

Property and Evidence

801.1 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.

801.2 DEFINITIONS

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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 Office of Protective Services (OPS) 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., Welf. and Inst. Code, § 5150 (mentally ill persons)).

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

801.3 PROPERTY HANDLING

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Any OPS 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 must be completed to document the release of property not booked and the owner shall sign the form acknowledging receipt of the items.

801.3.1 PROPERTY BOOKING PROCEDURE

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

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- (a) Complete the property form 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 using the appropriate method so as not to deface or damage the value of the property.
- (c) Complete an evidence/property label and attach it to each package or envelope in which the property is stored.
- (d) The original property page shall be completed with the case report.
- (e) When the property is too large to be placed in a locker, the item may be retained in the identified secure location.

801.3.2 NARCOTICS AND DANGEROUS DRUGS

Best Practice **MODIFIED**

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

The officer seizing the narcotics and dangerous drugs shall place them in the designated locker.

801.3.3 EXPLOSIVES

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Officers who encounter a suspected explosive device shall promptly notify their immediate supervisor or the Watch Commander. 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 hospital 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. The Property Officer is responsible for transporting to the Fire Department, on a regular basis, any fireworks or signaling devices that are not retained as evidence.

801.3.4 EXCEPTIONAL HANDLING

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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 designated property employee.
- (c) All bicycles and bicycle frames require a property page and label. Property label will be securely attached to each bicycle or bicycle frame. The property may be released directly to the designated property employee.

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- (d) All cash shall be counted in the presence of a supervisor and the envelope initialed by the booking officer and the supervisor. The appropriate Lieutenant shall be contacted for cash in excess of \$1,000.

State property, unless connected to a known criminal case, should be released directly to the appropriate State agency. Property should be booked for safekeeping in the normal manner.

801.4 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 section 11364
- (e) Fireworks
- (f) Contraband

801.4.1 PACKAGING CONTAINER

Best Practice **MODIFIED**

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

A property label, and in appropriate circumstances a warning label, shall be securely attached to the outside of all items or group of items packaged together.

801.4.2 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, photographed, labeled and placed in the designated locker. 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 report room. 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.

A completed property label shall be attached to the outside of the container.

801.5 PROPERTY CONTROL

Best Practice **MODIFIED**

Each time the designated property employee receives property or releases property to another person, he/she shall enter this information on the property module. Officers desiring property for court shall contact the designated property employee at least one day prior to the court day.

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801.5.1 RESPONSIBILITY OF OTHER PERSONNEL

Best Practice **MODIFIED**

Every time property is released or received, an appropriate entry in the property module 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 designated property employee. This request may be filled out any time after booking of the property or evidence.

801.5.2 TRANSFER OF EVIDENCE TO CRIME LABORATORY

Best Practice **MODIFIED**

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

The designated property employee releasing the evidence must complete the required information on the property module and the evidence. 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,

801.5.3 STATUS OF PROPERTY

Best Practice **MODIFIED**

Each OPS employee 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 on the property module, stating the date, time and to whom released.

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

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

801.5.4 AUTHORITY TO RELEASE PROPERTY

Best Practice **MODIFIED**

The designated OPS supervisor shall authorize the disposition or release of all evidence and property coming into the care and custody of OPS.

801.5.5 RELEASE OF PROPERTY

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

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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 designated OPS supervisor 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 designated property employee 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 forwarded to the Records Bureau for filing with the case. 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.

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 section 33865.

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.

OPS 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 (Pen. Code § 33875).

801.5.6 DISPUTED CLAIMS TO PROPERTY

State **MODIFIED**

Occasionally more than one party may claim an interest in property being held by OPS, 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 of State Hospitals (DSH) may wish to file an interpleader to resolve the disputed claim. (Code Civ. Proc., § 386(b).)

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801.5.7 CONTROL OF NARCOTICS AND DANGEROUS DRUGS

Best Practice **MODIFIED**

Investigations will be responsible for the storage, control and destruction of all narcotics and dangerous drugs coming into the custody section 11364.

801.5.8 RELEASE OF FIREARMS - GENERAL

Agency Content

Any DSH/OPS peace officer/facility that has taken custody of any firearm, ammunition feeding device, or ammunition shall not return the firearm, ammunition feeding device, or ammunition to any individual unless all of the following requirements are satisfied:

- (a) The individual presents a determination by the DOJ, pursuant to Penal Code section 33865, that the individual is eligible to possess a firearm, ammunition feeding device, or ammunition.
- (b) If the seized property is a firearm, the agency must verify that the firearm is not listed as stolen pursuant to Penal Code section 11108.2, and that the firearm has been recorded in AFS in the name of the individual who seeks its return.
- (c) If the firearm has been reported lost or stolen pursuant to Penal Code section 11108.2, a law enforcement agency must notify the owner or person entitled to possession pursuant to Section 11108.5. However, that person shall provide proof of eligibility to possess a firearm pursuant to Section 33865. (Pen. Code., § 33855.)
- (d) The designated property employee shall track all firearms in police custody. The designated property employee will maintain documentation on the status of all firearms in police custody including contact information of authorized parties such as OSI investigators and the courts who can determine when the firearms are subject to disposition according to law. The designated property employee shall conduct inquiries on the status of all firearms in OPS custody every ninety days until the disposition of the firearms are determined and appropriate action taken to release or dispose of the firearms according to law. The status checks will be documented, and the record kept with the information on the firearm. Dispositions on releasable firearms will take priority over other property releases.

