



| | |
|--|-------------------|
| Property & Evidence Management | Related Policies: |
| <i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i> | |
| Applicable Arkansas Statutes A.C.A. § 5-5-101 – 102 A.C.A. 5-5-201 – 204 A.C.A. § 5-5-301 – 306 A.C.A. § 12-12-301 A.C.A. § 5-5-401 – 405 A.C.A. § 12-15-30 A.C.A. § 12-15-301 A.C.A. § 12-12-104 (2012) | |
| CALEA Standard: 84.1.1, 84.1.2; 84.1.3; 84.1.4, 84.1.5; 84.1.6; 84.1.7; 84.1.8 | |
| Date Implemented: | Review Date: |

- I. **Purpose:** The purpose of this policy is to outline the procedure of this department with respect to property, contraband, or evidence that is seized. All property, with the exception of vehicles, will be dealt with under this policy.
- II. **Policy:** It is the policy of this department to provide for the reasonable safekeeping of all property that comes into the possession of this department. With respect to evidentiary items, this department shall maintain a proper chain of custody and secure such items in a manner that will ensure that the evidence is available to be admitted at trial.
- III. **General Provisions Applicable to All Seized Items**
 - A. Members of this department shall only seize items under the following conditions:
 - i. Officer has probable cause to believe that an item is contraband (contraband is an item that by its very nature is illegal to possess (e.g. illegal narcotics).
 - ii. Officer has probable cause, at the moment of seizure, to believe that the item to be seized is stolen.
 - iii. Officer has probable cause, at the moment of seizure, to believe that the item is evidence of a crime.
 - iv. Officer has lawful reason to store items that have come into his possession until returned to rightful owner or otherwise disposed in accordance with Arkansas law.
 - B. The evidence custodian or case officer will return seized items (other than contraband or items maintained as required for evidentiary purposes) to their rightful owner upon satisfactory proof of ownership and after meeting all needs of any potential criminal prosecution.
 - C. When seizing items of value (money/jewelry/precious metals), two officers shall inventory the items at the scene of the seizure, when feasible. The inventory will be documented via a police report, as well as the evidence management system.

- D. In cases where professional expertise is required to make a proper accounting of the property, the Chief of Police or their designee shall be notified so that the services of an expert may be obtained.
- E. Once an item is seized and inventoried, it shall be transported to the police department for processing.
- F. The officer who has seized the property shall complete all appropriate forms/reports.
- G. Items seized shall be properly marked and/or tagged with the report number, date of seizure, description of evidence, arresting officer's name, identification number, and suspect's name where applicable.
- H. The item(s) shall be entered in the evidence management system and stored in temporary evidence/property storage designated by the Chief of Police or their designee. All temporary evidence/property storage will be locked, secured, and function in such a way as to ensure that once seized items have been deposited, only approved evidence custodians will have subsequent access to the items. In cases where the seizing officer is not the reporting officer, the seizing officer may turn over seized items to the reporting officer for temporary evidence/property storage and documentation in the evidence management and report management system. Otherwise, the seizing officer will ensure that all evidence processing is completed and the initial report is supplemented regarding the seizure.
- I. Items secured in temporary evidence/property storage shall remain in this location until the items can be transferred to the permanent evidence/property storage area by assigned evidence custodians.
- J. The Chief of Police or their designee shall designate evidence custodians who shall ensure that all seized items are properly packaged, documented, entered in the evidence management system, and delivered to the permanent evidence/property storage area.
- K. Evidence custodian(s) shall be limited in number. Once approved, the evidence custodian will have sole access to the permanent evidence/property storage area as well as keys, pass cards, combinations, or any other mechanism required for entry. At no time will an evidence custodian permit any person (including the Chief of Police) to have access to any mechanism required to enter the permanent evidence/property storage area. At no time will any member of the department, other than approved evidence custodian(s), be permitted access to the permanent evidence/property storage area unless accompanied by an evidence custodian. Evidence custodians will immediately report any sign of unauthorized or attempted unauthorized entry, missing items, inventory discrepancies, violations of this policy, or any other matter of concern regarding the storage of seized items to the Chief of Police or their designee.
- L. If any discrepancies are discovered between items listed on the property form and the items being delivered to the permanent evidence/property storage area, the evidence custodian shall ensure that all issues are resolved. In the event an issue cannot be resolved, the evidence custodian shall report this discrepancy, in writing, to the Chief of Police or their designee.

