

IAPE STANDARDS SECTION 14 – DISPOSITION

Standard 14.1: Disposition – Review

Standard: Law enforcement agencies should have a systematic review process assuring that each item of property and evidence is evaluated for possible purging on an annual basis.

Definition: Review is the assessment of whether an item may be removed from the inventory based upon an elapsed period of time, or completion of all legal and departmental mandates.

Reasoning: There is no procedure more important to keeping the inventory of a property room at a manageable level than an effective on-going purging program. The property room inventory should be kept free of items that are no longer needed in order to avoid the need for additional storage space and staffing.

The timely and appropriate disposition of property is extremely important to the efficient management of the property room. Overcrowded evidence rooms generally require more staffing to manage simply because the size of their inventory has a tendency to slow down routine operations involving evidence storage and retrieval.

Methodology: Types of Systems

In order to establish an effective purging system, certain criteria must be established to provide guidance in how long property and evidence should be retained before being reviewed.

Statutes of Limitation:

The most common review system used in property rooms utilizes the statutes of limitations as a review date. For example, if the time limit for a misdemeanor were one year, the assigned detective or arresting officer would receive a “Review Notice” after one year. Each agency should utilize the statutory requirements for their own respective state.

In felony cases, the review should be sent out to the investigating officer when the statutes of limitations have expired. In most states, the statutes of limitations for felony crimes is generally much longer than misdemeanors, making the retention and review period for these serious crimes proportionally longer. An important factor in making a purging system work effectively is to apply the various statutes of limitations to cases where evidence is being retained. The review notice should request approval to release, dispose of or retain the property or evidence.

Here are factors to consider in setting review dates based upon the statute of limitations for each particular state. In many states there are fixed periods of time after which prosecution on specified types of crimes can no longer be initiated. In

some states the time limit is absolute, in some it does not start until a suspect is identified, and in some it is extended by the length of time that the suspect is out of state during the statutory period. In many states, the limitation no longer applies once a warrant is issued for the suspect, as long as the agency can show due diligence in attempting to serve the warrant.

Accelerated Review:

The accelerated review is similar to the Statutes of Limitation system, but the review dates may be reduced to a much shorter period of time. For example, a misdemeanor case may have a review date at six months instead of one year. Felonies may be reviewed in one year instead of three.

The review date is not a purge date, it's only a date to reassess the evidence and inquire whether the case has already been adjudicated, and whether or not the evidence can be disposed of. This process may be riskier because evidence could be disposed of prior to the Statute of Limitations expiring, thereby limiting prosecution.

Departments that implement an accelerated review often see a large proportion of the items forwarded to the detective are in fact signed off for release or destruction before the Statute of Limitations has expired.

Administrative Kill Policy:

A department whose inventory is completely out of control and lacking any staff to research all of the cases may consider utilizing an "Administrative Kill" policy. The Administrative Kill is the riskiest, but sometimes the only alternative to address the problem in a timely manner.

The Chief Executive Officer of the agency should initiate the Administrative Kill Policy with a written executive order to dispose of certain categories of evidence. This order should be specific as to the classifications of evidence covered, e.g. "all misdemeanors over 'X' months old, without a related arrest warrant, will be destroyed/released." Another example of a written kill policy would be, "designated felony property crimes that are beyond 'X' period of time and which will never be investigated."

Special attention should be given to prevent the "Administrative Kill" of any evidence in crimes against persons and sex related crimes. These could become both a political liability as well as a civil tort against the investigator, the agency and the umbrella organization. For this reason, the prosecutor should also review any "Administrative Kill" requests.

With recent advances in DNA technology, many states have adopted statutes that require a specific length of time that biological evidence must be retained. Department policies should ensure adherence to these statutes.

After establishing the time limits that are most suitable for the department, a system needs to be developed to add a review date to every item of evidence.

Some type of review form or memorandum should be used by the property unit to notify an investigating officer when a case is due for review. The form should include check boxes to differentiate items to be released, disposed of, or retained. The investigating officer should be required to sign the form for accountability purposes, and state why it should be retained. A supervisor should approve whenever evidence is retained beyond the respective statute of limitation. A schedule for re-review, or a second review within a year, should be set for property or evidence that is labeled as “retained.”

The purging process can best be accomplished by requiring an annual review by the assigned case investigating officer. The most efficient process is for the property room to generate a review notice requiring the investing officer to evaluate each case for potential purging. When the property unit does not initiate the review process, departmental policy should define who is responsible, and when the review should occur.

There should be special consideration given to NOT disposing of certain evidence without prosecutorial or judicial review, such as: sex crimes, capital crimes, other serious felonies, and pending civil litigation.

Standard 14.2: Disposition – Authority to Purge

Standard: The final authority to purge evidence from the property room should be reviewed and authorized by the investigating officer. In some jurisdictions this process may also require additional approval from the prosecutor or the court. Department policy should establish whether the authorization for the purging of Found Property and Safekeeping might be delegated to the property officer.

Definition: Authorization to purge refers to the process by which evidence from a case is reviewed to determine if it has potential evidentiary value. If not, the approval may be granted to dispose of the item(s).

Reasoning: The authorization to purge and dispose of evidence should be reserved for the investigating officer, and in some states the prosecutor, and courts. The investigating officer may be the only person who has specific knowledge that the evidence may be related to another case; therefore, it is imperative that the assigned case investigator be the approval process.

