

Fennimore Police Department <b>Evidence, Contraband and Recovered Property</b>		
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## PURPOSE

The purpose of this policy is to establish guidelines for the handling of evidence, contraband and any other property which ends up in police possession.

## POLICY

It is the policy of the Fennimore Police Department that any personnel seizing evidence, contraband or recovering property adhere to proper standards for collection, documentation, security and disposal of such items.

## DISCUSSION

Employees often seize property as evidence or contraband while performing their duties. These items are related to the elements of offenses for which arrests are made or citations are issued. They often require special handling to maintain their relevance and legal status for admission in court.

Employees may accept responsibility for the temporary safekeeping of other items, such as recovered property, vehicle keys, personal belongings or miscellaneous property. These items do not constitute evidence or contraband, but should be handled, transported or stored responsibly.

## DEFINITIONS

- **Abandoned Property:** items unclaimed after the item owner was notified by the department and the claim date of at least 30 days past notification has passed.
- **Contraband:** Items that cannot be legally possessed such as illicit drugs, illegal weapons, or other items described in Wis. Stat. § 968.13.
- **Chain of custody:** A record that documents every person that had custody of an item from the time it was collected until its introduction into court.

- **Evidence:** Any item that might be used in court to prove or disprove an issue.
- **Evidence Room:** The secure room utilized for long term storage of evidence as designated by the Chief of Police.
- **Found Property:** Items found that appear to have been accidentally lost or intentionally abandoned and have no evidentiary value.
- **Forfeiture Expenses:** include all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred. Wis. Stats. §§ 961.55(5)(B), 973.075(4).
- **Forfeited Property:** Items which have become the property of the department through court order or other state or federal legal process. Examples include: General Forfeitures Wis. Stat. § 973.075, Drug Related Forfeitures Wis. Stat. § 961.55, Vehicle Identification number violations Wis. Stat. § 342.30(4) and Racketeering Wis. Stat. § 946.86.
- **Safekeeping Property:** Items that end up in an officer's possession that are not evidence or contraband. These are usually items kept for short periods of safekeeping with the intention of returning them to their owner.
- **Temporary Evidence Storage:** A secure location approved by the Chief of Police for the temporary storage of evidence.

## PROCEDURE

Employees seizing or accepting property, evidence or contraband shall be responsible for the proper collection, packaging, labeling, processing and temporary storage of such items. Evidence shall be packaged in a manner consistent with guidelines explained in the Wisconsin Physical Evidence Handbook.

Employees shall establish the chain of custody and maintain security for all contraband or evidence seized until such items are transferred to the Evidence Room. The Chief of Police or his/her designee shall be responsible for all items secured in the Evidence Room.

Evidence, contraband, recovered property, abandoned property and safekeeping property will not be kept anywhere other than department designated lost and found storage areas, the impound room, temporary evidence lockers, refrigerator lock box or the evidence room without permission from a supervisor.

Non-evidentiary or contraband firearms will only be returned after an NCIC check has been completed on the firearm and it has been verified the person receiving the firearms is not prohibited from receiving or possessing a firearm by 18 USC § 922(d) or Wis. Stat. §968.20(1m).

## **EVIDENCE AND CONTRABAND COLLECTION**

Employees must be aware of the extent of their authority to search for and seize items, and the application of the item itself to the elements of the offense, or its status as contraband.

### **Crime Scene Securement**

- Officers should ensure that all non-essential or unauthorized persons are kept outside of the crime scene.
- Officers shall take appropriate steps to protect the crime scene from degradation due to weather conditions, or the intrusion of devices, people, animals, or vehicles.
- Officers will be cognizant not to disturb potential sources of trace evidence such as, but not limited to, fingerprints, tire marks, tool marks and Deoxyribonucleic acid (DNA) evidence. Officers will take precautions against the contamination or destruction of DNA evidence.

### **Documentation**

Employees shall document all recovered, accepted or seized items by associating all items with an incident number from the department records management system.

- Officers will label the item with the incident number, item number, recovered date, description of the item including available serial number(s) and name of the recovering officer.
- Officers will properly seal evidence packages with evidence tape or other tamper resistant materials.
- Officers will inventory all recovered, accepted or seized items in an incident report.
- Officers will prepare an incident report describing the discovery and collection of the items seized.
- Officers seizing items without a search warrant shall give a receipt as soon as practicable to the person from whose possession they are taken, Wis. Stat. § 968.18. This process can be accomplished by mail.

