



APD Policy CHAPTER 13 Evidence and Property	ABERDEEN POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL
<p><i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i></p>	
<p>Applicable State Statutes: 23A-3-8, 23A-37-1, 23A-37-2, 23A-37-3, 23A-37-4, 23A-37-5, 23A-37-6, 23A-37-8, 23A-37-9, 23A-37-10, 23A-37-11, 23A-37-12, 23A-37-13, 23A-37-13.1, 23A-37-14, 23A-37-15, 43-41B-1</p> <p>South Dakota Division of Criminal Investigation - South Dakota Drug Control Fund Statewide Policy December 5, 2016</p>	
<p>RELATED POLICIES:</p>	
<p>DATE IMPLEMENTED: June 15, 2020</p>	
<p>SPECIAL INSTRUCTIONS:</p>	<p>NUMBER OF PAGES: 29</p>

- I. **PURPOSE:** The purpose of this policy is to direct officers of this agency in the proper handling and accounting of found property, evidence, and in particular, monies seized during drug trafficking investigations.

- II. **POLICY:** The policy of this Department is to provide for the safekeeping of all property that comes into the possession of this agency. With respect to evidentiary items, this agency shall maintain a proper chain of custody and secure such items in a manner that will ensure that the evidence is available to be admitted at trial. It is the policy of this agency to comply with the procedures established in December 2016 by the South Dakota Division of Criminal Investigation and Attorney General's Office for the purpose of efficiency, accountability and timeliness of cash deposits related to seized monies in drug investigations/interdictions. Officers and investigators of this agency will work closely with the property and evidence officer of this agency to ensure compliance with both this policy and the property and evidence policy.

III. Rules and Regulations and Provisions Applicable to All Evidentiary Items:

A. General

For the purposes of this policy, the term "property" shall be defined to mean those physical items which come into the possession of the Department as a result of its lawful activities and which are other than items purchased with governmental funds, donated for ownership by the department, or converted to Department use in accordance with the Aberdeen City Code and South Dakota Codified Law. Property consists of three types of items:

1. Evidence which has been seized by law enforcement officials in the course of investigating a crime or with the knowledge its existence is likely a result of a criminal act. Members of this Department/Office shall only seize items under the following conditions:
 1. Officer has probable cause to believe that an item is contraband. (Contraband is an item(s) that by their very nature are illegal to possess. E.g. illegal narcotics.)
 2. Officer has probable cause, at the moment of seizure, that the item to be seized is stolen.
 3. Officer has probable cause, at the moment of seizure, to believe that the item is evidence of a crime.
2. Property retained for safekeeping which has been voluntarily given up to the Department in order to prevent a crime or the reoccurrence of a crime but is not being held by the Department in order to prove the existence of a crime or the identification of an individual responsible for a criminal act.
3. Found property that has been brought to the Department either by police officers or citizens. The Department will utilize available informational resources in order to return the property to its owner.

B. Property Rules

1. It is the rule of the Aberdeen Police Department that all property coming into the custody of the Department shall be properly recorded, stored, safeguarded, accounted for, made available when necessary, and returned to its owner as required by law. In the event a lawful return of the property is not possible, such property will be handled according to law.

2. Property or evidence which has been discovered, gathered, or received in connection with departmental responsibilities, will be processed in accordance with departmental procedures and established rules of evidence. Officers shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold any property or evidence in connection with any investigation or other police action.

3. All confiscated, found or recovered weapons shall be transferred to the control of the Property Clerk, as well as any other items that might be construed as weapons. **Firearms should not be bagged, or wrapped in plastic or paper to make it indistinguishable.** They shall be placed in an approved cardboard container that is marked as a weapon. Any knife or other sharp or cutting object shall be packaged so as to immediately identify it as a sharp object and not have protruding edges.
 - a. All firearms submitted to the Property Clerk for custody in the property system shall be **unloaded or otherwise rendered safe to handle.**

 - b. All firearms are considered high value items and enhanced security measures should be considered. Firearms should be segregated and not co-mingled with other property and evidence.

 - c. Safety procedures should be in place and require that any weapon seized by an officer is made “safe” and “inoperable” by physically inspecting the weapon to ensure that the weapon is unloaded and placing some type of device on the weapon to keep it from functioning as designed (i.e. This may be accomplished using a wire-wrap tie down secured through the breach of a firearm to prevent operation/discharge). These weapons should be placed in an individual gun storage box and sealed. Some means of visibly identifying the weapon as inoperable – “SAFE” would increase safety and ensure policy compliance.

 - d. No firearm held by the agency will be returned to the rightful owner with or without a court order until a criminal history check and other appropriate database checks have been completed to determine if the owner would be in violation of law to possess a firearm. No firearm should ever be returned to the owner who is prohibited from lawful possession. A check of available databases concerning domestic violence protective, restraining, or non-contact orders shall be conducted to determine if the person

receiving the firearm is prohibited by law from possessing a firearm.

- e. A note that appropriate checks were completed prior to return should be documented in the evidence management system.
- 4. Any evidence that is considered a bio-hazard, due to blood or other body fluid shall be air dried in the designated area. This includes clothing, or other items that are wet or soiled. After complete drying, the item(s) are to be properly packaged and marked as a bio-hazard risk.
 - 5. Any evidence/property seized by an officer shall be processed and either given to the Property Clerk or placed into a property locker before that officer ends his/her shift. If a temporary locker is utilized, the property shall be relocated to the property room lockers as soon as practical. Property may not be stored in temporary lockers without being accompanied by the relevant incident number.

No evidence or property shall be stored in a city vehicle, office, desk, or personal locker without supervisory authorization.

Property may be stored in the Drug Task Force office or the computer forensics lab when the additional security measures are being utilized.

