

## Property Disposition

### 1405.1 PROPERTY AND EVIDENCE RELEASE GUIDELINES

#### 1405.1.1 AUTHORIZED PERSONS

The following persons may authorize the release of property that has been placed in the Property Room under the provisions of this manual.

- (a) The investigating officer, assigned investigator, or the investigator's supervisor.
- (b) The Property & Evidence Supervisor, Property & Evidence Technician or his/her assistant under certain circumstances.
- (c) The Chief of Police or his/her authorized designee.
- (d) A Magistrate
- (e) The District Attorney's Office

#### 1405.1.2 RELEASE AUTHORITY

Property seized pursuant to a search warrant shall only be released or disposed of under the authority of a court order (1536 PC).

All evidence or property collected in homicide cases shall be stored until the death of the defendant(s) or 99 years from the date of incident. Homicide case property or evidence may be released however, if all court action involving all suspects is adjudicated and the District Attorney's Office approves the release.

Vehicles towed and stored relative to a homicide investigation will be released only after all CSI work has been performed and written authorization to release the vehicle is received from the Investigation's Sergeant, District Attorney and Public Defender if needed. In cases where a vehicle was seized pursuant to a search warrant, a court order authorizing the release must be obtained.

In felony cases where there are no suspects or leads, evidence shall be maintained for a period no longer than the statute of limitations.

- (a) Felony sexual offenses                      indefinitely
- (b) Felonies punishable by 8 or more years      6 years
- (c) 368 PC felonies, except thefts/  
embezzlements                                      5 years

#### 1405.1.3 REVIEW DATES

A review date is not considered a disposal date, if it is only a reminder to the case detective by the Property Section that the Property and Evidence section is still holding evidence associated with

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a particular case. It is the responsibility of the case detective to justify the retention of property on a case by case basis.

#### 1405.1.4 DISPOSITION CLASSIFICATIONS AND CONSIDERATIONS

Case dispositions can be found in the Alameda County Criminal History database, CORPUS, and/or JUVIS for juvenile offenders. The following are a few commonly used case dispositions and should be used by case investigators in determining the retention, release or disposal of property.

(a) **Conviction**

1. Ninety (90) days from the date of the disposition, the Property & Evidence Technician will query the court docket transaction to determine if the case has been appealed.
2. If the case has been appealed, the property will be maintained pending a disposition of the appeal.
3. If the case is not appealed and all charges have dispositions, and there are no other persons listed on the police report as arrestees or suspects, the Property & Evidence Technician will notify the case investigator to determine if the property can be released to the owner or otherwise disposed of in a manner pursuant to policy.
4. If there are still outstanding charges against a defendant (and the individual is within the court system), the property will be held pending the disposition of the charge.

(b) **Dismissed per PC 1203.4** (dismissal due to plea in another case) or Dismissed for Insufficient Evidence.

1. 90 days from the date of the disposition, the Property & Evidence Technician will determine if the property can be released to the owner or otherwise disposed of in a manner pursuant to policy.

(c) **Commitment to California Rehabilitation Center (CRC)**

1. The defendant has been directed to a drug diversion program.
2. If the defendant fails or does not complete the program the property may be required for further prosecution of the case. Retain property one year from date of diversion.

(d) **Committed**

1. The defendant has been sentenced and committed to custody in a jail facility.
2. Send appropriate notification for felony convictions and release or dispose of any property pursuant to policy.

(e) **Diversion**

1. The defendant is directed to participate in a diversion program.
2. Retain the property until one year from the date of diversion assignment.

