



WISCONSIN ASSOCIATION FOR IDENTIFICATION

PROPERTY AND EVIDENCE MANAGEMENT GUIDE

Table of Contents

MISSION STATEMENT.....	5
DISCLAIMER	5
WAI REDISTRIBUTION POLICY.....	5
RESOURCES.....	6
COMMONLY USED CONTACT INFORMATION	7
ACKNOWLEDGEMENTS	8
CURRENT PROPERTY & EVIDENCE COMMITTEE MEMBERS	9
PROPERTY AND EVIDENCE CONTROL	9
RIGHT OF REFUSAL.....	9
DEFINITIONS	10
EVIDENCE	
A. General Evidence	14
1. Initial Receipt	14
2. Storage	14
3. Crime Lab Submittals	14
4. Signing Out Evidence	14
a. Interim Release of Evidence	14
b. Court Release	15
5. Dispositions.....	15
a. Authorized Persons.....	15
b. Determining Disposition/Case Status	16
Exhibit A-1: Time Limits for Prosecution.....	17
Exhibit A-2: Statutes of Limitations Changes for Certain Sexual Abuse Cases	18
Exhibit A-3: Checking CCAP	22
Exhibit A-4: Checking WSCCA	23
c. Processing Dispositions.....	25
B. Biological/DNA/Sexual Assault Evidence	31
1. Initial Receipt	31
a. Supplies	31
b. Packaging Requirements.....	32
c. Updated Process for Sexual Assault Evidence Kit Collection.....	32
2. Storage	32
3. Crime Lab Submittals	33
4. Signing Out Evidence	33
5. Dispositions.....	33
a. Determining Disposition/Case Status	33
b. Processing Dispositions.....	34
C. Currency/Money.....	35
1. Initial Receipt	35
a. Genuine Currency	35
b. Counterfeit Currency	35
2. Storage	35
a. Genuine Currency	35
b. Counterfeit Currency	37
3. Crime Lab Submittals	37
4. Signing Out Evidence	37
5. Disposition	37
a. Determining Disposition/Case Status	37

b. Processing Dispositions.....	37
D. Drugs.....	38
1. Initial Receipt	38
a. Packaging Requirements	38
b. Clandestine Labs	38
2. Storage	39
3. Crime Lab Submittals	39
4. Signing Out Evidence	39
5. Dispositions.....	39
a. Determining Disposition/Case Status	40
b. Processing Dispositions.....	40
Exhibit D-1: Drug Disposal Facilities.....	42
E. Firearms	43
1. Initial Receipt	43
2. Storage	43
3. Crime Lab Submittals	43
4. Signing Out Evidence	44
5. Dispositions.....	44
a. Determining Disposition/Case Status	44
b. Processing Dispositions.....	45
Exhibit E-1: State and Federal Firearms Disqualifiers.....	47
Exhibit E-2: Additional Firearm Disqualification Information.....	48
Exhibit E-3: Sample of Submission Form for Guns for Destruction	49

PROPERTY

A. Found Property/Chattels	51
1. Property Found by Private Citizens with a Value of \$25-\$99	51
2. Property Found by Private Citizens with a Value of \$100 or more	51
3. Disposition of Property Found Private Citizens	51
4. Property Found by Public Employees	52
B. Safekeeping	52
1. General Safekeeping Items	52
2. Firearms Held for Safekeeping.....	53
C. Property Turned in for Destruction.....	54
1. Firearms and Ammunition	54
2. Medications	54
D. Deceased Person’s Property (Coroner/Medical Examiner)	54
E. Inmate Property	54
F. Injunction Firearms	54

APPENDICES

APPENDIX 1: COURT RECORDS RETENTION	58-60
APPENDIX 2: WCASA STATUTES OF LIMITATIONS.....	61-63
APPENDIX 3: FORFEITURE LAW SUMMARY	64-68
APPENDIX 4: SAMPLE DISPUTED PROPERTY LETTER	69-70
APPENDIX 5: SEIZING STOLEN PROPERTY FROM SECONDHAND GOODS STORES FAQ	71-72
APPENDIX 6: SAMPLE CONTRABAND LETTER	73
APPENDIX 7: SAMPLE USED IN THE COMMISSION OF A CRIME LETTER	74
APPENDIX 8: SAMPLE PROPERTY RETURN LETTER	75
APPENDIX 9: SAMPLE REQUEST FORM FOR THE RELEASE OF SUSPECTED PATHOGEN CONTAMINATED PROPERTY	76

APPENDIX 10: SAMPLE DIVERSION OF PROPERTY MEMO 77

APPENDIX 11: SAMPLE ABANDONED PROPERTY ORDINANCE 78

APPENDIX 12: SAMPLE VEHICLE OWNER/LIENHOLDER NOTIFICATION LETTER 79

APPENDIX 13: ABANDONED/UNREGISTERED VEHICLE TRANSFER CERTIFICATE 80

APPENDIX 14: WSCL DNA QUESTIONNAIRE FORM 81

APPENDIX 15: LABORATORIES FOR BLOOD SAMPLE SUBMISSIONS 82

APPENDIX 16: SAMPLE TWO YEAR HOLD LETTER FOR WSLH 83

APPENDIX 17: SAMPLE DNA NOTIFICATION LETTER 84

APPENDIX 18: GUIDE FOR HANDLING MONEY CONSIDERED CONTRABAND 85-86

APPENDIX 19: AG OPINION ON DISPOSITION OF UNCLAIMED CONTRABAND MONEY 87-88

APPENDIX 20: SAMPLE FIREARM RELEASE FORM 89

APPENDIX 21: PROCESSING A BACKGROUND FOR RETURN OF FIREARM 90

APPENDIX 22: SAMPLE FIREARM BACKGROUND CHECKLIST 91

APPENDIX 23: SAMPLE LETTER TO HANDGUN HOTLINE 92

APPENDIX 24: SAMPLE FIREARM DISQUALIFICATION NOTIFICATION LETTER 93

APPENDIX 25: RECEIPT REGARDING THIRD PARTY TRANSFER OF FIREARMS 94-95

APPENDIX 26: AG OPINION ON DISPOSITION OF DANGEROUS WEAPONS/AMMO 96

APPENDIX 27: SAMPLE FOUND PROPERTY CLAIM 97

APPENDIX 28: SAMPLE SEIZED PROPERTY RECEIPT 98

APPENDIX 29: SAMPLE CITIZEN’S REQUEST FOR FIREARM/DANGEROUS WEAPON
DESTRUCTION 99

MISSION STATEMENT

The Wisconsin Association for Identification (WAI) Property & Evidence Management Guide, hereafter referred to as the PEMG, is intended to provide standardized guidelines for Wisconsin property and evidence managers. This guide identifies the responsibility of a property/evidence manager as ensuring the integrity of property and evidence from the initial receipt to the final disposition with the use of a record management system.

DISCLAIMER

Any reference in this document to any person, organization, products, or services related to such person or organization, or any linkages from this document to the website of another party, does not constitute or imply the endorsement, recommendation, or favoring of the WAI or any of its members acting on its behalf.

This document is based upon Wisconsin state statutes, which are hyperlinked within the text, and is intended to be used as a guide. Every effort has been made to be as accurate as possible, but it does not cover every situation. This document also does not constitute legal advice. The guide should be supplemented with individual agency property/evidence management policies, as well as advice from your District Attorney (DA) and agency legal counsel. The information contained in the guide reflects the personal views and opinions of the members of the drafting committee and does not necessarily reflect the official positions or opinions of their employers.

This document also only reflects the law as of the date of its publication and may be superseded or affected by other versions or changes in the law. Updates will occur to this guide as new legislation is enacted, new court decisions are issued, and/or the State Crime Laboratory changes evidence handling procedures.

WAI REDISTRIBUTION POLICY

The WAI grants permission for redistribution and use of this document provided that the following conditions are met:

- 1) Redistributions of documents, or parts of documents, must retain the WAI cover page and the disclaimer.
- 2) Neither the name of WAI nor the names of the contributors may be used to endorse or promote products derived from its documents.
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RESOURCES

Biological Evidence Handling:

“The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers” is a publication that makes recommendations regarding biological evidence collection, examination, tracking, packaging, storing, and disposition. This is a National Institute of Standards and Technology (NIST) publication put together by the Technical Working Group on Biological Evidence Preservation.

<https://nvlpubs.nist.gov/nistpubs/ir/2013/NIST.IR.7928.pdf>

Fentanyl Information:

1) CDC Fentanyl Guidelines

- Overview: <https://www.cdc.gov/niosh/topics/fentanyl/default.html>
- For Emergency Responders: <https://www.cdc.gov/niosh/topics/fentanyl/risk.html>
- Additional Resources: <https://www.cdc.gov/niosh/topics/fentanyl/resources.html>

2) IAPE Fentanyl Resources & Guides

- <http://home.iape.org/evidence-resources/fentanyl-resources-guides.html>
- In addition to the resources available at the above link, the IAPE also has a publication for its members called the EVIDENCE LOG. This publication occasionally features articles related to fentanyl.

3) U.S. Department of Justice – Fentanyl: A Briefing Guide for First Responders

- https://www.iaclea.org/assets/uploads/pdfs/Fentanyl_BriefingGuide_June2017.pdf

4) Policy Considerations:

- Proper personal protective equipment (PPE)
The CDC Emergency Responders link above provides a good table detailing the various levels of recommended protection.
- Availability of Narcan
- Training (Identifying hazards, Use of PPE, Narcan, etc.)
- Safety Measures
- Packaging requirements

International Association for Property & Evidence, Inc. (IAPE):

The IAPE is a resource for law enforcement agencies nationwide. It offers a set of property and evidence standards, training, accreditation, and various documents and publications designed to assist property and evidence personnel with their responsibilities. www.iape.org

Wisconsin Handgun Hotline/Firearms Unit:

Operated by the Crime Information Bureau (CIB). The Wisconsin Handgun Hotline assists in interpreting and determining whether a specific act and/or conviction would disqualify a person from possessing a firearm. (Fax no. 608-264-6200; Phone no. 608-267-2776/nowlanam@doj.state.wi.us)

Wisconsin Physical Evidence Handbook:

The Wisconsin Physical Evidence Handbook <https://wilenet.org/html/crime-lab/physevbook/index.html> outlines the correct procedure for properly collecting and packaging evidence and is published on <https://wilenet.org/>. Future additions may be available for purchase from the Wisconsin Department of Administration, Document Sales Unit, 2310 Darwin Rd, Madison, WI 53704-3108. Prepayment of the books is required, and orders may be completed online at <http://docsales.wi.gov/Home.aspx> or by calling 1-800-DOC-SALE (362-7253). For general information, you may call 608-266-3358.

COMMONLY USED CONTACT INFORMATION

Wisconsin State Crime Laboratories

Madison

Phone (608) 266-2031
Fax (608) 267-1303

Milwaukee

Phone (414) 382-7500
Fax (414) 382-7507

Wausau

Phone (715) 845-8626
Fax (715) 848-5833

Wisconsin State Laboratory of Hygiene

General ?'s: (608) 224-6241
Toxicology: (608) 224-6247
Kit Orders: (608) 224-6257

Wisconsin Handgun Hotline/Firearms Unit

Fax (608) 264-6200

Justice Program Supervisor
Andrew Nowlan
Phone 608-267-2776
nowlanam@doj.state.wi.us

Bureau of Alcohol Tobacco and Firearms (ATF)

Milwaukee II Industry

Operations

Phone (414) 727-6200
Fax (414) 727-6201

Madison I Field Office

Phone (608) 441-5050
Fax (608) 441-5057

FBI Field Offices

Milwaukee Resident Agency

Phone (414) 276-4684

Green Bay Resident Agency:

Phone (920) 432-3868

La Crosse Resident Agency:

Phone (608) 782-6030

Madison Resident Agency:

Phone (608) 833-4600

Wausau Resident Agency:

Phone (715) 842-2666

Eau Claire Resident Agency:

Phone (715) 835-3761
Phone (715) 835-7864

U.S. Attorney General's Office

Eastern District:

Phone (414) 297-1700
Fax (414) 297-1738

Green Bay Branch

Phone (920) 884-1066
Fax (920) 884-2997

Western District:

Phone (608) 264-5158
Fax (608) 264-5054

Bureau of Engraving & Printing

Phone (866) 575-2361
Phone (202) 874-2141
or
(202) 874-2595

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PROPERTY AND EVIDENCE CONTROL

The property and evidence control function should provide for security and control of seized, recovered, and evidentiary property as well as abandoned, lost, or found property in the custody of the law enforcement agency. This is critically important in supporting investigations, in helping to guarantee successful prosecution at criminal/civil trials, in facilitating the timely return of property to its rightful owners, and in establishing the agency's reputation as honest, reputable, and worthy of the public's confidence and trust. It is critical that a law enforcement agency's property and evidence control function develop and maintain strict measures for the receipt, handling, security, and disposition of property.



RIGHT OF REFUSAL

Each law enforcement agency should develop a policy that clearly states that any deviation in packaging methods that do not meet the property or evidence unit's standards will be refused. Packaging methods are based upon the Wisconsin Physical Evidence Handbook and should be clearly defined through the use of an agency specific packaging manual. The Property Room Manager should have the authority to notify the submitting officer through normal channels to correct any issues.

DEFINITIONS

Abandoned or Unclaimed Property:

Non-contraband property that is no longer needed as evidence, or for which the time limitations to hold has expired, and the known owner has been notified by the property/evidence custodian to claim the property but fails to do so.

Adjudication:

Means the entry of a final judgment or order by the circuit court.

Appeal:

A legal proceeding by which a previous legal proceeding is brought before a higher court for the review of a decision made by a lower court.

Authorized Persons:

Persons who are formally and properly empowered to perform specified duties associated with an office.

CCAP (Consolidated Court Automation Program):

The Consolidated Court Automation Program for the State of Wisconsin identifies dispositions of court cases. Website: <https://wcca.wicourts.gov/>

Chain of Custody:

The movement and location of physical evidence from the time it is obtained until the time it is presented in court and/or disposed of.

Chattels:

Chattels are typically movable property (chattels personal, e.g. furniture or cars), but may also be interests in real property (chattels real, e.g. leases). Movable property is considered to be items of personal property that are not freehold land and are not intangible.

Class II Notification:

Class II notices require two insertions at two separate public locations ([Wis. Stat. § 985.07\(2\)](#)). An “insertion” is a legal notice/publication posted for consecutive weeks prior to the event. The placement of a legal notice on a county’s website is not considered legal publication under ([Wis. Stat. § 985.05\(1\)](#)).

Contraband:

Includes all of the following: ([Wis. Stat. § 968.13](#)) lottery tickets; gambling machines or other gambling devices; lewd, obscene, or indecent written matter; pictures; sound recordings or motion picture films; forged money or written instruments and the tools, dies, machines, or materials for making them; and controlled substances or analogs and the implements for smoking or injecting them.

Controlled Substance:

A drug, substance, or immediate precursor included in Schedules I through V under [Chapter 961](#).

Controlled Substance Analog:

A substance with a chemical structure that is substantially similar to the chemical structure of a controlled substance included in Schedule I or II under [Chapter 961](#).

Custody:

The care and control of a thing or person. This can mean physical detention (arrest, incarceration, extended supervision, or under a commitment order) or control or authority over property.

Crime:

A crime is conduct which is prohibited by state law and punishable by fine, imprisonment, or both. Conduct punishable only by a forfeiture is not a crime.

Discovery:

Pretrial discovery and disclosure issues: [Wis. Stat. § 971.23](#)

Discovery and disclosure are solely the responsibility of the DA's Office. Law Enforcement must comply with a DA's discovery request. One copy is sufficient. The DA is responsible for copying and dissemination, which they are allowed to charge a fee for.

Evidence Privileged: ([Wis. Stat. § 165.79](#)) In a felony action, defense can obtain approval by the presiding judge to have the crime lab conduct analyses of evidence on behalf of the defendant. The prosecution is not entitled to any information gained by the approval (order).

Dangerous Weapon:

([Wis. Stat. § 939.22\(10\)](#)) 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.

Discharge:

The actual date a person is no longer in **custody**. WILEnet has a DOC locator that records discharge dates. The Clerk of Courts maintains commitment orders.

Dismissed with Prejudice:

The disposition of a court case in which the case is dismissed permanently. The case is closed and cannot be brought back before the court.

Dismissed without Prejudice:

The disposition of a court case in which the case is dismissed, however the DA's office can refile charges at any point during the applicable statute of limitations.

Disposition:

The final settlement of a matter, such as sentencing in a criminal case or disposing or transferring possession of property.

Diversion:

A dispositional process that allows a department to retain property or evidence that is either abandoned or does not have a known owner and that has a specific use within the department. Diversion requires authorization from the Chief of Police or Sheriff.

DNA (Deoxyribonucleic Acid):

Deoxyribonucleic acid is the fundamental building block for an individual's entire genetic makeup. It is a component of virtually every cell in the human body. Further, a person's DNA is the same in every cell. For example, the DNA in a man's blood is the same as the DNA in his skin cells, semen, and saliva. (Except in the rare case of identical twins and human chimerism.)

Evidence:

Any material good that comes into the custody of an employee of a law enforcement agency (police officer or civilian crime scene investigator) when such material good may tend to prove or disprove the commission of a crime or the identity of a suspect pursuant to an official criminal investigation.

Felony and Misdemeanor:

A crime punishable by imprisonment in a Wisconsin state prison is a felony. Every other crime is a misdemeanor. See [Wis. Stat. § 939.60](#).

Firearm and Handgun:

“Firearm” as defined in [Wis. Stat. § 167.31\(1\)\(c\)](#), means a weapon that acts by force of gunpowder. “Handgun” as defined in [Wis. Stat. § 175.60\(1\)\(bm\)](#), means any weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore. “Handgun” does not include a machine gun, as defined in [Wis. Stat. § 941.25\(1\)](#), a short-barreled rifle, as defined in [Wis. Stat. § 941.28\(1\)\(b\)](#), or a short-barreled shotgun, as defined in [Wis. Stat. § 941.28\(1\)\(c\)](#). **Under federal law, black powder guns are not firearms.**

Found Property:

Any property that has no evidentiary value whatsoever, which comes into the custody of a law enforcement agency employee, and whose rightful owner may or may not be known to the finder or the agency.

International Association for Property & Evidence, Inc. (IAPE):

The IAPE is a resource for law enforcement agencies nationwide. It offers a set of property and evidence standards, training, accreditation, and various documents and publications designed to assist property and evidence personnel with their responsibilities. www.iape.org

Injunction:

An order issued by a court prohibiting someone from doing some specified act.

Legal Counsel:

Corporation Counsel (county jurisdiction)/City/Town or Village Attorney - generally handles civil legal matters for that jurisdiction, acting as a general counsel and giving legal advice to agencies under their jurisdiction.

Post-Conviction Relief:

An appeal or a motion which is filed in circuit court and served on the prosecutor, and any other party, after the date of sentencing or final adjudication.

Property:

Material goods that do not have evidentiary value and come into the possession of a law enforcement agency as found property, safekeeping, property for destruction, or abandoned property.

Property for Destruction:

Is non-evidentiary property that has been seized from, or released by, a citizen to law enforcement for disposal. This could include contraband (property forbidden by law), prescription drugs obtained by a community drug drop, or firearms and ammunition relinquished by their owners.

Respondent:

The subject against whom an injunction is sought or entered.

Right of Refusal:

The authority given to the property/evidence custodian to reject and notify the submitting officer that the property or evidence is improperly packaged or documented and needs to be corrected.

Safekeeping:

Is any property of no evidentiary value surrendered to an employee of a law enforcement agency for temporary custody with the understanding that the person surrendering the property has the legal

right to do so, and that the property will be returned to the rightful owner at the end of a specified period of time, or when it is requested by the owner.

Statute of Limitations:

The time limit allowed for the prosecution of a crime. See [Wis. Stat. § 939.74](#).

Submitting/Impounding Officer:

The law enforcement officer or crime scene investigator who initially receives or takes possession of the evidence.

Surrender of Firearms:

The court ordered surrender of any firearms to the Sheriff or a third party by person's subject to certain injunctions. This is not a seizure.

Tickler File:

A collection of dated file folders organized in such a way to allow the property/evidence custodian to follow up on the disposition of evidence at a specified future date.

Two Person Rule:

A principle where two persons are present anytime that a witness may be necessary to provide testimony (i.e., destruction of narcotics and currency verification).

Transmittal Form:

A Wisconsin State Crime Laboratory Bureau document which lists the items of evidence to be submitted and the requested analyses for those items. This form must be completed by the submitting officer before evidence can be sent to any of the three state crime labs.

Wisconsin Coalition Against Sexual Assault (WCASA):

Per its website, WCASA is "the membership agency which supports 54 certified sexual assault service provider (SASP) agencies that are working to end sexual violence in Wisconsin, and which offer support, advocacy and information to its victims of sexual assault and their families."

<https://www.wcasa.org/>

Wisconsin Handgun Hotline/Firearms Unit:

Operated by the Crime Information Bureau (CIB). The Wisconsin Handgun Hotline assists in interpreting and determining whether a specific act and/or conviction would disqualify a person from possessing a firearm. Fax no. 608-264-6200; Phone no. 608-267-2776; Email: wihotline@doj.state.wi.us or nowlanam@doj.state.wi.us)

Wisconsin Supreme Court and Court of Appeals (WSCCA):

The WSCCA provides public access to the status of appeals filed with the Wisconsin Supreme Court and the Wisconsin Court of Appeals. Generally, this site includes appeals that were considered "Open" from the end of 1993 forward. <http://wscca.wicourts.gov/index.xsl>.

EVIDENCE

This section of the guide is meant to provide general information about how to handle items of evidence from initial receipt through final disposition. Found property and property for safekeeping will be discussed in later sections. Given that some evidentiary items require special consideration, this section will be divided into the following sub-categories:

- A. General Evidence
- B. Biological/DNA/Sexual Assault Evidence
- C. Currency/Money
- D. Drugs
- E. Firearms

Section A will discuss information that should be relevant to most evidence. Sections B-E will discuss information that is meant to be supplemental to the information provided in Section A. For example, this means that if you are dealing with firearm evidence, you would want to review the information provided in both Sections A and D.

A. General Evidence

1. Initial Receipt

Verify that packaging conforms to your department's requirements. If not, utilize your right of refusal.

2. Storage

How evidence is stored is up to each individual agency based on available storage space and packaging options, so long as evidence is stored in a manner that maintains its integrity.

3. Crime Lab Submittals

For the most up-to-date information regarding evidence submission to the Wisconsin State Crime Laboratory (WSCL), please reference <https://www.doj.state.wi.us/dles/wscl/evidence-submission-information>. The information provided on this website references the 9th Edition of the Physical Evidence Handbook which contains an appendix for general evidence submission guidelines, as well as specific announcements pertaining to guidelines for DNA, latent print, and controlled substance evidence. This website also discusses the various forms that are required when submitting evidence. Links are provided within the website for each topic or form, as well as for the Physical Evidence Handbook. The handbook can also be found on WILEnet at the following link: <https://wilenet.org/html/crime-lab/physevbook/index.html>.

Be aware that the WSCL may require the submission of a memo from the DA's office requesting testing for certain evidence. This may be applicable in misdemeanor drug cases, non-violent touch DNA cases, or for cases in which the DA is waiting to file charges pending testing results.

Depending on your department's policy, if items need to be repackaged, separated, or have additional tape added for submission to the WSCL, property/evidence room staff may need to address these issues.

4. Signing Out Evidence

a. Interim Release of Evidence

To facilitate the need for officers to temporarily remove evidence from the property/evidence room for further investigation, examination, etc., the following procedures should be followed:

- i. The officer will request the evidence.
- ii. Officers checking out evidence will be required to sign and date the chain of custody form for all evidence released.
- iii. A tickler file can be implemented for the items of evidence.
- iv. Officers shall, as soon as appropriate, return all evidence to the property/evidence room.
- v. Evidence shall be repackaged or resealed as necessary to ensure the integrity of the item.

b. Court Release

When the property/evidence custodian receives an evidence release request for court, the item(s) of evidence shall be released to the requesting officer.

- i. The property/evidence custodian should request a copy of the court subpoena from the officer.
- ii. A tickler file can be implemented for the item(s) of evidence to ensure its return.
- iii. Evidence entered as a court exhibit is no longer the responsibility of the property manager. The Clerk of Courts maintains the evidence. The disposition of the evidence shall be documented as received by the Courts. It is encouraged to obtain a receipt from the clerk of courts as proof that the evidence was entered as an exhibit. The receipt should identify the item of evidence and the exhibit number. All documentation should be placed in the original report file.

Some clerk of courts return certain evidence to the law enforcement agencies who originally maintained the evidence, i.e. firearms and narcotics, because the clerk of courts does not have the resources to properly store or dispose of such evidence. If the court exhibit is returned to the original agency, the evidence shall be disposed of pursuant to the clerk of courts retention policies. See [APPENDIX 1: COURT RECORDS RETENTION](#) .

