

	<b>STANDARD OPERATING PROCEDURE</b> <small>State Form 39870 ( R/ S- 06 )</small>	Reference Number <b>LAB-002</b>
	Subject <b>Evidence and Property Disposal</b>	
	Special Instructions Replaces LAB-002 dated November 27, 2023	Effective Date <b>October 11, 2024</b>

## **I. PURPOSE**

Establishes guidelines for the disposition of evidence seized in furtherance of a criminal matter, as well as for property that is held for safe keeping.

## **II. POLICY**

All seized evidence and held property shall be securely stored in a properly designated location until ordered released or destroyed as outlined in this procedure\*.

**\*NOTE:** Exempted from the guidelines in this Standard Operating Procedure are firearms (refer to LAB-004 “Firearms Disposal”), chemical waste products associated with the clandestine manufacture of controlled substances (refer to [INV-023](#)), and disposal of explosives or related materials (refer to [SOC-011](#)).

## **III. DEFINITIONS**

A. EVIDENCE – Items seized in furtherance of a criminal investigation. This term includes items seized under a warrant or as an exception to the warrant requirement.

B. PROPERTY OFFICER – shall (for the purposes of this procedure) include Crime Scene Investigators (CSI), Laboratory Evidence Specialists, District Evidence Specialists, Laboratory CSI Supervisors, Laboratory Managers, or other laboratory personnel as designated by the Laboratory Division Commander having the necessary permissions to manage items of evidence.

C. HELD PROPERTY – property that is found, recovered, stored, or otherwise retained for safe keeping, or other official department purposes, and is not evidence related to or seized as part of a criminal investigation.

## **IV. PROCEDURE**

A. Disposition of Evidence:

1. It is the responsibility of the investigating officer to ensure that all evidence seized is properly disposed of upon completion of their investigation and any associated criminal cause. Disposition should be completed as soon as practicable at the conclusion of the criminal cause.
2. The return of items seized under a warrant shall only be completed in accordance with this policy as outlined below.
3. **No Cause Filed:** If evidence was seized as part of an investigation and no criminal cause

of action is filed, it shall be disposed as follows:

a. If seized under a warrant, the officer shall request that the prosecutor seek an order from the court that issued the warrant to dispose of the property.

i. If an order is obtained, the evidence shall be disposed of in accordance with the order.

ii. However, if no order is issued by a court, evidence shall be disposed of as follows:

(1) Evidence, the possession of which is unlawful, may be destroyed by the Department 60 days after the no file decision is issued by the prosecutor.

(2) Evidence which may be lawfully possessed:

(a) Shall be returned to its rightful owner, if known, by the assigned investigating officer without unnecessary delay;

(b) Property that may be lawfully possessed, but is contaminated, soiled, or otherwise may present a biohazard shall be destroyed as outlined in IV. F.

4. **Pre-Trial:** IC 35-33-5-5(b) and IC 35-43-4-4(h) provide that property held by the Department seized as evidence for which another person had exerted unauthorized control (i.e. theft or similar crimes) may be returned to the lawful owner prior to trial if:

a. The property may be lawfully possessed;

b. The prosecutor having venue in the case has not requested the Department to retain the physical evidence;\*

c. 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 accordance with [LAB-008](#); and

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

\*NOTE- The investigating officer shall obtain approval from the appropriate prosecutor's office prior to returning items of evidence.

5. **Post-Trial:** Upon conclusion of the criminal cause, to include any appeals:

a. Items of evidence that were admitted into a cause **shall only** be disposed of in accordance with an order of the court trying the cause. The following provisions do not apply for evidence entered into a court record.

b. The assigned investigator shall request from the prosecutor an evidence disposition order for every case. Evidence shall be disposed of in accordance with any court order.

c. However, if no order is issued by a court, evidence shall be disposed of as follows:

i. Evidence, the possession of which is unlawful, may be destroyed by the Department 60 days after final disposition of the cause as required by IC 35-33-5-5(c)(2) following the procedures IV. F.

ii. Evidence which may be lawfully possessed:

(a) Shall be returned to its rightful owner, if known, by the assigned investigating officer without unnecessary delay;

(b) Property that may be lawfully possessed, but is contaminated, soiled, or otherwise may present a biohazard shall be destroyed as outlined in IV. F.

(c) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the item and an adequate description of the item must be obtained before disposing of it. In the event of a retrial of any cause following an appeal, the photograph and description of the item may be admissible into evidence in place of the actual physical evidence. All other rules of law, however, governing the admissibility of evidence in general shall apply to the photographs.

**6. DNA Evidence for Violent Offenses:** IC 35-33-5-5 provides for preservation and disposal of Biological/DNA evidence. The following requirements shall be followed:

a. All evidence for a violent offense (as defined in IC 11-12-3.7-6) that could be subjected to DNA testing and analysis shall be preserved for the later of the following:

i. Twenty (20) years from the date the defendant's conviction becomes final, or

ii. The period of the defendant's incarceration.

b. In cases where an investigation did not result in a conviction, the evidence shall be preserved until the expiration of the statute of limitations for the alleged offense.

c. When evidence is to be disposed under this subsection, the assigned investigating officer, in consultation with Laboratory Division personnel, shall do the following:

i. Maintain a record of the preserved evidence.

ii. Schedule a disposal date for the preserved evidence.

iii. Provide notice to the last known address of the defendant and the defendant's attorney of the following:

- (1) When the preserved evidence is to be removed from its secure location; or
- (2) The date the preserved evidence has been marked for disposal.

iv. Notice under this section shall be in writing by means of certified mail sent by the assigned investigating officer who shall document the mailings in a supplemental case report with copies of the letters also provided to the applicable property officer.

