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## Property and Evidence

### 804.1 PURPOSE AND SCOPE

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 identifies those persons authorized to remove and/or destroy property.

### 804.2 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:

- Property obtained by the Department for safekeeping such as a firearm
- Personal property of an arrestee not taken as evidence
- Property taken for safekeeping under authority of a law (e.g., Welfare and Institutions Code § 5150 (mentally ill persons))

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

**Property Clerk** - Employee responsible for day to day operations of the Property Unit.

**Property Police Service Aid** - PSA assigned to assist Property Clerk in day to day operations of the Property Unit.

**Property Supervisor** - Supervisor responsible for overall management of Property Unit.

### 804.3 PROPERTY HANDLING

It is the policy of the Newark Police Department to book all property and evidence as soon after seizure as possible. Any employee who first comes into possession of any property shall retain such property in his/her possession until it is properly booked. Care shall be taken to maintain the chain of custody for all evidence.

A Property Receipt should be provided for any property taken from persons as safekeeping or as found.

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 Release/Declaration of Ownership form must be completed to document the release of property not booked and the owner shall sign the form acknowledging receipt of the items.

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#### 804.3.1 PROPERTY BOOKING

All property must be booked prior to the employee going off-duty unless otherwise approved by a supervisor.

Refer to the [Property and Evidence Booking Procedure](#).

#### 804.3.2 NARCOTICS AND DANGEROUS DRUGS

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

The officer seizing the narcotics and dangerous drugs shall retain such property in his/her possession until it is properly booked.

Narcotics or dangerous drugs shall be tested, weighed and packaged utilizing the designated drug processing evidence cart. Controlled substances should be processed outside, when weather allows. Use of personal protective equipment should be considered. In inclement weather, the roll-up door to the sally port should be opened for ventilation.

Prior to packaging, a presumptive test should be made on all suspected narcotics. Tactic ID should be used to conduct a presumptive test on the suspected controlled substance or dangerous drug. The results of this test shall be included in the officer's report. If a presumptive test is not conducted, this should be documented in the report.

#### 804.3.3 FIREARMS

If a firearm is seized, a Property Receipt which describes the firearm, the serial number or other identification of the firearm should be provided. The Property Receipt should be signed by subject it has been seized from, and attached to the report. If the subject refuses to sign the receipt, this refusal should be recorded, and shall be noted in the report.

The firearm shall be entered into Automated Firearms System (AFS).

Ensure the firearm is unloaded and booked separate from ammunition. If possible, firearms should be stored in handgun or rifle boxes. The case officer shall seal the box and indicate that the firearm is made safe and unloaded.

A crime gun is defined by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as any firearm that is illegally possessed, used in a crime, or suspected to have been used in a crime. An abandoned firearm may also be categorized as a crime gun if it is suspected it was used in a crime or illegally possessed.

All crime guns shall be run through E-trace. Electronic Tracing System is an internet-based system that allows participating law enforcement agencies to submit firearm traces to the ATF National Tracing Center (NTC).

All crime guns shall be submitted for entry in NIBIN (National Integrated Ballistic Information Network) in addition to any other evidentiary processing. NIBIN is a national database of digital images of spent bullets and cartridge cases that are found at crime scenes or test-fired from confiscated weapons.

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#### 804.3.4 RELINQUISHED FIREARMS

Individuals who relinquish firearms pursuant to the provisions of Penal Code § 29850 shall be issued a receipt that describes the firearm, the serial number or other identification of the firearm at the time of relinquishment (Penal Code § 29810).

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

- (a) A certificate is issued by a judge of a court of record or the District Attorney stating the firearms shall be retained; or
- (b) The convicted person provides written notice of an intent to appeal the conviction that necessitated the relinquishment; or
- (c) The Automated Firearms System indicates that the firearm was reported lost or stolen.
  - 1. In such event, the firearm shall be restored to the lawful owner as soon as it is no longer needed as evidence, the lawful owner has identified the weapon and provided proof of ownership, and the Department has complied with the requirements of Penal Code § 33850 et seq.

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

#### 804.3.5 CURRENCY

All cash shall be counted in the presence of a second officer or a supervisor and should be recorded. The denomination shall be noted on the envelope, and the envelope initialed by the booking officer and the witness or supervisor. The Watch Commander shall be contacted for cash in excess of \$1,000 for special handling procedures.

#### 804.3.6 EXPLOSIVES AND HAZMAT

Officers who encounter a suspected explosive device shall promptly notify their immediate supervisor or the Watch Commander. The Alameda County Explosive Ordinance Device (EOD) team 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 police facility. Only fireworks that are considered stable and safe and road flares or similar signaling devices may be stored in the secure Hazmat room. An email should be sent to the Property and Evidence Clerk... The Property Clerk is responsible for transporting to the Fire Department, on a regular basis, any fireworks or signaling devices that are not retained as evidence.

