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4/1/2016	18	02-01-101

**POLICY AND ADMINISTRATIVE  
PROCEDURE**  
**Manual of Policies and Procedures**

Title  
**OFFENDER PERSONAL PROPERTY**

Legal References (includes but is not limited to) IC 4-24-6-2; 4-24-6-5; 11-8-2-5 (a) (8-9); 11-8-6-1; 11-10-12- 1(a) (1); 11-11-2-1; 11-11-3-7	Related Policies/Procedures (includes but is not limited to) 00-02-301; 02-01-102; 02- 01-103; 02-03-101; 02-04- 101; 03-02-101; 04-01-104	Other References (includes but is not limited to) ACA Standards
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I. PURPOSE:

This policy and administrative procedure establishes the types and amounts of personal property that an offender may bring into and maintain while incarcerated in the Department of Correction. Additionally, this policy and administrative procedure establishes guidelines for the accounting and disposition of offender personal property.

II. POLICY STATEMENT:

Offenders shall be permitted to obtain and possess certain personal property while incarcerated in the Department. The personal property that an offender is allowed to possess must be used in an approved manner and must not constitute a threat to the safety, good order, and security of the public, staff, offenders, and facility. The Department shall establish lists, based upon the type of facility and its security level, that indicate the types of the personal property that an offender may keep in his/her possession. These lists shall take into consideration the needs of the offenders and the objectives of the facilities. Each facility shall limit possession of certain types of personal property based upon health, fire, and safety issues and the promotion and maintenance of good order and administrative manageability. All personal property retained by the Department shall be inventoried, receipted, stored, and returned to the offender within a reasonable time upon the offender's release from the Department.

An offender's personal property may be searched and, if it is determined to be contraband or prohibited property, seized. Any seizure of personal property shall be done in such a manner as to avoid unnecessary force, embarrassment, or indignity to the offender. An offender may appeal the seizure of personal property through the Offender Grievance Process. Additionally, an offender may file a Tort Claim, in accordance with the Indiana Code and Department policy, if property is lost, damaged, or destroyed by Department

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staff.

Offenders shall not be permitted to operate any private business, either for profit or non-profit, while incarcerated in the Department without written authorization from the Commissioner. Such authorization shall be given only after considering the general welfare and safety of all parties that might be impacted by the private business.

The Department shall establish procedures for the storage and disposition of personal property belonging to offenders who have died while in the custody of the Department, or who have escaped from custody. The disposition of the personal property of the deceased or escaped offenders shall be in compliance with the State statute.

### **III. DEFINITIONS:**

For the purpose of this policy and administrative procedure, the following definitions are presented.

- A. **BUSINESS ACTIVITY:** Any venture, enterprise, or other activity by which an offender or others acting on the behalf of an offender engage in the sale, barter, or exchange of goods and/or services or the solicitation of funds and/or services, including, but not limited to, any activity done in the name of an entity or organization rather than in the name of the offender. This venture, enterprise, or activity may be either for profit, not-for-profit, private, or charitable.
- B. **CONTRABAND:** An item, the possession of which is in violation of State or federal statute.
- D. **DEWISEE:** an individual who receives a gift of real property by a will.
- E. **HOBBY CRAFT:** An activity or handicraft conducted by an offender during leisure time, which may have a market value if sold.
- F. **IMMEDIATE FAMILY:** The immediate family of an offender is his/her father, mother, siblings, spouse, children, grandparents, grandchildren, and legal guardians, including those with a “step,” “half,” or adoptive relationship and those persons with the same relationship to the offender’s spouse.
- G. **INDIGENT OFFENDER:** An offender who has a Trust Fund account balance of less than fifteen dollars (\$15.00) (not including monies in the offender’s Re-Entry Administrative Account) on the day of request and has not had a total of more than fifteen dollars (\$15.00) credited to the Trust Fund account (not including the

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offender's Re-Entry Administrative Account) in the preceding thirty (30) days.

