

RAMSEY COUNTY UNIFORM EVIDENCE RETENTION POLICY

*Effective April 5, 2004
Revised November 5, 2007*

INTRODUCTION

This policy provides evidence retention procedures for felony cases in Ramsey County. The purpose of the policy is to ensure that evidence is handled in a manner that protects the public safety and the rights of the accused. The policy will have a positive impact on the quality of justice in this jurisdiction.

The Uniform Evidence Retention Policy was developed by the Ramsey County Attorney's Office with extensive input and strong support from law enforcement agencies in Ramsey County and Ramsey County District Court. It is intended to guide law enforcement, prosecutors and the courts.

The policy reflects scientific advances in DNA technology and resulting changes in post-conviction and statute of limitations law in Minnesota. The policy seeks to ensure that biological evidence is retained whenever appropriate. It also permits the earlier, orderly disposition of other evidence.

Nothing in the policy bars law enforcement from retaining property longer than recommended. The policy is consistent with the requirements of the Potentially Hazardous Exhibits Procedures adopted by the Conference of Chief Judges and implemented in Ramsey County District Court effective January 1, 2004, as amended February 20, 2004.

PART 1: RETENTION OF EVIDENCE BY LAW ENFORCEMENT AGENCIES

The following guidelines apply to evidence in the custody of law enforcement agencies:

A. UNCHARGED CASES

Homicides

- If possible DNA evidence of the perpetrator exists: Submit to the BCA for testing.
- If the identity of the perpetrator is unknown or, if there is insufficient evidence to prosecute: Retain evidence permanently.

- For a suspicious death or death of undetermined manner: Retain evidence for at least 5 years (evidence may be retained indefinitely). Evidence may not be disposed of without approval of the prosecutor in consultation with the medical examiner.
- For a missing person case suspected to be a homicide: Retain evidence for at least 5 years (evidence may be retained indefinitely). Evidence may not be disposed of without approval of the prosecutor.
- If the identity of the perpetrator is known, but the perpetrator is deceased (including murder-suicide cases): Retain evidence at the department's discretion.

Criminal Sexual Conduct (1st to 3rd Degree) and Kidnapping Cases

(When DNA evidence of an unknown perpetrator is available)

- Submit DNA evidence to the BCA for testing.
- If the case may be chargeable when the DNA is identified: Retain the biological evidence (dried) permanently.

Exception:

Sexual assault examination kits submitted to the BCA for testing and returned to law enforcement after testing need not be retained (the BCA retains samples).

If a kit is to be disposed of, a copy of the kit label and all writings showing chain of custody must be added to property sheet records and retained. Authorization and date of destruction must be noted on the property sheet.

Other Criminal Sexual Conduct Cases

- Retain evidence at the department's discretion based on the potential to charge the case in the future and the 9-year statute of limitations.

All Other Felonies

- Retain evidence at the department's discretion based on the potential to charge the case in the future and the 3-year statute of limitations.

B. CHARGED CASES

(Excluding Court Exhibits Received in Evidence at Trial)

Homicides

If the defendant is convicted:

- Retain evidence until the defendant's sentence has expired (or until the defendant dies, if that occurs before the prison sentence has expired) unless the prosecutor agrees to an earlier disposition.

Note: If the identity of the perpetrator was at issue in the case, early release or destruction of biological and fingerprint evidence related to the identity of the perpetrator requires approval of the prosecutor. The prosecutor may not give approval without first notifying the defendant and defense counsel with an opportunity to object.

If an arrest warrant has been issued:

- Retain evidence until the perpetrator has been apprehended and the case has been completed in court.

If the defendant is acquitted and no other suspect or related court action is expected:

- Evidence may be released or destroyed with agreement of the prosecutor.

Criminal Sexual Conduct Crimes

If the defendant is convicted:

- Retain evidence until the defendant's sentence has expired (or until the defendant dies, if that occurs before the prison sentence has expired) unless the prosecutor agrees to an earlier disposition.