5. Dispositions

a. Authorized Persons

The following persons may authorize the release of evidence that has been placed in the property/evidence room:

- i. The investigating officer, assigned investigator, or the investigator's supervisor
- ii. The DA's office
- iii. A judge via court order

When appropriate, the DA and case agents should be involved in decisions involving the disposition of evidence. This coordination will assist in the prevention of erroneous disposal of evidence associated with:

- i. Evidence and property linked to multiple cases
- ii. Cases with multiple defendants
- iii. Cases subject to DA refiling
- iv. Evidence and property with questionable ownership
- v. Evidence and property subject to court order (search warrant, return of property order)

b. Determining Disposition/Case Status

Property and evidence held by a law enforcement agency shall be disposed of in a manner authorized by statute and/or local ordinance. See [Wis. Stat. § 968.20](#) and below subsections for additional applicable statutes.

i. Disposition Letters/Forms

A disposition letter or other correspondence should be sent to the appropriate authorized person(s) for a determination as to what is to happen to evidence. It should not be the burden of property/evidence staff to make this determination. Typical disposition codes for property/evidence may indicate: destroy, return to owner, hold, retain for open records, court ordered disposition, auction, donate, diversion, etc.

ii. Considerations for Authorized Personnel when Determining Disposition.

(A) Statutes of Limitations

See [EXHIBIT A-1: TIME LIMITS FOR PROSECUTION](#) for a list of Statutes of Limitations for various offenses.

NOTE: Numerous Wisconsin Acts have changed the statutes of limitations for child sexual assault, repeated acts, and 1st degree sexual assault. The exact dates of these enactments are listed in [EXHIBIT A-2: STATUTES OF LIMITATIONS CHANGES FOR CERTAIN SEXUAL ABUSE CASES](#).

(B) No Arrest Made

- (1) In cases where there are no suspects or leads, evidence shall be maintained for a period designated by Wisconsin's statute of limitations ([Wis. Stat. § 939.74](#)), unless said evidence is department generated documents and/or electronic media. These files can be subject to a department's records retention policy and therefore should be held for whichever duration of time is longer, statute of limitations or retention policy.
- (2) Any evidence of felony or misdemeanor cases can be subject to disposition if the DA approves prior to the expiration of the statute of limitations. If there are multiple parties with a vested interest in any evidence that may be released, a court order stipulating which items are to be released and to whom will be required.
- (3) Statutes of limitations in child sexual assault cases apply only to offenses under [Wis. Stat. chapter 948](#) after July 1, 1989. The Wisconsin Coalition Against Sexual Assault (WCASA) provides an informational sheet regarding statutes of limitations for sexual assault offenses. See [APPENDIX 2: WCASA STATUTES OF LIMITATIONS](#).
- (4) The statutes of limitations are tolled or suspended for any person who is not publicly a resident of this state or has a pending prosecution ([Wis. Stat. § 939.74\(3\)](#)).

EXHIBIT A-1: TIME LIMITS FOR PROSECUTION

A prosecution has commenced when: A warrant or summons is issued, an indictment is found, or information is filed.

Felonies: 6 years unless noted below

No Time Limits

- 1st & 2nd Degree Intentional Homicide ([940.01](#), [940.05](#))
- 1st Degree Reckless Homicide ([940.02](#))
- Felony Murder ([940.03](#))
- First Degree Sexual Assault ([940.225\(1\)](#))
- First Degree Sexual Assault of a Child ([948.02\(1\)](#))
- Repeated Sexual Assault of the Same Child ([948.025\(1\)\(a\)](#), [\(b\)](#), [\(c\)](#), or [\(d\)](#))
- Attempted 1st & 2nd Degree Homicide ([940.01](#), [940.05](#))
- Attempted 1st Degree Sexual Assault ([940.225\(1\)](#))
- Attempted 1st Degree Sexual Assault of a Child ([948.02\(1\)](#))

Prior to the Victim Reaching 26 Years Old

- Child Abuse/Fail to Prevent ([948.03\(2\)\(b\)](#) or [\(c\)](#), [\(3\)](#), [\(4\)](#), or [\(5\)\(a\)\(4\)](#) or [\(5\)](#))
- Cause Mental Harm to a Child ([948.04](#))
- Child Enticement (Mental Harm / Narcotics) ([948.07\(5\)](#) or [\(6\)](#))

Prior to the Victim Reaching 45 Years Old

- 2nd Degree Sexual Assault of a Child ([948.02\(2\)](#))
- Repeated Sexual Assault of Same Child ([948.025\(1\)\(e\)](#))
- Child Abuse-Great Bodily Harm ([948.03\(2\)\(a\)](#))
- Repeated Physical Abuse of Same Child ([948.03\(5\)\(a\)\(1\)](#), [\(2\)](#), or [\(3\)](#))
- Sexual Exploitation of a Child ([948.05](#))
- Trafficking of a Child ([948.051](#))
- Incest with a Child ([948.06](#))
- Child Enticement ([948.07 \(1\)](#), [\(2\)](#), [\(3\)](#), or [\(4\)](#))
- Use Computer for Child Sex Crime ([948.075](#))
- Soliciting a Child for Prostitution ([948.08](#))
- Patronizing a Child ([948.081](#))
- Sexual Assault of a Child Placed in Substitute Care ([948.085](#))
- Sexual Assault of a Child by a School Staff Person ([948.095](#))

All Misdemeanors: 3 years

Within 3 Years

- Adultery ([944.16](#))

Within 15 Years

- 2nd Degree Reckless Homicide ([940.06](#))

Within 10 Years

- 2nd & 3rd degree sexual assault ([940.225\(2\)](#) or [\(3\)](#))

Extensions

- A prosecution for theft against one who obtained possession of the property lawfully and subsequently misappropriated it may be commenced within one year after discovery of the loss by the aggrieved party, but in no case shall this extend the time limits in [939.74\(1\)](#) by more than 5 years.
- In some circumstances a DNA profile of the suspect may extend the time limits for 1 year. See [939.74\(2d\)\(c\)](#) and [\(2d\)\(e\)](#)

Time limits are tolled or suspended when: [Wis. Stat. § 939.74\(3\)](#)

- The actor was not publicly a resident within the state, or
- During which time a prosecution against the actor for the same act is pending, or
- The alleged victim of sexual assault by a therapist ([940.22\(2\)](#)) is unable to seek issuance of a complaint due to the effects of sexual contact or due to any threats, instructions or statements from the therapist.

****Numerous Wisconsin Acts have changed the statutes of limitations for child sexual assault, repeated acts, and 1st degree sexual assault. The exact dates of these enactments are listed in EXHIBIT A-2 on page 20.**

**EXHIBIT A-2: STATUTES OF LIMITATIONS CHANGES FOR CERTAIN
SEXUAL ABUSE CASES**

Act	Effective	Statute of Limitations
1987 Wis. Act 332	July 1, 1989	Victim reaches age 21 or 6 years, whichever is later (Wis. Stat. § 948.02(1))
1993 Wis. Act 219	April 22, 1994	Victim reaches age 26 (Wis. Stat. § 948.02(1))
1997 Wis. Act 237	June 16, 1998	Victim reaches age 31 (Wis. Stat. § 948.02(1))
2003 Wis. Act 279	May 1, 2004	Victim reaches age 45 (Wis. Stat. § 948.02(1))
2005 Wis. Act 276	April 20, 2006	No Statute of Limitations for Wis. Stat. § 948.02(1) and Wis. Stat. § 948.025(1)(a-d)
2011 Wis. Act 282	April 26, 2012	No Statute of Limitations for Wis. Stat. § 940.225(1), attempted Wis. Stat. § 940.225(1), and attempted Wis. Stat. § 948.02(1)
2015 Wis. Act 121	December 18, 2015	10 year Statute of Limitations for 2 nd and 3 rd degree sexual assault (Wis. Stat. § 940.225(2) & (3))

(C) Arrest Made

(1) General Retention

Property seized as evidence must be maintained until a defendant is convicted, the case has been dismissed with prejudice, or the DA authorizes release of the property prior to adjudication. If a suspect has left the state or a John Doe warrant has been issued, the statutes of limitations are suspended or tolled and the evidence must be held.

(2) Property Claims

Any person claiming the right to possession of property seized with or without a warrant may petition for its return in the circuit court from where the property was seized or where the search warrant was returned. ([Wis. Stat. § 968.20](#))

(3) Juvenile Dispositions

Juvenile dispositions must be handled on a case-by-case basis. Disposition of juvenile cases can be obtained through the cooperation of Human Services, corporation counsel, and the DA.

(4) Multiple Defendants

When there are two or more defendants involved in a criminal case, evidence will not be disposed of until all defendants' trials have been concluded and the appeals process is resolved.

(5) Court Orders

There are situations in which departments can file for seizure of certain types of evidence in a given case. If the court orders the forfeiture of these items, this ruling must be honored. The same is true if the court orders a specific disposition for certain evidence as well. See [APPENDIX 3: FORFEITURE LAW SUMMARY](#).

(6) Recovered Stolen Property

Determine if the evidence submitted is property stolen during a non-violent crime. These items can be released to the lawful owner before the conclusion of the criminal case after the following conditions have been met:

- (a) A photograph is taken of the stolen property ([Wis. Stat. § 943.20\(4\)](#)).
- (b) Prior to release, all serialized property is cleared from NCIC/CIB.
- (c) Any request made by the owner for return of stolen property shall be cleared by the DA's office.
- (d) The property was not seized from a pawn store or other party that has a vested interest, see *Seizing Stolen Property from a Pawn Shop/Secondhand Goods Store*.
- (e) A receipt is signed by the owner when the property is released.

(7) Seizing Stolen Property from a Pawn Shop/Secondhand Goods Store

In cases where property is stolen, investigators may look to pawn shops or secondhand goods stores to see if the property was pawned or sold. Although this process is not directly related to the property/evidence custodian's duties, it is useful information to be aware of. Investigators can either reach out directly to a business, or they can utilize Leads Online.

Leads Online is an online tool that allows registered departments or users to search pawn shop transactions based on various factors, including an individual's name, property description, date range, etc. If a search is negative, users have the option to save their search. The system will then notify the user in the event their search parameters are met in the future. The caveat to this tool is that not all pawn shops and secondhand goods stores are required to register their transactions through Leads Online. Potential users would need to verify whether local businesses input their data to make this tool worthwhile to use.

If investigators are notified that a pawn shop or secondhand goods store does have the stolen property, then someone will need to respond to the store to take possession of the property. If someone is not on site at the business at the time this discovery is made, then a hold can be requested for the property. Requesting a hold notifies the business that the property in their possession is stolen and allows them time to either pull the property from the sales floor or to mark the property in the storeroom for police pick-up. When a department representative does arrive at the business to seize the property, they must issue a property receipt to the business. Documentation regarding what the business paid for the property should also be obtained so that they can be listed as a victim in the report.

In some departments, property/evidence room staff may be asked to recover the stolen property from the pawn shop or secondhand goods store. In other departments, the role of the property/evidence custodian does not begin until the property is submitted into evidence. Regardless of when the property/evidence function begins within a department, it is the responsibility of the

property/evidence custodian to ensure that recovered stolen property gets returned to the correct owner at the time of disposition.

Although pawn shops or secondhand goods stores are not considered victims under [Wis. Stat. § 950.02\(4\)\(a\)](#) unless a crime was committed directly against them (such as [Wis. Stat. § 946.32](#) False Swearing), they do have a vested interest in the stolen property due to the fact that they paid money to take possession of the property. Therefore, the recovered stolen property cannot be returned to anyone until the Court addresses how all involved parties are to be made whole, be it through restitution, return of the property, or some other means.

By statute, victims have the right to restitution ([Wis. Stat. § 950.04\(1v\)\(q\)](#)) and the right to the expeditious return of property if its ownership is not disputed ([Wis. Stat. § 950.04\(1v\)\(s\)](#)), among other rights as listed in [Wis. Stat. § 950.04\(1v\)](#). These rights, however, need to be requested by the victim. For instance, if a victim does not specifically request restitution, the Court may not consider ordering any when it comes to sentencing.

Similarly, if a business has a vested interest in property, but is not considered a victim, they would need to petition the Court for the return of said property under [Wis. Stat. § 968.20](#). DA's offices may be willing to adopt a policy in which they request restitution on behalf of an involved pawn shop or secondhand goods store so as to minimize the time it would take their office or the victim in having to file motions with the Court regarding the return of the property. As long as the case report documents the value of the property as determined by the business, the restitution can be requested.

In the event a property owner or business files a claim with an insurance company, in most situations, the insurance company will pay the claim, thereby assuming the role of victim via subrogation. In this situation, the original property owner or business would no longer have a claim to the property. Rather, if the property is ordered to be returned, it would go to the insurance company who assumed the role of owner upon paying the claim against the property ([Wis. Stat. § 973.20\(5\)\(d\)](#)).

If requested, at the time of sentencing, the Court will address any restitution or release of property requests. Property/evidence custodians can request copies of those orders to help them determine ownership of any disputed property. In the event restitution or property is not addressed by the Court, the best course of action would be to notify the DA's office as soon as possible so that they can file a motion for modification of a sentence with the Court to determine what is to happen with the disputed property. It will then be up to the Court to determine if restitution can be imposed outside the statutory time frame. The validity of the reasons for the delay in requesting restitution will be balanced against the prejudice suffered by the defendant in the delay. Thus, the sooner the DA's office gets notice that restitution was not ordered, the better position they will be in to argue against prejudice, thereby increasing the chance of the Court granting restitution.

In the case of disputed property in cases that were never charged criminally, then anyone claiming a right to the possession of the property can apply for its return

under [Wis. Stat. § 968.20](#) to the circuit court for the county in which the property was seized. In this situation, property would need to be held by the property/evidence custodian until a civil determination is made regarding ownership. For a sample letter that can be sent by an agency's legal counsel to persons claiming an interest in the disputed property, see [APPENDIX 4: SAMPLE DISPUTED PROPERTY LETTER](#).

For additional information regarding seizing stolen property, see [APPENDIX 5: SEIZING STOLEN PROPERTY FROM SECONDHAND GOODS STORES FAQ](#).

(8) Civil Litigation

If property or evidence that meets requirements for property destruction has been formally requested to be retained for civil litigation, you should consult with your agency legal counsel. If the evidence relates to potential civil claims against a government employee or agency the evidence should be retained until you are authorized to release or destroy by your agency legal counsel. In other civil cases, there is no legal requirement to retain such evidence, although an agency may agree to do so. The agency may also provide notice to the owner or persons known to have an interest in the property so that they may make arrangements for disposition of the property.

(9) Court Case Status

Property that has been held as evidence but not introduced during trial, and is not considered contraband, may be returned to the owner or disposed of provided the following conditions are met:

- (a) All proceedings in which evidence might be required have been completed and the case has been adjudicated. To verify this information, check the Wisconsin Circuit Court Access (CCAP) page (<https://wcca.wicourts.gov/>). For information on how to navigate and utilize CCAP, see [EXHIBIT A-3: CHECKING CCAP](#).
- (b) In cases that have been adjudicated, the property can be released or disposed of after the appeal process has been completed or the time allotted for an appeal has expired. The appeals process is defined in [Wis. Stat. Chapter 809](#). Although Ch. 809 allows for the defendant to petition the court for post-conviction relief within 20 days of the date of sentencing or final adjudication, it is common for courts to extend the appeal deadlines. Once the appeals process commences, there are other deadlines which go into effect. If the case has been appealed or a post-conviction motion filed, the property will be maintained pending a disposition of the appeal and should not be disposed of without consulting with the DA. Check the Wisconsin Supreme Court and Court of Appeals Case Access (WSCCA) page for the status of any appeals (<https://wscca.wicourts.gov/index.xsl>). For information on how to navigate and utilize WSCCA, see [EXHIBIT A-4: CHECKING WSCCA](#).

EXHIBIT A-3: CHECKING CCAP

Enter the name of the defendant; exact spelling is necessary.

OR

Enter the county and case number, if known.

Find the court record that pertains to the case under review. Be sure that the case you identify is the case that is related to the evidence and one in which the defendant was found guilty. (For example, sometimes there are several cases, such as a ticket for OWI and PAC and the person is found guilty on only one of these.) The case number on **CCAP** is the number assigned by the court which starts with the year the criminal case was filed. There is an offense date listed on **CCAP** which should match the law enforcement agency records. **CCAP** does not list the law enforcement agency's complaint number.

CV=Civil Case

CF=Felony Case

CM=Misdemeanor Case

FA=Family Case

Once the correct case is identified, click the case number link. This takes you to the search results page for that case. Click the "View case details" button to review the full court case.

- The status of the case can be found in the Case Summary section.
- To review the charges and the associated sentences, go to the Charges section and click the button to "View history and details of charges/sentences"

To determine if an appeal has been filed, navigate to the proper case in CCAP.

Once you have clicked into "View case details", scroll down to the Court Record section. This is where you will find any pertinent appeals information. An appeal may have been filed if entries for the following are found after the conviction/appeals rights information is presented:

- A notice of intent to pursue post-conviction relief
- A motion
- A notice of appeal

Be careful when numerous transcripts have been requested; it may be a sign that an appeal is forthcoming.

EXHIBIT A-4: CHECKING WSCCA

Enter the name of the defendant; exact spelling is necessary.

OR

Enter the county and circuit court case number, if known.

If there are no active appeals, you will see a Case Search Results page indicating that the search did not return any results.

If there is a single result, your search will take you directly to the relevant appeal.

If there are multiple results, they will be displayed on the Case Search Results page. If you cannot determine which is the appropriate appeal from the information provided on the Results page, you will need to click into each appeal to check the Circuit Court case number that is being appealed.

When reviewing an appeal, you will want to look at the case status, the disposition, and the case history. All this information can be found under the Summary heading for the appeal. If a case is open, there will be no disposition. However, you can click the Case History button to review the progress of the appeal. If a case is closed, you should see a disposition regarding the judgment. If you want additional information regarding the disposition, you can look to see if the Court published their opinion regarding the appeal. Click into the Case History. Under the Activity heading, look for "Opinion/Decision". If "Opinion/Decision" appears as a link instead of plain text, then an opinion was published. Clicking the link will direct you to the Court of Appeals Opinions page where you can mark the opinion you are interested in and download the file.

If you have any questions regarding the appeal, there is a Contact Us link at the bottom of the page. This will direct you to a new page that provides a phone number for the Clerk's Office for the WSCCA, as well as an email submission form.

NOTE: To streamline dispositions of evidence for cases that have not been appealed, a memorandum of understanding (MOU) between the law enforcement agency and the DA's office is suggested. Be aware that an MOU does not supersede any statutes dictating retention of evidence. An example MOU may look like this:

Example MOU for Disposition of Evidence:

If, after following the outlined procedures for viewing adjudicated cases on CCAP, you have found no notices of appeals for misdemeanors or traffic cases and more than six months have lapsed from the date the dispositional order/judgment of conviction was entered, you may dispose of the evidence.

For felonies, if more than one year has lapsed from the date of the judgment of conviction was entered, you may dispose of the evidence.

This is just an example of a memorandum of understanding for evidence disposition; authorization from the local DA must be obtained prior to implementing this procedure.

(10) Retention Guidelines

Review each case disposition for any applicable retention periods that you need to follow. Refer to agency specific records retention guidelines for agency generated electronic media and paper documents as some files will need to be stored as open records. Be aware of any DNA retention.

For the purposes of this section, a record is considered to be electronic media or paper documents that are created by department personnel. Electronic media and paper documents that are provided as evidence from outside sources such as witnesses, victims, or businesses should not be considered records unless they are attached to an official report in some manner. This is an important distinction because police reports and records are generally considered public records and are therefore subject to open records requests. Releasing evidence from an outside source that was not attached to the report and without the owner’s permission could result in a civil lawsuit against the department for releasing information that did not belong to the department. This also means that electronic media and paper documents from outside sources are not subject to a department’s record retention policies. That said, it is the prerogative of each department to make a determination as to whether all digital media and paper documents be retained, or if only records be retained.

(a) Videos/Recorded Statements/Photographs:

- (I) Videos/Recorded Statements/Photographs must be retained for a minimum of 7 years unless the jurisdiction has adopted a shorter period fixed by the public records board ([Wis. Stat. § 19.21](#)).

County Retention/Disposition Schedule:

publicrecordsboard.wi.gov/docview.asp?docid=19640&locid=165

The Records Retention / Disposition Schedule is purely voluntary. It will require an affirmative act, on the part of a county, to adopt the same. There are three alternatives. A county may:

- i. Opt in;
- ii. Revise and Opt in;
- iii. Opt out in whole.

This may be accomplished by means of a county’s adoption of a resolution or enactment of an ordinance and completion, execution, and filing of a “boilerplate” notification form.

Records retention schedule must be updated and resubmitted to the WPRB for approval every 10 years.

- (II) All sexually explicit recordings or photographs of persons under the age of 18 in the “possession, custody, and control” of the state are to be kept in the exclusive possession, custody, and control of a law enforcement agency unless otherwise ordered by a court. ([Wis. Stat. § 971.23\(11\)](#)).

Unless otherwise ordered by a court, both the DA and defense counsel are to examine the material at a “law enforcement or government facility”. ([Wis. Stat. § 971.23\(11\)\(c\)1 and 2](#)). Law enforcement needs to be present during such examination.

If the court grants broader access to the defense, the court is to issue a protective order for the material, including a return to the law enforcement agency. ([Wis. Stat. § 971.23\(11\)\(d\)](#))

(b) Wiretap:

Any wiretap recordings must be retained for 10 years unless ordered to be destroyed by a judge ([Wis. Stat. § 968.30\(7\)](#)).

(c) Firearms, money, or biological/DNA/sexual assault evidence:

Be aware of any forfeitures, court orders, or statute dictated retention periods. See the appropriate sub-category for more information.

(11) Other Acts Evidence

Be aware that evidence connected in one criminal proceeding may be used in another criminal proceeding. Purging decisions shall be made on a case-by-case basis and in consultation with the case officer and DA’s office.

(12) Dismissed Cases

Evidence in connection to a dismissed case shall be processed as follows:

(a) Dismissed with Prejudice

If a case is dismissed with prejudice, then the case is dismissed permanently. The case is closed and cannot be brought back before the court. Evidence can be disposed of per department policy.

(b) Dismissed without Prejudice

If a case is dismissed without prejudice, then the DA’s office can refile charges at any point during the applicable statute of limitations. Evidence should be held per statute of limitations.

(c) Dismissed and Read In

If a case was dismissed and read into another case, then evidence can be disposed of with permission from the DA.

c. Processing Dispositions

Once the appropriate authorized persons have weighed the various considerations regarding a case and have assigned each evidence item a disposition code, it then becomes the responsibility of the property/evidence custodian to process that evidence accordingly. Before this process is started however, it is recommended that each case disposition be reviewed to ensure the assigned disposition codes make sense.

For instance, if there is a disposition for a theft case in which a television, gaming console, and several video games were stolen, it might make sense if all the items were marked to be returned to owner. If an individual is listed as the owner, it may be worthwhile to verify whether any of the items were pawned. If so, then a pawn shop may have a vested interest. It would then be prudent to check on any restitution orders as that would dictate who the items could actually be returned to. If, however, those same items were marked to be destroyed, that would raise some flags. Typically, evidence items

that are up for disposition should be returned to an owner whenever possible. The obvious exceptions to this would be if there is no known owner or if the items are contraband. In that situation, the property/evidence custodian should probably verify that destruction is, in fact, the most appropriate disposition. If all the disposition codes seemingly make sense, then processing can proceed.

i. Return to Owner

The following are considerations for when evidence is marked to be returned to owner:

(A) Be aware of the type of case being processed. Some items, due to the circumstances of a given case, may not be returnable even if an authorized person indicates they can be returned.

(1) Contraband

As defined by [Wis. Stat. § 968.13\(a\)](#): “Contraband, which includes without limitation because of enumeration lottery tickets, gambling machines or other gambling devices, lewd, obscene or indecent written matter, pictures, sound recordings or motion picture films, forged money or written instruments and the tools, dies, machines or materials for making them, and controlled substances, as defined in s. [Wis. Stat. § 961.04\(4\)](#), and controlled substance analogs, as defined in s. [Wis. Stat. § 961.01\(4m\)](#), and the implements for smoking or injecting them. Gambling machines or other gambling devices possessed by a shipbuilding business that complies with s. [Wis. Stat. § 945.095](#) are not subject to this section.”

If you have contraband that cannot be returned, consider sending a letter to that effect. See [APPENDIX 6: SAMPLE CONTRABAND LETTER](#)

(2) Items Used in the Commission of a Crime

Per [Wis. Stat. § 968.20\(1m\)\(b\)](#), “If the seized property is a dangerous weapon or ammunition, the property shall not be returned to any person who committed a crime involving the use of the dangerous weapon or ammunition.”

Per [Wis. Stat. § 939.22\(10\)](#), “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 s. [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.