- H. **INTAKE UNIT:** Any facility or any unit within a facility designated by the Commissioner to receive offenders from a court.
- I. **LEGAL MATERIALS:** Pleadings, complaints, petitions, motions, briefs, exhibits, Department policies/procedures, affidavits, transcripts, expert reports; correspondence to and from attorneys or persons employed by an attorney in a legal capacity; correspondence to or from courts or expert witnesses; copies of case law; notices of filing or other documents to be filed in a court of law, court of claims, or other forum in which a suit may be filed; documents to be filed in support of clemency petitions; or any other documents which are or may be required to be served upon opposing counsel or parties.
- J. **OFFENDER:** An adult person committed to a department of correction (federal, state, or local) and housed or supervised in a facility either operated by the department of correction or with which the department of correction has a contract, including an adult under parole supervision; under probation supervision following a commitment to a department of correction; in a minimum security assignment, including an assignment to a community transition program.
- K. **PROHIBITED PROPERTY:** Any property item, other than contraband, that:
  - 1. Is not specifically permitted by Department policy and administrative procedure or by the Superintendent of a specific facility;
  - 2. Exceeds established limits;
  - 3. Is misused or is used in a manner other than has been approved by the Superintendent or designee; or,
  - 4. Is in the possession of an unauthorized person.
- L. **PROPERTY:** An item that the Department permits an offender to possess.
- M. **PROPERTY STORAGE AREA:** A physical location or container designated by the Superintendent as the area where offender personal property and belongings are stored when not in possession of the offender.
- N. **TORT CLAIMS ADMINISTRATOR:** The staff person in the Central Office Division of Legal Services designated to process Tort Claims from offenders concerning the loss of the offender's personal property.
- O. **WORKING DAY:** Mondays through Fridays, excluding weekend and State

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holidays.

#### **IV. NOTIFICATION OF ALLOWABLE PROPERTY TO COMMUNITY AGENCIES:**

The Commissioner, or designee, shall ensure that the following agencies are supplied with a list of property that an offender may bring to a Department intake unit:

- A. County Sheriffs; and,
- B. All judges having criminal jurisdiction

This notification shall be forward at least annually or when the Master Property List is revised. Allowable containers and amount of property shall be left to the Superintendent. These agencies and individuals shall be advised that any property not on the list shall not be accepted and may be returned with the transporting person.

#### **V. PERMITTED PROPERTY:**

Offenders shall be permitted to maintain only the types of property indicated in the attachments to this policy and administrative procedure, including those limits indicated in a facility's operational procedures. The amount of property offenders shall be able to maintain shall be indicated in the facility's operational procedure. The types of property permitted shall remain the same within each security level. However, the Superintendent may reduce the amount of property allowed for that specific facility and/or disallow certain items based upon operational concerns of the facility (e.g. sweatshirts may be disallowed due to laundry operations capacity). The maximum amount of allowable property shall be indicated in a facility's operational procedures.

Any property which the offender brings into the facility and which the offender is permitted to keep shall be the offender's responsibility. The offender shall assume all liability for any property that is left in an unsecured location. The Department shall not assume any responsibility for lost or stolen property that the offender has been permitted to maintain in his/her living unit.

#### **VI. GENERAL PROVISIONS REGARDING OFFENDER PERSONAL PROPERTY:**

The following provisions shall be applicable to all offenders housed in Department facilities:

- A. All offender personal property shall be stored in a safe and secure manner in accordance with this policy and administrative procedure, operational procedure, or facility directive.

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- B. All property in a living area shall be stored in a manner that will not obstruct line of sight, paths of entrance, or exit from the living area.
- C. The use of electrical appliances shall be controlled by the facility administration and shall be based upon the safety and security of the facility, including any applicable health and safety regulations.
- D. Decorations and furnishings of living areas shall be noncombustible and controlled by the facility administration based upon the safety and security of the facility.
- E. The affixing of posters, photographs, paper, or other items to the walls, ceilings, floors, doors, windows, bars, furniture, or storage boxes and the open display of nude images, depictions, or photographs or any images, depictions, or photographs that would be offensive or threatening to other persons (including, but not limited to: gang symbols or depictions, racist or discriminatory materials), shall be prohibited.
- F. Any offender who damages, defaces, or loses an approved storage area shall be subject to disciplinary action in accordance with Policy 02-04-102, "Disciplinary Code for Adult Offenders."
- G. Unless otherwise specified in this policy and administrative procedure, or in the facility's operational procedure, an offender's personal property shall be stored in a personal property storage box or other facility-approved storage container/area.
- H. Correspondence may be stored in the approved personal property area or other approved storage container.

