



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-090300 Institutional Evidence/Contraband Control, Tracking and Disposal	Issued: 10/31/85 Effective: 11/14/85	Reviewed: 11/30/18 Revised: 6/16/15
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:

NMSA 1978 Section 33-1-6 as amended.

REFERENCES:

- A. The Law of Evidence Graham C. Lilly 1978.
- B. ACA Standard 2-CO-3A-01, *Standards for the Administration of Correctional Agencies*, 2nd Edition.
- C. ACA Expected Practices, 5-ACI-3A-42, 5-ACI-3D-17 and 5-ACI-7D-08 *Performance Based Standards and Expected Practices for Adult Correctional Institutions*, 5th Edition.
- D. Blacks Law Dictionary, 1979. West Publishing Co.

PURPOSE:

To establish guidelines and procedures in conducting searches to control contraband and to ensure the secure, sanitary, safe, lawful, and timely disposition of contraband/evidence.

[5-ACI-7D-08] [2-CO-3A-01]

APPLICABILITY:

This policy applies to all state and contract employees of the New Mexico Corrections Department (NMCD).

FORMS:

Inventory/Chain of Custody form (CD-090301.1)

ATTACHMENTS:

- A. **Evidence Box Sign-In Log** Attachment (CD-090301.A)
- B. **Miscellaneous Contraband Log** Attachment (CD-090301.B)
- C. **Weapons Log** Attachment (CD-090301.C)
- D. **Narcotics Log** Attachment (CD-090301.D)

DEFINITIONS:

- A. Chain of Custody: A process to control and document security and handling of contraband and evidence.
- B. Contraband: any material prohibited by law, or by regulation, or material which can reasonably be expected to cause physical injury or adversely affect the security and safety of the institution.

1. *Dangerous Contraband*: any item which poses a serious threat to the security of an institution and which ordinarily is not approved for possession by an inmate or for admission into the institution.

Examples may include, but are not limited to weapons, ammunition or explosives, combustible or flammable liquids, hazardous or poisonous chemicals and gases.

2. *Nuisance Contraband*: any item other than hard contraband, which has never been authorized, or which may be, or which previously has been authorized for possession by an inmate, but whose possession is prohibited when it presents a threat to security or its condition or excessive quantities of it present a health, fire, or housekeeping hazard.

Examples may include, but are not limited to personal property no longer permitted for admission to the institution or permitted for sale in the commissary; altered personal property; excessive accumulation of commissary, newspapers, letters, or magazines which cannot be stored neatly and safely in the designated area; food items which are spoiled or retained beyond the point of safe consumption; government-issued items which have been altered, or other items made from government property without staff authorization.

- C. *Evidence*: Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or non-existence of a fact.
- D. *Evidence Custodian*: An employee designated by the Warden and is primarily responsible for the collection, tracking, storage, and disposal of all contraband confiscated or found within the confines of an institution or state vehicle.
- E. *Inventory Custody and Control Evidence Form*: A form designed to establish a chain of custody of any evidence secured by staff members.
- F. *Medical Personnel*: NMCD employees who are under the direction of the Chief Medical Administrator, and contract employees who are under the supervision of the Medical Vendor.
- G. *Medical Vendor*: Contract provider to the NMCD of medical, dental, psychiatric and other services of a healthcare nature.
- H. *Physical Evidence*: Contraband required substantiating or challenging any charge or be presented at a due process hearing.
- I. *Searches*: An examination of an individual's living quarters, property, and/or of his person, or any other area of the institution with a view to discovery of contraband, or some evidence of guilt to be used in a prosecution of a crime or the violation of Departmental policy.
- J. *Sharps*: Any edged or pointed medical instrument that is intended for or is capable of piercing the skin.

POLICY:

- A. The purpose of this policy is to provide for the preservation, control, and disposition of all physical evidence obtained in connection with a violation of law and/or institutional regulation to include: [5-ACI-3A-42]
- Chain of custody;
 - Evidence handling; and
 - Location and storage requirements.
- B. Evidence will be obtained, handled, retained and disposed of in a secure, professional and lawful manner.
- C. Evidence will be categorized identifying: what, when, where, from whom, and name of the individual who confiscated the evidence.
- D. Evidence that is not contraband that can be lawfully returned to the rightful owner will be returned and such action will be fully documented.
- E. When an inmate is suspected of a new crime, all searches are authorized by the Warden or designee unless immediate action is necessary; in such cases the Warden or designee is fully informed as soon as possible after the search. All evidence shall be preserved. [5-ACI-3D-17]
- F. Authorized Department employees will limit their investigative activity to preservation of the evidence and the crime scene until an investigator or the appropriate law enforcement agency assumes investigative jurisdiction (when applicable), unless ordered otherwise by the Warden.
- G. Evidence that has to be gathered must be accompanied by a signed consent form by the individual and appropriate legal documentation.



