

# 2013



Wisconsin Association for Identification

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## **MISSION STATEMENT**

The Wisconsin Association for Identification Property & Evidence Management Guide 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.

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## **DISCLAIMER**

This manual is based upon Wisconsin state statutes, which are hyperlinked in the manual, and is intended 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 and advice from your district attorney and agency legal counsel. The information contained in the manual 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This document also only reflects the law as of the date of its publication and may be superseded or affected by other versions or changes in the law.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 manual as new legislation is enacted, new court decisions are issued and/or the State Crime Laboratory changes evidence handling procedures.

The Wisconsin Physical Evidence Handbook outlines the correct procedure for properly collecting and packaging evidence, and is published on [www.wilenet.org](http://www.wilenet.org) or it can be purchased from the Wisconsin Department of Administration, Document Sales Unit, 202 S. Thornton Avenue, P.O. Box 7840, Madison, Wisconsin 53707-7840. Prepayment of the books is required and may be ordered by calling 1-800-DOC-SALE (362-7253) or for local customers at 608-264-9419. For general information, you may call 608-266-3358.

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## **ACKNOWLEDGMENTS**

A manual such as this one is not possible without input and constructive suggestions from professionals in the field. Wisconsin is blessed with many dedicated sworn and civilian evidence managers, legal counsel and crime lab professionals whom are all highly motivated to help any professional who is part of the evidentiary chain of custody.

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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 unit's standards will be refused. Packaging methods are based upon the Wisconsin Physical Evidence Handbook. The Property Room Manager should have the authority to notify the submitting officer through normal channels and have the submitting officer correct the problem.

## DEFINITIONS

### **Abandoned Property or Unclaimed Property:**

Property that is no longer needed as evidence (which is not contraband) or the time limitations to hold the property has expired, and the owner has been notified by the Property Officer to make an appointment to claim the property, but the owner does not make a commitment to retrieve the property.

### **Adjudication:**

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

### **Appeal:**

A legal proceeding by which a 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 (Consolidation Court Automation Program):**

The Consolidation Court Automation Program for the State of Wisconsin (The internet address is <http://wcca.wicourts.gov/index.xsl>) which identifies dispositions of court cases.

### **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.

### **Chattels:**

Movable property: an item of personal property that is not freehold land and is not intangible. 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).

### **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:**

Means a drug, substance or immediate precursor included in Schedules I to V in [Chapter 961](#).

### **Controlled Substance Analog:**

Means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance included in Schedule I or II.

### **Custody:**

The care and control of a thing or person. 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 or imprisonment or both. Conduct punishable only by a forfeiture is not a crime.

### **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.

## DEFINITIONS CONTINUED:

### **Discharge:**

Is 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.

### **Disposition:**

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

### **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:**

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

### **Firearm and Handgun:**

"Firearm" means a weapon that acts by force of gunpowder. [Wis. Stat. § 167.31\(1\)\(c\)](#) "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 explosive to expel a projectile through a smooth or rifled bore. "Handgun" does not include a machine gun, as defined in [Wis. Stat. § 941.27\(1\)](#), 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, blackpowder 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.

### **Handgun Hot Line:**

Operated by the Crime Information Bureau (CIB). The Handgun Hot Line 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. 1-800-262-4867)

### **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 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 comes into the possession of a law enforcement agency as found, safekeeping, property for destruction, or abandoned property.

## **DEFINITIONS CONTINUED:**

### **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 officer 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 Limitation:**

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 persons subject to certain injunctions. This is not a seizure.

### **Tickler File:**

Is a set time for the property officer to follow up on the disposition of the evidence.

### **Two Person Rule:**

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

### **Transmittal Form:**

A document formatted by the Wisconsin State Crime Lab, which has to be completed by the submitting officer before evidence can be sent to the Crime Lab, listing items of evidence that are being requested for analysis.

### **WSCCA:**

Wisconsin Supreme Court and Court of Appeals. 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>.

## 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](#)) (**Appendix 3, pg. 23**).

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 (**Appendix 16, pg. 45**).

A. Upon receiving property held for safekeeping, the Property Officer shall do the following:

1. Conduct an NCIC check on all serialized property to determine if it is stolen. Refer to the investigating officer or investigations if stolen.
2. Contact the owner by mail to schedule an appointment for the release of the property (**sample letter Appendix 4, pg. 29**).
3. Release to the owner:
  - a. The owner must present a photo ID and provide proof of ownership if requested. The owner must sign the property report.
  - b. 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.

B. Firearms seized for safekeeping shall be held no longer than necessary. The property officer shall do the following upon receiving a safekeeping firearm:

1. Conduct a criminal history check, CIB hot files (protection orders, warrants, sex offender etc), III (national criminal history data base), CCAP and in-house check on the owner or possessor of the firearm.
2. 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 to the Gun Hot Line (**Appendix 8, pg. 33**).
3. Contact the investigating officer for approval to release. 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.
4. If the person is disqualified from possessing a firearm, contact the owner by certified mail informing him/her of such. 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 and submittal to the Hand Gun Hot Line to determine if the third party is qualified to possess firearms.
5. Release the firearm
  - a. The owner must present a photo ID and provide proof of ownership if requested. The safekeeping receipt is proof of ownership unless proven otherwise (**e-trace, pg. 10-11**).
  - b. The owner must sign the property report.
  - c. 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 officer regarding the disposition of the property should accompany the property report.

## C. SURRENDER OF FIREARMS: INJUNCTION CASES

1. Any domestic abuse ([Wis. Stat. § 813.12\(4\)](#)), child abuse ([Wis. Stat. § 813.122\(5\)](#)), or harassment ([Wis. Stat. § 813.125](#)) injunction may require that the respondent surrender any firearms that he/she owns or has in his/her possession to the Sheriff.
2. The Sheriff shall receive any firearms subject to surrender under an injunction.

3. The Sheriff shall not receive any firearms until the sheriff is formally notified of the existence of an injunction (i.e., receives a copy of the injunction).
4. Any firearm surrendered shall be queried through NCIC by receiving law enforcement officer.
5. The law enforcement officer who is receiving the firearm shall prepare a receipt for firearm(s) surrendered. No firearm cases shall be received with the firearm.
6. The receipt should include each firearm and a complete description of the firearm. (*ex: appendix 18, pg. 64*)
  - a. The receipt shall include the manufacturer, model, and serial number, if available.
  - b. The receipt shall detail the condition of the firearm.
  - c. The receipt shall be dated and signed by the law enforcement officer and the respondent.
  - d. The sheriff's department shall retain the original receipt. The law enforcement officer shall provide an exact copy of the receipt to the respondent.
7. Information contained on a receipt shall not be entered into any computerized or direct electronic data transfer system.
  - a. The Sheriff may not disseminate or provide access to the information contained on a receipt except as authorized by [Wis. Stat. § 813.12\(4\)\(m\)\(4\)](#).
  - b. The order shall be retained by the Sheriff's Office in a confidential file expressly created for that purpose.

#### D. RETURN OF FIREARMS TO RESPONDENT OR OWNER

1. A firearm surrendered shall not be returned to the respondent or owner until the Sheriff's Office 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.
2. A receipt prepared under Sec. 4 above is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent.
3. When the firearm covered by the receipt is returned to the respondent or owner, the sheriff's office shall surrender the original receipt, and all copies, to the respondent.
4. The respondent or owner shall date and sign the order, acknowledging receipt of the firearm.
5. Under [Wis. Stat. § 813.12\(4m\)\(a\)2](#), if the owner of a firearm is disqualified from possessing a firearm, the owner may find a third person and relinquish ownership rights of the firearm to the third person. A background check shall be completed on the third person as well.

**A list of firearm possession disqualifiers can be found on pg. 17.**

**If after conducting a background check you have questions on whether a particular conviction disqualifies the owner from possessing a firearm you can contact the Wisconsin DOJ [Handgun Hotline](#) for assistance (See Appendix 8, pg. 33).**

**Please do the record checks before contacting the Hotline. 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 definition.**

#### E. [ATF.gov](#)

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.

The ATF can perform a trace 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:

<http://www.atf.gov/publications/download/p/atf-p-3312-7.pdf>

Directions to sign up for on-line firearm traces (e-trace) can be found on Wilenet under the DOJ tab, crime lab, then features section or go to:

<http://www.atf.gov/publications/download/p/atf-p-3312-9.pdf>

Firearm trace forms and directions to complete the forms are located on the ATF website at:

<http://www.atf.gov/forms/download/atf-f-3312-1.pdf>

## FOUND PROPERTY/CHATTELS WIS. STAT. CH. 170

### A. Property found by private citizens with a value of \$25-\$99

1. 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 found property claim, Appendix 7, pg. 32.*)
  - a. If written notice is not received within 5 days, the property may be treated as abandoned. Follow abandoned property guidelines.
2. 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.

### B. Property found by private citizens with a value of \$100 or more

1. 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 found property claim, Appendix 7, pg. 32.*)
  - a. 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.

### C. Disposition of property found by private citizens

1. 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.
  - a. 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.
  - b. The property report is removed from the property file and forwarded to Records for filing in the original case.
  - c. All unclaimed found property shall be deemed abandoned. Follow abandoned property guidelines.
2. If no owner appears within 90 days, then the finder of the property becomes the owner.
  - a. The Property Officer will notify the finder requesting them to schedule an appointment to obtain the property.
  - b. The finder must present satisfactory evidence of identification and must sign to acknowledge receipt of the property.
  - c. The property report is removed from the property file and forwarded to Records for filing in the original case.
  - d. All unclaimed found property shall be deemed abandoned. Follow abandoned property guidelines.

#### D. Property found by Public Employees

1. Property found by public employees, within the scope of his/her official duties, having a value exceeding \$25.00, shall transfer custody of the found money or goods to 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.
2. If the found property is not claimed within 90 days after the notices were posted, it becomes the property of the finder's agency.
3. 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.
  - a. The property officer will notify the owner requesting them to schedule an appointment to obtain the property.
  - b. The owner must present satisfactory evidence of identification, must sign to acknowledge receipt of the property, and must pay all associated expenses.
  - c. The property report is removed from the property file and forwarded to records for filing in the original case.
  - d. All unclaimed found property will be deemed abandoned. Follow abandoned property guidelines.