### **VII. INTAKE UNIT:**

#### **A. INITIAL INVENTORY OF AN OFFENDER'S PERSONAL ITEMS**

All items which accompany the offender shall be inventoried and classified as:

1. Contraband;
2. Prohibited Property; or,
3. Property.

All items shall be receipted. The staff person assigned to inventory the property

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shall do so in the presence of the offender and shall prepare a receipt for all property inventoried. State Form 4876, INVENTORY OF PERSONAL PROPERTY, or a similarly approved State Form shall be used for this purpose. If the offender cannot be present for the inventory, a second staff person shall monitor the inventory, and sign State Form 4876. If an offender is present for the inventory, but refuses to sign State Form 4876, a second staff person shall sign the list and indicate that the offender refused to sign. The completed, original State Form 4876 shall be given to the offender. A legible copy shall be placed in the offender's facility packet.

At the time that the offender's personal property is inventoried, the offender shall be issued a personal property storage container. The offender shall be required to store all his/her personal property in the personal property storage container and any other approved property storage devices provided in the living area.

### **B. DISPOSITION OF PROHIBITED PROPERTY AND/OR CONTRABAND:**

#### **1. Prohibited Property:**

If it is determined that an offender has prohibited property at the time of arrival at an intake unit or facility, the receiving facility shall inventory and package the prohibited property. A legible copy of the inventory shall accompany the package containing the prohibited property. The following alternatives shall be pursued:

- a. If available, the transporting person shall be requested to take the property back to the offender's commitment county for proper disposition;
- b. The offender may identify someone to whom the items may be shipped at the offender's expense;
- c. The offender may identify a charitable organization to which the items may be shipped at the offender's expense; or,
- d. The items may be disposed of in any other reasonable manner.

After these alternatives have been explored, the selected alternative shall be pursued to dispose of the prohibited property. If the offender chooses option b or c above, and has available funds, the offender shall assume the cost to ship the items. The offender shall complete State Form 35720,

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“REQUEST FOR REMITTANCE.” State Form 35720 shall be processed by the intake unit’s business office and funds shall be deducted from the offender’s Trust Fund account. The intake unit shall dispose of these items as quickly as possible, but in all cases prior to the transfer of the offender to another facility. State Form 21682, “DISPOSITION OF OFFENDER PERSONAL PROPERTY / CORRESPONDENCE,” shall be used to record the disposition of the offender’s property.

2. Contraband:

If it is determined that an offender has contraband at the time of arrival at an intake unit or facility, the receiving facility shall confiscate the contraband, complete SF 36030, “NOTICE OF CONFISCATED PROPERTY,” complete State Form 7212, “REPORT OF INCIDENT,” and process the contraband for submission to the facility Office of Investigations and Intelligence in accordance with Section XII, “Duties and Responsibilities for Evidence,” of Policy and Administrative Procedure 00-01-103, “The Operation of the Office of Investigations and Intelligence.”

VIII. RECEIPT AND INVENTORY OF PROPERTY RECEIVED AT A DEPARTMENT FACILITY (See Operational Procedure):

When transferred, all personal property shall accompany the offender, except in an emergency situation. The volume of property allowed on a transfer shall be no more than four and one-half cubic feet (4.5 ft<sup>3</sup>). The type of property transferred shall be in accordance with the respective Master Department Allowable Property List (Attachment). Property that exceeds four and one-half cubic feet may be disposed in accordance with Section VII, B, 1, b-d. Prior to the transfer of an offender; the sending facility shall inventory and box an offender’s personal property. A legible copy of the inventory shall be placed with the offender’s property and a legible copy placed in the offender’s facility packet. All property sent with the offender shall be in sealed boxes that are clearly labeled with the offender’s name and DOC number. In order to ensure that all boxes are received, all boxes are to be numbered as a quantity of a whole (1 of 3, 2 of 3, etc.). The offender shall be asked to sign the inventory and the offender’s signature shall be witnessed by the staff personal inventorying the property. If the offender refuses to sign the inventory, a second staff person shall sign indicating the offender’s refusal.