(f) **Proceeding Suspended**

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1. This disposition most often describes proceedings that were suspended to permit medical or psychiatric evaluation.
  2. Property should be retained until the case receives a final disposition.
- (g) **Dismissal by District Attorney – Probation Revocation**
1. The Property & Evidence Technician shall query the case investigator to determine if the evidence is needed for any further prosecution in the case or any other case for which probation has been revoked. If the property is not required, the Property & Evidence Technician will request the case investigator determine if the property can be released to the owner or otherwise disposed of in a manner pursuant to policy.
- (h) **Detention Only – 849(b) Insufficient evidence for complaint**
1. The Property & Evidence Technician will contact the case investigator for authorization to release/dispose of the property.
- (i) **Dismissed – Lack of cause, victim declines, interest of justice, etc.**
1. Property can be released immediately. Note: The case investigator should be contacted before the disposal of property in cases not charged by the District Attorney's office to ensure the case is not undergoing further investigation.
- (j) **Transfer Prosecution**
1. The Property & Evidence Technician will contact the agency/court that is listed for transfer and will determine property transfer requirements.
  2. The Property & Evidence Technician will also determine, through the court liaison officer and/or investigating officer, if the property will be required for further court evidence.
- (k) **Juvenile Dispositions**
1. The Property & Evidence Technician receive a Notice of Disposition that will provide a disposition report on the case.
  2. Property cannot be released unless final case disposition is received. The Juvenile District Attorney can authorize the release of property prior to the case disposition.

#### 1405.1.5 RELEASE INSTRUCTIONS (NON EVIDENCE ITEMS)

##### **Found Property**

The investigating employee shall attempt to determine and contact the owner(s) of found property at the time the property is recovered. The Property & Evidence Technician shall attempt to contact the owner(s) upon receipt and storage of the property and note findings in the narrative portion of the report.

When the owner has been identified, that person shall be called on the telephone or notified via mail instructing them to contact the Property & Evidence Technician to schedule an appointment

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to claim their property. The owner shall be given 90 days to establish ownership and claim the property.

If the property is not claimed, it shall be offered to the finder (unless the finder is a City of Union City employee). The claimant shall be given 90 days to claim the property. The claimant must provide a copy of the receipt issued at the time the property was booked. Exception: Found firearms shall be destroyed. The finder shall be given 30 additional days to claim the property.

The Property & Evidence Technician shall notify the finder requesting them to schedule an appointment to obtain the property.

Pursuant to Civil Code Section 2080.3, any found property having a value of \$250 or more shall be advertised as found in a newspaper of general circulation, one time. If the property is not claimed, the finder is legally entitled to the property after paying the advertising costs.

All unclaimed property shall be auctioned, disposed of, or transferred for departmental use.

The finder must present satisfactory evidence of identification and must sign to acknowledge receipt of the property to them.

#### **Safekeeping**

Property that is being held for safekeeping shall be returned to the legal owner upon request or by legal mandate. Property (excluding firearms) not claimed within (60) days shall be considered intentionally abandoned by the owner and will be disposed of as appropriate (2080.2 Civil Code).

#### **Other Property**

Upon receiving property held for safekeeping, the Property & Evidence Technician shall cause the following to occur:

- (a) Have Records conduct a CLETS check on all serialized property to determine if it is stolen. Refer to the investigating officer or Criminal Investigations Section if the property is determined to be stolen.
- (b) Contact the owner by mail to schedule an appointment for the release of the property.
- (c) Property (except firearms) not claimed within 60 days is to be considered intentional abandonment by the owner and disposed of per statute.
- (d) Release to the owner: The owner must present a photo ID and provide proof of ownership if requested. The owner must sign the property report.

#### **Search Warrant**

Property taken under the authority of a search warrant may only be released under the following conditions.

- (a) Property that is introduced in court as evidence and is retained by the court shall be released to the court by signing of the chain of custody by a court officer.

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- (b) The disposal of property that is alleged to have been stolen or embezzled or which has been obtained by means of a search warrant may be effected by order of the judge which has jurisdiction or by following the procedures outlined in 1413 PC.
- (c) A magistrate may order the disposal of stolen or embezzled property which was obtained by means of a search warrant, as set forth in 1408 through 1410 PC, prior to court adjudication.
- (d) The investigating officer shall seek the release of property with the assistance of the District Attorney's Office.
- (e) Once a court order is obtained, the Property & Evidence Technician has 10 days to release only that property described in the order. The Property & Evidence Technician can question the provisions of the court order and not release the property until the District Attorney has been consulted. The court can be petitioned to reverse its decision if the Property & Evidence Technician can show just cause (1008, Code of Civil Procedure).
- (f) A Property Release form is completed by the investigating officer itemizing the property to be returned. The person receiving the property must present a photo ID. The person receiving the property must sign the Property Report form. The form is then forwarded to Records for filing in the original case.