### EVIDENCE

#### Property and Evidence Release Guidelines

It is the responsibility of the property & evidence team to make purging decisions. If possible, the investigating officer shall be involved in the case disposition. This provides additional security against early disposal of evidence. The evidence could be linked to another case (especially drug cases), have multiple defendants, or be subject to DA refiling.

#### A. Authorized Person

1. The following persons may authorize the release of property that has been placed in the property room:
  - a. The investigating officer, assigned investigator, or the investigator's supervisor.
  - b. A judge via court order.
  - c. The district attorney's office.

#### B. 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:

1. A photograph is taken of the stolen property ([Wis. Stat. § 943.20\(4\)](#)).
2. Prior to release, all serialized property shall be cleared from NCIC/CIB.
3. Any request made by the owner for return of stolen property shall be cleared by an authorized person.
4. A receipt shall be signed by the owner when the property is photographed and released, and the owner shall agree not to destroy, sell, or give away the property until the conclusion of legal proceedings.

#### C. Without Arrest

1. In cases where there are no suspects or leads, evidence shall be maintained for a period no longer than Wisconsin's statute of limitations ([Wis. Stat. § 939.74](#)). See chart on pg. 14.
2. Any evidence of felony or misdemeanor cases can be disposed of or returned to the owner if the district attorney approves disposal/release of evidence prior to the expiration of the statute of limitations.

3. Statute of limitation in child sexual assault cases apply only to offenses under [Wis. Stat. chapter 948](#) after July 1, 1989.
4. The statute of limitations is tolled or suspended for any person who is not publicly a resident of this state ([Wis. Stat. § 939.74\(3\)](#)).

**IMPORTANT NOTE FOR SEXUAL ASSAULT CASES:** it is strongly encouraged that you work with your district attorney's office to develop a protocol for the retention of evidence in sexual assault cases. Evidence in uncharged cases may be important in identifying serial offenders or for use as other act evidence. For example, if a DNA sample is obtained, it may be preferable that the biological evidence be retained permanently.

**Time Limit for Prosecution**

**Misdemeanor**

**3 Years**

- \* 4th degree sexual assault (940.225(4))
- \* Sexual intercourse with a child age 16 or older (948.09)
- \* Exposing genitals or pubic area (948.10)

**Felonies**

**No Time Limit for Prosecution**

- \* Homicide (940.01, 940.02, 940.03, 940.05)
- \* 1st Degree Sexual Assault of a Child (948.02(1)) (see also appendix 29)
- \* Repeated Acts / Sexual Assault of a Child (948.025)(1)(a)) (see also appendix 29)
- \* 1st degree sexual assault (940.225(1)) (see also appendix 29)
- \* Attempted 1st degree homicide (940.01)
- \* Attempted 2nd degree homicide (940.05)
- \* Attempted 1st degree sexual assault of a child 948.02(1) (see also appendix 29)

*~numerous Wis. Act's have changed the statute of limitations for child sexual assault, repeated acts and 1st degree sexual assault. The exact dates of enactment are listed in appendix 29*

**Prior to the Victim Reaching 26 Years Old**

- \* Physical Abuse of a Child (948.03(2)(b-c) and (948.03)(3-4))
- \* Causing Mental Harm to a Child (948.04)
- \* Child Enticement (948.07(5-6))

**Prior to the Victim Reaching 45 Years old**

- \* Sexual Assault of a Child
  - 948.02(2) (2nd Degree)
  - 948.025(1)(e) (Repeated Acts)
  - 948.085 (Child in Substitute Care)
  - 948.095 (by School Staff or Volunteer)
- \* Physical Abuse of a Child/Great Bodily Harm (948.03(2)(a))
- \* Sexual Exploitation of a Child (948.05)
- \* Incest with a Child (948.06)
- \* Child Enticement (948.07(1-4))
- \* Use Computer to Facilitate a Child Sex Crime (948.075)
- \* Solicitation of a Child for Prostitution (948.08)
- \* Sexual Assault of child placed in substitute care (948.085)
- \* Sexual assault of a student by a school staff person (948.095)
- \* Trafficking of a Child (948.051)

**6 Years**

- \* 2nd degree Sexual Assault (940.255(2))
- \* 3rd degree Sexual Assault (940.225(3))
- \* Causing child to view / listen to sexual activity (948.055)
- \* Sexual exploitation by a therapist (can be longer sometimes) (940.22)
- \* All other felonies

Note: The statute of limitations is tolled or suspended for any person while they are not publicly a resident of Wisconsin. [Wis. Stat. § 939.74\(3\)](#).

#### D. With Arrest

Property seized as evidence must be maintained until a defendant is convicted, the case has been dismissed without prejudice, or the district attorney authorizes release of the property prior to adjudication. If a suspect has left the state or a John Doe warrant has been issued, the Statute of Limitations is suspended /tolled and the evidence must be held.

**Determine what category the item of property falls under.** Each category has its own retention guidelines, which are detailed in their respective subsections.

##### 1. Videos

- a. If evidence of a crime, see the categories above for retention of evidence.
- b. Under public records law, videos must be retained for a minimum of 7 years unless the jurisdiction has adopted a different time period ([Wis. Stat. § 19.21](#)).
- c. **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\(1\)](#)).

Unless otherwise ordered by a court, both a district attorney and defense counsel are to examine the material at a “law enforcement or government facility.” ([Wis. Stat. § 971.23\(1\)\(c\)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\(1\)\(d\)](#))

##### 2. Recorded Statements

- a. See categories above for the retention periods based on type of crime.
- b. Under public record law, recorded statements must be retained for a minimum of 7 years unless the jurisdiction has adopted a different time period ([Wis. Stat. § 19.21](#)).

##### 3. Wiretap

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

##### 4. Photographs

- a. Under public records law, photographs must be maintained for a minimum of 7 years unless the jurisdiction has adopted a different time period ([Wis. Stat. § 19.21](#)).
- b. **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\(1\)](#)).

Unless otherwise ordered by a court, both a district attorney and defense counsel are to examine the material at a “law enforcement or government facility.” ([Wis. Stat. § 971.23\(1\)\(c\)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\(1\)\(d\)](#))

##### 5. Firearms

- a. If a dangerous weapon (firearm, knife, ammunition) was used in the commission of a crime, the dangerous weapon will not be returned to the owner ([Wis. Stat. § 968.20\(1\)\(b\)](#)). The owner has the right to petition the court for the return of the weapon ([Appendix 6, pg. 31](#)).

- b. If the firearm was used in the commission of a crime and the actual owner of the firearm had no knowledge that the firearm was used in a crime and did not give consent to use the firearm in the commission of a crime the firearm may be returned to the owner.
- c. 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.
- d. Any person who is court ordered to surrender their firearms as the result of a domestic abuse injunction must petition the courts for the return of the firearms after the injunction has expired.
- e. Firearms no longer needed as evidence, unless considered contraband, may be returned to the owner without a hearing (Safekeeping, Found Property). See Firearms Release Form (app: 28)
- f. 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\(3\)](#)).
- g. All firearms/ammunition used in the commission of a crime and not returned to the owner shall be shipped to the Crime Lab for disposal ([Wis. Stat. § 968.20\(3\)\(a\)\(2\)](#)). When firearms are ready to be shipped to the Crime Lab, call the Crime Lab prior to transporting the firearms and ammunition. A firearms transfer form shall be completed (*Appendix 22, pg. 53*).
- h. 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).
- i. If after 30 days, from the date the notification letter was sent, the firearm and ammunition are not claimed then the law enforcement agency may retain the firearm or ammunition and authorize its use by the law enforcement agency (excluding handguns or those weapons used in the commission of a crime).

**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 blackpowder firearms.**

**RETAINED FOR DEPARTMENT USE:**

- 1. All firearms which are converted for departmental use and are specified Class III weapons according to NFA standards (machine guns, short barreled weapons, and silencers) shall register the weapons with ATF. Registration forms can be found on the ATF website.
- 2. When the firearm is no longer needed for department use, it shall be sent to the Crime Lab for disposal.

**6. Currency**

- a. 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. If you believe money in your possession is contraband, you should consult with your district attorney (see appendix 30).

## State Firearms Disqualifiers

[Wis. Stat. § 941.29\(1\)\(a\)](#)

Convicted of a felony in Wisconsin unless pardoned.

[Wis. Stat. § 941.29\(1\)\(b\)](#)

Convicted of a crime elsewhere that would be a felony if committed in this state unless pardoned.

[Wis. Stat. § 941.29\(1\)\(bm\)](#)

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\(1\)\(c\)](#)

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\(1\)\(d\)](#)

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\(1\)\(e\)](#)

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\(1\)\(em\)](#)

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\(1\)\(f\)](#)

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\(1\)\(g\)](#)

Ordered not to possess a firearm under s. 813.125(4m).

Some of the disqualifiers require interpretation. In addition, under current law some information is **NOT** available to do a check for return of property. These include many 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 records check.

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 of or addicted to a controlled substance:**

Disqualified under ANY of the following situations:

- Convicted for possession or use within the past year; **or**,
- 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 not count); **or**,
- The person has been found to have used a controlled substance illegally through the use of a drug test within the past year; **or**,
- The person has admitted to the unlawful possession or use of a controlled substance within the past year; **or**,
- The person is a current or former military member who received discipline or other administrative action based on confirmed drug use; **or**,
- 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.

### Federal Firearms Disqualifiers

<a href="#">18 U.S.C. § 922(g)(1)</a>	Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year
<a href="#">18 U.S.C. § 922(n)</a>	Is under indictment for a crime punishable by imprisonment for a term exceeding one year
<a href="#">18 U.S.C. § 922(g)(2)</a>	Is a fugitive from justice
<a href="#">18 U.S.C. § 922(g)(3)</a>	Is an unlawful user of or addicted to any controlled substance
<a href="#">18 U.S.C. § 922(g)(4)</a>	Has been adjudicated as a mental defective or committed to a mental institution
<a href="#">18 U.S.C. § 922(g)(5)</a>	Illegally or unlawfully in the United States
<a href="#">18 U.S.C. § 922(g)(6)</a>	Has been discharged from the Armed Forces under dishonorable conditions
<a href="#">18 U.S.C. § 922(g)(7)</a>	Having been a citizen of the United States, has renounced U.S. citizenship
<a href="#">18 U.S.C. § 922(g)(8)</a>	Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner
<a href="#">18 U.S.C. § 922(g)(9)</a>	Has been convicted in any court of a misdemeanor crime of domestic violence

\* See [www.atf.gov/publications/firearms](http://www.atf.gov/publications/firearms) for additional firearms resources.