If you have items that cannot be returned due to them being used in the commission of a crime, consider sending a letter to that effect. See [APPENDIX 7: SAMPLE USED IN THE COMMISSION OF A CRIME LETTER](#).

(3) Recovered Stolen Property/Multiple Party Interest in Property

Some cases, most notably thefts and burglaries, often have items that are sold or pawned at a secondhand goods store. If the secondhand goods store claims a vested interest in the property, then the court must make a determination as to which victim gets the property and which gets restitution, if any. Until that decision is made, the property cannot be released to either party unless one of them is made whole. Reference *Seizing Stolen Property from a Pawn Shop/Secondhand Goods Store*.

Similarly, if two individuals are claiming ownership of the same property, unless one party can prove ownership, then a determination should be made by the case officer regarding ownership. Alternatively, the contested owners could be told to file civilly for return of the property.

- (B) Property letters should be sent to the owner's last known or most current address. If a letter is returned, due diligence would dictate that a different address be tried, if available. See [APPENDIX 8: SAMPLE PROPERTY RETURN LETTER](#).
- (C) For property that has a significant monetary value (vehicles, jewelry, cash, etc.), consider sending a certified letter to ensure receipt of the letter by the owner.
- (D) Any property belonging to a deceased person that is in the care of the property/evidence room may be released to the next of kin. Next of kin hierarchy can be found at [Wis. Stat. § 990.001\(16\)](#). If there is question as to next of kin, contact the investigating officer or the Coroner or Medical Examiner's office.
- (E) If the property to be returned is contaminated by a biohazardous substance, consider informing the owner prior to the return. You can also have the owner sign a Biohazard letter at the time of the property release indicating that they are aware of the potential risk associated with claiming the property. See [APPENDIX 9: SAMPLE REQUEST FORM FOR THE RELEASE OF SUSPECTED PATHOGEN CONTAMINATED PROPERTY](#).
- (F) If a property letter is sent and the property is not claimed within the designated time frame, or if the property owner is unknown, then the property can be considered abandoned. Reference *Abandoned Property*.

ii. Destruction

Property of little or no auction or donation value can be disposed of in an appropriate trash receptacle except as otherwise suggested below.

The following are considerations for when evidence is marked to be destroyed:

- (A) **Recyclables:** Most law enforcement agencies have in house recycling bins to dispose of glass, and plastic.
- (B) **Documents:** Papers and digital media of a sensitive nature should be appropriately destroyed (in-house or contracted through a bonded shredding company).
- (C) **Property Room Records:** Evidence and property room records must be maintained for a minimum of seven years unless a shorter period is fixed by the public records board ([Wis. Stat. §19.21\(4\)\(c\)](#)).
- (D) **Alcohol:** The contents of alcoholic beverage containers should be poured down the drain before disposing of the container in a recycling bin. For abandoned beer barrels and tappers, return to local liquor stores and/or auction tappers.
- (E) **Batteries:** Lead-Acid car batteries can be returned to almost any store that sells car batteries. For alkaline or lithium batteries, consider looking into a recycling program or see if a local business will take them.
- (F) **Household Waste:** Check for permanent or special collection days in your community. If your community has neither, check with local businesses. For example, local garages may accept used motor oil.

(G) Electronics: Check with your IT (Information Technology) department as means to dispose of electronic devices. Electronic devices containing child pornography should be wiped prior to disposing.

Manufacturers and retailers offer several options to donate or recycle electronics. For retailer options view: <http://www.epa.gov/recycle/electronics-donation-and-recycling>

(H) Dangerous Weapons: See [Wis. Stat. § 939.22\(10\)](#) for the statutory definition. For non-firearm weapons, there are various disposal methods available (landfill, shredding, trash compactor, etc.). Regardless of the destruction method employed, the destruction needs to be witnessed and documented accordingly.

(I) Controlled Substances: Refer to subsection *Drugs/Destruction* for information on destroying drugs.

(J) Fireworks: The recommendation from the FBI’S Hazardous Devices School (HDS) regarding fireworks is that the public and/or law enforcement turn over unused fireworks to a certified bomb squad for disposal. See the following table for a list of contacts for Wisconsin by region from the Wisconsin Department of Military Affairs Division of Emergency Management.

Agency/Region	Name	Office #	Cell #	Email
Brown Co. /Outagamie Co	Lt Chris Knurr	920-448-4241	920-360-1528	knurr_ce@co.brown.wi.us;
	Lt. Kevin Kinnard	920-448-7632	920-461-0226	kinnard_kj@co.brown.wi.us;
Dane Co	Lt Charles Immel	608-293-3941	608-576-0160	Immel.charles@danesherriff.com;
	Sgt. Matt Meyer	608-266-3456	608-576-4207	meyer.matt@danesherriff.com;
	Dep. Bob Richardson	608-345-6423	608-345-6423	Richardson.robert@danesherriff.com
	Dep. Pat Kelly	608-444-0429	608-444-0429	Kelly.patrick@danesherriff.com
Kenosha Co	L.T. Steven Beranis	262-605-5124	262-672-5483	steven.beranis@kenoshacounty.org;
	Det Jeff Bliss	262-605-5142	262-496-8308	jeff.bliss@kenoshacounty.org;
Marathon Co	Lt Ryan Weber	715-261-1430	715-571-9327	ryan.weber@co.marathon.wi.us;
	Lt Jeff Stefonek	715-261-1420	715-581-7979	jeffrey.stefonek @co.marathon.wi.us;
Milwaukee Co Milwaukee PD	Dep. Joe Mazurczak	414 278-3018	414-651-6806	Joseph.Mazurczak@milwaukeecountywi.gov;
	Sgt George Anagnostopoulos	414-454-4061	414-688-9627	george.anagnostopoulos@milwaukeecountywi.gov
	Sgt Steve Herrmann	414-839-0293		sherrm@milwaukee.gov
	Det. Walter Cappelli	414-935-7741	414-429-4670	wcappe@milwaukee.gov
FBI/DCI	Agent Bryan Kastelic	920-257-7903	920-257-7903	kastelicbf@doj.state.wi.us;
	FBI Jon Hauser	715-781-0772		jrhauser2@fbi.gov;
	Milan Momcilevic	312-907-7613		mmomcilovic@fbi.gov;
	Chad Piontek	312-350-3167		cjpiontek@fbi.gov;

(K) E-Cigs/Vaping: Committee members reached out to various organizations for input regarding these devices, but there was no consensus as to one proper method of disposal. The general opinion seemed to be that as long as the battery is removed, then the remainder of the device can be disposed of as you would other property (controlled substances would be destroyed of with drugs, non-drugs with trash, etc). For more specific information, you can reach out to the device’s manufacturer, if one is known.

****WARNING**** Striking a charged vaporizer can cause the device to burst into flames.

iii. Auction

Evidence with an unknown owner of sufficient value (as dictated by department/city policy or the property/evidence custodian) can be auctioned.

Evidence that is abandoned should be auctioned per [Wis. Stat. § 66.0139\(2\)](#), unless dictated otherwise by local ordinance.

Refer to local ordinance and state statute for further direction.

Auction Resources:

Law enforcement agencies can hold their own auctions. Some agencies contract with an online police auction site that will post abandoned and unclaimed property such as:

<http://www.wisconsinsurplus.com/>

<http://www.propertyroom.com/>

<http://www.governmentauctions.org/>

If items are not of sufficient value, or if local ordinance allows, then items can be considered for donation, diversion or destruction.

iv. Donation

Evidence with an unknown owner that does not meet the threshold for auction (as dictated by department/city policy or the property/evidence custodian) and is in acceptable condition can be donated.

Evidence that becomes abandoned property should only be donated if allowed by local ordinance. Disposition of abandoned property must follow [Wis. Stat. § 66.0139\(2\)](#). Refer to *Abandoned Property*.

Consider donating to local non-profit organizations, schools, charitable institutions, etc. Check with each organization to see what conditions they have for donated property.

v. Diversion

Evidence with an unknown owner that has departmental use can be diverted with appropriate approval from the Chief of Police or Sheriff.

Evidence that becomes abandoned property can only be diverted if allowed by local ordinance. Disposition of abandoned property must follow [Wis. Stat. § 66.0139\(2\)](#). Refer to *Abandoned Property*. Also, see [APPENDIX 10: SAMPLE DIVERSION OF PROPERTY MEMO](#).

vi. Court Ordered Disposition

In situations where seizure applications have been filed with the court or a party has applied for the return of property under [Wis. Stat. § 968.20](#), the court must make a ruling concerning the disposition of the disputed property. Property/evidence custodians must adhere to the court ordered disposition. It is recommended that a copy of the court order be retained as part of the evidence record.

Court ordered dispositions are most frequently seen in cases involving seizure of firearms, currency, vehicles and stolen property seized from a secondhand goods store.

Be advised that on occasion, a Judge may rule to the disposition of specific property that is not directly related to seizure/forfeiture. Follow that specific judgment/ruling.

vii. Abandoned Property

For any evidence with a known owner that is not considered contraband, all reasonable efforts should be made to return the property to its owner. Reference *Return to Owner*. If the owner fails

to claim the property, then it becomes abandoned property. If abandoned property is currency, refer to subsection *Currency/Disposition/Abandoned Property*.

Per [Wis. Stat. § 66.0139\(2\)](#), abandoned property shall be disposed of through public auction. Any means of disposal other than public auction shall be specified by local ordinance.

- (A) Check your local ordinances for adoption of this statute and guidelines covering disposition of proceeds from abandoned property sales.
- (B) If the disposal is in the form of a sale, all receipts from the sale, after deducting the necessary expenses of keeping the property and conducting the sale, shall be paid into the treasury of the political subdivision.

Expense considerations: Actual sale expenses (auction fees), daily maintenance expenses like storage facility and appliances (refrigerator, freezer), property/evidence custodian wages and benefits, utilities for climate control, time spent preparing for auction and follow up at conclusion, etc.
- (C) If allowed by ordinance, property may be disposed of by other means, such as destruction, donation, or diversion. See [APPENDIX 11: SAMPLE ABANDONED PROPERTY ORDINANCE](#).
- (D) Unclaimed materials or devices that pose a danger to life or property can be disposed of immediately without public auction. See [Wis. Stat. § 66.0139\(3\)](#).
- (E) A record must be kept for at least two years from the date of disposal, indicating the method of disposal.

viii. Abandoned Vehicles

Given the definition provided in this guide for abandoned property, abandoned vehicles must be considered as their own entity due to the fact that state statutes hold registered owners accountable for their vehicles. [Wis. Stat. § 342.40\(1m\)](#) details the circumstances by which a vehicle is considered abandoned. Refer to your municipality's or county's ordinances, as there may already be codes in place detailing how abandoned vehicles are to be processed. That said, if you have a vehicle that was being held as evidence, then the vehicle should only be considered abandoned if the registered owner or lien holder fails to claim it after all attempts to return the vehicle have been exhausted.

The registered owner of any abandoned vehicle, except a stolen vehicle, is responsible for all costs of impounding and disposing of the vehicle ([Wis. Stat. § 342.40\(3\)\(b\)](#)). This would include any forfeitures allowed by ordinance ([Wis. Stat. § 342.40\(3\)](#)). That said, it is understood that not all registered owners are the current owner of a vehicle. However, given how the statutes read, legal title is what is relevant. The burden for payment of fees still falls to the registered owner. If they sold the car, it was their responsibility to ensure the registration was updated. Failing to do this does not release them from the statute imposed financial obligations. If the registered owner claims to have sold the vehicle, they can try to recoup the fees by filing a civil lawsuit against the individual they sold the vehicle to.

(A) Towing and Storage Fees Exceed Value of Vehicle

Abandoned vehicles shall be impounded until lawfully claimed or disposed of per statute, unless the towing and storage fees for the impoundment exceed the value of the vehicle ([Wis. Stat. § 342.40\(2\)](#)). If the vehicle's value is less than the associated fees, then the vehicle may be:

- (1) Junked
- (2) Donated to a nonprofit organization
- (3) Sold ((if the vehicle is verified to not be stolen or otherwise wanted for evidence or for another reason)
- (4) Vehicles older than 19 model years shall be disposed of via sale or donation to a nonprofit organization.

(B) Value of Vehicle Exceeds Towing and Storage Fees ([Wis. Stat. § 342.40\(3\)\(c\)](#))

Vehicles whose value exceeds the fees shall be impounded and a certified letter shall be sent to the registered owner and lienholder indicating the vehicle can be released upon payment of fees. The vehicle must be retained in storage for no less than ten days after the certified mail notice is sent. The certified letter must include the following information. See [APPENDIX 12: SAMPLE OWNER/LIENHOLDER NOTIFICATION LETTER](#).

- (1) Year, make, model, and serial number of the vehicle
- (2) Location the vehicle is being held
- (3) Information regarding the right to reclaim the vehicle
- (4) Notice that failure to reclaim the vehicle within ten days will result in a waiver of all rights, title, and interest in the vehicle, thereby indicating the owner's or lienholder's consent to the sale or donation of the vehicle to a nonprofit organization.

If a municipality or county opts to sell an abandoned vehicle, the vehicle may be disposed of via sealed bid or auction sale as provided by ordinance and in conjunction with any applicable department policies.

- (1) Should a bid for the vehicle not be received or is rejected, then the jurisdiction may re-advertise the sale, adjourn the sale to a definite date, sell the motor vehicle at a private sale, junk the vehicle, or donate the vehicle to a nonprofit organization.
- (2) If a vehicle is sold, the purchaser has ten days to remove the vehicle from storage after paying any associated storage fees. After that time, if the vehicle is not removed, the purchaser forfeits all rights and the vehicle is considered abandoned and can be sold again or donated to a nonprofit organization.

Within five days of the sale, donation, or disposition of an abandoned vehicle, the Department of Transportation shall be advised of the vehicle's disposition via form MV2419. See [APPENDIX 13: ABANDONED/UNREGISTERED VEHICLE TRANSFER CERTIFICATE](#). This form can be found in the secure area of WILEnet under Resources > Dept. of Transportation. Scroll to the bottom of the page and you will see a link for MV2419 – Abandoned/Unregistered Vehicle Transfer Certificate under the heading of Motor Vehicle Titles and Plates.

B. Biological/DNA/Sexual Assault Evidence

1. Initial Receipt

a. Supplies

Blood/Urine kits are provided by the Wisconsin State Laboratory of Hygiene (WSLH) free of charge. To order, call (608) 224-6257.

b. Packaging Requirements

- i. To prevent mold growth or deterioration, non-liquid evidence should only be stored in paper packaging material, never plastic. Liquid evidence should be stored in glass or plastic vials or jars for long-term storage, with the exception of liquid samples that are to be frozen. Any liquid evidence requiring freezing should be stored in plastic containers, never glass.
- ii. Make sure all evidence, except for liquids samples, is dry before placing into permanent storage.
- iii. See "[The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers](#)" for additional information regarding packaging requirements.

c. Updated Process for Sexual Assault Evidence Kit Collection

In December of 2012 the Attorney General's Sexual Assault Response Team (AG SART) was created to, among other things, address [Wis. Stat. § 175.405](#), which mandates DNA testing of sexual assault evidence kits where a perpetrator has not been identified. The intent of this statute was to eliminate any current backlog of sexual assault evidence kits and to ensure that there is never a backlog moving forward.

The AG SART has implemented a new process to offer victims options when presenting to a Sexual Assault Nurse Examiner (SANE) program following a sexual assault.

- i. If the victim wants to receive medical attention and treatment but does not want to report the crime to law enforcement, no kit would be collected.
- ii. If the victim wants to receive medical attention and treatment and wants to report the crime to law enforcement, a kit would be collected and turned over to law enforcement who will then send it to the WSCL for testing.
- iii. If the victim wants to receive medical attention and treatment but they do not want to report the crime to law enforcement at this time, but may decide to report at a later date, a kit would be collected and sent directly to the WSCL from the hospital. It would then be stored (not tested) at the WSCL for up to 9 ½ years or until the victim decides to proceed with a report to law enforcement. These non-reporting sexual assault kits should not go to law enforcement. If you receive one in error, please contact the WSCL as it should be sent there.

With this new process, all Sexual Assault Evidence Collection Kits will be issued by the WI Department of Justice's Crime Lab, at no cost, so that the same kits are being used throughout the state. The kits will each have a unique barcode to match to a victim through their hospital file so that the sealed kits remain anonymous. The kits will be provided to all hospitals and, upon request, are available to Law Enforcement Agencies as well. The evidence collection kits are provided to the hospital free of charge, not only to ensure uniformity, but also to guarantee that no sexual assault victim is ever charged for these kits.

2. Storage

All evidence except for liquid samples, must be dry and stored in an appropriate temperature-controlled environment.

There are many resources available regarding short-term and long-term storage of biological evidence. The two sources that we recommend are the [WSCL's Physical Evidence Handbook \(9th Edition\)](#) and "[The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers](#)".

3. Crime Lab Submittals

- a. For the most up-to-date information regarding evidence submission to the WSCL, please reference <https://www.doj.state.wi.us/dles/wscl/evidence-submission-information>. The information provided on this website references the 9th Edition of the Physical Evidence Handbook which contains an appendix for general evidence submission guidelines, as well as specific announcements pertaining to guidelines for DNA, latent print, and controlled substance evidence. This website also discusses the various forms that are required when submitting evidence. Links are provided within the website for each topic or form, as well as for the Physical Evidence Handbook. The handbook can also be found on WILEnet at the following link: <https://wilenet.org/html/crime-lab/physevbook/index.html>. When submitting DNA evidence to the WSCL you will be asked to fill out a DNA Questionnaire Form. See [APPENDIX 14: WSCL DNA QUESTIONNAIRE FORM](#).

Be aware that the WSCL may require the submission of a memo from the DA's office requesting testing for certain evidence. This may be applicable in misdemeanor drug cases or for cases in which the DA is waiting to file charges pending testing results.

Depending on your department's policy, if items need to be repackaged, separated, or have additional tape added for submission to the WSCL, property/evidence room staff may need to address these issues.

- b. Depending on the type of case, evidence will need to be submitted to the WSCL or the WSLH. For information regarding which lab should be utilized, see [APPENDIX 15: LABORATORIES FOR BLOOD SAMPLE SUBMISSIONS](#). These guidelines can also be located on WILEnet under DOJ > Crime Laboratory. Follow the link for "Which Lab to Send Blood Samples" under Crime Lab Features.
- c. In some cases, evidence is sent to the WSLH for analysis. The hygiene lab does dispose of evidence after six months. If this evidence needs to be preserved for your case, you will need to submit a letter to the lab requesting that they retain the evidence for an additional two years. You will need to submit a new letter after every two years for however long you require that evidence to be maintained. See [APPENDIX 16: SAMPLE TWO YEAR HOLD LETTER FOR WSLH](#).

4. Signing Out Evidence

There are no special considerations for signing out biological, DNA, or sexual assault evidence. Refer to *Signing Out Evidence* under General Evidence.

5. Dispositions

Only subsections with special considerations for Biological, DNA or Sexual Assault evidence are listed below. Refer to *Dispositions* under General Evidence.

a. Determining Dispositions/Case Status

Arrest Made

(1) General Retention

Per [Wis. Stat. § 968.205\(2\)](#), physical evidence which contains biological material must be retained and preserved until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date when:

- (a) It was collected in connection with a criminal investigation; AND

- (b) It resulted in a criminal conviction, delinquency adjudication, or commitment under [Wis. Stat. § 971.17](#) or Wis. Stat § [Wis. Stat. § 980.06](#); AND
- (c) The biological material is from a victim of the offense that was the subject of the criminal investigation OR may reasonably be used to incriminate or exculpate any person for the offense.

[Wis. Stat. § 968.205\(2\)](#). **NOTE: As currently drafted, the law would apply to blood samples in OWI cases. While this result was probably not intended, it would require a legislative change to correct.**

(2) Retention Guidelines

Per [Wis. Stat. § 968.205\(3\)](#), evidence containing biological material MAY be destroyed prior to the convicted being released from custody if:

- (a) The law enforcement agency sends a notice of its intent to destroy the evidence to all persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment, and to either the attorney of record for each person in custody or the state public defender, see [APPENDIX 17: SAMPLE DNA NOTIFICATION LETTER](#); AND
- (b) No person who is notified files a motion for testing of the evidence OR submits a written request for retention of the evidence to the law enforcement agency within 90 days; AND
- (c) No other provision of federal or state law requires the law enforcement agency to retain the evidence.

If, after sending a notice of intent to destroy, the law enforcement agency receives a written request to retain the biological evidence, the law enforcement agency SHALL retain the evidence until the discharge date of the person, unless the court orders the destruction or transfer of the evidence. [Wis. Stat. § 968.205\(2m\)](#) allows for a law enforcement agency to retain evidence in an amount and manner sufficient to develop a DNA profile. (An entire vehicle does not have to be maintained if a section of the seat is sufficient for DNA analysis.)

b. Processing Dispositions

i. Return to Owner

If the property to be returned is contaminated by a biohazardous substance, consider informing the owner prior to the return. You can also have the owner sign a Biohazard Letter at the time of the property release indicating that they are aware of the potential risk associated with claiming the property. See [APPENDIX 9: SAMPLE REQUEST FORM FOR THE RELEASE OF SUSPECTED PATHOGEN CONTAMINATED PROPERTY](#).

ii. Destruction

Items contaminated with a biohazardous substance should be placed in an appropriately labeled biohazard container and disposed of by a biohazardous waste contractor or medical facility. Check local businesses or medical facilities to determine what they accept.

iii. Abandoned Vehicles

There are situations in which vehicles contaminated with a biohazardous substance are released to a third party. In these situations, it is recommended that you inform the third party of the vehicle's condition. It is also suggested that you have them sign a Biohazard Letter upon release of the vehicle. See [APPENDIX 9: SAMPLE REQUEST FORM FOR THE RELEASE OF SUSPECTED PATHOGEN CONTAMINATED PROPERTY](#).

C. Currency/Money

For departments that may benefit from knowing how to identify counterfeit currency, the United States Secret Service offers a document at the following website that could be a useful resource:

<https://www.secretservice.gov/data/KnowYourMoney.pdf>

1. Initial Receipt

a. Genuine Currency

Monies that are being submitted as evidence should always be counted by two parties to ensure an accurate total is being recorded.

b. Counterfeit Currency

- i. Monies that are being submitted as evidence should always be counted by two parties to ensure an accurate total is being recorded.
- ii. Consider having officers enter the serial number for counterfeit bills in the evidence/RMS system for ease of tracking. An example of when this might be beneficial is when Crime Alerts are broadcast throughout the state regarding counterfeit bills. It should be relatively simple to search your database to determine whether your agency has any bills with those same serial numbers.

2. Storage

All currency, including suspected counterfeit currency, should be stored separately from general evidence and preferably in a location with enhanced security or that is double locked.

a. Genuine Currency

i. Needed for Court

Bills or coins that may potentially be needed for use in court should be retained in the property/evidence room.

ii. Not Needed for Court

It is recommended that any currency not needed for court be deposited in a non-interest bearing evidence trust checking account that is set up by your jurisdiction's financial officer. The threshold for how often funds are deposited, either by dollar amount or time frame, should be determined by department policy. It is recommended that all transactions for this account require two signatures.

iii. Mutilated or Contaminated Currency

(A) Mutilated Currency

Any mutilated U.S. paper currency should be sent to the Bureau of Engraving & Printing by registered mail with a request for a return receipt. Do not send coins. Include a letter with the following information:

- (1) The estimated value of the currency
- (2) Your contact information
- (3) An explanation of how the currency became mutilated and any contaminants (i.e. blood, cocaine, urine)
- (4) A U.S. bank account and routing number for electronic reimbursement or a payee name and mailing address for reimbursement via check.

Claims generally take 4-36 months to process. To check on a pending claim contact the Bureau of Engraving & Printing via email at: mcdstatus@bep.gov

Recommended packaging procedures:

- (1) If the currency was mutilated inside of another container and is likely to fall apart, send the entire container.
- (2) Try not to disturb the currency as much as possible. Pack it carefully in plastic and cotton.
- (3) Do not alter the currency in an attempt to preserve it. Leave the currency the way it was found.

For more information on mutilated currency, go to: <http://www.bep.gov/submitclaim.html>

Mutilated coins should be sent to the U.S. Mint for evaluation.

(B) Contaminated Currency

Contaminated currency is currency that may have become contaminated due to prolonged exposure to water or other liquids that results in the existence of mold; exposure to blood, urine, feces or any other bodily fluids, including removal from any body cavity, corpse or animal; exposure to sewage; exposure to any chemical, liquid or foreign substance that may pose a health hazard or safety risk; or exposure to tear gas used in most dye packs.

- (1) Currency that you intend to initiate forfeiture proceedings on that is contaminated with drugs can be sent to the Federal Reserve Bank for replacement.