#### **Non-Essential Property and Evidence**

With the concurrence of the District Attorney, property which is not essential to a prosecution or future prosecution shall be promptly released, whenever possible, to the rightful owner. The DA Evidence Release form should be used for this purpose.

Whenever possible, property which the District attorney considers to be non-essential to a prosecution shall be promptly released to the owner during the course of the investigation.

Property which has no market value or investigative value as determined by the District Attorney may be destroyed upon completion of the investigation; e.g., glass fragments, mutilated bullet not suitable for comparison purposes.

Property that has been held as evidence but not introduced during the trial shall be released to the owner upon receipt of a court disposition, provided the prescribed time for appeal has elapsed.

In misdemeanor and felony cases, 180 days shall be allowed for an appeal.

Property that is to be held as potential evidence shall be disposed of in accordance with the provisions of this manual as appropriate.

In all cases, the person who receives the property must present a photo ID. The property report must be signed by the person accepting the property.

#### **1405.1.6 RELEASE OF FIREARMS**

##### **18250 PC And 8102 W&I Seizures**

For firearms held under the provisions of 18250 PC (Domestic Violence) and 8102 W&I (Psychiatric Detention), the following procedure applies:

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- (a) The Property & Evidence Technician shall first ensure that a criminal records check of the firearm owner is performed. If the firearm is determined to be a stolen firearm or evidence of some other crime, the Property & Evidence Technician shall immediately notify the investigating officer and book the firearm as evidence.
1. If the owner is not legally entitled to the weapon under the provisions of 29800-29825 PC, 29900 PC, 8100 WI, 8103 WI, any person who is subject to a protective order as defined by Family Code section 6218, or PC section 136.2, or a temporary restraining order issued pursuant to Code of Civil Procedure section 527.6 or 527.8.
  2. Handguns can only be returned to the person who is listed in the Automated Firearms System (AFS) as the owner of the handgun. A handgun may be returned to a person who presents proof that the handgun was transferred to him/her in a lawful manner that was not required to be reported to the Department of Justice (DOJ) (i.e. prior to 1991).
  3. Rifles and shotguns (long guns) can only be returned to the person who presents proof of ownership, such as a sales receipt from a licensed firearms dealer or other evidence that the long gun was sold or transferred to the person in a lawful manner.
- (b) An assault weapon or .50 BMG rifle can only be returned to the person who is listed in AFS as the registrant of the assault weapon or .50 BMG rifle because it is illegal to transfer such a firearm (12028.5(b) (3) PC). If the registered owner is deceased or a prohibited person, the firearm can be transferred to an FFL holder (gun dealer) with a permit to transfer such firearms, allowing the firearm to be sold or transferred out of state. If the assault rifle or .50 BMG rifle is not registered in AFS, then it is contraband and cannot be released, except to a law enforcement agency for official use. A court order finding that preservation of the firearm is "In the interest of justice" is necessary to retain the firearm.
1. The ownership record matches the firearm being claimed.
  2. The ownership record is the most current ownership record for the firearm.
  3. The person listed in the ownership record is the same person seeking to claim the firearm.
  4. AFS transaction records that establish firearm ownership begin with the following titles:
  5. Dealer Record of Sale (DROS)
  6. Operation of Law (inter-family transfer)
  7. New Resident Report (Moving to CA from out of state)
  8. Pawn Redemption (Recovered possession from a pawn shop/secondhand gun dealer)
  9. Collector's Report (Curio & Relic Collector's Report)
  10. Assault Weapon Registration

