

DIVISION OF WILDLIFE LAW ENFORCEMENT DIRECTIVE

TO: COMMISSIONED PERSONNEL

FROM: Scott Zody, Chief

SUBJECT: Wild Animals and Litter as Seized
Property and/or Evidence

– **Effective**

10-01-2013

Purpose

To provide enforcement personnel guidance in addressing wild animals and litter as seized property and/or evidence.

Statutory

[2981](#), [1531.06](#), [1531.20](#)

 **Reference**

ODNR Evidence Directive, Directive #6 – Forfeiture Guidelines, Directive #28 – Wildlife Restitution

 **Resource**

Policy / Procedure Manual, Immediate Supervisor,
Division of Wildlife Columbus Law Enforcement Staff

This directive for wild animals and litter as seized property and/or evidence further amplifies the Department of Natural Resources' Evidence Directive.

Frequently Wildlife Officers deal with violations where the possession of wild animals or the discarding of litter is part of the violation. In many instances, these items must be seized as evidence in order for the case to be prosecuted or the items are subject to forfeiture under chapter 2981 of the Ohio Revised Code. A wildlife officer may seize property they have probable cause to believe is evidence or property subject to forfeiture.

Nothing in the Ohio Revised Code or case law requires an agency to keep the evidence in the same form in which it was seized. The property seized must be preserved and

the integrity and value of the property seized must be kept in the event property is to be returned to the owner or another person. This is in the best interest of both law enforcement and the accused.

Evidence is used to prove/disprove a case. Cases are routinely prosecuted without the original piece(s) of evidence used in the prosecution of the case. (Homicides, rapes, traffic crashes, hunter incidents, etc.) Photographs, reports, diagrams, statements, portions of the original evidence, may be used as evidence in court to prove/disprove the case. Photographs as evidence must ***fairly and accurately*** depict the evidence and go directly with what the prosecution is trying to prove. The weight of the photographs used as evidence in court is decided upon by the judge or jury, therefore good photographs must be taken in order to prove the case in court. In most instances where wild animals are seized as evidence or are seized because they are subject to forfeiture, photographs may be used as evidence.

To be admissible in court, all evidence must meet four requirements

1. Legally obtained (Probable cause)
2. Must be relevant (Decided upon by the judge)
3. Identifiable (Photographs, testimony, etc.)
4. Must have a properly maintained chain of custody

In an effort to preserve the property seized and its value, wildlife officers will comply with the following guidelines:

If the court requires a deer to be kept in another form than directed below, or the court requires the officer to collect the litter, the officer will conform to the courts requirement.

In cases where a deer is seized as evidence or because it is subject to forfeiture, the deer will be photographed and then processed by a commercial meat processor into ground one pound packages. The officers can pay for the processing with their state credit card. The meat will be held in a Division of Wildlife evidence property room freezer until the close of the case. In cases that involve deer with antlers, the deer will be photographed and then caped and processed by a commercial meat processor. The head/hide will be kept with the deer meat in a Division of Wildlife evidence property room freezer.

In instances where litter is the violation, if possible, the litter will be photographed and may be collected to be discarded. If the litter is photographed, a UIR will be completed and it will be noted on the UIR that photographs have been taken as evidence and the photographs will be attached to the UIR. If the litter was also collected, it will be discarded in the trash and it will be noted in the UIR that it has been discarded.

If the litter is a meth lab, marijuana grow or drug dump site, the local drug task force will be contacted. This type of litter can only be destroyed per a court order.

Examples:

You are working a night project and someone shoots a deer in front of you with a rifle. You catch the suspect and recover the deer. The rifle is seized because it is subject to forfeiture under 1531.20 and the deer (proceeds – property directly derived from an offense) is subject to forfeiture under 2981.04. You take a photograph of the deer and you have the deer processed by a commercial processor. The deer is then placed in the Division of Wildlife evidence property room freezer. You request the rifle and the deer be forfeited to the state. (UIR is done because evidence/property was seized)