Note: If the identity of the perpetrator was at issue in the case, early release or destruction of biological and fingerprint evidence related to the identity of the perpetrator requires approval of the prosecutor. The prosecutor may not give approval without first notifying the defendant and defense counsel with an opportunity to object.

- Exception:

Sexual assault examination kits submitted to the BCA for testing and returned to law enforcement after testing need not be retained (the BCA retains samples).

If a kit is to be disposed of, a copy of the kit label and all writings showing chain of custody must be added to property sheet records and retained. Authorization and date of destruction must be noted on the property sheet.

If an arrest warrant has been issued:

- Retain evidence until the perpetrator has been apprehended and the case has been completed in court.

If the defendant is acquitted and no other suspect or related court action is expected:

- Evidence may be released or destroyed with agreement of the prosecutor.

Other Felony Crimes

If the defendant is convicted:

- Retain evidence until the defendant's sentence has expired unless the prosecutor agrees to an earlier disposition.

Note: If the identity of the perpetrator was at issue in the case, early release or destruction of biological and fingerprint evidence related to the identity of the perpetrator requires approval of the prosecutor. The prosecutor may not give approval without first notifying the defendant and defense counsel with an opportunity to object.

If an arrest warrant has been issued:

- Retain evidence until the perpetrator has been apprehended and the case has been completed in court.

If the defendant is acquitted and no other suspect or related court action is expected:

- Evidence may be released or destroyed with agreement of the prosecutor.

C. EVIDENCE THAT MAY BE RETURNED OR DESTROYED EARLY

(Including Court Exhibits Received in Evidence at Trial)

The following guidelines comprise exceptions to Sections A and B above. These guidelines list the types of evidence that may be returned or destroyed under specific circumstances.

Controlled substances

If the defendant is convicted:

- Pursuant to procedures for handling potentially hazardous court exhibits (see Part 3, below), drug evidence received in court may be returned to the law enforcement agency for safekeeping immediately after sentencing according to the following procedures:
 - Potentially hazardous court exhibits turned over to law enforcement will have a court label specifying the date the defendant's sentence expires.
 - The evidence must be retained until the defendant's sentence has expired, unless the prosecutor and court agree.

- An agreement to dispose of evidence early should not occur until 180 days after the defendant has been sentenced, or, if an appeal is filed, until 180 days after the appeal is final.
- If the drug evidence was not introduced in court, the law enforcement agency has the option to destroy the drugs 180 days after sentencing or, if an appeal is filed, 180 days after the appeal is final.

If the defendant is acquitted or the investigation is complete and no one is charged:

- The law enforcement agency has the option to destroy the drugs pursuant to department policy.

Firearms

If the defendant is convicted:

- Pursuant to procedures for handling potentially hazardous court exhibits (see Part 3, below), a firearm received as evidence in court may be returned to the law enforcement agency for safekeeping immediately after sentencing according to the following procedures:
 - Potentially hazardous court exhibits turned over to law enforcement will have a court label specifying the date the defendant's sentence expires.
 - The evidence must be retained until the defendant's sentence has expired, unless the prosecutor and court agree.
 - An agreement to dispose of evidence early should not occur until 180 days after the defendant has been sentenced, or, if an appeal is filed, until 180 days after the appeal is final.
- If the firearm was not introduced as evidence in court, the law enforcement agency has the option to destroy the firearm pursuant to department policy 180 days after sentencing or, if an appeal is filed, 180 days after the appeal is final.

If the defendant is acquitted or the investigation is complete and no one is charged:

- Destroy the evidence (unless it is related to an unsolved homicide) pursuant to department policy.

Stolen property (see Minnesota Statute 609.523)

If a defendant has been charged:

- Upon request of the owner, property may be returned before the final disposition of the case if the property is photographed and the prosecutor agrees. In certain cases, the owner may be required to maintain the property so it can be produced in court
- If the owner does not make an earlier request, and if there is no appeal, the property may be returned to the owner 90 days after sentencing.