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11. Voluntary Registration (Used prior to 1/31/05)
  12. Firearm Ownership (Voluntary registration (Used after 1/31/05)
- (c) The Property & Evidence Technician shall review the case file for the impounding officer's recommendations: i.e. request for hearing, return of property, etc.
1. Where the impounding officer has recommended a hearing to consider destruction of the firearm, the Property & Evidence Technician shall confirm with Records that a copy of the case file along with a Request for Hearing form was delivered to the City Attorney.
- (d) The City Attorney shall file a Petition for Judicial Determination for the destruction of the firearm with the Superior Court. The City Attorney shall also send a certified letter to the firearm owner advising the owner of their right to request a hearing. This request is good for 30 days from the date of receipt of the notification.
1. The City Attorney may also seek a Stipulation Order, requesting that the firearm is released to a 3rd party in lieu of destruction, with approval from the court.
  2. If the firearm owner fails to respond in the 30 day period, the City Attorney shall file a Petition for Default with the court. If the court grants the default, the firearm is destroyed according to law. If the court otherwise orders the firearm destroyed, it is destroyed according to law.
  3. The City Attorney shall send copies of all correspondence and court orders to the Property & Evidence Technician for inclusion in the case file.
  4. Firearms shall not be released without all appropriate or necessary documentation in the case file. Questions or concerns about the substance or appropriateness of requested documentation should be forwarded to the City Attorney's office.
- (e) LEGR Process – Prior to a court hearing, the person seeking possession of the firearm must present the following either to the City Attorney pursuant to a Stipulation Order or directly to the court for a Court Determination order:
1. The firearm owner shall make application for a determination by the Department of Justice (DOJ) as to whether he or she is eligible to possess a firearm per 29805 PC. **Note:** This document is called the Law Enforcement Gun Release Application (LEGR) and does not constitute ownership or registration of a firearm. It merely establishes that the applicant is eligible to possess firearms.
  2. If the DOJ issues a clearance letter, the letter is valid for 30 days. The firearm owner must make an appointment with the Property & Evidence Technician and provide the original DOJ clearance letter, proof of ownership and ID within the 30-day period
    - (a) The Property & Evidence Technician shall re-verify that the firearm is not listed as stolen in AFS.
    - (b) The Property & Evidence Technician shall complete an Evidence Disposition Request form and forward it to the investigating officer for approval to release the firearm.

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- (c) If the DOJ or the Union City Police Department determines that the firearm owner is prohibited from possessing the firearm, and the firearm is an otherwise legal firearm, the firearm owner shall be entitled to sell or transfer the firearm to a licensed dealer, per 29810 PC.
- (f) If the Court orders the firearm released to a specified person or stipulates an agreement as arranged by the City Attorney, copies of any Court Orders or Stipulations must be presented to the Property & Evidence Technician, along with all supporting documents as described above in Paragraph 4 above, prior to releasing the firearm.
  - 1. Prior to releasing the firearm, the Property & Evidence Technician shall perform another criminal records check of the person receiving the firearm to ensure the person receiving the firearm is still allowed to possess the firearm.
  - 2. For safety reasons, the Property & Evidence Technician shall not release firearms and ammunition on the same day to the same person or associated persons.
- (g) Any firearm taken into custody and held by the Department for longer than 180 days and not recovered by the owner or person, who had lawful possession at the time it was taken into custody, shall be considered a nuisance and destroyed as provided in 12021.3(g) PC.

#### **48 Hour “Cooling Off”**

Where the investigating officer has recommended only a 48 hour “Cooling off” period as specified in 18250 PC and is not seeking a petition for judicial determination prior to the return of firearms from when they were taken, the Property & Evidence Technician shall follow the release procedure as specified in Paragraph 4a through 4d above.

#### **Voluntary Surrender**

Occasionally someone will voluntarily turn in a firearm to the Police Department for safekeeping while they make arrangements to sell or transfer the weapon. A family situation may have arisen that makes it unsafe for a firearm to be in the house. Or, more frequently, an individual has become prohibited from possessing an otherwise legal firearm and has been ordered to dispose of the weapon by transferring ownership to another individual.

In these cases, firearms owners will be directed to retain the services of a licensed firearms dealer in order to facilitate the transfer of ownership. The Union City Police Department shall remain a neutral third party and caretaker of the firearm only. The Property & Evidence Technician shall require a notarized statement from the firearm owner that states their intent to transfer the weapon to a licensed firearms dealer and to release their rights to the firearm. After receipt of the notarized statement, the Property & Technician shall schedule an appointment with the firearm owner and the FFL holder to be present to transfer possession of the firearm.

In all cases where a firearm is to be released to someone other than to a licensed firearms dealer, the person requesting possession of the firearm shall comply with all of the requirements as specified above.



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#### 1405.1.7 RELEASE OF PHOTOGRAPHIC EVIDENCE

Subject to Government Code 6250-6270, Vehicle Code 20012 and UCPD Policy 801, copies of photographic evidence may be released under the following conditions.