## **Collection, Packaging and Handling of Evidence and Contraband**

- All employees collecting/handling evidence shall take precautions to preserve the integrity of the evidence.
- If possible, photographs will be taken to document the original location and condition of items seized.
- Evidentiary items shall be secured, as applicable, in a container suitable for the item collected and labelled with cautionary statements if necessary (sharps, biohazard, flammable, loaded firearm).
- Collection of firearms shall be performed in a manner that will ensure the safety of involved personnel while maintaining the integrity of the evidence.
- A Chain of Custody document will be started by the officer who seized the item of evidence or contraband and maintained by every department employee associated with the handling of the item.
- An inventory search of all vehicles impounded shall be conducted at the time of the seizure. This search is completed without probable cause or a warrant with intent to protect the department from physical harm and litigation associated with the condition of the vehicle and its contents. All items of value shall be documented, and a warrant shall be obtained to remove items of evidentiary value.

## **STORAGE OF EVIDENCE AND CONTRABAND**

Officers shall immediately secure evidence or contraband in a manner which prohibits other persons from having unsupervised access to the item. All seized items will be secured in the department's Temporary Evidence Storage as soon as possible until it can be transferred to the Evidence Room.

Transporting items to court requires the employee to maintain security until the court accepts responsibility for the item(s). Items not used for court action should be returned to the department for storage or disposal.

## **DISPOSING OF EVIDENCE AND CONTRABAND**

### **Biological material**

Sexual Assault Nurse Examination (S.A.N.E.) kits collected by hospitals from adult victims who desire medical treatment, but do not want law enforcement contacted will not be collected by the department.

These kits are to be sent directly from the hospital to the crime lab for storage. Questions from hospital staff can be referred to the DNA Supervisor at the Wisconsin Crime Laboratory (608) 266-2031. Under these circumstances, adult victims may contact the police department at a later date to make a complaint before the statute of limitations for the offense expires.

S.A.N.E. kits involving felony offenses shall be immediately forwarded to the Wisconsin Crime Laboratory regardless of whether a suspect has been identified or the incident will be prosecuted. The crime lab will be consulted before S.A.N.E. kits involving misdemeanor offenses are submitted.

When the department collects, in a case of alleged or suspected sexual assault, evidence upon which deoxyribonucleic acid analysis can be performed, and the person who committed the alleged or suspected sexual assault has not been identified, the department shall submit the evidence to the Wisconsin Crime Laboratory in a timely manner, Wis. Stat. § 175.405.

- Biological material from a victim collected in connection with a criminal investigation that resulted in a criminal conviction, delinquency adjudication or commitment due to being found not guilty by reason of mental disease, mental defect or a sexually violent person and may reasonably be used to incriminate or exculpate any person for that offense, shall be kept until every person in custody has reached his or her discharge date, Wis. Stat. § 968.205(2).
- The department shall retain biological material in an amount and manner sufficient to develop a deoxyribonucleic acid profile, Wis. Stat. § 968.205(2m)
- The department may destroy evidence which includes biological material before the discharge date mandated above if notification is made as defined in Wis. Stat. § 968.205(3)-(5)

### **Dangerous Weapons**

For the purpose of this section, “crime” includes an act committed by a juvenile or by an adult who is adjudicated incompetent that would have been a crime if the act had been committed by a competent adult. Wis. Stat. § 968.20 (1m)(a)1.

Dangerous weapon means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood; any electric weapon, as defined in Wis. Stat. § 941.295 (1c) (a); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, Wis. Stat. § 939.22(10).

Firearms ordered seized by the court due to an involuntary commitment (past 72 hours) cannot be returned to the owner until the court has canceled the order or otherwise orders the return of the weapons.

A person who is court ordered to surrender their firearms as a result of a domestic abuse injunction must petition the courts for the return of the firearms after the injunction has expired.

Dangerous weapons or ammunition will not be returned to any person who committed a crime involving the use of the dangerous weapon or the ammunition. Dangerous weapons or ammunition may be returned to the rightful owner if the owner had no prior knowledge of and gave no consent to the commission of the crime, Wis. Stats. § 968.20(1m)(b) & (c).

Firearms will not be released until it has been verified the person receiving the firearms is not prohibited from receiving or possessing a firearm by 18 USC § 922(d) or Wis. Stat. §968.20(1m).

The Wisconsin Department of Justice, Crime Information Bureau maintains the Wisconsin Handgun Hotline to assist in interpreting and determining whether a specific act and/or conviction would disqualify a person from possessing a firearm (608-261-8134 or 608-267-2776)

Unclaimed dangerous weapons shall be disposed of in a manner consistent with Wis. Stats. § 968.20(3)(b).

