

IN THE THIRD JUDICIAL CIRCUIT OF FLORIDA

ADMINISTRATIVE ORDER NO. 2024-004
Replaces Administrative Order No. 2007-003

IN RE: PROCEDURES FOR DESTRUCTION OF EVIDENCE
NOT FILED AS AN EXHIBIT

WHEREAS, Florida Rule of General Practice and Judicial Administration 2.430 (f) and section 28.213 of the Florida Statutes address the destruction of evidence filed as an exhibit; however, it is necessary to address the destruction of evidence and disposal of contraband where such evidence has not been filed as an exhibit; and,

WHEREAS, as established by section 705.105 of the Florida Statutes, if unclaimed evidence or unclaimed tangible personal property lawfully seized pursuant to a lawful investigation is determined to be of appreciable value, a law enforcement agency may elect to retain the property for the agency's own use, transfer the property to another unit of state or local government, donate the property to a charitable organization, sell the property at public sale or, if the property is not of appreciable value, destroy it; and,

WHEREAS, section 705.105 (1) of the Florida Statutes establishes that title to unclaimed evidence or unclaimed tangible personal property lawfully seized pursuant to a lawful investigation in the custody of the court or clerk of the court from a criminal proceeding or seized as evidence by and in the custody of a law enforcement agency shall vest permanently in the law enforcement agency sixty (60) days after the conclusion of the proceeding; and,

WHEREAS, section 893.12 (1) of the Florida Statutes declares as contraband, subject to seizure and confiscation, substances and chemicals controlled by chapter 893 to which lawful possession or title cannot be established or ascertained; and,

WHEREAS, section 893.12 (1)(a) requires a court order for the destruction of such contraband; and,

THEREFORE, in an effort to standardize procedures throughout the Third Judicial Circuit relating to the destruction of evidence and the disposal of contraband not filed as an exhibit,

IT IS THEREFORE ORDERED:

1. A law enforcement agency, including but not limited to the Florida Department of Law Enforcement, the State Attorney's Office, the Sheriff of any county in the Third Circuit, the Florida Highway Patrol, the Florida Fish and Wildlife Conservation Commission, a municipal police department located in the Third Circuit, or any other law enforcement agency located in the Third Circuit, may present a written request in the form of an affidavit to the Office of the State Attorney for the Third Circuit requesting the forfeiture and destruction of items in question, setting forth with specificity in the affidavit or detailed attachment to the affidavit the precise items to be forfeited and destroyed. The affidavit or attachment must include the court case number or agency case number where such numbers have been assigned, and identify the agency or custodian in current possession of the items. The affidavit shall also include the date that the items were seized by the law enforcement agency and identify any individuals with a potential claim upon the items. The affidavit shall contain an affirmation that the items were seized and held as evidence by the law enforcement agency or that the items were seized pursuant to an investigation and is in the custody of the court clerk, as applicable.

2. If the request by the agency is approved by the Office of the State Attorney of the Third Judicial Circuit, the State Attorney or his or her designee shall petition the appropriate court for an order directing the forfeiture and destruction of said evidence. The petition shall be filed sixty (60) days after the conclusion of the criminal proceeding or later, and any identified potential claimants of the property shall be mailed a copy of the petition. At the time the petition is submitted for review by the court, the Office of the State Attorney shall also provide the court with an appropriate proposed order granting the petition which lists each item to be forfeited or destroyed. The draft order shall also specify that the destruction shall take place in the physical presence of not less than two (2) witnesses, one of whom shall be a designated representative of the Office of the State Attorney, and one of whom shall be a law enforcement official of the Third Judicial Circuit.

3. Upon review of the petition, should there be no claim submitted for the evidence or property, and should the court find the petition to be otherwise proper, the court shall enter an order authorizing and directing the forfeiture and destruction of the specific items listed in the petition.

4. If the facility where the evidence is to be destroyed has rules or guidelines as to how many persons may be present during the destruction, those rules or guidelines shall be honored. The destruction shall take place during regular business hours and the destruction shall occur within thirty (30) days from the date of the court's order.

5. After execution of the court's order, the law enforcement official primarily responsible for the destruction of the contraband shall prepare a written and properly sworn acknowledgement. Said acknowledgement shall identify the kinds and quantities of evidence,

property, controlled substances or listed chemicals destroyed, and the time, place, and manner of destruction. The acknowledgment shall also specifically identify the State Attorney's designated representative, the law enforcement official witness and any other witnesses present at the destruction. The acknowledgement shall be filed within ten (10) days of the date the items are destroyed. If an intervening holiday prevents filing the return within ten (10) days, the return shall be filed on first day the clerk's office is open after the expiration of the ten days referenced above.

6. This Administrative Order does not supersede the requirements of chapter 379 (forfeiture of saltwater products, fishing gear, fish and wildlife), section 790.08 (disposition of weapons), section 925.11 (DNA evidence), or sections 932.701-.7062 (the Florida Contraband Forfeiture Act) of the Florida Statutes.

7. This Administrative Order rescinds and supersedes Administrative Order No. 2007-003, dated January 30, 2007.

DONE AND ORDERED on this 3rd day of September, 2024.



Melissa Gates Olin, Chief Judge

Original: Columbia County Clerk of Court Recording

Copies:

All Third Circuit Judges
Office of the State Attorney-Third Circuit
Office of the Public Defender-Third Circuit
All Third Circuit Judicial Assistants
All Third Circuit Clerks
Court Administration