

# Property and Evidence

## 804.1 PURPOSE AND SCOPE

Best Practice MODIFIED

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.

## 804.2 DEFINITIONS

Best Practice MODIFIED

**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 audio, video, photographs and latent fingerprints.

**Safekeeping** - Includes the following types of property, which should include contact information for the owner:

- 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

Best Practice MODIFIED

Any employee who first comes into possession of any property shall retain such property in his/her possession until it is properly tagged and placed in the designated property locker or storage room along with the property form. 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 release must be completed to document the release of property not booked and the owner shall sign the form acknowledging receipt of the items. A copy of this form will be released to the owner (pink copy), a copy to the Evidence Unit (yellow) and the original attached to the report.

### 804.3.1 PROPERTY BOOKING PROCEDURE

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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) Complete the entry of property describing each item separately in the FileOnQ evidence tracking system, 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/or employee identification number and the date booked using the appropriate method so as not to deface or damage the value of the property.
- (c) Print an evidence/property bar code label and attach it to each package or envelope in which the property is stored.
- (d) Place the bar code label on the item to be booked. Refer to the Property and Evidence Guide located on the Booking counter.
- (e) The original property log if applicable shall be submitted with the case report. The original form shall be placed outside the property and evidence office. The applicable forms are the IPD (1) firearm entry form, (2) Forensic services request form and (3) property release receipt form..
- (f) When the property is too large to be placed in a locker, the item may be retained in the designated exterior property and evidence bulk evidence secured area. Enter the property record into the FileOnQ evidence system and apply the barcode label and inform the Property and Evidence Unit.

#### 804.3.2 NARCOTICS AND DANGEROUS DRUGS

**Best Practice** **MODIFIED**

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

The officer seizing narcotics and dangerous drugs shall place them in the designated locker and document the items in FileOnQ. All narcotics must be weighed and the weight must be documented on the narcotics envelope and in FileOnQ. If analysis is required the officer will fill out the DA-8 form and attach it to their case.

#### 804.3.3 EXPLOSIVES

**Best Practice** **MODIFIED**

Officers who encounter a suspected explosive device shall immediately notify their supervisor or the Watch Commander. The supervisor shall then contact the Hazardous Material Response Team to handle explosive-related incidents who will be responsible for the handling, storage, sampling and disposal of all suspected explosives.

Explosives will not be retained in the police 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 as instructed by the property and evidence officers. The Property and Evidence Officer is responsible

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for transporting to the Fire Department, on a regular basis, any fireworks or signaling devices that are not retained as evidence.

#### 804.3.4 EXCEPTIONAL HANDLING

**Best Practice** **MODIFIED**

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 Property and Evidence Officer, or placed in the designated container for return to the Department of Motor Vehicles. No formal property booking process is required.
- (c) All bicycles and bicycle frames require a property record. Property barcode labels will be securely attached to each bicycle or bicycle frame. The property may be released directly to the Property and Evidence Officer, or placed in the bicycle storage area until a Property and Evidence Officer can log the property.
- (d) All cash in excess of \$1,000 shall be counted in the presence of a supervisor and placed in a currency envelope initialed by the booking officer and the supervisor. If seizing the currency for asset forfeiture inform the Street Crimes Unit Sergeant as there is a short time frame to get the forms filed and then the Property & Evidence Unit.

City property, unless connected to a known criminal case, should be released directly to the appropriate City department. No formal booking is required. In cases where no responsible person can be located, the property should be booked as found property in the normal manner.

#### 804.3.5 RELINQUISHED FIREARMS

**State** **MODIFIED**

Individuals who relinquish firearms pursuant to the provisions of Penal Code § 29810(i) shall be issued a receipt that describes the firearm, the serial number or other identification of the firearm at the time of relinquishment (Penal Code § 29810).

Relinquished firearms shall be retained for 30 days, after which time they may be destroyed, retained, sold or otherwise transferred, unless (Penal Code § 29810):

- (a) A certificate is issued by a judge of a court of record or the District Attorney stating the firearms shall be retained; or
- (b) The convicted person provides written notice of an intent to appeal the conviction that necessitated the relinquishment; or
- (c) The Automated Firearms System indicates that the firearm was reported lost or stolen.
  - 1. In such event, the firearm shall be restored to the lawful owner as soon as it is no longer needed as evidence, the lawful owner has identified the weapon

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and provided proof of ownership, and the Department has complied with the requirements of Penal Code § 33850 et seq. No law enforcement agency shall be required to retain the firearm for more than 180 days from date of notice per Penal Code 33875.

