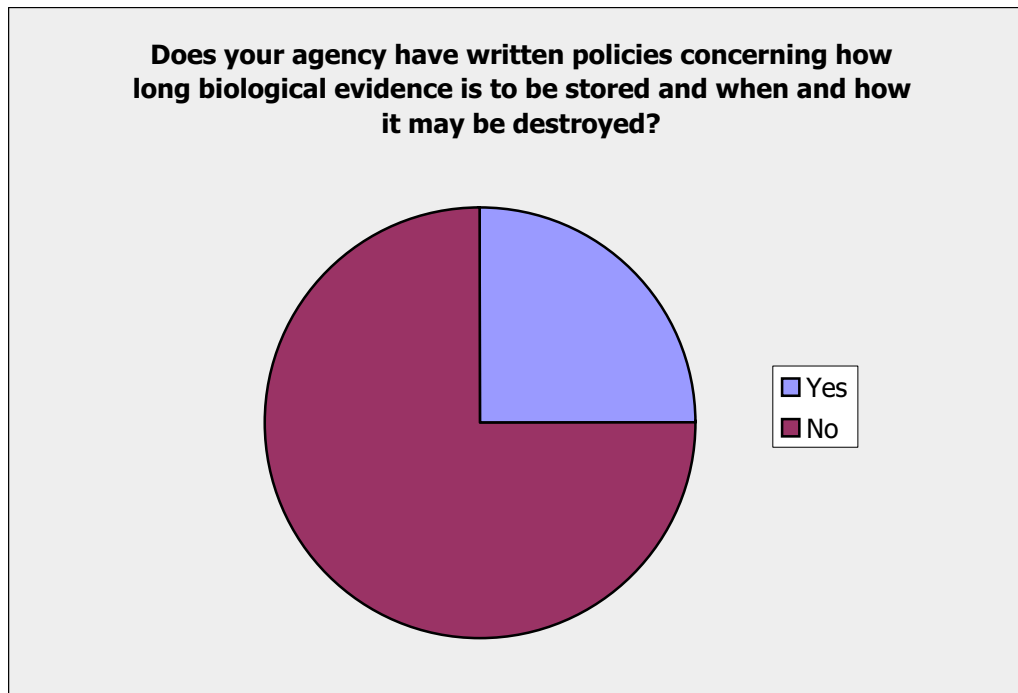
Is biological evidence segregated from other evidence?		
Answer Options	Response Percent	Response Count
Yes	64.3%	18
No	35.7%	10
<i>answered question</i>		28
<i>skipped question</i>		0



Legislative Survey on Preservation of Biological Evidence

Does your agency have written policies concerning how long biological evidence is to be stored and when and how it may be destroyed?

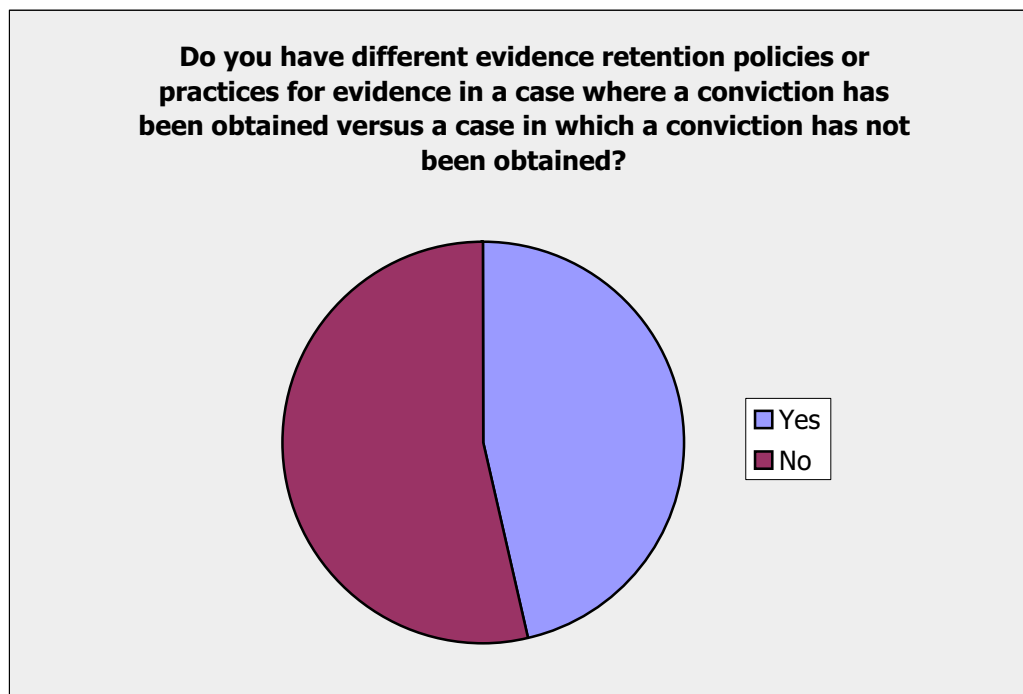
Answer Options	Response Percent	Response Count
Yes	25.0%	7
No	75.0%	21
<i>answered question</i>		28
<i>skipped question</i>		0