#### 804.3.7 EXCEPTIONAL HANDLING

Certain property items require a separate process. The following items shall be processed in the described manner:

- (a) SART kits should be booked and secured into the refrigerator located in the hallway of the Property and Evidence room. The refrigerator should be locked, and the key

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dropped in a push locker. An email should be sent to the Property Clerk and Detective Supervisor, letting them know a SART kit has been collected and booked. It shall subsequently be entered into the "Safe-T" database by the Property Clerk.

- (b) Blood soaked or wet items, or bodily fluids such as semen or urine should be dried in the evidence dryer prior to packaging and booking. The case officer is responsible for ensuring the items are packaged and booked once dry. The booking officer should ensure the item is marked as biohazard and the Property Clerk is notified.
- (c) License plates found not to be stolen or connected with a known crime, should be booked as found property.
- (d) Bicycles and bicycle frames shall be entered into Automated Property System (APS). They shall be booked as evidence, found property, or safekeeping. Property tags will be securely attached to each bicycle frame.
- (e) Vehicle - Vehicles towed by NPD as evidence should be towed by a city contracted company to the Evidence Yard. The vehicle must be secured, and sealed, and should be entered into RIMS as a property item. The case number should be marked on the windshield of the vehicle. An email should be sent to the Property Clerk along with a copy of the CHP 180 form, indicating the case number, vehicle make, model, color, and year as well as the location of the stored vehicle.
- (f) Keys associated to the vehicle should be booked as a separate item, but the Vehicle item number should be indicated to associate the two items.
- (g) City property, unless connected to a known criminal case, should be released directly to the appropriate City department. No formal booking is required. In cases where no responsible person can be located, the property should be booked for safekeeping in the normal manner.

#### **804.4 PACKAGING OF PROPERTY**

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) Currency
- (d) Property with more than one known owner
- (e) Paraphernalia as described in Health and Safety Code § 11364
- (f) Fireworks
- (g) Contraband

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

The Property Clerk receiving custody of evidence or property shall record his/her signature, the date and time the property was received, and where the property will be stored on the physical chain of evidence.

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Any changes in the location of property held by the Newark Police Department shall be noted in RIMS Property.

#### **804.6 PROPERTY CONTROL**

Each time the Property Clerk receives property or releases property to another person, he/she shall enter this information into RIMS. Officers desiring property for court shall contact the Property Clerk prior to the court day.

##### **804.6.1 CONTROL OF NARCOTICS AND DANGEROUS DRUGS**

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

The Detective Unit supervisor will be responsible for purging and destruction of narcotics.

##### **804.6.2 RESPONSIBILITY OF OTHER PERSONNEL**

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

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

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

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

The Property Clerk or PSA releasing the evidence must complete the required information in the property database and the evidence. The lab forms and a copy of the report will be transported with the property to the examining laboratory. A copy of the lab results will be scanned into the report, and a hard copy provided to the investigating officer.

##### **804.6.4 STATUS OF PROPERTY**

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

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

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

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#### 804.6.5 AUTHORITY TO RELEASE PROPERTY

The Detective Unit shall authorize the disposition or release of all evidence and property coming into the care and custody of the Department.

#### 804.6.6 DISPUTED CLAIMS TO PROPERTY

Occasionally more than one party may claim an interest in property being held by the Department, and the legal rights of the parties cannot be clearly established. Such property shall not be released until all disputed claims are resolved, one party has obtained a valid court order or other undisputed right to the involved property.

All parties should be advised that their claims are civil and in extreme situations, legal counsel for the Department may wish to file an interpleader to resolve the disputed claim (Code of Civil Procedure § 386(b)).

#### 804.6.7 RELEASE OF PROPERTY

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

Release of property shall be made upon receipt of an authorized release form, listing the name and address of the person to whom the property is to be released. The release authorization shall be signed by the authorizing supervisor or detective and must conform to the items listed on the property form or must specify the specific item(s) to be released. Release of all property shall be documented on the property 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.

A Property Clerk 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 Unit for filing with the case. If some items of property have not been released, the property card will remain with the Property Unit. Upon release, the proper entry shall be documented in the Property Log.

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

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The Property Unit 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.

The Department is not required to retain any firearm, magazine, or ammunition longer than 180 days after notice has been provided to the owner that such items are available for return. At the expiration of such period, the firearm, magazine, or ammunition may be processed for disposal in accordance with applicable law (Penal Code § 33875).

#### 804.6.8 FIREARMS RELEASE PROCEDURE

Upon receipt of any firearm or weapon into the Property Unit, The Property Clerk shall send a "Receipt and Notice of Rights for Confiscated/Other Deadly Weapons" letter to owner and/or subject taken from as described under Penal Code § 33850, §33875, § 33870. This letter serves as a receipt for weapons confiscated and provides information regarding notice of rights. A copy of the letter should scanned to the case file.

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).

A firearm should not be returned to any individual until the case has been adjudicated, approved by the primary officer, and such person presents valid identification and LEGR notification from the California Department of Justice that conforms to the provisions of Penal Code § 33865.

The Property Unit 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.

Firearms will be released per the requirements listed in Penal Code section 12021.3.