- (a) To any person involved in a traffic collision who may have a proper interest therein, including, but not limited to, the driver or drivers involved, or the guardian or conservator thereof, the parent of a minor driver, the authorized representative of a driver, or to any named person injured therein, the owners of vehicles or property damaged thereby, persons who may incur civil liability, including liability based upon a breach of warranty arising out of the accident, and any attorney who declares under penalty of perjury that he or she represents any of the above persons.

Upon receipt of proper documentation from the requesting party by the Records Unit, along with payment of appropriate fees collected by the Records Unit, copies of photographs may be released in the format desired by the requesting party.

#### **1405.2 PHOTOGRAPHIC RELEASE GUIDELINES**

It is the intent of the Union City Police Department to release, at the earliest possible time, all recovered property of evidentiary value to the owner or party authorized to take possession

- (a) **PROPERTY STOLEN DURING A NON-VIOLENT CRIME**

Property can be released to the lawful owner before the conclusion of the criminal case in the following manner:

- (a) The investigating officer must check out the evidence from the Property & Evidence Technician.
- (b) Proof of ownership, when applicable, must be submitted to the Department and a copy of that proof retained.
- (c) The Property Report form shall be signed by the owner when the property is photographed and released.
- (d) As soon as possible, all serialized property shall be cleared from the California Department of Justice Automated Property System in CLETS.
- (e) Photographs taken for the release of property shall be entered into evidence.

- (b) **PHOTOGRAPHIC RELEASE DOES NOT APPLY TO:**

1. Property seized by search warrant.
2. Money.
3. Explosives.
4. Hazardous materials or illegal substances.
5. Controlled substances.
6. Firearms or weapons used in the commission of a crime.
7. Property requiring laboratory analysis.
8. Property containing biological material.

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9. Any property that is illegal to possess.
10. Any property in which ownership is in dispute.
11. Property that is evidence of a violent offense.
12. Property that is evidence of a crime having a Statute of Limitations in excess of 6 years. Photographic release of property may be conducted from the scene providing that the above criteria have been met

#### **1405.3 INTERIM RELEASE OF PROPERTY GUIDELINES**

To facilitate the need for employees to temporarily remove evidence from the Property Room for further investigation, examination, court, etc., the following procedures have been established

##### **1405.3.1 INVESTIGATIVE RELEASE**

The employee shall complete a Property Checkout Request form and forward it to the Property & Evidence Technician at least 48 hours (weekends and holidays excluded) in advance of when the property will be needed. On rare occasions during exigent circumstances property may be released to the employee with less prior notification. These requests should be kept to a minimum.

Employees shall return all checked-out property to the Property Room as soon as the property is no longer required by the employee. Generally, reasons for checking out property, such as for court or victim ID purposes, don't require that the property be checked out longer than the employees' workday. Investigation Unit employees may require temporary possession of property for longer periods of time for investigative purposes.

The temporary use evidence lockers shall be used to securely store property checked out to employees, if for some reason the property cannot be immediately returned to the Property Room. Under no circumstances shall any employee store property or evidence in any location other than the temporary use evidence lockers.

The Property & Evidence Technician shall track evidence checked out. After 3 days for non-Investigations Unit employees or 7 days for Investigations Unit employees, written notification shall be given to the employee who has not returned the property and to the Investigations Sergeant, requesting the status of the property.

Property shall be repackaged or resealed as necessary to ensure the integrity of the item.

##### **1405.3.2 COURT RELEASE**

When the Property Clerk receives a Property Checkout Request form or is contacted by a person needing evidence for court, the item(s) needed shall be pulled from storage and released.

All transfers of property for court purposes shall be properly documented on the Property Checkout Request form and on the property chain-of-custody label, indicating the date, time and employee's name.

When it is expected that evidence taken from the Property Room will be held by a Court, the following procedure shall be followed:

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- (a) After obtaining the evidence from the Property Room, the employee shall sign the chain of custody on the envelope or tag of each item received.
- (b) The presiding Judge or Clerk of the Court or the District Attorney receiving the property from the employee must sign the chain of custody on the envelope or tag of each item received
- (c) The employee shall communicate to the Property Clerk which items have been retained by the Court. The Property Checkout Request form, signed by the court officer, shall be used for this purpose.

