

**I. PROPERTY & EVIDENCE RELEASE GUIDELINES**

**A. Authorized Persons**

1. The following persons may authorize the release of property that has been placed in the Property Room under the provisions of this manual.
  - a. The investigating officer, assigned investigator, or the investigator's supervisor.
  - b. The Property Officer or his/her assistant
  - c. Any person authorized by the Chief of Police
  - d. A magistrate
  - e. The District Attorney's Office

**B. Release Authority**

1. Property seized pursuant to a search warrant shall only be released/disposed of under the authority of a court order (1536 PC).
2. All evidence or property collected in homicide cases will be stored until the death of the defendant(s) or 99 years from the date of incident. Property/evidence may be released; however, if the following conditions are met:
  - a. All court action involving all suspects must be final and the District Attorney's Office must approve the release.
3. In felony cases where there are no suspects or leads evidence will be maintained for a period no longer than the statute of limitations.
4. In misdemeanor cases where there are no suspects or leads, evidence will be maintained for a period no longer than one year. If after one year, there are no suspects or leads, the evidence will be disposed.
5. Any felony or misdemeanor case involving property whereby the District Attorney approves disposal/release of evidence in the interest of justice prior to the expiration of the statute of limitations.
  - a. Any property/evidence that has been retained or has been requested to be retained for civil litigation shall

not be released or destroyed without prior approval of the Investigations Lieutenant. In cases where the City of Gilroy is one of the involved parties in the civil litigation, the City Attorney will be contacted prior to the release or destruction of that property.

### **C. Disposition Classifications**

The following disposition descriptions can be found on the final disposition line of the Arrest Disposition Report. These shall be used as the keys in determining the retention, release or disposal of property.

#### **1. Convicted**

- a. 90 days from the date of the disposition, the Property Officer will query the court docket transaction to determine if the case has been appealed.
- b. If the case has been appealed, the property will be maintained pending a disposition of that appeal.
- c. If the case is not appealed and all charges have dispositions, and there are no other persons listed on the Property Report as arrestees or suspects, the Property Officer will notify the investigating officer/investigator to determine if the property can be released to the owner or otherwise disposed of in a manner pursuant to policy.
- d. If there are still outstanding charges against a defendant (and the individual is within the court system) the property will be held pending the disposition of the charge.

#### **2. Previously Convicted**

Disposition reflects a prior conviction. Disregard for purposes of property release and disposal.

#### **3. Dismissed Per PC 1203.4 or Dismissed for Insufficient Evidence**

- a. 90 days from the date of this disposition, the Property Officer will contact the investigating officer to determine if the charges have been refiled. If the case is still active, the Property Report will be so noted and suspended for future action.

- b. If charges have not been refiled, the Property Officer shall release/ dispose the property.
4. **Commitment to California Rehabilitation Center (CRC)**
  - a. The defendant has been directed to a drug diversion program.
  - b. If the defendant fails or does not complete the program the property may be required for further prosecution of the case.
5. **Committed**
  - a. The defendant has been sentenced and committed to custody in a jail facility.
  - b. Send appropriate notification and release/ dispose of any property in a manner pursuant to policy.
6. **Diversion**
  - a. Defendant is directed to participate in a diversion program.
  - b. Retain the property until the defendant completes the terms of the program.
7. **Proceeding Suspended**

Disposition most often describes proceedings that were suspended to permit medical or psychiatric evaluation. Property should be retained until the case receives a final disposition.
8. **Detention Only – No Charges Filed**

Property Officer will contact the investigating officer for authorization to release/ dispose of property.
9. **Dismissed – In View of Plea**

Disregard for purposes of property release and disposal.
10. **Bail Ordered Forfeited**

Send appropriate notifications and release/ dispose of property in a manner pursuant to policy.

**11. Amended Miscellaneous**

Disregard for purposes of property release and disposal.

**12. Transfer Prosecution**

- a. The Property Officer will contact the agency / court that is listed for transfer and will determine property transfer requirements.
- b. The Property Officer will also determine, through the court liaison officer and /or investigating officer, if the property will be required for further court evidence.

**13. Juvenile Dispositions**

- a. The Property Officer will receive a Notice of Disposition that will provide a disposition report on the case.
  - (i) Property cannot be released unless final case disposition is received.

**D. Disposition Instructions (Non-evidence)**

**1. Found Property**

The investigating officer will attempt to determine and contact the owner(s) of found property at the time the property is recovered. The Property Officer will attempt to contact the owner(s) upon receipt and storage of the property.