- (1) If no response is received within 90 days, the preserved evidence may be disposed.
  - (2) If a response by the defendant and/or the defendant's attorney is received prior to 90 days from the date of the certified mailings asking or directing for continued preservation or to perform additional testing and analysis, the assigned investigating officer shall contact the Legal Office for guidance and inform the applicable property officer to not dispose of the item(s), all of which shall be documented in a supplemental case report with an approved copy provided to the property officer.
- v. Updates to the address of the defendant or the defendant's attorney shall be recorded in supplemental case report(s) by the assigned investigating officer.

#### **7. Biological Items in Laboratory Analysis:**

If extractions and sub-items used in laboratory analysis exist, they shall be maintained in an approved evidence storage location and shall be disposed of in the same manner as the parent item.

#### **B. Disposition of Held Property**

1. Held property shall be returned to its rightful owner, if known, by the assigned investigating officer without unnecessary delay.
2. If ownership is unknown, the assigned investigating officer shall make a reasonable attempt to ascertain the ownership of the item for proper return.
3. Should the ownership be ascertained, a certified letter shall be sent by the assigned investigating officer to the last known address giving notification of the evidence release, and a copy of the letter shall be provided to the applicable property officer and included as an attachment to the incident report.
4. If after 90 days from the time the rightful owner has been notified to take possession and has not obtained the item, the item shall be considered as unclaimed property and may be disposed of under [FSS-002 Unclaimed Property, Disposition of](#).
5. If the owner cannot be ascertained or contacted by reasonable efforts, the items shall be considered abandoned and disposed of according with [FSS-002 Unclaimed Property, Disposition of](#), and all attempts at contact shall be documented by the assigned investigating officer in the

associated incident report.

**C. Records for Disposition of Evidence or Held Property:** In order to adhere to the time periods established for the disposition of evidence, the applicable property officer shall maintain an electronic Officer's Evidence Log for all evidence and held property submitted by an officer to the applicable District or Regional Laboratory.

1. The District property officer shall notify all officers having evidence items in storage, by means of the Officer's Evidence Log, by no later than the end of the first quarter of each year for the purpose of obtaining and documenting the disposition actions for the items in storage.
2. The assigned officer shall be responsible for reviewing the various statutes and determining proper dispositions for each item in storage.
3. The officers shall respond within 30 days of the request by completing and returning the Officer's Evidence Log to the property officer, along with a copy of an approved supplemental incident report for each associated incident noted on the log documenting appropriate actions for disposition of each item.
4. The approved supplemental incident report must include information instructing the property officer which items are to be sold at auction or sale, destroyed, and which items are to be released, and to whom.
5. For items to be released, the owner or a receiving third party shall be instructed by the assigned investigating officer to call the property officer so that a mutually agreeable time to release the items can be arranged. The property officer shall be made aware of these contacts by the assigned investigating officer, in person or by email, to properly prepare for the release of the items. The investigating officer or designated officer shall be present for the release of all evidence or held property.
6. Whenever an assigned investigating officer leaves the agency due to resignation, retirement, disability, termination, etc., and evidence is still being held on that Officer's Evidence Log, it shall be the responsibility of the applicable Commander to reassign that officer's cases to another officer to ensure proper disposition of the evidence. The Commander shall also advise the District Property Officer to whom the cases are reassigned in order to facilitate appropriate entries on the newly assigned officer's Officer's Evidence Log, and to also facilitate the appropriate edits of the records for the officer who is no longer assigned to those cases.
7. Department personnel disposing of evidence in any manner shall sign and maintain records of any such disposition on the PRR form. All property receipts shall be processed and maintained according to [LAB-001 PRR Evidence Submission](#).

**D. State Auction Disposition Documentation:** When a property disposition is required for inclusion at a state auction, in accordance with IC 35-33-5-5, the property officer shall prepare a list of the items to be sold at the discretion of the Quartermaster Section.

1. The list shall include the following information:

a. The incident report number;

b. The item number(s); and

c. A brief description of each item to be sold.

2. The Quartermaster representative receiving the items for inclusion in a state auction shall sign as having received the items and shall be provided the original list. A copy of the list shall be maintained by the property officer, and the associated PRR form and Laboratory Information Management System (LIMS) entries shall indicate the items were transferred to state auction.

#### **E. Property Which May Be Destroyed and Required Documentation**

1. Certain property may not be suitable for public auction. As such, the following items may be destroyed:

a. Items that are reasonably determined to be of a value less than the administrative cost to auction the item.

b. Items, if sold, may result in a violation of federal copyright laws.

c. Personal items such as clothing, footwear, headgear, etc., which may be soiled or otherwise contaminated.

d. Items that present a biohazard or health hazard.

2. Property shall be destroyed in a safe, reasonable, and efficient manner.

3. Destruction of property by a Department employee shall be witnessed by another Department employee, documented on the property record receipt, and recorded in LIMS. Prior to destruction, both employees who take part in the destruction shall confirm the incident number, item number, and authorization for destruction for the item(s) to be destroyed. A photographic record shall be made of all items that are destroyed.

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