


<p align="center"><b>STATE OF VERMONT</b> <b>AGENCY OF HUMAN SERVICES</b> <b>DEPARTMENT OF CORRECTIONS</b></p>	<p><b>Title:</b> <b>CRIME SCENE PRESERVATION &amp; EVIDENCE COLLECTION - FACILITY</b></p>	<p align="center"><b>Page 1 of 8</b> <b>'A'</b> <b>SECURITY LEVEL</b></p>
<p><b>Chapter:</b> <b>Security and Supervision</b></p>	<p align="center"><b># 409.08</b></p>	<p align="center">New</p>
<p><b>Attachments, Forms &amp; Companion Documents:</b> N/A</p>		
<p><b>Local Procedure(s) Required:</b> Yes – See Policy Section <b>Applicability:</b> All Facility Staff <b>Security Level:</b> “A” – Only correctional staff may have access to this unredacted document; anyone may have access to the redacted document.</p>		
<p><b>Approved:</b>  <hr/><b>Andrew A. Pallito, Commissioner</b></p> <p align="center"><u><b>May 29 , 2013</b></u> <b>Date Signed</b></p> <p align="right"><u><b>December 2, 2013</b></u> <b>Date Effective</b></p>		

**PURPOSE**

The purpose of this administrative directive is to provide guidelines for the secure and legal collection, storage, preservation, and disposal of evidence within a State correctional facility.

**POLICY**

All Department of Corrections staff will maintain the integrity and credibility of evidence to be used in inmate disciplinary proceedings and/or criminal cases. All Department facilities will establish and maintain local procedures for controlled access to evidence storage areas and the safe and secure disposal of evidence consistent with this administrative directive.

**AUTHORITY**

28 V.S.A. § 102(b)2, (c)(5) and (c)(6).

**REFERENCE**

American Standards for Adult Correctional Institutions, 4<sup>th</sup> Edition, 2003: Standards 4-4207, 4-4233, and 4-4282; Administrative Directives #321.01, *Offender/Inmate Property*; #351.03, *Bloodborne Pathogens Exposure Control Plan*; #409.09, *Prison Rape Elimination Act (PREA) & Staff Sexual Misconduct – Facilities*; #410.01, *Facility Rules And Inmate Discipline*; and *Interim Procedure on Contraband Classification & Disposition*.

**DEFINITIONS**

Chain of Custody: A process to control and document security and handling of contraband and criminal physical evidence.

Chain of Custody Label: A form printed on an evidence bag, adhesive sticker, or tag that contains: date and time of collection, name and title of individual collecting the evidence, where the evidence was found, specific description of the evidence (e.g., when more than one item of the same type is contained in a bag or container, the number included such as "10 pages" or "15 pills" is listed), and chain of custody, including ALL individuals who handled the evidence, in the order of possession.

**Charged Case:** Charged cases include completed investigations accepted for prosecution by the appropriate prosecuting authority, resulting in the filing of criminal charges in court or other disciplinary proceedings.

**Evidence:** Any substance, material, or physical object that proves or disproves a fact in a judicial case or disciplinary hearing.

**Evidence Repository:** A secure box, locker, or area where staff will deposit and log items into evidence for further processing by investigative staff.

**Incident Command System (ICS):** An emergency response structure which provides a systematic, proactive approach guiding government agencies at all levels, the private sector, and nongovernmental organizations to work seamlessly to prepare for, prevent, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity, in order to reduce the loss of life or property and harm to the environment.

**Investigative Staff:** Employees assigned to work cases for the DOC (VSP, DHRIU or assigned DOC staff).

**Litigation Hold:** Also known as a “legal hold”; a communication issued as a result of current or anticipated litigation, audit, government investigation, or other such matter that suspends the normal retention guidelines.

**Strip Search Kit:** A kit designated for the collection and preservation of physical and DNA evidence associated with alleged penetrating sexual act.

**Uncharged Case:** Completed investigations not yet reviewed for prosecution by the appropriate prosecuting authority, completed investigations that have not been accepted for prosecution by the appropriate prosecuting authority, or completed investigations that have been declined for prosecution due to insufficient evidence.