- a. When the owner has been identified, that person will be called on the telephone or notified via mail instructing them to contact the Property Officer to schedule an appointment to claim their property.
- b. The owner will be given 60 days to establish ownership and claim the property.
- c. If the property is not claimed, it will be offered to the finder (unless the finder is a City of Gilroy employee). The claimant will be given 60 days to claim the property. *Exception: Found firearms will be destroyed.*

The Property Officer will notify the finder requesting them to schedule an appointment to obtain the property.

- d. Pursuant to Civil Code Section 2080.3, any found property having a value of \$250 or more will be advertised as found in a newspaper of general circulation, one time.
- e. If the property is not claimed, the finder is legally entitled to the property after paying the advertising costs.
- f. All unclaimed property will be auctioned, disposed of, or transferred for departmental use.
- g. Release to Finder
  - (i) The finder must present satisfactory evidence of identification and must sign to acknowledge receipt of the property to them.
  - (ii) The property report is removed from the property file and forwarded to Records for filing in the original case.

## 2. Safekeeping

Property that is being held for safekeeping shall be returned to the legal owner upon request or by legal mandate. Property (excluding firearms) not claimed within 90 days shall be considered intentionally abandoned by the owner and will be disposed of as appropriate.

- a. Firearms held under the provisions of 12028.5 PC shall be held no longer than 72 hours. The Property Officer shall do the following upon receiving a firearm taken for safekeeping:
  - (i) Conduct a criminal history check on the owner or person from whom the weapon was taken. If the owner is not legally entitled to the weapon under the provisions of 12001.6, 12021.1, 12021.5, or 12560 PC, it will be destroyed per 12028 PC.. The firearm shall not be released to the owner if they have a conviction for any offense as listed in section 12021c PC. That firearm shall be disposed of according to law.

- (ii) Conduct a CLETS check on the firearm to determine if it has been reported stolen. If stolen, an attempt will be made to return the firearm to the rightful owner. If the owner cannot be found, the weapon will be destroyed per 12038 (f) PC upon court adjudication.
  - (iii) Complete a firearm release request and forward to the investigating officer for approval to release.
  - (iv) Upon return of the release form, the Property Officer will notify the owner by mail or telephone to schedule an appointment for release of the weapon.
  - (v) Release the weapon to the owner.  
  
The owner must present a photo ID and provide proof of ownership if requested.  
  
The owner must sign the property report.  
  
The property report is removed from the property file if there are no additional items of evidence connected with the case, and forwarded to Records for filing in the original case.
  - (vi) All other types of property held for safekeeping shall be returned to the owner as soon as possible.
- b. Upon receiving property held for safekeeping, the Property Officer shall do the following:
- (i) Conduct a CLETS check on all serialized property to determine if it is stolen.  
  
Refer to the investigating officer or Investigations if stolen.
  - (ii) Contact the owner by mail to schedule an appointment for the release of the property.
  - (iii) Property (except firearms) not claimed within 90 days is to be considered intentional abandonment by the owner and disposed of per statute.

(iv) Release to the owner:

The owner must present a photo ID and provide proof of ownership if requested.

The owner must sign the property report.

The property report is removed from the property file if there are no additional of evidence connected with the case, and forwarded to Records for filing in the original case.

**3. 8102 W&I Seizures**

Firearms of other weapons that are confiscated under the provisions of section 5150 W&I, are held in storage pending release by court order (8102 W&I).

- a. The Property Officer maintains a file on all weapons confiscated under 5150 W&I, and is responsible for working with the investigating officer, City Attorney or District Attorneys Office for their release. The Property Officer will provide recommendations as to the disposition of the weapon(s) based on the totality of the circumstances and past criminal or violent behavior.
- b. When a court order is obtained, all firearms and weapons shall be returned to the person specified in the court order.
  - (i) The City Attorneys Office will forward the court order to the Property Officer for release.
  - (ii) The Property Officer will contact the person who is to receive the weapon to arrange for an appointment.
  - (iii) The weapon(s) will only be released to the person specified in the court order. The owner must present a photo ID and provide proof of ownership if requested.

The owner must sign the property report.

The property report is removed from the

property file if there are no additional items of evidence connected with the case, and forwarded to Records for filing in the original case.

- c. If the weapon is not claimed within one year, a court order will be obtained and the weapon will be declared a nuisance and destroyed under the provisions of 12028 PC.

#### **4. Recovered Property**

Property may be released by the Property Officer to the rightful owners prior to the conclusion of a trial under the authority of a court order, upon the written authorization of the representing District Attorney, or as otherwise provided by this manual.