You get a call where a subject is HWOP and you catch the subject with a deer on property he does not have permission. The landowner wants the subject arrested for HWOP. The deer is subject to forfeiture under 2981.04 (proceeds – property directly derived from an offense) Photographs are taken of the deer and the photographs are used as one of the items used to prosecute the case. The deer is processed by a commercial meat processor and is held at a Division of Wildlife evidence property room freezer. If the subject is found guilty, the Division of Wildlife will ask the deer be forfeited under 2981.04. If the subject is found not guilty and the court orders the deer to be returned, the deer will be returned and the value of the deer has been retained.(UIR is done because evidence/property was seized)

It is bow season and you receive a call that a suspect shot a large buck deer with a shotgun. You arrive at the suspect's house and find the deer hanging in the suspect's yard. It clearly looks like a 12 gauge slug hole, not an arrow hole. You run a lead test on the hole and it shows the presence of lead. The suspect will not confess but gives you several signs of deception. The local prosecutor is consulted on the phone and he advises to seize the deer and run additional tests. The deer is seized and you take photographs of the deer and the area around the slug hole. The deer is caped and processed by a commercial processor and the section of the deer around the hole is kept for further testing. If the subject is to get his deer back, the value of the deer has been retained.(UIR is done because evidence/property was seized)

You are working sport fishing enforcement at a local lake. You watch a subject catch two walleye and he puts them in his bucket. Upon contacting the subject, he says he does not have a fishing license. A check through WOCRMS confirms the subject does not have a fishing license. The fish are seized (proceeds – property directly derived from an offense) and photographs are taken of the fish, the suspect and his equipment. The officer asks the court to forfeit the fish to the Division of Wildlife.(UIR is done because evidence/property was seized)

You are working sport fish and litter enforcement at a local lake. You observe three subjects fishing, they drink a twelve pack of soda and all subjects discard their cans in the weeds behind them. The subjects are in their vehicle and getting ready to leave when you contact them. They all have a fishing license and they all tell you they

did not pick up their empty soda cans. You give each of them a summons for litter and they leave. You go back to the area and take photographs of the soda cans they threw in the weeds. You pick up the cans and discard them in the trash can. (Although evidence was not technically seized, a UIR is completed and the property section is filled out because photographs were taken as evidence and it is also documented on the UIR that the cans were picked up and discarded in the trash)

You get a call from the local area manager at the wildlife area and he advises you that someone dumped a truckload of trash on the wildlife area. You go to the dump site and you find evidence (mail) of where the trash came from and you develop a suspect. You photograph the mail and the entire dump site. The wildlife area personnel pick up the trash and discard it in the dumpster. You interview the suspect and he confesses to dumping the trash. You give him a summons to appear in court. The photographs are used as evidence in court. (A UIR is completed because you did not witness the violation and the property section is filled out and photographs are evidence)

You get a call of a dump site at a local wildlife area. Upon investigating the complaint, you find that it is the remnants of an indoor marijuana grow. (Pots, leaves, stems, etc.) You photograph the site and collect the evidence. The local drug task force is contacted to see if they may have any suspects. They advise they do not want the case and they do not have any suspects. You obtain a court order to destroy the items because 2981.12 (A)(1) states that drugs shall be disposed of pursuant to 3719.11. 3719.11 states that all controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, that have come into the custody of a peace officer, shall be forfeited pursuant to Chapter 2981 of the Revised Code, and, unless any such section provides for a different manner of disposition, shall be disposed of as follows:

(A) The court or magistrate having jurisdiction shall order the controlled substances forfeited and destroyed. The agency served by the peace officer who obtained or took custody of the controlled substances may destroy them or may send them to the bureau of criminal identification and investigation for destruction by it. A record of the place where the controlled substances were seized, of the kinds and quantities of controlled substances so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting the destruction, shall be made by the officer who destroys them to the court or magistrate and to the United States director, bureau of narcotics and dangerous drugs.



Ohio Department of Natural Resources

JOHN R. KASICH, GOVERNOR

JAMES ZEHRINGER, DIRECTOR

Division of Wildlife
Scott Zody, Chief

I _____, understand that pursuant to Ohio Revised Code 1531.02, it is unlawful to possess an animal from the wild. I do hereby voluntarily release said animal, to wit; one raccoon taken from the wild, to the Ohio Division of Wildlife. In doing so, I understand the _____ Prosecutor has been consulted on this matter, and agrees that no charges will be filed if said animal is voluntarily released to the Ohio Division of Wildlife.

Person releasing animal Date

Officer Date