An exception shall be allowed for the four and one-half cubic feet (4.5 ft<sup>3</sup>) for Department-approved television sets. Musical instruments that do not fit within the four

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and one-half cubic feet (4.5 ft<sup>3</sup>) requirement may be included in transferring property on a case-by-case basis by the Superintendent or designee.

Upon arrival at the receiving facility, the offender's property and money, if any, shall be inventoried. The offender shall be requested to sign the inventory, listing all property and monies, and the staff person conducting the inventory shall sign as a witness. If the offender refuses to sign the inventory, a second staff person shall sign indicating the offender's refusal. Whenever possible, the offender shall be present during the inventory. The completed, original SF 4876 shall be given to the offender. A legible copy shall be placed in the offender's facility packet.

If an offender arrives at a facility with prohibited property, this property shall be inventoried and packaged. A legible copy of the inventory shall be attached to the package and the package shall be placed in the facility's property storage area. The offender shall be advised that this property is considered prohibited property and that the offender has a maximum of sixty (60) days to dispose of this property. The offender may dispose of the property in accordance with the intake unit/receiving facility procedure found in Section VII, B, 1, b-d.

If an offender arrives at a facility with contraband hidden in his/her property, the contraband shall be handled according to Section XII of Policy and Administrative Procedure 00-01-103, "The Operation of the Office of Investigations and Intelligence," and the offender shall be subject to disciplinary actions in accordance with Policy and Administrative Procedure 02-04-101, "The Disciplinary Code for Adult Offenders."

After the sixty (60) day period, if the offender has not made arrangements for the disposal of the prohibited property, the Superintendent or designee shall determine a reasonable disposition of the property. Disposition at this time does not require the approval of the offender provided that the offender has been notified of the sixty (60) day waiting period and the disposition is in accordance with this policy and administrative procedure.

Operational procedures shall specify the manner in which property is to be handled from the time the offender is received at the facility. The operational procedure shall identify the specific staff person's responsibilities in the receiving, handling, inventorying, and storing of offender property.

### **IX. PERSONAL PROPERTY STORAGE AREA/CONTAINERS (See Operational Procedure):**

When an offender is received at a facility and his/her personal property is inventoried, the offender shall be issued a personal property storage container, temporarily or



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permanently as determined by the facility's operational procedure. When an offender is transferred from one facility to another, the personal property storage container shall remain with the sending facility. A transferred offender shall receive a new personal property container in accordance with the facility's operational procedure at the receiving facility following the inventory of the offender's personal property.

The size of this personal property storage container shall be determined by the facility based upon the type of storage devices/areas that are already in the facility's living areas and the space limitations in the living areas. If the offender arrives with his/her personal property in a personal property storage container, the facility shall determine whether this container is of the appropriate size to fit in the offender's assigned living area. If so, the offender shall be permitted to maintain the same container. If not, this container shall be confiscated from the offender and the appropriate-sized container issued to the offender.

The personal property storage container issued to the offender shall be kept in the offender's living area. The only exception to this procedure may be for offenders housed in a restrictive status housing unit. At the discretion of the Superintendent, the personal property storage containers for offenders in restrictive status housing units may be stored outside the living area. In this case, the Superintendent shall designate a secure area outside the living area where the containers shall be stored.

Operational procedures shall be developed which indicate whether the personal property storage container will be kept in the offender's living area and, in conjunction with the facility's operational procedures for the restrictive status housing units, shall indicate the property permitted in the restrictive status housing units.

### **X. TRANSFER OF AN OFFENDER (See Operational Procedure):**

Prior to an inter-facility transfer, an offender's personal property shall be inspected, inventoried, packed, and receipted by staff. The volume of property allowed on a transfer shall be no more than four and one-half cubic feet (4.5 ft<sup>3</sup>). The type of property transferred shall be in accordance with the respective Master Department Allowable Property List. This property shall be inventoried in the presence of the offender whenever possible. Staff shall ensure the offender's property does not include any prohibited property/contraband and that all amounts are within the limits of the sending facility, as indicated in the sending facility's operational procedure.

Property that exceeds four and one-half cubic feet (4.5 ft<sup>3</sup>) on an inter-facility transfer may be disposed of in the following manner:

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### A. Prohibited Property:

If it is determined that an offender transferring to another Department facility has prohibited property during the inspection and inventory, the following dispositions of the property are available to the offender:

1. The offender may identify an individual to whom the items may be shipped at the offender's expense;
2. The offender may identify a charitable organization to which the items may be shipped at the offender's expense; or,
3. The items may be disposed of in any other reasonable manner.