## **PROCEDURAL GUIDELINES**

### **A. Securing a Potential Crime Scene**

1. When an inmate, Department staff, contractor, volunteer, or visitor is suspected of committing a crime or in some circumstances misconduct, staff must follow specific steps to ensure the preservation of evidence for the State’s case and the protection of legal rights of the accused.
2. The first staff person at the scene of a possible crime will:
  - i. [REDACTED];
  - ii. Secure the area (knowing that the scene may be larger than it initially appears); and
  - iii. Not allow any object to be touched or moved.
3. The staff person in command of the incident will immediately assign available staff to the following tasks:
  - i. Keep the scene secure by removing and keeping out inmates and all unnecessary staff members, and taping off the area if appropriate;
  - ii. Assign a staff recorder to list every person in the area, times of arrival and departure, why there, and what was done. [REDACTED];
  - iii. Make sure the Supervisor on duty is notified. The Supervisor will ensure the facility Superintendent, Vermont State Police (VSP), and/or the Department of Human Resources

Investigations Unit (DHRIU) and other units relevant to the incident are notified, when necessary;

- iv. [REDACTED]
- v. When directed by investigative staff or Supervisor, photograph and/or videotape the area;
- vi. When directed by VSP, DHRIU, or Supervisor, assign a staff member to collect evidence and initiate the chain of evidence documentation; unless otherwise directed by VSP, the VSP investigator will collect evidence in criminal matters; and
- vii. Ensure an unusual incident report (UIR) and relevant accompanying documents (PREA forms, Use of Force Report, property slips, etc.) are completed and that all staff involved write detailed UIR's [REDACTED]

## B. Evidence Collection and Handling

[REDACTED] If the scene cannot be immediately secured and it is necessary to move evidence (such as a weapon) to prevent injury or loss, the staff person must take possession of the item and initiate the following procedures immediately after the scene is secure. [REDACTED]

1. Staff must follow the below steps when collecting and handling evidence:
  - i. Use clean disposable gloves for collecting items of evidence; (To avoid cross-contamination, gloves should be changed between collection of unrelated items of evidence or when visibly soiled.)
  - ii. Minimize the number of individuals handling the evidence;
  - iii. Maintain the chain of custody for each evidence item;
    - a. Place all physical evidence in the proper container/bag and label appropriately. If necessary, attach an adhesive evidence label to the container/bag.
    - b. Secure an evidence tag to items too large for a bag or container.
    - c. The collecting staff will seal the bag or container with evidence tape and accurately enter all information on the chain of custody label.
    - d. For allegations involving a penetrating sexual act, follow the protocol listed on the *PREA Incident Form Inmate-on-Inmate Sexually Abusive Penetration* or *PREA Incident Form Staff-on-Inmate Sexually Abusive Penetration/Contact* found with Administrative Directive 409.09, *Prison Rape Elimination Act (PREA) & Staff Sexual Misconduct – Facilities*, which includes the usage of a strip search kit.
  - iv. Biohazard Evidence
    - a. Mark all evidence possibly contaminated with blood, bodily fluids, or other potentially infectious materials as *biohazard* by placing it in a biohazard bag (preferably a paper bag or envelope) or affixing a biohazard label/sticker except for forensic evidence collected in a PREA allegation.
    - b. Use extreme caution in handling sharp objects (razor blades, needles, syringes, shanks, glass, etc.). These items are to be placed in a puncture-resistant container prior to