For the procedures for Depositing Contaminated Currency please follow the link below; <https://www.frbservices.org/resources/financial-services/cash/exception-processing/contaminated-coin-currency.html>

Note: The dye used in dye packs is not considered a contaminant. Notes stained from the dye alone should be deposited normally

- (2) Only “rolled” bills that have been used to ingest drugs may be destroyed (burned) per the Federal Reserve Bank. They do not want them sent in to them.

b. Counterfeit Currency

i. Needed for Court

Counterfeit bills that may potentially be needed for use in court should be retained in the property/evidence room.

ii. Not Needed for Court

Any counterfeit currency not needed for court should only be held onto until such time as it can be forwarded to the United States Secret Service (USSS) for further investigation. Currency, along with a copy of the case report, shall be sent to the USSS per U.S. § Code 492 – Forfeiture of Counterfeit Paraphernalia <https://www.law.cornell.edu/uscode/text/18/492> .

U.S. Secret Service
517 E. Wisconsin Ave
Suite #572
Milwaukee, WI 53202

iii. Contaminated Counterfeit Currency

Counterfeit currency with any contaminants (i.e. cocaine, blood, urine), should not be turned over to the USSS without contacting your local Secret Service office to see if they will accept it.

3. Crime Lab Submittals

There are no special considerations for submitting currency evidence to the WSCL. Refer to *Crime Lab Submittals* under General Evidence.

4. Signing Out Evidence

There are no special considerations for signing out Currency/Money evidence. Refer to *Signing Out Evidence* under General Evidence.

5. Dispositions

Only subsections with special considerations for Currency/Money evidence are listed below. Refer to *Dispositions* under General Evidence.

a. Determining Disposition/Case Status

i. Contraband Currency

Money that is “put to an illegal use or acquired illicitly” or that has “a significant connection to items which are illegal to possess” can be considered contraband. *Return of property in State v. Jones*, 226 Wis. 2d 565, 594 N.W.2d 738 (1999). The state must be able to establish by greater weight of the credible evidence that the money was contraband, see [APPENDIX 18: GUIDE FOR HANDLING MONEY CONSIDERED CONTRABAND](#) for guidance. If it is determined that the money in your possession is contraband, you should consult with your DA’s Office in regards to sending a Contraband Letter, see [APPENDIX 6: SAMPLE CONTRABAND LETTER](#).

Law enforcement agencies may not retain seized or contraband currency and should comply with statutory procedure for the disposition of unclaimed money. See [APPENDIX 19: AG OPINION ON DISPOSITION OF UNCLAIMED CONTRABAND MONEY](#).

b. Processing Dispositions

i. Return to Owner

If money is not seized, forfeited, or deemed contraband it should be returned to the owner.

ii. Auction

Banks will not accept foreign currency; therefore it is recommended that agencies auction foreign currency that has been found or abandoned. The agency should first have the foreign currency appraised to ensure that it is not counterfeit and to get an estimate of its value in US dollars.

iii. Court Ordered Disposition

For forfeiture rulings regarding currency, refer to [APPENDIX 3: FORFEITURE LAW SUMMARY](#) and [Wis. Stat. § 961.55](#) for more information.

Be advised that on occasion a Judge may rule to the disposition of money that is not directly related to seizure/forfeiture. Follow that specific judgement/ruling.

iv. Abandoned Property

All abandoned money will be deposited in the County Treasurer's General Fund, except rare coins or paper money that will be sold at public auction. For information regarding Unclaimed Funds refer to [Wis. Stat. § 59.66](#).

D. Drugs

1. Initial Receipt

a. Packaging Requirements

- i. Drug materials should be field tested and weighed prior to packaging per department policy.
- ii. If the drug material is in a bag or other container that will potentially need to be processed for fingerprints or DNA, then the drug material should be removed and packaged separately from the container.
- iii. Plant materials and other substances (dabs, gels, etc.) that are not completely dried should only be packed in paper products. This is for the prevention of degradation of the substance due to mold growth.
- iv. Powder materials can be packaged in plastic. However, it is recommended that secondary packaging be utilized as well.
- v. Defer to your department's policy regarding who is authorized to open drug packaging for any reason and utilize the right of refusal as appropriate.

b. Clandestine Labs

Clandestine Labs: If you locate a clandestine laboratory involving the illegal manufacturing of controlled substances, or any related manufacturing materials, or suspected clandestine laboratory waste products, contact the Wisconsin Department of Justice – Division of Criminal Investigation (DCI) at 608-266-1671. DCI will provide instruction and advice to requesting agencies concerning the collection, packaging, and submission of evidentiary items for analysis. Requesting agencies should be prepared to photograph items of evidence and provide evidence collection materials such as disposable tarps, evidence bags, and collection bottles for liquid samples. DCI will identify items of evidentiary value, dismantle laboratory components, separate hazardous items, collect evidence items for the requesting agencies, and provide written documentation regarding the

clandestine laboratory scene and the investigative actions of DCI. Requesting agencies will be responsible for the final packaging of evidence and any submission of evidence to the WSCL.

The United States Occupational Safety and Health Administration (OSHA) require the inspection, processing, or removal of suspected or known clandestine laboratory materials be handled by personnel with specific training and personal protective equipment. DCI investigators, or other DCI designated personnel, will provide assistance with the collection of non-hazardous items deemed to be of evidentiary value necessary for potential criminal prosecution. Materials identified as hazardous will be removed by a federally approved company, coordinated by DCI upon completion of the scene assessment.

2. Storage

- a. All drugs (including those stored to be destroyed) need to be double-locked and stored separately from general evidence. Depending on storage space, drugs can be stored in the same space as other items requiring double locking (firearms/money).
- b. Follow department policy regarding storage of drugs to be destroyed.

3. Crime Lab Submittals

For the most up-to-date information regarding evidence submission to the WSCL, please reference <https://www.doj.state.wi.us/dles/wscl/evidence-submission-information>. The information provided on this website references the 9th Edition of the Physical Evidence Handbook which contains an appendix for general evidence submission guidelines, as well as specific announcements pertaining to guidelines for DNA, latent print, and controlled substance evidence. This website also discusses the various forms that are required when submitting evidence. Links are provided within the website for each topic or form, as well as for the Physical Evidence Handbook. The handbook can also be found on WILEnet at the following link: <https://wilenet.org/html/crime-lab/physevbook/index.html>.

Be aware that the WSCL may require the submission of a memo from the DA's office requesting testing for certain evidence. This may be applicable in misdemeanor drug cases or for cases in which the DA is waiting to file charges pending testing results.

Depending on your department's policy, if items need to be repackaged, separated, or have additional tape added for submission to the WSCL, property/evidence room staff may need to address these issues.

4. Signing Out Evidence

Only subsections with special considerations for Drug evidence are listed below. Refer to *Signing Out Evidence* under General Evidence.

Interim Release of Evidence

If, per department policy, officers will be responsible for any repackaging, separation, or other handling of drug evidence, then items of evidence may need to be signed out to officers for issues to be addressed prior to submission to the WSCL, if said issues were not addressed through right of refusal.

5. Dispositions

Only subsections with special considerations for Drug evidence are listed below. Refer to *Dispositions* under General Evidence.

a. Determining Disposition/Case Status

Disposition Letters/Forms

Drugs and contraband should always be destroyed unless they are diverted for training purposes.

b. Processing Dispositions

i. Return to Owner

- (A) No illicit substance or paraphernalia shall ever be returned to owner.
- (B) Prescription and over the counter drugs should only be released to the owner if you can verify/identify prescription/pills and the owner can provide proof of ownership.

ii. Destruction

All drugs should be destroyed in a manner that will totally consume the item(s) and prevent future use. The destruction should take place at a designated site capable of burning the items according to environmental safety rules as well as abiding by all state and federal laws. Drugs should not be destroyed by dumping in waterways, flushing down a toilet, or burying in a landfill.

- (A) Drug paraphernalia shall be rendered inoperable (i.e. pipes broken, bongs smashed) and disposed of.
- (B) For instructions regarding what to do with money contaminated with controlled substances or used as drug paraphernalia refer to *Currency section*.
- (C) Follow the “Rule of Two” when destroying drug evidence. The “rule of two” is a principle that requires two persons to jointly move or stage the drugs awaiting destruction. A “rule of two” may be created by using two different locks on the storage container, locker, or room/vault. Each person would possess one of the keys, requiring both to be present to access the secure items. Also use this rule for managing drug drop boxes.
- (D) It is recommended that all pills/medications and drugs be audited prior to destruction. Follow your department’s policy.
- (E) Witness destruction. Regardless of the destruction method employed, the destruction of drugs needs to be witnessed and documented accordingly.
- (F) The Wisconsin Department of Natural Resources (DNR) has issued a guidance memorandum which exempts law enforcement from federal air management rules (§60.2887). The memorandum was issued on May 2, 2011, and is effective through June 30, 2016. As of the printing of this guide, the exemption is still in effect.
- (G) You may not burn any medications that you have collected from households. You must arrange to have them burned at a facility with an air permit. See [Exhibit D-1: DRUG DISPOSAL FACILITIES](#) or participate in the DOJ Prescription Take Back Initiative. The Wisconsin Department of Justice (DOJ) holds two Prescription Drug Take Back Initiative events per year in different locations throughout Wisconsin. Check WILEnet for dates and locations. If you have any questions, please contact Danielle Long by email at longdb@doj.state.wi.us or call (414) 403-4437.

Grants: Wisconsin offers grants for pharmaceutical waste collections through the Department of Agriculture, Trade and Consumer Protection Clean Sweep grant program for

unwanted prescription drugs. For more information, see DATCP's Clean Sweep page at https://datcp.wi.gov/Pages/Programs_Services/CleanSweep.aspx

iii. Donation

Law enforcement may donate certain uncontaminated science equipment (i.e. grow lamps) to a school or school district for science classroom education in lieu of destruction. Follow your specific department's protocol.

iv. Diversion

If allowed by ordinance, drugs can be diverted for departmental training purposes. Should suitable drug items become available by disposition, then the appropriate approval process should be followed per department policy. Typically, this would involve obtaining the written approval of the Chief of Police or Sheriff. If approval is obtained, then any use of the drug items should be well documented, and all weights should be recorded so as to track the amounts utilized during each training process.

v. Court Ordered Disposition

For forfeiture rulings regarding drug cases refer to [APPENDIX 3: FORFEITURE LAW SUMMARY](#), and [Wis. Stat. § 961.55](#) for more information.

EXHIBIT D-1: DRUG DISPOSAL FACILITIES

DRUG DISPOSAL FACILITIES

Below is a list of facilities that are authorized to take prescription drugs for disposal.
All rates listed are subject to change. Please contact the facility for most up to date pricing.

Barron County Waste-To-Energy Facility

575 10 1/2 Ave

Almena, WI 54805

http://www.barroncountywi.gov/index.asp?Type=B_BASIC&SEC=%7BA7E66E87-8E68-4A98-B529-C67768AE2615%7D

Contact: Al Zeltner (715) 357-6566 (phone) or (715) 357-3006 (fax) or recycle@chibardun.net (e-mail)

Fee Disposal Schedule: <http://www.barroncountywi.gov/vertical/sites/%7B55B35465-9825-4C7F-A839-E0EDFC6408E8%7D/uploads/Tipfeerates2016.pdf>

Covanta – Indianapolis

2425 South Belmont Avenue

Indianapolis, IN 46221

<http://www.covanta.com/>

Contact: John Frotton 862-345-5039

(Facility currently used by DCI for collection disposal)

Free disposal for law enforcement/drop box collections; Can dispose of controlled substances/evidence also

Covanta – Kent, Inc. (Run by Covanta but not owned by Covanta)

950 Market Ave, SW

Grand Rapids, MI 49503

<http://www.covanta.com/>

Contact: Chris Robinson 616-336-4359 (phone) chris.robinson@kentcountymi.gov (email)

To set up an account call Kim Alexander 616-336-3965

Cost: 1-ton max – minimum fee of \$91.68 **Need to call ahead to schedule appointment

**Will take pharmaceuticals and controlled substances **Liquids need to be solidified prior to disposal

Pope Douglas

2115 Jefferson Street

Alexandria, MN 56308

<http://www.popedouglasrecycle.com/>

Contact: Nathan Reinbold 800-972-6318

Fees (Subject to adjustment); Call ahead and set up an account for billing

Rates based on following schedules:

HH Pharm Waste: \$150.00 flat fee (per transaction, NOT per collection site)

+ \$ 0.50 / lb. tip fee (based on actual weight of all filled containers)

+ 17% State Tax (based on 17% Solid Waste Management Tax)

Confiscated Drugs (Organic):

\$ 150.00 flat fee (per transaction, NOT per collection site)

+ \$ 0.50 / lb. tip fee (based on actual weight of all filled containers)

+ 17% State Tax (based on 17% Solid Waste Management Tax)

Madison Environmental Resourcing Inc. (MERI)

CONTROLLED SUBSTANCES ONLY; Not Licensed for pharmaceuticals

800 Uniek Drive

Waunakee WI 53597

Website: www.meriinc.com

Contact: James Fitzpatrick, 608-257-7652 (phone) jamesfitzpatrick@meriinc.com(email)

Accepts controlled substances only. Not licensed for pharmaceuticals.

E. Firearms

This section refers only to evidentiary firearms. For Safekeeping or Injunction firearm information, refer to the *Property Section*

1. Initial Receipt

Firearms should be packaged in such a manner so as to protect anyone who handles the firearm, protect the evidentiary value of the firearm, and allow for efficient storage. Because safety is a priority, all firearms should be verified to be unloaded. How this is accomplished is up to each individual department.

It is recommended that once a firearm is verified as unloaded, a zip tie be inserted through the action or cylinder whenever feasible. The zip tie should never be inserted into the barrel of the firearm as it may alter barrel markings that are used during a firearm analysis. For this reason, it is suggested that the departments contact the WSCL to verify that their policy or procedure is acceptable and will not disrupt the integrity of the firearm evidence.

Although there are a variety of packaging options available, it is up to a department to choose the option that works best for their storage space. Regardless of the container that is used, packaging should safeguard the firearm from any cross-contamination or loss of trace evidence, as well as protect against contact with biohazardous substances.

If live ammunition is to be submitted with the firearm, it is recommended that the ammunition be separated and stored independently of the firearm. Follow your department's policy/packaging manual.

A Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) E-trace should be performed on any firearm seized by law enforcement. Firearms tracing is the tracking of the movement of any firearm from its first sale by the manufacturer or importer through the distribution chain to the first retail purchaser. A firearm trace could potentially link a suspect to a firearm in a criminal investigation or find the owner of a found firearm. The National Tracing Center Division conducts the firearm traces. Their contact information can be obtained at: <https://www.atf.gov/firearms/national-tracing-center> The ATF website is a resource for management of firearms. Most of the information on their website pertaining to the management of firearms can be found under the publications or forms tabs.

2. Storage

- a. All firearms (including those stored to be destroyed) need to be double-locked and stored separately from general evidence. Depending on storage space, firearms can be stored in the same space as other items requiring double locking (drugs/money).
- b. Follow department policy regarding storage of firearms to be destroyed.

3. Crime Lab Submittals

For the most up-to-date information regarding evidence submission to the WSCL, please reference <https://www.doj.state.wi.us/dles/wscl/evidence-submission-information>. The information provided on this website references the 9th Edition of the Physical Evidence Handbook which contains an appendix for general evidence submission guidelines, as well as specific announcements pertaining to guidelines for DNA, latent print, and controlled substance evidence. This website also discusses the various forms that are required when submitting evidence. Links are provided within the website for

each topic or form, as well as for the Physical Evidence Handbook. The handbook can also be found on WILEnet at the following link: <https://wilenet.org/html/crime-lab/physevbook/index.html>.

Be aware that the WSCL may require the submission of a memo from the DA's office requesting testing for certain evidence. This may be applicable in misdemeanor drug cases or for cases in which the DA is waiting to file charges pending testing results.

Depending on your department's policy, if items need to be repackaged, separated, or have additional tape added for submission to the WSCL, property/evidence room staff may need to address these issues.

4. Signing Out Evidence

There are no special considerations for signing out Firearm evidence. Refer to *Signing Out Evidence* under General Evidence.

5. Dispositions

Only subsections with special considerations for Firearm evidence are listed below. Refer to *Dispositions* under General Evidence.

a. Determining Disposition/Case Status

- i. Firearms that are not considered contraband and are no longer needed as evidence, or for which all proceedings and investigations in which it might be required have been completed ([Wis. Stat. § 968.20 \(1\) \(b\)](#)), may be returned to the owner (pending a firearm background check) without a hearing. See [APPENDIX 20: SAMPLE FIREARM RELEASE FORM](#).

If a dangerous weapon, including firearms and ammunition, is not required for evidence to further an investigation and has not been disposed of pursuant to a court order at the completion of a criminal action or proceeding, then the agency shall make reasonable efforts to notify all persons who have or may have an authorized rightful interest in the dangerous weapon (i.e., firearms used in suicide).

- ii. Be aware of the type of case being processed. Some firearms, due to the circumstances of a given case, may not be returnable even if an authorized person indicates they can be returned.

(A) Contraband

As defined by [Wis. Stat. § 968.13\(a\)](#): "Contraband, which includes without limitation because of enumeration lottery tickets, gambling machines or other gambling devices, lewd, obscene or indecent written matter, pictures, sound recordings or motion picture films, forged money or written instruments and the tools, dies, machines or materials for making them, and controlled substances, as defined in s. [Wis. Stat § 961.01\(4\)](#), and controlled substance analogs, as defined in s. [Wis. Stat § 961.01\(4m\)](#), and the implements for smoking or injecting them. Gambling machines or other gambling devices possessed by a shipbuilding business that complies with s. [Wis. Stat § 945.095](#) are not subject to this section.

If you have a firearm that is considered contraband that cannot be returned, consider sending a letter to that effect. See [APPENDIX 6: SAMPLE CONTRABAND LETTER](#).

(B) Firearm Used in the Commission of a Crime

Per [Wis. Stat. § 968.20\(1m\)](#), If a dangerous weapon (firearm, knife, ammunition) was used in the commission of a crime, the dangerous weapon or ammunition will not be returned to

any person who committed a crime involving the use of the dangerous weapon or the ammunition. The property 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.

Per [Wis. Stat. § 939.22\(10\)](#), “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 s. [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.

If you have items that cannot be returned due to them being used in the commission of a crime, consider sending a letter to that effect. See [APPENDIX 7: SAMPLE USED IN THE COMMISSION OF A CRIME LETTER](#).

(C) Owner’s Right to Petition the Court for the Return of Firearm

When a person claiming the right to possession of the firearm has applied for its return through the courts, the court shall order a hearing to occur within 20 business days after the person applies for the return.

If, at the hearing, the courts find the proceedings and investigations are completed and the petitioner is not prohibited from possessing a firearm, the court shall, within 5 days of the completion of the hearing and using a return of firearms form, order the property returned if one of the following has occurred:

1. The DA has affirmatively declined to file charges in connection with the seizure against the person.
2. All charges filed in connection with the seizure against the person have been dismissed.
3. Ten months have passed since the seizure and no charges in connection with the seizure have been filed against the person.
4. The trial court has reached final disposition for all charges in connection with the seizure and the person has not been adjudged guilty, or not guilty by reason of mental disease or defect, of a crime in connection with the seizure.
5. The person has established that he or she had no prior knowledge of and gave no consent to the commission of the activity that led to the seizure.

b. Processing Dispositions

i. Return to Owner

(A) Processing Background Prior to Returning to Owner

1. Conduct a criminal history check

- a. Follow the outline provided in [APPENDIX 21: PROCESSING A BACKGROUND FOR RETURN OF FIREARM](#). Your department may also consider using a Firearm Background Checklist to document that the thorough Criminal History Check was completed, see [APPENDIX 22: SAMPLE FIREARM BACKGROUND CHECKLIST](#).

- b. See [EXHIBIT E-1: POSSESSION OF FIREARMS DISQUALIFIERS](#) for a list of State and Federal firearm disqualifiers. Also, see [EXHIBIT E-2: ADDITIONAL FIREARM DISQUALIFICATION INFORMATION](#) for assistance in interpreting some of the disqualifiers.
- c. Law Enforcement Agencies are expected to conduct background checks before contacting the Wisconsin Handgun Hotline Firearms Unit. The Firearms Unit will help in any way that they can if you have questions. This includes assisting in interpreting and determining whether convictions meet the disqualifier definition. If there are questionable convictions and you are unable to determine if the person is disqualified from owning a firearm, then submit a qualification letter (fax or e-mail) to the Wisconsin Handgun Hotline/Firearms Unit, see [APPENDIX 23: SAMPLE LETTER TO HANDGUN HOTLINE](#).
- d. If an individual is disqualified from possessing a firearm, send a Firearm Disqualification Notification letter to inform them of their status. See [APPENDIX 24: SAMPLE DISQUALIFICATION NOTIFICATION LETTER](#). Send the letter by certified mail. The owner will be given 30 days from the date of the letter to provide a name of a third party to relinquish ownership rights. It is then necessary to perform a background check to determine if the third party is qualified to possess firearms.
- e. If, after 30 days from the date the notification letter was sent, the firearm and ammunition remain unclaimed, then they shall be destroyed or diverted for department use. A law enforcement agency may retain a firearm or ammunition, with the exception of handguns or weapons/ammunition that were used in the commission of a crime, if allowed by statute and authorized by the Chief of Police or Sheriff.

(B) Release the Firearm

1. The owner must present a photo ID and provide proof of ownership if requested.
2. The owner must sign the property report.
3. The owner and property/evidence custodian should go through the State and Federal Disqualifiers together and owner should attest that they recognize that they could become disqualified if they meet any of the criteria at any time and would be subject to criminal action if they continued to possess the firearm. Refer to [APPENDIX 20: SAMPLE FIREARM RELEASE FORM](#).
4. If the firearm is being released to a third party, agencies should consider sending a third-party agreement letter to the original (disqualified) owner prior to the release. See [APPENDIX 25: RECEIPT REGARDING THIRD PARTY TRANSFER OF FIREARMS](#). The third party should then complete their section of the agreement with the property/evidence custodian at the firearm release. Third party owners should then complete all the other steps listed above with property officer.

EXHIBIT E-1: STATE AND FEDERAL FIREARMS DISQUALIFIERS

State Firearms Disqualifiers

- [Wis. Stat. § 941.29\(1m\)\(a\)](#) Convicted of a felony in Wisconsin unless pardoned.
- [Wis. Stat. § 941.29\(1m\)\(b\)](#) Convicted of a crime elsewhere that would be a felony if committed in this state unless pardoned.
- [Wis. Stat. § 941.29\(1m\)\(bm\)](#) Adjudicated delinquent for an act committed on or after 04/21/1994 that if committed by an adult in this state would be a felony unless a court has restored the right to possess.
- [Wis. Stat. § 941.29\(1m\)\(c\)](#) Found not guilty of a felony in this state by reason of mental disease or defect unless a court has restored the right to possess.
- [Wis. Stat. § 941.29\(1m\)\(d\)](#) Found not guilty or not responsible for a crime elsewhere that would be a felony in this state by reason of insanity or mental disease, defect or illness unless a court has restored the right to possess.
- [Wis. Stat. § 941.29\(1m\)\(e\)](#) Committed for treatment under s. [51.20\(13\)\(a\)](#) and ordered not to possess a firearm unless the prohibition has been cancelled.
- [Wis. Stat. § 941.29\(1m\)\(em\)](#) Ordered not to possess a firearm under s. [51.20\(13\)\(cv\)1](#), [51.45\(13\)\(i\)1](#), [54.10\(3\)\(f\)1](#) or [55.12\(10\)\(a\)](#) unless the order has been cancelled.
- [Wis. Stat. § 941.29\(1m\)\(f\)](#) Enjoined under an injunction issued under s. [813.12](#) or [813.122](#) or under a tribal injunction, as defined in s. [813.12 \(1\) \(e\)](#), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under [s. 941.29](#) and that has been filed under s. [806.247 \(3\)](#).
- [Wis. Stat. § 941.29\(1m\)\(g\)](#) Ordered not to possess a firearm under s. [813.125\(4m\)](#).

Federal Firearms Disqualifiers

- [18 U.S.C. § 922\(g\)\(1\)](#) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year
- [18 U.S.C. § 922\(g\)\(2\)](#) Is a fugitive from justice
- [18 U.S.C. § 922\(g\)\(3\)](#) Is an unlawful user of or addicted to any controlled substance
- [18 U.S.C. § 922\(g\)\(4\)](#) Has been adjudicated as a mental defective or committed to a mental institution
- [18 U.S.C. § 922\(g\)\(5\)](#) Illegally or unlawfully in the United States
- [18 U.S.C. § 922\(g\)\(6\)](#) Has been discharged from the Armed Forces under dishonorable conditions
- [18 U.S.C. § 922\(g\)\(7\)](#) Having been a citizen of the United States, has renounced U.S. citizenship
- [18 U.S.C. § 922\(g\)\(8\)](#) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner
- [18 U.S.C. § 922 \(g\)\(9\)](#) Has been convicted in any court of a misdemeanor crime of domestic violence
- [18 U.S.C. § 922\(n\)](#) Is under indictment for a crime punishable by imprisonment for a term exceeding one year (can possess firearm but cannot purchase a firearm)

* See www.atf.gov/publications/firearms for additional firearms resources.

