



# CHAIN OF CUSTODY

Chain of custody refers to the preservation of evidence from the time it is collected in the field to when it is presented in court. In a stable, non-conflict setting, what typically happens after a crime occurs is that the police enter a crime scene, collect forensic or documentary evidence using gloves, put the evidence in bags, tag the bags, and store the bags in a secure locker at the police station. Anytime anyone wants to view the evidence, it must be checked out and checked back in to the lockers. The purpose of this process is to ensure that the evidence is always accounted for and no one is given the opportunity to manipulate or destroy information that could be used in a trial. If there is any indication that the evidence has been altered while in police custody, the defense lawyers could motion to have the evidence dismissed, diminishing the prosecutor's case.

## Why is Chain of Custody Important?

Sloppy and incomplete documentation collection may cast doubt on a future case that relies on the documentation as evidence to prove the guilt of a defendant. It is important to view chain of custody as one aspect of the collection and storage process – when chain of custody is incomplete, the documentation as a whole is also incomplete. With proper chain of custody, every person who ever handled the documentation is known and can be called to appear before the court to testify about the handling of the evidence. The fewer people who have handled the documentation, the lower the risk of evidence tampering and the easier it will be for the prosecutor to use the evidence in trial.

## What is Required?

There is no set standard that all courts use. American courts are stricter than European courts and hybrid tribunals have their own standards. What is most important is that your organization develops a standard practice and applies that standard uniformly in all situations and by all staff.

As a general principle, the following information should be included for proper chain of custody documentation:

- Description of the item(s)
- The identity of the person who collected the item(s)
- The time and date at which the item(s) was collected
- The location from which the item(s) was retrieved
- The time, date, and location where the item(s) changed hands and the identity/signatures of the people who released and received the item(s)
- The purpose for the transfer and any other relevant information

Your chain of custody practice is closely linked to your security practices. How do you store documentation after it is collected? If you do not securely lock up the documentation in a safe location only you can access, who else has possible access to the documentation? If others can access the documentation, you need to record who accessed the information, when, and for what purpose to ensure you don't jeopardize your chain of custody.

## Digital vs Physical Evidence

New technologies have complicated traditional chain of custody practices. Digital data requires different considerations than a physical document or bloody weapon. On one hand, digital data contains metadata that can more easily track information and automatically signal when something has been changed. On the other hand, it is also easier to access digital data, and with the right tech knowledge, delete, edit, or fabricate data without anyone knowing. Physical hard drives, phones, and computers can be tagged and locked up like other types of physical data, but there also needs to be a certain level of cyber security in place. All data should be encrypted, password protected, and backed up so that no one can overwrite or rearrange the data without your knowledge. This is especially important if your organization stores data online, even on secure databases.

## Working in a Conflict Setting?

Throughout the evidence collection process, it is important to be realistic. You are working in a conflict setting. An iron-clad, uninterrupted chain-of-custody is not always possible. If you were not able to record chain of custody, this does not mean that your evidence will have zero value in court. For example, the International Criminal Tribunal for Yugoslavia (ICTY) ruled that “gaps in the chain of custody are not fatal, provided that the evidence as a whole demonstrates without reasonable doubt that that the piece of evidence concerned is what it purports to be.” (Judgment in Prosecutor v. Orić, 30 June 2006). Do your best given your knowledge of the standards and what is possible in your situation. Even if your documentation is not used in court, it can still be valuable in other justice proceedings that do not have such strict procedural standards, including truth commissions, reparations programs, or memorialization projects.