
**NEVADA COUNTY
SHERIFF'S OFFICE**



GENERAL ORDER
66
Effective Date ~~08/01/93~~
—7/1/18

SUBJECT

EVIDENCE PROCEDURES

POLICY

This policy provides for the proper collection, storage, and security of evidence and other property.

PURPOSE

, This policy provides for the protection of the chain of evidence and those persons authorized to remove and/or destroy property.

CODE REFERENCE

Welfare and Institutions Code § 5150; Health and Safety Code § 11364; Civil Code § 2080.6; Penal Code § 33865; Penal Code § 33875; Code of Civil Procedure 386(b); Penal Code § 33850; Penal Code § 33855; Family Code § 6389 (g); Welfare and Institutions Code § 8100; Welfare and Institutions Code § 8103; Welfare and Institutions Code § 8102(c); Penal Code § 33870; Penal Code § 18120; Penal Code § 34000; Penal Code § 29300; Penal Code § 32750; Penal Code § 599a; Penal Code § 480; Penal Code § 335a; Penal Code § 312; Vehicle Code § 10751; Health and Safety Code § 11471; Penal Code § 1411; Penal Code § 19000; Government Code § 50050; Government Code § 50051; Government Code § 50055; Penal Code § 1417.9.

CASE LAW

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:

1. Property obtained by the Sheriff's Office for safekeeping such as a firearm.

2. Personal property of an arrestee not taken as evidence.
3. Property taken for safekeeping or subject to probate under authority of a law (e.g., Welfare and Institutions Code § 5150 (mentally ill persons)).
4. 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.

PROPERTY HANDLING

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. 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; with the exception of firearms per the Department of Justice (DOJ).

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) Complete the property entry in RMS 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 package 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) Once the entry is complete, print an evidence/property tag and attach it to each package or envelope in which the property is stored. Each package/envelope shall be sealed with evidence cellophane tape across any points of entry. The deputy shall place his/her initials and the date along the evidence tape seal.

NARCOTICS AND DANGEROUS DRUGS

After weighing, 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 deputy seizing the narcotics and dangerous drugs shall place them in the evidence locker.

EXPLOSIVES

Deputies who encounter a suspected explosive device shall promptly notify their immediate supervisor or the Shift Sergeant. 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 Sheriff's Property Unit. Only fireworks that are considered stable and safe and road flares or similar signaling devices may be booked into the Sheriff's Property Unit. All such items shall be stored in proper containers and in an area designated for the storage of flammable materials. The property and evidence technician is responsible for destruction of any fireworks or signaling devices that are not retained as evidence.

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 in the drying cabinet and the property report shall indicate that the items were placed in the cabinet in the property unit. The key to the drying cabinet shall be booked and submitted separately as an evidence item.
- (b) License plates found not to be stolen or connected with a known crime, should be packaged and booked as found property . RMS entry should include registered owner's information. License plates that are unclaimed for 90 days will be returned to DMV.
- (c) All bicycles and bicycle frames require a property record. Property tags will be securely attached to each bicycle or bicycle frame. The property may be released directly to the property and evidence technician, or placed in the bicycle storage area until a property and evidence technician can log the property.
- (d) All cash shall be counted in the presence of two officers. The supervisor shall be contacted for cash in excess of \$1,000 for special handling procedures.

County property, unless connected to a known criminal case, should be released directly to the appropriate County department. 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.

PACKAGING OF PROPERTY

Syringes are not to be booked into evidence. Syringes are to be photographed for evidentiary purposes and the syringe placed in a designated sharps container for destruction. Photographs of syringes are to be marked with an evidence number in the report and uploaded to the multimedia section of the report. Deputies are not to hit the "submit" button for the photograph evidence.

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

(g) Money

PACKAGING CONTAINER

Employees shall package all property, except narcotics and dangerous drugs in a suitable container available for its size. Knife boxes or appropriate sharps tubes should be used to package knives. Money shall be booked in money envelopes and handguns shall be booked in gun boxes. Rifle boxes will be used only for DNA or print sensitive cases involving long guns.

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

PACKAGING NARCOTICS

The deputy 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 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 deputy's report. In narcotic cases being sent to the District Attorney for prosecution, suspected narcotics shall be packaged securely and placed in a Department of Justice envelope for processing.

