

## Section 2.8

### Chain of Custody

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#### Questions posed at the Roundtable

This document provides guidance on the following questions posed at the Hearing Officer Roundtable:

- How admissible is a document containing chain of custody if not all the signatories are present?
  - What is the proper chain of custody procedure?
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#### Definition

**Chain of custody** - is technically defined as the movement and location of real evidence from the time it is obtained to the time it is presented in court. In practical terms, a chain of custody is the documentation and testimony that proves that the evidence has not been altered or tampered with in any way since it was obtained. This is necessary both to assure its admissibility in a judicial proceeding and its probative value in any preceding investigation.

“Chain of custody” and “chain of evidence” are often used interchangeably by Department of Pesticide Regulation (DPR) and county agricultural commissioner (CAC) staff; either name is acceptable.

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#### Documenting the chain of custody

The most likely tool CACs will use to document chain of custody is on the reverse side of the Sample Analysis Report, form PR-ENF-030, in a section titled “Custody Record.”

DPR staff credentialed to perform federal inspection activities relating to the Federal Insecticide, Fungicide and Rodenticide Act will use the inspection and/or sampling forms approved in the Cooperative Agreement between the U.S. Environmental Protection Agency and DPR.

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## Chain of Custody, Continued

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### **Handling the evidence**

The necessity to maintain a chain of custody requires documentation of where the evidence was kept, who had access to it, and who actually had possession of the evidence at each point in time. Maintenance of such records as the DPR Chain of Evidence form and the similar DPR laboratory sampling form serve this purpose. Every time a piece of evidence is handled increases the risk that the chain of custody might be “broken,” that is, accurate records may not be maintained, accidental contamination may occur, etc. For this reason, the number of persons handling the evidence from the time it comes into the possession of the CAC or DPR until the ultimate disposition of the case should be kept to a minimum.

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### **Transferring the evidence to another person**

A record must be kept documenting the transfer of evidence from one person to another. It is the responsibility of each person in the chain of custody to ensure that a complete and accurate record is maintained, including:

- The name of the person from whom he/she obtained the evidence;
  - Date and time he/she came into possession of the evidence;
  - What steps were taken to protect the evidence; and, if transferred again,
  - The name of the person to whom it was transferred and the date and time of that transfer.
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### **Protecting physical evidence**

Protecting the physical evidence is important for two reasons:

1. Certain types of evidence are fragile and any failure to exercise due care in its handling could destroy its value as a clue in furtherance of the investigation.
  2. If the evidence is not in the same condition as when it was first obtained near the time of a suspected violation, the evidence may still be used, however, its value as credible evidence to prove the violation can be diminished, e.g., plant foliage that was collected, documented, and preserved, but dessicates and dries out before the hearing.
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### **Reference**

- California Peace Officers Legal Sourcebook
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