Legislative Survey on Preservation of Biological Evidence

Do you have different evidence retention policies or practices for evidence in a case where a conviction has been obtained versus a case in which a conviction

Answer Options	Response Percent	Response Count
Yes	46.4%	13
No	53.6%	15
<i>answered question</i>		28
<i>skipped question</i>		0

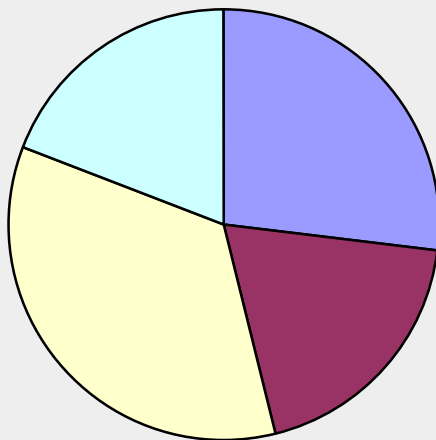


Legislative Survey on Preservation of Biological Evidence

How long does your agency store biological evidence in **felony** criminal cases in which a conviction has been obtained? Please choose the

Answer Options	Response Percent	Response Count
Our retention schedule is based on the statute of limitations for the crime involved	26.9%	7
For a minimum of 3 years after the conviction becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction becomes final	19.2%	5
Indefinitely	34.6%	9
Other (if you select this answer, please answer the next question)	19.2%	5
answered question		26
skipped question		2

How long does your agency store biological evidence in felony criminal cases in which a conviction has been obtained? Please choose the option that best describes your policy or practice.



- Our retention schedule is based on the statute of limitations for the crime involved
- For a minimum of 3 years after the conviction becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction becomes final
- Indefinitely

Legislative Survey on Preservation of Biological Evidence

If you answered "Other" to question 12: How many years does your agency store biological evidence in the following types of

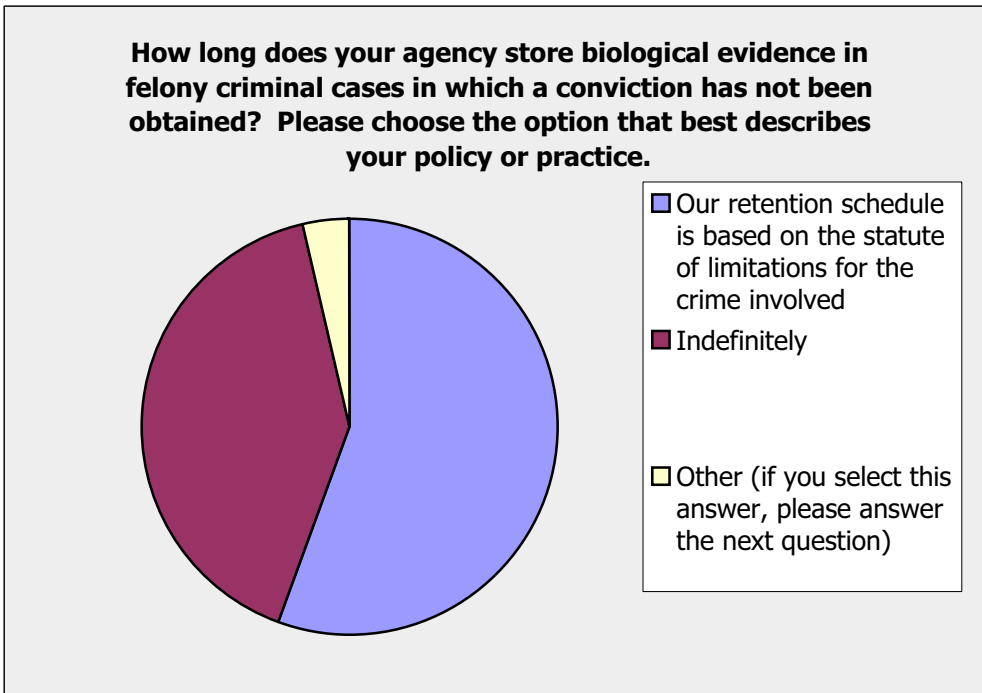
Answer Options	Response Percent	Response Count
a. Homicide	100.0%	5
b. Sexual assault/rape	100.0%	5
c. Other sex offenses	100.0%	5
<i>answered question</i>		5
<i>skipped question</i>		23

Number	a. Homicide	b. Sexual assault/rape	c. Other sex offenses
1	100	15	15
2	Indef	07/10/2010	Stat Limits
3	0-Ind	0-7	0-7
4	40	10	5
		released by	released by
5	released by court order	court order	court order

Legislative Survey on Preservation of Biological Evidence

How long does your agency store biological evidence in felony criminal cases in which a conviction has not been obtained? Please choose the option that

Answer Options	Response Percent	Response Count
Our retention schedule is based on the statute of	55.6%	15
Indefinitely	40.7%	11
Other (if you select this answer, please answer the next	3.7%	1
<i>answered question</i>		27
<i>skipped question</i>		1



Legislative Survey on Preservation of Biological Evidence

If you answered "Other" to question 14: How many years does your agency store biological evidence in the following types of cases in which a conviction