The booking deputy shall tape, date, and initial the sealed envelope. Narcotics and dangerous drugs shall not be packaged with other property.

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

IMPROPERLY PACKAGED OR LABELED PROPERTY

Any property submitted to the Sheriff's Property Unit that is incorrectly packaged or labeled will not be accepted by property unit personnel and shall be brought to the attention of the deputy or a supervisor for repackaging and/or relabeling.

PROPERTY CONTROL

Each time an employee receives property or releases property to another person, he/she shall enter this information in the appropriate module of the Records Management System (RMS). Deputies desiring property for court shall contact the property and evidence technician at least one day prior to the court day.

ANALYSIS REQUESTS

Request for analysis for items other than narcotics or drugs shall be completed on the appropriate forms and submitted to the property and evidence technician. This request

shall be completed immediately following booking of the property or evidence or such time that the evidentiary value is determined.

TRANSFER OF EVIDENCE TO AND FROM THE CRIME LABORATORY

When transferring evidence for testing, the transporting employee will check the evidence out of property, indicating the date and time on the Chain of Custody Form

The property and evidence technician releasing the evidence must complete the required information in RMS. The Chain of Custody Form will be transported with the property to the examining laboratory. Upon delivering the item involved, the employee will record the delivery date and time, and indicate the locker in which the item was placed or the employee to whom it was delivered. The original copy of the Chain of Custody Form will remain with the item of evidence. One copy will be returned to the Records Unit for filing and another to the Property Unit for tracking..

When returning evidence from testing, the transporting employee will check out the evidence from the lab, indicating the date and time on the Chain of Custody Form. The Chain of Custody Form will be transported with the evidence item to the Property Unit. Upon delivering the evidence item, the employee will record the delivery time and indicate the locker in which the item was placed or the employee to whom it was personally delivered. The original copy of the Chain of Evidence Form will remain with the evidence item. One copy will be sent to the Records Unit for filing.

STATUS OF PROPERTY

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

Any 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 in RMS, indicating date, time, and the person who returned the property.

AUTHORITY TO RELEASE PROPERTY

Evidence will be released only after authorization from the investigating officer or his/her supervisor in the absence of a release order from the Court or District Attorney's Office.

RELEASE OF PROPERTY

All reasonable attempts shall be made to identify the rightful owner of found property or evidence no longer needed for an investigation.

Release of property shall be made upon receipt of authorization from a deputy, detective, supervisor, courts, District Attorney's Office, or associated outside agency representative , listing the name of the person to whom the property is to be released. The release authorization shall be documented 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 and in RMS.

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 retained by the Sheriff's Office for usage, or 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 technician shall release the property upon proper identification being presented by the owner, or his or her designee or a designee established either by the Coroner or a court stipulation for which an authorized release has been received. If the owner designates someone to pick up the property on their behalf, the designee must provide the Sheriff's Property Unit with a letter giving the designee permission to pick up the specific items(s). The letter must be signed by the property owner, and have a copy of the owner's photo ID. If the property owner is in custody, they can fill out a property release form provided by the correctional facility staff, giving a designee permission to pick up their property. The form should be delivered to the Sheriff's Property Unit. The designee picking up the property must present their photo ID at the time they pick up the property. A signature of the person receiving the property shall be recorded on the appropriate property release form. Upon release, the proper entry shall be documented in RMS.

Under no circumstances shall any firearm be returned to any individual unless and until such person presents valid identification and presentation of the original written notification from the California Department of Justice that conforms to the provisions of Penal Code § 33865.

The property technician 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).

DISPUTED CLAIMS TO PROPERTY

Occasionally more than one party may claim an interest in property being held by the Sheriff's Office, 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 Sheriff's Office may wish to file an interpleader to resolve the disputed claim (Code of Civil Procedure § 386(b)).

RELEASE OF FIREARM IN DOMESTIC VIOLENCE MATTERS

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 technician shall return 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 or the individual is otherwise prohibited from possessing a firearm (Family Code 6389(g); Penal Code § 33855).

RELEASE OF FIREARMS AND WEAPONS IN MENTAL ILLNESS MATTERS

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:

- (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 original 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 Sheriff's Office shall make the weapon available for return. No firearm will be returned unless and until the person presents valid identification and original written notification from the California DOJ which conforms to the provisions of Penal Code § 33865.
- (c) Unless the person contacts the Sheriff's Office 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.