If the offender chooses option 1 or 2 above, the sending facility shall weigh the excess property to determine the shipping cost and have the offender complete State Form 35720, "REQUEST FOR REMITTANCE." State Form 35720 shall be processed by the sending facility's business office and funds shall be deducted from the offender's trust fund account.

### B. Contraband:

If it is determined that an offender has contraband hidden in his/her property, the sending facility shall confiscate the contraband, complete State Form 36030, "NOTICE OF CONFISCATED PROPERTY," complete State Form 7212, "REPORT OF INCIDENT," and process the contraband for submission to the facility Office of Investigations and Intelligence in accordance with Section XII, "Duties and Responsibilities for Evidence," of Policy and Administrative Procedure 00-01-103, "The Operation of the Office of Investigations and Intelligence."

Staff shall complete a State Form 4876, "INVENTORY OF OFFENDER PERSONAL PROPERTY." The offender shall be required to sign the inventory form. If the offender refuses to sign, a second staff person who witnessed the inventory shall sign and indicate that the offender refused to sign the form.

Once the property is inventoried it shall be placed in sealed cardboard boxes, and numbered as a quantity of a whole (1 of 3, 2 of 2, 3 of 3, etc).

If the offender has other approved containers for excess legal materials, these boxes shall be inventoried, sealed, and numbered, as well.

Once all property has been inventoried, the offender shall be given the original copy of

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SF 4876 and a legible copy shall be placed in the offender's facility packet.

The receiving facility shall ensure that a copy of the inventory form is received when the offender arrives. If the receiving facility does not find a copy of the inventory form, designated staff shall contact the sending facility to determine where the form may be. The receiving facility shall inventory all of the offender's property to ensure that all indicated property is present. Any excess legal materials shall be stored in accordance with the facility's operational procedure.

Operational procedures shall be developed to ensure that an offender's personal property is inventoried prior to the offender being transferred. The operational procedure shall designate the staff responsible for inventorying the offender's property.

### **XI. TEMPORARY TRANSFER OR ABSENCE OF AN OFFENDER (See Operational Procedure):**

A temporary transfer or absence of an offender includes:

- A. Temporary Leave;
- B. Bedside or funeral visit;
- C. Temporary release on court order;
- D. Temporary inter-facility transfer; and,
- E. Medical leave.

In all instances, the offender shall return to a facility with only those items that were taken on the temporary transfer or absence. Offenders assigned to a community-based facility may purchase additional clothing and toiletries while on a temporary leave; provided a receipt is available, the articles are inventoried upon return to the facility, and the Superintendent approves such purchases. When an offender transfers to another facility, only one State issue of clothing is to accompany the offender.

Offenders released to a court order and/or turned over to wanting authorities (TOT) shall have their property inventoried and packaged according to Section X. An Executive Directive shall be issued by the office of the Commissioner listing types and amounts of personal property when an offender is released to court order or TOT to wanting authorities.

Additionally, staff shall advise the offender that should he/she be released by the court, the offender is to contact the facility as soon as possible regarding his/her release and the disposition of any personal property left at the facility. The offender shall be advised that sixty (60) days following the facility's official notification of the offender's release by

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the court, any personal property remaining at the facility shall be considered abandoned property and shall be disposed of in accordance with State law and Department property procedures.

In those cases where an offender is TOT and remains in custody, the offender shall contact the facility and advise as to his/her custody status and request that any personal property left behind be released to a specific friend or family member. The offender shall be advised that the property will not be released to anyone without a request from the offender designating the person authorized to obtain the property.

Operational procedures shall specify whether all other property left behind shall be stored or maintained at the offender's housing unit, and the specific staff person's responsibilities in this process. The operational procedures shall also specify the exit inventory process and the staff person's responsibilities if the property is to be stored and/or maintained at two (2) facilities if a temporary inter-facility transfer occurs.