- 6. In order to protect police personnel from unwarranted allegations of theft of monies from individuals the following rules apply:
 - a. All officers who while in the process of handling persons under arrest, serving a search warrant, finding unclaimed currency, or come into the custody of a wallet, purse, or other device used for the purpose of carrying money, should in the presence of another officer or employee, make a count of the cash contained in such for the purpose of verifying the amount of cash. Refer to property packaging manual for correct procedures to processing cash.
 - 1) Each member will sign the property form when applicable verifying the cash was counted by both, and the correct amount was labeled.
 - 2) After cash has been placed into property, it will be placed in a secure safe used only for storing found, seized, or cash held for safekeeping by the Property Clerk or his/her designee.

- b. Officers who are booking arrestees into the Brown County Jail shall, notwithstanding any previous count of money, count the arrestee's cash in the presence of the receiving jailer so as to provide a second point of verification as to the amount of money being carried by the arrestee.
7. The Property Clerk, Detective Sergeant and Services Division Commander are the only personnel who have authority to access evidence or property placed in the Property Room.
8. No member or volunteer of the Aberdeen Police Department shall transfer or convert any found, seized, or property placed into safekeeping, regardless of category, to his/her personal use except through the purchase of such property at public auction.
9. All lockers which contain property or evidence, located in police buildings, are the property of the Department. They may be subject to periodic search without notice.
10. All animals stolen, strayed, lost, or confiscated that come into the possession of the Aberdeen Police Department shall be sent to an animal shelter located within the county.

C. Property Records

1. Each item of property coming into the custody of the Department shall be entered into the Aberdeen Police Department records management system by the responsible member. Such entries will contain all pertinent information by the acquiring or seizing employee and no property will be accepted into the Department's property system unless it is properly entered.
2. Upon receipt of property that is properly identified in the records management system, the Property Clerk will enter the description of the property and other relevant information into the RMS.

D. Receiving and Handling Property

1. **Abandoned Property/Articles Found or turned over to police:** Abandoned property and articles found which come into the custody of this agency shall be initially handled in accordance with the general provisions of this policy. In addition to the general provisions, the following specific procedures shall be followed:
2. If the item contains any identifying feature of ownership, an attempt will be made to contact the owner. If an owner is found, then the

procedures above for the returning of “mere evidence” shall apply for the return of these items.

3. While the provisions of state law allow for the quick disposal of property, this agency shall attempt to contact the claimant of any property before disposing of the property in accordance with the laws of this state.
4. All property that remains in the custody of the property officer without any lawful claimant thereto, or if the right to possession of the seized property cannot be determined after a reasonable period of time, the law enforcement agency collecting such property, through an order of the court, may:
 - i. Transfer ownership of the property to any governmental agency having a legitimate need for such property; or
 - ii. Sell the property and deliver the proceeds of the sale to the appropriate finance officer of the city, county, or state employing such law enforcement agency.
5. All animals stolen, strayed, lost, or confiscated that come into the possession of the property clerk shall be sent to an animal shelter located within the county, if there is one, or if there is none to an animal shelter in another county.
6. No property shall be delivered to the property officer except as provided in this section.
7. No property shall be disposed of by the property officer, except in the manner prescribed by law.
8. If any property in the custody of the evidence officer is desired as evidence in any court, such property shall be delivered to any officer who presents an order to that effect from the court. Such property shall not be retained by the court but shall be returned to the property officer.
9. All property, which has been seized and is forfeited pursuant to law, shall be disposed of as provided in the court order of forfeiture.
10. To insure items of property which may potentially pose a safety hazard or will be required for prosecution are admitted and handled only by the proper personnel, the following guidelines will be adhered to:
 - a. All items of property which are contraband, firearms, or are offered as or determined to be evidence of a crime, will be received, handled, and admitted into the property system only by commissioned members of the Department.

b. Keys and glasses which are received as found property may be received, handled and admitted by non-commissioned members of the Department.

- 1) Found property is accepted by the Department as a public service and the Department is reasonably expected to use its informational resources to locate the owner and to return the property to the owner. Property, which presents a danger to members or the Department building, shall not be accepted.
- 2) It is the responsibility of the employee receiving the found property to obtain the name, address, and phone number of the finder so that, in the event the owner is not located, the finder may claim the property as is provided by law.
- 3) Bicycles which are found, either by employees or by citizens, shall be taken to the bicycle storage area at the vehicle impound. An ID number shall be attached to the bicycle via plastic tag tape for identification.

c. In all cases, evidence or property that comes into the possession of employees shall be packaged according to the instruction manual, labeled and placed into any evidence lockers or given directly to the Property Clerk. Any exception to this rule must be authorized in advance, in writing by a Division Commander.

11. Hazardous Materials and Explosives

- a. Materials which are hazardous to the health and safety of members (with the exception of commercially available fireworks), are not to be brought into the Police Department building.
- b. Hazardous materials acquired in the field shall, if practical, be properly identified, labeled, and arrangements made with the Fire Department Safety Officer for their storage.

12. When seizing items of value (money/jewelry/precious metals/electronics) officers shall make a handwritten inventory of the items at the scene of the seizure. When feasible two officers shall conduct this inventory. Both officers shall then sign the handwritten inventory. When the seizing officer is working alone, and a second officer is unavailable he shall make every effort to document the seizure at the time the items are seized. This can be done by taking notes and photographing the items at the scene.

When the property is being entered into the property/evidence storage area the evidence officer will verify the seized items against the written property seizure forms.