EXHIBIT E-2: ADDITIONAL FIREARM DISQUALIFICATION INFORMATION

HELPFUL FIREARM DISQUALIFIER INFORMATION

Some of the disqualifiers require interpretation. In addition, under current law some information is NOT available to do a check for return of property including some mental health commitments, illegal or unlawful alien status, dishonorable discharge, and renunciation of citizenship. However, some of this information may show up in a criminal record check or may be contained in the NICS Indices maintained by the FBI. Your agency is now authorized to query the NICS Indices for the disposition of a firearm. Your agency can access this information through Portals utilizing form 0028.

The following are examples of some federal disqualifiers that you may identify and how they are treated under the National Instant Check System (NICS):

1. Is an unlawful user or addicted to a controlled substance (ONE YEAR firearms disqualification).

Disqualified under **ANY** of the following situations:

- a. Convicted for possession or use within the past year; **or**,
- b. 2 or more arrests for possession or use within the past 5 years if the most recent has occurred within the last year (can be from different states, convictions not required but a dismissed charge does count); **or**,
- c. the person has been found to have used a controlled substance illegally through the use of a drug test within the past year; **or**,
- d. The person has admitted to the unlawful possession or use of a controlled substance within the past year, which has been documented in an criminal incident report; **or**,
- e. The person is a current or former military member who received discipline or other administrative action based on confirmed drug use; **or**,
- f. The person has a drug paraphernalia charge within the past year and the paraphernalia has been field or lab tested positive for residue of a controlled substance.

Note: prescriptions drugs may qualify if they are used in a non-prescribed manner, or are possessed illegally (forged prescription or obtained by theft or fraud) or using another person's prescription even with their consent.

2. Has been adjudicated as a mental defective or committed to a mental institution.

There is no time limit on the age of the adjudication or commitment for this prohibition.

3. Has been convicted of a misdemeanor crime of domestic violence.

ANY misdemeanor that has, as an element, the use or attempted use of physical force OR the threatened use of a deadly weapon and at the time of the offense the person was a current or former spouse, parent, or guardian of the victim, shared a child in common with the victim, cohabitated with the victim as a spouse, parent or guardian or who was or had been similarly situated to a spouse, parent or guardian of the victim.

The Wisconsin Domestic Abuse modifier DVO enhancers or lack thereof should not be viewed as an automatic disqualification/qualifier. All Disorderly Conduct criminal complaints should be reviewed for the element(s) of "violent" or "abusive" conduct. Check with the firearms unit for clarification as to whether a disorderly conduct conviction with the element of "violence" may be a disqualifier.

Note: Wisconsin law defines a firearm as any weapon that acts by force of gunpowder. However, under federal law the term firearm does not include black powder firearms.

****If a person is disqualified from possessing a firearm under STATE law then they are prohibited from possessing any firearm, including a black powder firearm. HOWEVER, if the only prohibition is a FEDERAL law disqualifier then that person may possess a black powder firearm.**

ii. Destruction

All firearms/ammunition used in the commission of a crime and not returned to the owner shall be submitted to the WSCL for disposal [Wis. Stat. § 968.20\(3\)\(a\)\(2\)](#). When firearms are ready to be submitted, call the WSCL prior to transporting the firearms and ammunition.

For first class cities, only (Milwaukee), an attempt shall be made to return firearms no longer needed as evidence. If after one (1) year the owner has not requested the return of the firearm, the firearm may be disposed of; however, each agency shall have an ordinance that permits the disposal of unclaimed firearms/dangerous weapons ([Wis. Stat. § 968.20\(3\)](#)).

See **EXHIBIT E-3: SUBMISSION FORM FOR GUNS FOR DESTRUCTION** below for a snapshot of the WSCL's most recent submission form for guns for destruction. This form is an EXCEL spreadsheet and it can be obtained from the WSCL by requesting it via email to madevidence@doj.state.wi.us. The form needs to be filled out entirely for each firearm. When the form is completed, a copy can be sent to Madevidence@doj.state.wi.us prior to the submission. If any of the firearms have biological substances on them, they need to be packaged and clearly marked as biohazard. Please do not submit BB guns, air rifles, knives, or anything else that is not classified as a firearm. A submission form does not need to be filled out for any ammunition for destruction. The WSCL does not accept black powder or gunpowder.

For questions regarding Firearms for Destruction, please contact:

Olivia Sassman, Evidence Specialist-Senior (main contact)

Wisconsin State Crime Laboratory Bureau, State of Wisconsin Department of Justice
4626 University Ave. Madison WI 53705

Phone: 608.266.2031, Email: sassmanob@doj.state.wi.us

If Olivia is unavailable, you may contact any Evidence Specialist at 608-266-2031 or email madevidence@doj.state.wi.us.

EXHIBIT E-3: SAMPLE OF SUBMISSION FORM FOR GUNS FOR DESTRUCTION

	A	B	C	D	E	F	G	H	I
1	Manufacturer	Model	Serial Number	Type	Caliber / GA	Agency Number	Date Received	Agency Name	Inventory Date
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									

NOTE: It is NOT recommended to Auction or Donate Firearms

iii. Diversion

See [Wis. Stat. § 968.20\(3\)\(b\)](#). All firearms which are diverted for departmental use and are specified Class III weapons per National Firearms Act (NFA) standards (machine guns, short barreled weapons, and silencers), shall register the weapons with ATF. Registration forms can be found on the ATF website. **Agencies are prohibited from diverting handguns.** See [APPENDIX 26: AG OPINION ON DISPOSITION OF DANGEROUS WEAPONS/AMMO](#).

When the firearm is no longer needed for department use, it shall be sent to the WSCL for disposal. See *Destruction* section outlined above for more information regarding the destruction process.

iv. Court Ordered Disposition

This section refers to Court Orders **other than Injunctions**. For information pertaining to firearms held due to an Injunction Order, see section *Property/Injunction Firearms*.

If an agency holding a seized firearm receives a return of firearms order from the Court, that agency shall return the firearm within 10 business days of receiving the order unless, after running the firearms background check, the agency determines that the person who would receive the firearm is prohibited from possessing a firearm under state or federal law. The entity shall use the information provided under [Wis. Stat. § 165.63](#) to aid in making the determination. [Wis. Stat. § 968.20\(1m\)\(d\)](#).

- (A) A firearm surrendered shall not be returned to the respondent or owner until the agency receives an order from a judge or family court commissioner directing return of the firearm to the respondent or owner and ensuring that a background check has been completed establishing the respondent's lawful ability to possess a firearm.
- (B) A firearm receipt issued at the time firearms were seized is conclusive proof that the respondent owns the firearm for purposes of returning the firearm(s).
- (C) When the firearm(s) covered by the receipt is returned to the respondent or owner, the department shall surrender the original receipt and all copies, to the respondent.
- (D) The respondent or owner shall date and sign the Firearm Release Form, acknowledging receipt of the firearm(s).

Any firearm ordered seized by the court due to an involuntarily commitment (past the 72 hours), cannot be returned to the owner until the court has canceled the order. The owner of the firearm must petition the courts for the return of the firearm, [Wis. Stat. §968.20\(1\)](#). Corporation Counsel handles the involuntary commitment orders.

v. Abandoned Property

If the owner fails to claim their firearm after an owner notification letter has been sent, then it becomes abandoned property and should be destroyed or retained for department use. [Wis. Stat. § 66.0139\(2\)](#)

PROPERTY

A. Found Property/Chattels [WIS. STAT. CH. 170](#)

1. Property Found by Private Citizens with a Value of \$25-\$99 [Wis. Stat. §170.07](#)

Property found by private citizens with a value of **less than \$25** does not need to be accepted as Found Property. It can either be destroyed or the finder has the right to keep it.

- a. Within 5 days, the finder **shall** give **written** notice to the law enforcement agency in the city, village, or town where property was found. See [APPENDIX 27: SAMPLE FOUND PROPERTY CLAIM](#).
 - i. If written notice is not received within 5 days, the property may be treated as abandoned. Follow abandoned property guidelines.
 - ii. If the property found is money and the owner is unknown, the money can be returned to the finder as long as they gave the appropriate written notice.
- b. Upon receipt of written notice, the law enforcement agency shall post a notice of the found property in two public places in the city, village, or town where the property was found.

2. Property Found by Private Citizens with a Value of \$100 or more [Wis. Stat. §170.08](#)

Within 15 days, the finder **shall** give **written** notice to the law enforcement agency in the city, village, or town where the property was found and effect a Class 2 notice to be published in the county where the property was found. See [APPENDIX 27: SAMPLE FOUND PROPERTY CLAIM](#).

If written notice is not received within 15 days or a class 2 notice is not published, the property may be treated as abandoned. Follow abandoned property guidelines.

3. Disposition of Property Found by Private Citizens [Wis. Stat. §170.09](#)

- a. If the owner of the found property appears within 90 days after notice is given to the law enforcement agency, the property may be returned to them upon their paying all the costs and charges on the property, including a reasonable compensation to the finder for the finder's trouble.
 - i. The property officer will notify the owner requesting them to schedule an appointment to obtain the property. The owner must present satisfactory evidence of identification, must sign to acknowledge receipt of the property, and must pay all associated expenses.
 - ii. The property report is removed from the property file and forwarded to Records for filing in the original case.
 - iii. All unclaimed found property shall be deemed abandoned. Follow *abandoned property* guidelines under General Evidence.
- b. If no owner appears within 90 days, then the finder of the property becomes the owner.
 - i. The Property Officer will notify the finder requesting them to schedule an appointment to obtain the property.

- ii. The finder must present satisfactory evidence of identification and must sign to acknowledge receipt of the property.
- iii. The owner must, within two months, procure an appraisal by the law enforcement agency in the finder's city, village or town. The appraisal shall be certified by the head of the law enforcement agency and filed in the office of the agency.
- iv. The property report is removed from the property file and forwarded to Records for filing in the original case.
- v. All unclaimed found property shall be deemed abandoned. Follow *abandoned property* guidelines under General Evidence.

4. Property Found by Public Employees [Wis. Stat. §170.105](#)

- a. Property (money or goods) found by public employees within the scope of his/her official duties, and having a value exceeding \$25.00, shall be transferred to the custody of the agency in the jurisdiction where the property was found that is designated by the city, village, or town governing body to receive found property. That agency shall post a notice in two public places.
- b. If the found property is not claimed within 90 days after the notices were posted, it becomes the property of the finder's agency.
- c. If the owner of the found property appears within 90 days after notice is posted, the property may be returned to them upon their paying all the costs and charges on the property.
 - i. The property officer will notify the owner requesting them to schedule an appointment to obtain the property.
 - ii. The owner must present satisfactory evidence of identification, must sign to acknowledge receipt of the property, and must pay all associated expenses.
 - iii. The property report is removed from the property file and forwarded to Records for filing in the original case.
 - iv. All unclaimed found property will be deemed abandoned. Follow *abandoned property* guidelines under General Evidence.

B. Safekeeping

Departmental policy shall instruct all law enforcement officers to issue a receipt for any property seized without a search warrant. The receipt shall inform the citizen how to claim the property ([Wis. Stat. § 968.18](#)). See [APPENDIX 28: SEIZED PROPERTY RECEIPT](#).

Property that is being held for safekeeping shall be returned to the legal owner upon request or by court order. Property (excluding firearms) not claimed within 90 days from the issued receipt date shall be considered intentionally abandoned by the owner and the process for disposing of abandoned property ([Wis. Stat. § 66.0139](#)) shall commence. Follow *abandoned property* guidelines under General Evidence.

1. General Safekeeping Items

Upon receiving property held for safekeeping and receiving approval from the investigating officer that it can be released, with the exception of firearms (see *Firearms Held for Safekeeping*), the property/evidence custodian shall do the following:

- a. Contact the owner by mail to schedule an appointment for the release of the property.
- b. Release to the owner
 - i. The owner must present a photo ID and provide proof of ownership if requested. The owner must sign the property report.
 - ii. The property report is removed from the property file if there is no additional property connected with the case and forwarded to Records for filing in the original case.
- c. If there is no response to the letter or the property is not claimed within the designated amount of time, then it is considered abandoned property. See *abandoned property* section.

2. Firearms Held for Safekeeping

Firearms seized for safekeeping shall be held no longer than necessary. Upon receiving firearms held for safekeeping and receiving approval from the investigating officer that they can be released, the property/evidence custodian shall do the following:

- a. Conduct a firearm background check. Follow the outline provided in [APPENDIX 21: PROCESSING A BACKGROUND FOR RETURN OF FIREARM](#). Your agency may also consider using a Firearm Background Checklist to document that the thorough Criminal History Check was completed. See [APPENDIX 22: SAMPLE FIREARM BACKGROUND CHECKLIST](#).
- b. If there are questionable convictions and you are unable to determine if the person is disqualified from owning a firearm, then submit a qualification letter (fax or e-mail) to the Wisconsin Handgun Hotline/Firearms Unit. Refer to [APPENDIX 23: SAMPLE LETTER TO HANDGUN HOTLINE](#).
- c. If the release is authorized and the person is qualified to possess firearms, contact the owner to schedule an appointment for the return of the firearm.
- d. Release of Firearm
 - i. The owner must present a photo ID and provide proof of ownership if requested. The property receipt they were issued at the time of the seizure is proof of ownership unless proven otherwise.
 - ii. The owner must sign the property receipt.
 - iii. The property report is removed from the property file if there are no additional items of evidence connected with the case and forwarded to Records for filing in the original case. A dictation or written record authored by the property/evidence custodian regarding the disposition of the property should accompany the property report.
- e. If the person is disqualified from possessing a firearm, send them a Firearm Disqualification Notification letter to inform them of their status. See [APPENDIX 24: SAMPLE DISQUALIFICATION NOTIFICATION LETTER](#). Send the letter by certified mail. The owner will be given 30 days from the date of the letter to provide a name of a third party to relinquish ownership rights. It is then necessary to perform a background check to determine if the third party is qualified to possess firearms.

For additional firearms information regarding disqualifiers and return, refer to *Firearms*.

C. Property Turned in for Destruction

It is encouraged to allow citizens to surrender unwanted firearms, ammunition, and medications to their local police department for destruction. Please refer to your department's policy in regards to accepting these items.

1. Firearms and Ammunition

Please consider having the citizen turning over firearm(s) complete a Citizen's Request for Destruction of Firearm form. See [APPENDIX 29: SAMPLE CITIZEN'S REQUEST FOR FIREARM/DANGEROUS WEAPON DESTRUCTION](#).

2. Medications

Refer to your department's policy on accepting drugs from citizens and follow the destruction process listed in the *Drug Destruction* section of this guide.

D. Deceased Person's Property (Coroner/Medical Examiner) - [Wis. Stat. § 59.66\(3\)](#)

County Medical Examiners may take possession of personal effects of a deceased person. After one year, if the personal effects are not claimed by a person having the legal right to the property, then it may be turned over to the Sheriff.

The Medical Examiner must produce a written report listing all personal property that is turned over to the Sheriff.

The Sheriff shall post the unclaimed property, on or before August 1st, annually in three public places in the county. This posting will include a brief description of the property as well as the Sheriff's intention to sell the property at public auction. This posting will also contain the date, time, and place of said auction. An internet site is an acceptable auction location.

The proceeds of the sale shall go to the County Treasurer.

Any unclaimed property not sold at auction shall be destroyed.

E. Inmate Property - [Wis. Stat. § 59.66\(3\)](#)

Any inmate property which is unclaimed at the county jail for a period of one year after the prisoner has been discharged, transferred, or committed shall be sold at auction.

The Sheriff shall post the unclaimed property, on or before August 1st, annually in three public places in the County. This posting will include a brief description of the property as well as the Sheriff's intention to sell the property at public auction. This posting will also contain the date, time, and place of said auction. An internet site is an acceptable auction location.

The proceeds of the sale shall go to the County Treasurer.

Any unclaimed property not sold at auction shall be destroyed.

F. Injunction Firearms

This section pertains to the court ordered surrender of any firearms **to the Sheriff** or a third party by person's subject to certain injunctions. **This is not a seizure.**

Injunctions that **require** mandatory firearm surrender:

- * Domestic abuse [Wis. Stat § 813.12\(4m\)\(a\)2](#)
- * Child abuse [Wis. Stat § 813.122\(5m\)\(a\)2](#)

Injunctions where the court **may** order firearm surrender:

- * Individual at risk [Wis. Stat § 813.123\(5m\)\(a\)](#)
- * Harassment [Wis. Stat § 813.125\(4m\)\(a\)](#)

The sheriff shall not receive any firearms until the sheriff is formally notified (i.e. receives a copy of the injunction).

When the sheriff is receiving firearms subject to surrender under an injunction the following procedures should be followed [Wis. Stat. § 813.1285\(6\)](#):

A receipt shall be prepared for the surrendered firearms and must include a complete description of the firearm.

1. Document manufacturer, model, and serial number.
2. Document the condition of the firearm.
3. The receipt must be dated and signed by the person receiving the firearm(s) and the respondent.
4. The Sheriff's department shall retain the original receipt and provide two exact copies of the receipt to the respondent.
 - One copy is respondent's receipt.
 - Respondent must turn over the second copy to the Clerk of Courts within 48 hours of the order to surrender firearms.

IMPORTANT NOTE:

The Sheriff may not enter any information contained on a receipt into any computerized or direct electronic data transfer system or disseminate or provide access to the information.

Additional Suggestions:

1. Photograph the firearms upon receipt to provide a record of the actual condition. Do not store photographs on a computerized system.
2. Do not accept gun cases, they are difficult to store.
3. Store your hard copy of the paperwork (receipt, court order, etc.) in a binder and file in alphabetical order by respondents last name. **The file must remain confidential.**
4. Before storing, tag each firearm using the respondent's name, civil case number, item number, and the description used on the receipt.
5. Remember to query the firearm(s) through NCIC upon receipt.

Additional Injunction Information:

1. A Sheriff may store a firearm surrendered to him or her under [Wis. Stat. § 813.1285\(3\)\(a\)2](#) or [Wis. Stat. § 813.1285\(4\)\(b\)2](#) in a warehouse that is operated by a public warehouse keeper

licensed under ch. 99. If a Sheriff stores a firearm at a warehouse under this subdivision, the respondent shall pay the cost charged by the warehouse for storing the firearm.

2. If an injunction expires and is not extended, or an injunction is vacated, a Sheriff may charge the respondent for any cost incurred 30 days after the injunction expires for storage of the firearm surrendered to the sheriff due to that injunction. A Sheriff may dispose of a firearm surrendered to the Sheriff due to that injunction 12 months after the injunction expires or is vacated and, if the Sheriff disposes of the firearm, the Sheriff may charge the respondent for the cost of disposal.



APPENDICES

APPENDIX 1: COURT RECORDS RETENTION

The following information is intended to provide a short summary of the records retention rules under Wisconsin Supreme Court Rule Chapter 72. Before destroying any record, consult the complete Chapter 72 rule.

Disposing of Court Records (SCR 72.02, 72.03)

A court records custodian may destroy records in their custody after the minimum retention periods in SCR 72.01 expires and after offering the record to the State Historical Society. A record defined as confidential by rule or statute should be destroyed by burning, shredding, or other means that obliterate the record.

A court record that has been electronically or optically stored (i.e. scanned/imaged) and preserved, following the procedures in SCR 72.05, may be destroyed one year after entry of a final order in the action for which the record is maintained or one year after filing for records not specifically related to court actions.

Any court record that has been suitably microfilmed may be destroyed two years after entry of the final order in the action for which the record is maintained or two years after filing for records not specifically related to court actions.

Offering to State Historical Society (SCR 72.04)

The court records custodian, prior to destroying most court records, must give at least 60 days written notice of the destruction to the State Historical Society. Notice is not required for records the Historical Society has previously approved destruction of or for records the Historical Society has waived interest in.

The court records custodian should notify the Historical Society of a pending record destruction by completing the “Notification To the State Historical Society” (GF-110) form. Complete one form for each record series (i.e. family on one form, criminal on another). This form can be printed from the Forms section of the Wisconsin Court System website – <https://www.wicourts.gov/forms1/index.htm>.

Notification Requirement Waived

The State Historical Society has waived notification under SCR 72.04 for certain records. The following records may therefore be destroyed when the retention period under SCR 72.01 expires:

- Accounting Records - receipts, bank statements, etc.
- Complex Forfeitures
- Condominium Liens
- Court Reporter Notes
- Criminal Misdemeanor Records
- Criminal Traffic (CT) Records
- Exhibits
- Family Maintenance/Support Payment Records
- Guardianship Records
- Incarcerated Persons Records
- Judgment/Lien Docket/Tax, UC warrants
- Jury Records - payroll, questionnaires, arrays
- Juvenile Delinquency/CHIPS Records
- Mental Health Records
- Notary Public Appointments
- Oaths of Office
- Ordinance Violations
- Search warrants
- Small Claims Records
- Tax warrants/liens
- Traffic/Conservation Forfeitures Records
- Trust Account Ledgers
- Unemployment compensation warrants/liens
- Workers Compensation Liens

Retention Periods under SCR 72.01 (By Record Type):

- Accounting Records – 7 years
- Adoption/TPR Records – Permanent
- Civil Records – 20 years
- Complex Forfeitures – 20 years
- Condominium Liens – 7 years
- Construction Liens – 7 years
- Coroner's Inquest – None
- Court Records in Books – Retention of related case file
- Court Records No Longer Created – 20 years
- Court Reporter Notes – 10 years
- Criminal Felony Records – 50 years (75 years for Class A felonies)
- Criminal Misdemeanor Records – 20 years
- Criminal Traffic Records – 20 years
- Delinquent Income Tax Warrants:
 - filed before Aug 1, 1981: 10 years
 - filed between Aug 1, 1981 - April 30, 2004: Permanent
 - filed on or after May 1, 2001: 20 years
- Estate/Probate Records – 75 years
- Exhibits – 120 days (appeal time to expire) + 1 year
 - Criminal Exhibits Containing Biological Material – varying retention times (see SCR 72.01(46m))
- Family Records – 30 years (+7 years if ongoing payments)
- Family Support/Maintenance Records – 30 years (+7 years if ongoing payments)
- Forfeiture (Traffic, DNR, Ord. Violations) – 5 years
- Grand Jury Records – 75 years
- Guardianship Records – 7 years
- Incarcerated Persons Records – 5 years
- Information & Indictment Records – None
- John Doe Records – 50 years (75 years Class A fel.)
- Jury Records – 4 years
- Juvenile Delinquency Records
 - 4 years after 18th birthday
 - 75 years if adjudicated for act punishable as a felony
- Juvenile Guardianships – 7 years after 18th birthday
- Juvenile JIPS/CHIPS Records – 4 years after 18th birthday
- Juvenile Ordinance Violations – 5yrs
- Juvenile Search Warrants (if not filed w/case) – 15 years
- Liens – Until satisfied, expired, or judgment entered
- Mental Health Records – 7 years
- Ministers' Credentials – none
- Misdemeanor Traffic Records – 20 years
- Naturalization Records – Transfer to SHS
- Notary Public Appointments – none (not filed with courts)
- Oaths of Office – 7 years
- Paternity – 30 years (+7 years if ongoing payments)
- Proceedings commenced under 968.02 – 75 years
- Public Assistance Liens – 20 years
- Register of Officials – 2 years
- Registry of Wills – 100 years
- Search Warrants (if not w/case) – 75 years
- Small Claims Records – 20 years
- Small Claims Records (Dismissed) – 2 years
- Trust Account Ledgers - Retention of related case file
- Unemployment Compensation Warrants – 20 years
- Workers Compensation Warrants – 20 years
- Wills – 100 years

Retention Periods under SCR 72.01 (By Length of Retention):

ONE YEAR

- Criminal Case Exhibits (+120 days for appeal)
 - Except Exhibits Containing Biological Material
- Non-Criminal Case Exhibits (+120 days for appeal)

TWO YEARS

- Dismissed Small Claims Cases
- Register of Officials

FOUR YEARS

- Juror Questionnaires
- Jury Array and Records of Jurors
- Juvenile JIPS/CHIPS Cases (4 years after 18th birthday)
- Juvenile Delinquency Cases (4 years after 18th birthday unless Class Felony – see below)

FIVE YEARS

- Incarcerated Persons Records
- Dismissed Divorce, Legal Separation, Annulment Cases
- DNR Forfeiture Cases
- Juvenile Ordinance Violation Cases
- Ordinance Violation Cases
- Traffic Forfeiture Cases

SEVEN YEARS

- Bank Statements, Checks, Deposit Slips
- Certificates of Payment/Vouchers
- Condominium Liens
- Guardianship Cases
- Jury Payrolls
- Juvenile Guardianships (7 years after 18th birthday)
- Receipts

TEN YEARS

- Court Reporter Notes

FIFTEEN YEARS

- Juvenile Search Warrants (if not filed w/case)

TWENTY YEARS

- Civil Cases
- Complex Forfeitures
- Court Records No Longer Created
- Criminal Traffic Cases
- Misdemeanor Cases
- Proceedings commenced under 968.02
- Small Claims Cases (except for dismissed small claims)
- Unemployment Compensation warrants /Docket
- Workers Compensation Warrants

THIRTY YEARS (+7 years if ongoing payments)

- Family Cases
- Family Maintenance & Support Records
- Paternity Cases

FIFTY YEARS

- Felony Cases (except for Class A fel.)