Persons who are lawful owners of firearms that are in the possession of the Newark Police Department are required to meet the requirements of the California Department of Justice (DOJ), Law Enforcement Gun Release (LEGR) Program. The firearm will need to be registered through DOJ prior to release if it was not registered when it was booked. Proof of both ownership and eligibility are required for firearms release.

Applications and instructions on how to show proof of ownership and obtain a LEGR Firearms Eligibility Clearance can be obtained at the DOJ web site at <http://oag.ca.gov/firearms/legrinfo>.

Lawful firearm ownership can be determined by a listing in DOJ's Automated Firearms System (AFS). The AFS database listings for ownership are Dealer Record of Sale (DROS), Pawn Redemption, New Citizen Report or Firearms Ownership Record.

For the release of the firearm the Property Control Officer shall:

- Verify that the firearm(s) has not been reported lost or stolen, and is no longer needed for official court of law enforcement purposes.

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- Verify the identity of person seeking redemption of a firearm.
- Verify the person seeking redemption of a firearm(s) and the name on the LEGR Approval Letter match.
- Verify that the person seeking redemption of a firearm(s) is the lawful owner/possessor of the handgun or long gun.
- At the time of the release of the firearm, provide the owner with a trigger locking device.

The Property Clerk should also make reasonable efforts to determine whether the person is 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.

Release of any firearm should be authorized by the Detective Unit Supervisor and Property Supervisor, upon all requirements being met.

#### 804.6.9 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 or ammunition, the Property Clerk shall return the weapon or ammunition to the owner if the requirements of Penal Code § 33850 and Penal Code § 33855 are met, unless the firearm or ammunition 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).

#### 804.6.10 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 a firearm or a weapon has been initiated pursuant to Welfare and Institutions Code § 8102(c), the firearm or 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) that 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 firearm or weapon is not retained as evidence, the Department shall make the firearm or weapon available for return. No firearm will be returned unless and until the person presents valid identification and written notification from the California DOJ that conforms to the provisions of Penal Code § 33865.
- (c) Unless the person contacts the Department to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Penal Code § 33870, firearms not returned should be sold, transferred, destroyed, or retained as provided in Welfare and Institutions Code § 8102.



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#### 804.6.11 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 Newark Police Department determines him/her to be the lawful owner, the firearms or ammunition shall be returned in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18120).

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

#### 804.6.12 RELEASE OF FIREARMS, MAGAZINES, AND AMMUNITION

The Department shall not return any firearm, magazine, or ammunition taken into custody to any individual unless all requirements of Penal Code § 33855 are met.

### **804.7 DISPOSITION OF PROPERTY**

All property not held for evidence in a pending criminal investigation or proceeding, and held for six months or longer where the owner has not been located or fails to claim the property, may be disposed of in compliance with existing laws upon receipt of proper authorization for disposal. The Property Clerk 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 supervisor or detective.

Any felony cases, cases involving money, jewelry, drugs, firearms, or any crimes of violence shall be approved by the primary case officer or investigating detective before any property is dispositioned and purged. The Property Clerk shall inquire with the primary case officer, or investigating detective regarding the disposition.

The Property Clerk may disposition minor cases that have met the statute of limitations, and/or closed cases for release or destruction of property and evidence, without approval by the primary case officer.

Any release of a firearm must be authorized by the Detective Supervisor and Property Supervisor.

For disposition of evidence related to any homicide, fatal traffic collision or sexual assault, the Detective Unit Supervisor shall be notified.

#### 804.7.1 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:

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

#### 804.7.2 UNCLAIMED MONEY

If found or seized money is no longer required as evidence and remains unclaimed after three years, the Department shall cause a notice to be published each week for a period of two consecutive weeks in a local newspaper of general circulation (Government Code § 50050). Such notice shall state the amount of money, the fund in which it is held and that the money will become the property of the agency on a designated date not less than 45 days and not more than 60 days after the first publication (Government Code § 50051).

Any individual item with a value of less than \$15.00, or any amount if the depositor/owner's name is unknown, which remains unclaimed for a year or by order of the court, may be transferred to the general fund without the necessity of public notice (Government Code § 50055).

If the money remains unclaimed as of the date designated in the published notice, the money will become the property of 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.

#### 804.7.3 RETENTION OF BIOLOGICAL EVIDENCE

The Property Unit Supervisor shall ensure that no biological evidence held by the Department is destroyed without adequate notification to the following persons, when applicable:

- (a) The defendant
- (b) The defendant's attorney
- (c) The appropriate prosecutor and Attorney General
- (d) Any sexual assault victim
- (e) The Detective Unit supervisor

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Biological evidence shall be retained for either a minimum period that has been established by law (Penal Code § 1417.9) or that has been established by the Property 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 Department within 180 days of the date of the notification. A record of all certified mail receipts shall be retained in the appropriate file. Any objection to, or motion regarding, the destruction of the biological evidence should be retained in the appropriate file and a copy forwarded to the Detective Unit supervisor.

Biological evidence related to a homicide shall be retained indefinitely and may only be destroyed with the written approval of the Chief of Police and the head of the applicable prosecutor's office.

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