### **XII. EMERGENCY TRANSFERS:**

An offender who is transferred to another Department facility on an emergency basis may be transferred without his/her property. The sending facility shall collect the offender's personal property, inventory the personal property, and document on State Form 4876, "INVENTORY OF OFFENDER PERSONAL PROPERTY." A second staff person shall witness the inventorying and collection of the offender's property and shall sign the inventory list. The sending facility shall maintain a copy of the completed inventory list. The personal property shall be packaged and sealed in cardboard boxes with the inventory list, marked with name, DOC number, and with the quantity of a whole on the outside of the box. The box(es) shall be secured until transported to the receiving facility.

The offender's personal property shall be transferred to the receiving facility within ten (10) working days from the date of transfer. The receiving facility shall process the offender's property as described in this policy and administrative procedure.

### **XIII. RELEASE OF PERSONAL PROPERTY (See Operational Procedure):**

Property shall be returned to an offender within a reasonable period of time upon release or discharge from a facility. State Form 4876, or similarly approved State Form, shall be used as a receipt for this purpose. An offender may request the release of property retained by the Department prior to release or discharge.

Operational procedures shall specify the manner in which property is released or returned to an offender, and the time frames for the return of property upon release or discharge.

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**XIV. SEIZURE OF PROPERTY (See Operational Procedure):**

All prohibited property or contraband found by staff shall be seized. Property may be seized if its use or possession is a danger to the security, safety, or operation of the facility. When any property (including extra allowed property, or personal property that has been altered), prohibited property, or contraband is seized, the offender shall be given written notice of the seizure. State Form 36030, "NOTICE OF CONFISCATED PROPERTY," shall be used for this purpose. This form shall be completed fully, including the offender's signature. If the offender is unable or unwilling to sign State Form 36030, a second staff member shall sign and document the unwillingness or inability to sign. The offender shall receive a copy of the completed State Form 36030 and a legible copy shall be placed in the offender's facility packet. If it is determined that the property is not the offender's property, is prohibited property, or is contraband, disciplinary action may be taken, if applicable. If property that is seized is later determined to be neither contraband nor prohibited property, it shall be returned to the offender or disposed of as directed by the offender. Money that is seized shall not be returned to offender. Unauthorized money that is seized shall be deposited in the Inmate Recreation Fund in accordance with Policy and Administrative Procedure 04-01-105, "Recreation Fund Administration.:

Seized prohibited property that is not stolen property shall be disposed of in accordance with this policy and administrative procedure. Once the property has been determined to be prohibited property, the offender shall be given State Form 21682, "DISPOSITION OF OFFENDER PERSONAL PROPERTY/CORRESPONDENCE." The offender shall be instructed to indicate the desired disposition of the prohibited property. The offender shall have up to sixty (60) days to determine a desired disposition, except for food items as indicated below, and have the property removed from the facility. The offender shall have the option of choosing from the proposed manners of disposition indicated on State Form 21682. If the offender chooses to send the property to someone outside the facility, the offender shall be responsible for the cost of mailing the prohibited property. If the offender does not advise how to dispose of the property within the sixty (60) day period, the facility shall make the determination. The facility shall be permitted to dispose of the property in any reasonable manner. The offender shall be notified by use of State Form 21682 of the date on which the property was disposed and the manner of disposition. A legible copy of the completed State Form 21682 shall be filed in the offender's facility packet.

If the confiscated property is a non-canned food item, the same procedures shall be followed. However, the facility shall not be required to store the item for the sixty (60) day period. The facility shall ensure that the offender is notified that a non-canned food

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item has been confiscated. This notification shall take place within twenty-four (24) hours of the time of the confiscation. The offender shall be instructed that he/she must advise the facility of the desired disposition of the property as outlined in Section X, A. The offender shall be given seven (7) days from the date the offender is notified of the confiscation to advise the facility as to the desired disposition. If the facility is not notified within seven (7) days of the confiscation, the facility shall dispose of the item(s) in accordance with this administrative procedure. In the case of canned food items, the same procedure shall be followed; however, the offender shall have sixty (60) days from the date that he/she is notified of the confiscation to advise the facility of the desired disposition. All notifications indicated above shall be made in a timely manner.

If it is determined that any seized property has been stolen, every effort shall be made to return the stolen property to its rightful owner. If the rightful owner cannot be identified, the facility shall document all efforts that were taken to locate the owner and, after sixty (60) days, the facility may dispose of the property in any reasonable manner.