- a. Prior to release, a picture of the property and the owner will be taken by the investigating officer.
- b. The owner must sign a Declaration of Ownership and agree not to destroy, sell, or give away the property until the conclusion of legal proceedings.
- c. The person from whom the property was taken will have already received written notification of their right to claim the property.
  - (i) A copy of the notification will be attached to the property report.
  - (ii) If a claim has been made, the magistrate will determine ownership.
- d. The investigating officer must complete a property release form itemizing the property to be released and forward it to the Property Officer.
  - (i) The person must present a photo ID.
  - (ii) The person must sign the property release form.
  - (iii) The property report and release forms are forwarded to Records for filing in the original case.

If additional property being held, the property report is maintained in the property room until disposition of the case.

## 5. Search Warrant

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

- a. Property that is introduced in court as evidence is placed beyond the control of the department and shall thereafter be disposed of pursuant to the orders of such court.
- b. The disposal of property that is alleged to have been stolen or embezzled or which has been obtained by means of a search warrant may be effected by order of the judge which has jurisdiction or by following the procedures outlined in 1413 PC.
- c. A magistrate may order the disposal of stolen or embezzled property which was obtained by means of a search warrant, as set forth in PC sections 1408-1410, 1411, 1418, and 1536, prior to court adjudication.
  - (i) The investigating officer will seek the release of property with the assistance of the District Attorney's Office.
  - ii) Once a court order is obtained, the Property Officer will release only that property described in the order. The Property Officer can question the provisions of the court order and not release the property until the District Attorney has been consulted. The court can petition to reverse its decision if the Property Officer can show just cause.

A Property Release form is completed by the investigating officer itemizing the property to be returned.

The person receiving the property must present a photo ID.

The person receiving the property must sign the property release form. The form is then forwarded to Records for filing in the original case.

**6. Non-Essential Property/Evidence**

- a. With the concurrence of the District Attorney, property which is not essential to a prosecution or future prosecution shall be promptly released, whenever possible, to the owner as follows:
  - (i) Property (a photograph of which is sufficient for court presentation) shall be released, with the concurrence of the prosecuting District Attorney, to the rightful owner.
- b. Whenever possible, property which the District Attorney considers to be non-essential to a prosecution shall be promptly released to the owner during the course of the investigation.
  - (i) Property which has no market value or investigative value as determined by the District Attorney may be destroyed upon completion of the investigation; e.g., glass fragments, mutilated bullet not suitable for comparison purposes.
- c. Property that has been held as evidence but not introduced during the trial shall be released to the owner upon receipt of a court disposition, provided the prescribed time for appeal has elapsed.
  - (i) In misdemeanor and felony cases, 90 days shall be allowed for an appeal.
- d. Property that is to be held as potential evidence shall be disposed of in accordance with the provisions of this manual as appropriate.
  - (i) In all cases, the person who receives the property must present a photo ID.
  - ii) The property report must be signed by the person accepting the property.
  - (iii) If all of the recorded property has been returned to the owner, the property report is removed from the property file and forwarded to Records.

7. **Court Releases**

- a. When the Property Officer receives an evidence request form, or is contacted by the person needing evidence for court, the item(s) needed shall be pulled from its storage location and released
  - (1) In all cases, the person who receives the property must present a photo ID.
  - (2) The property report must be signed by the person accepting the property.
  - (3) If all of the recorded property has been returned to the owner, the property report is removed from the property file and forwarded to Records.

II **PHOTOGRAPHIC RELEASE GUIDELINES**

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

- A. Property stolen during a **non-violent crime** can be released to the lawful owner before the conclusion of the criminal case after the following conditions have been met:
  - 1. A photograph is taken of the property and owner together;
  - 2. An additional photograph is taken of any unique marks, distinguishing characteristics, serial numbers or evidence tags on the property;
  - 3. All photographs shall include a sign displaying the Department case number;
  - 4. Photographs shall be color prints, not slides, and taken with a digital or Polaroid-type camera capable of reproducing sufficient detail as to show identifying marks and serial numbers;
  - 5. Proof of ownership, when applicable, must be submitted to the Department and a copy of that proof retained.
  - 6. A Declaration of Ownership form shall be signed induplicate by the owner when the property is photographed and released.

7. Prior to release, all serialized property shall be cleared from the California Department of Justice, Automated Property System in CLETS.
8. Photographs taken for the release of property shall be entered into evidence.