- removing it from the scene. The container must be labeled as *biohazard* and placed in the evidence repository.
- c. Place clothing and linens contaminated with blood, body fluids, or other potentially infectious materials in a clean paper bag. The paper bag must then be placed in a red biohazard bag for transport. Once in the evidence repository, the biohazard bag will be opened and rolled down so that the paper bag is exposed to air and resting on top of the biohazard bag to prevent leakage. These types of contaminated items must be allowed to air dry to preserve their evidentiary value.
  - v. Non-biohazard physical evidence such as drugs, papers, and non-liquid items will be placed in an evidence bag. Use separate bags for each type of evidence collected; drugs should be placed in a separate bag.
  - vi. Place a sample of discovered homemade alcohol (“hooch”) in a bottle container with a lid that can be tightly secured to prevent leakage. The actual amount discovered must be recorded in the evidence log book. The sample must be placed in the container designated for “hooch” near the evidence repository. Once administrative hearings have been completed, this evidence may be disposed of.
  - vii. Keep urine samples in the container in which they were collected and tested. The container must be sealed with evidence tape, and initialed by both the person giving and the person collecting the sample.
  - viii. Ensure that all suspected narcotics under the control of a specific inmate are identified by a field test kit.
  - ix. Ensure that all evidence collected and placed inside a bag or evidence envelope is sealed with evidence tape and initialed by the individual sealing the envelope. Bags designed for evidence collection that are self sealing will be sealed in accordance with label instructions to prevent tampering or opening.
2. Digital photographs and storage media
- i. Staff will use digital cameras to photograph the scene [REDACTED]  
[REDACTED] This includes, but is not limited to:
    - a) All injuries;
    - b) [REDACTED]
    - c) Blood spills related to an assault.
  - ii. A dedicated form of digital storage media (sticks, cards, etc.) will be used just for evidence collection.
  - iii. A separate digital storage media will be used for each incident.
  - iv. Staff taking digital photos will submit the digital storage media into evidence and include the number of photos taken and the storage media inventory number on their incident report.
  - v. Staff taking digital photos are encouraged to view photos for quality and may take more than one to ensure a quality shot. Poor quality photos are to be included and not deleted from the storage media.
  - vi. When evidence of a crime involves any form of digital device, staff will document the make, model, serial number, and location of any and all devices. If the digital device is connected to any peripherals, such as an external hard drive, or printer, those devices shall be collected and similarly documented. Staff will document if the device has any physical connections to the Internet (Ethernet cable).

3. Video recordings
  - i. Videos made to document use of force or to record crime scenes must be placed into evidence by the Supervisor.
  - ii. All videos placed into evidence must be labeled with the date and time recorded, name of person or description of the incident recorded, location of the incident, and the name of the staff member who made the recording, as well as the UIR number.

### **C. Logging and Depositing Evidence**

1. All evidence will be placed in the evidence repository. The staff member depositing the evidence will record each item on an evidence log and assign a number. This number is the next number consecutive to the previous entry. [REDACTED]
2. Log Numbering – Each item of evidence shall be identified by a unique number which shall be prefixed by the facility's initials and the calendar date, followed by a dash (-) and sequential and uninterrupted numbers for logged evidence items, (e.g., NWSCF, 02.18. 06-121).
3. Each log entry shall be legible, pertinent, and professionally drafted. No log page shall be removed, and nothing shall be erased in the log. No correctional fluid or tape of any kind will be used to correct errors. Any error shall be corrected by drawing a single line through the incorrect entry. The date and time of the correction, along with the initial of the staff member making the correction, shall be entered next to the section being corrected.
4. Only investigative staff and staff authorized by the facility Superintendent (or higher) may remove evidence from the repository. The staff person removing the evidence will record the date of removal, initials of the person removing the evidence, and disposition in the evidence log. The evidence will then be taken to the evidence storage area. The chain of custody must be documented on the removed item's evidence bag, tag, or label.
5. Facilities not using this method of evidence transfer, or that do not have a separate evidence storage area, must create a protocol for logging and depositing evidence. Any alternative protocol will be reviewed and approved by the Director of Facilities Operations or designee.

### **D. Evidence Storage Area**

1. An evidence storage area is used to retain evidence for criminal and inmate discipline cases.
2. Only investigative staff are authorized to enter the evidence storage area. All others who enter the evidence storage area must be under the escort of an investigative staff person, unless authorized by the facility Superintendent.
3. All evidence related to a single case must be clearly labeled and stored together in a neat and orderly fashion.
4. All drugs, tobacco, money, or other high risk evidence will be further secured within the evidence storage area by placement in a locked container such as a cabinet or safe.
5. Sharps will be stored in sharps containers.

**E. Evidence Retention for Inmate Discipline Cases**

1. Evidence relating to inmate discipline cases will be either released or disposed of 45 days after the hearing date.
2. If an inmate appeals the hearing decision to the Superintendent, the evidence shall be photographed and the evidence will be released or disposed of 45 days after the hearing date.
3. At investigative staff's discretion, some evidence may be kept for training purposes. Sharps, if kept, must remain in approved sharps containers or otherwise protected from direct handling.
4. Evidence relating to inmate PREA cases will be forwarded to the PREA Director 45 days after the hearing date.