### **Wiretap Recordings**

Any wiretap recordings will be retained for 10 years unless ordered to be destroyed by a judge, Wis. Stats. § 968.30(7).

## **Video, Photographic or Audio Recordings**

For the purpose of this section, “duty related recording” is a video, photograph or audio recording of any interaction between an on-duty officer and non-department member regardless of whether or not the contact is related to the commission of an offense.

Duty related recordings will be kept in some form of digital or physical storage for a period of time designated by city ordinance 3.09, Wis. Stats. § 19.21(4)(b). Regulations of body camera videos is provided by the police department’s Body Cameras policy.

Any video, photograph or audio recording not created by the department, but having evidentiary value, will be stored in digital format, secured with the paper case file or entered as evidence.

Any sexually explicit recordings or photographs of persons under the age of 18 in the possession, custody and control of the department shall remain in the possession, custody and control of a law enforcement agency or a court but shall be made reasonably available to the defense, Wis. Stats. § 971.23(11)(b)

- “Sexually explicit conduct” has the meaning given in Wis. Stats. § 948.01 (7).
- In order to make the items reasonably available to the defense, both a district attorney and defense counsel are to examine sexually explicit recordings or photographs of persons under the age of 18 at a law enforcement or government facility. A member of the department will be present for the examination and any reproduction of the material will be prohibited.
- Copies of sexually explicit recordings or photographs of persons under the age of 18 may be provided to the defense provided a court order has been issued and the order meets the criteria of Wis. Stat. § 971.23(11)(c)2.

## **Asset Forfeiture**

**Under Chapter 973**, the district attorney of the county within which the property was seized or in which the defendant is convicted shall commence the forfeiture action within 30 days after the seizure of the property or the date of conviction, whichever is earlier. Wis. Stat. § 973.076(1)(b) and 961.555(2).

Only vehicles forfeited in actions under Chapter 973 may be retained by the department for official use. All other items must be sold, destroyed or transferred to another agency. If the property is sold, up to 50 percent of the proceeds may be used to pay forfeiture expenses. The remainder shall be deposited in the school fund. If the property forfeited under Chapter 973 is money, all proceeds must go to the school fund., Wis. Stat. § 973.075(4).

Under Chapter 961, the district attorney of the county within which the property was seized shall commence the forfeiture action within 30 days after the seizure of the property, Wis. Stat. § 961.555(2).

All items, other than money, forfeited in actions under Chapter 961 may be retained for department use or sold. If the property is sold, the department may use 50 percent of the amount received for payment of forfeiture expenses and the remainder shall be deposited in the school fund, Wis. Stat. § 961.55(5)(B).

If the property forfeited under Chapter 961 is money, the department may keep 70 percent of the first \$2,000 and 50 percent of any amount seized in excess of \$2,000 to pay forfeiture expenses. The remaining money shall be deposited in the school fund, Wis. Stat. § 961.55(5)(e).

### **Seized Money**

In the absence of an asset forfeiture proceeding initiated by the city or state or a judicial determination that seized money constitutes contraband, seized money will be returned to the original owner when the associated court case is complete.

Money not claimed by the original owner will be handled as unclaimed funds pursuant to Wis. Stat. § 59.66(2). Attorney General's Opinion OAG-10-09

On or before January 10 of every odd-numbered year, the Chief of Police shall file with the Grant County Treasurer a written report under oath detailing the names and last-known addresses of all persons for whom the department holds money which has not been claimed for at least one year along with the amount of the money held. A duplicate report shall also be mailed to the department of financial institutions. Wis. Stat. § 59.66(2)

Upon request from the Grant County Treasurer, the money will be turned over to the Grant County Treasurer's Officer to be handled in a manner consistent with Wis. Stat. § 59.66(2).

Counterfeit US currency should be mailed to the US Secret Service along with a copy of the incident report.

### **All Other Evidence and Contraband**

All other evidence or contraband not described above or for which a final disposition has not already been prescribed may be disposed of after the following has been determined:

- The police department determines no charges will be filed in regard to a violation of Chapter 961 of the Wisconsin Statutes or an equivalent city ordinance.
- The statute of limitations for an uncharged offense has expired. Wis. Stats. § 939.74
- The victim has withdrawn their complaint in writing or other form of documentation.
- The legal owner of the evidence has requested the return of the item and returning the item will not negatively impact the prosecution of the associated crime.
- One year has passed since the completion of all criminal court and/or appeals proceedings.
- A final disposition has been reached regarding municipal ordinance violations.
- An investigation has been completed and no criminal or municipal charges will be filed.

