



DEPARTMENT OF PUBLIC SAFETY POLICIES & PROCEDURES



POLICY NUMBER

OPR: 17

**EFFECTIVE
DATE:**
10/12/2017

**ORIGINAL
ISSUED ON:**
09/17/1997

SUBJECT: EVIDENCE/PROPERTY HANDLING

REVISION NO:

9

1.0 PURPOSE

The purpose of this policy is to establish a process for the preservation and disposition of evidence or property taken into custody by the Department of Public Safety (DPS).

2.0 POLICY

It is the policy of the DPS to preserve evidence and property in such a manner as to ensure its actual and evidentiary value. It is also departmental policy to dispose of evidence and property promptly and lawfully when such items are no longer required for departmental purposes. No DPS employee shall take, receive or convert to his/her use, or anyone else's, any property or evidence at any time, whether or not it is needed for any purpose or even if it is scheduled to be destroyed.

3.0 APPLICABILITY

This policy is applicable to all employees of the Department of Public Safety who are involved in the seizing and storing of evidence or property taken into custody by the Department of Public Safety. The DPS Forensic Laboratories shall follow their own internal policies for evidence storage and processing.

4.0 REFERENCES

- A. Chapter 29 – NMSA - 1978, Peace Officers in General**
- B. Chapter 30-Art. 9-19 NMSA**

5.0 DEFINITIONS

- A. Abandoned Property** – Items that were found or are being held for safekeeping which are no longer needed for court proceedings and that remain unclaimed pursuant to Section 29-1-14, NMSA 1978.
- B. Alternate Evidence Custodian** – A district/bureau supervisor or an appointed non-commissioned DPS employee as designated by the evidence custodian. The alternate evidence custodian is responsible for the secure storage of evidence or property at a DPS storage facility in the absence of the evidence custodian.
- C. Audit** – A sampling of items of evidence and/or property in the department's possession.
- D. Department or Departmental** – Unless otherwise specified, all reference in this policy to "department" will apply only to the Department of Public Safety.
- E. DPS** – The Department of Public Safety.

- F. Evidence** – Instrumentalities of a crime, fruits of a crime, and contraband constitute evidentiary items. Such items may be obtained through investigative activities, such as arrest, service of search warrants, or submission by third parties. Evidence may be held for use in investigations, criminal court proceedings, or civil court proceedings to which the department is a party.
- G. Evidence Custodian** – Any person designated by the Chief as responsible for the secure storage of evidence or property at a DPS storage facility. Evidence custodian may be either commissioned or non-commissioned employees of the Department of Public Safety. Evidence custodians may appoint alternate custodians.
- H. Inspection** – A documented examination of an evidence facility to determine adherence to procedures used for the control of evidence/property. The inspection is conducted to determine that the storage facility is being maintained in a clean and orderly fashion, the integrity of evidence/property is being maintained, evidence/property is being protected from damage and deterioration, and evidence/property no longer having evidentiary value is being properly disposed of.
- I. Inventory** – A complete documented accounting of evidence and property in the department's possession in order to establish that all items are properly accounted for and records are correct relating to those items.
- J. Property** – Non-evidentiary items in DPS custody that were found or being held for safekeeping. These items may immediately be released to the owner at the owner's request.
- K. SANE Kit** – Sexual Assault Nurses Examination Kit is a package of items used by medical personnel for gathering and preserving physical evidence following an allegation of sexual assault. Also known as a SAEK, (Sexual Assault Evidence Kit).
- L. Storage Facility** – Any facility used for secure storage of evidence or property which is capable of excluding persons other than evidence custodians.
- M. Temporary Storage** – Use of one-way drop boxes, lockers or other specially designated locking containers/areas/rooms for the purpose of storing evidence until items can be placed in the permanent storage within the vault.
- N. Tracker** – Digital based evidence management system used by the department.

6.0 PROCEDURE

A. Guidelines

1. All property and evidence obtained by employees will be packaged and/or marked to maintain its value as evidence or its actual property value. Such evidence or property will be documented and entered in Tracker.

Evidence/Property shall be secured before the end of the employee's shift except under the following exceptional circumstances; inclement weather, excessive distance to travel at the end of shift, and/or supervisor unavailability. When this occurs, an officer shall obtain supervisor authorization to place the evidence/property overnight in a secure location. The officer shall transport the item(s) of evidence/property immediately at the beginning of his/her shift the following day. In the event the officer is going on days off, he/she shall arrange for

the evidence/property to be transported to the evidence storage facility prior to going on days off. Any deviation from the normal evidence procedure shall be documented on the officer's incident report or activities email.

IB agents shall also obtain supervisory authority for exceptions to the requirement of storage of evidence/property prior to the end of their shifts. These circumstances include, but are not limited to; packaging and storage of an excessive amount of evidence/property that would be unreasonably burdensome to the agent, and/or there is an immediate investigative need relating to the evidence/property. The evidence/property shall be maintained in a secure location agreed upon by the agent and his/her supervisor. The evidence/property shall be secured in the appropriate evidence facility once the immediate investigative need has been fulfilled. Any deviation from the normal evidence procedure shall be documented on the agent's incident report or activities email.