If the defendant is acquitted or the investigation is complete and no one is charged:

- Return the property to the owner.

Other personal property *with* evidentiary value (charged cases)

If the defendant is convicted:

- Upon request of the owner, property may be returned 90 days after sentencing if no appeal is filed.
- If the owner requests an earlier return of the property, the return must be approved by the prosecutor and documented with photos (see Minnesota Statute 609.523). The owner may be required to keep the property through trial.

If the defendant is acquitted or the investigation is complete and no one is charged:

- The property may be returned to the owner upon request.

Personal property *without* evidentiary value (charged cases):

If ownership of the property is undisputed:

- Upon request of the owner, return the property with the consent of the prosecutor.

If ownership of the property is disputed:

- The trial court may resolve ownership of the property at sentencing or the dispute may be referred to the city attorney.

If the defendant is acquitted and no one else is chargeable:

- Return property to the owner, if known; if the owner is unknown, sell the property at auction or destroy.

D. DOCUMENTING CHAIN OF CUSTODY

Documentation of any disposition of evidence must be maintained by the law enforcement agency. Such documentation, showing the date action was taken and by whom, includes the following:

- Chain of custody of evidence to and from court
- Return of property to the owner
- Destruction of evidence

Documentation should include the date action was taken and by whom.

<p>PART 2: CLERK OF COURT REQUESTS FOR EARLY DISPOSITION OF EXHIBITS</p>

The clerk of court may seek the consent of the prosecutor and the court to return court exhibits after a defendant has been sentenced, but before the sentence has expired. The following guidelines apply to such requests:

If the defendant is sentenced to life in prison:

- Disposal of evidence may not be considered until at least 10 years after the defendant has been sentenced.

If the defendant is sentenced to more than 60 months in prison (including stayed sentences):

- Disposal of evidence may not be considered until at least 5 years after the defendant has been sentenced.

If the defendant is sentenced to less than 60 months in prison (including stayed sentences):

- Disposal of evidence may not be considered until at least 2 years after the defendant has been sentenced.

Exceptions:

Exceptions include potentially hazardous exhibits, unwieldy or bulky exhibits, alcohol and perishable exhibits. See Part 3, below.

Procedures:

All court-initiated requests to the prosecutor for early disposition of evidence must include:

- A copy of the exhibit list indicating which exhibits are intended for early disposition
- The date of sentencing
- The sentence imposed
- The date when the sentence expires

The court must retain documentation of any disposition of evidence. This documentation must show the chain of custody of the evidence and the consents of the prosecutor and judge.

If exhibits contain fingerprint or DNA evidence related to the identity of the defendant, the prosecutor may not consent to early disposition of the evidence without first giving notice to the defendant and defense counsel with an opportunity to object. The prosecutor must provide documentation of this notice to the court.

All other exhibits released to law enforcement with the consent of the prosecutor and the judge need not be retained until the defendant's sentence has expired. Such items may be disposed of pursuant to the law enforcement agency's policy.

PART 3: POTENTIALLY HAZARDOUS EXHIBITS

A. EXHIBITS RECEIVED IN EVIDENCE IN COURT

Potentially hazardous exhibits include any biohazard evidence, such as items containing blood or semen. Also included are such items as contaminated sharp instruments, guns and ammunition and flammable explosive or reactive materials. Such evidence requires special packaging in accordance with the Potentially Hazardous Exhibits Procedures adopted by the Conference of Chief Judges and Ramsey County District Court.

When potentially hazardous exhibits are received as evidence in court, the following special evidence retention procedures apply:

If the defendant is convicted

After the defendant is sentenced, all potentially hazardous exhibits may be transferred from the custody of the court to law enforcement for safekeeping until the defendant's sentence has expired.

All exhibits containing DNA evidence relating to the identification of the defendant *must* be returned to law enforcement as soon as possible after sentencing. This is necessary so exhibits can be removed from the sealed plastic packaging required for court and then retained in paper bags or boxes. This procedure will preserve the integrity of the evidence in the event of any post-conviction retesting need.