**B. Photographic release of property shall NOT apply to:**

1. Property seized by search warrant;
2. Money;
3. Explosives;
4. Hazardous materials or illegal substances;
5. Narcotics;
6. Firearms or weapons used in the commission of a crime;
7. Property requiring laboratory analysis;
8. Property containing biological material;
9. Any property that is illegal to possess;
10. Any property in which ownership is in dispute;
11. Property that is evidence of a violent offense; or

**C. Photographic release of property may be conducted from the scene providing that the above criteria have been met.**

**III. INTERIM RELEASE OF PROPERTY GUIDELINES**

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

- A. The officer will complete a property request form and forward it to the Property Officer at least 24 hours (weekends and holidays excluded) in advance of when the property will be needed.
  1. On rare occasions during exigent circumstances, property may be released to the officer with less prior notification; however, these requests should be kept to a minimum.

- B. Officers checking out evidence for court will be required to sign and date the chain of custody form for all evidence released.
- C. Officers shall immediately return all evidence to the Property Room, unless held by the court.
- D. Property shall be repackaged or resealed as necessary to ensure the integrity of the item.
- E. The Property Officer shall track evidence check out for court and its return. After 72 hours, notification shall be given to the officer who has not returned the property.

#### **IV DISPOSAL GUIDELINES**

- A. Property held by the Police Department shall be disposed of in a manner authorized by statute and as provided for by policy.
- B. When there are two or more defendants involved in a criminal case, property will not be disposed of until all defendants' trials have been concluded.
  - 1. Property shall not be disposed of until the period for appeals has closed and all appeals have been concluded.
  - 2. The Property Officer shall not dispose of property until the end of the time period established by department policy for holding the item; e.g., found property, safekeeping.
  - 3. If the person from whom custody of the property was taken is a secondhand dealer or licensed pawnbroker, and if the owner of the property cannot be located at the end of the criminal proceeding, the property shall be returned to the secondhand dealer or pawnbroker.
  - 4. In all cases where property is destroyed, Records shall delete information in the appropriate State Department of Justice computer file concerning each item of serialized property that is authorized for disposal. Additionally, the Property Officer will file all property records in the original case file.
  - 5. No property will be disposed of unless the Property Officer receives a property release authorization form from the person requesting destruction with instructions to dispose of the property, a court order, or written instructions from the District Attorney's Office.

**A. Destruction of Property Pursuant to a Court Order**

1. Property will be destroyed as instructed in the court order.

**B. Statute of Limitations**

1. In misdemeanor cases, the statute of limitations is one year when the case file report indicates no suspects. After review by the investigating officer or assigned investigator, the property will be disposed of after one year.
2. In felony cases (except homicides, embezzlement of public funds or falsification of public funds), property will be disposed of after the statute of limitations has expired, the case file report indicates no suspect(s), and the investigating officer or assigned investigator approves disposal.
  - a. Property from homicides, embezzlement of public funds or falsification of public funds will be retained indefinitely, except when disposal or release is ordered by the investigating officer or assigned investigator with the concurrence of the District Attorney or the court.

**C. Disposition of Property to be Destroyed**

Property of little or no auction value can be disposed of in an appropriate trash receptacle except as otherwise directed below:

1. Metal object can be placed in a scrap metal container for recycling.
2. Papers of a sensitive nature will be shredded.
3. The contents of alcoholic beverage containers will be poured down the drain before disposing of the container in the trash.
4. Property of value (except firearms, money, ammunition, controlled substances and hazardous materials) will be sold at auction or designated for department use.
5. Pursuant to statutory requirements, firearms will be destroyed or designated for department use.
6. Ammunition will be disposed of through pre-approved, designated agencies or designated for department use.

7. Controlled substances will be burned or otherwise disposed of as a hazardous waste material. Narcotic paraphernalia will also be disposed of as a hazardous waste.
8. Hazardous materials will be disposed of through an authorized, pre-approved hazardous waste disposal firm.
9. Knives, clubs, BB or pellet guns or other dangerous weapons will be destroyed in the same manner as firearms.
10. Fireworks will be turned over to the County Bomb Disposal Unit for incineration or detonation. A limited amount of fireworks may be retained for department use.
11. All unclaimed money will be deposited in the City of Gilroy General Fund, except rare coins or paper money that will be sold at public auction.