When items of evidence are released by the Court following disposition of a case, the following procedures apply:

- (d) The Judge or Clerk of the Court must return the items in question to the investigating officer, and that officer must sign the chain of custody on each envelope or tag received.
- (e) The property items must be accompanied by a court order authorizing the disposition of the property.
- (f) All property in question shall be returned to the Property Room by the investigating officer along with the court order. The Property Clerk shall then carry out the intended disposition.
- (g) The Property Clerk shall sign the chain of custody for each item returned to the Property Room.

All property returned from Court shall be repackaged or resealed as necessary to ensure the integrity of the item.

The Property Clerk shall track property checked out for court and its return. After 72 Hours, notification shall be given to the officer who has not returned the property and to their supervisor.

#### 1405.3.3 LABORATORY RELEASES

When the Property & Evidence Technician receives a Lab Service Request form, the item(s) shall be pulled from storage and released, with permission from the Investigations Sergeant.

All transfers of property to and/or from a crime lab shall be properly documented indicating the date, time, laboratory and courier's name.

The person accepting the property must sign the chain of custody. Property shall be repackaged or resealed as necessary to ensure the integrity of the item.

The Property & Evidence Technician shall track evidence checked out to a crime lab for analysis.

When received, crime lab results shall be forwarded to Records for submission into the case file. A copy will be forwarded by the Property & Evidence Technician to the requesting officer and/or assigned investigator.

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#### 1405.3.4 MEDICAL MARIJUANA RELEASE

The Compassionate Use Act of 1996 (11352.5 H&S) ensures that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of certain illnesses for which marijuana provides relief.

Marijuana and/or paraphernalia may be released, upon approval by the Chief of Police, to the person or caregiver from whom it was seized when the following circumstances have been met.

- (a) The person or caregiver provides the Department with a valid court order, if required, specifying the items to be released to their custody.
- (b) The requesting party has provided valid identification from which his/her identity can be established.
- (c) The requesting party must be in possession of a valid, unexpired medical marijuana card.

**Note:** A state or local law enforcement agency or officer shall not refuse to accept an identification card unless the agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

- (d) A criminal history check has been conducted on the requesting party and he/she has not been convicted of any drug-related criminal offenses.
- (e) The requesting party is at least 18 years old unless the primary caregiver is the parent of a minor child who is a qualified patient or a person entitled to make medical decisions under state law pursuant to sections 6922, 7002, 7050 or 7120 of the Family Code.

#### 1405.3.5 TRANSFER FILE

The Property & Evidence Technician shall maintain a file indicating the location, dates, times and personnel involved of all property temporarily transferred out of the Property Room.

- (a) The Property & Evidence Technician shall make an inquiry into the status of property temporarily released to officers for further examination if the property has not been returned to the Property Room after 72 hours.
- (b) The Property & Evidence Technician shall make an inquiry into the status of property temporarily released for outside laboratory analysis every 90 days until the property has been returned to the custody of the Union City Police Department Property Room. A notation shall be made in the Transfer File during each inquiry, indicating the new status of the property.

#### **1405.4 DISPOSAL GUIDELINES**

Property held by the Union City Police Department shall be disposed of in a manner authorized by statute and as provided for by department policy.

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#### 1405.4.1 GENERAL PROVISIONS

Unless otherwise governed by provisions of law, the investigating employee or investigating officer assigned to the follow up stage of the investigation has the final authority regarding the disposition of property or evidence held by this department. Where no detective is assigned to a case involving property held by this department, the Investigations Sergeant shall make the decision as to the disposition of the property in a manner prescribed by law.

When there are two or more defendants involved in a criminal case, property will not be disposed of until all defendants' trials have been concluded.

Property shall not be disposed of until the period for appeals has closed and all appeals have been concluded.

The Property & Evidence Technician shall not dispose of property until the end of the time period established by department policy for holding the item; e.g., found property, safekeeping.

If the person from whom custody of the property was taken is a secondhand dealer or licensed pawnbroker, and if the owner of the property cannot be located at the end of the criminal proceeding, the property shall be returned to the secondhand dealer or pawnbroker.