Supervisory authorization for exceptional circumstances shall serve the purpose of logging the in-custody property into agency records until the evidence/property can be logged into the appropriate facility.

2. Evidence custodians shall ensure that evidence/property seized/obtained is submitted promptly, properly packaged, properly labeled, and logged into the permanent evidence tracking system. Evidence must also be disposed of promptly, in accordance with law.
3. All evidence obtained in a particular case will be entered into Tracker by the collecting officer/agent.
4. At storage facilities, all evidence/property will be inspected and each item permanently logged into storage and Tracker by the evidence custodian or his/her alternate.
5. Each transfer of evidence/property will be entered and maintained within the Tracker software. All evidence receipts and tracking originating from outside the agency will be scanned and uploaded into Tracker. The chain of custody will be entered in the notes section of the item entered.
6. Evidence/property no longer needed by the department will be returned to the owner, destroyed, or lawfully disposed of as soon as practical or within six (6) months after legal requirements have been satisfied.
7. An Offense/Incident Report shall be completed for **any** seizure of evidence or property or any item taken into department custody. The case or CAD number shall be indicated in the Tracker software for tracking purposes.
8. Evidence and property may only be transported by authorized department personnel, evidence custodians, or by registered mail.
9. Evidence and property may only be transported for official departmental business.
10. All property acquired for the DPS, through the civil process or asset forfeiture proceedings shall be accounted for in agency records and disposed of pursuant to state law.

11. Personnel are strongly discouraged from using their personally-owned electronic equipment (cell phones and/or audio/video equipment) for official departmental use.

B. Packaging

1. General Guidelines

- a. All evidence will be packaged in such a manner as to maintain its value as evidence and/or (when practical) its property value.
- b. All property or evidence will have the evidence number and item number permanently written on each package or securely attached by a tag in addition to the adhesive sticker generated by Tracker.
- c. When evidence or property pertaining to a single case is split; for any reason other than submission to the DPS Forensic Laboratory for analysis, a second Tracker adhesive sticker will be printed and attached to the evidence/property being moved.

When evidence is being submitted to the DPS Forensic Laboratory, the officer/agent shall:

- i. Complete the DPS Forensic Laboratory Evidence Receipt. This form becomes the second original chain of custody for the item(s) of evidence while in the lab;
 - ii. A notation indicating the date/time and item number shall be made in Tracker indicating the change in custody;
 - iii. When the evidence is returned from the DPS Forensic Laboratory, a notation indicating the date/time and item number shall be made in Tracker indicating the change in custody. In the event more pieces of evidence are returned from the Lab than originally submitted, then each item will be entered into Tracker as a sub-item of the original piece of evidence submitted. (Example: an article of clothing is submitted. The clothing and two swabs are returned from the Lab. The clothing remains the original item and both swabs are entered as sub-items 1 and 2.) The DPS Forensic Laboratory Evidence Receipt shall be scanned into Tracker and Tracker shall again become the original chain of custody; and
 - iv. The DPS Forensic Laboratory Evidence Receipt should be kept by the case agent/officer for chain of custody purposes.
- d. In the event evidence is received from another law enforcement agency, employees must scan that agency's Evidence/Property Control form into Tracker and note the chain of custody within the system. All original forms will be maintained by the case agent/officer. Original signatures must appear in the chain of custody section of the DPS form and the other agency's form, from both the person receiving and by the person relinquishing the items.
 - e. In those instances when evidence is received from non-law enforcement agencies; i.e. Office of Medical Investigator, the evidence shall be inventoried and packaged pursuant to department policy, including the entry into Tracker.

- f. Property and evidence shall not be packaged together.
- g. Wet evidence shall not be placed in sealed plastic containers.
- h. Video or audio recordings used in wiretap investigations shall be kept in evidence for ten (10) years, or as ordered by the appropriate court.

2. Specific Guidelines

a. Hazardous Materials

- i. Hazardous chemicals of unknown manufacture or origin, or those with manufacturer's containers which have been damaged or opened, shall not be stored at DPS facilities.
- ii. Highly flammable and reactive chemicals or USDOT class A and B explosives may not be stored at DPS facilities.
- iii. USDOT class A and B explosives must be stored at departmental explosive magazine facilities. USDOT class C explosives and ammunition may be stored at DPS evidence facilities at the discretion of the evidence custodian.
- iv. Biological hazards such as bodily fluids shall be clearly labeled BIOHAZARD in red or orange prior to submission to an evidence custodian as per policy *OPR: 12 Exposure Control Plan*.
- v. An exception to this requirement is the storage of representative samples of liquids/chemicals obtained from clandestine methamphetamine laboratory investigations. These items must be clearly labeled as such.

b. Firearms

- i. All firearms should be unloaded before transportation or storage. If it is necessary to transport or store a loaded firearm to preserve its condition for forensic examination, the firearm will be clearly labeled "LOADED FIREARM". No firearms shall be stored in a loaded condition after forensic examination.
- ii. Firearms should be stored with a tag bearing the evidence number and item number clearly visible on the item/packaging. Actions on firearms should be rendered inoperable by opening the action and running a plastic wire through it, thus preventing the action from closing. In those instances when firearms are packaged in cardboard boxes, the evidence and case numbers shall be clearly marked on the exterior of the packaging for ease of identifying the item.
- iii. All ammunition will be stored in a separate box/container from the firearm, but must still be stored in secondary locking areas of the vault.
- iv. Any items attached to the firearm, such as optics, slings, flashlights, etc., will not be removed and will be stored with the firearm in a manner in which the item was collected.