In general, the property officer should not be making final decisions on the disposition of evidence. The property officer should be considered the guardian of the items and not the decision-maker of its final disposition. Such procedures provides for a good internal control by separating responsibilities and duties

Homicide evidence is generally held for extended periods of time due to the statutes of limitations being open-ended and a lack of policy that governs its retention.

Absent any statute which requires otherwise, there are times when even homicide evidence may be eligible for being purged from the property system, such as when:

- suspect has completed sentence
- suspect died in custody
- all appeals have been exhausted
- suspect waives right to retain evidence

In any homicide or manslaughter case, departmental policy should require some type of periodic review to determine if the case has been adjudicated, and whether or not the evidence is eligible for final disposition. Policy should require that all such cases should be approved by the investigating officer in conjunction with the prosecutor. In cases where evidence has been seized pursuant to a search warrant, court approval may be necessary.

Due to the nature of recent post-conviction appeals, some states' statutes are requiring that biological evidence be retained beyond the death of the defendant, and, in some cases "forever". It is incumbent upon each agency to be aware of the applicable statutes in this area and adhere to them.

Suicide evidence is unique in its potential for being reclassified as a homicide if new evidence is discovered. Any suicide evidence that is reviewed for possible purging should be considered on a case-by-case basis.

Standard 14.3: Disposition – Release to Owner

Standard: All property or evidence releases should document who authorized the transfer, who actually released the item, full description of the item, and complete identifying information of the person receiving the item.

Definition: A "release to owner" refers to the return of property or evidence to its rightful owner or designee.

Reasoning: The investigating officer should inform the property room in writing, giving specific instructions to whom specific items should be released. Department policy should designate who is responsible for sending or making such notification to the owner.

All release notices should have some type of "drop dead date" to initiate action if there is no response within a specified period of time. All notifications made

should be documented in the property record in order to “start the clock” on any length of time provided for a response.

All releases should be signed by the receiving person along with other personal data, such as, address, phone, and government issued photo ID. In addition, a photograph of the person while receiving the article should be considered when items of high value are released. The signed release should be attached to the paper evidence record, or electronically as an attachment to the item record. The purpose of this procedure is to counter any future claims and/or allegations regarding the release of the items.

In agencies that that have an automated tracking system, it may be possible to have the signature captured on an electronic signature pad, a government ID card scanned, and a digital photo attached to the file for complete documentation.

Standard 14.4: Disposition - Auctions

Standard: Law enforcement agencies should develop policies for auction sales of property that is consistent with state and local laws.

Definition: An auction is public sale where items are sold to the highest bidder.

Reasoning: Most local codes require the selling of unclaimed and surplus property at public auction. Department policy should designate who is responsible for evaluating what property is to be auctioned, and what property should be destroyed.

Agencies may choose to conduct in-house public auctions, contract with an auction company to conduct an auction, or utilize an online auction company. In-house auctions require the use of storage space for items pending auction, while outside auctioneers will routinely pick-up items at the department’s request. All proceeds from auction sales should be deposited in the umbrella agency’s general fund to avoid a potential conflict of interest. Requests for future funds may cite offsetting revenue from auction sales as justification, thus enhancing transparency.

More people are likely to bid on items at a professional auction or online service often resulting in a higher return than an in-house auction. The goal of the auction should not necessarily be to garner the greatest return for the city or county, but should be to control the property room’s inventory and recapture needed space.

The property unit managers should thoroughly familiarize themselves with the specific state and local statutes regarding the sale of property. Policy should prohibit any departmental employees from bidding on auction items due to the appearance of, or an actual conflict of interest.

Standard 14.5: Disposition - Diversion

Standard: Law enforcement agencies should develop written policy and procedures that enable the diversion of unclaimed property for public use.

Definition: Diversion is the process by which a public agency may transfer ownership of unclaimed property in its possession for public use. Law enforcement agencies may generally divert property for public use when the rightful owner is either unidentified, or has failed to claim the item within a designated time frame.

Reasoning: Most states provide statutory approval to transfer unclaimed property for city, county, or state use. If there is no authorizing state statute applicable, the development of a municipal or county ordinance may legally permit the process and insulate the agency from any civil litigation.

Agencies should have a written policy and procedures to guide department personnel on the requirement to divert the requested property. The procedures should include a request for the retention of a specific item and the justification should originate with the person in charge of the area where the item is to be used. The approval process should include approval by the requesting person's direct chain of command, including the Chief Executive Officer or designee.

Once the departmental approval process has been completed, consider including a third party approval from outside the agency for items of designated value. This could be the city or county's Purchasing Director, City Manager, County Executive, Mayor, or any other disassociated official. The property unit should maintain a permanent record of all property diversions. Refer to Standard 11.7 for the diversion of firearms.

Use of any property so retained must be for official purposes only; the practice of allowing employees to retain property for personal or non-governmental purposes should be prohibited.

Standard 14.6: Disposition - Destruction

Standard: Evidence items that are not released to owner, diverted for government use, or sold at auction should be destroyed.

Definition: Destruction is the act of breaking apart, melting, crushing, or making an item of property unusable prior to discarding.

Reasoning: When property has been authorized for destruction it should be rendered unusable and placed in a secure holding area until it is transported to the disposal site. This action prevents the items being removed from the trash for

personal gain. Having a witness to the destruction of items that are of a sensitive nature, such as pornography, for instance, is always a good idea.

Recycling of component materials, batteries, metals, plastics, glass, paper, and electronics is the preferred method of disposal.

Items consisting of drugs and firearms require specialized destruction techniques to guarantee the items cannot be retrieved and used illegally. Refer to Standard 11 for destruction of firearms and Standard 9 for the destruction of drugs.