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AUTHORITY:

Policy *CD-090300*

PROCEDURE: [5-ACI-7D-08] [2-CO-3A-01]

A. Institutional Evidence Handling:

All contraband, whether or not traceable to a specific person, shall be submitted to the designated Evidence Custodian or secured in an area designated for evidence, in accordance with the following procedures:

1. Any time a staff member finds contraband within the confines of an institution or a state vehicle, the staff member is responsible for securing said contraband and notifying the appropriate supervisor.
2. All contraband and weapons shall be logged and tracked by the staff member who first took custody by using an **Inventory/Chain of Custody** form (*CD-090301.1*). All narcotics shall be submitted for testing, logging and tracking in accordance with policy *CD-090500*.
3. The original **Inventory/Chain of Custody** form should be attached to and remain with the contraband until final disposition of the contraband.
4. All efforts should be made to transfer contraband to the designated Evidence Custodian or area designated for evidence as soon and directly as is practical. When contraband is submitted it shall be logged using the **Evidence Box Sign-In Log** Attachment (*CD-090301.A*). The number of persons handling evidence should be kept to a minimum.
5. The **Inventory/Chain of Custody** form shall reflect all persons who physically handled the evidence and the date and time it was handled. There should not be any date or time that the evidence was not accounted for. When evidence is placed in a secure location, the form should reflect the date, time, and location where it was stored and then again the date and time it was removed from a stored location and by whom.
6. Evidence that is to be removed from the facility grounds by the law enforcement agency with jurisdiction or with written permission of the Warden or designee should first be photographed and a copy of the **Inventory/Chain of Custody** form retained with the photo.
7. Handling of needles, tattoo guns, weapons or other sharp instruments:

- a. All contraband that is sharp and capable of puncturing the skin (i.e. needles, tattoo machines, weapons, etc.) shall be placed in a sharps container prior to being placed in a designated evidence storage location.
 - b. Any staff member who is punctured, scratched, or injured in any way by a piece of contraband is to notify supervisory staff and seek medical assistance immediately.
 - c. During final disposition all syringes shall only be disposed of in a medically approved sharps container through medical personnel and only after all administrative and legal measures have been completed.
8. Evidence soiled by blood or other bodily fluid shall be placed in a paper bag in order to preserve the evidence. **BIOHAZARD** should be clearly written on the outside of the bag. Plastic biohazard bags should not be used until the evidence is ready for final disposal and should only be disposed of through the medical department. Plastic bags can spoil the integrity of any biological evidence and may cause mold to form.
 9. Alcohol shall not be retained as evidence, a photograph with a full description and an **Inventory Chain of Custody** Form indicating the disposition of the substance shall be submitted as a facsimile of the physical evidence. The evidence should be finally disposed of in a manner approved by the medical personnel.
 10. Illegal drugs or non-prescribed pharmaceuticals shall be tested, logged and tracked in accordance with Policy *CD-090500*.

B. Evidence Handling for Disciplinary Proceedings:

Whenever possible, the Disciplinary/Hearing Officer should present photographs of physical evidence as a facsimile of the physical evidence when the evidence in question poses a threat in and of itself, or when the item is too large to safely transport back and forth to a proceeding (television, chair, foot locker, etc).

- a. The designated Evidence Custodian shall photograph the evidence upon request and submit a copy of the **Inventory Chain of Custody** form reflecting the current disposition of the physical evidence to the requesting Disciplinary/Hearing Officer.
- b. The photograph shall be retained by the Disciplinary Department throughout the disciplinary process including appeal and then returned to the designated Evidence Custodian to indicate a completion of the disciplinary process.
- c. The presentation of evidence at a disciplinary proceeding shall be determined by the Disciplinary/Hearing Officer adjudicating the case. The designated Evidence Custodian shall not arbitrarily deny access to any physical evidence by a Disciplinary/Hearing Officer either investigating or adjudicating the case.
- d. When the actual physical evidence is used for the adjudication of a disciplinary proceeding,

the physical evidence shall be retained by the Disciplinary Department, in a previously approved secure location for evidence throughout the disciplinary process including appeal and then returned to the designated Evidence Custodian to indicate a completion of the disciplinary process.