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- v. All other accessories, such as holsters, gun cases, or other types of gun cases/covers will be stored separately from the firearm. These items will be stored with other property.
- vi. All seized firearms will be sent to the forensic lab for forensic ballistic testing and entry into the national database.
- vii. Firearms may only be released from evidence/property storage according to law. Firearms may only be shipped to law enforcement agencies or federal licensed firearms dealers.

c. Monies

- i. Money shall be listed by denomination and number of bills or coins unless an individual bill or coin is of individual forensic or evidentiary value. When practical, monies should be packaged in heat-sealed plastic bags.
- ii. The denominations will be entered into Tracker and the officers/agents that counted the money will also be noted in Tracker.
- iii. A witnessed count of seized money will be completed at the initial sealing of the package, if the money is transferred to the Headquarters Vault for storage, or if the integrity of the seal on the packaging is broken or altered in anyway. The person sealing the item will initial and date the seal of the package. The Tracker system shall indicate the change of custody.
- iv. Money subject to forfeiture shall be handled as described above. However, once the count has been made, the seizing agent shall immediately, or as soon as practical, deliver the money to the appropriate district court for storage. The agent shall indicate in an Offense/Incident Report the information concerning the change of custody as well as indicating said change in Tracker.
- v. The exception to the above-listed requirement will be when money is being submitted for forensic examination.

Money submitted for forensic examination shall be sealed in a plastic container and the chain of custody shall indicate "No Count Was Completed Due to Forensic Examination."

d. Vehicles

- i. Any vehicle being seized or held as evidence for forfeiture, and/or for processing, shall be placed at a DPS secured facility immediately upon the seizure. Officers/Agents may also utilize other law enforcement secured facilities after proper authorization from those law enforcement entities and approval from the officer's/agent's supervisor. In the event a secured law enforcement facility is not available for storage of a seized vehicle, the seizing officer/agent may use a commercial storage facility. The "hold" shall be no longer than seventy- two (72) hours, unless otherwise authorized by the district/bureau commander. If a department facility is used, processing should be completed as quickly as practical to ensure continued departmental operation.

- ii. Integrity of the evidence shall be maintained in a manner consistent with departmental training. Evidence tape shall be used to secure the vehicle's doors, windows, trunk, hood, etc., until it can be processed. Evidence tape may also be used on exterior doors to the garage in an effort to demonstrate the integrity of the security over the vehicle.
 - iii. Any vehicles subject to long term storage shall be removed from a secured district, sub-district, other law enforcement approved facility, or commercial facility and transported to the DPS Headquarters vehicle storage area as soon as practical, but not later than forty-five (45) days.
 - iv. An original Vehicle Towing Authorization/Inventory form shall be scanned and uploaded to Tracker for any seized vehicle, if applicable.
 - v. Personal property in seized vehicles shall be returned to the owner by the officer/agent who seized the vehicle. In the event the owner or a designee is not present, the property shall be secured in accordance with the property section of this policy. Should there be an overwhelming amount of property in the vehicle, arrangements shall be made to transport the vehicle and property to the headquarters storage area as soon as practical. Every effort should be made to return the property to the owner or a designee so as not to transport the vehicle to headquarters for storage. In the event the seizing officer/agent is in the process of making arrangements for the return of the property, the property can be stored temporarily in the district evidence vaults.
- e. Photographs, Videos, Audio Recordings, and other Digital Evidence
- i. Photographs, exposed film, negatives of crime scenes/traffic crashes, and video and audio recordings shall be placed into evidence when the items may become potential evidence. These items shall be packaged according to the general guidelines mentioned above.
 - ii. The narrative section of the incident or crash report should reflect the number of photographs taken.
 - iii. When the case is adjudicated both criminally and civilly, negatives and photographs may be destroyed pursuant to a valid destruction order.
 - iv. Digital image/audio files captured for evidentiary purposes that are initially captured on a temporary storage medium, such as internal camera/audio recorder memory or flash memory cards including, but not limited to: Smart Media Cards, Multi Media Cards, Compact Flash Cards, XD Cards, Sony Sticks, etc., shall be transferred to a write once read many (WORM) CD, DVD or Blu Ray for storage/archival purposes as soon as practical. The permanent storage media shall be labeled and stored in the same manner as film and negatives. If the size of the file exceeds the capacity of the storage medium, the file may be saved in a secure location on designated department servers such as COBAN or other secure network drives. Digital media is sensitive to temperature, light, and other environmental conditions. Refer to DPS Policy *OPR: 48 Digital Cameras* for additional information on safeguarding digital files for evidentiary purposes.

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- v. Digital evidence should be collected and stored in a way that maintains the original content and file format(s).
 - vi. Refer to *OPR: 40 Crime Scene Processing Guidebook* for specifics regarding other types of digital evidence.
- f. Drugs
 - i. Drugs shall be packaged in clear plastic bags. Any sharp items shall have secondary packaging to avoid tears in the bag or accidental sticks. All sharps shall be labeled "BIOHAZARD" in red. The packaging shall be clearly marked with the case number and item number. Officers are encouraged to only place syringes in evidence that are necessary for successful prosecution of a serious violent criminal case. All other syringes will be disposed of in an authorized "sharps container" at the district office.
 - ii. Marijuana plant material which has not been dried, shall be packaged in such a way as to discourage mold; e.g. cardboard boxes, paper bags, etc. which allow the material to dry.
 - iii. Large quantities of drugs shall be transported to the headquarters vault within three (3) working days. Any exceptions to this requirement must be approved by a supervisor and clearly documented on the seizing officer/agent's offense incident report.
 - iv. On large seizures, a representative sample shall be submitted to the forensic laboratory for analysis. The procedures outlined above, for submission of evidence to the DPS Forensic Laboratory, shall be adhered to. The representative sample shall be stored with the original seizure when it is returned from analysis and will be entered in to Tracker as a sub-item of the original seizure.
 - v. Liquids shall be stored in such a manner as to maintain their evidentiary value while considering the potential for container breakage and/or contamination. The substance shall be clearly marked on the exterior of the outer packaging. In the event the substance is hazardous, the substance shall be stored pursuant to the hazardous materials section of this policy.
 - vi. Special health considerations shall be given to processing, packaging, and storing unknown controlled substances. If the substance is unknown, the exterior packaging shall clearly reflect this information as well as an indication made in Tracker.
- g. Blood
 - i. Blood tests (samples for analysis of alcohol or controlled substance content) should be collected in a standardized kit and retained temporarily by the officer who witnessed the collection or who made the arrest. The collection kit should be mailed to the Scientific Laboratory Division via first-class mail as soon as is practical after it is obtained. If a sample cannot be mailed within thirty-six (36) hours of collection, it should be logged into evidence and entered into Tracker, turned over to an evidence custodian, and then refrigerated until mailed. If the blood is believed to be HIV or AIDS infected,

clearly label the packaging “AIDS” or “HIV CONTAMINATED” in red, in accordance with department policy *OPR: 12 Exposure Control Plan*.

- ii. Blood, bodily fluids, and human tissue which are evidence or are on any evidence item should be air-dried, then packaged in a paper bag which must be sealed with tape. Any evidence packaging containing blood, bodily fluids, or human tissue shall be labeled “BIOHAZARD” in red. If the blood, bodily fluids, or human tissue are known to be HIV or AIDS infected, clearly label the packaging “AIDS” or “HIV CONTAMINATED” in red, in accordance with department policy *OPR: 12 Exposure Control Plan*.
- iii. Needles, broken glass, and other sharp objects contaminated with blood or other bodily fluids shall be packaged so that the packaging cannot be punctured to ensure that persons handling the evidence package will not be injured by the items. Such items shall be labeled as in Paragraph 2 above.
- iv. All department employees coming into contact with evidence contaminated by blood or bodily fluids or tissues shall use “Universal Precautions” to prevent contamination by bloodborne pathogens.

h. DNA

i. General storage guidelines for DNA are as follows:

- 1. Dried DNA samples, such as dried blood may be kept at room temperature for an extended period of time without significant degradation to the DNA;
 - 2. Collected samples that are moist (e.g. buccal swabs, swabs of dried blood, stained clothing, etc.) should be air dried before packaging. Once these samples are air dried they can be stored at room temperature for an extended period of time without significant degradation to the DNA; and/or
 - 3. DNA evidence that consists of blood, bodily fluids, and/or human tissue should be handled and packaged as explained above in Section H (Blood).
- ii. Buccal swab(s) shall be air dried before being packaged. Once the swab has been dried it should be placed into a glassine envelope, if available, before being placed inside a paper envelope.
 - iii. Materials that are stained with blood, semen, urine, or other bodily fluids should be air dried before being placed into a paper bag, envelope, or box.
 - iv. Hair samples collected for DNA should be placed into a glassine envelope, if available, before being placed inside a paper envelope.
 - v. For additional information regarding packaging of DNA evidence contact the DPS Forensic Laboratory or refer to *OPR: 40 Crime Scenes* policy and the *Crime Scene Processing Handbook*.

i. SANE KITS

- i. SANE kits shall be submitted to the DPS Forensic Laboratory within thirty (30) days of the officer/agent receiving them from the SANE examiner.
- ii. The officer /agent shall request a DNA acceptance code from the DPS Forensic Laboratory website:

<http://www.dps.state.nm.us/index.php/forensics/>

Click on “request DNA acceptance code” at the bottom of the page. The officer/agent shall fill out the form completely, emphasizing that this is a Sexual Assault Case. Click the Submit To “DNA.Code@state.nm.us” area in red or save the document to the computer and e-mail it to this address. A DPS Forensic Laboratory Analyst will provide a code and may call or email the officer/agent to discuss the case. Submit the SANE kit within thirty (30) days of the officer/agents receipt, using the DPS Forensic Laboratory Evidence Receipt, to the lab. This will assist in tracking and expediting the SANE kit.

- j. Jewelry and Precious Metals
 - i. All items will be stored in secondary locking.
 - ii. Regardless of whether the item is costume jewelry or is made of precious metals and stones, they will be treated as a high risk items and will be stored separate from other property.

C. Procedures for Submitting Evidence/Property to Headquarters Facility

- 1. An appointment shall be made with the Headquarters Evidence Custodian or designee by phone or email before taking evidence to the headquarters facility.
- 2. All evidence transferred to the headquarters facility must have a case number or incident number which corresponds to a NMIBRS report.
- 3. Money, drugs, firearms, jewelry, and property are stored separately in the headquarters facility and will need to be checked into the vault in separate packages.

D. Procedure for Submitting Evidence to Forensic Laboratory

- 1. The primary investigating officer or case agent has ultimate responsibility for submitting any evidence requiring forensic examination to the appropriate forensic laboratory.
- 2. Prior to submitting evidence to either of the DPS forensic laboratories, officers/agents shall ensure the item(s) of evidence being submitted are properly packaged in accordance with this policy.
- 3. The DPS Forensic Laboratory Evidence Receipt shall be completed for all items of evidence being submitted for forensic analysis.
- 4. If it is necessary to submit a loaded firearm to a DPS Forensic Laboratory to preserve its condition for forensic examination, the firearm will be clearly labeled “LOADED FIREARM”. The submitting officer/agent shall inform Forensic Laboratory personnel of the fact the firearm is LOADED.

E. Evidence for Training Purposes**1. Training Aids**

- a. Department personnel, such as Canine Enforcement Unit handlers, may be issued controlled substances as training aids. All training aids (controlled substances) shall be procured through the DPS HQ evidence vault. All training aids must be analyzed by the DPS Forensic Laboratory prior to distribution to department personnel. A chain of custody shall be maintained in Tracker.
- b. Prior to issuance of training aids, the aids shall be weighed and documented.
- c. Upon return of the training aids, they shall be re-weighed. Some training aids may have normal weight and mass loss.
- d. All training aids shall be separated and stored in secured locations.
- e. Criminal Enforcement Unit handlers shall store their assigned controlled substance training aids in secured areas. Training aids stored in the Criminal Enforcement Unit handler's vehicle will be placed inside a secured container. Once training aids are issued, handlers are permitted to break them down into various weights and packaging material. Seized narcotics shall be stored separately to avoid cross-contamination. All other personnel using controlled substances as training aids shall store the substances in accordance with requirements set forth in this policy for storage of controlled substances (drugs).
- f. Annual Inspections - A CEU supervisor shall conduct an annual inspection and inventory of all controlled substances training aids. This inspection/inventory shall be documented on an Intra-Departmental Correspondence. The correspondence shall be forwarded to the Special Operations/Investigations Bureau commanders, as applicable. A copy will also be forwarded to the Standards Bureau Commander for accreditation purposes. The correspondence shall include, but not be limited to the following:
 - i. Date(s) of inventory/inspection;
 - ii. Names of personnel conducting inventory/inspection;
 - iii. The status/type of security container being used to store the training aids;
 - iv. The weight of the training aid(s) at the time of the inventory; and
 - v. Any discrepancies found and any corrective action taken.
- g. Training aids shall be replaced periodically as needed, but not later than once a year, when practical.
- h. In the event that an employee misplaces or destroys a controlled substance training aid, he/she shall immediately notify their immediate supervisor. Proper documentation shall immediately be submitted through the appropriate chain of command to the respective bureau commander and the Evidence Unit.
- i. Any explosive training aids shall be secured in authorized explosive magazines (containers) when not in use.

F. Storage Facilities

1. The headquarters storage facility is the most secure and should be used to store evidence/property with a very high value as determined by each evidence custodian.
2. District, sub-district, and off-site evidence storage facilities have a lower level of security. Most evidence may be stored in a district facility with the approval of the appropriate evidence custodian.
3. When the evidence custodian is unavailable, officers/agents shall use the drop box/lockers to deposit evidence/property which will fit. It is the responsibility of the officer/agent depositing the evidence/property, to contact an evidence custodian or alternate within one (1) working day of placing an item in the drop box/locker. It is the evidence custodian's responsibility to ensure that the drop box/locker is checked each day, when the custodian or alternate are working at that location.
4. Storage facilities will be outfitted with a secondary level of security for storing items of exceptional valuable or sensitive items of evidence/property, e.g., firearms, controlled substances, jewelry, and currency. These items shall be stored together by category. Example: firearms stored with firearms, controlled substances stored with controlled substances, jewelry stored with jewelry, etc. These items shall be stored separate from other items of evidence.
5. Fenced-in, secure storage areas either at the headquarters facility or at district or sub-district offices shall be constructed so that all items of evidence/property can be securely stored preventing access by anyone other than the evidence custodian or designee.
6. All storage facilities, including fenced, secured areas shall be equipped with a sign-in/out log that must be signed by everyone upon entering and leaving the facility. If the storage facility is secured with electronic key card access, the sign-in/out log is no longer required. Any personnel entering the vault shall swipe their department issued key card, regardless if that person has access to the storage facility. Access shall be limited to the evidence custodian or designee and authorized DPS personnel.

G. Evidence Custodians

Evidence custodians for the headquarters facility will be appointed by the Chief. Evidence custodians for district and/or sub-district offices may be the district commander or an appointed non-commissioned DPS employee. District evidence custodians may appoint alternate custodians from commissioned personnel within the district holding the rank of Lieutenant or above. Sergeants will only operate as an evidence custodian in the absence of the District Commander, the Assistant District Commander and/or the appointed non-commissioned evidence custodian. Evidence custodians are the only authorized personnel allowed access to the area used by the agency for storage of in-custody evidence or property. The designations for evidence custodians and alternates for district personnel are as follows:

1. District Commander or Non-Commissioned DPS Employee – Evidence custodian of corresponding district, sub-district, and/or Investigations Bureau facilities;

2. Assistant District Commander or Non-Commissioned DPS Employee – Alternate evidence custodian of corresponding district and all sub-district facilities;
3. No evidence facility should have more than one (1) evidence custodian and three (3) alternate evidence custodians.

H. Evidence Vault Records and Entry into Tracker

1. Evidence custodians shall maintain a permanent record of every item of evidence and/or property stored in the evidence storage facility. This shall be accomplished by the use of Tracker evidence software.
2. Officers/Agents will use the following procedures when entering items into Tracker after it has been collected:
 - a. Officer/Agent will log on to Tracker via their MDT or a computer at his/her district office;
 - b. A new case will be created using the CAD or IB case number;
 - c. Case Submission Form with the incident's details will be completed first;
 - d. Persons will be added, as needed, following the completion of the Case Submission Form; and
 - e. All items will then be entered after all persons are entered. All items will be entered separately.
3. For detailed instructions, see *Attachment E. Tracker Guidelines Manual*.

I. Inventories, Audits, and Inspections

1. Inventories
 - a. Evidence custodians must conduct an inventory of their respective vaults every January. The inventory will be documented on the Property/Evidence Inventory/Inspection Form.
 - b. Inventories will consist of a physical inspection of all evidence and any other record keeping mechanism, including Tracker, to determine adherence to procedures used for the control of evidence/property. Sealed packages with **item numbers** on the outside need not be opened for these inventories. An inventory report listing all evidence for each evidence facility under the control of each evidence custodian, at the time of the inventory, will be compiled and retained by the evidence custodian for auditing purposes. Any discrepancies found and any corrective action taken will be followed up during the semi-annual inspection.
 - c. Full Inventories will also be conducted when any evidence custodian first assumes responsibility over evidence facilities or when anyone relinquishes said responsibility. The inventory should be conducted jointly by the incoming and outgoing evidence custodian, when practical. If the outgoing evidence custodian is unavailable due to retirement, illness, etc., the inventory will be conducted jointly by the incoming evidence custodian and another commander/evidence custodian as assigned by the Chief or designee. The

inventory will be documented on the Property/Evidence Inventory/Inspection Form.

- d. The Property/Evidence Inventory/Inspection Form must be submitted to the headquarters evidence custodian no later than ten (10) days following any required inventory.

2. Audits

- a. An annual audit of property and evidence held by the agency shall be conducted by the Standards Bureau.
 - i. The Standards Bureau shall complete the Property/Evidence Audit Form and forward a copy to the Office of the Chief. The Audit should consist of a significant representative sampling to include high-risk items. No less than one hundred (100) high risk items will be reviewed for audit. If there are less than one hundred (100) high risk items, other property items will be reviewed to reach a total of one hundred (100) items. If there are less than one hundred (100) total items, then all items will be reviewed. Any discrepancies identified during the audit shall be documented on the form. These discrepancies shall be immediately brought to the attention of the respective district or sub-district commander for corrective action.
 - ii. Major discrepancies identified during the audit may be remedied by a complaint generated pursuant to department policy *ADM: 04 Internal Investigations*.

3. Inspections

- a. The State Police Chief, or his/her designee, shall conduct annual documented, unannounced inspections of evidence/property storage facilities.
 - i. A Property/Evidence Inspection Form shall be completed on the results of the inspection and be forwarded to the Office of the Chief. Any discrepancies identified during the inspection shall be documented in the form. These discrepancies shall be immediately brought to the attention of the respective district or sub-district commander for corrective action.
 - ii. Major discrepancies identified during the inspection may be remedied by a complaint generated pursuant to department policy *ADM: 04 Internal Investigations*.
- b. A semi-annual inspection to determine adherence to procedures used for the control of property shall be conducted by the evidence custodian. These inspections shall be conducted in January and July unless documented authorization is obtained from the headquarters evidence custodian. *The January inspection can be conducted in conjunction with the annual inventory.* The Property/Evidence Inventory/Inspection Form must be submitted to the headquarters evidence custodian no later than ten (10) days following the inspections.

J. Numbering System

1. Evidence custodians shall use the CAD number or Investigation's case number when entering evidence into Tracker. If the case originates with the Uniform Bureau and then is referred to Investigations Bureau, the tracking number will become the IB case number. If evidence is stored in a sealed container that is not transparent, the evidence number and item numbers must be permanently marked on the outside of the packaging.
2. All items of evidence pertaining to one (1) case will use the same evidence number. It is not necessary to assign individual item numbers to several nearly identical items which are packaged together.

K. Tracking and Disposition

1. Evidence custodians must also ensure that evidence/property within the storage facility is disposed of promptly and/or disposal proceedings initiated as soon as practical at the end of the department's need for the evidence/property.
 - a. Evidence released to the court will be documented on the transfer of property form generated by Tracker. The form will be completed by the officer/agent handling the case and recorded as released to the specific court by the judge ordering such release.
 - b. Evidence destroyed by court order shall be done in a lawful manner and within the time limit specified in the order. The evidence custodian or one (1) of his/her alternates and one (1) non-evidence custodian witness must be present during destruction to verify the destruction unless otherwise instructed by court order. The evidence custodian is to ensure that individual evidence items being destroyed are the same specific items identified (by evidence number, item number and description) on the court order.
2. Each evidence custodian or alternate shall prepare a list of stored evidence/property in the evidence facilities within their areas of responsibility at least every ninety (90) days. The list will be disseminated to agents/officers responsible for the seizure or collection of such evidence. The headquarters evidence custodian shall prepare such lists at least annually.
3. Agents/officers must review the evidence lists, obtain case disposition, and report the case status to the evidence custodian within thirty (30) days of agent/officer receiving the list.
4. Evidence/property items which are not contraband and are no longer needed by the department shall be returned to the owner or the owner's agent. The owner's agent must possess a valid power of attorney from the owner or the owner's estate. A copy of the owner's, or owner's agent governmental, ID will be made and scanned into Tracker. If the owner cannot be contacted by telephone or registered mail, the evidence will be treated as abandoned or unclaimed property and disposed of according to law. If the item released is a firearm, a Triple I will be run to ensure the person receiving the weapon is not prohibited from possessing a firearm.
5. Evidence/property items may be returned in person, by registered mail, or by commercial carrier. A return receipt bearing the signature of the person receiving

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the evidence/property shall be required when using the US Postal Service or commercial carrier.

6. A receipt and release form shall be required when returning evidence/property in person. When evidence/property is returned in person, the returning official shall make a reasonable attempt to notarize the signatures of the returning and receiving persons. In the event a notary public is unavailable, the returning official must obtain a second departmental employee to witness the return of the evidence/property. This second department employee must acknowledge witnessing the return of the evidence/property by signing the receipt and release form.
7. If the evidence is contraband, an order for destruction of that evidence shall be obtained from the appropriate court.
8. If controlled substances or contraband are to be forfeited to the department for use in conducting reverse-role undercover investigations, a court order allowing continued departmental custody of the contraband must be obtained.
9. Pursuant to Section 29-1-14, NMSA 1978, the following procedures will be used to dispose of evidence/property, **excluding weapons, firearms, contraband, controlled substances, and items of significant historical value**, that have been unclaimed/abandoned by the owner, no longer needed for obtaining a conviction, not needed for any other department purpose, and has been in the department's possession for more than ninety (90) days:
 - a. Evidence/property valued at less than fifty dollars (\$50.00), that has been unclaimed by the true owner, is no longer necessary for use in obtaining a conviction, is not needed for any other public purpose, and has been in the department's possession for more than ninety (90) days may be destroyed upon application to, and approval of, the district court unless otherwise directed by order of the District Court.
 - b. Evidence/property valued at more than fifty dollars (\$50.00) shall be destroyed in the following manner:
 - i. The custodian shall make a reasonable attempt to notify the original owner of the seized personal property and shall publish a notice of the auction of unclaimed personal property once each week for two (2) consecutive weeks. The notice shall contain:
 1. a brief description of the personal property to be sold;
 2. the time and place of the sale; and
 3. the name of any purported owner, if known.
 - ii. If the owner claims and provides proof of ownership of the property prior to sale, it shall be returned to the owner.
 - iii. Any evidence/property not sold at auction may be destroyed upon application to, and approval of, the district court.

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Destruction Orders must be obtained to dispose of this evidence/property. Orders must contain the following items:

1. Petition/Motion/Affidavit for destruction with an attachment of items to be destroyed, if necessary;
 2. Order for Destruction; and
 3. Certification/Verification of Disposal.
- c. All misdemeanor evidence, not prosecuted by the District Attorney, shall be photographed, if applicable, sent to the State Crime Lab, and tested. After one (1) year from seizure date, misdemeanor evidence will be disposed of in accordance with State Law.
10. Any evidence/property which was seized prior to July 1, 2007 for which there is no Offense Incident report associated with it, the original **SP-205** Evidence/Property Control forms, with attached (complete) copies of a court-ordered destruction document or Release of Evidence/Property form, shall be maintained at the location where the evidence/property was stored for three (3) years from the date of the final disposition of the case.

Any evidence/property which was seized after July 1, 2007 for which there is a required Offense Incident report, a supplemental report as well as a copy of the original **SP-205** Evidence/Property Control form and court or release documentation shall be forwarded to the Law Enforcement Records Bureau. A copy of the supplemental report with attachments shall be maintained for a period of one (1) year and then destroyed appropriately. The supplemental report shall describe the following, at a minimum:

- a. The date, time, and location of destruction/release of evidence/property.
 - b. The names of any and all witnesses present during the destruction/release of the evidence/property.
 - c. The name(s) of the person(s) receiving the evidence/property when released.
11. Evidence/property will be stored in vault of which the items were seized.
- Evidence/property previously stored for a former Department employee must be reassigned to a supervisor or their designee, in the district where the item was originally seized.
12. If long-term storage of evidence is needed, e.g. homicide case, the evidence custodian shall make storage arrangements with the headquarters evidence custodian and shall request a letter from the appropriate district attorney's office requesting the long-term storage, including a date for disposal. A supplemental report shall be completed describing the change in custody as well as any information regarding the long-term storage and disposal date. A copy of this report shall be attached to the evidence.
13. Procedure for temporarily releasing evidence/property from a Department evidence vault:

- a. Requesting employee must make arrangements with the appropriate evidence custodian;
- b. The evidence custodian obtains the item(s) of evidence/property from the vault and transfers possession to the requesting employee;
- c. The evidence custodian documents the transfer of custody in Tracker. The evidence custodian also documents the reason for the evidence/property being temporarily released in the *Purpose for Change of Custody* Tracker. Example: *Out for Court; and*
- d. When the item of evidence/property is returned for storage, the item is scanned back into Tracker.

L. Property Acquired Through the Civil Process

Property acquired through the civil process shall be accounted for in the agency pursuant to the following procedures:

1. Vehicles

- a. Vehicles forfeited by a federal agency and turned over to the DPS shall be documented on Departmental inventory logs. These vehicles shall be assigned a Department inventory number and entered into the fleet database. When the vehicle is assigned to a Department employee, a notation shall be made in the *Assignment History* section of the fleet database. The Department **SP-52** Vehicle Assignment form shall be completed at the time the vehicle is issued. The **SP-52** Vehicle Assignment form shall be maintained in a file in the Special Operations Bureau.
- b. Vehicles forfeited pursuant to the altered VIN state law shall be entered into the Department inventory following the same procedure as outlined above. When the vehicle is removed from Departmental service, the vehicle must be disposed of according to state law. Documentation of this process shall be maintained in the Special Operations Bureau.

2. Firearms

- a. Firearms may be acquired by the Department or destroyed pursuant to state law.
- b. A court order for destruction shall be obtained by the DPS Office of Legal Affairs (OLA) or appropriate District Attorney's (DA) office. OLA or DA's office personnel will provide the court order to the Department evidence custodian.
- c. Firearms shall be destroyed pursuant to the section of this policy regarding destruction of evidence/property.
- d. In the event the firearm is released for Department use, the evidence custodian shall transfer the firearm(s) to the Department armorer. The evidence custodian shall document the transfer of the firearm(s) in Tracker. A copy of the court order shall be maintained in both Tracker and in a file by the evidence custodian.

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- e. The armorer or his/her designee shall document and maintain the make, model and serial numbers of each firearm in a Department database.
- f. In the event a firearm is needed for training or another Department purpose, it may be removed from storage and assigned to a Department employee by the Department Armorer's prescribed procedures. The armorer shall update the database, as necessary, documenting the change(s) in status.

M. Forms

The following forms are the only forms department personnel are to use (excluding court orders or affidavits) when taking custody of, or returning, evidence or property:

1. **SP-205** Evidence/Property Control Form or the *Attachment A. NMDPS Receipt for Property or Evidence Form* for use by all DPS commissioned personnel when collecting evidence that will be immediately transferred to another agency when access to Tracker is unavailable.
2. NMDPS Receipt and Release Form. Use *Attachment B. NMDPS Receipt and Release Form* when releasing property or evidence to owners or their agents. When property is being released after-hours and a notary is not available, two (2) department witnesses can sign the Receipt and Release Form in lieu of a notary.
3. Crime Laboratory Evidence Receipt. Use *Attachment C. NMDPS Crime Laboratory Evidence Receipt* for movement (submission or retrieval) of evidence through the forensic laboratories.

7.0 ATTACHMENTS:

- A. NMDPS Receipt for Property or Evidence
(SP-205 Evidence/Property Control Form)
- B. NMDPS Receipt and Release Form
- C. NMDPS Crime Laboratory Evidence Receipt
- D. Property/Evidence Inventory/Inspection Form
- E. Property/Evidence Audit Form

8.0 APPROVAL

APPROVED BY: S/ Scott Weaver DATE: October 12, 2017
DPS Cabinet Secretary