- M.** In cases where a discrepancy has been reported, the Chief of Police or their designee shall cause an immediate investigation to resolve the discrepancy at issue.
- N.** Evidence custodians will ensure that appropriate entries are made to the evidence management system for all movements of seized items (i.e. court, crime labs, prosecutors review, etc) until such items are destroyed, returned to owner, or are otherwise lawfully disposed.
- O.** Any seized item released to the custody of its owner or other approved individual will be documented via a signed property release form and appropriate entries made to the evidence management system and/or report management system. Items returned should be particularly described including the status of their condition. The receiver will sign affirming the receipt and condition of items.
- P.** All firearms seized by this department that are no longer necessary for evidentiary purposes and are not returned to a rightful owner following a criminal history check, shall be disposed of in accordance with Arkansas Law.
- Q.** No items in the custody of this department will be disposed of in any manner contrary to law.
- R.** Evidence custodians should consider photographing seized items returned to owners or other approved individuals when there is a potential for disagreement regarding the state of the items returned.
- S.** The permanent evidence/property storage area will be locked and secured. It is recommended that an alarm and video surveillance system be installed. In addition, narcotics, firearms, monetary items, and other items deemed valuable by the Chief of Police or their designee will be secondarily locked within the permanent evidence/property storage area.
- T.** When evidence custodians are removed from their evidence function and replaced with new personnel, locking mechanisms, used for evidence storage for which only evidence custodians possess access, shall be reprogrammed, rekeyed, and/or replaced.

IV. Special Provisions Regarding Money

- A.** Monetary items may come into the possession of members of this department via confiscation for asset forfeiture, stolen property, found property, safekeeping, etc.
- B.** It is the goal of this department not to store monetary items in evidence/property storage areas unless no alternative to storage exists.
- C.** Monetary items related to asset forfeiture will comply with Arkansas Law concerning funds related to asset forfeiture and will typically provide a procedure for the maintaining of these monetary items that may differ from this policy.
- D.** Stolen monetary items, if possible, will be immediately released to the rightful owner or their designee following photographing and inventorying for police reports. A property release form will be executed particularly describing and accounting for denominations returned.
- E.** In the event monetary items come into the possession of this department and no lawful alternative exists to storage, these items will be handled in accordance with the general procedures for the custody of evidence/property. All monetary items will

be placed in a secondarily locked area of the permanent evidence/property storage area pending lawful disposition.

V. Special Provisions Regarding Narcotics

- A.** Evidentiary narcotics should be field tested when possible. .
- B.** Seized narcotics should be weighed. The drug weight, inclusive of original packaging, as well as a gross weight of drugs and evidence container should be recorded in the description area of the evidence tag.
- C.** The evidence custodian shall ensure that a crime lab submission form is completed and submit evidentiary narcotics to the appropriate laboratory for toxicological examination. A member of the laboratory will sign a receipt for the evidence.
- D.** The evidence custodian shall file the receipt in the appropriate case file and make all appropriate entries into the department's evidence management system.
- E.** Once a toxicology report is received, the evidence custodian and or receiving officer shall notify necessary and appropriate personnel of the results of the report and cause the report to be filed in the appropriate case file.
- F.** The evidence custodian shall be responsible for ensuring that narcotics sent for toxicological testing are returned, properly documented, and stored in the designated area of the permanent evidence/property storage area.
- G.** When large amounts of narcotics are seized and storage is impractical, the Chief of Police or their designee will contact the prosecuting attorney's office for authorization for immediate destruction of a substantial portion of narcotics seized. A representative sample as determined by the prosecuting attorney would be maintained for prosecution purposes. If the prosecuting attorney concurs with the request, a destruction order will be obtained. All evidence to be immediately destroyed will be photographed and otherwise described and documented in official reports.
- H.** Narcotics that are abandoned or turned over to police as articles found are not used as evidence in criminal trials and therefore a toxicology exam is not required.
- I.** Officers who initially take custody of non-evidentiary narcotics must complete an incident (found property) report documenting the facts and circumstances surrounding the seizure. Items obtained will be handled in accordance with the general provisions of this policy
- J.** Non-evidentiary narcotics, in the discretion of the court (order required), may be maintained for lawful purposes (i.e. training or demonstrations). Such items shall be maintained in a secure manner and accessed only by authorized personnel as directed by the Chief of Police or their designee.

