

## Butte County DA's Office Bureau of Investigation

# Property and Evidence

### 804.1 PURPOSE AND SCOPE

This policy provides for the proper collection, storage, and security of evidence and other property. Additionally, this policy provides for the protection of the chain of evidence and those persons authorized to remove and/or destroy property.

The management of the evidence/ property room will be the responsibility of the Chief Investigator, or the Investigative Lieutenant assigned by the Chief Investigator. The daily operations of the property room can be assigned to an investigator or an investigative assistant. Any employee assigned to the role of property room manager should be provided training in the best practices of property room management.

### 804.2 DEFINITIONS

**Property** - Includes all items of evidence, items taken for safekeeping and found property.

**Evidence** - Includes items taken or recovered in the course of an investigation that may be used in the prosecution of a case. This includes photographs and latent fingerprints.

**Safekeeping** - Includes the following types of property:

- Property obtained by the Department for safekeeping such as a firearm
- Personal property of an arrestee not taken as evidence
- Property taken for safekeeping under authority of a law (e.g., Welfare and Institutions Code § 5150 (mentally ill persons))

**Found property** - Includes property found by an employee or citizen that has no apparent evidentiary value and where the owner cannot be readily identified or contacted.

### 804.3 PROPERTY HANDLING

Any employee who first comes into possession of any property, shall retain such property in his/her possession until it is entered in to the Evidence Manager system, properly tagged, and placed in the designated property locker or storage room. Care shall be taken to maintain the chain of custody for all evidence.

Where ownership can be established as to found property with no apparent evidentiary value, such property may be released to the owner without the need for booking. The property form must be completed to document the release of property not booked and the owner shall sign the form acknowledging receipt of the item(s).

#### 804.3.1 PROPERTY BOOKING PROCEDURE

All property must be booked prior to the employee going off-duty unless otherwise approved by a supervisor. Employees booking property shall observe the following guidelines:

- (a) Enter the property in to the Evidence Manager system describing each item of property separately, listing all serial numbers, owner's name, finder's name, and other identifying information or markings.
- (b) Mark each item of evidence with the booking employee's initials and the date booked using the appropriate method so as not to deface or damage the value of the property.
- (c) Attach the printed label to each package or envelope in which the property is stored.

**Commented [WJ1]:** Create a property room management handbook or protocol book

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(d) Refer to the Evidence Manager User Manual for further guidelines.

### **804.3.2 NARCOTICS AND DANGEROUS DRUGS**

All narcotics and dangerous drugs shall be booked separately using a separate property record. Paraphernalia as defined by Health & Safety Code § 11364 shall also be booked separately.

The investigator seizing the narcotics and dangerous drugs shall make specific reference to these items to the property room manager.

### **804.3.3 EXPLOSIVES**

Investigators who encounter a suspected explosive device shall promptly notify their immediate supervisor or the Chief Investigator. The bomb squad will be called to handle explosive-related incidents and will be responsible for the handling, storage, sampling and disposal of all suspected explosives.

Explosives will not be retained in the bureau facility. Only fireworks that are considered stable and safe and road flares or similar signaling devices may be booked into property. All such items shall be stored in proper containers and in an area designated for the storage of flammable materials..

### **804.3.4 EXCEPTIONAL HANDLING**

Certain property items require a separate process. The following items shall be processed in the described manner:

(a) Bodily fluids such as blood or semen stains shall be air dried prior to booking

(b) License plates found not to be stolen or connected with a known crime, should be released directly to the Department of Motor Vehicles or the local office of the California Highway patrol. No formal property booking process is required.

(c) All cash shall be counted in the presence of a supervisor and the envelope initialed by the booking investigator and the supervisor. If the cash is to be deposited into an interest bearing account, Two investigators will be present at all times during the process until the cash is deposited at the Butte County Treasurer's Office, or as otherwise directed by the District Attorney Chief Financial Officer

(d) The Chief Investigator shall be contacted for cash in excess of \$1,000.

District Attorney property, unless connected to a known criminal case, should be released directly to the appropriate District Attorney unit. No formal booking is required. In cases where no responsible person can be located, the property should be booked for safekeeping in the normal manner.

### **804.4 PACKAGING OF PROPERTY**

Certain items require special consideration and shall be booked separately as follows:

(a) Narcotics and dangerous drugs

(b) Firearms (ensure they are unloaded and booked separately from ammunition)

(c) Property with more than one known owner

(d) Paraphernalia as described in Health and Safety Code § 11364 and Business and Profession Code § 4140

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- (e) Fireworks
- (f) Contraband

### **804.4.1 PACKAGING CONTAINER**

Employees shall package all property, except narcotics and dangerous drugs in a suitable container available for its size. Knife boxes should be used to package knives, and syringe tubes should be used to package syringes and needles.

A property tag shall be securely attached to the outside of all items or group of items packaged together.