If the seized property is determined to be contraband, the facility shall determine whether criminal charges are to be filed. If so, the facility shall handle the contraband in accordance with Policy and Administrative Procedure 00-01-103, "The Operation of the Office of Investigations and Intelligence," Policy and Administrative Procedure 02-04-101, "The Disciplinary Code for Adult Offenders," and Policy and Administrative Procedure 02-03-117, "Correctional Police Officer." If criminal charges are not to be filed, the facility's Correctional Police Officer shall determine the appropriate manner in which to dispose of the contraband. The facility shall dispose of the contraband in accordance with the instructions of the Correctional Police Officer. It shall not be necessary to notify the offender of the disposition of contraband.

Operational procedures shall specify the manner of holding and storing seized property pending investigation, the manner of disposing of contraband, and the process in determining when criminal prosecution is pursued.

### **XV. LIMITS OF PROPERTY (See Operational Procedure):**

The Attachment presents the types of property an offender may possess. Each facility shall develop operational procedures that determine the amount of property allowed consistent with the following considerations:

- A. Maintenance of security;
- B. Ensuring the health and safety of staff and offenders;
- C. Promotion of administrative manageability;
- D. Sanitation of the facility;

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## **Manual of Policies and Procedures**

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- E. Statutory and judicial mandates; and,
- F. Availability of fiscal and staff resources.

### **XVI. STORAGE OF OFFENDER PROPERTY (See Operational Procedure):**

Offenders shall be required to keep all property within their living areas either in a large property container or in a combination of locations within the living area (e.g. in a small property box and a locker, under-bed storage drawer, or chest-of-drawers). The facility shall determine whether a large property box or a small property box combined with other property storage containers are appropriate for the types of living areas within the facility. All property, with the exceptions of large items (e.g. televisions) must be kept in the approved storage containers/areas. Any property, with the exception of large items, shall be required to fit into the approved property storage containers. Property that cannot fit into the approved storage containers/areas shall be considered excess property and shall be subject to confiscation and disposal in accordance with this policy and administrative procedure.

Operational procedures shall be developed that outline the property allowed to remain outside the approved storage containers/areas or other containers when the offender is not in his/her living area.

### **XVII. COMMISSARY ITEMS:**

Each facility shall develop a list of items that may be purchased by offenders from commissary or through vending machines. This list of available items shall be developed in accordance with Policy and Administrative Procedure 02-01-108, "The Establishment and Operation of Commissaries."

### **XVIII. OFFENDER LEGAL MATERIALS (See Operational Procedure):**

An offender may keep correspondence and legal materials. Offenders who have excess legal materials that cannot fit into the offender's personal property storage container/area shall have the excess legal materials stored and maintained in a secure area designated by the Superintendent. The offender and a staff person shall inventory and pack legal materials in the additional storage containers/areas. The facility may use cardboard boxes to store the additional legal material that is not kept in the offender's living area. The offender shall sign a receipt for the additional storage box(es). A legible copy of this receipt shall be placed in the container in the presence of the staff person and the offender. A legible copy of this inventory shall be maintained by the staff person in charge of the storage area and the original shall be given to the offender.

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Once the inventory is complete, the box(es) shall be sealed and marked with the offender's name and DOC number. The box(es) shall be identified as "Excess Legal Material."

In order to gain access to this material, the offender shall be required to submit a written request to the staff person designated by the Superintendent. The offender is to give this notice seven (7) days prior to the desired review date. In those cases where the offender has a verified court date, deadline, or a statute of limitations deadline, the offender shall note such on the request and the facility shall make every effort to provide the requested access within twenty-four (24) hours of receipt of the request. An offender shall be allowed to access any excess legal materials with the following conditions.

- A. The offender shall retrieve and return to his/her living area with no more material than will fit into the personal property area in his/her living area.
- B. Unless the offender has a verified court, statutory, or statute of limitations deadline, or other verified emergency, the offender shall be allowed access to the excess legal materials no more than once per week.