**D. Disposition of Firearms**

1. Retained for department use
  - a. The Chief of Police shall authorize all firearms retained for official use by the department. Such authorization shall be in writing and retained in the property file.
  - b. A court order must be obtained from a magistrate authorizing the retention of a firearm for department use.
  - c. The make, model and serial number will be recorded on the department's weapon inventory log maintained by the Personnel & Training Sergeant.
  - d. The Property Officer shall forward to Records who shall be responsible to notify the California Department of Justice through CLETS.
2. **Destruction**
  - a. The make, model, serial number and involved case report number is recorded in the property management computer system.
  - b. A computer printout of all firearms is attached to a request for destruction and submitted to the Superior Court for approval and signature.

- c. Firearms that are authorized for disposal are destroyed as necessary to conserve space and security of the weapon(s).
- d. All firearms are inventoried prior to destruction.
- e. The property report is removed from the property file and updated with the new status. The disposition section of the report is completed and forwarded to Records for filing under the appropriate case file.
- f. The disposal of all firearms must be done through an approved disposal firm.
- g. The Property Officer, or designee, will be accompanied by an armed police officer or reserve police officer who will transport the firearms to a destruction facility and shall witness the destruction of each weapon.
- h. Records shall be responsible to notify the California Department of Justice of the destruction through CLETS.
- i. All written documentation of the destruction transaction shall be retained by the Property Officer.

**E. Destruction of Ammunition**

- 1. Department Use
  - a. Surplus small arms and rifle ammunition may be retained by the department for official use.
  - b. Ammunition retained for department use will be transferred to the Personnel & Training Sergeant, Head Rangemaster or SWAT Commander as appropriate.
  - c. The department employee receiving the ammunition shall sign the property report. The property report is then forwarded to Records for filing under the original case file.
- 2. Disposal
  - a. Ammunition not converted for department use is transported to the Range for destruction.

- (i) The disposition section of the property report must be completed to reflect the disposition of the ammunition.
    - b. The department employee receiving the ammunition shall sign the property report. The property report is then forwarded to Records for filing under the original case file.
- F. Destruction of Narcotics/Controlled Substances
  - 1. Controlled substances and narcotic paraphernalia will be destroyed by the Property Officer after receiving authorization for such disposal.
    - a. Items to be destroyed are pulled from their storage locations and placed in boxes labeled "Narcotics Destruction". Each box is sealed, labeled and numbered.
    - b. A list is prepared for each box, noting the case number and a copy of the appropriate property report is attached to each list.
    - c. An appointment for disposal (crush or burn) should be made and the necessary permits obtained in advance.
    - d. The Property Officer must obtain a court order for the destruction of the contraband from a magistrate.
    - e. The Property Officer, or designee, will be accompanied by an armed police officer or reserve police officer, who will transport the controlled substances to the disposal facility and shall witness the destruction of the controlled substances.
    - f. Prior to destruction, a representative of the Police Department shall conduct a random test of the controlled substances scheduled for destruction at the burn site to ensure its authenticity.

G. Disposal of Hazardous Materials

The disposal of hazardous materials falls under a number of State and Federal statutes. In practice, most disposals are regulated by either the California Department of Health Services at the direction of the Environmental Protection Agency or the local water district. Whenever questions arise regarding the proper procedures for

waste disposal, the Property Officer shall consult with the Gilroy Fire Department's Hazardous Materials Unit for direction and assistance with disposal efforts.

## **V AUCTION OF UNCLAIMED PROPERTY**

### **A. Disposition of Unclaimed Property**

1. Property that has been found and not claimed within 90 days, stolen or embezzled property which has not been claimed by the owner within 30 days of notification, or in any case in which such notice is not given, after the expiration of 6 months has passed from the date of conviction, can be auctioned.
  - a. If no conviction occurred from the time the property came into possession of Police Department, or the case has been disposed of.
2. Unclaimed property, not governed by statute, after being held 90 days from the date the owner was notified to claim the property, shall be auctioned, destroyed, or diverted for department use.
  - a. The Department may donate bicycles for distribution to non-profit organizations within the community (check for local ordinance permitting this)
3. Unclaimed property not suitable for auction, property for which no bids were received at the public auction, perishable goods, property which is inherently dangerous, and property which is contrary to the policy of the Chief of Police to retain, shall be disposed of in an appropriate manner. This section shall not apply to property subject to confiscation or disposition under State or Federal law.

### **B. Auction of Unclaimed Property**

1. A contract between the Police Department and the Nationwide Auctioneers is arranged and a mutually agreed date, time and location for the auction is established.
2. Pursuant to Government Code Section 1090, and to avoid conflict of interest, or any appearance of conflict of interest, no employee of this department shall purchase any item at such auction, either personally or through a third party.