**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.

Can include disorderly conduct where the charge and the conduct convicted of include “violent” or “abusive” conduct.

**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.**

## 7. Biological Evidence / DNA

- a. 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 if:
- 1) It was collected in connection with a criminal investigation;
  - 2) **AND**, it resulted in a criminal conviction, delinquency adjudication, or commitment under [Wis. Stat. §§ 971.17](#) or [980.06](#);
  - 3) 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.

[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.**

- b. Evidence containing biological material **MAY** be destroyed prior to the convicted being released from custody if:
- 1) 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 sample letter, Appendix 13, pg. 42*);
  - 2) **AND** no person who is notified, within 90 days files a motion for testing of the evidence **OR** submits a written request for retention of the evidence to the law enforcement agency ([Wis. Stat. § 968.205\(4\)](#));
  - 3) **AND** no other provision of federal or state law requires the law enforcement agency to retain the evidence ([Wis. Stat. § 968.205\(3\)\(c\)](#));
  - 4) **OR**, at sentencing, the district attorney may request that all evidence being held in this matter be disposed of.

[Wis. Stat. § 968.205\(3\)\(a\)](#).

- c. 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.
- d. [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 kept for DNA analysis).
- e. Submittal of DNA evidence to the Crime Lab (*Appendix 11 and 12, pg. 38-41*).

## 8 All Other Evidence, Including Search Warrants

- a. Return of property seized with or without a search warrant ([Wis. Stat. § 968.20](#)).
- 1) Any person claiming the right to possession of property seized by a warrant 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.
  - 2) If the property is not needed as evidence, the district attorney can authorize the release prior to the disposition of the case.
  - 3) Evidence may be returned to the owner if it is not considered contraband when the case has been adjudicated.

## 9. Interim / Temporary / Court Release

### a. Court Release

When the property officer receives an evidence release request for court, the item/s of evidence shall be released to the requesting officer. The Property Officer should request a copy of the court subpoena from the officer. Tickler file shall be implemented for the item/s of evidence to ensure its return. If the item/s will remain with the court the property officer or requesting officer shall obtain a receipt from the court. The property report is removed from the property file and forwarded to records for filing.

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 do not have the resources to dispose of or properly store 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 (*Appendix 20, pg. 50-51*).

### b. Interim Release of Property Guidelines

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

- 1) The officer will request the evidence.
- 2) Officers checking out evidence will be required to sign and date the chain of custody form for all evidence released.
- 3) A tickler file shall be implemented for the items of evidence.
- 4) Officers shall, as soon as appropriate, return all evidence to the property room.
- 5) Property shall be repackaged or resealed as necessary to ensure the integrity of the item.

## 10. Juvenile Dispositions

- a. 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 district attorney.

## 11. Civil Litigation

- a. 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.

## DETERMINING DISPOSITION / CASE STATUS

### A. Conviction / Appeals

1. Evidence may be released to the owner, or disposed of if the evidence is contraband, when the following conditions are met:
  - a. All proceedings in which evidence might be required have been completed; the case has been adjudicated.
  - 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 [Wisconsin Statutes Ch. 809](#). Although Ch. 809 allows for the defendant to petition the court for post-conviction relief within 20 days after 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 or motion and should not be disposed of without consulting with the district attorney.**
  - c. To determine if an appeal has been filed with the courts go to CCAP [www.wcca.wicourts.gov](http://www.wcca.wicourts.gov):
    - 1) Enter the name of the defendant; exact spelling is necessary.
    - 2) 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
    - 3) Once the correct case is identified, enter "Court Record Events." Identify the date that the dispositional order/judgment of conviction was entered.
    - 4) Scroll down until you find the judgment of conviction/appeals rights information given. An appeal may have been filed if entries are made after the conviction/appeals rights information state:
      - a. A notice of intent to pursue post-conviction relief.
      - b. A motion.
      - c. A notice of appeal.
      - d. Be careful when numerous transcripts have been requested; it may be a sign that an appeal is forthcoming.
      - e. If a notice of intent to pursue post-conviction relief is found, the evidence must be held until the appeal process has concluded. Contact the prosecuting attorney for final disposition.
      - f. Check WSCCA for status of any appeals.

### B. Biological / DNA Evidence. Refer to evidence subsection 6 for disposal methods.

1. If the case is not appealed and all charges have court dispositions, and there are no other arrestees or suspects, the authorized person determines if the property can be released to the owner or otherwise disposed of in a manner pursuant to statute. If there are still outstanding charges against a defendant, the property will be held pending the disposition of the court case.

**To streamline dispositions of evidence for cases that have not been appealed, a memorandum of understanding between the law enforcement agency and the district attorney is suggested.**

**Example memorandum of understanding 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, dispose of the evidence.*

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

2. Other Acts Evidence

Be aware that evidence connected in one criminal proceeding may be used in another criminal proceeding, especially in sexual assault cases. Purging decisions shall be made on a case-by-case basis and in consultation with the district attorney's office.

3. Dismissed for insufficient Evidence

- a. Evidence in connection to a dismissed case shall be kept pending statute of limitations, including sexual assault kits. However, see **IMPORTANT NOTE** on the bottom of pg. 13.
- b. Evidence in connection to a case that was dismissed and read in can be disposed of with permission from the district attorney.

## DISPOSAL GUIDELINES

- A. Property/evidence held by the law enforcement agency shall be disposed of in a manner authorized by statute and/or local ordinance (*Appendix 14 and 15, pg. 43-44*).
- B. 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.
1. Property that has been held as evidence but not introduced during the trial, and is not considered contraband, may be returned to the owner provided an appeal has not been filed with the courts.
  2. If the person from whom custody of the property was taken is a secondhand dealer or licensed pawnbroker, and if the owner of the property cannot be located at the end of the criminal proceeding, the property shall be returned to the secondhand dealer or pawnbroker.
  3. Disposition of Property to be Destroyed.

Property of little or no auction value can be disposed of in an appropriate trash receptacle except as otherwise directed below:

- a. Recyclables can be disposed of in the proper manner.
  - b. Papers of a sensitive nature will be shredded.
  - c. The contents of alcoholic beverage containers will be poured down the drain before disposing of the container in the trash.
  - d. Property of value (except firearms, money, ammunition, controlled substances, and hazardous materials) will be sold at auction or designated for department use.
  - e. Pursuant to statutory requirements, firearms and ammunition will be destroyed or designated for department use ([Wis. Stat. § 968.20\(3\)\(a\)](#)).
  - f. Controlled substances will be burned or otherwise disposed of at an acceptable facility. Controlled Substance paraphernalia will be rendered inoperable and disposed of and the two-person rule shall apply.
  - g. Hazardous materials will be disposed of through an authorized hazardous waste disposal firm.
  - h. Dangerous weapons may be destroyed in the same manner as firearms. *The Crime lab accepts ammunition and knives* ([Wis. Stat. § 939.22\(10\)](#)).
  - i. Fireworks will be turned over to the County Bomb Disposal Unit for incineration or detonation.
  - j. All abandoned money will be deposited in the County Treasurers General Fund, except rare coins or paper money that will be sold at public auction.
  - k. 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. § 16.61\(3\)](#)). Ordinance can dictate a longer period of retention for records ([Wis. Stat. § 19.21\(4\)\(c\)](#)).
4. Suicide Evidence.

Evidence processed and submitted in death investigations, which have been deemed suicides by the Medical Examiner, may be destroyed upon authorization of the investigating officer or their supervisor. If there are any inclinations that the cause of death is not a suicide, the evidence shall be retained for the statute of limitations for Homicide—99 years.

Evidence that has been authorized for destruction may be turned over to the next of kin ([Wis. Stat. § 990.001\(16\)](#)) (refer to firearms section for firearm release procedures). Corporation Counsel or the City/Village Attorney should be consulted with prior to release of any evidence to the next of kin.

## DISPOSITION OF ABANDONED PROPERTY

Property which remains unclaimed for a period of 30 days after the owner was notified to claim the property, shall be auctioned, destroyed or converted to departmental use (*Appendix 4, pg. 29 and Appendix 16, pg. 45*).

### A. Auction of abandoned property

1. Abandoned property should be disposed of through auction ([Wis. Stat. § 66.0139\(2\)](#)).
2. After deducting the necessary expenses of the sale, the remaining, shall be paid into the general fund of that jurisdiction.

### B. Other dispositions of Abandoned Property – [Wis. Stat. § 66.0139\(2\)](#)

1. If not disposed by auction, then property may be disposed of by other means, such as destroyed, converted to departmental use, or donated.
2. A record must be kept for at least two years from the date of disposal, indicating the method of disposal.
3. Any means of disposal other than auction shall be specified by ordinance. (*See example ordinance Appendix 14 and 15, pg. 43-44*).

### C. Disposition of Unclaimed Dangerous Materials or Devices – [Wis. Stat. § 66.0139\(3\)](#)

1. Unclaimed materials or devices that pose a danger to life or property can be disposed of immediately without public auction.

### D. Deceased Persons Property – [Wis. Stat. § 59.66\(3\)](#)

1. Medical Examiner
  - a. 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.
  - b. The Medical Examiner must produce a written report listing all personal property that is turned over to the Sheriff.
  - c. The Sheriff shall post the unclaimed property, on or before August 1<sup>st</sup>, 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.
  - d. The proceeds of the sale shall go to the county treasurer.
  - e. Any unclaimed property not sold at auction shall be destroyed.
2. Any other property belonging to a deceased person, in the care of the property room, may be released to the next of kin. Next of kin hierarchy can be found at [Wis. Stat. § 990.001\(16\)](#). Consult with your agency legal counsel prior to release to the next of kin.

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

1. 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.
2. The Sheriff shall post the unclaimed property, on or before August 1<sup>st</sup>, 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.

3. The proceeds of the sale shall go to the county treasurer.
4. Any unclaimed property not sold at auction shall be destroyed.

