

## RETENTION OF EVIDENCE

### MODEL RULE FROM RECORDS MANAGEMENT COMMITTEE

The Supreme Court Records Management Committee, by consensus, recommended the adoption of the following Rules for Evidence Handling, Retention and Disposition as a model rule for courts to consider when developing local rules on the retention of evidence. The following is a final draft of these rules.

### ARTICLE XI. RULES FOR EVIDENCE HANDLING, RETENTION AND DISPOSITION

#### **Rule 1101. Preamble**

In all cases, the court shall proceed pursuant to these Rules unless the court directs a longer retention period after motion by any party or on its own motion.

#### **Rule 1102. Retention Periods for Evidence introduced in Civil Proceedings**

a) **Civil Cases, Including Adoption, Paternity, and Juvenile Proceedings.** All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the court, four (4) months after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for two (2) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later.

The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

b) Retention Periods for Evidence Introduced in Criminal Misdemeanor, Class D and Class C Felonies and Attempts.

**Misdemeanor, Class D and C Felonies and Attempts.** All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence except as otherwise ordered by the court, three (3) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken, If an appeal is taken, all such exhibits shall be retained by the court reporter for three (3) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

c) Retention Periods for Evidence Introduced in Criminal Class B and A Felonies and Murder Attempts

***Class B and A Felonies and Murder and Attempts.*** All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the court, twenty (20) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for twenty (20) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

The court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

Courts should be encouraged to photograph as much evidence as possible and courts and parties reminded of the requirements of Appellate Rule 29(B).

**Rule 1103. Non-documentary and Oversized Exhibits**

***Non-documentary and Oversized Exhibits.*** Non-documentary and oversized exhibits shall not be sent to the Appellate level Court, but shall remain in the custody of the trial court or Administrative Agency during the appeal. Such exhibits shall be briefly identified in the Transcript where they were admitted into evidence. Photographs of any exhibit may be included in the volume of documentary exhibits.

Under no circumstances should drugs, currency, or other dangerous or valuable items be included in appellate records.

**Rule 1104. Notification and Disposition**

In all cases, the court shall provide actual notice, by mail, to all attorneys of record and to parties only if unrepresented by counsel, that the evidence will be destroyed by a date certain if not retrieved before that date. Counsel and parties have the duty to keep the court informed of their current addresses and notice to the last current address shall be sufficient. Court reporters should maintain a log of retained evidence and scheduled disposition date and evidence should be held in a secure area. At the time of removal, a detailed receipt shall be given to the court reporter by the party receiving and removing the evidence, the receipt will be made part of the court file.

In all cases, evidence which is not retaken after notice should be disposed of by the sheriff on the court's order. The sheriff should be ordered to destroy evidence if its possession is illegal or if it has negligible value. Evidence of some value should be auctioned by the sheriff with proceeds going to the county general fund. These Rules and their retention periods will take precedence over inconsistent language in statutes, ct I.C. 35-33-5-5(c)(2).

**Rule 1105. Biologically Contaminated Evidence**

A party who offers biologically contaminated evidence must file a pretrial notice with the trial court and serve all the parties so that the court can consider the issue and rule appropriately before trial. A party can show contaminated evidence or pass photographs of it to jurors, but no such evidence, however, contained, shall be handled or passed to jurors or sent to the Jury Room.

**EXPLANATION OF MODEL RULE**

The Records Management Committee of the Indiana Supreme Court, by consensus, had first recommended to the justices of the Indiana Supreme Court that the suggested rules for retention of evidence be placed in the Rules of Evidence and be applied to all trial courts in Indiana. The Records Management Committee had first determined that the retention of evidence was a completely different matter than the retention of records. The committee had determined, therefore, that retention schedules for evidence did not belong in Administrative Rule 7. The committee had come to the determination that rules pertaining to the retention of evidence would best fit in the Rules of Evidence.

The justices of the Indiana Supreme Court voted to table the recommendation from the Records Management Committee to make the suggested rules on retention of evidence applicable to all trial courts. It was their consensus that if the rules were made mandatory that it would be perceived by many local officials and judges to be an unfunded local mandate. The justices suggested a middle course. It was their suggestion that the rules for retention of evidence be made available as models for local rules for those counties who were in need of doing something with the evidence that had accumulated over the years. Many counties already had local rules concerning the retention of some types of evidence.

Several counties have used the model rules as models for their local rules on the retention of evidence. At this point in time, there are no statewide rules concerning the retention of evidence.