In all cases where property is destroyed, Records shall delete information in the appropriate State Department of Justice computer database concerning each item of serialized property that is authorized for disposal. All property records shall be filed in the original case file.

Property generally will not be disposed of without the Property & Evidence Technician receiving a Property and Evidence Disposition form from the person requesting destruction, along with instructions to dispose of the property, a court order, or written instructions from the District Attorney's Office. This is to insure that the original seizing employee or assigned investigator is included in the decision to dispose of property.

#### 1405.4.2 APPEALS PERIOD – ADJUDICATED CASES

Generally, evidence may not be released or disposed of prior to the adjudication of the case and the expiration of the appropriate appeals period following sentencing (30 days following the sentencing for misdemeanors and 50 days for felonies, per Rule 31 and Rule 182, Rules of Court).

It is advisable to wait an additional 30 days beyond these dates to verify that no appeal has been initiated.

#### 1405.4.3 DESTRUCTION OF PROPERTY PURSUANT TO COURT ORDER

Property will be destroyed as instructed in the court order.

#### 1405.4.4 STATUTE OF LIMITATIONS

In misdemeanor cases, the statute of limitations is one year when the case file indicates no suspects. After review by the investigating officer or assigned investigator, the property will be disposed of after one year (800-806 PC).

In felony cases (except homicides, embezzlement of public funds or falsification of public funds), property will be disposed of after the statute of limitations has expired (usually 3-10 years,

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depending on the crime), the case file report indicates no suspect(s) and the investigating officer or assigned investigator approves disposal (800-806 PC).

Property from homicides, embezzlement of public funds or falsification of public funds will be retained indefinitely, except when disposal or release is ordered by the investigating officer or assigned investigator with the concurrence of the District Attorney or the court.

#### Statute of Limitations – Adjudicated Cases

Misdemeanors	1 year
Exception: 647.6 PC and 7629 B&P	2 years
Felonies	
a. Sexual offenses	indefinitely
b. Felonies punishable by 8 or more years	6 years
c. 368 PC felonies (not theft/embezzlement)	5 years
d. 803(c) PC	4 years
e. All others	3 years
Cases that involve:	
a. Property from homicide	indefinitely
b. Embezzlement of public funds	indefinitely
c. Falsification of public funds	indefinitely

Exception: If disposal release is ordered by the investigating officer, District Attorney or the court.

#### **1405.5 DISPOSAL OF FIREARMS**

Retained for department use, per 12032 PC

The Chief of Police shall authorize all firearms to be retained for official use by the Department. Such authorization shall be in writing by use of the Property Conversion Request form and retained in the property file. A court order must be obtained from a magistrate authorizing the retention of a firearm for department use.

The make, model, and serial number will be recorded on the department's weapon inventory log maintained by the Range Master.

The Property & Evidence Technician shall forward the authorization to Records who shall be responsible to notify the California Department of Justice through CLETS.

The Property & Evidence Technician shall provide a copy of the computer printout of firearms destroyed to Records. Records shall be responsible to notify the California Department of Justice of the destruction through CLETS.

All written documentation of the destruction transaction shall be retained by the Property & Evidence Technician. The Property & Evidence Technician shall write a supplemental report

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documenting the date of the destruction of the weapons and forward a copy of the destruction list to the Records Section to be placed in case file.

#### **1405.5.1 DISPOSAL OF AMMUNITION**

Non-evidentiary ammunition booked into the Property Room is immediately marked for destruction. The Department Range Master has first right-of-refusal to divert ammunition for Department use. Thereafter ammunition shall be disposed of periodically either by releasing to the approved auction company for sale or to the ACSO bomb squad.

#### **1405.6 DISPOSAL OF CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

Controlled substances, dangerous drugs and drug paraphernalia will be destroyed by the Property & Evidence Technician after receiving authorization for such disposal, per 11473.5 – 11488.2 H&S.

Items to be destroyed are pulled from their storage locations and placed in boxes or bags labeled “Drugs for Destruction.” When each box is full, each box is sealed, labeled and numbered. Each box and bag is inventoried by two Property and Evidence Section personnel prior to sealing. The seal shall be dated and initialed by both employees.