**F. Evidence Retention for Staff Investigations**

1. Active investigation files will be kept indefinitely by the Security and Operations Supervisor or designee.
2. Inactive investigation files will be retained for seven (7) years from the date of the incident or two (2) years from the action affecting the employee, whichever is longer.

**G. Retention of Criminal Evidence**

1. Uncharged cases
  - i. Except for cases involving homicide or criminal sexual conduct, evidence collected pursuant to criminal investigation of any uncharged case will be retained [REDACTED]
  - ii. Evidence collected pursuant to investigation of criminal sexual conduct will be retained [REDACTED]
  - iii. Evidence collected pursuant to investigation of homicide or suspicious death will be retained pursuant to a litigation hold, or if none in place, as follows:
  - iv. Under the following circumstances, evidence will be retained indefinitely unless the Director of Facilities Operations, in consultation with VSP determines that it can be disposed of:  
[REDACTED]

2. Charged cases
  - i. Evidence to be used in charged cases will be released to the appropriate law enforcement agency, prosecutor, or court as needed, and will thereafter be subject to the retention and/or disposition procedures of the receiving entity.
  - ii. A written record of any such transfer will be retained by the releasing facility.
  - iii. All evidence remaining in DOC custody on a charged case will be subject to disposal according to the following schedule:  
[REDACTED]

3. Requests for Early Disposition – Absent a litigation hold, variance from the disposition schedule may be granted by the Director of Facilities Operations, who may consult with the appropriate prosecuting authority. An investigator may initiate a request for early disposition of evidence. The request will include the following:
  - i. A list of items for which early disposition is sought, including:
    - a. A description of the evidence;
    - b. Case name and number;
    - c. Unusual Incident Report number;
    - d. Chain of custody; and
    - e. Purported evidentiary value.
  - ii. Submit the list, written response of prosecuting authority, and request for early disposition to the Director of Facilities Operations. Document and where appropriate, photograph the item prior to disposal.
4. Where an item or document identified as evidence by an investigator is subject to both this administrative directive and a Records Retention schedule, the longer retention period applies.

## **H. Evidence Release or Disposal**

Before disposing of any evidence, the investigative staff must consult with the facility Superintendent for any litigation holds. The release or disposal of all evidence will be documented on the evidence log.

### Evidence Disposal Methods

1. *Drugs* – VSP should be contacted for the removal and disposal of all drugs. In cases where VSP permits disposal, after acquiring this permission in writing, investigative staff will dispose of these items witnessed by one (1) of the following: another investigator, a Supervisor, or above.
2. *Weapons and Tobacco* – Investigative staff will dispose of these items by delivering them outside the facility secure perimeter for destruction by compaction, turning over to VSP, or other method that renders the items harmless.
3. *Biohazards* – All evidence and sharps possibly contaminated with blood or other potentially infectious materials will be disposed of in accordance with Administrative Directive #351.03, *Bloodborne Pathogens Exposure Control Plan*.
4. *Inmate Personal Property*
  - i. Radios, televisions, jewelry, clothes, shoes, etc. are examples of inmate personal property that may be involved in a disciplinary report and considered contraband. Investigative staff may waive the thirty (30) day guideline for inmate property held as evidence, if true ownership is established.
  - ii. Inmate property will be processed for disposition as allowable/unallowable property or contraband in accordance with the *Interim Procedure on Contraband Classification and Disposition (03/18/06)*.
  - iii. If ownership of evidence items is uncertain, investigative staff will contact staff assigned to manage property for assistance in identifying the rightful owner.

- iv. Inmate personal property that contains biohazards will not be returned to an inmate and must be destroyed by investigative staff.
- 5. *State Property* – Repairable or reusable, altered, or damaged State property will be destroyed or released to the appropriate work area for further disposition.

**TRAINING**

The Director of Facilities Operations and the Directive of Human Resource Development will ensure that training is developed and appropriate staff are trained on all procedures in this administrative directive.

**QUALITY ASSURANCE**

The Director of Facilities Operations will ensure that monitoring of this directive occurs through Security Compliance Audits at each correctional facility.