The Property and Evidence Officer shall ensure the Records Supervisor is notified of the relinquished firearm for purposes of updating the Automated Firearms System and the disposition of the firearm for purposes of notifying the California Department of Justice (DOJ) (See the Records Bureau Policy).

### 804.4 PACKAGING OF PROPERTY

Best Practice MODIFIED

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
- (e) Fireworks
- (f) Contraband

#### 804.4.1 PACKAGING CONTAINER

Best Practice MODIFIED

Employees shall package all property, except narcotics, currency and dangerous drugs in a suitable container available for its size.

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

#### 804.4.2 PACKAGING NARCOTICS

Best Practice MODIFIED

The officer seizing narcotics and dangerous drugs shall retain such property in his/her possession until it is properly weighed, packaged, tagged, and placed in the designated evidence locker, as well as documented in the FileOnQ evidence system.. 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 officer's report.

Narcotics and dangerous drugs shall be packaged in an envelope of appropriate size available in the evidence counters. The booking officer shall initial the sealed envelope and the initials covered with cellophane tape. Narcotics and dangerous drugs shall not be packaged with other property.

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If a large package is used and not the narcotics envelope, ensure the weight, type of drug, and who drugs were seized from is written on the package.

#### **804.5 RECORDING OF PROPERTY**

**Best Practice** **MODIFIED**

The Property and Evidence Officer receiving custody of evidence or property shall ensure the item is transferred in FileOnQ to the appropriate storage location which will indicate the date and time property was received.

A property barcode number shall be obtained for each item or group of items. This number shall be recorded on the property barcode label and documented in FileOnQ for chain of custody purposes.

Any changes in the location of property held by the Indio Police Department shall be noted in the property logbook.

#### **804.6 PROPERTY CONTROL**

**Best Practice** **MODIFIED**

Each time the Property and Evidence Officer receives property or releases property to another person, he/she shall enter this information into FileOnQ. Officers desiring property for court shall contact the Property and Evidence Officer at least one day prior to the court day.

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

**Best Practice** **MODIFIED**

Every time property is released or received, an appropriate entry into FileOnQ shall be completed to maintain the chain of evidence. No property or evidence is to be released without first receiving written authorization from a supervisor or detective.

Request for analysis for items other than narcotics or drugs shall be completed on the appropriate forms and submitted to the Property and Evidence Officer. This request may be filled out any time after booking of the property or evidence.

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

**Best Practice** **MODIFIED**

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

The Property and Evidence Officer releasing the evidence must complete the required information in the property database. The lab forms will be transported with the property to the examining laboratory. Upon delivering the item involved, the officer 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 returned to the Records Bureau and Property and Evidence Officer for filing with the case.

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#### 804.6.3 STATUS OF PROPERTY

Best Practice MODIFIED

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

The Property and Evidence Officer 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 property and evidence or properly released to another authorized person or entity.

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

#### 804.6.4 AUTHORITY TO RELEASE PROPERTY

Best Practice MODIFIED

The Major Crimes Unit, Street Crimes Unit or Property and Evidence shall authorize the disposition or release of all evidence and property coming into the care and custody of the Department.

#### 804.6.5 RELEASE OF PROPERTY

State MODIFIED

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 receipt or electronically in FileOnQ.

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.

A Property and Evidence Officer 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 receipt or electronically in FileOnQ. After release of all property, the documentation shall be forwarded to the Records Bureau for filing with the case. Upon release, the proper entry shall be documented in FileOnQ.

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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 § 33865.

The Property and Evidence Unit 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 § 33875).

#### 804.6.6 DISPUTED CLAIMS TO PROPERTY

State MODIFIED

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 AND DANGEROUS DRUGS

Best Practice MODIFIED

The Property and Evidence Unit will be responsible for the storage, control and destruction of all narcotics and dangerous drugs coming into the custody of the Indio Police Department, including paraphernalia as described in Health and Safety Code § 11364.

#### 804.6.8 RELEASE OF FIREARM IN DOMESTIC VIOLENCE MATTERS

State MODIFIED

Within five days of the expiration of a restraining order issued in a domestic violence matter that required the relinquishment of a firearm, the Property and Evidence Officer shall start the process for return of the weapon to the owner, if the requirements of Penal Code § 33850 and Penal Code § 33855 are met unless the firearm is determined to be stolen, evidence in a criminal investigation, illegally modified, illegal to own or possess or the individual is otherwise prohibited from possessing a firearm (Family Code 6389(g); Penal Code § 33855).