Controlled substances, dangerous drugs and drug paraphernalia targeted for destruction shall remain in their original Booking containing identifying information and case number for verification.

A list is prepared for each box and bag, noting the inventory. The list is secured to each box and bag and an additional copy of each list is attached to the court order for destruction.

An appointment for disposal shall be made and the necessary permits obtained in advance.

The Property & Evidence Technician must obtain a court order for the destruction of the contraband from a magistrate.

The Property & Evidence Technician will be accompanied by an armed police officer who will transport the controlled substances to the disposal facility and shall witness the destruction of the controlled substances.

As soon as possible after the property has been destroyed, the Records Management System shall be updated, noting the disposition.

#### **1405.7 DISPOSAL OF HAZARDOUS MATERIALS**

The disposal of hazardous materials falls under a number of State and Federal statutes. In practice, most disposals are regulated by either the California Department of Health Services at the direction of the Environmental Protection Agency or the local water district. Whenever questions arise regarding the proper procedures for waste disposal, the Property & Technician shall consult with the Union City/Pleasanton Fire Department’s Hazardous Materials Unit for direction and assistance with disposal efforts.

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#### **1405.8 DISPOSAL OF BICYCLES**

Found bicycles that remain unclaimed and the owner is unknown, will be given to the City Teen Workshop program administered by Leisure Services. The Property & Technician will fill out a Property Conversion form and submit it to the Lieutenant in charge of Property prior to releasing bicycles to Leisure Services.

Stolen bicycles will be returned to the owner upon case adjudication.

Bicycles held for safekeeping will be returned to the owner upon request or disposed of as abandoned property, when notification has occurred and after 60 days has elapsed.

Officers are urged to release found bicycles to the proper owner in the field whenever possible and appropriate.

#### **1405.9 UNCLAIMED PROPERTY GUIDELINES**

##### 1405.9.1 DISPOSITION OF UNCLAIMED PROPERTY

Property that has been found and not claimed within 90 days, stolen or embezzled property which has not been claimed by the owner within 30 days of notification, or in any case in which such notice is not given, after the expiration of 6 months has passed from the date of conviction, can be disposed of.

Unclaimed property, not governed by statute, after being held 90 days from the date the owner was notified to claim the property, shall be auctioned, destroyed, or diverted for Department use.

Property may be retained for Department use, but shall only be done with the authorization of the Chief of Police. The request for such authorization shall come from the Property & Evidence Technician or the Property & Evidence Supervisor. The authorization shall be in writing via a Property Conversion form.

Upon obtaining written authorization, the requesting party will request the property from the Property room and sign the chain of custody and the Property Report indicating receipt. The Property report and a copy of the approved Property Conversion Request form are forwarded to Records for inclusion in the case file.

Drugs and/or paraphernalia from closed cases may also be retained for Department use, such as the Department's training program, K-9 program or Narcotics Unit, following the above listed procedures. Additionally, a court order must be obtained from a magistrate authorizing the retention of the drugs for Department use.

The Property & Evidence Technician shall be responsible for forwarding all documentation of all controlled substances and/or paraphernalia converted for department use into the original case file.

Unclaimed property not suitable for auction, property for which no bids were received at the public auction, perishable goods, property which is inherently dangerous, and property which is contrary



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to the policy of the Chief of Police to retain, shall be disposed of in an appropriate manner. This section shall not apply to property subject to confiscation or disposition under State or Federal law.

Unclaimed currency shall be deposited into the City of Union City general fund. A report shall be generated by the Property & Technician when funds are deposited into the general fund. The report shall be forwarded to the Chief of Police via the chain of command.

#### **1405.9.2 AUCTION OF UNCLAIMED PROPERTY**

A contract between the Union City Police Department and an auction company is arranged and a mutually agreed date, time and location for the auction are established.

Pursuant to Government code Section 1090, and to avoid conflict of interest, or any appearance of conflict of interest, no employee of this department shall purchase any item at such auction, either personally or through a third party.

Prior to transfer, the Property & Technician will generate a Property Auction List. The list shall include the case number, the property tag number, item number and description of the property, including make, model, serial number, etc.

#### **1405.10 REVISIONS**

Procedure Adopted: