DEPARTMENT OF CORRECTIONS

Policy:	**301.035**
Title:	**Evidence Management**
Effective Date:	**3/6/18**

PURPOSE: To provide procedures for the secure and legal collection, storage, preservation, and disposal of evidence.

APPLICABILITY: Minnesota Department of Corrections (DOC); all department staff

DEFINITIONS:

Chain of custody label – a form printed on an evidence bag, adhesive sticker, or tag that contains: date and time of collection, name and title of individual collecting the evidence, where the evidence was found, specific description of the evidence, and chain of custody, including all individuals who handled the evidence in the order of possession.

Charged case – charged cases include completed OSI investigations accepted for prosecution by the appropriate prosecuting authority, resulting in the filing of criminal charges in district court.

Controlled substance – a drug, substance, or immediate precursor in schedules I through V of Minn. Stat. § 152.02.

Evidence – any item identified that would assist in resolving whether a crime was committed or a policy/rule/regulation was violated. Any proof or probative item.

Evidence repository – a secure box, locker, or area where staff deposit and log items into evidence for further processing by investigative staff.

Investigative staff – employees assigned to work in OSI or a facility discipline unit.

Litigation hold – also known as a legal hold, is a communication issued as a result of current or anticipated litigation, audit, government investigation, or other such matter that suspends the normal retention guidelines.

Uncharged case – uncharged cases include completed OSI investigations not yet reviewed for prosecution by the appropriate prosecuting authority, completed OSI investigations that have not been accepted for prosecution by the appropriate prosecuting authority, and completed OSI investigations that have been declined for prosecution due to insufficient evidence.

PROCEDURES:

A. Securing a potential crime scene

1. When an offender, staff, contractor, volunteer, or visitor is suspected of committing a crime or a policy/rule/regulation violation, staff must follow specific steps to ensure the preservation of evidence, using the Evidence Management – Securing a Potential Crime Scene template (attached).

2. The responding staff person at the scene of a possible crime must:

a) Initiate the incident command system (ICS), if appropriate;
b) Secure the area; and
c) Not allow any object to be touched or moved.

3. The incident commander must immediately assign available staff to the following tasks:
   a) Keep the scene secure by removing and keeping out offenders and all unnecessary staff, and taping off the area, if appropriate;
   b) Assign a staff recorder to list every person in the area, times of arrival and departure, why there, and what was done. An incident report, to be retained by OSI, must contain this information;
   c) Make sure the watch commander is notified. The watch commander ensures an OSI investigator is notified, when necessary;
   d) Identify suspects and witnesses and keep these people separated from each other;
   e) When directed by investigative staff or watch commander, photograph and/or video record the area;
   f) When directed by investigative staff or watch commander, assign a staff member to collect evidence and initiate the chain of evidence documentation; and
   g) Ensure all staff involved write detailed incident reports including: date, time, names of staff, offenders and witnesses**,** law enforcement officers, and the sequence of events.

B. Evidence collection and handling
   1. Responding staff must refer to the facility/location specific Evidence Management – Evidence Collection, Handling, and Logging Checklist (template attached) for collection, handling, and chain of custody of the evidence.
   2. Digital photographs, video media, and storage media must be handled according to Policy 301.147, "Security Video Recording Systems/Photographic Images."

C. Logging and depositing evidence
   1. All evidence must be placed in the evidence repository. The staff member depositing the evidence records each item on the Evidence Inventory Report. The Evidence Inventory Report must also include the offender suspect's name, offender identification number (OID), date of collection, brief description of the evidence, and signature of the depositing staff member and the staff's printed name. All facilities must use the Evidence Inventory Report available from MINNCOR. Evidence Inventory Reports are retained by investigative staff at the facility.

   2. Only investigative staff may remove evidence from the repository. The staff removing the evidence must record the date of removal, initials of the person removing the evidence, and disposition in the Evidence Inventory Report. The evidence is then taken to the evidence storage area. The chain of custody is documented on the removed item's evidence bag, tag, or label.

D. Evidence storage area
   1. An evidence storage area is used to retain evidence for criminal and offender discipline cases. Access to the area is limited to investigative staff.

   2. Only investigative staff are authorized to enter the evidence storage area. All others who enter the evidence storage area must be under escort of an investigative staff.

3. All evidence related to a single case must be clearly labeled and stored together in a neat and orderly fashion.

4. All drugs, tobacco, money, or other high risk evidence are further secured within the evidence storage area by placement in a locked container such as cabinet or safe.

5. Sharps are stored in sharps containers.

E. Evidence retention for internal discipline cases

1. Evidence relating to offender discipline cases must be either released or disposed of after 60 days from adjudication of incident.

2. At investigative staff's discretion, some evidence may be kept for training purposes. Sharps, if kept, must remain in approved sharps containers or otherwise protected from direct handling.

3. The retention and disposition of evidence relating to a crime is managed by OSI staff in accordance with this policy.

F. Evidence retention for staff investigations

1. Active investigation files are kept indefinitely.

2. Inactive investigations are retained seven years from the date of the incident or two years from the action affecting the employee whichever is longer.

3. PREA cases involving criminal sexual conduct investigations and sexual harassment are retained as long as the abuser is incarcerated or employed, plus five years.

G. Retention of criminal evidence

1. Uncharged cases:

a) Except for cases involving homicide or criminal sexual conduct, evidence collected pursuant to criminal investigation of any uncharged case is retained for a period of four years or subject to the litigation hold, whichever is later.

b) Evidence collected pursuant to investigation of criminal sexual conduct must be retained for ten years or subject to the litigation hold, whichever is later.

c) Evidence collected pursuant to investigation of homicide or suspicious death must be retained pursuant to a litigation hold or, if none, in place as follows:

(1) If the identity of the perpetrator is known, but perpetrator is deceased, evidence is retained at the discretion of the director of OSI.

(2) If the identity of the perpetrator is unknown, the evidence is retained indefinitely, and may not be disposed of without approval of the director of OSI.

(3) If the investigation involves a suspicious death of undetermined manner, the evidence is retained indefinitely, and may not be disposed of without approval of the director of OSI.

2. Charged cases: evidence to be used in charged cases is released to the appropriate law enforcement agency, prosecutor, or court as needed, and is thereafter subject to the retention and/or disposition procedures of the receiving entity. OSI retains a written record of any such transfer. All evidence remaining in DOC custody on a charged case is subject to disposal according to the following schedule:
   a) Defendant convicted – in charged cases that result in the conviction of the defendant, evidence is retained until the defendant's sentence has expired, or until the defendant dies, whichever occurs first or subject to a litigation hold.

   b) Defendant acquitted – in consultation with the prosecuting authority, evidence in charged cases that result in acquittal of the defendant may be disposed of at the discretion of the director of OSI unless subject to a litigation hold.

   c) Mistrial – in consultation with the prosecuting authority, evidence in charged cases that result in mistrial may be disposed of at the discretion of the director of OSI unless subject to a litigation hold.

3. Requests for early disposition – absent a litigation hold variance from the disposition schedule, requests may be granted by the director of OSI, who may consult with the appropriate prosecuting authority regarding such a request where deemed necessary and appropriate. An OSI investigator may initiate request for early disposition of evidence as follows:
   (a) Create a list of items for which early disposition is sought, including:
      (1) A description of the evidence;
      (2) Case name and number;
      (3) Chain of custody; and
      (4) Purported evidentiary value.

   (b) Submit list, written response of prosecuting authority, and request for early disposition to director of OSI. Document and where appropriate, photograph, item prior to disposal.

4. Where an item or document identified as evidence by OSI is subject to both this policy and a records retention schedule, the longer retention period applies.

H. <u>Evidence release or disposal</u>
1. Before disposing of any evidence, the investigative staff must consult with the litigation coordinator for any litigation hold. The release or disposal of all evidence must be documented on the evidence log.

2. Evidence disposal methods
   a) Controlled substances/narcotics – investigative staff or canine officers must give the OSI investigator the controlled substance/narcotics for appropriate disposal as determined by the OSI director/designee. The OSI investigator must log the controlled substances/narcotics. All other drugs are disposed of in accordance with Policy 105.152, "Hazardous Waste Management."

   b) Weapons and tobacco – investigative staff must dispose of these items by delivering them outside the facility secure perimeter for destruction by compaction or other method that renders the items harmless.

c) Biohazards – all evidence and sharps, possibly contaminated with blood or other potentially infectious materials, is disposed of in accordance with Policy 105.170, "Bloodborne Pathogen Exposure Control Plan."

d) Offender personal property

(1) Radios, televisions, jewelry, clothes, shoes, etc. are examples of offender personal property that may be involved in a disciplinary report and considered contraband. Investigative staff may waive the 45-day guideline for offender property held as evidence, if true ownership is established.

(2) Offender property is released to the property department for disposition as allowable/unallowable property or contraband in accordance with Division Directive 302.250 "Offender Property". If ownership of evidence items is uncertain, investigative staff must contact property control for assistance in identifying the rightful owner.

(3) Offender personal property that contains biohazards is not returned to an offender and must be destroyed by investigative staff.

e) State property – repairable or reusable altered or damaged state property is destroyed or released to the appropriate work area for further disposition.

INTERNAL CONTROLS:

A. Investigative staff at the facility retain Evidence Inventory Reports in accordance with records retention.

B. Crime scene incident reports are retained by OSI.

ACA STANDARDS: 4-4207, 4-4282

REFERENCES:
Minn. Stat. §241.01, subd. 3(a)
Policy 302.250, "Offender Property"
Policy 105.170, "Bloodborne Pathogens
Policy 301.147, "Security Video Recording Systems/Photographic Images"
Policy 105.152, "Hazardous Waste Management"
Policy 106.240, "Records Retention and Disposal"

REPLACES: Division Directive 107.055, "Evidence Handling" 9/2/14.
All facility policies, memos, or other communications, whether verbal, written, or transmitted by electronic means, concerning this topic.

ATTACHMENTS:
Evidence Inventory Report (301.035A) – sample only, use triplicate form
Evidence Management – Securing a Potential Crime Scene template (301.035B)
Evidence Management – Evidence Collection, Handling & Logging (301.035C)

APPROVED BY:
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