Answer Options	Response Percent	Response Count
a. Homicide	100.0%	1
b. Sexual assault/rape	100.0%	1
c. Other sex offenses	100.0%	1
<i>answered question</i>		1
<i>skipped question</i>		27

Number	a. Homicide	b. Sexual assault/rape	c. Other sex offenses
1	40	10	5

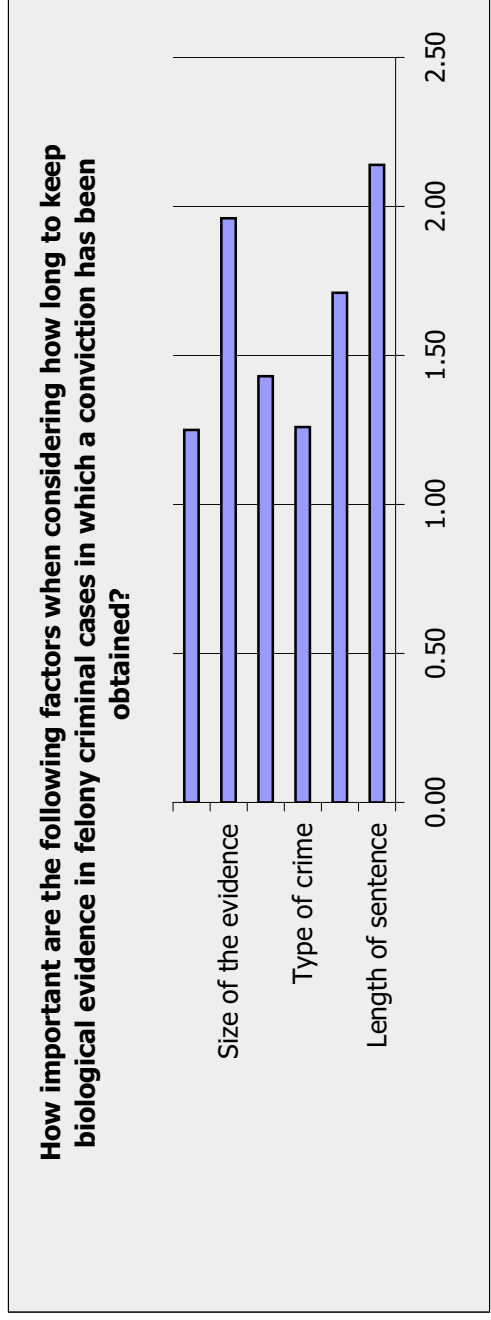
Legislative Survey on Preservation of Biological Evidence

How important are the following factors when considering how long to keep biological evidence in felony criminal cases in which a conviction has been obtained?

Answer Options	Very Important	Somewhat Important	Less Important	Not Important	Rating Average	Response Count
Length of sentence	7	14	3	4	2.14	28
Statute of limitations	15	8	3	2	1.71	28
Type of crime	22	4	0	1	1.26	27
Whether the evidence has been tested	19	7	1	1	1.43	28
Size of the evidence	13	7	4	4	1.96	28
Other	6	2	0	0	1.25	8
Describe "Other"						7
<i>answered question</i>						28
<i>skipped question</i>						0

Number Describe "Other"

- 1 Storage requirements
- 2 The impact that the case had on families and/or the community.
- 3 All evidence in felony cases must get clearance from our county attorney before it can be disposed of. If there is a possibility of appeals, the evidence is retained.
- 4 State Law
- 5 Appeals pending; Individual investigative discretion; case by case review; Integrity of Evidence; quality of storage or environmental damage
- 6 Homicide indefinitely
- 7 Conviction based upon a plea agreement would allow for disposal. Anything other would dictate retention until appeals are exhausted.



Legislative Survey on Preservation of Biological Evidence

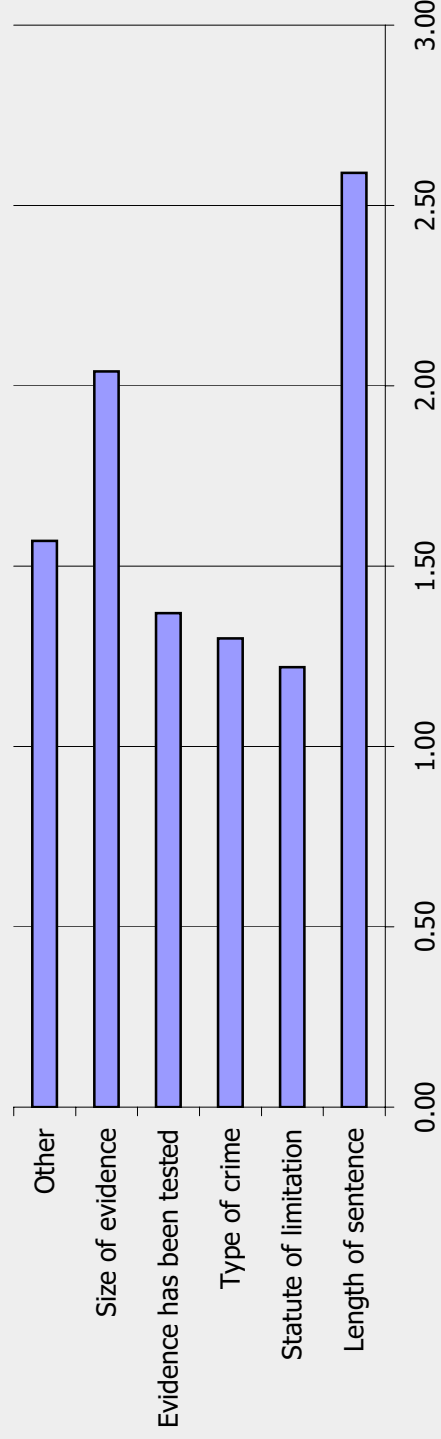
How important are the following factors when considering how long to keep biological evidence in felony criminal cases in which a conviction has not been obtained?