If the legal owner of the item has not taken any formal action to reclaim the item or prevent the disposal of the item, the item will be disposed of in the following manner:

- Return the items to the owner if they are legal to possess and were not used in a manner which violates law or ordinance. Reasonable attempts to contact the owner will be made by mail. Items not retrieved by the owner by the assigned collection date will be treated as abandoned property and disposed of in a manner consistent with city ordinance 3.10.
- Destroy or discard items which are contraband or otherwise illegal to possess. Contraband items which contain value as a training item may be kept by the department for training use.

The final disposition of evidence or contraband shall be recorded in the incident report associated with the collection of the item.

## **SAFEKEEPING PROPERTY**

Employees accepting responsibility for safekeeping property shall make an attempt to return the item to the lawful owner. If the owner cannot be contacted, is not immediately available or cannot be determined, the item will be labeled with a case number and stored with found property.

When an owner does not claim the safekeeping property a notification letter will be sent to the owner's last known address or some other documented form of notification will be made advising the owner the safekeeping property is to be picked up within 90 days. Notification documentation will be made in the incident report associated with the safekeeping property.

Firearms will not be released until it has been verified the person receiving the firearms is not prohibited from receiving or possessing a firearm by 18 USC § 922(d) or Wis. Stat. §968.20(1m).

All safekeeping property not required to be turned over to another agency and not claimed by the original owner within 90 days of notification shall be disposed of as abandoned property in a manner consistent with city ordinance 3.10.

The final disposition of safekeeping property shall be recorded in the incident report associated with the collection of the item(s).

## **FOUND PROPERTY**

Employees accepting responsibility for found property shall make a reasonable attempt to ascertain the rightful owner of the recovered property and return it to them. If the employee is not able to determine the rightful owner of the property, the item will be labeled with an incident number and stored at the police department.

### **Property found by citizen or off duty city employee**

Recovered property found by a citizen or off duty city employee having a value of \$25, but less than \$100, shall be handled in a manner consistent with Wis. Stats. § 170.07. Whether or not the item(s) are stored at the police department or left with the person who found them, the receiving officer shall post a notice of the found item(s) in 2 public places in the city.

Recovered property found by a citizen or off duty city employee having a value of more than \$100 shall be handled in a manner consistent with Wis. Stats. § 170.08. The citizen or off duty city employee is responsible for the notice and appraisal procedures required by Wis. Stats. § 170.08 if they wish to receive the item if it remains unclaimed. If the citizen or off duty city employee does not wish to claim the item or accomplish the necessary notice or appraisal, the item will be left at the police department and shall be treated as if found by an on duty city employee.

In circumstances where the rightful owner of the found property cannot be contacted through mail or the found property owner is unknown or the found property remains unclaimed after 90 days, the Chief of Police may return the item(s) to the person who found it provided the public notice and time requirements of Wis. Stats. § 170.07 and §170.08 have been met.

### **Property found by on duty city employee**

If an official or employee of the city finds property having a value of \$25 or more while acting within the scope of his or her official duties or employment, he or she shall transfer custody of the item(s) to the police department for storage. The receiving officer shall post a notice of the found item(s) in 2 public places in the city. If the item(s) remain unclaimed after 90 days, the item(s) become the property of the city. Wis. Stats. §170.105

### **Disposal of Found Property**

All found property not required to be turned over to another agency or returned to the person who found it shall be disposed of as abandoned property in a manner consistent with city ordinance 3.10. The final disposition of found property shall be recorded in the incident report associated with the collection of the item(s).

### **ABANDONED PROPERTY**

Abandoned property shall be disposed of in a manner consistent with Wis. Stats. § 66.0139 and city ordinance 3.10. To dispose of abandoned property, the Chief of Police may:

- Process the item(s) for public sale
- Donate the item(s) to a charitable organization or non-profit cause
- Retain the item(s) for department or city use
- Dispose of or destroy the item(s)

**DISPUTED CLAIMS TO PROPERTY**

In circumstances where more than one person claims ownership of any item in the department's possession, the items will not be released until one party has obtained a court order or otherwise establishes undisputed right to the item.

**DISCLAIMER**

This policy is for internal use only and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy may form the basis for departmental administrative action, but it is not intended for use in courts of civil or criminal jurisdiction.

/s/ Christopher J. French

09/22/2020

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Christopher J. French  
Chief of Police

Date