When any potentially hazardous exhibit is to be returned to law enforcement for retention, district court staff must label the exhibit with the district court case number, the law enforcement case number, the sentencing date and the date when the defendant's sentence expires. The district court and law enforcement must maintain a record documenting chain of custody of any exhibits returned to law enforcement.

Excessively unwieldy or bulky items, alcoholic beverages and perishable items also may be transferred from the custody of the court to law enforcement after the defendant is sentenced. Such items are subject to the same labeling and documentation requirements noted above.

If the defendant is acquitted

All exhibits may be returned after the verdict to law enforcement or the party who offered the evidence.

B. EXHIBITS RETURNED TO LAW ENFORCEMENT

Procedures

When the court, at sentencing, orders potentially hazardous (including biohazard) or unwieldy or bulky exhibits returned to a law enforcement agency for safekeeping until the defendant's sentence has expired, the clerk of court must label the exhibits with the following information:

- The district court case number
- The law enforcement case number
- The sentencing date
- The date of expiration of sentence

The clerk of court also must document the chain of custody involved in transferring the exhibits to the law enforcement agency.

The law enforcement agency must retain the exhibits, as labeled, until expiration of sentence, unless the prosecutor and the judge agree to an earlier disposition of the evidence.

Re-packaging of Exhibits Containing DNA Evidence for Long-term Retention

All biohazard exhibits containing DNA relating to the identify of the defendant must be removed from the sealed plastic packaging required for court and retained in paper bags or boxes to preserve the integrity of the evidence in the event of any post-conviction retesting need. The plastic packaging also must be retained with the evidence because it contains identification and chain of custody information.

Requests for Early Disposition

A law enforcement agency may initiate a request for earlier disposition of court exhibits. The agency should observe the following procedures:

- Provide the prosecutor a written list of the exhibits.
- Obtain the prosecutor's and the court's consent.
- Retain documentation of these consents.

Note: If the exhibits contain fingerprint or DNA evidence related to the identity of the defendant, the prosecutor may not consent without first giving notice to the defendant and defense counsel with an opportunity to object and providing documentation of this notice to the law enforcement agency.

ACCESS TO COUNTY ATTORNEY'S CASE TRACKING SYSTEM

For purposes of tracking date of sentencing, date of expiration of sentence and date of final disposition of any direct appeal or post-conviction matter in order to facilitate disposition of evidence, Ramsey County law enforcement agencies may now make arrangements with the Ramsey County Attorney's Office to access the county attorney's case tracking system (CAIS). This Internet access is now available at no charge. It will permit each law enforcement agency to monitor its cases directly to determine when evidence may be disposed of. Contact Lynn Dexter at (651) 266-3070 or lynn.dexter@co.ramsey.mn.us for CAIS access information. Contact Annalee Strandskov at (651) 266-3025 or annalee.strandskov@co.ramsey.mn.us for assistance in interpreting CAIS screens or entries.

POTENTIALLY HAZARDOUS COURT EXHIBIT

Name of case: _____
(include name of defendant and d.o.b.)

D.Ct. #: _____ C.N. # _____

Convicted of: _____

Sentenced on: _____ Expir. of sentence: _____
(date of permissible destruction)

Trial Exhibit #: _____ Description: _____

Biohazard? Yes No If yes, related to ID of Def? Yes No
(circle one) (circle one)

Any co-def? Yes No If yes, note name and D.Ct. #: _____
(circle one)

TOT: _____ by: _____ on: _____
(name/dept.) (clerk's name)

This evidence may be disposed of prior to expiration of sentence ONLY by prosecutor consent and court order (with notice to defense, if required for DNA or fingerprint evidence).

Early disposition approved on this date: _____.

NOTE: Attach PROSECUTOR'S REQUEST FOR EARLY DISPOSITION AND ORDER FORM to permanent record.