801.5.9 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 or ammunition, the designated property employee shall return the weapon or ammunition to the owner if the requirements of Penal Code section 33850 and Penal Code section 33855 are met unless the firearm is determined to be stolen, evidence in a criminal investigation or the individual is otherwise prohibited from possessing a firearm. (Fam. Code, 6389(g); Pen. Code, § 33855.)

801.5.10 RELEASE OF FIREARMS AND WEAPONS IN MENTAL ILLNESS MATTERS

State **MODIFIED**

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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 section 8100 or Welfare and Institutions Code section 8103 shall be released or disposed of as follows:

- (a) If a petition for a hearing regarding the return of the weapon has been initiated pursuant to Welfare and Institutions Code section 8102, subdivision (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 section 33865.
- (b) If no petition has been initiated pursuant to Welfare and Institutions Code section 8102, subdivision (c) and the weapon is not retained as evidence, OPS 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 section 33865.
- (c) Unless the person contacts OPS to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Penal Code section 33870, firearms not returned should be sold, transferred, destroyed or retained as provided in Welfare and Institutions Code section 8102.

801.5.11 RELEASE OF FIREARMS IN GUN VIOLENCE RESTRAINING ORDER MATTERS

State **MODIFIED**

Firearms, magazines 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 section 33850 et seq. (Pen. 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 (Pen. Code § 18120).

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

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

801.5.12 RETURN AND DESTRUCTION OF CRIME AND EVIDENCE FIREARMS

Agency Content

1. Within 10 days of acquiring a handgun or any firearm, Department of State Hospital (DSH) and Office of Protective Services (OPS) must record and follow the same procedure as an institutional weapon in AFS (Automated Firearms System) via the California Law Enforcement Telecommunications System (CLETS). (Pen. Code.,§ 27050.)

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2. Within seven days of being notified, DSH/OPS must enter in AFS each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, surrendered pursuant to Penal Code section 28050, relinquished pursuant to Penal Code section 6389 of the Family Code. (Pen. Code., § 11108.02.) Information about a firearm entered in AFS must remain in the system until the reported firearm has been found, recovered, is no longer under observation, or the record is determined to have been entered in error. (Ibid.)

801.6 DISPOSITION OF PROPERTY

Best Practice **MODIFIED**

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 designated property employee 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 a designated OPS supervisor.

801.6.1 EXCEPTIONAL DISPOSITIONS

State **MODIFIED**

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 (Pen. Code § 29300; Pen. Code § 18010; Pen. Code § 32750)
- Animals, birds, and related equipment that have been ordered forfeited by the court (Pen. Code § 599a)
- Counterfeiting equipment (Pen. Code § 480)
- Gaming devices (Pen. Code § 335a)
- Obscene matter ordered to be destroyed by the court (Pen. Code § 312)
- Altered vehicles or component parts (Veh. Code § 10751)
- Narcotics (Health and Saf. Code § 11474 et seq.)
- Unclaimed, stolen or embezzled property (Pen. Code § 1411)
- Destructive devices (Pen. Code § 19000)
- Sexual assault evidence (Pen. Code § 680(e))

801.6.2 UNCLAIMED MONEY

State **MODIFIED**

If found or seized money is no longer required as evidence and remains unclaimed after three years, OPS shall cause a notice to be published each week for a period of two consecutive weeks in a local newspaper of general circulation (Gov. 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

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on a designated date not less than 45 days and not more than 60 days after the first publication (Gov. 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 (Gov. 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.

801.6.3 RETENTION OF BIOLOGICAL EVIDENCE

State **MODIFIED**

The appropriate OPS supervisor shall ensure that no biological evidence held by OPS 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 Investigations supervisor

Biological evidence shall be retained for a minimum period established by law (Pen Code § 1417.9), the appropriate OPS 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 OPS 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 designated OPS supervisor.

Biological evidence related to a homicide shall be retained indefinitely and may only be destroyed with the written approval of the Hospital Police Chief 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 designated OPS supervisor should be consulted and the sexual assault victim shall be notified at least 60 days prior to disposal (Pen. Code § 680). Reasons for not analyzing biological evidence shall be documented in writing (Pen. Code § 680.3).

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801.6.4 RETENTION OF FIREARMS

Agency Content

DSH is not required to retain any firearm, ammunition feeding device, or ammunition for more than 180 days after the owner has been notified by the court or DSH that the property has been made available for return. An unclaimed firearm, ammunition feeding device, or ammunition may be disposed of after the 180-day period has expired. (Pen. Code, § 33875.)

801.7 INSPECTIONS OF THE EVIDENCE ROOM

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- (a) On a monthly basis, the designated OPS supervisor 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 Hospital Police Chief.
- (c) An annual audit of evidence held by OPS shall be conducted by a designated OPS supervisor (as appointed by the Hospital Police Chief) 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 to the property room or function to ensure that records are correct and all evidence property is accounted for. The inventory shall be completed prior to the change of personnel.