75 YEARS

- Estate Cases
- Felony Case Files (Class A fel.)
- Grand Jury Proceedings (Class A fel.)
- John Doe Cases (Class A fel.)

- Juvenile Delinquency cases (if adjudicated delinquent for act punishable as a felony)
- Probate Cases
- Proceedings commenced under 968.02
- Search Warrants (if not filed w/case)
- Sexually Violent Person Commitments (CI)

100 YEARS

- Registry of Wills
- Wills Deposited for Safekeeping
- Wills Not Admitted to Probate

PERMANENT RETENTION

- Adoption & TPR Cases

VARIABLE RETENTION PERIODS

- Criminal Case Exhibits Containing Biological Material
- Court Records in Books – Retention of related case file
- Delinquent Income Tax Warrants
- Trust Account Ledgers – Retention of related case file

NO RETENTION REQUIRED

- Coroner's Inquest Records (979.08(6))
- Information & Indictment Records
- Judgment & Order Records
- Ministers Credentials
- Naturalization Records (Transfer to SHS)
- Notary Public Appointments
- Mental Health Cases
- Oaths of Office

OTHER USEFUL RETENTION PERIODS

- General Judicial Assignments – Retain for current year plus 10 years after the year assigned
- County Board Reports/Admin. Files: Retain for current year plus 6 years [Wis. Stat. 59.52(4)(c) requires 6 years]

APPENDIX 2: WCASA STATUTES OF LIMITATIONS



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WISCONSIN COALITION AGAINST SEXUAL ASSAULT

INFORMATION SHEET SERIES

Statutes of Limitation

Statutes of limitation (SOLs) specify the time within which a criminal prosecution or a civil action must commence or be lost. SOLs for criminal and civil actions differ. The SOL clock starts ticking at different times in different situations and can stop ticking or be suspended in some situations.

CRIMINAL STATUTES OF LIMITATION

The SOL clock for crimes typically starts running when a crime occurs, and prosecution must commence within a specified period of time after the clock starts ticking. The SOL stops running during any time that the defendant is not a resident of Wisconsin. There are specialized SOLs for many sex crimes and the current state of the law is as follows:*

1st Degree Sexual Assault of a Child	No SOL	948.02(1)
Repeated Acts of SA of the same child for 948.025(1)(a),(b),(c), or (d) offenses	No SOL	948.025(1)(a),(b),(c), or (d)
1st Degree Sexual Assault	No SOL	940.225(1)
2nd Degree Sexual Assault of a Child	Victim reaches age 45	948.02(2)
Repeated acts of SA of a child for 948.025(1)(e) offenses	Victim reaches age 45	948.025(1)(e)
Sexual exploitation of a child	Victim reaches age 45	948.05
Incest with a child	Victim reaches age 45	948.06
Four of the six acts of child enticement	Victim reaches age 45	948.07
Soliciting a child for prostitution	Victim reaches age 45	948.08
Sexual Assault of a student by a school staff person	Victim reaches age 45	948.095
Sexual Assault of a child placed in substitute care	Victim reaches age 45	948.085
Use of a computer to facilitate a child sex crime	Victim reaches age 45	948.075
Trafficking of a child	Victim reaches age 45	948.051
Two of the six acts of child enticement	Victim reaches age 26	948.07
2nd Degree Sexual Assault	10 years	940.225(2)
3rd Degree Sexual Assault	10 years	940.225(3)
Causing a child to view or listen to sexual activity	6 years	948.055
Sexual exploitation by a therapist (SOL can be longer than 6 years in certain situations)	6 years	940.22
Adult exposing genitals or pubic area	6 years*	948.10(1)(a)
4th Degree Sexual Assault	3 years	940.225(3m)
Sexual intercourse with a child 16 or over	3 years	948.09
Minor exposing genitals or pubic area	3 years	948.10(1)(b)(1)

***Except:** If at the time of the violation, the actor had not attained the age of 19 years and was not more than 4 years older than the child. In such a case, the actor is guilty of a Class A misdemeanor and the statute of limitations is 3 years. Wis. Stat. 948.10(1)(b)(2).

DNA EVIDENCE: The SOL may be extended for all of the above crimes if:

- 1.) The state obtains a DNA sample within the applicable SOL, and 2.) The state, within this SOL, attempts to obtain and is unable to obtain a match or "hit" after comparing the profile to existing DNA databases.
- If the DNA sample is later matched to a known person, the State may commence prosecution of that person for the original violation.
- If the state obtains a DNA sample for 1st degree SA before the SOL has expired and later obtains a match, prosecution of the identified person may be commenced at any time after DNA identification.
- For all other crimes specified above and any other felony under Wis. Stat. ch. 940 or 948, if the State obtains a DNA sample within the applicable SOL and later identifies a match, the State may commence prosecution of that person within 12 months of the identification or within the applicable SOL, whichever is latest.

PAST ABUSE

Some cases of past abuse may still be prosecuted today. It is beyond the scope of this fact sheet to provide enough information to allow an exact determination of whether a SOL for past abuse currently prevents prosecution. The district attorney (DA) is the best person to ask whether the SOL has expired for a particular crime. DAs may decline prosecution even when prosecution is not barred by the SOL. Lack of evidence and a long passage of time could lead a DA to believe that a crime cannot be proven beyond a reasonable doubt.

Specialized SOLs were established for some crimes against children on July 1, 1989 that allowed prosecution until the victim reached age 21 or six years had passed since the crime, whichever was later. The legislature extended the SOL to allow prosecution until victims reached the age of 26 on April 22, 1994, until victims reached the age of 31 on June 16, 1998, and until victims reached the age of 45 on May 1, 2004. However, these changes did not extend SOLs for all of these crimes each time, and as new crimes were added to the statutes, only some of these received specialized SOLs. The most recent change in the law completely eliminated SOLs for, 1st degree sexual assault of a child and several acts described in the crime of repeated acts of sexual assault of the same child on April 20, 2006.

Since 1989, all of the extensions described above, including the most recent change eliminating the SOLs for some crimes, applied to all crimes for which the SOL had not expired when the new SOL went into effect. In other words, if you were the victim of a crime for which the SOL has been extended, that extension would apply if, on the day the new law went into effect, the previous SOL had not expired.

CIVIL STATUTES OF LIMITATIONS

Victims can also bring a civil action against a perpetrator for a sexual assault. In the civil court system, a sexual assault is a type of "intentional tort." Civil actions for intentional torts committed against adults must be commenced within three years of the act. Other types of claims, such as sexual harassment, have different SOLs, and victims should always consult with a private attorney to determine what types of actions may be pursued based on a particular set of facts. SOLs for civil actions based on the sexual assault of a child are complex. The current SOLs for sexual assaults that would constitute 1st or 2nd degree sexual assault of a child, repeated acts of sexual assault of the same child, incest with a child, sexual assault of a student by school instructional staff, sexual assault of a child in substitute care, or sexual exploitation by a member of the clergy allow an action to

be commenced until the victim reaches age 35. The version described above became effective on May 1, 2004 and changed the way that SOLs are calculated in these civil actions. Victims wishing to pursue a civil action based on an assault that occurred prior to May 1, 2004 should contact a private attorney to determine whether the old or new way of calculating SOLs would apply.

Victims of any age who are sexual exploited by a therapist may also have a longer time within which to file a civil action and may wish to contact a private attorney to learn about their options.

SOLs are constantly changing. Courts can also interpret SOLs in ways that limit or broaden the statutory limitation period.

WCASA is a membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 56 sexual assault service provider (SASP) agencies throughout the state that offer support, advocacy and information to victims of sexual assault and their families. For information sheets on other topics and for more information about sexual assault, please visit our website. This sheet may be reproduced in its original format only.

This information does not constitute legal advice.

Please note that this is an abridged information sheet; the statutes have not been printed in their entirety due to space restrictions.

APPENDIX 3: FORFEITURE LAW SUMMARY

The following is a summary of forfeiture of property law. **IMPORTANT NOTE:** This summary is not intended to be a complete analysis of the law. There are different types of forfeitures depending upon the type of property involved and the specific statutes regarding those cases should be reviewed. More detailed information is available on WILenet and you are strongly encouraged to consult with agency legal counsel.

A. STATE FORFEITURE STATUTES

1. **General-Wis. Stat. § 973.075**

Real and personal property, including money, derived from crime and certain vehicles are subject to forfeiture proceedings pursuant to Wis. Stat. § 973.075. The statute also deals with property subject to forfeiture for violations of specific crimes. Wis. Stat. § 973.075(1)(b). In addition, there are exceptions and limitations to vehicle forfeitures. This section **may not be used to forfeit property or vehicles for crimes committed in violation of Chapter 961 Wis. Stats.** Wis. Stat. § 973.075(6).

2. **Drug cases-Wis. Stat. § 961.55**

Controlled substances or controlled substance analogs, raw materials, products and equipment used for manufacturing, compounding, processing, delivering, distributing, importing or exporting controlled substances, all property that is used, or intended for use, as a container for controlled substances, including vehicles used for Schedule I and II narcotic drugs, vehicles which are used, or intended for use, to transport raw materials, products, and equipment to manufacture or deliver them, **or** property or weapons used or to be used in drug crimes (**NOTE:** There are a number of exceptions and limitations on vehicle forfeitures), books, records and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of Chapter 961, property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime under Chapter 961, and any drug paraphernalia, a defined in sec. 961.571, used in violation of Chapter 961.

3. **OWI Forfeitures, Wis. Stats. § 346.65.**

Wis. Stat. § 346.65(6), Wis. Stats., authorizes the forfeiture of a vehicle used to engage in certain intoxicated driving related offenses including refusals under sec. 343.305(10). Forfeiture is discretionary for any third offense, within 10 years as calculated under sec. 343.307(1), or subsequent offense, although forfeiture is not allowed if the court orders the vehicle immobilized, equipped with an ignition interlock device, or if seizure would result in undue hardship, extreme inconvenience or endanger the health and safety of a person. Wis. Stat. § 346.65(6)(a)1. **NOTE:** There are various limitations and restrictions on vehicle forfeitures. Wis. Stat. § 346.65(6)(a)4.

4. **Vehicle Identification number violations-Wis. Stat. § 342.30.**

Wis. Stat. Sec. 342.30(4) authorizes the seizure and requires the forfeiture of certain vehicles or parts of vehicles with a removed, altered or obliterated identification number. The forfeiture proceeding is governed by Wis. Stat. Sec. 973.076. Wis. Stat. § 342.30(4)(a).

If the identification number of a vehicle or a part of a vehicle cannot be ascertained, the vehicle or part of a vehicle is presumed to be contraband. Wis. Stat. § 342.30(4)(a). If the owner of the vehicle or part of a vehicle can be identified, the property may be returned to that person by the seizing agency. Wis. Stat. § 342.30(4)(a).

If the DA brings a criminal action arising out of the seizure, forfeiture proceedings shall not be instituted before there is a final determination in the criminal action. Wis. Stat. § 342.30(4)(b).

If the seized items are either a motorcycle or a part of a motorcycle, which has identification numbers identified and an owner determined, and no forfeiture proceeding is initiated within 30 days after seizure, the custodian of the property must immediately return the seized property to the registered owner. If the property is not timely returned, and the owner commences a replevin action to recover possession of the property, and a judge finds that the property was unreasonably retained after 30 days after the seizure, the court shall award the owner the costs and reasonable attorney fees incurred in the replevin action. Wis. Stats. § 342.30(4)(d).

5. Racketeering-Wis. Stat. § 946.86.

Criminal forfeitures shall be ordered by the court of all real or personal property used in the course of, or intended for use in the course of, derived from or realized through conduct in violation of Wis. Stat. §§ 946.83 or 946.85.

B. SEIZURE OF PROPERTY

Under Wis. Stat. §§ 961.55 and 973.075 an officer may seize property:

1. **With process issued by a court** with jurisdiction over the property. Wis. Stats. §§ 961.55(2) or 973.075(2).
2. **Without process**, in non-prostitution related cases, if **incident to a lawful arrest, pursuant to a search warrant**, pursuant to an inspection under an **administrative inspection warrant**, subject to a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding upon Chapter 961, or subject to a prior judgment in favor of the state. In addition, property can be seized where **probable cause exists** to believe that the property is directly or indirectly dangerous to health or safety, that the property was used or is intended to be used in violation of Chapter 961, that the property is a vehicle that qualifies under chapter 961, that the property was derived from or realized through a crime other than a crime committed in violation of Chapter 961, or that the property is a vehicle which was used to transport any property or weapon used or to be used or received in the commission of any felony other than a crime committed in violation of Chapter 961, or a vehicle used in certain specified offenses.

For OWI forfeitures Wis. Stat. § 346.65 contemplates that an officer may seize a vehicle once a court has issued a seizure order. The owner must surrender the certificate of title of all vehicles to the clerk of court within 5 days of receiving notice from the DA. Wis. Stat. § 346.65(6)(a)1 and 2m.

C. RETENTION OF PROPERTY

Seized property is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. Wis. Stats. §§ 961.55(4) and 973.075(3). Properly seized property is not subject to replevin. Wis. Stat. §§ 961.55(4) and 973.075(3).

The person seizing the property may:

1. Place the property under seal. Wis. Stat. § 961.55(4)(a) and 973.075(3)(a);
2. Remove the property to a place designated by the seizing agency or person Wis. Stat. §§ 961.55(4)(b) and 973.075(3)(b);

3. Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law. Wis. Stat. § 961.55(4)(c) and 973.075(3)(c).
4. In OWI forfeiture cases, seized property must be stored in a “secure place subject to the order of the court.” Wis. Stat. § 346.65(6)(b).

D. FORFEITURE PROCEDURE

There are different procedures depending upon the type of forfeiture (general criminal, drug, OWI, etc). This section primarily focuses upon traditional forfeiture cases under Wis. Stat. §§ 961.55 and 973.075. The provisions of Wis. Stat. Sec. 346.65(6) should be carefully reviewed before commencing an OWI related forfeiture. Forfeiture proceedings under Wis. Stat. §§ 961.555 and 973.076 are civil in nature.

1. Jurisdiction

The circuit court in the county where the property is seized shall have jurisdiction over any proceedings regarding the property when the action is commenced in state court. Wis. Stat. § 961.555(1) and 973.076(1).

The DA in the county where the motor vehicle was seized, or where the owner refused to take a requested test, or violated other indicated statutes, shall commence an action to forfeit the motor vehicle. Wis. Stat. § 346.65(6)(c). Property can be seized in counties other than the county where the offense giving rise to the forfeiture happened, but the matter must be litigated in the county where the property was seized.

2. Parties

In an action brought to cause the forfeiture of any seized property, the court may render the following judgments:

- ***in rem*** - that is, against the property. The action must name a person as a party/defendant as well as naming the property.
- ***in personam*** – that is, against the party personally, or
- both ***in rem*** and ***in personam***.
Wis. Stat. § 961.555(1) and § 973.076(1).

In OWI forfeitures, Wis. Stat. § 346.65(6)(c) requires the naming of the owner and all lien holders as parties.

3. Commencement of action

Under Chapter 961 forfeitures, the DA of the county where the property was seized shall commence the forfeiture action. Wis. Stat. § 961.555(2)(a).

Under Chapter 973, slightly different language requires the DA of the county within which the property was seized ***or in which the defendant is convicted*** to commence the forfeiture action. Wis. Stat. § 973.076(2)(a).

A forfeiture action can be filed whether or not a criminal charge has been brought. However, an OWI forfeiture action is predicated upon a conviction for a third or fourth offense and thus would require the filing of a charge. Wis. Stat. § 346.65(6)(a). A delay in the filing of a criminal complaint will not toll the time within a forfeiture action must be filed to avoid loss of jurisdiction.

A forfeiture action is commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of the circuit court. Wis. Stat. § 961.555(2)(a), 973.076(2), 346.65(6)(c). Commencement of the forfeiture action (filing of the summons, complaint and affidavit) **must occur within 30 days after the seizure of the property** Wis. Stats. § 961.555(2)(a), 346.65(6)(c). Chapter 971 sets forth slightly different language, by requiring that the forfeiture action commence within 30 days after “the seizure of the property or the date of conviction, whichever is earlier.” Wis. Stat. § 973.076(2)(a). From a practical standpoint, the seizure typically predates the conviction and as such the date of seizure would trigger the time limits as it does in the context of other forfeiture actions. Note that in the context of Anti-Theft Law forfeiture actions under

Chapter 342, the DA may not institute the forfeiture action under Wis. Stat. Sec. 973.076 before there is a final determination of the criminal action. Wis. Stat. § 342.30(4)(b).

The defendant is entitled to an adjournment upon request until after adjudication of the criminal case. Wis. Stat. § 961.555(2)(a), 973.076(2)(a). However, once “adjudication” of the charge forming the basis for forfeiture occurs, the time limits are retriggered. “Adjudication of a criminal charge for purposes of the forfeiture statute occurs at the moment the trial court enters its finding of guilt or innocence and does not embrace an appeal.” *State v. One 1997 Ford F-150*, 2003 WI App 128, 265 Wis.2d 264, 665 N.W.2d 411.

A hearing upon merits of the forfeiture action must be held within 60 days of service of the answer. Wis. Stats. § 961.555(2)(b), § 973.076(2)(b). The time limits are jurisdictional and cannot be waived after the fact. However, a hearing may be continued **for cause** or **on stipulation of the parties**. The prosecutor should formally request a continuance based upon the stipulation of the parties or for cause

If the hearing cannot be held within the 60-day time period. When a hearing is not conducted within the 60 days (and the hearing has not been continued for cause, by stipulation of the parties, or at the request of a defendant), the prosecutor may be able to revive the proceeding by a showing of excusable neglect. Wis. Stat. § 801.15(2)(a). See, *Baye*, 191 Wis.2d at 342-3; *State v. Elliot, supra*. But see *State v. One 2000 Lincoln Navigator*, 2007 WI app 127, “once the sixty-day period mandated by § 961.555(2)(b) has expired, the circuit court loses competency, and the State may not start the clock running anew by filing another forfeiture petition based on the same facts.”

If the time limits are missed property can still be retained if it can be proved to be contraband under Wis. Stat. § 968.20 or is evidence of a crime in a pending matter.

E. DISPOSITION OF FORFEITED PROPERTY

In actions under Wis. Stat. § 961.55 and § 973.075, property which has been forfeited may be disposed of as follows:

1. All property, other than money, may be retained for official use. Wis. Stat. § 961.55(5)(a). Note, however, that under Chapter 973 forfeiture actions, only vehicles may be retained for official use and all other property must be sold, destroyed or transferred to another agency. Wis. Stat. § 973.075(4).
2. If the property is sold, up to 50% of the proceeds may be used to pay costs of seizure, storage, court costs, costs of investigation; prosecution; and the remainder shall be deposited in to the school fund. Wis. Stats. § 961.55(5)(b), §973.075(4).

3. If the property forfeited is money, under Ch. 973 all proceeds must go to the school fund. Wis. Stat. §973.075(4). See also, Article X, Section 2, Wisconsin Constitution.
4. If the property forfeited is money, under Ch. 961, the state may be able to retain 70% of the first \$2000, and 50% of any amount in excess of \$2000, for payment of forfeiture expenses only. "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. The remainder of proceeds must go to the school fund. Wis. Stat. § 961.55(5)(b) and (e); Article X, Section 2, Wisconsin Constitution.
5. The sheriff of the county in which the property was seized may be required to take custody of the property and dispose of it according to law. Wis. Stat. § 961.55(5)(c).

Vehicles seized in OWI actions must be disposed of pursuant to the specific procedures, taking account of the property of lien holders, law enforcement and prosecution costs, innocent owners, and the school fund. Wis. Stat. § 346.65(6)(e) and (em).

F. LIABILITY OF LAW ENFORCEMENT-Wis. Stats. §§ 961.56(3) and 973.077(3)

No liability is imposed by Chapter 961 or Wis. Stat. Secs. 973.075 to 973.077 on any authorized law enforcement officer or employee engaged in the lawful performance of duties.

G. FEDERAL FORFEITURE LAW

There are a number of federal statutes that govern federal forfeitures. Some of these include:

- 21 U.S.C. Secs. 333(e)(3), 853, and 881, Federal Drug Violations
- 18 U.S.C. Secs. 981 and 982, Money Laundering Violations
- 18 U.S.C. Secs. 1963 and 1955, and Title 15 U.S.C. Sec. 1177, Gambling and Racketeering Laws
- 18 U.S.C. Secs. 2253, 2254 and 1467, Child Pornography and Obscenity Laws
- 18 U.S.C. Secs. 512 and 2513, Auto and Electronic Communication Theft
- 22 U.S.C. Sec. 401, Illegal War Munitions
- 17 U.S.C. Sec. 509, Copyright Materials
- 8 U.S.C. Sec. 1324(b), Smuggling of Aliens
- 21 U.S.C. Sec. 857, Drug Paraphernalia

While federal law allows property seized by local law enforcement to be forfeited through federal administrative civil actions, sections 961.555 and 973.076, Wis. Stats., specifically allow for property seized under state law to become the subject of a federal forfeiture action.

APPENDIX 4: SAMPLE DISPUTED PROPERTY LETTER

LEGAL SERVICES DEPARTMENT

Office of the City Attorney

100 North Appleton Street

Appleton, WI 54911

Phone: 920/ [REDACTED]

Fax: 920/ [REDACTED]

June 4, 2015

“Pawn Shop”

[REDACTED] Avenue
Green Bay, WI 54302

RE: Release of Evidence- APD Case No. [REDACTED]

Dear “Pawn Shop”,

Currently the Appleton Police Department is storing the following item(s):

- 1 Men’s gold wedding band
- 1 Women’s wedding band and engagement ring, soldered together

The purpose of this letter is to serve as your notice that the City of Appleton is seeking to release the above item(s). The City is seeking to release the property based on the enclosed documents which indicate that the property is no longer needed as evidence—as neither the Outagamie County nor Brown County District Attorney’s Offices are pursuing charges associated with this case.

Pursuant to Wis. Stat. §968.20, any person claiming the right to possession of property seized may apply for its return to the circuit court in which the property was seized. The City respectfully requests that if you believe to have a right to possession of the property, that you contact the Appleton City Attorney’s Office **within thirty (30) days** in writing to indicate your intention on filing a claim **AND** then apply for the return of the property by filing out the appropriate paperwork with the circuit court for the county in which the property was seized (likely Brown County Circuit Court). A copy of said paperwork must be served upon the Appleton Police Department, Appleton City Attorney’s Office, and any other party that may have an interest in the property (including, but may not be limited to, John H. Doe).

If the appropriate paperwork is not filed with the circuit court within thirty (30) days of receipt of this letter and the Appleton City Attorney’s office is not notified within the same time period, you are hereby on notice that you may forfeit any and all ownership interest that you may have in the item(s) listed above.

[REDACTED]
City Attorney

[REDACTED]
Deputy City Attorney

[REDACTED]
Assistant City Attorney

[REDACTED]
Assistant City Attorney

If you have any questions or concerns regarding any of the information contained in this letter, please do not hesitate to contact me at the Appleton City Attorney's Office. I can be reached directly at 920-██████████.

Sincerely,

██████████
Assistant City Attorney

Enclosures: five (5) pages

Cc: John H. Doe, ██████████ Street, Appleton WI 54911
Appleton Police Department Evidence Custodian, 222 S Walnut Street, Appleton WI 54911
Outagamie County DA's Office, 320 S. Walnut Street, Appleton WI 54911
Brown County DA's Office, 300 E. Walnut Street, P.O. Box 23600, Green Bay, WI 54305

██████████
City Attorney

██████████
Deputy City Attorney

██████████
Assistant City Attorney

██████████
Assistant City Attorney

APPENDIX 5: SEIZING STOLEN PROPERTY FROM SECONDHAND GOODS STORES FAQ

1. I located property at a pawn shop that I think is stolen, what do I do?

Contact the pawn shop and ask if they still have the property. If they do, place a “hold” on the property. The “hold” is only good for 30 days. If you do not pick up the property or notify the store of the status of the property within the 30 days, the pawn shop can sell or return the property. If, within the 30 days, you verify the property is stolen, you must seize it. Place the property in evidence at your department and list the pawn shop as a “victim” in your report. The property should be held until the disposition of the case. The Court or the DA should decide who the property is returned to. If the property is seized from a pawn shop, restitution should be requested for the amount the pawn shop paid/loaned for the item and/or request the Court to determine who the property should be returned to. In all cases, ask for the paperwork associated with the transaction at the pawnshop.

