

# RAMSEY COUNTY UNIFORM EVIDENCE RETENTION POLICY

*Effective April 5, 2004*

*Revised **August 3, 2012***

## INTRODUCTION

This policy provides evidence retention procedures for all criminal cases in St. Paul, Ramsey County. Its purpose is to ensure that evidence is handled in a manner that protects the public safety and the rights of the accused. The policy prioritizes the retention of certain evidence while allowing law enforcement agencies to cull less important evidence.

The Uniform Evidence Retention Policy was originally developed by the Ramsey County Attorney's Office with extensive input from all law enforcement agencies in Ramsey County and Ramsey County District Court. It was adopted by all parties in 2004 and has been in effect since that time for felony cases. This 2010 update has also been adopted by the St. Paul City Attorney's Office and therefore now applies to all misdemeanors, gross misdemeanors and felony cases in St. Paul.

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

The main change in the 2010 amendment shortened retention requirements for crimes other than homicide, sexual assault and kidnapping by incorporating a recent change in Minnesota's post-conviction law requiring that petitions for post-conviction relief be filed within two years after (1) the date of sentencing (if no direct appeal is filed) or (2) the date of final disposition of a direct appeal, whichever is later. However, newly discovered evidence, including scientific evidence (such as new DNA technology), that could not have been ascertained by due diligence within the two years is an exception to this rule. Homicide and sexual assault cases are generally the ones most impacted by newly discovered scientific evidence. Most evidence in homicide and sexual assault (and kidnapping when DNA is involved) must continue to be retained until expiration of sentence, unless the prosecutor approves earlier disposition. However, this amendment adopts the 2-year limit (plus an additional 180 days, to cover the time allowed for entering final judgment and for taking an appeal) in all other cases.

This change provides a systematic method for departments to dispose of less important older evidence in police property rooms so that space is available for evidence in the most serious crimes with the longest sentences to be preserved.

[This 2011 amendment clarifies retention requirements for certain evidence submitted to the BCA in sex cases.](#)

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. Store biological evidence (dried) in paper bags or boxes, not in sealed plastic.
- 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.
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**Criminal Sexual Conduct (1st to 3rd Degree) and Kidnapping Cases**

(When DNA evidence of an unknown perpetrator is available)

- Submit DNA evidence **and victim blood or urine kit (if any)** to the BCA for testing.
- If the case may be chargeable when the DNA is identified: Retain biological evidence (dried) permanently in paper bags or boxes, not in sealed plastic.

**Exception:**

Sexual assault evidence collection kits submitted to the BCA for DNA testing and returned to law enforcement after testing need not be retained if all specimens have been tested. The BCA retains samples of all DNA specimens examined. If any specimens were untested, the kits should be retained (the written report of BCA results will specify what items, if any, were not examined). Victim blood and alcohol kits, once tested, need not be retained; untested victim blood and alcohol kits more than 1 year old are likely to be degraded and will be rejected by the BCA for testing.

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 (CSC 4, or CSC 1-3 without DNA evidence)**

- Submit sexual assault evidence kit and victim blood and alcohol kit (if any) per above. 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.

### **Arson (1st to 3rd degree)**

- These crimes have a 5-year statute of limitations. To allow time for third parties to obtain access to evidence in serious arson cases that are not criminally charged, evidence should be retained for 6 years. For arson resulting in death, see homicide rules.)

### **All Other Crimes**

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 applicable to most other crimes.

## **B. CHARGED CASES**

*(Excluding Court Exhibits Received in Evidence at Trial – See Parts 2 and 3)*

If there is an active warrant for any defendant in a charged case, evidence must be retained until the defendant is apprehended and the case completed in court.

### **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 (use attached request form).

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 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 (use attached request form).

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 evidence collection kits submitted to the BCA for DNA testing and returned to law enforcement after testing need **not** be retained if all specimens have been tested. The BCA retains samples of all DNA specimens examined. If any specimens were untested, the kit should be retained (the written report of BCA results will specify what items, if any, were not examined). Victim blood and alcohol kits, once tested, need not be retained; untested victim blood and alcohol kits more than 1 year old are likely to be degraded and will be rejected by the BCA for testing.

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 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.

### **Arson (1st to 3rd degree)**

- Retain for **6** years or two years plus 180 days after sentencing or, if direct appeal or post-conviction filed, two years after final disposition, whichever is later.

### **All Other Crimes**

If the defendant is convicted:

- Retain evidence until two years plus 180 days after sentencing or, if direct appeal or post-conviction petition filed, two years after final disposition, whichever is later, 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 the defendant is acquitted and no other suspect or related court action is expected:

- Evidence may be released or destroyed with agreement of the investigator or after 3 years.

### **Special Rule for Firearms Submitted to NIBIN**

Firearms follow the same general retention rules as other evidence **unless** the weapon has been submitted to NIBIN. In NIBIN cases, the firearm may be disposed of 3 years after submission to NIBIN, or two years plus 180 days after sentencing if no appeal or two years after final disposition of appeal, **whichever is later**. (Firearms in homicide, sexual assault or kidnapping cases follow the longer retention rules above.)

