

Montana Code Annotated 2009

46-21-111. Preservation and disposal of scientific identification evidence

obtained in criminal proceeding. (1) The state shall preserve scientific identification evidence that the state has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The state 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.

(2) The state may propose to dispose of scientific identification evidence before the expiration of the time period described in subsection (1) if the state notifies the convicted person and any attorney of record for the convicted person. The notification must include a description of the scientific identification evidence, a statement that the state 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 that 120-day period, the state 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.

(3) If a party objects to the disposition of the scientific identification evidence, the state has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.