2. Can I take a picture of the stolen property and then return the property to the victim/original owner?

No. The seized property should be held in evidence until there is a dispositional order or judgment on the case. See Wis. Stat. § 968.19 and Wis. Stat. § 968.20(1). Contact the DA’s office concerning special circumstances (i.e. prized possessions, sentimental value, etc.)

3. The victim just wants the property back and no charges filed. Can I just go get the property and give it to the victim?

No. As officers, we do not have the authority to take property from one person (business) and give it to another. All interested parties have the right to a hearing regarding any property seized by law enforcement (Wis. Stat. § 968.20(1)). If there is a dispute over ownership of the property and no criminal charges were filed, the individual can pursue civil action to recover the property.

4. Do I have to give the pawn shop anything when I seize the property from them?

Yes. You should give the pawn shop a receipt (Wis. Stat. § 968.18). This can be done by either generating a receipt and emailing it, or you can return to the owner with a hard copy of the receipt. If you offer a receipt and the pawn shop or owner does not wish to have a receipt for the seized item(s), you do not need to issue a receipt.

5. I work nights and can’t pick up the property. What should I do?

Provide all necessary information concerning the case to a daytime officer and request they seize the property, log it into the evidence management system, and complete a supplement. Additional follow-up, such as providing the property/evidence receipt to the pawn shop, as well as follow-up interviews with the suspect(s), should be the primary officer’s responsibility.

6. Can I just show up at the pawn shop and seize the stolen property?

Officers should attempt to make an appointment with the pawn shop or obtain a window of time to arrive that works for both the officer and the contact person at the pawn shop. The pawn shops need time to locate the property and do their own paperwork. By making prior arrangements, officers may reduce the amount of time they have to wait for the pawn shop personnel to retrieve and process the seizure.

7. Is it okay to tell a victim to check the pawn shops for their property?

This would not be the best advice to give a victim. Pawn shops and secondhand goods stores must hold property for at least 21 days before it is placed out on the sales floor for customers to purchase. The pawn shops will not allow customers in the back to see the inventory. It is our job to check Leads Online for the

property. If the theft occurred more than 30 days ago, the property may be on the floor for sale; however, it is much more efficient to use Leads Online to do the searching. Remember, you can also “save a search” and/or create persons of interest if you have specific items or individuals you are looking for.

8. I can't prove who committed the theft or burglary, but I know the property is stolen. What do I do?

If the property is at a pawn shop, seize the property as referenced above. Investigate who pawned or sold the property and, if possible, refer charges for Receiving Stolen Property – Wis. Stat. § 943.34(1). Use the location of the pawn shop as the incident location. You may also be able to refer a charge of False Swearing (Wis. Stat. § 946.32(1)) if the person lies when they complete the Property Transaction Report at the pawn shop. NOTE: The DA may use this for a plea bargain. Be sure to review the paperwork signed by the suspect at the pawn shop carefully to see if this applies. If the property is at a pawn shop outside your jurisdiction, refer your report to that jurisdiction and ask them to investigate and request charges.

9. Is it okay if I just cite the suspect for an ordinance violation, seize the property, and return the property to the victim?

No. If you are going to seize property from a pawn shop, criminal charges should be pursued against the suspect, particularly when elements of a criminal offense exist. Restitution can be ordered to the pawn shops if the Court determines the property is to be returned to the victim.

APPENDIX 6: SAMPLE CONTRABAND LETTER

AGENCY LETTERHEAD

Date: _____

TO: _____

RE: Case # _____

Please be advised, the [AGENCY NAME] has property taken from you in case # _____. It has been determined that this property is contraband as defined under Section 968.13 of the Wisconsin State Statutes. Under Section 968.20 of the Wisconsin Statutes, you must petition the _____ County Circuit Court for the return of your property. If you elect to do so, the District Attorney's Office will have to prove, beyond a preponderance of the evidence, that the property in question is in fact contraband; in which case, the property would not be returned to you and would instead become property of [AGENCY NAME].

If you do not petition the court for the return of your property within 30 days of receiving this letter, the property will be considered abandoned and become property of [AGENCY NAME].

If this case involves a firearm and you are a convicted felon, you may not possess a firearm in accordance with Wisconsin Statute 941.29. If the firearm was not used in the commission of a crime, you may transfer ownership of the firearm, in writing, to any person legally eligible to possess a firearm. If the firearm was used in the commission of a crime, statute requires that the gun be sent to the Wisconsin State Crime Lab for final disposition.

Any correspondence to this letter must be done so in writing. No information will be provided over the telephone or via electronic messaging. Please include your current address and telephone numbers.

Sincerely,

Property/Evidence Custodian
AGENCY NAME

APPENDIX 7: SAMPLE USED IN THE COMMISSION OF A CRIME LETTER

AGENCY LETTERHEAD

Date: _____

TO: _____

RE: Case # _____

Dear Mr./Mrs./Ms. _____

The AGENCY NAME is holding the following property under case number _____.

-
-

Pursuant to WSS 968.20(1m)(b), *if the seized property is a dangerous weapon or ammunition, the property shall not be returned to any person who committed a crime involving the use of the dangerous weapon or the ammunition.*

Pursuant to, WSS 939.22(10), *"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 s. 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.*

The property seized in this case is considered a dangerous weapon used in the commission of a crime.

Due to the fact that we cannot return said property to you, we intend to destroy said property 30 days from the date of this letter, unless you obtain a legal order prohibiting such action.

If you do not obtain a legal order prohibiting the destruction of said property within 30 days of this letter, it will be disposed of pursuant to WSS 968.20.

Any communication related to this matter must be done in writing. Please mail your response to the AGENCY NAME, Attn: _____, address, city, state, zip. Please be sure to include your current address and telephone number in any correspondence.

Sincerely,

Property/Evidence Custodian
AGENCY NAME

APPENDIX 8: SAMPLE PROPERTY RETURN LETTER

AGENCY LETTERHEAD

Date: _____

TO: _____

|

Reference case number – #####

Dear _____,

The property listed below is now available for release by the [Agency Name]

- ITEM DESCRIPTION
- ITEM DESCRIPTION

If you wish to claim this property, please call to make an appointment with the Evidence Clerk (Monday through Friday 8:00 am – 4:00 pm). Property will not be released without an appointment. **You must have this letter with you when you arrive to claim your property.**

If the property is not claimed within 30 days of the date of this letter, it will be disposed of according to law.

Sincerely,

Property/Evidence Custodian
AGENCY NAME

**APPENDIX 9: SAMPLE REQUEST FORM FOR THE RELEASE OF SUSPECTED PATHOGEN
CONTAMINATED PROPERTY**

AGENCY LETTERHEAD

**REQUEST FOR RETURN/RELEASE OF SUSPECTED
PATHOGEN CONTAMINATED PROPERTY**

Case Number: _____

I request the return/release of the following property that is currently in the custody of the
AGENCY NAME.

- Item 1
- Item 2
- Item 3

I understand that the property requested may be contaminated with pathogens and may present a serious
health risk.

I understand that I may refuse to take custody of this property.

I acknowledge receipt of the above listed property.

Recipient's Name (Printed): _____

Recipient's Signature: _____

Date: _____

Property/Evidence Custodian:

Did recipient indicate he/she understood the above warning? Yes _____ No _____

Released By: _____ (Signature)

ID/Badge Number: _____

Date: _____

APPENDIX 10: SAMPLE DIVERSION OF PROPERTY MEMO



Evidence Unit

Memo

Insert
Agency
Logo
Here

To: Chief/Sheriff _____
From: Property/evidence custodian name |
Date: ___/___/_____
Re: Diversion of Property

Per policy, any property held by the Evidence Unit that is to be converted to department use requires your authorization.

The Evidence Unit is currently storing the following item(s) of abandoned property:

- Case Number:
- Item #1: USB drive
 - Item #3: USB drive
 - Item #8: USB drive

According to the case disposition, the property is no longer needed as evidence and the rightful owners did not claim the property within 30 days of having been notified via letter that the property was being held. Per Wisconsin State Statute §66.0139, the property may be disposed of.

The Evidence Unit has a use for the above described property and requests that you authorize the conversion of property to department use as allowed by law.

OR

The Evidence Unit is currently storing the following item(s) that are no longer needed as evidence and have been authorized for destruction per the case disposition:

- Case Number:
- Item #4: Green leafy substance which tested positive for THC

The Evidence Unit would like to utilize the above described property for training purposes and requests that you authorize the conversion of property to department use as allowed by law.

Approved by: _____ Date: ___/___/_____
Name, Title

APPENDIX 11: SAMPLE ABANDONED PROPERTY ORDINANCE

ABANDONED PERSONAL PROPERTY

1. Authority

This section is enacted pursuant to the authority of § 66.0139, Wis. Stat., as amended.

2. Disposal of Personal Property

Personal property, other than cash, which has been abandoned or which remains unclaimed for a period of 90 days after the property is not needed for evidence, or if all proceedings in which the property might be required as evidence have been completed or expired, shall be disposed of by any means, including but not limited to a public auction, determined to be in the best interest of the County. If the disposal is in the form of a sale, all receipts from the sale, after deducting the necessary expenses of keeping the property and conducting the sale, shall be paid into the County Treasury. The officer shall attempt to return to the rightful owner such items of personal property which have a substantial value, if the owner can reasonably be determined.

3. Disposal of Cash

(a) Personal Property consisting of cash which has been abandoned, or which remains unclaimed for a period of 90 days after the property is not needed for evidence, or if all proceedings in which the property might be required as evidence have been completed or expired, shall be turned over to the County Treasurer and credited to the General County Revenue account. The County shall attempt to return to the rightful owner such items of personal property consisting of cash which have a substantial value, if the owner can be reasonably determined.

(b) Notwithstanding subsection (a) above, abandoned or unclaimed personal property consisting of cash which has been seized as part of a controlled substance, controlled substance analog, or marijuana arrest or investigation shall be placed in a Sheriff's Department account for use solely for law enforcement activities by the Sheriff's Department or, at the discretion of the Sheriff, by the multi-jurisdictional drug task force. Any funds received as a result of this subsection shall not be used in any manner to reduce the budget appropriation for the Sheriff's Department in any year. For the purposes of this paragraph "controlled substance," "controlled substance analog," and "marijuana" shall have the meanings defined in § 961.01, Wis. Stat., as amended.

4. Disposal of Abandoned or Unclaimed Flammable, Explosive or Incendiary Substances, Materials or Devices

Any County officer may safely dispose of abandoned or unclaimed flammable, explosive, or incendiary substances, materials, or devices posing a danger to life or property in their storage, transportation, or use immediately after taking possession of the substances, materials, or devices without a public auction. If the substance, material, or device appears to be or is reported stolen, an attempt shall be made to return the substance, material, or device to the rightful owner. The officer shall attempt to return to the rightful owner such substances, materials, or devices which have a commercial value in the normal business usage and do not pose an immediate threat to life or property.

5. Records to be Kept

If abandoned or unclaimed personal property is not disposed of in a sale open to the public, the Sheriff, or his or her designee shall maintain an inventory of the property, a record of the date and method of disposal, including the consideration received for the property, if any, and the name and address of the person taking possession of the property. The inventory shall be kept as a public record for a period not less than 2 years from the date of disposal of the property.

6. Abandoned, Unclaimed or Seized Dangerous Weapons or Ammunition

Abandoned, unclaimed or seized dangerous weapons or ammunition may be disposed of only under § 968.20, Wis. Stat., as amended.

APPENDIX 12: SAMPLE VEHICLE OWNER/LIENHOLDER NOTIFICATION LETTER

Date:

Name:

Address:

City, State, Zip:

Abandoned Vehicle Owner Notification

Incident Number:

Year:

Plate:

Make:

VIN:

Model:

To Whom It May Concern:

The [Department Name] towed the above vehicle and is currently holding it at the [Department Name]. Wisconsin Department of Transportation records indicate that you are the last registered owner or lien holder of the above described vehicle.

To schedule an appointment to pick up the vehicle, please contact our office at [phone number] between 8:00 a.m. and 4:00 p.m. Monday through Friday. Property releases are by appointment only. Vehicles will not be released on weekends or holidays.

There is a \$75.00 administrative fee, as well as a \$15.00 per day storage fee. Storage fees are charged from the date your vehicle was towed (date of tow) and includes the day you reclaim the vehicle. These fees, along with proof of a paid tow bill from the licensed towing services, must be presented prior to the release of the vehicle. Payment must be CASH only. If you do not reclaim your vehicle you will be invoiced for these costs if incurred by the [Department Name]. Failure to pay may result in an issuance of a summons for violation of [applicable ordinance].

Be advised, that failure of the owner or lien holder to exercise reclaim of the vehicle identified herein within 15 days from the date of this letter, shall be deemed a waiver of all rights, title, and interest in the vehicle and shall be considered the owner or lien holder's consent to the disposition of the vehicle.

The owner may claim personal effects in the vehicle within the 15-day period. Any parts of the vehicle remain with the vehicle and are not considered personal items. Personal items will be disposed of, along with the vehicle, if unclaimed in the 15 day period.

Sincerely,

Property/Evidence Custodian
[Department Name]

Towing Fee: \$ _____

Towing Company: [Name] [Phone Number]

APPENDIX 13: ABANDONED/UNREGISTERED VEHICLE TRANSFER CERTIFICATE

ABANDONED/UNREGISTERED VEHICLE TRANSFER CERTIFICATE

MV2419 7/2015

Wisconsin Department of Transportation, PO Box 7949, Madison, WI 53707-7949

Clear
Print



Vehicle	Year	Vehicle Make	Vehicle Model	Selling Price	Vehicle Identification Number <small>(standard VIN has 17 characters)</small>																																		
					<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 100px; height: 20px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> <td style="width: 100px;"> </td> </tr> <tr> <td style="text-align: center;">1</td><td style="text-align: center;">2</td><td style="text-align: center;">3</td><td style="text-align: center;">4</td><td style="text-align: center;">5</td><td style="text-align: center;">6</td><td style="text-align: center;">7</td><td style="text-align: center;">8</td><td style="text-align: center;">9</td><td style="text-align: center;">10</td><td style="text-align: center;">11</td><td style="text-align: center;">12</td><td style="text-align: center;">13</td><td style="text-align: center;">14</td><td style="text-align: center;">15</td><td style="text-align: center;">16</td><td style="text-align: center;">17</td> </tr> </table>																		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17																							
Vehicle Acquired Pursuant to: <i>(Check One)</i> <input type="checkbox"/> ABANDONED VEHICLE s.342.40 Wis. Stats. <input type="checkbox"/> UNREGISTERED VEHICLE s.341.65 Wis. Stats.					I, the authorized representative of the municipality/county named on this document, have complied with Wis. Stats. regarding abandoned/unregistered vehicles and have disposed of the specified vehicle to the purchaser identified.																																		
Name of Municipality and Authorized Agent _____																																							
Agency (Area Code) Telephone Number _____																																							
If the vehicle is less than ten model years old, the seller is required to complete a MV2488 <i>Vehicle Transfer and Odometer Mileage Statement</i> , along with this form. The MV2488 form may be obtained through Maps and Publication Sales (WisDOT Stores) using form DT1435. Photocopies of form MV2488 are not acceptable. s. 342.155(1), Wis. Stats.					X (Signature of Authorized Agent)																																		
Vehicle Transferred as: <i>(Check One)</i> <input type="checkbox"/> Regular Sale – Give completed form to purchaser; seller may wish to keep a photocopy. <input type="checkbox"/> Junk – Vehicle can never be retitled s.342.34(3) Wis. Stats. Send completed form to WisDOT (address given above). <input type="checkbox"/> Salvage – Inspection Required – Vehicle must be less than 7 model years old and damaged more than 70% of its market value s.340.10(55g) Wis. Stats. Give completed form to purchaser; seller may wish to keep a photocopy.					Purchaser Name _____ Address _____ City, State, ZIP Code _____ (Area Code) Telephone Number – Daytime _____																																		

The purchaser named on this form must submit the **original** MV2419 to the DMV. Photocopies are not acceptable.

This form can be found in the secure area of WILenet under Resources > Dept. of Transportation. Scroll to the bottom of the page and you will see a link for MV2419 – Abandoned/Unregistered Vehicle Transfer Certificate under the heading of Motor Vehicle Titles and Plates.

APPENDIX 14: WSCL DNA QUESTIONNAIRE FORM

Questions about the case. If more space is needed, please use the back of form.

Sexual Assault:

1. Do you have a suspect?
2. When & where did the incident take place (outside, inside victim's/suspect's home)?
3. What type of contact allegedly occurred (oral, vaginal, anal penetration, with or without - ejaculation, penis, finger, mouth)?
4. How much time elapsed between the incident and the collection of evidence?
5. Prior sexual contact (before/after assault, time elapsed)?
6. Did the victim & suspect know one another?

Homicide:

1. Was there *evidence* of contact between the victim and the suspect?
2. Are you submitting possible blood, touch DNA, or both? If both, state which items.
3. Are there particular stains/items that you have reason to believe originated from an individual other than the victim?
4. If there is possible secondary transfer of blood from the victim, how & where is this alleged to have occurred (i.e. Suspect took knife with him & threw it in the trunk of a car)?
5. Please give a brief description of the alleged events that occurred. (Please explain relationship to case for evidence that may seem unusual at first glance.)

Property Crime & Others (Burglary, Robbery, FIP, Drugs)

1. Are you submitting possible blood, touch DNA, or both? If both, state which items.
2. Touch DNA: was this object regularly handled by an individual other than the suspect (i.e. the homeowner or employees of the business)? If so, was an elimination buccal swab standard submitted?
3. Cigarette butts: was the victim also a smoker? If so, was an elimination buccal swab standard submitted?
4. FIP/Drug cases: Is there a jury trial date set for this case (give date)? Were suspect buccal swab standards submitted?
5. Please give a brief description of the alleged events that occurred. (Please explain relationship to case for evidence that may seem unusual at first glance.)

APPENDIX 15: LABORATORIES FOR BLOOD SAMPLE SUBMISSIONS

Laboratory Services for OWI Violations/Blood Samples

Background

The Wisconsin State Laboratory of Hygiene (WSLH) provides blood collection kits for Operating While Intoxicated (OWI) offenses. Although address labels for the WSLH are included in the kits, the samples must be sent to the appropriate laboratory depending on the nature of the offense.

Where to Send Blood Samples

Non-felony OWI Offenses (1st through 3rd offense): Blood samples must be sent to the Wisconsin State Laboratory of Hygiene (WSLH).

*Other laboratories that are certified to perform Implied Consent Alcohol testing may be available in certain jurisdictions.

Felony OWI Offenses: Blood samples may be sent to the State Crime Laboratory in your service area (Madison, Milwaukee or Wausau). This includes all 4th and higher OWI offenses as well as homicide and injury OWI [940.09(1)a-d, 940.25 Wis. Stats.] cases. Prior to submission, there needs to be a charged offense. WSLH will accept felony OWI blood samples as well.

Traffic Incidents: Blood samples must be sent to the WSLH for fatal or non-fatal incidents that do not have a felony criminal charge actively being pursued (i.e. 'clear the driver' case, driver has not been charged prior to submission or will be charged pending laboratory results)

Non-OWI Felony Offenses: Blood samples for all non-OWI cases must be sent to the State Crime Laboratory in your service area. These samples will be redirected to the appropriate laboratory if sent to the WSLH.

Firearms: Blood samples for all intoxicated use of firearm violations must be sent to the State Crime Laboratory in your service area.

Drug Possession: Call the Crime Laboratories in Madison or Milwaukee to determine if the blood sample will be accepted for analysis. The WSLH will not perform testing in support of drug possession charges.

Bail-jumping: Felony or misdemeanor: The State Crime Laboratory in your service area will accept these samples.

Please contact the appropriate laboratory listed below if you have any questions:

Madison Laboratory

4626 University Avenue
Madison, WI 53705
608-266-2031
608-267-1303 fax

Milwaukee Laboratory

1578 S 11th Street
Milwaukee, WI 53204
414-382-7500
414-382-7507 fax

Wausau Laboratory

7100 Stewart Ave
Wausau, WI 54401
715-845-8626
715-848-5833 fax

WI State Lab of Hygiene

Toxicology Section

2601 Agriculture Drive
Madison, WI 53718-6780
(608) 224-6241

APPENDIX 16: SAMPLE TWO YEAR HOLD LETTER FOR WSLH

AGENCY LETTERHEAD

DATE:

REFERENCE: [DEFENDANT'S NAME]

SPECIMEN #:

TO: TOM NEUSER, WISCONSIN STATE LABORATORY OF HYGIENE

FROM: DEPUTY NAME/AGENCY NAME

Mr. Neuser:

Please save the above blood sample for an additional two years as this is a criminal case. If you have any questions please contact me at [phone number].

Thank you.

APPENDIX 17: SAMPLE DNA NOTIFICATION LETTER

AGENCY LETTERHEAD

Date

Subject

DOC #: 00393073

Green Bay Correctional Institution

P.O. Box 19033

Green Bay WI 54307-9033

Attorney

103 East College Avenue

Appleton, WI 54911

To Whom It May Concern:

The (Agency Name) is in possession of evidence regarding case _____. The Defendant, _____, and the Attorney of Record, _____, are being notified per Wisconsin Statutes that the items of evidence will be destroyed unless the (Law Enforcement Agency) is notified within 90 days of either a motion for testing of the evidence is filed under s. 974.07 (2) or a written request for retention of the evidence is submitted to the law enforcement agency.

968.205 (2) Except as provided in sub. (3), if physical evidence that is in the possession of a law enforcement agency includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, delinquency adjudication, or commitment under s. 971.17 or 980.06 and the biological material is from a victim of the offense that was the subject of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense, the law enforcement agency shall preserve the physical evidence until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date.

968.205(4) A notice provided under sub. (3) (a) shall clearly inform the recipient that the **evidence will be destroyed unless, within 90 days after the date on which the person receives the notice**, either a motion for testing of the evidence is filed under s. 974.07 (2) or a written request for retention of the evidence is submitted to the law enforcement agency.

The (Agency Name) is in possession of _____, etc. It is believed that the appeal time has expired, however, due to the DNA law, this letter is being sent. The (Agency Name) has maintained the property thus far, and would like to dispose of it.

Sincerely,

Property Manager Information

APPENDIX 18: GUIDE FOR HANDLING MONEY CONSIDERED CONTRABAND

The following is intended as a guide for handling of money that may be considered contraband.

1. LE agency seizes money and determination is made that money is contraband.
2. If no forfeiture action or 968.20 return of property motion filed or no other agreement reached on disposition of the funds, such as part of the resolution in a criminal case (agreement that the money is contraband), then the procedure under Wis. Stat. 59.66 should be followed. If a forfeiture action is filed or a return of property motion is filed, then the status of the money is litigated in those proceedings.
3. Procedure under Wis. Stat. 59.66:
 - a. On or before January 10 of every odd numbered year (e.g. 2013, 2015, etc),
 - b. Each officer of a municipality and county ... (NOTE: This would include a Sheriff or Chief of Police),
 - c. Shall file with the Treasurer of that person's county a written report under oath giving the names and the last-known addresses of all persons for whom any such officer or clerk holds money or security, and which has not been claimed for at least one year, and showing the amount of the money or the nature of the security in detail.
 - d. A duplicate report shall also be mailed to the department of financial institutions.
 - e. Upon receiving the reports the Treasurer shall cause to be published a class 3 notice, under ch. 985, on or before February 1 of the same year, which contains the names and last-known addresses of the owners of the unclaimed money or security that has a value of at least \$10, and shall state that unless the owners call for and prove their ownership of the money or security, within 6 months from the time of the completed publication, the Treasurer will take possession or control of the money or security. In counties with a population of 500,000 or more, the Treasurer shall distribute to as many community-based newspapers as possible, that are published in the county, a copy of the notice that is described above. The Treasurer shall distribute these copies of notices at the same time that he or she causes the notices to be published.
 - f. At the end of the 6 months from the time of the completed publication, the Treasurer shall also take possession or control of all money or security of persons for whom an officer of a municipality and county, and each clerk of every court of record, holds money or security, and which has not been claimed for at least one year, if the money or security has a value of less than \$10.
 - g. Any money or security of which the Treasurer has taken possession or control above and has had in his or her possession or control for more than one year shall, to the extent possible, be deposited in the county's general revenue fund. Money or security that is deposited under this paragraph may remain in the county's general revenue fund or may be used by the county until the money or security is paid or delivered to its owner, or becomes the property of the county.
 - h. 59.66(2)(b) If within 10 years from the time any such money or security is delivered to the Treasurer the owner of the money or security proves to the satisfaction of the Treasurer the owner's right to the possession of the money or security, it shall be paid or delivered to the owner.

