

	STANDARD OPERATING PROCEDURE State Form 39870 (R/S-06)	Reference Number LAB-002
	Subject Evidence and Property Disposal	
	Special Instructions Replaces LAB-002 dated August 28, 2018	Effective Date September 13, 2022

I. PURPOSE

Establishes guidelines for the disposition of evidence seized in furtherance of a criminal matter, as well as for property that is found, recovered, or held for safe keeping that is not in furtherance of a criminal matter.

II. POLICY

All seized evidence and recovered property shall be securely held in a properly designated location until ordered released or destroyed by the assigned investigating officer, or otherwise ordered for disposal by a court having venue for the cause in a criminal matter, all in a manner outlined in this procedure.

NOTE: Exempted from the guidelines in this Standard Operating Procedure are firearms (refer to SOP LAB-004 “Firearms Disposal”) and chemical waste products associated with the clandestine manufacture of controlled substances (refer to SOP INV-023 “Methamphetamine Suppression Section - Clandestine Lab Team”).

III. DEFINITIONS

A. “**Evidence**” – shall (for the purposes of this procedure) be inclusive of both items seized in furtherance of a criminal matter, as well as found, recovered, or safe keeping of items of property not in furtherance of a criminal matter.

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.

IV. PROCEDURE

A. **Pre-Trial Disposition:** IC 35-43-4-4 and IC 35-33-5-5 state, in part, 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 items 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. 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.

3. 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 case report.

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

1. Evidence which may be lawfully possessed 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.

a. 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 case report.

b. If the owner cannot be ascertained or contacted by reasonable efforts, the items shall be considered abandoned and disposed of according to the procedure in Section C, and all attempts at contact shall be documented by the assigned investigating officer in the associated case report.

3. 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 SOP FSS-002 "Unclaimed Property, Disposition of".

4. 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), and it shall be the responsibility of the assigned investigating officer to formally document the destruction authority and request to the property officer in an approved supplemental case report.

a. If any such item was admitted into evidence in the court having cause, the disposition of the item shall be based upon an order of the court having venue of the cause.

b. The assigned investigating officer shall obtain a court order in these cases for disposition and shall formally document the destruction authority and request with the court order to the property officer in an approved supplemental case report.

5. 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.

C. **Lost, Abandoned, or Stolen Property:** Such items that come into the custody of the Department shall be disposed of pursuant to IC 10-11-5 *et seq*, which permits the items to be sold at a state auction after proper notice and a six-month waiting period, but only if the true owner cannot be found.

D. **Disposition of Property Seized Under Warrant:** Department employees executing search warrants who seize or recover evidence or items described therein shall:

1. Make a return on the warrant directed to the court or judge who issued the warrant. This return must identify the officer(s) serving the order, indicate the date and time the order was served, and shall include a complete listing of the items seized or recovered; and
2. Shall properly secure the items seized or recovered after executing the search warrant under order of the court trying the cause in accordance with SOP LAB-001 “Evidence Submission Requirements—Use of the Property Record and Receipt Form” (PRR); and
3. Shall only release or otherwise dispose of the seized or recovered items according to law and in a manner as outlined in this procedure; and
4. The assigned investigating officer shall formally document the execution and items seized or recovered associated with the service of a search warrant in an approved case report.

E. **Records of Disposition of 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 seized or recovered evidence 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 Evidence Status Inquiry form, 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 officers shall be responsible for reviewing the various statutes and determining proper dispositions for the items 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 case report for each associated case noted on the log documenting appropriate actions for disposition of all items.

a. The approved supplemental case 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.

b. For all evidence, the assigned investigating officer shall be responsible for determining what action is to be taken and advising the property officer of the action.

4. 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.

5. 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 District, Area, or Division Commander to reassign that officer's cases to another officer so proper disposition of the evidence can be determined. The District, Area, or Division Commander shall also advise the District Property Officer who the cases are reassigned to in order to facilitate appropriate entries on the newly assigned officer's Electronic 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.

6. 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 SOP LAB-001.

7. Destruction of evidence by a Department employee shall be witnessed by another Department employee who shall sign the PRR as a witness. Both employees who take part in the destruction shall confirm the authorization for destruction and the case and item number of the item to be destroyed prior to destruction. A photographic record shall be made of all items that are destroyed.

F. **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 typed list, in duplicate, of the items to be sold at the discretion of the Quartermaster Section.

1. The list shall include the following information:

a. The case report number; and

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 in file by the property officer, and the associated PRR form and Laboratory Information Management System (LIMS) entries shall indicate the items were transferred for a state auction disposition.

G. **DNA Evidence for Violent Offenses:** Effective July 1, 2022, to adhere with amendments made in IC 35-33-5-5 associated with Biological/DNA evidence preservation and disposal, the following requirements shall be followed:

1. 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:

- a. Twenty (20) years from the date the defendant's conviction becomes final, or
- b. The period of the defendant's incarceration.

2. 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.

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

- a. Maintain a record of the preserved evidence.
- b. Schedule a disposal date for the preserved evidence.
- c. 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.

d. Notice under this section shall be in writing by means of certified mail sent by the assigned investigating officer and the officer 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 in accordance with the certified mail.

(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.

e. 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.

H. **Biological Items in Laboratory Analysis:** There are extractions and sub-items used in laboratory analysis which shall not be disposed of but shall be maintained pursuant to Laboratory Division Policy.

1. The applicable extractions and sub-items used in analysis shall not be disposed of per Laboratory Division Policy but shall be maintained at the Regional Laboratories in an approved designated location until such time as it is practical for the Laboratory Managers to cause those items to be transferred to a Long-Term Evidence Storage Facility for permanent storage.

2. The assigned investigating officer may authorize the disposal of all other biological items; considering the need for a court order, if required.

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