## **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 (and no other suspect's case remains active):

- Pursuant to procedures for handling potentially hazardous court exhibits (see Part 3, below), drug evidence received as an exhibit 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.
  - Drug exhibits must be retained until two years plus 180 days after sentencing or, if direct appeal or post-conviction petition filed, two years after final disposition, whichever is later, unless the prosecutor agrees to earlier disposition.
- If the drug evidence was not introduced in court, the law enforcement agency has the option to destroy the drugs 180 days after sentencing if no appeal is filed 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 (other than those used in homicide, sexual assault or kidnapping cases)**

If the defendant is convicted (and no other suspect's case remains active):

- Pursuant to procedures for handling potentially hazardous court exhibits (see Part 3, below), a firearm received as an exhibit 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 firearm exhibit must be retained until two years plus 180 days after sentencing or, if direct appeal or post-conviction petition filed, two years after final disposition, or if submitted to NIBIN, 3 years after submission, whichever is later, unless the prosecutor and court agree to earlier disposition. Any firearm used in a homicide must be retained to expiration of sentence.
- If the firearm was not introduced as evidence in court, it must be retained until two years plus 180 days after sentencing, or, if direct appeal or post-conviction petition filed, two years after final disposition, or if submitted to NIBIN, 3 years after submission, whichever is later. However, a firearm used in a homicide, sex or kidnapping case must be retained to expiration of sentence.

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

- Destroy the firearm (unless submitted to NIBIN and/or related to an unsolved homicide) pursuant to department policy. If submitted to NIBIN, retain for 3 years; if used in unsolved homicide, retain indefinitely.

**Stolen property (see Minnesota Statute 609.523)**

If a defendant has been charged:

- Upon request of the owner, stolen property may be returned before the final disposition of the case if the property is photographed **and** the prosecutor agrees. The owner may be required to maintain the property so it can be produced in court; however, M.S. 609.523 expressly provides that a photographic record of stolen property, when satisfactorily identified, is as admissible in evidence as the property itself. The property record maintained by law enforcement must include: photo of property and applicable CN, name of owner, name of person who authorized early release, name of person who turned property over to owner and date of release.
- If the defendant is acquitted or the investigation is complete and no one is charged, property may be returned to owner with approval of investigator.

**Other personal property**

If a defendant is charged:

- Upon request of the owner, property may be returned before final disposition of the case if the prosecutor agrees. The property record maintained by law enforcement must include the name of the owner, the

name of the person who authorized early release, the name of the person who turned over the property and date of release.

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.
- Note: If ownership of the property is disputed, the trial court may resolve this issue at sentencing, or the dispute may be referred to the city attorney.

#### **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 style="text-align: center;"><b>PART 2: CLERK OF COURT REQUESTS FOR EARLY DISPOSITION OF COURT EXHIBITS (other than Potentially Hazardous Exhibits—See Part 3 below)</b></p>
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The clerk of court may seek the consent of the prosecutor and the court to return court exhibits to law enforcement or the county attorney 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:

- Return of court exhibits 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):

- Return of court exhibits 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):



- Return of court exhibits 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 court exhibits 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 court exhibits. 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 shall be retained or disposed of as provided in Part 1, C. (above) and the law enforcement agency's policy.

**PART 3:  
POTENTIALLY HAZARDOUS COURT 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, flammable explosive or reactive materials and controlled substances. 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, unwieldy or bulky exhibits may be transferred from the custody of the court to law enforcement for safekeeping until the defendant's sentence has expired or earlier disposition as provided in Part 1, C. (above).

**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, the clerk of court must label the exhibits with the following information (see sample label at end of this policy):

- 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.

Except for homicide, sexual assault and kidnapping cases, the law enforcement agency must retain the labeled potentially hazardous, unwieldy or bulky exhibits returned by the court until two years plus 180 days after sentencing or, if a direct appeal or post-conviction petition is filed, two years after final disposition, whichever is later, unless the prosecutor and the judge agree to an earlier disposition of the evidence. In homicide, sexual assault and kidnapping cases, biohazard exhibits containing DNA relating to the identity of the defendant must be retained to expiration of sentence; other potentially hazardous, unwieldy or bulky exhibits may be disposed of earlier if the prosecutor and court agree.

### **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 than provided in this policy (such as with unusually bulky or unwieldy items) by complying with 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. For all other exhibits, the law enforcement agency may request early disposition two years plus 180 days after sentencing or, if a direct appeal or post-conviction petition is filed, two years after final disposition, whichever is later.

### **How to access court disposition data:**

The easiest, most accurate and timeliest way for law enforcement to verify criminal case status for purposes of disposing of evidence is by accessing MNCIS online through Odyssey Assistant (this is not the same as public access through MPA,

which only shows convictions). MNCIS through OA will show all court data in chronological order, including sentencing date and appeals, as well as dismissal, acquittal or active warrant. Any co-defendant case will also be identified. MNCIS entries begin with the filing of the complaint or first appearance in court (not necessarily date of offense). By entering the name of your law enforcement agency, MNCIS may be searched by CN. The absence of any information in MNCIS under the CN means no city or county case has been charged. (**Warning:** cases charged federally—most often drug or gun cases—are not in MNCIS.)

MNCIS online court data goes back to April 1993. Alternatively, for County Attorney cases, Ramsey County law enforcement agencies may also access case status information in the County Attorney’s Information System (CAIS) online via CITRIX. CAIS information goes back to 1990; however, it can take more steps to access data in CAIS than MNCIS, and CAIS is not as complete or up-to-date as MNCIS. For further information on accessing CAIS, contact your system administrator or, at the County Attorney’s Office, Lynn Dexter at (651) 266-3070 or lynn.dexter@co.ramsey.mn.us. For assistance interpreting CAIS screens, contact Annalee Strandskov at (651) 266-3025 or annalee.strandskov@co.ramsey.mn.us.

**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.**