## DISPOSITION OF ABANDONED VEHICLES

- A. The 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\(3\)\(b\)](#)).
  1. Notice to Owner /Lien Holder of an Abandoned Vehicle – [Wis. Stat. § 342.40\(3\)](#).
    - a. The owner/lien holder will be sent a notice via certified mail that includes the following information ([Appendix 18, pg. 45](#)):
      - 1) The owner must be advised to respond to the jurisdiction within ten days of receiving the notice.
      - 2) The notice must include the make, model, serial number, and where the vehicle is being stored. It must also indicate that failure to reclaim the vehicle shall be deemed a waiver of all rights, title and interest in the vehicle and consent to the sale of the vehicle.
- B. Abandoned vehicles will be disposed of through auction or sealed bid, unless the towing/storage fees exceed the value of the vehicle ([Wis. Stat. § 342.40\(3\)](#)).
  1. At such sale the highest bid shall be accepted unless the bid is deemed inadequate by the jurisdiction, in which event, all bids may be rejected.
  2. If all bids are rejected or no bid received, the jurisdiction may readvertise the sale, adjourn the sale to a definite date, sell the motor vehicle at a private sale, or junk the vehicle.
- C. Disposition of an Abandoned Vehicle (other than auction/sealed bid) – [Wis. Stat. § 342.40\(2\)](#).
  1. If the towing/storage fees exceed the value of the vehicle, the vehicle will be disposed of by direct sale to a licensed salvage dealer.
- D. Completion of a Disposal for an Auctioned or Salvaged Abandoned Vehicle – [Wis. Stat. § 342.40\(3\)\(e\)](#).
  1. Within five days of the sale or disposal of an abandoned vehicle the following must occur:
    - a. The Department of Transportation shall be advised of the sale or disposition of the vehicle ([Appendix 17, pg. 46](#)).

## APPENDIX: 1 Telephone Numbers

### Wisconsin State Crime Laboratories

#### State Crime Laboratory –Madison

Phone (608) 26602013  
Fax (608) 267-1303

#### State Crime Laboratory-Milwaukee

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

#### State Crime Laboratory-Wausau

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

### Wisconsin State Laboratory of Hygiene Toxicology Section

Phone (608)224-6241

### Wisconsin Gun Hotline

Phone 1-800-262-5867  
Fax (608) 264-6200

### Bureau of Alcohol Tobacco and Firearms (ATF)

#### Milwaukee II Industry Operations

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

#### Madison I Field Office

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

### 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) 264-5006

### FBI Evidence Section

#### Frank Magestro

Evidence Control Technician  
FBI Milwaukee Division  
414-276-4684 ext 4334  
Frank.Magestro@ic.fbi.gov

### FBI Field Offices

#### Green Bay Resident Agency:

Green Bay, WI 54303  
Telephone # 920-432-3868

#### La Crosse Resident Agency:

Senior Resident Agent Andrew M. John  
La Crosse, WI 54603  
Telephone # 608-782-6030

#### Madison Resident Agency:

Supervisory Senior Resident Agent Christopher P. Cole  
Middleton, WI 53562  
Tel # 608-833-4600

#### Wausau Resident Agency:

Senior Resident Agent Ted Banholzer  
Wausau, WI 54403  
Telephone # 715-842-2666  
(414) 276-4684 ext. 4334

#### Eau Claire Resident Agency:

Senior Resident Agent David T. Fitzgerald  
Eau Claire, WI 54701  
Telephone # 715-835-3761  
Telephone # 715-835-7864

#### Kenosha Resident Agency:

Senior Resident Agent Michael Johnson  
Pleasant Prairie, WI 53158-0292  
Telephone # 262-857-3447

### Best Practice Committee Member Contact Information

#### Vickie Brugger

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vbrugger@co.dodge.wi.us

#### David Karls

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#### Julie A. Mead

Burnett County Sheriff's Office  
Detective/Property Room  
Manager  
715-349-2121 (x1205)  
jmead@burnettcounty.org

#### Jason White

Sun Prairie Police  
Department  
Property & Evidence  
Manager  
608-825-1119 Ext 6208  
jwhite@cityofsunprairie.com

APPENDIX: 2



**WISCONSIN STATE  
LABORATORY OF HYGIENE**

Environmental Health Division  
2601 Agriculture Dr. “  
P.O. Box 7996  
Madison, WI 53707-7996  
Phone: (608) 224-6202 • (800) 442-4618  
FAX: (608) 224-6213

University of Wisconsin

**LABORATORY SERVICES FOR OPERATING WHILE INTOXICATED VIOLATIONS**

**Background**

The Wisconsin State Laboratory of Hygiene 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 (1<sup>st</sup> through 3<sup>rd</sup> 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 should be sent to the State Crime Laboratory in Madison or Milwaukee. This includes all 4<sup>th</sup> and higher OWI offenses as well as homicide and injury OWI (940.09 (1)a-d, 940.25 Wis. Stat.) cases.

**Non-OWI Felony Offenses:** Blood samples for all non-OWI cases must be sent to the State Crime Laboratory in Madison or Milwaukee. These samples will be re-directed to the appropriate laboratory if sent to the WSLH.

**Firearms:** Blood samples for all intoxicated use of a firearm violations must be sent to the appropriate Crime Laboratory.

**Drug Possession:** Call the appropriate Crime Laboratory 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: Send to the appropriate Crime Laboratory.  
Misdemeanor: WSLH will perform alcohol testing for a fee.

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

**Wisconsin State Laboratory of Hygiene Toxicology Section**

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

**Wisconsin State Crime Laboratory- Madison**

4626 University Avenue  
Madison, WI 53705  
(608) 266-2031

**Wisconsin State Crime Laboratory- Milwaukee**

1578 S 11<sup>th</sup> Street  
Milwaukee, WI 53204-2860  
(414) 382-7500



November 2, 2010. Prepared by Patrick Harding, Wisconsin State Laboratory of

<http://www.slh.wisc.edu>

**APPENDIX: 3 OFFICE OF DODGE COUNTY SHERIFF**

TODD M. NEHLS  
Sheriff



BLAINE LAUERSDORF  
Chief Deputy

**SEIZED PROPERTY RECEIPT**

(Dodge County Sheriff's Department)

<b>CASE #:</b>	<b>DATE:</b>
----------------	--------------

<b>NAME:</b>	<b>DOB:</b>
--------------	-------------

<b>ADDRESS</b> :	<b>CITY</b> :	<b>STATE/ZIP:</b>
---------------------	------------------	-------------------

<b>PHONE:</b>	<b>ALTERNATE PHONE:</b>
---------------	-------------------------

Are you the owner of this property?      Yes       No

<b>IF NO, who is the owner?</b>	<b>Owner phone:</b>
---------------------------------	---------------------

	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 \*\*\*\***

PAGE \_\_\_\_ OF \_\_\_\_

**APPENDIX: 4**

Return of Property Letter

Letter Head

Date

Owner

Street Address

City, State, Zip Code

Reference case number – #####

Dear \_\_\_\_\_,

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

**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 Clerk Information**

**APPENDIX: 5**

Sample Letter for Return of Seized But Not Forfeited Currency  
(Dodge County)

Letter Head (Currency letter)

DATE

PERSON  
ADDRESS

**Re: Return of Property**

Dear \_\_\_\_\_ :

The (Agency) is in possession of property seized from your person on \_\_\_\_\_, reference case number \_\_\_\_\_, which resulted in evidence of “\_\_\_\_\_”. The property consists of \$ \_\_\_\_\_. According to CCAP (Wisconsin Circuit Court Access), you were convicted of “\_\_\_\_\_” on \_\_\_\_\_. Therefore, all proceedings in which this property might be required have been completed.

Section 968.20, Wisconsin Statute, states that:

*“Any person claiming the right to possession of property... may apply for its return to the circuit court for the county in which the property was seized... The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court’s satisfaction, it shall order the property, other than... property covered under sub. (1m) , returned if: (a) the property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or (b) All proceedings in which it might be required have been completed.”*

I am giving notice to \_\_\_\_\_ that he has the right to apply to the circuit court and claim ownership of the monies under Sec. 968.20(1), Wis. Stat. ***If you choose to petition the court, you are required to provide a copy of the petition to the (Agency).*** If you fail to apply for the return of said monies through the Dodge County Circuit Court within **30 days** upon receipt of this letter, the monies will be considered abandoned by the (Agency), and will be disposed of per (Agency) ordinance.

Thank you,

Name  
Evidence Clerk  
Address  
Ph:

**APPENDIX: 6**

**BURNETT COUNTY SHERIFF'S DEPARTMENT  
7410 County Road K, #122  
Siren, WI 54872**

**Dean Roland, Sheriff  
Scott Burns, Chief Deputy**

**Telephone: 715-349-2121  
Fax: 715-349-2176**

**Date:** \_\_\_\_\_

**TO:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RE: Case #** \_\_\_\_\_

Please be advised, the Burnett County Sheriff's Department 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 Burnett 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, instead would become property of Burnett County.

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 Burnett County.

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 in Madison 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,

Evidence Custodian  
Burnett County Sheriff's Department

**APPENDIX: 7**

**FOUND PROPERTY CLAIM**

**170.07 Lost chattels, notice.** Except as provided in ss. 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 (i.e.; on-line and lobby of agency) in the city, village or town.

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: 8

Sample Letter to the Handgun Hotline on Agency letterhead

LETTER HEAD

DATE: \_\_\_\_\_

TO: Handgun Hotline – (f) 608-264-6200

FROM: \_\_\_\_\_

Evidence Custodian  
Agency Information

RE: Ability to possess firearms

**I have conducted a records check: Wisconsin criminal history, CIB hot files (protection orders, warrants, sex offender etc), III(national criminal history data base), 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 fax response to \_\_\_\_\_

I can be reached directly at \_\_\_\_\_

Thank you for your assistance.

**IMPORTANT NOTE: Please do the record checks described above before 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: 9**

**Sample Letter Surrender of Firearms Under 18 U.S.C. 922(g)(4)**  
**(Dane County)**

**Agency Letter Head**

**SURRENDER OF FIREARMS AND AMMUNITION PROCEDURE  
ORDER PROHIBITING POSSESSION**

You are prohibited from possessing a firearm or ammunition under 18 U.S.C. s. 922(g)(4). As such, you are required to immediately surrender any firearms or ammunition that you own, or have in your possession, to the Sheriff's Office, unless the judge at your court hearing approves a third party to take custody of the firearm(s).

You can make arrangements to surrender the firearm(s) and ammunition by calling non-emergency dispatch at (608) 255-2345. Please advise the call taker that you want to make arrangements to surrender your firearm(s) and ammunition, and a deputy will respond to your location.