### **804.4.2 PACKAGING NARCOTICS**

The investigator seizing narcotics and dangerous drugs shall retain such property in their possession until it is properly weighed, packaged, tagged, and turned over to the Butte Interagency Narcotics Task Force. Prior to packaging and if the quantity allows, a presumptive test should be made on all suspected narcotics. If conducted, the results of this test shall be included in the investigator's report.

Narcotics and dangerous drugs shall be packaged in an envelope of appropriate size available in the evidence room. The booking investigator shall initial the sealed envelope and the initials covered with cellophane tape. Narcotics and dangerous drugs shall not be packaged with other property and will be placed in a ValTox Controlled Substance evidence envelope.

A completed property tag shall be attached to the outside of the container. The chain of custody will be maintained in the Evidence Manager system and on the outside of the ValTox envelope.

### **804.5 RECORDING OF PROPERTY**

The Investigator receiving custody of evidence or property shall record his/her signature, the date and time the property was received and where the property will be stored in the Evidence Manager system.

A property number shall be obtained for each item or group of items. This number shall be recorded on property tag and the property control card.

Any changes in the location of property held by the Butte County District Attorney Bureau of Investigations shall be noted in the Evidence Manager system.

### **804.6 PROPERTY CONTROL**

Each time the property manager receives property or releases property to another person, he/she shall enter this information in to the Evidence Manager system. Investigators desiring property for court shall contact the property manager at least one day prior to the court day.

#### **804.6.1 RESPONSIBILITY OF OTHER PERSONNEL**

Every time property is released or received, an appropriate entry in the Evidence Manager system shall be completed to maintain the chain of possession. No property or evidence is to be released without following the property management protocol.

#### **804.6.2 TRANSFER OF EVIDENCE TO CRIME LABORATORY**

The transporting employee will check the evidence out of property, indicating the date and time in the Evidence Manager system and the request for laboratory analysis.

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The property manager releasing the evidence must complete the required information in the Evidence Manager system. The lab forms will be transported with the property to the examining laboratory. Upon delivering the item involved, the investigator will record the delivery time on both copies, and indicate the locker in which the item was placed or the employee to whom it was delivered. The original copy of the lab form will remain with the evidence and the copy will be submitted to the Clerical Staff along with a supplemental report documenting the activity.

### **804.6.3 STATUS OF PROPERTY**

Each person receiving property will make the appropriate entry to document the chain of evidence. Temporary release of property to investigators for investigative purposes, or for court, shall be noted in the Evidence Manager system, stating the date, time and to whom released.

The property manager shall obtain the signature of the person to whom property is released, and the reason for release. Any employee receiving property shall be responsible for such property until it is properly returned to the evidence room or properly released to another authorized person or entity.

The return of the property should be recorded in the Evidence Manager system, indicating date, time, and the person who returned the property.

### **804.6.4 AUTHORITY TO RELEASE PROPERTY**

The Investigative Lieutenant in charge of the property room shall authorize the disposition or release of all evidence and property coming into the care and custody of the Bureau of Investigations.

### **804.6.5 RELEASE OF PROPERTY**

All reasonable attempts shall be made to identify the rightful owner of found property or evidence not needed for an investigation.

Release of property shall be made upon receipt of an authorized release form, listing the name and address of the person to whom the property is to be released. The release authorization shall be signed by the authorizing supervisor or detective and must conform to the items listed on the property form or must specify the specific item(s) to be released. Release of all property shall be documented on the property form.

With the exception of firearms and other property specifically regulated by statute, found property and property held for safekeeping shall be held for a minimum of 90 days. During such period, property personnel shall attempt to contact the rightful owner by telephone and/or mail when sufficient identifying information is available. Property not held for any other purpose and not claimed within 90 days after notification (or receipt, if notification is not feasible) may be auctioned to the highest bidder at a properly published public auction. If such property is not sold at auction or otherwise lawfully claimed, it may thereafter be destroyed (Civil Code § 2080.6). The final disposition of all such property shall be fully documented in related reports.

The Investigative Lieutenant shall release the property upon proper identification being presented by the owner for which an authorized release has been received. A signature of the person receiving the property shall be recorded on the original property form. After release of all property entered on the property control card, the card shall be placed into the evidence disposal log. If some items of property have not been released the property card will remain with the Evidence Room. Upon release, the proper entry shall be documented in the Property Log. Any items released shall be documented in the case file with what was released and to whom.

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Under no circumstances shall any firearm be returned to any individual unless and until such person presents valid identification and written notification from the California Department of Justice that conforms to the provisions of Penal Code § 12021.3(e).

The Evidence Room Supervisor should also make reasonable efforts to determine whether the person is the subject of any court order preventing the person from possessing a firearm and if so, the firearm should not be released to the person while the order is in effect. The Department is not required to retain any firearm or other deadly weapon longer than 180 days after notice has been provided to the owner that such firearm or other deadly weapon is available for return. At the expiration of such period, the firearm or other deadly weapon may be processed for disposal in accordance with applicable law (Penal Code §12021.3(g)).

