

	<b>STANDARD OPERATING PROCEDURE</b> State Form 39870 (R/S-06)	Reference Number <b>LAB-004</b>
	Subject <b>Firearms Disposal</b>	
	Special Instructions Replaces LAB-004 dated January 31, 2018	Effective Date <b>September 13, 2022</b>

## **I. PURPOSE**

Establish guidelines for the disposition of firearms seized as evidence in a criminal matter or pursuant to court order, as well as those firearms that are found, recovered, or held for safe-keeping by Department employees.

## **II. POLICY**

All firearms seized by a Department employee shall be securely held in a properly designated location by the Laboratory Division until ordered to be released or destroyed by the assigned investigating officer, or otherwise ordered for disposal by a court having venue for the cause, all in a manner outlined in this procedure.

## **III. PROCEDURE**

**A. Pre-Trial Disposition** - IC 35-43-4-4 and IC 35-33-5-5 state, in part, that evidence which consists of property obtained unlawfully from its rightful owner may be returned by the Department to its rightful owner before the trial so long as:

1. The prosecutor having venue in the case has not requested the Department to retain the physical evidence.
  - a) All requests to retain such evidence shall be in writing and attached to the case report.
  - b) Notwithstanding this provision, it shall be the duty of the assigned investigating officer to obtain approval from the appropriate prosecutor's office prior to returning items of evidence.
2. In cases where the firearm is owned by the Department or an individual officer, and the item is evidence in a police action incident, the Legal Office shall approve the release.
3. The evidence shall be photographed in such a manner as will serve the purpose of demonstrating its nature, and the photographs shall be maintained in file in lieu of the evidence.

**NOTE:** Photographs demonstrating the nature of the evidence may be admissible as evidence. All other rules of law, governing the admissibility of evidence in general, shall apply to photographs.

4. The assigned investigating officer shall obtain a receipt of the delivery of the firearm to its rightful owner and complete a [Pre-Trial Release of Evidence form \(Stock #40096\)](#) to be maintained along with all other records for the disposition of the firearm, to include copies filed in the case report.

**B. Post-Trial Disposition of Firearms** - Upon obtaining a final disposition of the cause at trial level or any other court approved final disposition agreement:

1. Firearms shall be immediately returned to the rightful owner, if known, by the assigned investigating officer following the release procedure in Section D (IC 35-47-3-2(b)).
2. If the rightful owner is unable to possess the firearm because of a criminal conviction or other prohibition under Indiana or federal law, the owner must provide a court order or a notarized affidavit directing the transfer of ownership to another party who may lawfully possess the firearm.
3. If the rightful owner has been convicted for the misuse of the firearm, the court may provide for the return of the firearm, or order it delivered at once to the sheriff's department of the county in which the offense occurred or the law enforcement agency that confiscated the firearm (IC 35-47-3-2(b)(1) and (b)(2)).
4. If the rightful owner is not prohibited under Indiana law but is otherwise unable to legally possess the firearm, the assigned investigating officer shall request a notarized letter from the rightful owner or a court order, providing authority for another party to take custody of the firearm. The release procedure in Section D shall be followed.
5. If ownership is unknown, the assigned investigating officer shall make a reasonable attempt to ascertain the ownership of the firearm for proper return.
  - a) Should the ownership be ascertained, a certified letter shall be sent by the assigned investigating officer to the last known address of the owner with notification of the firearm release and a copy shall be provided to the applicable Laboratory Division's property officer and included as an attachment to the case report.
  - b) If the owner cannot be ascertained or contacted by reasonable efforts, the firearm shall be considered abandoned and disposed of according to the procedure in Section C.
  - c) All attempts at contact shall be documented by the assigned investigating officer in the associated case report.
6. In cases where the firearm is owned by the Department or an individual officer, and is involved in a police action incident, the Legal Office shall approve the release.

**C. Lost or Abandoned Firearms Disposition / Firearms for State Auction or Sale -**

Firearms that come into the custody of the Department by virtue of being lost or abandoned shall be disposed of pursuant to IC 35-47-3-2(c) and (d).

1. After 180 days since the Department received the firearm, when all reasonable attempts to locate the rightful owner have failed or the rightful owner has been convicted of an offense related to the misuse of a firearm, and there is no court order to return the firearm to the rightful owner or transfer of ownership, the firearm shall be disposed of in accordance with this section.
2. Methods of disposition shall include the following:

- a) Public auction;
- b) Sale to a licensed firearms dealer;
- c) Sale or transfer to another law enforcement agency;
- d) Release to the Laboratory Division's Reference Collection upon approval of the Forensic Firearms Identification Unit Supervisor; or
- e) Destruction of the firearm.

3. Firearms identified for auction, sale, or destruction shall be verified by the assigned investigating officer as not reported stolen through the National Crime Information Center (NCIC) prior to requesting disposition by the property officer.

4. For a firearm identified for auction or sale, the assigned investigating officer shall:

- a) Provide a copy of the approved case report supplement, inclusive of the NCIC stolen check, to the property officer indicating the final disposition as auction or sale; and
- b) Verify the firearm possesses a proper serial number prior to transmittal by the property officer to the Quartermaster Section.

**D. Release of Firearms** - If a firearm is to be released to an individual:

1. The assigned investigating officer shall provide Dispatch with the name and identifiers of the person to whom the firearm is being released to, the case number, as well as the serial number, make, and caliber of the firearm being released; and

a) Dispatch shall complete a Gun Query to determine if the firearm is entered into the NCIC Gun File; and

b) Dispatch shall complete a National Instant Criminal Background Check System (NICS) Records Query on the person picking up the firearm (this runs a Criminal History Query automatically); and

c) Dispatch shall complete a Criminal Record Request Query if NICS Records Query indicates the person picking up the firearm has a Federal Bureau Investigation (FBI) number.

d) The assigned investigating officer shall provide the current documentation to the property officer affirming the firearm is not reported as stolen and the person picking up the firearm is eligible to possess the firearm, all of which shall be included as an attachment to the case report.

2. The assigned investigating officer shall make all necessary arrangements with the property officer and the rightful owner or assignee for scheduling the release.

**E. Firearms Seized from Dangerous Persons (IC 35-47-14)** - Firearms seized from a dangerous person pursuant to a warrant or retention order shall be stored by the Laboratory Division until further order of the court.

1. If at least five (5) years have passed since the seizure/retention of the firearm, a court may order the firearm disposed under IC 35-47-3-2 and IC 35-47-14-9 as required in Section B.
2. If the court, at any time, orders the firearm sold, the assigned investigating officer shall immediately cause the firearm to be processed for auction or sale under IC 35-47-3-2 as required in Section C (IC 35-47-14-10 (c) and (d)).
3. If the court orders the transfer of the firearm to a responsible third party, the assigned investigating officer shall immediately cause the firearm to be released to that person according to the procedure outlined in Section D (IC 35-47-14-10(a) and (b)).

**F. Firearms Held for Safekeeping** - Firearms held for safekeeping shall be submitted to the Laboratory Division following the procedures in SOP-LAB-001.

1. It is the responsibility of the assigned investigating officer to ensure these firearms are returned to the rightful owner as soon as is practical after submission as required in Section D.
2. Firearms, ammunition, and other deadly weapons held in connection with a domestic or family violence situation shall be stored during the pendency of the proceeding related to that event. If no charges are filed, the item(s) shall be returned as soon as is practical (IC 35-33-1-1.5) as required in Section D.

**G.** This procedure is to be used in conjunction with all relevant Department regulations, rules, policies, and procedures.