VI. Evidence Demanded in Court

- A.** When evidence is needed for court, the officer assigned to the case shall notify the evidence custodian.
- B.** The evidence custodian shall retrieve the evidence requested by the court and provide it to the case officer. All appropriate entries will be made in the evidence management system documenting the transfer of evidence.

- C. When evidence is returned from court, it shall be returned to the evidence custodian who shall complete all appropriate entries in the evidence management system and return the evidence to proper storage.
- D. If the evidence custodian is unavailable, the officer returning from court shall utilize the temporary storage procedures.
- E. In cases where items of evidence are needed for court on several occasions but are not held by the court, officers must follow the above outlined procedure.
- F. In no case will evidence be stored in any other manner than outlined in this policy when held in the custody of this department and its members.
- G. When a case is completed through a trial or plea, the officer handling the case shall notify the evidence custodian of the disposition of the case. The evidence custodian shall verify this disposition with the court so that a determination can be made regarding the continued custody or disposal of the evidence.

VII. Evidence/Property Disposal

- A. Evidence/property disposal will adhere to procedures promulgated by the State of Arkansas and or this policy. Unless other disposition is specifically provided by law, when property seized or held is no longer required to be maintained, it shall be disposed of by the law enforcement department via a court order if applicable as follows:
 - i. Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner;
 - ii. Money shall be restored to the owner unless it was seized under laws pertaining to asset forfeiture. In such cases, money will be forfeited or returned to owner in the event of a negative finding.
 - iii. Contraband shall be destroyed unless they may reasonably be returned to a condition or state in which such goods may be lawfully used, possessed, or distributed by the public. In such a case, the item(s) must be disposed of by court order.
 - iv. Firearms, explosives, ammunition, bombs, and like devices shall be destroyed. Firearms, which may have a lawful use, may be held without destruction and disposed of by way of a court order.
 - v. Animals seized as evidence and are no longer required to be maintained, will be disposed of pursuant to a court order.
 - vi. Any other property shall be disposed of in accord with a court order.
- B. Evidentiary items not required to be maintained following criminal and or appellate process under Arkansas Law, should be returned to owner, destroyed pursuant to a destruction order, or otherwise lawfully disposed under Arkansas Law following the disposition of the criminal case and the statutory time for appeal.
- C. In all subsequent court proceedings following the disposition of the case, all evidence presented at the original proceedings is admissible through introduction of the certified record of the case.
- D. It shall be the responsibility of the evidence custodian to perform periodic reconciliations between evidence/property in the custody of this department and the

disposition of cases. The purpose of this reconciliation is to determine those cases where there is no longer a requirement to maintain evidence/property. Reconciliation is recommended to occur on a monthly basis, but is required semi-annually. Items that are no longer have a requirement to be maintained will be disposed of in accordance with Arkansas Law and this policy.

- E. Destruction orders, when required, shall be prepared by the evidence custodian. This destruction order shall include the following information: PD case number, court case number; name of defendant; disposition of the case; description of evidence/property; and affiant information.
- F. Destruction orders will be reviewed by the Chief of Police or their designee who will verify the dispositions of the case and compliance with evidence procedures. Orders will be forwarded to the appropriate prosecuting officer for review and concurrence with destruction.
- G. If it is determined that the destruction order does not meet the criteria set forth in this policy, the designated officer shall direct the individuals responsible for compliance on what is necessary to correct the deficiencies. No evidence/property will be destroyed before there is complete compliance with destruction order procedures when such an order is required.
- H. Following approval of the destruction order by this department and the Prosecuting Attorney, the order will be presented to a judicial officer for authorization to destroy.
- I. Following judicial approval, evidence/property will be destroyed in accordance with the procedure set forth by the State of Arkansas and the procedures outlined in this policy. Evidence custodians in charge of the physical destruction will ensure that the date, time, and location of destruction as well as a minimum of two (2) witnesses to the destruction are entered in the evidence management system and or attached to the destruction order.