C. Designated Evidence Custodian:

An employee who is designated by the Warden and primarily responsible for the collection, tracking, storage, and disposal of all contraband confiscated or found within the confines of an institution or state vehicle. The designated Evidence Custodian's duties include but are not limited to:

- Serving as the point of contact for all facility staff as it pertains to the collection, tracking, logging, storing, and disposal of contraband;
- assuring the rules of evidence are implemented and followed;
- Retrieving, logging, tracking, and storing of all contraband submitted or secured in an area designated for evidence on a daily basis (not including weekends and holidays);
- Assuring limited access to approved evidence storage facilities (i.e. Warden, Deputy Warden, back-up evidence custodian, etc);
- Creating a lesson plan and training staff during the 40 hour in-service on evidence handling procedures;
- Assisting the disciplinary section by photographing evidence and submitting copies of the chain of custody upon request;
- Establishing procedures with the medical department for disposal of needles and bio-hazardous materials;
- Establishing procedures with local law enforcement or the state police for the disposal of narcotics and weapons;
- Establishing procedures for the deposit of confiscated money to the inmate general fund;
- Refer all gang related contraband to the STIU; and
- Establish procedures for the submission of evidence to the District Attorneys office for cases that are prosecuted.

D. Monthly Contraband/Evidence Reporting:

At the end of each month the designated Evidence Custodian shall submit a copy of the **Miscellaneous Contraband Log** Attachment (*CD-090301.B*), the **Weapons Log** Attachment (*CD-090301.C*) and the **Narcotics Log** Attachment (*CD-090301.D*) to the Warden or designee. The Warden or designee should in turn share this information with supervisory staff.

E. Evidence Disposal:

1. Evidence that is considered dangerous in nature including, but not limited to, all weapons, blood or other bodily fluid contaminated items, narcotics, medications, and/or drug paraphernalia shall only be disposed of in a manner that is authorized by this policy/procedure and only with written authorization from the Warden or designee.

2. All evidence is linked to a crime or connected with an alleged criminal act shall not be disposed of unless authorized in writing by the Warden or designee. In most cases these items shall be signed over to the law enforcement agency with jurisdiction or the District Attorney's office. The Evidence Custodian shall be responsible for maintaining receipt of all evidence that is signed over to law enforcement or the courts.
3. All weapons and narcotics shall only be disposed of through a contract such as a memorandum of understanding or intergovernmental agreement with a local or state law enforcement agency and only with written approval of the Warden or designee as indicated above.
4. All evidence that is deemed as minor contraband that does not have any biological hazard associated with it shall be disposed of in a manner that protects the evidence from being re-introduced into the facility (i.e. not in office trash cans which are emptied by inmate porters). These items should be removed from the perimeter of the facility or compacted in a locked trash compacter, which is monitored at all times when unlocked, by security staff.
5. All sharps and biohazardous evidence shall be disposed of by medical personnel and only as approved by federal, state, and local guidelines allow.

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EVIDENCE LOG #: _____

FACILITY: _____

LOCATION WHERE EVIDENCE WAS FOUND: _____

DATE EVIDENCE RECOVERED: _____

TIME EVIDENCE RECOVERED: _____ AM / PM

SUSPECT(S) AND NMCD NUMBER(S) if applicable



ITEM #	ITEM TYPE	<u>INVENTORY AND DESCRIPTIONS OF ARTICLES</u> (Include model, Serial number, identifying marks, condition)	QUANTITY
1.		 	
2.		 	
3.		 	
4.		 	
5.		 	

CHAIN OF CUSTODY				
Item #	Date & Time	Recovered By:	Received By	Purpose of Change of Custody
		Printed Name or Location:	Printed Name or Location:	<input type="checkbox"/> Transfer <input type="checkbox"/> Storage <input type="checkbox"/> Disposal
		Printed Name or Location:	Printed Name or Location:	<input type="checkbox"/> Transfer <input type="checkbox"/> Storage <input type="checkbox"/> Disposal
		Printed Name or Location:	Printed Name or Location:	<input type="checkbox"/> Transfer <input type="checkbox"/> Storage <input type="checkbox"/> Disposal
		Printed Name or Location:	Printed Name or Location:	<input type="checkbox"/> Transfer <input type="checkbox"/> Storage <input type="checkbox"/> Disposal