Whenever an offender is granted access to the excess legal materials, staff assisting in the access shall document such on State Form 4876, "INVENTORY OF OFFENDER PERSONAL PROPERTY." This documentation shall include the offender's name and DOC number, the date of the request for access, the date of the approval or denial of access, and if denied, the reason for the denial. In addition, the inventory of the excess legal materials shall be updated each time the offender accesses this material. The staff person shall ensure that any material that is added to or removed from the excess legal materials is inventoried and documented on State Form 4876. A completed State Form 4876 shall be provided to the offender and a legible copy placed in the offender's facility packet.

Operational procedures shall indicate the manner in which excess legal materials are to be stored and the manner in which the offender may access these legal records.

### **XIX. DISPOSITION OF A DECEASED OFFENDER'S PERSONAL PROPERTY:**

Should a confined offender die, a request for entitlement of the offender's property may be made forty-five (45) days after the date that the offender dies. In computing the forty-five (45) day period, the day the offender dies is not to be counted, and the forty-fifth (45<sup>th</sup>) day is the last day of the waiting period. This means that the forty-sixth (46<sup>th</sup>) day after an offender's death is the first day that an affidavit for entitlement can be executed by the person requesting the property. However, if the forty-sixth (46<sup>th</sup>) day falls on a



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Saturday, Sunday, or holiday, then the next working day is the first day that such an affidavit for entitlement can be executed. State Form 41973, "AFFIDAVIT OF ENTITLEMENT TO PROPERTY," may be executed at the facility or before a proper notary public. This form is to be accepted from a person requesting property only if:

- A. Forty-five (45) days have elapsed since the death of the offender as determined in accordance with the above; and,
- B. The value of the offender's property held by the Department is less than twenty-five thousand dollars (\$25,000.00). If the value of the offender's property is more than twenty-five thousand dollars (\$25,000.00), the facility is to contact the Department's Legal Services Division for instructions on the proper method of handling the property.

Upon submission of a properly completed State Form 41973, "AFFIDAVIT OF ENTITLEMENT TO PROPERTY," the personal property shall be released to the claimant. When more than one (1) claimant requests entitlement, the Office of the Chief of Staff shall be contacted. Person(s) requesting entitlement of a deceased offender's property and presenting "letters testamentary" indicating an estate has been opened shall be granted a waiver of the forty-five (45) day waiting period. The offender's property shall be released to that person immediately, provided:

- A. The authenticity of the "letters testamentary" can be reasonably established (letters testamentary do not have to be certified);
- B. The identity of the person requesting the deceased offender's property can be reasonably established as the person named in the "letters testamentary;" and,
- C. A copy of the "letters testamentary" is retained by the Department.

The forty-five (45) day waiting period is established as a minimum. In the event that no claims are made in forty-five (45) days, the facility shall attempt to contact the offender's emergency notification person. The offender's property may be disposed of in the same manner as prohibited property. This disposal of the property shall occur no sooner than ninety (90) days after the offender's death. The facility shall record all efforts taken and file this information in the offender's packet.

**XX. DISPOSITION OF AN ESCAPED OFFENDER'S PERSONAL PROPERTY:**

The Department shall collect all of the personal property left by an escaped offender. This property shall be inventoried and held in a secure location. The personal property of

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the offender shall not be given to friends or family. The facility shall hold this property for a period of sixty (60) days from the date of the escape, after which it becomes prohibited property and is to be disposed of accordingly.

The facility shall stop any actions taken to dispose of an escaped offender's property and hold it for the offender, if the escaped offender is apprehended before the sixty (60) day period expires. The facility shall keep a written record of the actions taken in regards to such property. If the escaped offender is apprehended and held in a non-Department facility, the Superintendent or designee shall determine an appropriate disposition of the property.

**XXI. GRIEVANCES AND TORT CLAIMS:**

An offender may challenge an action relevant to the disposition of any property through the offender grievance procedures as found in Policy and Administrative Procedure 00-02-301, "The Offender Grievance Process."

In those cases where an offender alleges that personal property was lost due to inappropriate actions by Department staff and the offender is seeking compensation for the loss, the offender shall use the Tort Claim process outlined in Policy and Administrative Procedure 00-01-104, "Tort Claims for Property Loss," rather than the grievance process.

**XXII. APPLICABILITY:**

This policy and administrative procedure is applicable to all facilities housing adult offenders.

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Bruce Lemmon, Commissioner

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Date