- a. When money or property, other than that seized pursuant to chapters 23A-35 to 23A-37, inclusive, is taken from a defendant arrested pursuant to state law, the law enforcement officer taking it must:
 - i. Make duplicate receipts therefore, specifying the amount of money or kind of property taken and;
 - ii. Present one of the receipts to the defendant.
 - b. In cases where professional expertise is required to make a proper accounting of the property, the Sheriff/Chief shall be notified so that the services of an expert may be obtained.
 - c. Once an item is seized it shall be transported to the agency and safely kept and may not be taken from its custodian as long as it is required as evidence in any trial without an order of such court.
 - d. The officer who has seized the property shall fill out a property form.
 - e. In cases where the items relate to a criminal investigation all forms necessary for criminal processing shall be compiled.
 - f. Evidence shall be properly marked or tagged with the report number, the date of seizure, the arresting officer's name and identification number as well as the suspect's name where applicable.
 - g. The item shall then be stored in a secure area which has been previously designated by the Sheriff/Chief.
- 13. Currency:** Where the actual currency is not necessary for evidence, and with authorization from the prosecutor, currency shall be deposited for safekeeping in a federally insured banking institution in an agency limited access account.
- i. Deposit slip for currency shall be attached to agency property form.
 - ii. Withdrawal forms shall be attached to property form as will signed receipt upon release of said currency.
- E. Stolen Property:** In addition to the general provisions of this policy, the following particular provisions also must be complied with when dealing with stolen property or property for which there is probable cause to believe is stolen. It should be noted that state legislatures set diverse requirements for types of stolen property and for property that has been recovered as stolen from varying crimes. It is the intent of this policy to be broad enough to cover all stolen property irrespective of the crime or type of property that will meet all the requirements of law.

1. When dealing with any type of stolen property officers responsible for that property shall comply with the provisions of South Dakota state law.
2. The evidence officer shall secure the property believed to be stolen. Create an inventory detailing the property taken into custody in accordance with the general provisions of this policy.
3. The evidence officer shall maintain a log of every item brought into the custody of this department and verify that the property is assigned a report number.
4. The evidence officer may deliver the stolen property to its rightful owner upon satisfactory proof of ownership after meeting the provisions of state law.

F. Other seized property: In the course of investigating crime, it is often necessary to seize what courts refer to as “mere evidence” to establish a connection between a suspect and a crime. This would include items such as wallets with identification, clothing, photographs, and any other item that belongs to a suspect, victim or witness to a crime. While some of these items may have no monetary value, they may in fact be valuable to the rightful possessor of the property. In addition to the general provisions of this policy which must be followed for all items coming into the custody of this agency, the following particular provisions shall also be followed:

1. Prior to returning any property to a claimant the following criteria shall be met:
 - i. A complete photographic record of the items shall be made including at least one photo depicting the claimant and the items shall be made. This photograph shall be tagged by the evidence officer and kept on file.
 - ii. The person claiming the property shall complete a signed declaration of ownership of the items under penalty of perjury.
 - iii. The owner is not prohibited by law from possessing such property
 - iv. The property is not needed as evidence in any judicial proceeding
 - v. Satisfactory arrangements having been made to return such property to the court if subsequently needed
 - vi. No items in the custody of this agency shall be disposed of except in accordance with the provisions of this policy.

G. Transferring Evidence to Court

Evidence required in court for prosecutorial purposes will be released by the Property Clerk, or designee, to the impounding officer/investigating officer for

presentation in court. The evidence will be returned to the Property Clerk, or designee, immediately after all legal proceedings have been completed.

1. All evidence shall be returned to the Property officer, or designee, in the original tagged packages.
2. If any of the evidence is retained by the court, the presenting officer will notify the Property Clerk so the records can reflect the status of the evidence.
 - a. The impounding officer/investigating officer will complete a supplement report under the Incident Number in RMS, recording the movement of the property, if not returned from court.

F. Disposition of Property and Evidence

1. At the conclusion of a court action, or the closure of an investigation, the prosecutor will complete a disposition form and forward it to the Property Clerk. Such form will authorize the Property Clerk to dispose of any evidence or property connected with such case according to law.
2. The Property Clerk will consult with the prosecutor on a regular basis to determine what evidence or property may be disposed of as a result of a court order, by the Department.
 - a. When the evidence is released by the prosecutor the Property Clerk will note in RMS under the case the date the property can be released.
 - b. The Property Clerk will release/dispose of property held, 30 days after adjudication of the defendant(s) based on a court order.
 - c. Upon receipt of the court order to release/dispose property, the property clerk will send a letter to the owner of the property with instructions of how to retrieve the property.
 - d. After thirty (30) days from the date of the letter being sent, if no response from the owner has been received, the property shall be disposed of as described in section 13-G-1, 2, & 4.
3. Property that is found by an individual can be claimed by the finder after the statutory time limit for finding the legal owner has expired. In all cases of found property, the Department reserves the right to secure legal determination before releasing property. The finder may not necessarily be entitled to the found property. This decision is at the discretion of the department and court.

4. Upon receipt of a Court Order, the Property Clerk will comply with the requirements set forth in the order pertaining to the property in question.
5. Prior to the release of any firearms to an owner, a background investigation will be conducted by the property technician and/or a detective to ensure the individual is allowed by law to possess the firearm.
6. If the individual is prohibited from possessing the firearm by South Dakota law, Federal Law or other applicable law, the firearm shall be disposed of in accordance with South Dakota Codified Law and Department Policy.
 - a. Prohibited by law:
 - i. 18 U.S.C. section 922 (g)(9) – It shall be unlawful for any person who has been convicted in any court of a misdemeanor crime of domestic violence to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.
 - ii. SDCL 22-14-15 – Possession of firearm by one with prior Violent crime conviction or certain drug-related conviction – Felony—Fifteen-year period. No person who has been convicted in this state or elsewhere of a crime of violence or A felony pursuant to section 22-42-2, 22-42-3, 22-42-4, 22-42-7, 22-42-8, 22-42-9, 22-42-10 or 22-42-19, may possess or have control of a firearm. A violation of this section is a Class 6 felony. The provisions of this section do not apply to any person who was last discharged from prison, jail, probation, or parole more than fifteen years prior to the commission of the principal offense.
 - iii. SDCL 22-14-15.1 – Possession of firearm by one with prior drug conviction—Felony—Exception. No person who has been convicted of a felony under chapter 22-42 or of a felony for a crime with the same elements in another state may possess or have control of a firearm. A violation of this section is a Class 6 Felony. The provisions of this section do not apply to any person who was last discharged from prison,

jail, probation, or parole, for a felony under chapter 22-42 more than five years prior to the commission of the principal offense and is not subject to the restrictions in section 22-14-15.

iv. SDCL 22-14-15.2 – Possession of firearm by one convicted of misdemeanor crime involving domestic violence—Misdemeanor—Civil Rights restored—Repeal of section—Order restoring rights. No person who has been convicted of any misdemeanor crime involving an act of domestic violence may possess or have control of a firearm for a period of one year from the date of conviction. Any violation of this section is a Class 1 misdemeanor.

