

Property and Evidence Section

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.

Found property that is not contraband and/or cash exceeding \$500 should be turned into the BART District's Lost and Found via the on-duty station agent when available.

Drug Paraphernalia - Includes any equipment, product or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. Drug paraphernalia includes but is not limited to items such as bongs, roach clips, miniature spoons, and various types of pipes.

804.3 PROPERTY HANDLING

Any employee who first comes into possession of any property shall retain such property in his/her possession until it is properly labeled and placed in the designated temporary locker or storage room. Care shall be taken to maintain the chain of custody for all evidence.

[Whenever property is taken or received \(e.g., relinquished firearms\) from an individual, a property receipt form will be completed. The receipt shall describe the property and contain a notice on how to retrieve the property, as applicable, from the Department. A copy of the property receipt form shall be given to the individual from whom the property was taken or received.](#)

Where ownership can be established as to found property with no apparent evidentiary value, such property may be released to the owner without the need for booking. The property form (#1448) must be completed to document the release of property not booked and the owner shall

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sign the form acknowledging receipt of the items. Once completed, the form should be forwarded to the Records Division for filing.

804.3.1 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 module in the report writing system describing each item of property separately, listing all serial numbers, owner's name, finder's name, and other identifying information or markings.
- (b) Place the property in the proper evidence envelope and/or container. Make sure all the data fields are completely and accurately filled out.
- (c) Print an evidence/property bar code [or complete an evidence/property tag](#) and attach it to each package or envelope in which the property is stored.
- (d) Seal all openings with evidence tape and write your initials/badge number so it is on both the evidence container and evidence tape.
- (e) The original property form shall be submitted to the Records Division to be added to the case report. [A copy shall be placed with the property in the temporary locker or bulk lockers.](#)
- (f) When the property is too large to be placed in a temporary locker, the item(s) shall be brought to the Lake Merritt, [Castro Valley, Powell Street, or Berryessa](#) Police Facilities and placed into one of the large [bulk](#) storage room/[bin s](#) available before the end of their shift. The officer shall note the location in the property management system.

804.3.2 NARCOTICS AND DANGEROUS DRUGS

All narcotics and dangerous drugs shall be booked separately using the specific county crime lab evidence envelopes and containers. Paraphernalia as defined by Health and Safety Code § 11364 shall also be booked separately.

The officer seizing the narcotics and dangerous drugs shall weigh and measure all drugs prior to booking the items into evidence and shall have a witnessing officer or supervisor sign off on the measurement. The narcotics and or dangerous drugs shall be placed them in the a designated temporary locker or dropped off to the county crime lab for testing. Officers will note the location in the property management system.

804.3.3 EXPLOSIVES

Officers who encounter a suspected explosive device shall promptly notify their immediate supervisor or the Watch Commander. The bomb squad will be called to handle explosive-related incidents and will be responsible for the handling, storage, sampling and disposal of all suspected explosives.

Explosives will not be retained in the police facility. Only fireworks that are considered stable and safe and road flares or similar signaling devices may be booked into property. All such items shall be stored in proper containers and in an area designated for the storage of flammable materials.

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The Evidence PAS/CSO is responsible for contacting to the Alameda County Sheriff's Office EOD Unit, on a regular basis, to dispose of any fireworks or signaling devices that are not retained as evidence.

804.3.4 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 prior to booking. Biological items requiring temperature control (refrigerated/frozen) shall be booked into the temporary fridge/freezer at the Lake Merritt Station as soon as possible. Officers shall note the location within the property management system
- (b) License plates found not to be stolen or connected with a known crime, should be released directly to the Evidence PAS/CSO, or placed in the designated container for return to the Department of Motor Vehicles. No formal property booking process is required.
- (c) All bicycles and bicycle frames require a property record that shall include the serial number. Property tags will be securely attached to each bicycle or bicycle frame with the property bar code attached to the back of the tag. All bicycles shall be transported to the Lake Merritt Station and placed in the evidence processing room before the end of shift.
- (d) All cash shall be counted in the presence of a supervisor and/or witnessing officer and the envelope initialed by both. The Watch Commander shall be contacted for cash in excess of \$1,000 for special handling procedures.
- (e) Seized drug paraphernalia may be disposed of in the Department-approved destruction bins when there are no pending charges related to the possession of the drug paraphernalia. No items, other than drug paraphernalia, will be placed in the destruction bins. Items containing flammable liquids or gasses are not authorized to be disposed in the secure destruction bin and must be booked for destruction.
Syringes will still be disposed of in a red sharps container in lieu of placement in the destruction bin. Photographs will be taken of the seized items that will be placed in the destruction bin and the photographs will be uploaded to evidence.com. All photographs will be labeled and categorized, as to associate them to the applicable case. The placement of the seized items into the destruction bin will be recorded on the employee's body worn camera and uploaded to evidence.com. All videos will be labeled and categorized, as to associate them to the applicable case. [The category of "Destruction Bin Use" will be utilized.](#) A field interview report or incident report will be completed which contains documentation regarding the disposal of the seized items into the destruction bin, as well as the fact the person was warned for the violation and the reason why prosecution was not sought.