### **804.6.6 DISPUTED CLAIMS TO PROPERTY**

Occasionally more than one party may claim an interest in property being held by the Department, and the legal rights of the parties cannot be clearly established. Such property shall not be released until one party has obtained a valid court order or other undisputed right to the involved property.

All parties should be advised that their claims are civil and in extreme situations, legal counsel for the Department may wish to file an interpleader to resolve the disputed claim (Code of Civil Procedure § 386(b)).

### **804.6.7 CONTROL OF NARCOTICS & DANGEROUS DRUGS**

The Butte Interagency Narcotics Task Force will be responsible for the storage, control, and destruction of all narcotics and dangerous drugs coming into the custody of this department, including paraphernalia as described in Health & Safety Code § 11364.

### **804.7 DISPOSITION OF PROPERTY**

All property not held for evidence in a pending criminal investigation or proceeding, and held for six months or longer where the owner has not been located or fails to claim the property, may be disposed of in compliance with existing laws upon receipt of proper authorization for disposal. The Investigative Lieutenant shall request a disposition or status on all property which has been held in excess of 120 days, and for which no disposition has been received from an investigator.

#### **804.7.1 EXCEPTIONAL DISPOSITIONS**

The following types of property shall be destroyed or disposed of in the manner, and at the time prescribed by law, unless a different disposition is ordered by a court of competent jurisdiction:

- Weapons declared by law to be nuisances (Penal Code §§ 29300; 18010; 32750)
- Animals, birds, and related equipment that have been ordered forfeited by the court (Penal Code § 599a)
- Counterfeiting equipment (Penal Code § 480)
- Gaming devices (Penal Code § 335a)
- Obscene matter ordered to be destroyed by the court (Penal Code § 312)
- Altered vehicles or component parts (Vehicle Code § 10751)
- Narcotics (Health and Safety Code § 11474, etc.)
- Unclaimed, stolen or embezzled property (Penal Code § 1411)
- Destructive devices (Penal Code § 19000)

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### **804.7.2 UNCLAIMED MONEY**

If found or seized money is no longer required as evidence and remains unclaimed after three years, the Department shall cause a notice to be published each week for a period of two consecutive weeks in a local newspaper of general circulation (Government Code § 50050). Such notice shall state the amount of money, the fund in which it is held and that the money will become the property of the agency on a designated date not less than 45 days and not more than 60 days after the first publication (Government Code § 50051). Any individual item with a value of less than fifteen dollars (\$15.00), or any amount if the depositor/owner's name is unknown, which remains unclaimed for a year or by order of the court, may be transferred to the general fund without the necessity of public notice (Government Code § 50055).

If the money remains unclaimed as of the date designated in the published notice, the money will become the property of this department to fund official law enforcement operations. Money representing restitution collected on behalf of victims shall either be deposited into the Restitution Fund or used for purposes of victim services.

### **804.7.3 RETENTION OF BIOLOGICAL EVIDENCE**

The Evidence Room Supervisor shall ensure that no biological evidence held by the Department is destroyed without adequate notification to the following persons, when applicable:

- (a) The defendant
- (b) The defendant's attorney
- (c) The appropriate prosecutor and Attorney General
- (d) Any sexual assault victim
- (e) The Criminal Investigations Division supervisor

Biological evidence shall be retained for a minimum period established by law (Penal Code § 1417.9), the Evidence Room Supervisor or the expiration of any sentence imposed related to the evidence, whichever time period is greater. Following the retention period, notifications should be made by certified mail and should inform the recipient that the evidence will be destroyed after a date specified in the notice unless a motion seeking an order to retain the sample is filed and served on the Department within 90 days of the date of the notification. A record of all certified mail receipts shall be retained in the appropriate file. Any objection to, or motion regarding, the destruction of the biological evidence should be retained in the appropriate file and a copy forwarded to the Criminal Investigations Division supervisor. Biological evidence related to a homicide shall be retained indefinitely and may only be destroyed with the written approval of the Chief of Investigations and the head of the applicable prosecutor's office.

Biological evidence from an unsolved sexual assault should not be disposed of prior to expiration of the statute of limitations. Even after expiration of an applicable statute of limitations, the Criminal Investigations Division supervisor should be consulted and the sexual assault victim should be notified.

### **804.8 INSPECTIONS OF THE EVIDENCE ROOM**

An annual audit of evidence held by the department shall be conducted by, or as directed by, the Chief Investigator.

Whenever a change is made in personnel who have access to the evidence room, an inventory of all evidence/property shall be made by an individual(s) not associated to the property room or function to ensure that records are correct and all evidence property is accounted for.