Answer Options	Very Important	Somewhat Important	Less Important	Not Important	Rating Average	Response Count
Length of sentence	5	9	5	8	2.59	27
Statute of limitation	21	6	0	0	1.22	27
Type of crime	21	5	0	1	1.30	27
Evidence has been tested	20	5	1	1	1.37	27
Size of evidence	11	8	4	4	2.04	27
Other	5	1	0	1	1.57	7
Describe "Other"						5
answered question						27
skipped question						1

Number Describe "Other"

- 1 Storage requirements
- 2 The impact that the case had on families and/or the community.
- 3 Projected advances in forensic examination and analysis capabilities.
- 4 Integrity of Evidence- quality of storage or environmental damage
- 5 Homicide indefinitely

How important are the following factors when considering how long to keep biological evidence in felony criminal cases in which a conviction has not been obtained?

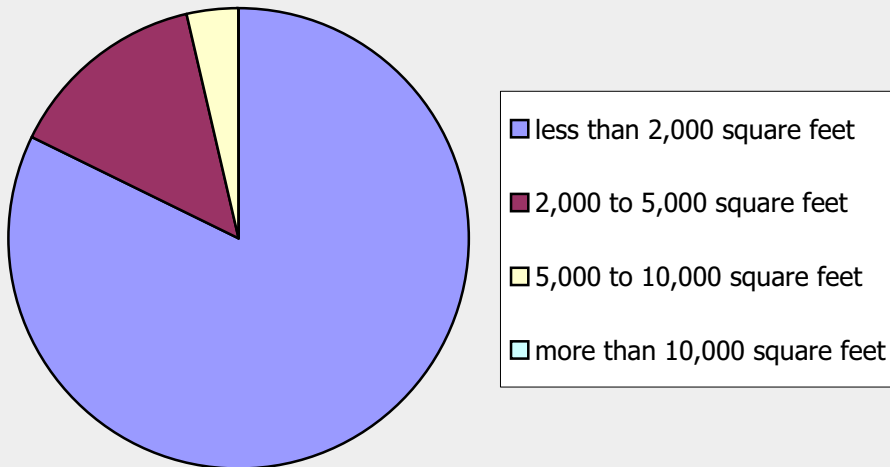


Legislative Survey on Preservation of Biological Evidence

What is the estimated total square footage of your storage space for all evidence?

Answer Options	Response Percent	Response Count
less than 2,000 square feet	82.1%	23
2,000 to 5,000 square feet	14.3%	4
5,000 to 10,000 square feet	3.6%	1
more than 10,000 square feet	0.0%	0
answered question		28
skipped question		0

What is the estimated total square footage of your storage space for all evidence?

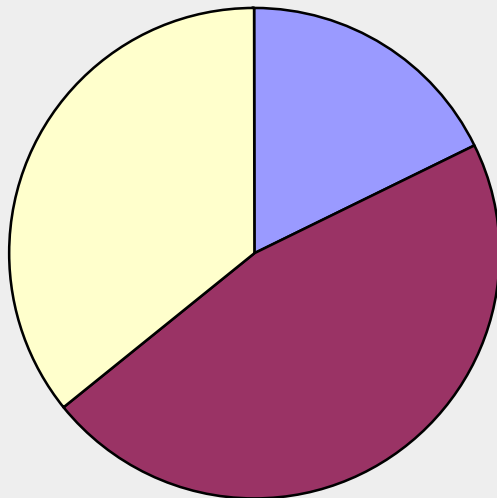


Legislative Survey on Preservation of Biological Evidence

How full is your evidence storage facility?

Answer Options	Response Percent	Response Count
Less than 50 percent capacity	17.9%	5
Between 50 and 100 percent capacity	46.4%	13
At or over capacity	35.7%	10
answered question		28
skipped question		0

How full is your evidence storage facility?



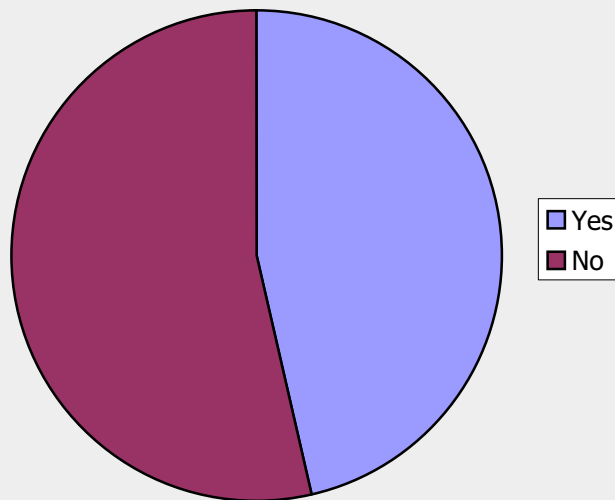
- Less than 50 percent capacity
- Between 50 and 100 percent capacity
- At or over capacity

Legislative Survey on Preservation of Biological Evidence

When evidence is destroyed, are any parties notified?

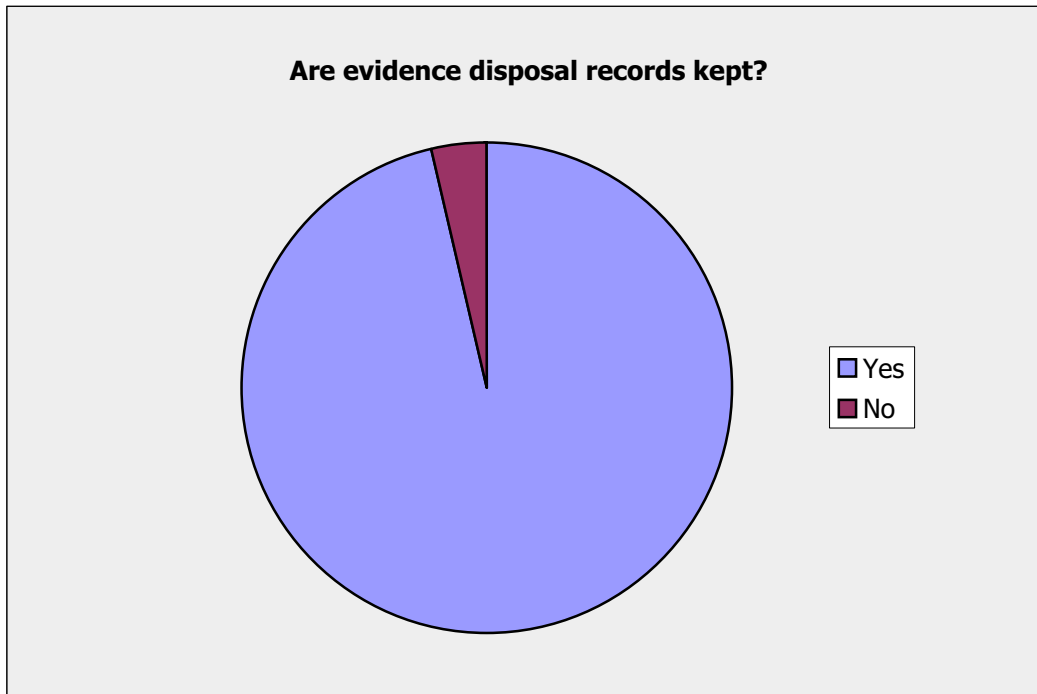
Answer Options	Response Percent	Response Count
Yes	46.4%	13
No	53.6%	15
<i>answered question</i>		28
<i>skipped question</i>		0

When evidence is destroyed, are any parties notified?



Legislative Survey on Preservation of Biological Evidence

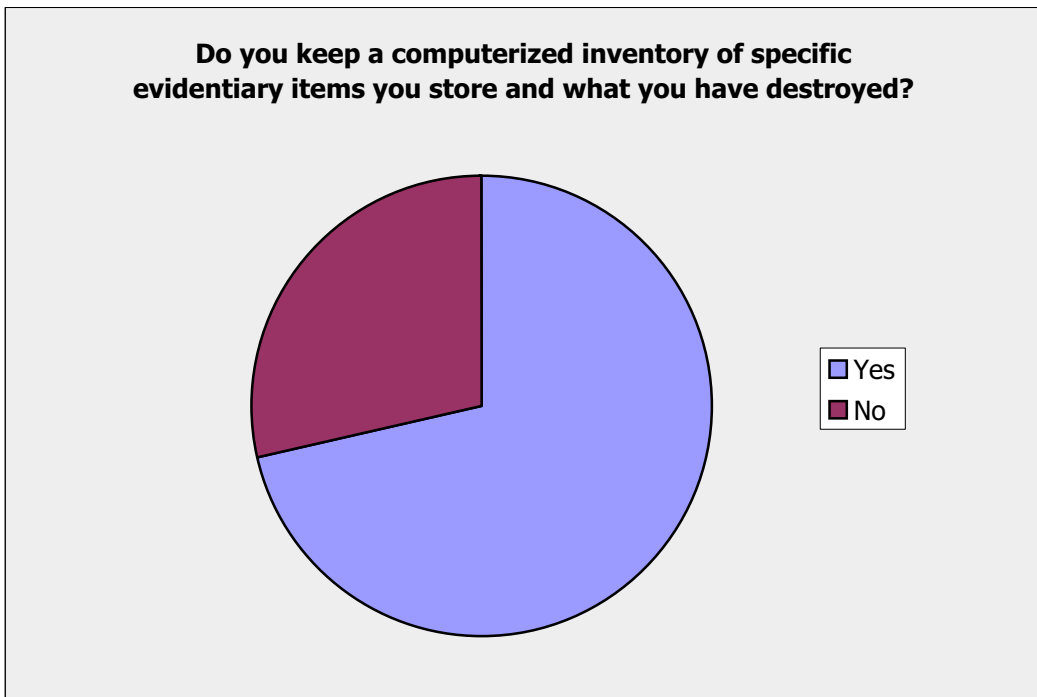
Are evidence disposal records kept?		
Answer Options	Response Percent	Response Count
Yes	96.4%	27
No	3.6%	1
<i>answered question</i>		28
<i>skipped question</i>		0



Legislative Survey on Preservation of Biological Evidence

Do you keep a computerized inventory of specific evidentiary items you store and what you have destroyed?

Answer Options	Response Percent	Response Count
Yes	71.4%	20
No	28.6%	8
<i>answered question</i>		28
<i>skipped question</i>		0



Legislative Survey on Preservation of Biological Evidence

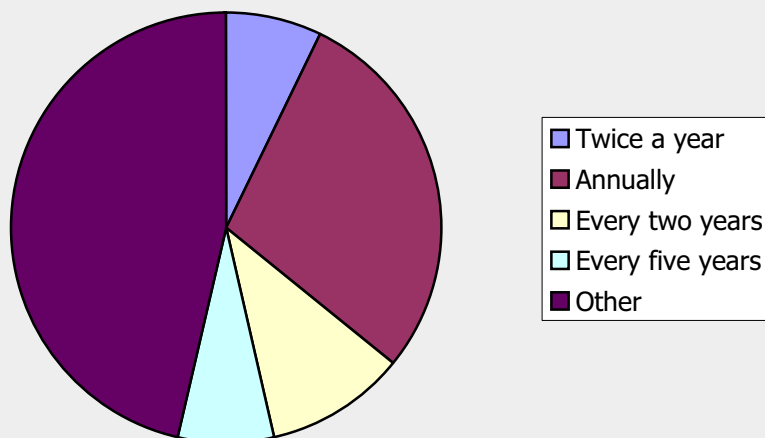
How often do you audit the records and inventory the items in your evidence room?

Answer Options	Response Percent	Response Count
Twice a year	7.1%	2
Annually	28.6%	8
Every two years	10.7%	3
Every five years	7.1%	2
Other (comments optional)	46.4%	13
answered question		28
skipped question		0

Number (comments optional)

- 1** all officers keep track of their own evidence.
- 2** Partial audit conducted on an annual basis
- 3** On occasion
- 4** Each Officer is responsible for his own evidence storage and records. There is no current audit system in place.
- 5** Monthly partial audit with a complete annual
- 6** No audit policy at this time. We're working on that.
- 7** Only once in three years
- 8** Inspections are required at least four times a year
- 9** Never Have.
- 10** Random item sampling and cash audit
- 11** We do not keep perishable evidence in our lockers or coolers beyond sending them to the crime lab.
- 12** I have an ongoing inventory in the evidence room. Each piece is tracked in and a disposition recorded when it leaves.

How often do you audit the records and inventory the items in your evidence room?



Legislative Survey on Preservation of Biological Evidence

What is your approximate annual budget, in dollars, for evidence preservation and storage? (numeric whole numbers only, no characters or commas)

Answer Options	Response Percent	Response Count
Annual rent (if any)	82.6%	19
Operations and maintenance	82.6%	19
Personnel	78.3%	18
Other	52.2%	12
answered question		23
skipped question		5

Number	Annual rent (if any)	Operations and maintenance	Personnel	Other
1	0	0	0	0
2	200			
3			12000	
4	0	0	0	0
5	0	0	17500	
6	0	0	0	0
7	0	0	0	0
8	1200	5000	50000	
9				1000
10	8000	2000	18000	0
11	0			
12	0	13200	95220	
13	0	0	0	
14	16820	10000	40178	1000
15	11214	1500	22500	
16	0	6650	30828	5644
17	0	2000	48000	0
18		0		
19		10000	65000	
20	0	500	0	0
21	0	500		
22	0	5000	25000	0
23	0	0	0	0

Legislative Survey on Preservation of Biological Evidence

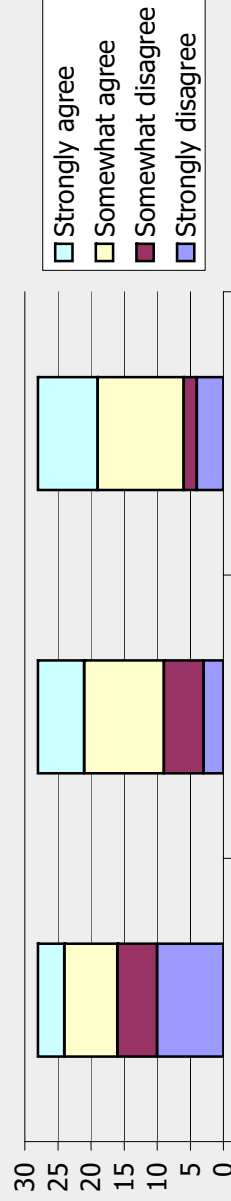
Please rate the following statements:

Answer Options	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	Response Count
a. My agency's evidence storage facilities are adequate	4	8	6	10	28
b. My agency's evidence storage policies and practices	7	12	6	3	28
c. My agency would support statewide standards	9	13	2	4	28
Comments (optional):					7
	<i>answered question</i>				28
	<i>skipped question</i>				0

Number Comments (optional):

- 1 If the size of our rural agencies is taken into consideration and training is provided by the State.
- 2 Financial assistance would be appreciated
- 3 We will be moving into a new facility in June which will have appropriate storage.
- 4 Again - we are allowed to utilize the Billings Police Storage facility which negates a lot of these.
- 5 Montana Statute, ie, statute of limitations indicates the length of storage time.
- 6 Statewide standards cannot be unfunded mandates-financial assistance to agencies must accompany standards.
- 7 If standards are required by the state, funding should come from the state.

Please rate the following statements:

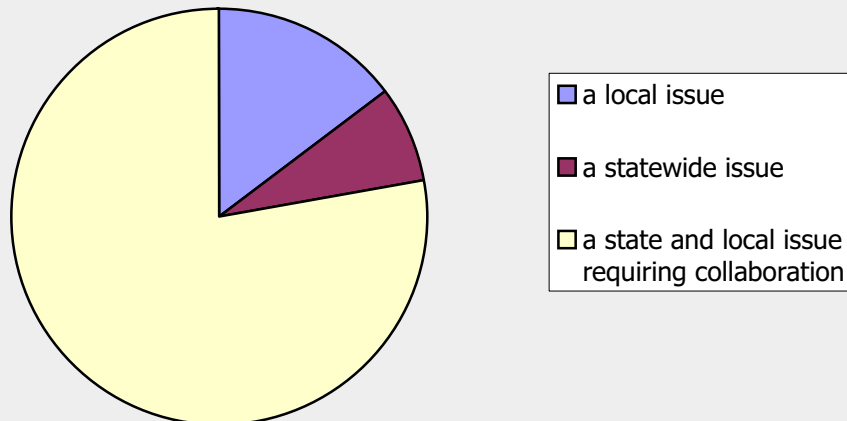


Legislative Survey on Preservation of Biological Evidence

Please choose which of the following options best represents your agency's opinion in the following area: Policies and standards regarding the preservation and storage of biological evidence in felony criminal cases should be:

Answer Options	Response Percent	Response Count
a local issue	14.8%	4
a statewide issue	7.4%	2
a state and local issue requiring collaboration	77.8%	21
<i>answered question</i>		27
<i>skipped question</i>		1

Please choose which of the following options best represents your agency's opinion in the following area: Policies and standards regarding the preservation and storage of biological evidence in felony criminal cases should be:

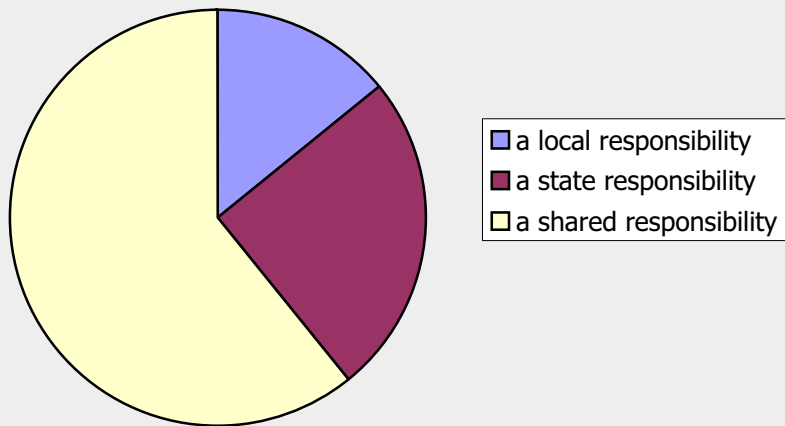


Legislative Survey on Preservation of Biological Evidence

Please choose which of the following options best represents your agency's opinion in the following area: <i>Funding for preservation and storage of

Answer Options	Response Percent	Response Count
a local responsibility	14.3%	4
a state responsibility	25.0%	7
a shared responsibility	60.7%	17
<i>answered question</i>		28
<i>skipped question</i>		0