VIII. Arkansas Statute Regarding Physical Evidence in Sex or Violent Offense Prosecutions, Retention and Disposition

- A. Per ACA 12-12-104, in a prosecution for a sex offense or a violent offense, the law enforcement agency shall preserve, subject to a continuous chain of custody, any physical evidence secured in relation to a trial and sufficient official documentation to locate that evidence. **After a trial resulting in conviction, the evidence shall be impounded and securely retained by a law enforcement agency. Retention shall be the greater of:**
 - (A) Permanent following any conviction for a violent offense;
 - (B) For twenty-five (25) years following any conviction for a sex offense; and
 - (C) For seven (7) years following any conviction, for any other felony for which the defendant's genetic profile may be taken by a law enforcement agency and submitted for comparison to the State DNA Data Base for unsolved offenses.
- B. After a conviction is entered, the prosecuting attorney or law enforcement agency having custody of the evidence may petition the court with notice to the defendant for entry of an order allowing disposition of the evidence if, after a hearing and a reasonable period of time in which to respond, the court determines by a preponderance of the evidence that:
 - (A) The evidence has no significant value for forensic analysis and must be returned to its rightful owner; or

- (B) The evidence has no significant value for forensic analysis and is of a size, bulk, or physical character not usually retained by the law enforcement agency and cannot practicably be retained by the agency.
- C. The court may order the disposition of the evidence if the defendant is allowed the opportunity to take reasonable measures to remove or preserve portions of the evidence in question for future testing.
- D. It is unlawful for any person to purposely fail to comply with the provisions of this section. A person who violates this section is guilty of a Class A misdemeanor. As used in this section:
- i. "Law enforcement agency" means any police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal laws, traffic laws, or highway laws of this state;
 - ii. "Sex offense" means:
 - (a) Rape, § 5-14-103;
 - (b) Sexual indecency with a child, § 5-14-110;
 - (c) Sexual assault in the first degree, § 5-14-124;
 - (d) Sexual assault in the second degree, § 5-14-125;
 - (e) Sexual assault in the third degree, § 5-14-126;
 - (f) Sexual assault in the fourth degree, § 5-14-127;
 - (g) Incest, § 5-26-202;
 - (h) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
 - (i) Transportation of minors for prohibited sexual conduct, § 5-27-305;
 - (j) Employing or consenting to use of child in sexual performance, § 5-27-402;
 - (k) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
 - (l) Computer child pornography, § 5-27-603;
 - (m) Computer exploitation of a child in the first degree, § 5-27-605(a);
 - (n) Promoting prostitution in the first degree, § 5-70-104;
 - (o) Stalking, § 5-71-229;
 - (p) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (f)(2); or
 - (q) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (f)(2); and
 - iii. "Violent offense" means:
 - (a) Capital murder, § 5-10-101, murder in the first degree, § 5-10-102, or murder in the second degree, § 5-10-103;
 - (b) Manslaughter, § 5-10-104;
 - (c) Kidnapping, § 5-11-102;
 - (d) False imprisonment in the first degree, § 5-11-103;
 - (e) Permanent detention or restraint, § 5-11-106;
 - (f) Robbery, § 5-12-102;
 - (g) Aggravated robbery, § 5-12-103;
 - (h) Battery in the first degree, § 5-13-201;
 - (i) Battery in the second degree, § 5-13-202;
 - (j) Aggravated assault, § 5-13-204;
 - (k) Terroristic threatening in the first degree, § 5-13-301;

- (l) Domestic battering in the first degree, § 5-26-303, domestic battering in the second degree, § 5-26-304, and domestic battering in the third degree, § 5-26-305;
- (m) Aggravated assault on family or household member, § 5-26-306;
- (n) Engaging in a continuing criminal gang, organization, or enterprise, § 5-74-104;
- (o) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (f)(3); or a violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (f)(3).