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

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804.3.5 RIGHT OF REFUSAL

The Evidence Custodian and CSO's assigned to the evidence unit have a right to refuse improperly booked evidence and safekeeping items. Those items will be placed in a refusal locker which can be opened by the booking officer via a onetime combination code provided by evidence staff. The items must be rebooked according to instructions provided by the evidence unit. The officer shall document what changes were made in a supplemental report. Once the mistakes have been corrected the items shall be placed back into a temporary storage locker for pick up.

804.3.6 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 Evidence PAS/CSO 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 Division Policy).

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

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804.4.1 PACKAGING CONTAINER

Employees shall package all property, except narcotics and dangerous drugs in a suitable container available for its size. Knife, guns and rifle boxes should be used to package these items. Syringe tubes should be used to package syringes and needles. Syringes may be disposed of in a red sharps container.

A property bar code tag shall be securely attached to the outside of all items taken for evidence or safekeeping.

804.4.2 PACKAGING NARCOTICS

The officer seizing narcotics and dangerous drugs shall retain such property in his/her possession until it is properly weighed, packaged, labeled, and placed in the temporary locker. Prior to packaging and if the quantity allows, a presumptive test should be made on all suspected narcotics. If conducted, the results of this test shall be included in the officer's report.

Narcotics and dangerous drugs shall be packaged in an envelope of appropriate size available in the report room. The booking officer shall initial the sealed envelope. Narcotics and dangerous drugs shall not be packaged with other property.

A completed property bar code tag shall be attached to the outside of the container. The chain of custody shall be recorded within the property management system.

804.5 RECORDING OF PROPERTY

The Evidence PAS/CSO receiving custody of evidence or property shall manage the property within the property management system which records the name of the receiver, the date and time the property was received and where the property is stored.

A property number is assigned for each item. This number is recorded on the property bar code tag and within the property management system.

Any changes in the location of property held by the Bay Area Rapid Transit Police Department shall be noted within the property management system.

804.6 PROPERTY CONTROL

Each time the Evidence PAS/CSO receives property or releases property to another person, he/she shall enter this information in the property management system. Officers desiring property for court shall contact the Evidence PAS/CSO at least three days prior to the court day.

804.6.1 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 custody. 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 requested by a detective who will notify the Evidence PAS/CSO. The detective is responsible for filling out all lab paperwork

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prior to the transport of the item to the applicable crime laboratory. This request may occur any time after booking of the property or evidence.

804.6.2 TRANSFER OF EVIDENCE TO CRIME LABORATORY

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

The Evidence PAS/CSO releasing the evidence must complete the required information within the property management system and the chain of custody found on the evidence packaging. The lab forms, if required, will be transported with the property to the examining laboratory. Upon delivering the item involved, the Evidence PAS/CSO will record the delivery time within the evidence management system and the chain of custody found on the evidence packaging. The Evidence PAS/CSO will indicate the locker in which the item was placed or the employee to whom it was delivered. The original copy of the lab form will remain with the evidence and the copy will be returned to the Records Division for filing with the case.

804.6.3 STATUS OF PROPERTY

Each person receiving property will make the appropriate entry to document the chain of custody. Temporary release of property to officers for investigative purposes, or for court, shall be noted within the property management system and the chain of custody found on the envelopes and/or containers, stating the date, time and to whom released.

The Evidence PAS/CSO 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 the property management system, indicating date, time, and the person who returned the property.