#### 804.6.9 RELEASE OF FIREARMS AND WEAPONS IN MENTAL ILLNESS MATTERS

State MODIFIED

Firearms and other deadly weapons confiscated from an individual detained for an evaluation by a mental health professional or subject to the provisions of Welfare and Institutions Code § 8100 or Welfare and Institutions Code § 8103 shall be released or disposed of as follows:

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- (a) If a petition for a hearing regarding the return of the weapon has been initiated pursuant to Welfare and Institutions Code § 8102(c), the weapon shall be released or disposed of as provided by an order of the court. If the court orders a firearm returned, the firearm shall not be returned unless and until the person presents valid identification and written notification from the California Department of Justice (DOJ) which conforms to the provisions of Penal Code § 33865.
- (b) If no petition has been initiated pursuant to Welfare and Institutions Code § 8102(c) and the weapon is not retained as evidence, the Department shall make the weapon available for return. No firearm will be returned unless and until the person presents valid identification and written notification from the California DOJ which conforms to the provisions of Penal Code § 33865.
- (c) Unless the person contacts the Department to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Penal Code § 33870, firearms not returned should be sold, transferred, destroyed or retained as provided in Welfare and Institutions Code § 8102.

#### 804.6.10 RELEASE OF FIREARMS IN GUN VIOLENCE RESTRAINING ORDER MATTERS

**State** **MODIFIED**

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order and in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18120).

If the restrained person who owns the firearms or ammunition does not wish to have the firearm or ammunition returned, he/she is entitled to sell or transfer title to a licensed dealer, provided that the firearms or ammunition are legal to own or possess and the restrained person has right to title of the firearms or ammunition (Penal Code § 18120).

If a person other than the restrained person claims title to the firearms or ammunition surrendered pursuant to Penal Code § 18120 and the Indio Police Department determines him/her to be the lawful owner, the firearms or ammunition shall be returned in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18120).

Firearms and ammunition that are not claimed are subject to the requirements of Penal Code § 34000.

#### 804.7 DISPOSITION OF PROPERTY

**Best Practice**

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 Property and Evidence Officer shall request a disposition or status on all property which has been



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held in excess of 120 days, and for which no disposition has been received from a supervisor or detective.

#### 804.7.1 EXCEPTIONAL DISPOSITIONS

**State**

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; Penal Code § 18010; Penal Code § 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 et seq.)
- Unclaimed, stolen, or embezzled property (Penal Code § 1411)
- Destructive devices (Penal Code § 19000)
- Sexual assault evidence (Penal Code § 680)

#### 804.7.2 UNCLAIMED MONEY

**State** **MODIFIED**

If found or seized money is no longer required as evidence and remains unclaimed after three years from date of notice, the Indio Police 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 \$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 the Indio Police 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

**State** **MODIFIED**

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The Property & Evidence Unit 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 Investigative Services Division supervisor

Biological evidence shall be retained for either a minimum period that has been established by law (Penal Code § 1417.9) or that has been established by the Property & Evidence Unit, or until the expiration of any imposed sentence that is 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 180 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 Investigative Services 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 Police and the head of the applicable prosecutor's office.

Biological evidence or other crime scene evidence from an unsolved sexual assault should not be disposed of prior to expiration of the statute of limitations and shall be retained as required in Penal Code § 680. Even after expiration of an applicable statute of limitations, the Investigative Services Division supervisor should be consulted and the sexual assault victim shall be notified at least 60 days prior to the disposal (Penal Code § 680). Reasons for not analyzing biological evidence shall be documented in writing (Penal Code § 680.3).

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

Best Practice **MODIFIED**

- (a) On a monthly basis, the supervisor of the evidence unit shall make an inspection of the evidence storage facilities and practices to ensure adherence to appropriate policies and procedures.
- (b) Unannounced inspections of evidence storage areas shall be conducted annually as directed by the Chief of Police.
- (c) An annual audit of evidence held by the Department shall be conducted by a Division Chief (as appointed by the Chief of Police) not routinely or directly connected with evidence control.
- (d) 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 not associated

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to the property room or function to ensure that records are correct and all evidence property is accounted for.