7. Specific Firearms Disposition Protocol:

- a. SDCL 23A-37-9 – Destruction of contraband and illegal property—Sale of articles capable of lawful use—Controlled weapons or firearms. Articles of contraband or property of an illegal nature shall be destroyed, except that any articles which are capable of lawful use may in the discretion of the court be sold and the proceeds disposed of as provided in section 23A-37-10. However, the provisions of section 23A-37-13 apply to any controlled weapon or firearm.
- b. SDCL 23A-37-13 – Controlled weapons and firearms disposal. Any Controlled weapon or firearm used in violation of chapter 22-14 shall be disposed of as follows:
 - I. If it is stolen, it shall be returned to the lawful owner upon proof of ownership; or
 - II. If it is illegal, it shall be destroyed pursuant to law; or
 - III. If it is neither stolen nor illegal, it shall be delivered to the arresting agency or, at the direction of the attorney general, to the South Dakota Forensic Laboratory for scientific examination purposes, for lawful use or disposal.

In the case of a disposition pursuant to subdivision (3), the arresting agency or forensic laboratory may use, trade-in, destroy, or sell, as provided in section 5-23-32, 5-24-9.2 or 6-13-6, the

controlled weapon or firearm.

- c. Emergency Mental Holds;
 - i. Regarding weapons seized pursuant to an emergency hold, the weapons shall be held by the Police Department for a period of no less than ninety days after the date of the hold. After the designated time period, if the property owner seeks return of the seized firearms, he/she shall apply for a hearing with the Clerk of Courts to seek the return of firearms. Only upon an order from the court shall a firearm be returned to the owner.
 - ii. It shall be the responsibility of the City Attorney to represent the police department in this matter.
- d. In the event that the owner of a firearm is prohibited from having it returned, the owner will be notified of such in writing, prior to the disposal of the firearm. The exception to this section is if a court hearing has been held and the court has found that the firearm should not be released to the owner.
- e. When court orders for the release of firearms appear to conflict with federal law, the matter shall be forwarded to the City Attorney for review.

G. Disposal of Property

Disposal of property and evidence which is no longer of evidentiary value shall be accomplished through one of the following methods and in accordance with the Aberdeen City Code and the South Dakota Codified Laws:

1. Destruction - the Property Clerk will arrange for the destruction of property or contraband that is of little or no value or which is not disposed of by any other method. The Chief of Police or the Services Division Commander will approve the method and time of destruction of all property.
2. Conversion to departmental use – firearms, ammunition and other equipment which are serviceable and appropriate for Aberdeen Police Department use may be converted to the Department's use with a Court Order based on South Dakota Codified Law.

3. Return to owner – normally all property should be returned to the owner unless:
 - a. It is the instrumentality of a crime; or
 - b. Its return would pose a threat to the health and safety of the community.

4. Sale at Public Auction - on an as needed basis, the City will hold a public auction to dispose of items which have not been reclaimed by the owner (with the exception of firearms). Such items will be sold in accordance with the Aberdeen City Code and the South Dakota Codified Law to the highest bidder.
 - a. All funds from the sale of items during a public auction shall be placed into the General Fund of the City of Aberdeen.
 - b. Items sold which have been confiscated in the course of investigations into the sale and/or possession of narcotics and dangerous drugs may be sold separately with the proceeds placed in the State Department Drug Enforcement Fund.

5. Firearms, which are of considerable value and not appropriate to departmental use may be sold or traded to persons or businesses in possession of an U.S. Federal Firearms license.

6. **Seized Monies in Drug Investigations/Interdictions:** In order to create more efficiency, accountability, and timeliness of cash deposits the South Dakota Division of Criminal Investigation (DCI) along with the Attorney General's Office established procedures to deposit seized monies in drug investigations/interdictions. These procedures were established to help preserve evidence related to criminal cases and eliminate cash sitting in evidence rooms for extended periods of time. Officers of this agency will comply with the following established procedures. Seized monies can now be deposited as soon as possible in any of the three banks identified at the end of this policy. Several branches (45) exist for each of these South Dakota banks. In the event the evidence officer of this agency needs help facilitating the deposit or counting/documentation of these seized monies the officer will contact the DCI field office. The normal asset forfeiture paperwork will remain the same.

- a.** Officers of this agency will comply with SDCL chapters 34-20B, 23A-49 and related statute(s) dealing with forfeiture law.

- b.** Officers are not encouraged to seize less than \$500 cash.

- c.** Upon discovery of cash assets linked to drug trafficking or possession, officers shall photograph the money and, if possible, have another law enforcement officer or employee witness the counting of the seized cash. Witnesses shall be noted on the forfeiture form and investigative files. Provide the subject with the evidence inventory form(s) verifying the amount of the cash. If possible, have the Subject of the forfeiture also initial the evidence bag containing the seized money. Seal the evidence bag.
 - i.** The evidence officer will maintain proper evidence and chain of custody procedures with seized cash.

 - ii.** Officers seizing cash or assisting another agency in a cash seizure will consult with the prosecutor assigned to the criminal case in the jurisdiction of the seizure to verify the actual seized cash is not needed for evidence. This information will be reported to the property and evidence officer of this agency.

 - iii.** If there is no criminal case but only a seizure of cash that is linked by evidence to drug proceeds, the Assistant Attorney General assigned to the civil forfeiture case shall be consulted to determine if the cash may be deposited.

 - iv.** The consultation with the county or state prosecutor and the decision made to deposit the cash will be noted in the officer's report.

- v. If the seized cash was found within a bag or container, or was wrapped or bundled, every effort will be made to photograph, preserve, and store this evidence for later processing, as it may provide potential forensic evidence. The Chief or their designee will also consider listing the contraband or other assets for seizure purposes or it may be required to be released.

- vi. An asset forfeiture form shall be completed, listing all currency by denomination of bills and coins. The forfeiture form will be filed with the Attorney General's Office within five (5) working days of the seizure. A copy of the forfeiture form will be filed in the investigative case file.

- vii. The evidence officer of this agency shall deposit the cash as soon as possible into a designated bank. The evidence officer will facilitate the cash being deposited and documented by the bank's cash counting machine which will also identify the quantity and denominations of the cash seized. Copies of the receipts, evidentiary forms verifying the amount of the cash seized, and the deposit slip shall be forwarded directly to the Pierre DCI office for the civil forfeiture file.

- viii. Designated bank:
Great Western Bank
Deposit Only Account #14056247
Aberdeen

7. Narcotics Disposal

- a. It shall be the responsibility of the evidence officer to perform a reconciliation between the drugs within the custody of this department and the disposition of cases. The purpose of this reconciliation is to determine those cases where the drugs will no longer be needed as evidence. In cases where the drugs are no longer needed, the drugs will be destroyed in accordance with the procedure set by the State of South Dakota.

- b. A drug destruction sheet indicating which narcotics are ready for destruction shall be prepared by the evidence officer on a monthly basis. This destruction sheet shall include the following information: report number, toxicology number, name of

defendant, disposition of the case, gross weight of the narcotics and two open categories for the initials of the officer who ultimately destroys the drugs as well as the outside witnesses and a second open category where the date of destruction will be filled in following destruction.

- c. The drug destruction sheet shall be forwarded to the supervisor designated by the Chief who will verify the dispositions of the case.
- d. A supervisor designated by the Chief who does not have authority over the evidence room shall review the drug destruction sheet and determine the compliance with the above listed procedure. Once it has been determined that there is compliance the designated officer shall approve the destruction of the narcotics in writing.
- e. No drugs will be destroyed before there is complete compliance with the above listed procedure.
- f. Once the supervisor has approved the destruction of drugs, a copy of the destruction sheet shall be kept on file.
- g. The supervisor and the evidence officer will then travel together to the disposal site. Narcotics will then be destroyed in accordance with the procedure set forth by the State of South Dakota.

IV. SYSTEM OF POLICY AND PROCEDURE

A. PROPERTY CONTROL

1. INTRODUCTION

In order for evidence to be accepted by the courts at the time of trial, it is essential that the chain of custody of evidence be properly maintained and documented. It is the responsibility of the arresting or reporting officer to properly package and tag all property and/or evidence.

2. PROCEDURE

a. Required Documentation.

- 1) Evidence and Found Property will be ENTERED by the responsible officer.
- 2) Once all the necessary paperwork has been completed and the evidence or property is properly bagged, sealed, and tagged, the evidence will be placed in the pass thru lockers.

b. Currency.

A currency evidence envelope is used to control and properly handle seized money which comes into the possession of the Department.

- 1) Remove cash from original container.
- 2) Original container should be packaged separately and treated as a separate item.
- 3) Count each denomination separately and determine total amount.
- 4) Have second person count, verify, and sign.
- 5) Place money into currency evidence envelope.
- 6) Complete all information.
- 7) Sign name and print ID number.
- 8) Place currency evidence envelope into pass thru evidence locker.

c. Releasing Firearms.

- 1) Prior to the weapon or ammunition being released back to the owner, a firearms release form will be completed and signed by the owner. The Property Clerk will review the owner's criminal history to determine if Federal law restricts that person from claiming the item(s).
- 2) If the record shows a disqualifying conviction, the items shall not be released back to the person until ordered to do so in writing by a Court Order.

d. Evidence Submitted to the State Laboratory for Analysis.

- 1) Evidence submitted to the laboratory for analysis should be packaged in an acceptable manner. No evidence submitted to the State Lab will be accepted unless it is contained in or accompanied by a manila Lab envelope with the required data on the front of the envelope properly filled in. Officers requesting items to be sent to the State Lab should notify the Property Clerk.
- 2) Guidelines for Evidence Packaging
 - a) When package size permits, submit items in envelopes provided by the state lab.
 - b) Oversized item should be packaged in boxes or paper sacks. Label all biological samples, or sharp objects.
 - c) Each item submitted should have the following

necessary information:

- 1a) Name of suspects and /or victims;
 - 2b) Date and time of incident;
 - 3c) Investigating officer;
 - 4d) Case number; and
 - 5e) Description of evidence and tests desired.
- d) Evidence should be sealed with evidence tape and initialed. No staples.
 - e) If possible, submit the RMS report on homicide or rape cases.
- 3) Sex Crime Kits should be submitted to the laboratory in accordance with South Dakota state law **SDCL Chapter 23-5C**.
 - a) Keep refrigerated between collection and submission time.
 - b) Package all associated evidence in paper only.
 - c) Document the type of analysis requested.
 - 4) Narcotic Evidence
 - a) Illegal drugs shall be weighed on a designed scale. The gross weight of the drug and packaging material should be noted in the RMS report.
 - b) Evidence will be secured in an evidence locker in a forensics envelope and listed on the Property/Evidence form.
- e. **Evidentiary Narcotics:** Officer who seizes drugs shall complete all paperwork that accompanies these arrests. The suspected narcotics should be field tested, where applicable, properly packaged, and tagged. The tag should include the report number, defendant's name, date of seizure, and the seizing officer's name. The tagged narcotics along with the property form shall then be placed in a secure area which has been previously designated by the Sheriff/Chief. Copies of all associated paperwork should be included with the evidence.
- 1) Drugs should be removed from unnecessary exterior packaging and a net weight taken and recorded.
 - 2) Evidence should be properly bagged and tagged and a gross weight should be taken and recorded.
 - 3) Evidence examination report shall be typed.

- 4) Any drugs as well as money, which have been seized, shall be logged in a "drug evidence log." The gross weight of the narcotics; the amount of cash, if any, and any vehicle seized must be recorded.
- 5) The tagged and bagged narcotics and any cash seized should then be placed in the secured area which has been previously designated by the Sheriff.
- 6) When there exists a need for toxicological examination the evidence officer shall then submit the narcotics evidence to the appropriate agency/lab. A member of that agency will sign a receipt for the evidence.
- 7) The evidence officer shall maintain the receipt to ensure that the chain of custody for the evidence is maintained.
- 8) Once a toxicology report is received evidence officer shall file the report for use in a subsequent criminal prosecution.
- 9) The evidence officer shall be responsible for ensuring that narcotics sent for toxicological testing is returned and properly documented as well as stored in the designated area of the evidence room.
- 10) The agency drug locker shall be maintained as a dual-key entry requiring two persons at all times that the locker will be entered. The officer shall maintain one key and a supervisor designated by the Sheriff/Chief shall maintain one key. At no time shall one person be able to unilaterally enter this drug locker.
- 11) When the evidence is needed for court, the officer assigned to the case shall notify the evidence officer. The evidence officer, accompanied by the officer who has been designated by the chief of police as the keeper of the drug locker key shall enter the drug locker and retrieve the evidence. The officer handling the case shall sign and date the "drug locker log" indicating that he or she has accepted the evidence.
- 12) The evidence custodian will maintain data base that documents the "out to court transactions" and notifies the evidence custodian that the evidence which was removed for court has not been returned in accordance with the policy. Immediate notifications shall be made to the officer and his supervisor until such items are properly returned.
- 13) When evidence is returned from court, it shall be returned to the custody of the evidence officer who shall initial the "drug locker log" indicating the return of the drugs. The evidence officer shall then return the narcotics to the drug locker accompanied by the key-holder designated by the Chief/Sheriff. If the evidence officer is unavailable, the officer returning from court shall place the

narcotics in the designated secure area/locker for overnight storage. A supervisor or second officer should witness this placement. In such cases, the evidence officer shall retrieve the narcotics from the designated secure area/locker the next day and complete its return to the drug locker as outlined above.

14)In cases where items of evidence are needed for court on several occasions but are not held by the court, officers must follow the above outlined procedure and sign the evidence out each day. In no case, will drugs be stored in any other manner than outlined in this policy when held in the custody of this department and its members.

15)When a case is completed through a trial or plea, the officer handling the case shall notify the evidence officer of the disposition of the case. The evidence officer shall verify this disposition with the court so that a determination can be made regarding the continued custody or disposal of the narcotics.

f. Non-evidentiary narcotics: Narcotics that are abandoned and narcotics turned over to the agency as articles found. In these cases, the narcotics are not used as evidence in criminal trials thus, it is not necessary to have a toxicology exam performed on the drugs.

1) Any found drugs turned over to the agency with no suspect. The officer who initially takes custody of the item must complete a report and a property form as well as tagging (officer's name, date of recovery, and report number) and bagging the item. The item shall be weighed for a gross weight prior to placement in the secure area. The tagged item and its property form should then be placed in the designated secure area.

B. DUTIES OF PROPERTY CLERK

The Property Clerk will receive, store and release evidence and other property in a timely, efficient, and accountable manner. Established procedures are to be followed which minimize the loss, theft, or destruction of property. In addition, procedures are to be followed to maintain a proper chain of custody and document the transfer of property to the point of release from Department control. Every legal effort should be made by the Property Clerk to prevent the unnecessary accumulation of property in storage.

1. Receiving - Evidence/property will be received by the Property Clerk only after each item has been recorded in the RMS system.
 - a. The Property Clerk shall ensure that all firearms to be rendered safe for handling and storage.
 - b. Drugs will be properly sealed in a secure container before it is transferred to the

control of the Property Clerk.

2. Recording and Storing - Upon receipt of evidence or found property, the Property Clerk will check the property label for completeness and check the property for proper packaging.
 - a. Evidence or property will be placed in the evidence storage room and the property involvement record will be completed in RMS.
 - b. Bicycles will be stored at the City vehicle impound.

3. Evidence and Property Room Procedures

In addition to the above responsibilities of the Property Clerk, the following procedures are to be conducted:

- a. Any item of evidence or property taken to the State Crime Lab will be documented by the Property Clerk. The item will be initialed by the Property Clerk and the State Crime Lab log will be initialed by the Property Clerk showing the item has been received by the State Crime Lab.
- b. The Property Clerk shall assist the Support Services Commander or a designee of equal rank in performing an inventory audit of the evidence system. This audit is to be performed by randomly selecting a minimum of 20 property records and checking them for property location and complete and accurate chain of custody. The results of this audit shall be provided to the Chief of Police not later than March 1st and September 1st of each year.

4. Inspections/Audits

- i. Inspections of the Evidence/Property Storage Areas will be conducted to ensure:
 - a. Storage areas are clean and orderly
 - b. Integrity of property is maintained
 - c. Provisions of agency orders and directives are followed
 - d. Property is protected from damage and deterioration
 - e. Accountability procedures are maintained
 - f. Property having no further evidentiary value is disposed of promptly.
- ii. Inventories, audits, and Inspections will be conducted as follows:

- a. Annually, the primary property/evidence manager shall conduct an inspection to determine adherence to procedures used for the control of property. This inspection shall be documented via memorandum directed to the Chief of Police.
 - b. Whenever the primary property manager is assigned and/or transferred from the property and evidence control function, an inventory of all property/evidence will be conducted, to ensure that records are correct and properly annotated. This inventory will be conducted jointly by the newly designated property manager and the outgoing primary property manager or other person as designated by the Chief of Police. This inventory shall be documented via memorandum directed to the Chief of Police.
 - c. An annual inventory of property will be conducted by a Supervisor not routinely or directly connected with property control. The Supervisor will be accompanied by an evidence custodian. It is highly recommended that this inventory be inclusive of all property held by the Department however it may include only a random sample of a sufficient number of property records to ensure proper accountability. This inventory shall be documented via memorandum directed to the Chief of Police.
5. Annual unannounced inspections and random sample inventories of property storage areas are conducted as directed by the department's Chief of Police or their designee. Unannounced inspections shall be documented via memorandum directed to the Chief of Police.

C. STOLEN/RECOVERED AND ABANDON BICYCLES

1. All incoming reports of stolen bicycles will be processed through the Records Manager.
 - a. An officer will be sent to the location to take a stolen bike report.
 - b. An Aberdeen Police Department Bicycle RMS entry will be completed by the responsible officer.
 - c. All investigative follow-ups on bicycles will be done by patrol with the exception of a burglary.
2. An officer will be sent to the location to recover a stolen bike when reported.

- a. The officer will attempt to contact the owner of the bike and release the bike to the owner or other designed person.
 - b. The responsible officer will pull the case file and note the bicycle has been recovered on the RMS entry and take it to the City Shop.
 - c. The officer will notify dispatch to remove the stolen bike information from NCIC.
 - d. If the owner cannot be located when the bike is recovered the responsible officer will immediately impound the bike and place it into property.
3. All reports of abandoned bicycles will be processed through the Communications Center.
 - a. An officer will be dispatched to the location of the abandon bike and complete an RMS entry.
 - b. The bike will be secured at the scene and the Animal Control Officer notified to pick up the bicycle.

D. VEHICLE IMPOUNDMENT

1. INTRODUCTION

The purpose of this policy is to provide officers with guidelines for impoundment of motor vehicles. The decision to impound should be based upon the circumstances known to the officer at the time of impoundment.

2. POLICY

Motor vehicles may be seized and impounded for reasons including but not limited to the following:

- a. The vehicle is illegally parked as defined in Aberdeen City Code, Section 24-223, which states: "The Chief of Police or his/her designee may remove and impound any unlawfully parked vehicle or cause the registered owner to be issued a citation, or both."
- b. The vehicle is an "abandoned" motor vehicle as defined in Aberdeen City Code and South Dakota Codified Law.
- c. The vehicle leaks fuel or cargo or contains hazardous materials which

create an actual or potential danger.

- d. The vehicle is needed as evidence in a criminal investigation.
- e. The vehicle is a "Junk Vehicle" as defined by City ordinances and the owner has not complied with the requirements set forth in Article VIII, Sections 24-351-24-362.
- f. Upon the arrest of the driver, impoundment is necessary to secure property or to remove the vehicle as traffic or other hazard.
- g. D.U.I. VEHICLE IMPOUNDS
 - 1) When a driver of a vehicle is arrested for Driving Under the Influence (D.U.I.), the vehicle will be inventoried and towed.
 - 2) There are exceptions to this rule:
 - a) If there is a qualified driver (no signs of impairment) at the scene, who has permission of the driver/owner to take custody of the vehicle and remove it from the scene, they may do so after being identified.
 - b) If there are mitigating circumstances for which the officer feels justified in leaving the vehicle in an area of relative safety, so long as it is not on private property of another.

Example: *Driver is stopped and taken into custody in his/her own driveway or his/her business property; vehicle should not be automatically towed.*

- c) Officers will not call for a qualified driver to come to the scene to recover the vehicle.
 - 3) If the officer does not impound a vehicle, the vehicle keys will be given to the detention staff to be secured with the defendant's other personal property.
 - 4) The owner/operator of the vehicle will be responsible for payment of the towing fees prior to the time the vehicle is picked up.

3. PROCEDURES

- a. Officer Responsibilities - Impoundment for non-evidentiary purposes.
 - 1) Report the license plate number and/or VIN to the dispatcher to determine:
 - a) The registered owner,
 - b) Whether the vehicle is listed as stolen, and

- 2) Issue a citation to the vehicle parked in violation of the law or rules of the road prior to ordering the vehicle impounded.
- 3) Attempt to contact the registered owner of the vehicle in order to notify such owner of:
 - a) The reason for the impoundment, and
 - b) Provide dispatch the actions taken to contact the registered owner for inclusion in call comments.
- 4) Advise the registered owner of police procedures, fees, and fines required for release of the vehicle.
- 5) If towed, conduct an inventory of the vehicle as per the next section: **III.E** "Motor Vehicle Inventory."

b. Officer Responsibilities - Impoundment for evidentiary purposes.

- 1) Conduct an inventory of the vehicle as per **III.E** "Motor Vehicle Inventory" procedures.
- 2) Exception: If the officer has reason to believe the vehicle contains item(s) of evidence which are not in plain view and the officer is searching for specific evidence, then a warrant must be obtained unless specific exceptions to the warrant requirement are present. Examples of exceptions to warrant requirements:
 - a) consent by the person exercising control of the vehicle or by the registered owner;
 - b) exigent circumstances.
- 3) Attempt to contact the registered owner of the vehicle in order to notify such owner of the reason(s) for impoundment.
- 4) Advise the registered owner of police procedures, fees, and fines required for release of the vehicle.

c. Vehicle Damage

- 1) The overall vehicle condition and existing damage will be noted on the vehicle impound form. It is recognized that officers cannot note each individual mark, scratch or dent on the impounded vehicle but should record any significant pre-existing damage to the vehicle. Photos may be taken and placed in the file.
- 2) Officers will attach written notice of any damage caused as a result of impoundment or inventory on the vehicle impound form and immediately notify their supervisor of such damage.
- 3) Officers will immediately notify their supervisor of any claim of damage or reported missing property involving any vehicle impounded.

d. Storage

- 1) Hold abandoned vehicles at a towing company's designated

facility.

- 2) Hold vehicles impounded for evidence or outstanding parking citations at the City vehicle impound.
- 3) Any vehicle not stored at a towing company's designated facility normally shall be stored at the Aberdeen City vehicle impound.
- 4) Vehicles may be stored at a facility other than the Aberdeen City vehicle impound when the impounded storage area at the Aberdeen City vehicle impound does not meet the specific needs of the situation.
- 5) Examples of specific needs:
 - a) Vehicles containing hazardous cargo;
 - b) Vehicles requiring special security of evidence;
 - c) Large vehicles.
- 6) Storage and impound fees shall be charged for impounded vehicles in accordance with City policies and schedules.

e. Release of Vehicle

- 1) Vehicles shall be released:
 - a) Upon lawful order of the court;
 - b) Upon payment of fees and fines;
 - c) After the vehicle is no longer needed for evidentiary purposes;
 - d) Upon authorization of the Chief of Police or his/her authorized designee;
 - e) Upon authorization of the Aberdeen City Attorney's office;
 - f) Upon authorization of the Brown County States Attorney's office; or
 - g) Upon authorization of another appropriate authority.
 - h) The member releasing the vehicle will complete the release section of the form from RMS, verifying all information of the individual.
 - i) The form will be signed by the person seeking the release.
 - j) A copy of the form must be presented to the wrecker service before any personal property of the vehicle is released.
- 3) Vehicle impound sheets will only be released to the registered owner or other responsible person designated by the owner, rental/leasing agent, or a court order. In all cases, proper identification and documentation must be presented before a release is authorized.

f. Release of Property

All personal property or other valuables in the vehicle shall be released to the owner (or owner's designee) or be inventoried and processed in a lawful manner and in accordance with this Chapter.

E. MOTOR VEHICLE INVENTORY

1. INTRODUCTION

The purpose of this policy is to provide Aberdeen Police Department officers with guidelines for determining when and how a motor vehicle inventory should be conducted.

2. POLICY

A motor vehicle inventory is an administrative measure designed to protect motor vehicles and their contents while in police custody; to protect the agency against claims of lost, stolen, or damaged property; and to protect Aberdeen Police Department personnel and the public against injury or damaged property due to hazardous materials or substances that may be in the vehicle. It is the policy of the Aberdeen Police Department to safeguard personal property and the owner's interest and to conduct motor vehicle inventories only in accordance with the following procedures.

3. PROCEDURES

a. **Legal Authority to Inventory.**

A member of Aberdeen Police Department shall conduct a motor vehicle inventory without a warrant or probable cause when:

- 1) The vehicle has been lawfully seized or impounded pursuant to the arrest of the driver; after towing the vehicle for violations, or related enforcement or safety reasons as defined by state law and/or City ordinance; and
- 2) When officers conduct the inventory within the scope of this policy it will be classified as an administrative procedure.

b. **Search is not an Inventory.**

Examination of the contents of a motor vehicle pursuant to a criminal investigation or with the intent of discovering evidence of a crime is a search, not an administrative inventory. Officers shall be guided by existing laws and this agency's policy on motor vehicle searches when engaged in those actions.

c. **Vehicles to be inventoried.**

All vehicles lawfully impounded by this agency shall be subject to a routine custodial inventory. All areas within the vehicle will be checked and all pertinent contents will be recorded on the vehicle inventory sheet for reference. The inventory sheet will be scanned into the department's RMS system. The officer's body worn camera will be activated for the entire duration of the inventory process. See attachments for vehicle inventory form.

d. **Location of Inventory.**

An inventory should be conducted at the location where the vehicle is impounded unless limited by reasons of safety or practicality. Body worn cameras shall be activated for the duration of the inventory search.

e. **Removal of Valuables.**

The owner, operator, or person in lawful control of the vehicle shall be asked to remove, if possible, all valuables from the vehicle prior to impoundment. If such items cannot be removed, they shall be inventoried before the vehicle is removed, and the owner/operator/controller shall be requested to verify the completeness of the inventory by signature if available. The following items will be removed from the vehicle by the officer and placed into property for safekeeping:

- 1) All cash, excluding loose coinage.
- 2) Any valuable items to be removed at the officer's discretion.

f. **Scope of Inventory.**

- 1) A motor vehicle inventory may extend to all areas of the vehicle in which personal property or hazardous materials may reasonably be found, including but not limited to the passenger compartment, trunk, and glove compartments.
- 2) All closed containers found in the vehicle shall be opened for purposes of inventory. Locked containers shall not be forced open but shall be logged on the impound report as a closed and locked container. If a key or lock combination is available, locked containers will be opened and inventoried.

g. **Property Control.**

- 1) All property shall be itemized on this agency's vehicle impoundment form and valuable property may be placed in the property room for safekeeping.
- 2) Control and safekeeping of hazardous materials shall be at the direction of the Services Division Commander.
- 3) Contraband or evidence discovered during the course of a motor vehicle inventory shall be deposited with the Property Officer in accordance with Department policy regarding criminal evidence.

If contraband or evidence is found, the officer's supervisor shall be notified as soon as possible.