804.6.4 AUTHORITY TO RELEASE PROPERTY

The Criminal Investigation Division Sergeant or Civilian Supervisor assigned to evidence and video recovery shall authorize the disposition, or release, or destruction of all evidence and property coming into the care and custody of the Department. Property and evidence related to a felony crime or suspicious circumstance shall have the case reviewed by the Criminal Investigations Division Sergeant prior to the release or destruction of any property or evidence. All other criminal and non-criminal cases can be reviewed by a detective or the Civilian Supervisor assigned to evidence and video recovery prior to release or destruction. In all cases the reviewing employee will abide by state and federal statute of limitations for the suspected offense. Property items held solely for safekeeping can be released at the discretion of the Civilian Supervisor assigned to evidence and video recovery or their designee.

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804.6.5 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 60 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 60 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.

An Evidence PAS/CSO 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 release form. After release of all property entered on the property release form, the form shall be forwarded to the Records Division for filing with the case. All property releases shall be documented within the property management system.

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.

The Property and Evidence Section 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).

804.6.6 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 one party has obtained a valid court order or other undisputed right to the involved property.

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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 CONTROL OF NARCOTICS AND DANGEROUS DRUGS

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

804.6.8 RELEASE OF FIREARMS 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 Evidence PAS/CSO 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, another successive order has been issued against the individual, or the individual is otherwise prohibited from possessing a firearm (Family Code § 6389(g); Penal Code § 29825.5; Penal Code § 33855).

804.6.9 RELEASE OF FIREARMS AND WEAPONS IN MENTAL ILLNESS MATTERS

Firearms, other deadly weapons, or ammunition confiscated or relinquished 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.

804.6.10 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, verification that the person is not otherwise legally prohibited from possessing a firearm,

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and in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18108; Penal Code § 18120).

If the restrained person who owns the firearms or ammunition does not wish to have the firearm or ammunition returned, they are 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 Bay Area Rapid Transit Police Department determines the person 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.

804.6.11 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 Evidence PAS/CSO 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.

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:

- Weapons declared by law to be nuisances (Penal Code § 25700; Penal Code § 26110; Penal Code § 26395; 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)

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- 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 and Evidence Section 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 Criminal Investigations Bureau supervisor

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 and Evidence Section 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 Criminal Investigations Bureau 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

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in Penal Code § 680. Even after expiration of an applicable statute of limitations, the Criminal Investigations Bureau 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).

804.7.4 DESTRUCTION OF FIREARMS AND OTHER WEAPONS

The Property and Evidence Section supervisor or the authorized designee shall develop and maintain guidelines and procedures relating to the destruction of firearms and other weapons that includes but is not limited to the following (Penal Code § 18005):

- (a) Identification of firearms and other weapons that need to be destroyed
- (b) Maintenance of records of firearms and other weapons that need to be destroyed, including entry into the Automated Firearms System, as applicable, and records of the destruction and disposal of those firearms and other weapons
- (c) Identification of any law enforcement agency that the Department contracts with or has an agreement with related to the storage or destruction of firearms or other weapons that outlines the responsibilities of this department and the other agency
 - 1. If the Department contracts with a third-party for destruction of firearms or other weapons, the contract must explicitly prohibit the sale of any firearm or weapon or any part or attachment to the firearm or weapon.

The Property and Evidence Section supervisor or the authorized designee should ensure guidelines and procedures relating to the destruction of firearms and other weapons are posted on the Bay Area Rapid Transit Police Department website (Penal Code § 18005).

804.8 INSPECTIONS OF THE EVIDENCE ROOM

- (a) On a semi-annual 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.
- (b) Unannounced inspections of evidence storage areas shall be conducted annually as directed by the Chief of Police.
- (c) An annual audit of evidence held by the Department shall be conducted by a Division Commander (as appointed by the Chief of Police) not routinely or directly connected with evidence control.
- (d) Whenever a change is made in personnel who have access to the evidence room, an inventory of all evidence/property shall be made by an individual not associated to the property room or function to ensure that records are correct and all evidence property is accounted for.

804.9 POLICY

It is the policy of the Bay Area Rapid Transit Police Department to process and store all property in a manner that will protect it from loss, damage, or contamination, while maintaining documentation that tracks the chain of custody, the location of property, and its disposition.