IX. Firearms

- A.** All firearms seized for evidentiary purpose pursuant to a criminal offense should be submitted to the appropriate crime laboratory for forensic testing of the weapon and entry in the National Integrated Ballistic Information Network (NIBIN) . Once the testing has been completed, the firearm will be returned to the submitting officer. The chain of custody shall be properly documented and the weapon logged in and out of the evidence storage area.
- B.** All firearms should be stored with some type of protective covering (i.e. a gun box designed and manufactured for this purpose or some type of brown paper wrapping). Gun boxes are preferred over the wrapping. With DNA always an issue in criminal cases and the likelihood it could exist on a firearm, protection of that evidence should always be a consideration of Long guns, rifles and shotguns pose a storage problem due to their size. Long gun boxes are the recommended method of storage.
- C.** Safety procedures should be in place and require that any weapon seized by an officer is made “safe” and “inoperable,” by physically inspecting the weapon to ensure that the weapon is unloaded, and placing some type of device on the weapon to keep it from functioning as designed (i.e. This may be accomplished using a wire-wrap tie down secured through the breach of a firearm to prevent operation/discharge). These weapons should be placed in an individual gun storage box and sealed. Some means of visibly identifying the weapon as inoperable – “SAFE” would increase safety and ensure policy compliance.
- D.** No firearm held by the Department will be returned to the rightful owner with or without a court order until a criminal history check and other appropriate database checks have been completed to determine if the owner would be in violation of law to possess a firearm. No firearm should ever be returned to the owner who is prohibited from lawful possession. A note that appropriate checks were completed prior to return should be documented in the evidence management system.

X. Arkansas Statute Regarding Unclaimed Seized Property

- A.** Except as provided in subdivision (d)(2) of A.C.A. § 5-5-101 (contraband), unclaimed seized property shall be sold at public auction to be held by the chief law enforcement officer of the county, city, or town law enforcement department that

seized the unclaimed seized property or the chief law enforcement officer's designee.

Disposition of unclaimed property shall be in accordance with A.C.A. § 5-5-101. The proceeds of the sale, less the cost of the sale and any storage charge incurred in preserving the unclaimed seized property, shall be paid into the general fund of the county, city, or town whose law enforcement department performed the seizure.

Unclaimed seized property that is a recreational item may be donated at no cost to a local or state department, a nonprofit organization, or an educational program designed to provide education, assistance, or recreation to children.

A "recreational item" means an item generally used for children's activities and play. "Recreational item" includes without limitation a bicycle but does not include a motor vehicle or motorcycle.

The time and place of sale of seized property shall be advertised:

For at least fourteen (14) days next before the day of sale by posting written notice at the courthouse door; and

By publication in the form of at least two (2) insertions, at least three (3) days apart, before the day of sale in a weekly or daily newspaper published or customarily distributed in the county.

Any seized property to be sold at public sale shall be offered for sale on the day for which it was advertised between 9:00 a.m. and 3:00 p.m., publicly, by auction, and for ready money.

The highest bidder shall be the purchaser.

The proceeds from any sale of seized property shall be delivered to the county, city, or town treasurer, as appropriate, to be held by him or her in a separate account for a period of three (3) months.

XI. Inspections/Audits

A. Inspections of the evidence/property storage areas will be conducted to ensure:

- i.** Storage areas are clean and orderly;
- ii.** Integrity of property is maintained;
- iii.** Provisions of department orders and directives are followed;
- iv.** Property is protected from damage and deterioration;
- v.** Accountability procedures are maintained; and
- vi.** Property having no further evidentiary value is disposed of promptly.

B. Inventories, audits and Inspections will be conducted as follows:

- i.** Semi-annually, the primary property/evidence manager shall conduct an inspection to determine adherence to procedures used for the control of property. This inspection shall be documented via memorandum directed to the Chief of Police.
- ii.** Whenever the primary property manager is assigned and/or transferred from the property and evidence control function, an inventory of all property/evidence

will be conducted to ensure that records are correct and properly annotated. This inventory will be conducted jointly by the newly designated property manager and the outgoing primary property manager or other person as designated by the Chief of Police. This inventory shall be documented via memorandum directed to the Chief of Police.

- iii.** An annual inventory of property will be conducted by a supervisor not routinely or directly connected with property control. The supervisor will be accompanied by an evidence custodian. It is highly recommended that this inventory be inclusive of all property held by the department; however, it may include only a random sample of a sufficient number of property records to ensure proper accountability. This inventory shall be documented via memorandum directed to the Chief of Police or their designee.
- iv.** Annual unannounced inspections and random sample inventories of property storage areas are conducted as directed by the department's Chief of Police or their designee. Unannounced inspections shall be documented via memorandum directed to the Chief of Police or their designee.