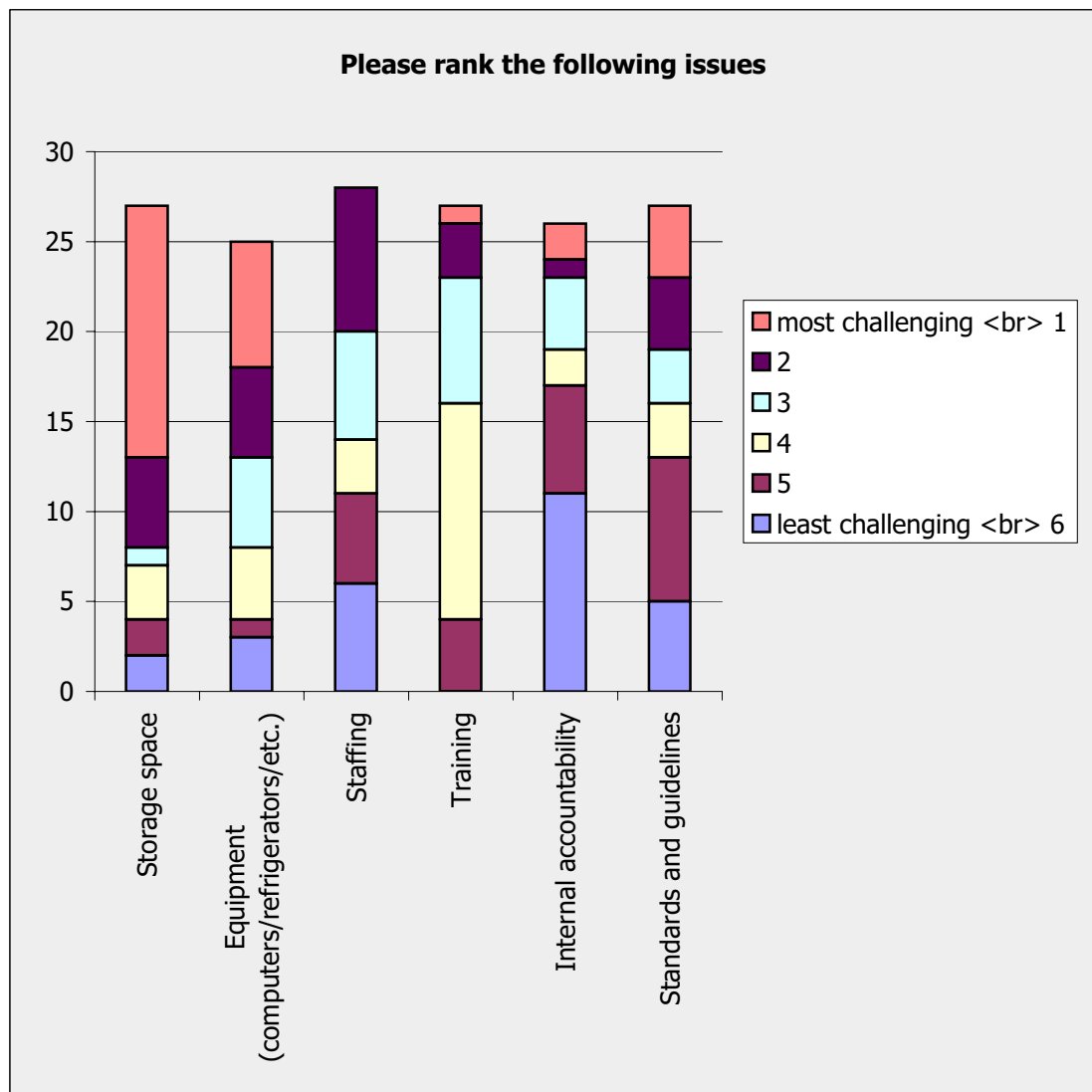
Please choose which of the following options best represents your agency's opinion in the following area: Funding for preservation and storage of biological evidence in felony criminal cases should be:



Legislative Survey on Preservation of Biological Evidence

Please rank the following issues by what is most challenging to your agency and least challenging to your agency with 1 being the most challenging and 6 being the least challenging with respect to the storage and preservation of biological evidence (you may not use the same rank twice):

Answer Options	most challenging 1	2	3	4	5	least challenging 6	Response Count
Storage space	14	5	1	3	2	2	27
Equipment (computers/refrigerators/etc.)	7	5	5	4	1	3	25
Staffing	0	8	6	3	5	6	28
Training	1	3	7	12	4	0	27
Internal accountability	2	1	4	2	6	11	26
Standards and guidelines	4	4	3	3	8	5	27
answered question							28
skipped question							0



Legislative Survey on Preservation of Biological Evidence

OPTIONAL: What additional comments, if any, would you like to offer to the Law and Justice Interim Committee as it examines state and local policy on the preservation and storage of biological evidence in felony criminal cases?

Answer Options	Response Count
	7
<i>answered question</i>	7
<i>skipped question</i>	21

Number Response Text

- 1 #27-Our agency feels that evidence preservation should be the financial responsibility of the agency until a conviction or statute of limitations is met. If any further retention of evidence is desired by the state, then that financial and storage responsibility should fall on the state.
- 2 Work on clear cut guidelines for the retention of biological items. Clear guidelines of what needs to be retained and what can be disposed of.
- 3 LJIC needs to take a serious look at the funding issue that is associated with this new law and consider an alternate storage site i.e. State Crime Lab and possibly fund the lab for the storage of this type of evidence.
Use the common sense/expertise of the people in this field. This area is very difficult to understand from the outside looking in. There are not many agencies in the state of Montana that have this level of expertise. We know of approx 8 agencies that utilize full time staffed evidence tech personnel. Most other agencies use existing personnel with this as a collateral duty.
- 5 If preservation and storage of biological evidence becomes a state mandate, the state ought to provide funding for the added expenses
- 6 Our only experience with biological evidence is when we have sent it to the crime lab, then we get the results of the tests.
- 7 I am a one person police department who's office is less than 60 square feet. I have no additional storage facility. I have no funds for an additional storage facility. The state needs to recognize they have far more departments like mine than big city and county departments. The small PD's are in desperate need of state assistance when it comes to evidence, handling and storage if we are going to do a quality job.