RELEASE OF FIREARMS IN GUN VIOLENCE RESTRAINING ORDER MATTERS

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 Nevada County Sheriff's Office 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).

The Sheriff's Office is not required to retain any firearm or deadly weapon longer than 180 days after notice has been provided to the owner of such firearm or other deadly weapon is available for release. At the expiration of such period, the firearm or other deadly weapon may be processed for disposal in accordance with applicable law (Penal Code § 34000).

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

DISPOSITION OF PROPERTY

All evidence not held in a pending criminal investigation or proceeding and 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 Technician shall request a disposition or status on all evidence which is beyond the Statute of Limitations and where no disposition has been received from the deputy, detective (case agent) supervisor, courts, District Attorney's Office or associated outside agency representative.

All safekeeping property must be held for 90 days, unless returned to its owner or designee. Where the owner has not been located or fails to claim the property, it may be disposed of in compliance with existing laws.

All found property must be held for 90 days unless returned to its owner or designee. If unclaimed by its owner the property must be kept for an additional 30 days to be released to the finder, with the exception of firearms and items which may contain the owner's personal information, it may be disposed of in compliance with existing laws after 120 days.

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:

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

9. Destructive devices (Penal Code § 19000)

MONEY

All money submitted to the Property Unit shall be considered for deposit, unless it contains specific evidentiary value. Evidentiary value could be, but not limited to dyed or marked money. All money considered for deposit should be photographed prior to deposit.

Money should be considered for deposit when:

- a) The money is non-evidentiary and in excess of \$100.00
- b) The money was booked for safekeeping and exceeds \$300.00
- c) The money was booked for a Coroner's case and exceeds \$300.00
- d) When all the non-evidentiary money accumulates and exceeds \$1,000.00

All safekeeping money totaling less than \$300 per case will be maintained in the Property Unit safe for a period of 90 days. All safekeeping money non-returned within 90 days shall be deposited and returned at a later date if claimed.

Coroner's case money in excess of \$300 may be maintained in the Property Unit safe for a period of 90 days with pre-approval from the Property Unit Supervisor.

All found money totaling less than \$300 per case will be maintained in the Property Unit safe for 90 days. All "found" money not returned within 120 days shall be deposited and returned at a later date, if claimed.

If found or seized money is no longer required as evidence and remains unclaimed after three years, the Sheriff's Office 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 Sheriff's Office 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.

RETENTION OF BIOLOGICAL EVIDENCE

The Property Unit Supervisor shall ensure that no biological evidence held by the Sheriff's Office 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 Operations Division supervisor

Biological evidence shall be retained for either a minimum period that has been established by law or that has been established by the Property Unit Supervisor, 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 Sheriff's Office within 180 days of the date of the notification. A record of all certified mail receipts shall be retained in the appropriate file, to include RMS. 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 Operations Division Commander (Penal Code § 1417.9).

Biological evidence related to a homicide shall be retained as per statute and may only be destroyed with the written approval of the Sheriff 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 Operations Division Commander should be consulted and the sexual assault victim should be notified.

INSPECTION AND INVENTORY OF THE EVIDENCE ROOM

On a monthly basis, the supervisor of the evidence custodian shall make an inspection of the evidence storage facilities and practices to ensure adherence to appropriate policies and procedures.

Unannounced inspections of evidence storage areas shall be conducted by the Division Commander annually as directed by the Sheriff.

An annual audit of evidence held by the Sheriff's Office shall be conducted by a Division Commander (as appointed by the Sheriff) not routinely or directly connected with evidence control.

The Property Unit shall be continually inventoried by evidence/property technicians every Wednesday. Firearms, money and narcotics will be inventoried twice yearly as such:

- Firearms shall be inventoried February and August
- Money shall be inventoried March and September
- Narcotics shall be inventoried April and October

Whenever a change is made in personnel who have access to the evidence room, the Property Unit supervisor shall ensure that all exterior locks and alarm codes to the Property Unit are changed and an inventory of firearms, money and narcotics are completed. The Property Unit supervisor shall ensure that 10% of all remaining property shall be spot inventoried to ensure that records are correct and all evidence property is accounted for.

All records of inspections and audits will be kept by the Personnel and Training Unit.