If at all possible the firearm(s) should be enclosed in a carrying case for firearms. This means the firearm(s) must be completely contained in gun cases made expressly for that purpose. The cases must be zipped, buckled, tied or otherwise fastened, with no portion of the firearm(s) exposed. Homemade cases are legal if they conform to this definition. If you do not have cases, please inform the person taking your call. The cases will be returned to you for long term storage.

All firearms must be unloaded. This means having no shell or cartridge in the chamber of the firearm or in any magazine attached to the firearm; having the cap removed from a percussion muzzle loading firearm or having the flash pan cleaned of powder from a flint lock muzzle loading firearm. If you are unsure if the gun is loaded or are unsure how to unload it, please advise the call taker and the responding deputy.

The Dane County Sheriff's Office will provide you with a receipt for the firearm as conclusive proof of ownership for the purpose of returning the firearm(s) and ammunition when authorized by the court. If you would like the firearm(s) and ammunition returned to you, you must petition the court that issued the order by completing a form they provide and attaching your firearms receipt. The court will then issue an order to the Sheriff's Office to complete a firearms records check. The Sheriff's Office will forward the results of the check, within five business days, to your judge who will then make a decision as to whether or not your firearm(s) will be returned to you. If ordered to return your firearm(s) to you, the Sheriff's Office must be provided with a current phone number and address to contact you. You will need to complete a Sheriff's Office Firearms Release Form that follows state and federal laws. The telephone number for our evidence and property area is (608) 284-6803.

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

**Sample Letter Surrender of Firearms Under WI 813.12(4m)**  
**(Dane County)**

**Agency Letter Head**

**SURRENDER OF FIREARMS PROCEDURE WHEN AN INJUNCTION IS ORDERED**

Wisconsin State Statute 813.12(4m) prohibits a person (the respondent) from possessing firearms when there is a Domestic Injunction or a Harassment Injunction if it is specifically ordered. You are required to immediately surrender any firearms that you own or have in your possession to the Sheriff's Office, unless the judge at your court hearing approves a third party to take custody of the firearms.

You can make arrangements to surrender firearms by calling (insert telephone number here). Advise the call taker that you want to make arrangements to surrender your firearms and a deputy will respond to your location.

If at all possible, the firearms should be enclosed in a carrying case for firearms. This means firearms must be completely contained in gun cases made expressly for that purpose. The cases must be zipped, buckled, tied or otherwise fastened, with no portion of the firearms exposed. Homemade cases are legal if they conform to this definition. If you do not have cases, please inform the person taking your call.

All firearms must be unloaded. This means having no shell or cartridge in the chamber of the firearm or in any magazine attached to the firearm; having the cap removed from the percussion muzzle loading firearm or having the flash pan cleaned of powder from a flint lock muzzle loading firearm. If you are unsure if the gun is loaded or are unsure how to unload it, please advise the call taker and the responding deputy.

The (Insert Department Name Here) will provide you with a receipt per Wisconsin State Statute 813.12(4m)2(am). This receipt is conclusive proof that the respondent owns the firearms for the purpose of returning the firearms when authorized by the court.

When the injunction expires or is vacated and you want your firearms returned, you must petition the court that issued the injunction by completing a form they provide and attaching your firearms receipt. The court will then order the Sheriff's Office to do a firearms record check. The Sheriff's Office will then, within five business days, forward the results to your judge who will then make the decision as to whether or not your firearms will be returned to you. If ordered to return your firearms to you, we need a current phone number and address to contact you. You will need to complete a Sheriff's Office Firearms Release Form that follows state and federal laws. The telephone number for our evidence and property room is (insert telephone number here).

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

**Sample Letter Surrender of Firearms Under WI 813.12(4m) Spanish Version**  
(Dane County)

**Agency Letter Head**

**PROCEDIMIENTO DE ENTREGA DE ARMAS DE FUEGO CUANDO HAY UNA ORDEN JUDICIAL**

Los estatutos “Wisconsin State Statute 813.12(4m)”, prohíben que una persona (demandado) posea armas de fuego cuando hay una Orden Judicial Domestica u Orden por Acoso si se ha ordenado específicamente. A usted se le exigirá que entregue inmediatamente a la oficina del Sheriff las armas de fuego que usted posea o tenga en su posesión. Excepto si el juez aprueba en la audiencia judicial que una tercera persona tenga custodia de las armas de fuego.

Usted puede hacer arreglos para entregar las armas de fuego llamando teléfono (Insert telephone number). Diga al despachador que usted quiere hacer arreglos para entregar su arma de fuego y un oficial se presentará en el lugar donde usted se encuentra.

Si es posible, usted deberá poner las armas de fuego en una caja cerrada para transporte. Esto significa que las armas de fuego deben estar completamente guardadas en cajas para armas fabricadas especialmente para ese propósito. Estas cajas deben tener cierre (cremallera), hebillas o aseguradas de manera que ninguna parte del arma de fuego este expuesta. Es legal usar cajas caseras siempre que estén en conformidad con esta disposición. Si usted no tiene una caja, dígaselo a la persona que recibe su llamada.

Todas las armas de fuego deben estar descargadas. Esto significa que no debe haber balas o cartuchos en el cargador del arma de fuego; debe remover la tapa de la apertura de percusión del arma de fuego o debe limpiar el detonante sacando la pólvora del pedernal de chispa del cargador del arma de fuego. Si usted no está seguro/a que el arma está cargada o no sabe cómo descargarla, debe decirselo al despachador y al oficial que responde la llamada.

La (Insert Department Name) le dará un recibo de acuerdo con los estatutos “Wisconsin State Statutes 813.12(4m)2(am)”. Este recibo es una prueba decisiva de que el demandado es dueño del arma de fuego, con el propósito de devolver el arma de fuego cuando sea autorizado por el tribunal.

Cuando la orden judicial vence o es anulada y si usted desea que le devuelvan su arma de fuego, usted debe pedir al tribunal que emita la orden judicial completando un formulario que ellos tienen y adjuntando su recibo al arma de fuego. El tribunal ordenará a la Oficina del Sheriff que haga una revisión de registro del arma de fuego. La Oficina del Sheriff entregará a su juez los resultados dentro de cinco días hábiles y enseguida el juez tomará una decisión respecto a si le devuelven o no su arma de fuego. Si se ordena que le devuelvan su arma de fuego, necesitamos su número de teléfono y dirección actual para comunicarnos con usted. Usted deberá completar el formulario “Sheriff’s Office Firearms Release Form” que cumple con las leyes estatales y federales. El número de teléfono para nuestra área de evidencia y propiedad es (insert telephone number here).

**SE APLICAN TODAS LAS OTRAS LEYES LOCALES, ESTATALES Y FEDERALES PERTENECIENTES A LA POSESION, ALMACENAMIENTO Y TRANSPORTE DE ARMAS DE FUEGO.**

## APPENDIX: 10

### 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 authorize 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: 11


**STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE**
**J.B. VAN HOLLEN  
ATTORNEY GENERAL**

Kevin St. John  
Deputy Attorney General

Division of Law Enforcement  
Services  
State Crime Laboratory-Milwaukee  
1578 S. Eleventh Street  
Milwaukee, WI 53204-2860  
Telephone (414) 382-7500  
Fax (414) 382-7507

The following evidence guidelines are set forth in order to increase efficiencies at the Wisconsin State Crime Laboratory-Milwaukee, particularly within the DNA unit. These guidelines set the standard requirements for routine submission of evidence to the WI State Crime Laboratory-Milwaukee. The Crime Lab acknowledges that, in some circumstances, there may be a need to analyze evidence that falls outside the stated guidelines. Requests for analysis of evidence that fall outside these guidelines should be made by the submitting agency's case officer to either the Laboratory DNA Supervisors or the Laboratory Director of the Wisconsin State Crime Laboratory-Milwaukee.

**CASES HANDLED**

Submission of all items of evidence must be connected with potential felonious criminal investigations as per WI Statute 165.75. No misdemeanors will be accepted for DNA. No examinations will be conducted for private individuals or corporations.

**CASE ACCEPTANCE GUIDELINES FOR DNA**

1. DNA testing will be completed when an association is established from probative evidence. For example, an association is established between a subject and a victim. A scenario must be provided with the submitted evidence. The scenario will establish the value of each item as to its likelihood to provide probative results or an investigative lead.
2. The type and number of items accepted per submission is based on case type. For all cases, known standards from victim(s) or subject(s) will not count against the number of items that may be submitted. An item is expected to be comprised of one piece of evidence. If items are received packaged together, the number of items in the package will be considered to be the number of items submitted (i.e. pants, shirt and shoes packaged together will be considered three items).
  - a. Sexual Assaults
    - The first submission is limited to a sexual assault evidence kit plus one pair of underwear, one condom, and suspect evidence collection kit, if applicable.
    - If the kit is negative, additional items such as clothing or bedding may be submitted in a separate submission-limited to 5 items per submission.
    - If the kit is positive, no additional items will be accepted for DNA, unless case circumstances (such as multiple subjects) dictate the need for additional processing.
    - Large items such as mattresses and car seats are not to be submitted. These types of items of evidence will only be processed when no other probative evidence exists. Prior to submission of these items contact the DNA Laboratory Supervisors for further direction.
    - Buccal swab standard(s) from any consensual partner(s) who had sexual contact with the victim within 72 hours of evidence collection must be submitted.
  - b. Homicides
    - DNA evidence is limited to a maximum of 10 items per submission.
    - If probative DNA results are obtained from any of the 10 items in the initial submission, additional items will not be examined, unless case circumstances dictate the need for additional processing.
    - If no probative results are found on the first submission, the next tier of probative items (maximum of 10) may be submitted.
  - c. Burglary/Property Crimes
    - The first submission is limited to a maximum of 3 items for DNA-typically blood sample(s) from the scene, or items that may have been left at the scene (cigarette butt, item of clothing).
    - If a profile is developed additional items will not be examined, unless case circumstances dictate the need for additional analysis.
  - d. Other Case Types (robbery, assault, etc.)
    - The first submission is limited to a maximum of 3 items for DNA.
    - If a profile is developed additional items will not be examined, unless case circumstances dictate the need for additional analysis.
    - Any items of evidence directly taken from a subject in a possession case (i.e. body cavity, pockets, or waistband) will not be processed for DNA.
  - e. Criminal Parentage Cases
    - Submissions must include a buccal swab standard from the mother or alleged mother, father or alleged father, the child and if necessary, the product of conception (frozen with no preservatives).
    - No partial submissions will be accepted, unless dictated by case circumstances (such as mother is deceased or maternity is in question and the father is unknown).
3. Touched Evidence
  - a. Touched evidence is defined as evidence which has no visible staining and would contain DNA that only results from touching an item with the skin. Touched evidence does not include cigarette butts, swabbing from cans, bottles, straws or other items in which

the substance being tested is most likely saliva. Touched evidence does not include items submitted for wearer of such shirts, shoes, hats, etc. where there is probability of prolonged contact.

- b. Touched evidence will be accepted for possible STR DNA analysis when there is a high degree of likelihood that the evidence submitted will provide probative results or investigative leads. A high degree of likelihood may be established by means of witness corroboration, visual monitoring systems, or sound deductive reasoning.
- c. Touched evidence will be processed on violent crime cases only.
- d. Touched evidence accepted will be processed only when no other probative evidence exists.
- e. Touched evidence accepted will be processed for DNA only if it has not been previously processed by another discipline.
- f. Touched evidence will be processed for DNA only if it has been properly stored and handled.
- g. Items submitted for touched evidence processing will comply with existing policy relating to the number of items of evidence that may be submitted based on case type.
- h. Charred or burnt evidence and fired cartridge casings will not be processed for DNA.
- i. Touched evidence collected from the floor, countertop, doorknob/handle, or payphone of a public place will not be processed for DNA, unless there is direct evidence that the object was touched/handled by the subject.
- j. Elimination standards must be submitted with touched evidence where appropriate (i.e. owner of hijacked vehicle).

If you have any questions, concerns or comments please direct them to me either via e-mail, [championjl@doj.state.wi.us](mailto:championjl@doj.state.wi.us), phone, or in writing. We are committed to provide you with the best possible service we can in a timely fashion.

Sincerely,

Jana L. Champion, CPM  
Laboratory Director  
Wisconsin State Crime Laboratory-Milwaukee

APPENDIX: 12

WISCONSIN  
DEPARTMENT OF JUSTICE



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

Division of Law Enforcement Services  
State Crime Laboratory- Madison

J.B. VAN HOLLEN  
ATTORNEY GENERAL  
Kevin St. John  
Deputy Attorney General

4626 University Avenue  
Madison, WI 53705-2174  
608/266-2031  
FAX 608/267-1303

November 18, 2011

Hello,

I'd like to introduce myself- My name is Amy Beatty and I am the new Laboratory Manager of the Madison Crime Lab. I come from the Colorado Bureau of Investigation Laboratory, where I was an Agent in Charge of the Physical Sciences Section of the Denver laboratory, but am a native of central Wisconsin and happy to be home. As I learn the ropes here, I wanted to take the opportunity to address some upcoming changes to *our* processes: submission information, case reviews, and our annual survey.

As you are undoubtedly aware, the state of Wisconsin is experiencing the same budget issues as *the rest of the nation*. *This* means we need to streamline the receipt, analysis, and return of your evidence, without reducing our quality standards, while ensuring that we continue to provide you with results from the best evidence in your case as quickly as possible.

To accomplish this task, in the future you will begin to see us requesting more information regarding large cases at evidence receiving. Attached you will find an example set of questions regarding DNA submittals. Most of these questions are currently asked by the analyst during the processing of these cases, but they are required to call the investigating officer to do so. By gathering the information at intake, we will reduce the amount of time analysts and officers spend attempting to get in contact with each other. The format in which the information is conveyed does not matter- it can be a short explanation of the situation in the comments area of a transmittal form, a conversation with our evidence technicians, a completed copy of the attached form, or just a copy of the report.

In conjunction with this request for information, we will also be asking for a review of evidence in large cases in conjunction with the lead detective(s) and/or the District Attorney to determine the most probative evidence in the case and ensure it is given priority. This will allow us an opportunity to propose avenues of testing that may not have been considered, as well as to explain the reasons why some evidence or analyses requested may not provide answers to your investigative questions. These conversations can occur in person at our facility or yours or via telephone. The goal is to ensure that we work in partnership to focus on the best items of evidence in your cases. In many instances, this analysis will answer the investigative questions, and prevent the submission and analysis of items of evidence what may not provide further information.

Finally, enclosed you will also find a survey requesting input on our service. I hope you will have an opportunity to complete it. I promise that every comment will be reviewed to determine how and where we can improve our services.

In law enforcement your goal is to solve the crimes as soon as possible to ensure the safety of our friends and neighbors. Our goal is to continue to provide you with high quality analysis of your best evidence in the case and get you the information you need as quickly as possible. Working together, I know we will both succeed.

Either I or other lab staff is available 24 hours a day if you have questions. I would be happy to discuss any current or ongoing concerns you may have regarding our service. I look forward to working with you.

Sincerely,

Amy Beatty  
Laboratory Manager  
WI DOJ State Crime Laboratory- Madison  
608-266-2031 Front Office  
[beattyaj@doj.state.wi.us](mailto:beattyaj@doj.state.wi.us)

June 26, 2013

## Evidence Receipt- DNA

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: 13**

Sample DNA Notification Letter

Letter Head (DNA Notification Letter)

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

June 26, 2013

## **APPENDIX 14**

### ***SAMPLE ABANDONED PROPERTY ORDINANCE*** *(Burnett County)*

#### **Disposition of abandoned personal property.**

**A.** Abandoned personal property which has been in the possession of the county for a period of more than 30 days may be disposed of by the county by public auction, private sale, or other means of disposal deemed to be in the best interest of the county by unanimous decision of the county administration committee.

**B.** Any disposition of abandoned personal property not competed by public sale shall require the county to maintain an inventory of said property, recording the date and method of disposal, the consideration received for the property, and the name and address of the person taking possession of the property. This inventory shall be kept as a public record for a period of two years from the date of disposal of said property.

**APPENDIX: 15**

**Sample Abandoned Property Ordinance**

**(Dodge County)**

**5.07 - FORFEITED AND ABANDONED PROPERTY. (Rep. & recr. #760)**

**(1) TRANSFER OF FORFEITED PROPERTY.**

The Sheriff is hereby authorized to participate in the equitable transfer of federally forfeited property to local law enforcement agencies under 21 U.S.C.881 (e) and 19 U.S.C. 1616, and a separate account shall be maintained for the purpose of itemizing those funds received under such program.

(a) The tangible property or cash that is transferred shall be credited directly to the Sheriff's Department for use in the Sheriff's investigative fund and for general law enforcement purposes.

(b) Any funds received through the program shall only be used to enhance the law enforcement resources of the Sheriff's Department and shall not be used in any manner to reduce the budget appropriation for the Sheriff's Department in any year.

**(2) ABANDONED PERSONAL PROPERTY.**

**(a) Authority.**

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

**(b) 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.

**(c) Disposal of Cash.**

1. 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.

2. Notwithstanding subsection 1., 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.

**(d) 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 stances, materials or devices posing a danger to life of 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.

**(e) 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 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.

**(f) 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.

Here is the website that Dodge County Abandoned Property Ordinance is found.  
<http://library.municode.com/index.aspx?clientID=14332&stateID=49&statername=Wisconsin>

**APPENDIX: 16**

**Abandoned Property Checklist**

**DISPOSITION OF ABANDONED PROPERTY (CHECKLIST)**

- \_\_\_\_\_ 1. Send the Property Return Letter via Certified Mail (30 days to respond)
- \_\_\_\_\_ - Check departmental records, driver's license, Accurint and CCAP and send the letter to the most recent address.
- \_\_\_\_\_ 2. Save the following:
- \_\_\_\_\_ - The Receipt for Certified Mail
- \_\_\_\_\_ - The P. O. PS FORM 3811 (Domestic Return Receipt)
- \_\_\_\_\_ - A copy of the Department Letter (Property Return Letter)
- \_\_\_\_\_ - The envelope/letter, if it is returned undelivered

**IF NO RESPONSE AFTER 30 DAYS**

- \_\_\_\_\_ 1. Attach the items listed in #2 and file in Central Records
- \_\_\_\_\_ 2. Dispose of property
- \_\_\_\_\_ - Auction
- \_\_\_\_\_ - Destroy
- \_\_\_\_\_ - Convert to departmental use

**APPENDIX: 17**

**Abandoned Vehicles Checklist**

**DISPOSITION OF ABANDONED VEHICLES (CHECKLIST)**

- \_\_\_\_\_ 1. Solicit appraisal (if towing/storage exceeds the value of the vehicle, the vehicle will be disposed of by direct sale to a licensed salvage dealer).
- \_\_\_\_\_ 2. If the value exceeds the cost of towing and storage, the vehicle will be sold by sealed bid or auction.

**WITHIN FIVE DAYS OF SALE OF VEHICLE**

- \_\_\_\_\_ 1. WI DOT shall be advised of the sale or junking.
- \_\_\_\_\_ - Complete the Certificate of Transfer (MV 2419)
- \_\_\_\_\_ - The MUNICIPALITY COPY will be placed in Central Records
- \_\_\_\_\_ - The PURCHASER COPY will be given to the purchaser of the vehicle
- \_\_\_\_\_ - The DMV COPY will be sent to the DOT along with the following:
  - \_\_\_\_\_ - A copy of the P. O. PS FORM 3811 (Domestic Return Receipt)
  - \_\_\_\_\_ - A copy of the Receipt for Certified Mail
  - \_\_\_\_\_ - A copy of the Department Letter (Impound Letter)
  - \_\_\_\_\_ - The above will be mailed to the DOT,  
Division of Motor Vehicles  
P.O. Box 7949  
Madison, WI 53707

**APPENDIX: 18**

**Abandoned Vehicles Sample Letter**

**AGENCY LETTERHEAD**

Case #

Date:

Re: Abandoned, Seized or Towed Vehicle

Name/Address:

The agency name has an impounded vehicle which was last registered to you.

Description: must include make and model

License # and VIN:

The investigation regarding this vehicle is complete and it is no longer needed by agency. To claim this vehicle you must show proof of ownership. Failure to claim this vehicle within ten (10) days of receiving this letter will be considered a waiver of all rights, title and interest in this vehicle. It will authorize jurisdiction to dispose of this vehicle as deemed appropriate.

To make an appointment or for any questions regarding this matter, you can contact me directly at give phone number and hours of service.

Thank you,

Your name

Title

**APPENDIX: 19**



114 East, State Capitol  
P.O. Box 7857  
Madison, WI 53707-7857  
[www.doj.state.wi.us](http://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. Att'y 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](http://www.doj.state.wi.us/ag/opinions/2009_11_30Malone-Request.pdf).

**APPENDIX: 20****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 expire 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.

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 2 years after entry of final order in the action for which the record is maintained or 2 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 *Notification To the State Historical Society (GF-110)*. 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 – [www.wicourts.gov](http://www.wicourts.gov).

**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
- 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 yrs 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 on Aug1,1981-April 30, 2004 :Permanent
  - filed on or after may 1, 2001 : 20 yrs
- 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 yrs 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 yrs Class A fel.)
- Jury Records - 4 years

**Retention Periods Under SCR 72.01****By Record Type:**

**By Record Type Cont:**

- Juvenile Delinquency Records
  - 4 years after 18<sup>th</sup> birthday
  - 75 yrs if adjudicated for act punishable as a felony
- Juvenile Guardianships – 7 yrs after 18<sup>th</sup> birthday
- Juvenile JIPS/CHIPS Records - 4 yrs. after 18<sup>th</sup> 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 yrs if ongoing payments)
- Proceedings commenced under 968.02 – 75 yrs
- Public Assistance Liens – 20 yrs
- Register of Officials - 2 years
- Registry of Wills - 100 years
- Search Warrants (if not filed 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

**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 18<sup>th</sup> birthday)
- Juvenile Delinquency Cases (4 years after 18<sup>th</sup> 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
- 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**

- Coroners Inquest Records (979.08(6))
- Information & Indictment Records
- Judgment & Order Records
- Ministers Credentials
- Naturalization Records (Transfer to SHS)
- Notary Public Appointments• Juvenile Guardianships (7yrs after 18<sup>th</sup> birthday)
- Mental Health Cases
- Oaths of Office

**Other Useful Retention Periods**

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

## APPENDIX: 21

### Destruction of Mushrooms

#### MUSHROOM DISPOSAL

This is Bob Block, head of the drug identification unit at the crime lab in Madison. Psilocybin mushrooms are difficult to grow as conditions must be very sterile during the growth process. If the growth culture is exposed to air this will generally cause the growth process to stop due to contamination. Therefore, disposal is pretty straight forward.

If you have jars with growth culture (with or without caps) with no mold present, then either no spores were added to the growth culture or they were contaminated and the spores either will not grow or have been dried out and are dead. In this case simply dump out the growth culture and throw the jars away.

If you have jars with white mold (but not mycelium - see next possibility below) - then you may or may not have mushrooms growing. In this case, simply remove the caps and expose the growth culture to air and let air dry for a day or two. This will contaminate the culture killing any spores. After the culture has dried for a day or two, dump out the culture and throw away the jars.

If you have mycelium in your jars (mycelium is a white stringy, angel-like hairs mold), then you have the final step before the mushrooms pop out or start to appear and grow. Depending how long the process has gone, the mycelium may or may not contain psilocin. If you have no mushrooms present, then either it just hasn't gone long enough or the culture is contaminated and the mushrooms will not grow. In this case, do the same as above removing the caps, letting the culture air dry for a day or two to kill (contaminate) the growth culture. Again, after drying dump out the growth culture and throw away the jars.

If you have mushrooms growing, they can be removed from the jars, air dried and submitted to the lab for analysis if you need to have that done. After the mushrooms are removed, let the growth culture dry for a day or two to contaminate the growth culture. After that, dump out the growth culture and throw away the jars.

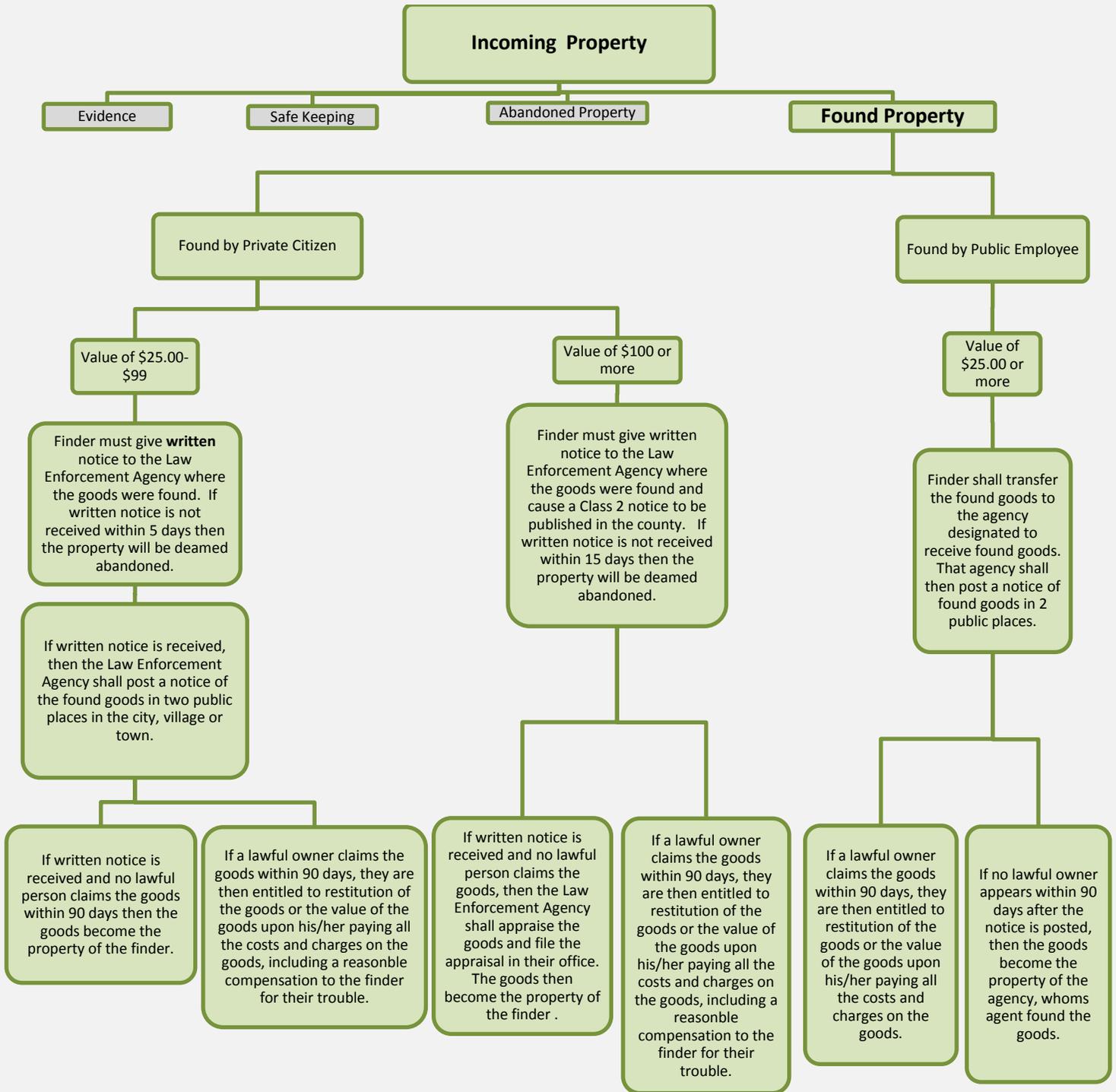
The mushroom spores are usually shipped and stored in tubes containing water and the spores. If you have the spores, those could simply be poured out. I would dump them on a parking lot surface where there is no dirt and the surface is pretty contaminated which would kill the spores. Even if you dumped the water down the drain, the spores are very unlikely to grow as they would be badly contaminated.

Hope this answers your question about disposal of the growth culture. Should you have any further questions regarding this disposal feel free to email or call me (608-266-2031) at the crime lab in Madison.

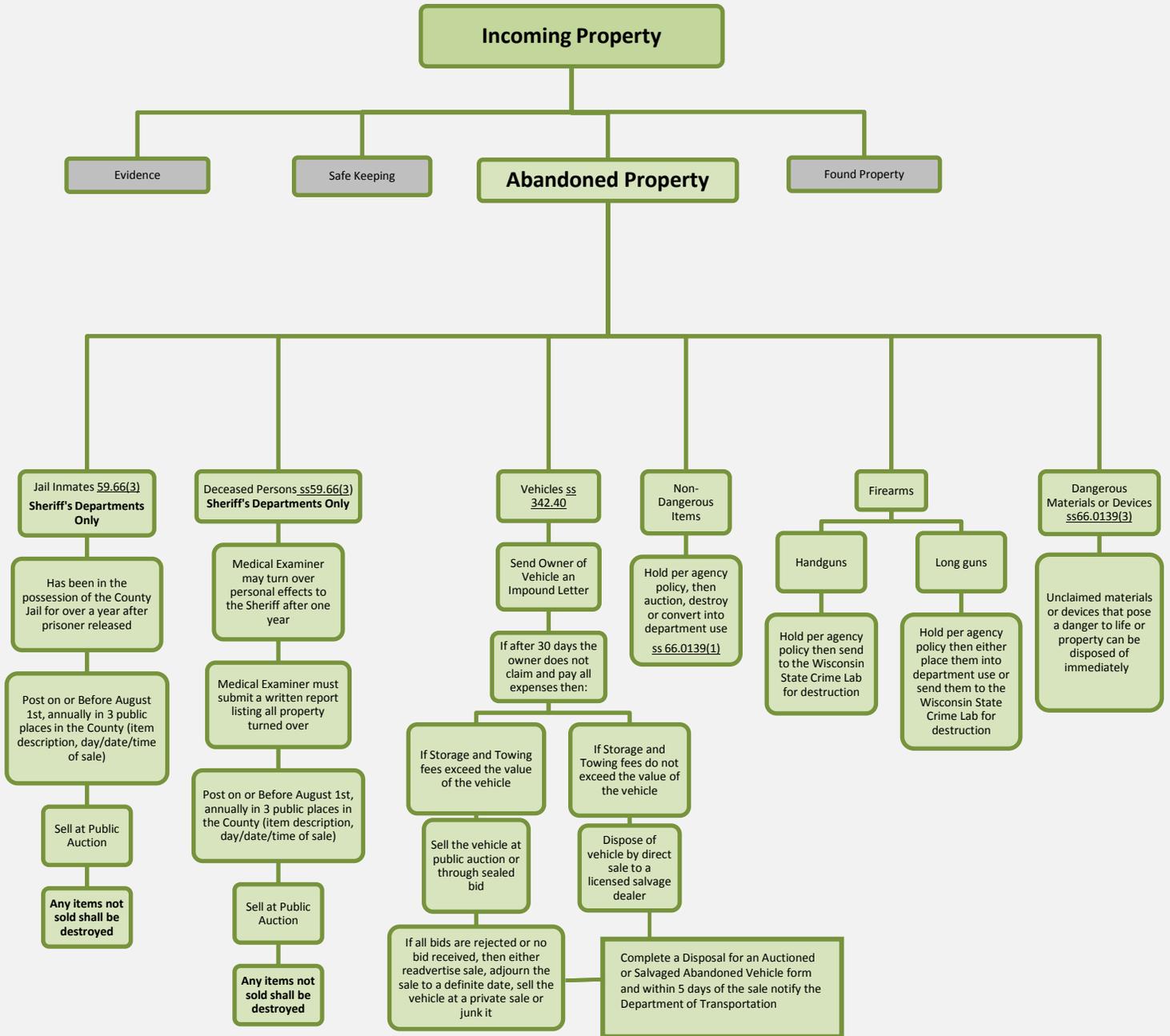
Bob Block  
Drug Identification Unit  
WI Crime Lab



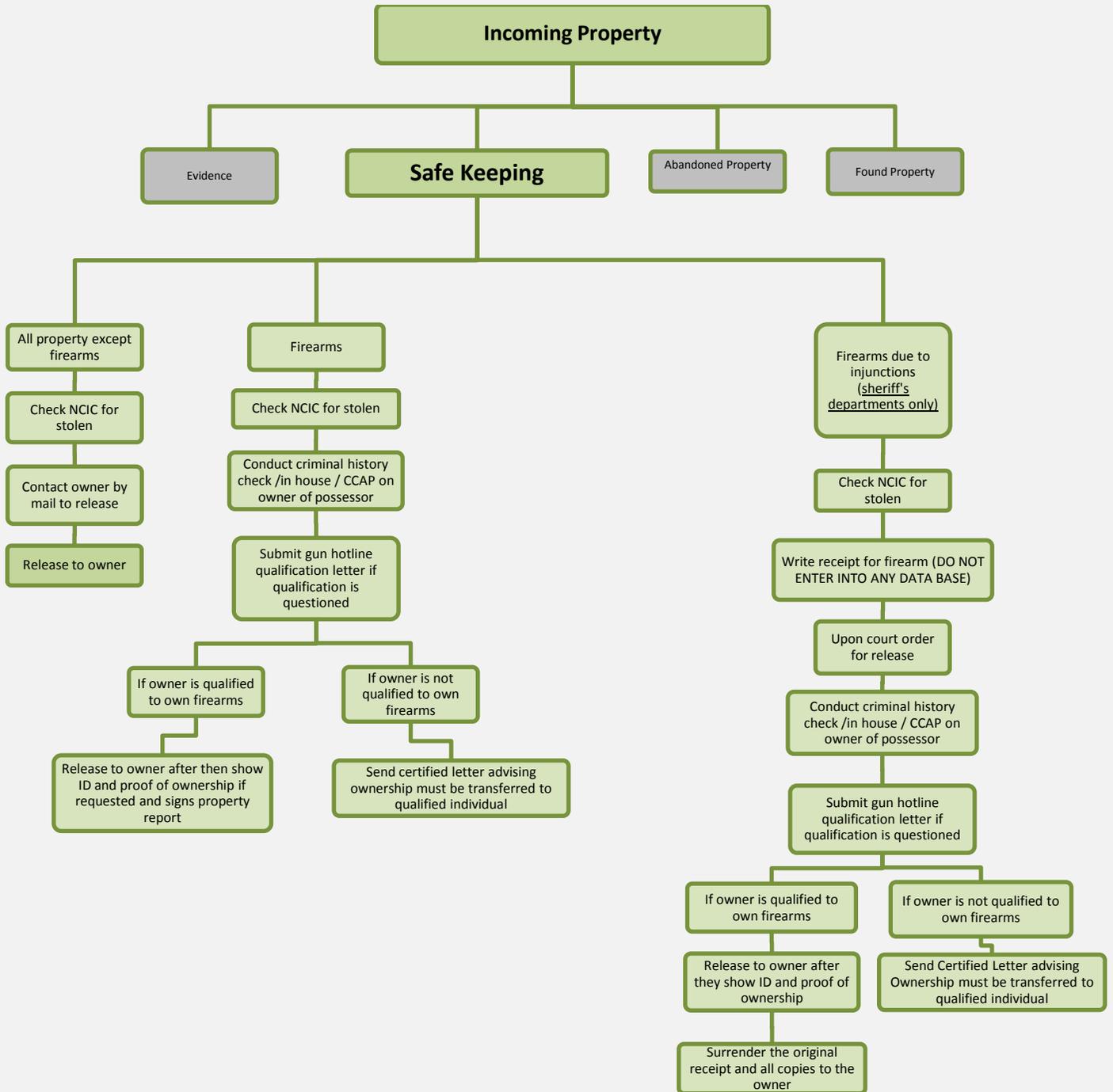
APPENDIX: 23



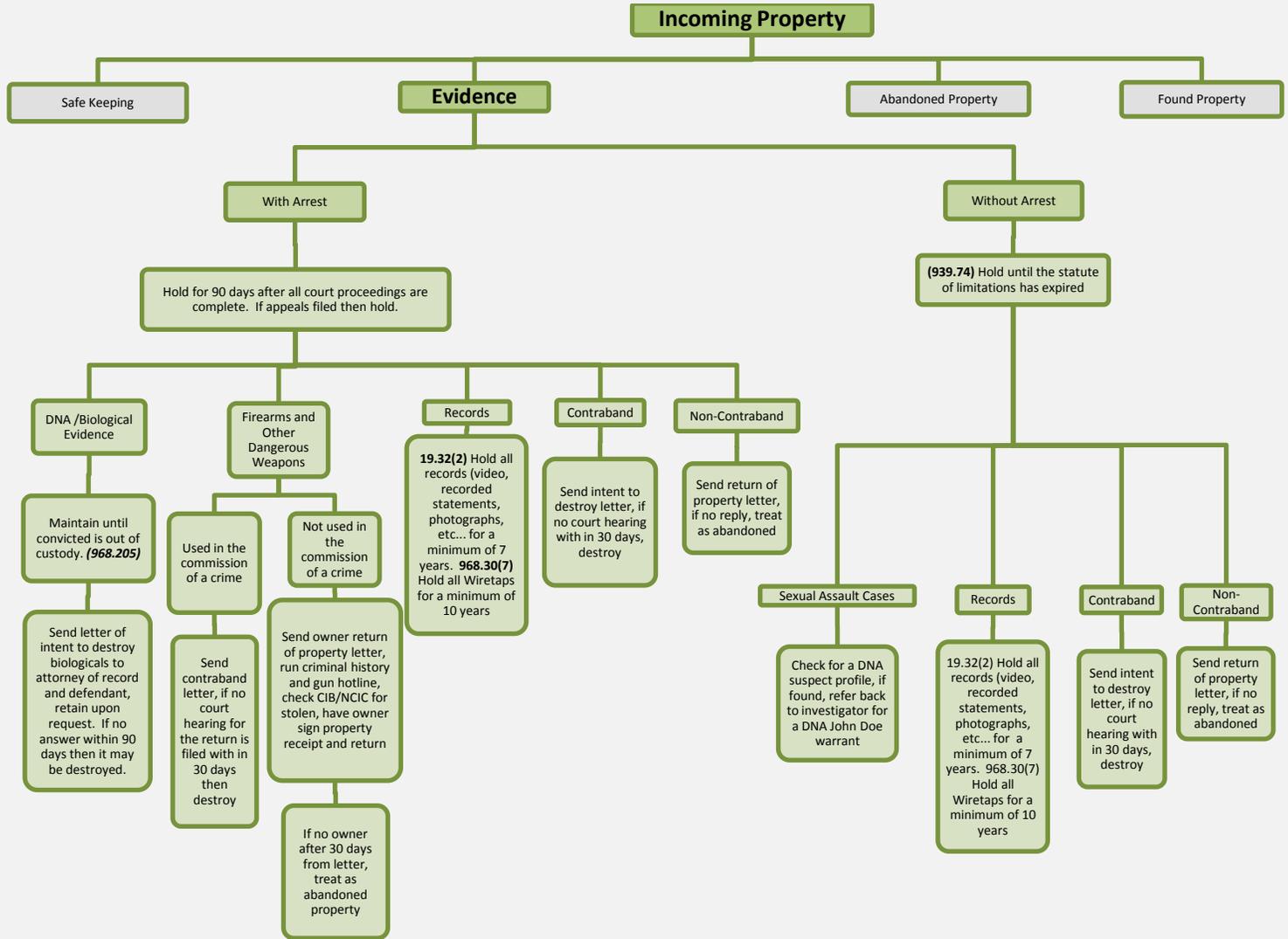
APPENDIX: 24



APPENDIX: 25



APPENDIX: 26



## APPENDIX: 27

### 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, as 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 district attorney 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 district attorney. 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 district attorney 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 has to 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 district attorney 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 district attorney 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 district attorney 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)**.
6. 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: 28**

**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 <b>dishonorable</b> 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 <b>illegally</b> 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 <b>fugitive</b> 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: 29**

**Statute of Limitations Changes for Certain Sexual Abuse Crimes**

<u>Act</u>	<u>Effective</u>	<u>Date Statute of Limitations</u>
1987 Wis. Act 332	July 1, 1989	Victim reaches age 21 or 6 years, whichever is later §948.02(1)
1993 Wis Act 219	April 22, 1994	Victim reaches age 26 §948.02(1)
1997 Wis. Act 237	June 16, 1998	Victim reaches age 31 §948.02(1)
2003 Wis. Act 279	May 1, 2004	Victim reaches age 45 §948.02(1)
2005 Wis. Act 276	April 20, 2006	No Statute of Limitations for §948.02(1) and §948.025 (1) (a-d)
2011 Wis Act 282	April 26, 2012	No Statute of Limitations for §940.225(1), attempt §940.225(1) and Attempt §948.02(1)

## APPENDIX: 30

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

1. LE agency seizes money and determination 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 filed or return of property motion 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 with 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. *Id.* If you believe money in your possession is contraband, you should consult with your district attorney.

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?