IMPORTANT NOTES: If the alleged owner does make a claim with the County Treasurer within the specified time period then the return can be declined on the grounds that the money is contraband. The person can then file a motion for return of property under 968.20 or file a civil action. Alternatively, the County Treasurer could bring a declaratory judgment action at any time to declare the funds contraband. However, if a court declares the funds contraband the money then goes to the school fund. Only in cases where the person does not make a claim on the funds and there is no court determination that the funds are contraband do the funds become the property of the county.

Any refusal to return the money will require that the Treasurer know that the money is considered contraband and must not be returned AND that the LE file showing the basis for the seizure and contraband nature of the money be maintained for at least 12 years. Therefore, when the report is filed with the County Treasurer it should be noted that the funds are considered contraband and should not be returned before consulting with the agency that had possession of the funds.

In addition, the agency must ensure that it keeps all reports and evidence supporting its conclusion that the funds are contraband in order to defend any lawsuit or motion for return of property.

- i. If no such proof is made, then at the end of the 10-year period the money or property shall become the property of the county. Nothing in this subsection shall be construed to deprive the owner of any such property of the owner's right to proceed by court action for the recovery of such money or security from the Treasurer.
- j. 59.66(2)(c) Any person violating this subsection shall, upon conviction, be fined not less than \$50 nor more than \$200 or imprisoned for not less than 30 days nor more than 6 months. *Wis. Stat. 59.66(2)(c).*

Money that is “put to an illegal use or acquired illicitly” or that has “a significant connection to items which are illegal to possess” can be considered contraband. *Return of Property in State v. Jones*, 226 Wis.2d 565, 594 N.W.2d 738 (1999). The state must be able to establish by the greater weight of the credible evidence that the money was contraband. If you believe the money is contraband, make contact with your District Attorney for a decision to start a legal action or for the disposition of the money.

APPENDIX 19: AG OPINION ON DISPOSITION OF UNCLAIMED CONTRABAND MONEY



114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

J.B. VAN HOLLEN
ATTORNEY GENERAL

December 3, 2009

LAW ENFORCEMENT AGENCIES MAY NOT RETAIN UNCLAIMED CONTRABAND MONEY FOR OWN USE

Ms. Malia T. Malone
Polk County Assistant Corporation Counsel
1005 West Main Street, Suite 100
Balsam Lake, WI 54810

Dear Ms. Malone:

1. You have requested an opinion, on behalf of the Polk County Corporation Counsel, regarding the property disposition of seized money that may constitute contraband when the state has not sought the forfeiture of such money through judicial proceedings.

Question Presented and Brief Answer

2. Specifically, you ask whether a law enforcement agency may retain seized money when a court has not formally found that the seized money constitutes contraband subject to forfeiture through a proceeding for the return of property under Wis. Stat. § 968.20.

3. In my opinion, I conclude that the law enforcement agency may not retain the seized money and must comply with the proper statutory procedure for the disposition of unclaimed money.

Analysis

4. Wisconsin Const. art. X, § 2 provides in relevant part that “all moneys and the clear proceeds of all property that may accrue to the state by forfeiture...shall be set apart as a separate fund to be called ‘the school fund,’...” Wisconsin law authorizes the state to commence forfeiture proceedings against seized property, including money that constitutes the proceeds of criminal activity. See Wis. Stat. § 961.075. If the court finds that the property is contraband and orders its forfeiture, the agency must deposit the seized money or the proceeds from the sale of the forfeited property in the state school fund as provided by statute. Wis. Stat. § 961.55(5) and § 973.075(4).

5. For a variety of reasons, the state may elect not to initiate a forfeiture action for seized money. Wisconsin Stat. § 968.20 permits a property owner to petition the circuit court for return of property, including money, that law enforcement agencies have seized, but has not been the subject of a state-initiated forfeiture action. See *Jones v State*, 226 Wis. 2d 565, 578, 594 N.W.2d 738 (1999). If the state demonstrates that the property is contraband, then the court may not order the property returned. *Id.* at 570. Though Wis. Stat. § 968.20 is not a forfeiture proceeding in the traditional sense, Wisconsin appellate courts recognize that a court’s decision declining to return contraband property to its owner constitutes a “forfeiture” of that

person's interest in it. *State v. Perez*, 2001 WI 79, ¶¶ 59-61, 244 Wis. 2d 582, 628 N. W. 2d 820 (referring to § 968.20 as a forfeiture statute); *In re Return of Property in State v. Bergquist*, 2002 WI App 39, ¶8, 250 Wis. 2d 792, 641 N.W.2d 179 (denying return of weapon under § 968.20 held a "forfeiture"); and *State v. Kueny*, 2006 WI App 197, ¶7, 296 Wis. 2d 658, 724 N.W.2d 399 ("The forfeiture order was property under Wis. Stat. § 968.20(1m)(b) if Kueny committed a crime involving the use of the seized weapons."). Requiring law enforcement agencies to transfer contraband money to the school fund is consistent with the purpose of Wis. Const. art. X, § 2 and the framers' intention to "throw everything possible into the school fund." *Estate of Payne*, 208 Wis. 142, 145, 242 N.W.553 (1932); accord 61 Op. Atty Gen. 208, 209, (1972).

6. Your question focuses on what happens to seized money when the circuit court has not had occasion to declare it contraband through an asset forfeiture proceeding or through a motion for the return of seized property. Because the money's potential status as contraband does not by itself vest its title in the school fund, the law enforcement agency does not have authority to transfer it to the school fund. Indeed, Wis. Const. art. X, § 2 specifically contemplates that money accrues to the school fund through "forfeiture."

7. At common law, forfeiture of a person's interest in property to the government contemplated judicial action. As such, a forfeiture cannot occur without a judicial determination that the property constitutes contraband and is subject to forfeiture. See *United States v. 92 Buena Vista Ave.*, 507 U.S. 111, 125 (1993) (plurality) quoting *United States v. Grundy*, 3 Cranch 337, 350-351 (1806) ("It has been proved, that in all forfeitures accruing at common law, nothing vests in the government until some legal step shall be taken for the legal assertion of its right,..."). To be sure, a legislature could adopt a statutory scheme that permits an agency under limited circumstances to administratively forfeit contraband without a judicial action. See *Dusenbery v. United States*, 534 U.S. 161 (2002). However the Wisconsin Legislature has promulgated a scheme that expressly contemplates a judicial declaration that property constitutes contraband and is subject to forfeiture. See Wis. Stat. § 961.55-.555; §973.075-076; see also *Jones v. State*, 226 Wis. 2d 565, 578, 594 N. W. 2d 738 (1999). To permit a law enforcement agency to unilaterally declare money or other property contraband and forfeit it would circumvent the legislative preference for judicial involvement in forfeiture proceedings.

8. Absent a judicial finding that the money constitutes contraband and is subject to forfeiture, a law enforcement agency should dispose of the money as unclaimed or abandoned property. Wisconsin Stat. § 59.66(2) proscribes the procedure for disposing of unclaimed property in possession of county and municipal officials, including law enforcement officials. Wisconsin Stat. ch. 177 governs disposal of unclaimed property in possession of a state agency. If no one claims the money, then a county or municipal law enforcement agency may not retain the money for its own use. Rather, it must transfer the money to the County Treasurer pursuant to § 59.66(2). If at any time during the process for disposing of unclaimed money a person asserts an interest in it, the law enforcement agency may decline to return the money on the grounds that it may constitute contraband. Should the agency decline to return it, the person could seek its return through a proceeding under § 968.20. At that time, if the agency demonstrates its status as contraband and the court orders its forfeiture, the agency should then transfer it to the school fund.

Conclusion

9. I conclude that a law enforcement agency may not retain unclaimed contraband money for its own use. In the absence of an asset forfeiture proceeding initiated by the state or a judicial determination that the money constitutes contraband, a local law enforcement agency should dispose of the money as unclaimed property pursuant to Wis. Stat. 59.66 (2).

Sincerely,

J.B. Van Hollen
Attorney General
JBVH:KSJ:DVL:kw:lkw

A copy of the opinion is available at
<http://www.doj.state.wi.us/news/files/20091203132311071.pdf>.

A copy of the original request from the Polk County Assistant Corporation Counsel is available at
http://www.doj.state.wi.us/ag/opinions/2009_11_30Malone-Request.pdf.

APPENDIX 20: SAMPLE FIREARM RELEASE FORM

Dane County Sheriff's Office
Firearm Release

CASE NUMBER

To comply with federal legislation 18 U.S.C. 922, the owner of a firearm must complete this form before the firearm is released.

LAST NAME, FIRST NAME, MIDDLE	SEX	RACE	DATE OF BIRTH
ADDRESS	CITY	STATE	ZIP

CERTIFICATION. Questions 1 through 12 must be answered with a "yes" or "no" inserted in the box at the right of the question.			
1. Are you the actual owner of the firearm(s) indicated below?		7. Have you been discharged from the Armed Forces under dishonorable conditions?	
2. Are you under indictment or information in any court for a crime for which the judge could imprison you for more than one year? An information is a formal accusation of a crime made by a prosecuting attorney.		8. Are you an alien illegally in the United States?	
3. Have you been convicted in any court of a crime for which the judge could have imprisoned you for more than one year, even if the judge actually gave you a shorter sentence?		9. Have you ever renounced your United States citizenship?	
4. Are you a fugitive from justice?		10. Are you subject to a court order restraining you from harassing, stalking, or threatening an intimate partner or child of such a partner?	
5. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?		11. Have you been convicted in any court of a misdemeanor crime of domestic violence? This includes any misdemeanor conviction involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim or by a person with a similar relationship with the victim.	
6. Have you ever been adjudicated mentally defective or have you been committed to a mental institution?		12. Are you a citizen of the United States?	

My signature below acknowledges receipt of my firearms and confirmation that the firearms are in the same condition as when they were received by the Dane County Sheriff's Office.

Signed by _____

Witnessed by _____

Law Enforcement Agency _____

Date _____

DO NOT COMPLETE THE REST OF THIS FORM WHEN THE FIREARMS RELEASED ARE PURSUANT TO A COURT ORDERED INJUNCTION

TYPE	MAKE	MODEL	SERIAL NUMBER

APPENDIX 21: PROCESSING A BACKGROUND FOR RETURN OF FIREARMS

Background Checks for Return of Firearms

- Use the TIME System (Portals 100) to conduct background checks.
 1. From the main page of Portals 100, locate the menu on the left side.
 2. Go to Criminal History Record Information and open the drop down list
 3. Select Return of Firearms and open the drop down list
 4. Open 0028-Firearms Return Query
- Portals 100 query will automatically check the mental health file, which is one of the biggest benefits of using this resource.
- You need to review the 0028 results to make your determination if the person is disqualified from possessing a firearm. The 0028 results **WILL NOT** state if a person is disqualified or not, you must review the results and make your determination.
- You will also run your III (national criminal history data base) **by the FBI number** (if there is one) as well as check CCAP and your own in-house check.

If, after conducting a background check you still have questions, you can contact, via fax or e-mail, the Wisconsin Handgun Hotline/Firearms Unit for assistance see [APPENDIX 23: SAMPLE LETTER TO HANDGUN HOTLINE](#). Please be sure to complete the Criminal History check before contacting the Hotline.

APPENDIX 22: FIREARM BACKGROUND CHECKLIST

FIREARM BACKGROUND CHECKLIST

NAME OF PERSON
REQUESTING FIREARM: _____ DOB: _____
CONTACT PHONE #: _____
DASO CASE #: _____ COURT CASE #: _____ DATE: _____

APPROVED TO RELEASE PER DEPUTY/DETECTIVE: _____

RUN AND CHECK THE FOLLOWING REPORTS:

- NCIC
- CIB
- CCAP
- MENTAL HEALTH DISQUALIFIERS, WAYNE PFISTER, C of C
- GUARDIANSHIP DISQUALIFIERS, WAYNE PFISTER, C of C
- JUVENILE DISQUALIFIERS (only avail if DOB is >1983), WAYNE PFISTER, C of C
- SUMMIT RECORDS
- RUN NCIC CHECK FOR FIREARM TO MAKE SURE IT IS NOT IN SYSTEM**

ANY DISQUALIFIERS NOTED:

- NO YES

IF YES, EXPLAIN: _____

GIVEN TO SUPERVISOR FOR FINAL DETERMINATION
DATE: _____

THIS PORTION TO BE FILLED OUT AND SIGNED BY A SUPERVISOR

- APPROVED FOR RELEASE OF FIREARM(s)**
- DENIED FOR RELEASE OF FIREARMS(s)**

SIGNATURE

DATE

APPENDIX 23: SAMPLE LETTER TO HANDGUN HOTLINE

AGENCY LETTERHEAD

DATE: _____

TO: Wisconsin Handgun Hotline/Firearms Unit – (e-mail) wihotline@doj.state.wi.us or nowlanam@doj.state.wi.us or FAX 608-264-6200

FROM: _____
Evidence Custodian
Agency Information

RE: Ability to possess firearms

I have conducted a records check using Portals 100, 0028 Firearms Return Query as well as CCAP and our own in house data base.

I have been unable to determine based on this check whether the person is prohibiting from possessing a firearm as there are convictions that may disqualify a person. I request your assistance in ascertaining whether the highlighted conviction(s) (attached) would constitute a disqualifying firearms possession offense.

Name _____ **DOB** _____

Please e-mail/FAX response to _____

I can be reached directly at _____

Thank you for your assistance.

IMPORTANT NOTE: Please do the record checks described above before e-mailing/faxing. DOJ will help in any way that they can if you have questions. This includes assisting in interpreting and determining whether convictions meet the disqualifier definitions.

APPENDIX 24 - FIREARM DISQUALIFICATION NOTIFICATION LETTER

AGENCY LETTERHEAD

DATE: _____

NAME: _____

RE: FIREARM DISQUALIFICATION NOTIFICATION LETTER

We are holding firearm(s) under [Agency Name] case number_____. Our records indicate these firearm(s) belong to you.

After performing a Firearm Release Background Check, we have found that you are disqualified from possessing a firearm and/or ammunition due to State and/or Federal Firearm Disqualifiers.

Due to the fact that we cannot return said firearm(s) to you, we intend to destroy said firearms in 30 days from the date of this letter, unless you obtain a legal order prohibiting such action.

You have the option to transfer ownership of the firearm(s) to a qualifying third party. If you choose to transfer ownership to a qualifying third party, please notify us **in writing within 30 days**. In your request, you must include the third party's full name, date of birth and contact information. A thorough background check will then be done on the third party and if approved both you and the third party will be required to sign a Third-Party Firearm Release Acknowledgement.

If you do not obtain a legal order prohibiting the destruction of said firearms within 30 days of this letter, or notify us of your intent to transfer ownership of the firearm(s) within 30 days of this letter, they may be disposed of pursuant to §968.20., Wis. Stats.

If you have further questions, please contact me at (608) 284-6895.

Sincerely,

Property/Evidence Custodian
[Agency Name]

***ALL OTHER LOCAL, STATE AND FEDERAL LAWS PERTAINING TO FIREARMS
POSSESSION, STORAGE AND TRANSPORTATION APPLY.***

APPENDIX 25: RECEIPT REGARDING THIRD PARTY TRANSFER OF FIREARMS

RECEIPT AND ACKNOWLEDGEMENT REGARDING THIRD PARTY TRANSFER OF FIREARMS

The Grand Chute Police Department has received information that _____, DOB ___/___/___ is currently prohibited from acquiring and/or possessing firearms; therefore, the firearm(s) listed below may not be returned to him/her. However, the firearms(s) listed below may be transferred to a person identified and verified as not having a firearms prohibition.

Prohibited Firearms:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____

OWNER ACKNOWLEDGEMENT

I, _____, hereby acknowledge the following:

- _____ 1. Federal and/or State law prohibits me from possessing or receiving the above described firearm(s) and/or any other firearms(s).
- _____ 2. Possession or receipt of the above described firearms (and any other firearms) could result in Federal or State criminal charges against me and forfeiture of the firearm(s).
- _____ 3. I can request the above described firearm(s) be transferred to _____, a person who is not prohibited from possessing the firearm(s) or any other firearms.
(name of third party)
- _____ 4. That _____ does not reside with me.
(name of third party)

THIRD PARTY ACKNOWLEDGEMENT

I, _____, hereby acknowledge the following:

- _____ 1. Federal and/or State law does not prohibit me from possessing or receiving the above described firearm(s) and/or any other firearms(s).
- _____ 2. Possession or receipt of the above described firearms (or any other firearms) by _____ directly or indirectly could result in Federal or State criminal charges against him/her and forfeiture of the firearm(s).
(name of owner)
- _____ 3. Selling, giving or otherwise transferring the above described firearm(s) (or any other firearms) to _____ or to anyone residing with _____ could result in Federal or State criminal charges against me and forfeiture of the firearm(s).
(name of owner) (name of owner)
- _____ 4. That I do not reside with _____.
(name of owner)

PLEASE READ BEFORE SIGNING

I, _____ (please print name), do hereby agree that I have read and fully understand the information contained above.

Dated _____

Signature of Owner

Date of Birth

Address

I, _____ (please print name), do hereby agree that I have read and fully understand the information contained above.

Dated _____

Signature of Third Party

Date of Birth

Address

Dated _____

Witnessed by: _____

Grand Chute Police Department

APPENDIX 26: AG OPINION ON DISPOSITION OF DANGEROUS WEAPONS/AMMO

Attorney General's Opinion on Retention, Sale and Disposal of Dangerous Weapons and Ammunition.

This article was published in 2001 in the law enforcement bulletin and can be found on WILENET.

Retention of Seized and Abandoned Firearms June 2001 Law Enforcement Bulletin

This article addresses the issue when a law enforcement agency may retain firearms that have either been seized as part of a criminal investigation or otherwise have been delivered to the law enforcement agency. **A law enforcement agency may not retain any handgun.** A law enforcement agency has a limited right to retain long guns for its own use. However, the agency may not sell or trade-in such weapons and once the agency no longer has any need to retain the weapons for its own use they must be turned over to the State Crime Lab.

DISCUSSION

Section § 968.20 of the Wisconsin Statutes governs the handling of property seized by law enforcement agencies. Section § 968.20(3)(b), sets forth the procedure to be followed regarding dangerous weapons and ammunition. That section provides that if the dangerous weapon or ammunition is not required for evidence or use in further investigation and has not been disposed of pursuant to a court order at the completion of a criminal action or proceeding, the city or other entity shall make reasonable efforts to notify all persons who have or may have an authorized rightful interest in the dangerous weapon or ammunition of their right to request the return of the property by a motion to the local circuit court. A law enforcement agency may also voluntarily return a firearm to the rightful owner only if the owner was not involved in committing a crime involving the firearm. If there is no response to the notice, or the weapon is not otherwise disposed of by return or court order:

. . . the city, village, town or county or other custodian may retain the dangerous weapon or ammunition and authorize its use by a law enforcement agency, except that a dangerous weapon used in the commission of a homicide or a handgun . . . may not be retained. If a firearm or ammunition is not so retained, the city, village, town or county or other custodian shall ship it to the state crime laboratories and it is then the property of the laboratories. . . .

Section §66.0139 of the Wisconsin Statutes deals with the disposition of unclaimed or abandoned property. This statute, while generally authorizing cities, towns, villages and counties to sell such property, specifically provides that "A political subdivision may retain or dispose of any abandoned, unclaimed or seized dangerous weapon or ammunition only under s. §968.20." Therefore, abandoned and unclaimed dangerous weapons or ammunition must be handled in accordance with the procedure set forth in Wis. Stat. §968.20.

It is important to note that Wis. Stat. §968.20(3) specifically prohibits a law enforcement agency from retaining any handgun or any firearm used in the commission of a homicide. It is also self-evident that properly retained firearms may only be used by the law enforcement agency and not for any personal use.

This department has consistently interpreted and advised law enforcement agencies that the above statutes only authorizes a governmental agency to retain seized, abandoned or unclaimed firearms for its own use and when the firearm is no longer needed by the agency, it must be provided to the State Crime Laboratory. A law enforcement agency is not authorized by statute to sell or trade seized firearms to a licensed gun dealer for credit towards the purchase of other firearms or other equipment. If a law enforcement agency wishes to use a seized firearm it may do so. However, when it is determined that the firearm is no longer needed for use by the law enforcement agency, it must be turned over to the State Crime Laboratory.

This opinion is based on the specific language of Wis. Stat. §968.20 and §66.0139. Wis. Stat. § 968.20 only authorizes the retention of firearms for use by a law enforcement agency. It does not authorize the sale of such firearms for any purpose. In fact, Wis. Stat. § 968.20(3)(a) specifically allows first class cities to sell vehicles which are considered dangerous weapons but does not extend this right to firearms. Even then such sales are subject to the provisions of the forfeiture statute, Wis. Stat. §973.075(4), which provides that 50% of the sale proceeds are to be paid to the school fund. In addition, Wis. Stat. § 66.0139 specifically authorizes the sale of abandoned and unclaimed property but specifically excludes firearms. In cases where abandoned property may be sold the proceeds are to be paid into the city, county, village or town treasury, and not the law enforcement agency. As there is no provision for the sale of firearms under any circumstances, although the statutes allow for the sale of other seized or abandoned property, it can be concluded that such firearms may not be sold, exchanged or bartered. In addition, Wis. Stat. § 968.20 only authorizes the agency to "retain" the firearm for "use" by a law enforcement agency. The sale, exchange or barter of firearms is inconsistent with the meaning of "retain" and "use." Therefore, when firearms are no longer retained for use by a law enforcement agency they must be provided to the State Crime Laboratories.

APPENDIX 27: SAMPLE FOUND PROPERTY CLAIM

FOUND PROPERTY CLAIM

AGENCY LETTERHEAD

§170.07 Lost Chattels, notice: (\$25-\$99)

Except as provided in §170.05 and §170.12, if a person finds \$25 or more or any goods having a value of at least \$25 but less than \$100, and if the owner of the money is unknown, ***the finder shall, within five (5) days after finding the money or goods, give a written notice (provided below)*** of the found money or goods to the law enforcement agency of the city, village or town in which the money or goods are found. That law enforcement agency shall post a notice of the found money or goods in two public places in the city, village or town.

§170.08 Notice and Appraisal: (\$100 or more)

Except as provided in §170.050 and §170.12, the finder of goods having a value of \$100 or more shall, within 15 days, give written notice (provided below) to the law enforcement agency of the city, village or town in which the goods were found **AND** cause a class 2 notice, under ch. 985 to be published in the County in which the goods were found.

Failure to comply with the written notice and/or the class 2 notice will result in the found property being deemed abandoned and disposed of in accordance with Wis. Stat. §66.0139.

Date Form Completed: _____

Name: _____

Address: _____

City/State/Zip Code: _____

Telephone Number: _____

Date Property was Found: _____

Description of Property You Wish to Claim: _____

Serial Number: _____ Model Number: _____

Circumstances of Finding the Property: _____

Signature: _____

-----BELOW COMPLETED BY DEPARTMENT-----

Date Property Received: _____ Claim Received: _____

Date of Release to Finder: _____

APPENDIX 28: SAMPLE SEIZED PROPERTY RECEIPT

Agency Letter Head

SEIZED PROPERTY RECEIPT

CASE #:	DATE:
----------------	--------------

NAME:	DOB:
--------------	-------------

ADDRESS :	CITY :	STATE/ZIP:
---------------------	------------------	-------------------

PHONE:	ALTERNATE PHONE:
---------------	-------------------------

Are you the owner of this property?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
-------------------------------------	------------------------------	-----------------------------

IF NO , who is the owner?	Owner phone:
----------------------------------	--------------

	QTY	ITEM DESCRIPTION
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

EVIDENCE

SAFEKEEPING

If the property seized is for safekeeping, this receipt is your official notice to claim your property within 90 days per **Dodge County Ordinance 5.07 (2)(b) – PERSONAL PROPERTY UNCLAIMED FOR A PERIOD OF 90 DAYS SHALL BE DISPOSED OF.**

To claim your property, contact the Evidence Clerk at **920-386-4004** (Mon-Fri 8:00 am to 4:00 pm)

OFFICER SIGNATURE

PROPERTY OWNER SIGNATURE

******THIS RECEIPT MUST BE PRESENTED TO OBTAIN YOUR PROPERTY ******

APPENDIX 29: CITIZEN'S REQUEST FOR FIREARM DESTRUCTION

CITIZEN'S REQUEST FOR FIREARM/DANGEROUS WEAPON DESTRUCTION

DATE: _____ INCIDENT NUMBER: _____

I, _____, request that the [Department Name] destroy the firearm(s) and/or other dangerous weapon(s) listed below.

Make	Model	Serial #	Caliber	Agency Tag #

Other Dangerous Weapon	Description	Agency Tag #

I certify that I am the owner of the above listed firearms and/or weapon(s). I understand that by signing this form, I am permitting the [Department Name] to permanently destroy these firearms(s) and/or weapon(s) and I agree to hold Dane County harmless for their destruction.

Signature of Citizen Turning Over Property for Destruction **Date**

Signature of Deputy Accepting Property for Destruction **Date**