

	<b>DELMAR POLICE DEPARTMENT</b>	
	<b>Policy 12.4 Disposal of Property/Evidence</b>	
	<b>Effective Date: 07/27/14</b>	<b>Replaces: 2-15-4</b>
	<b>Approved: <u>Ivan Barkley</u> Chief of Police</b>	
	<b>Reference: DPAC: 4.4.1</b>	

## I. POLICY

Proper documentation, collection, preservation, and submission of physical evidence to forensic laboratories may provide the key to a successful investigation and prosecution. Through evidence located at the scene, suspects are developed or eliminated, investigative leads are established, and theories concerning the crime are substantiated or disproved. It is imperative, therefore, that each officer carefully process a crime scene not to overlook or contaminate or destroy evidence. Physical evidence appears in many shapes, sizes and forms, thereby necessitating various recovery, preservation, and submission techniques. The officer or investigator shall be prepared to collect, identify, and package the evidence so that it will not be changed in form and value when it reaches the laboratory. The officer collecting the evidence shall maintain a chain of custody of that evidence in order to ensure that it is presented to the court professionally and in compliance with the law.

## II. PURPOSE

To establish guidelines for the destruction, disposal, restitution, and sale of property.

## III. DISPOSAL OF PROPERTY/EVIDENCE, GENERALLY

### A. Authorized methods of property/evidence disposal:

1. Return to Owner or Finder
2. Sale
3. Agency or Other Public Use
4. Destruction

### B. Procedures applicable for all methods of property/evidence disposal:

1. No item of property/evidence held by the Delmar Police Department shall be disposed of in any manner until a Property Release Authorization Form,

containing a supervisor's signature of approval and listing disposal instructions has been received by the property custodian.

2. Property Release Authorization form shall be prepared by the employee responsible the case in which a person has been arrested upon receipt of the Disposition of Arrest and Court Action form specifying a final disposition of the case, except that when there are two or more defendants involved, property/evidence shall not be disposed of until all defendants' trials have been concluded; and further until the period for appeals has been closed and all appeals have been concluded.
3. The property custodian, at the expiration of the regular 90-day period for the retention of property, such as found property held for safe keeping, upon receipt of a Property Release Authorization Form, may dispose of such property. This authorization shall not apply to property/evidence referenced in the two preceding subparagraphs.
4. The property custodian shall ensure that the final disposition information concerning each item of property that has been disposed of is recorded in the Tracker Products system.
5. No property item shall be released without the signature of the person receiving the property.

#### **IV. RESTITUTION OF PROPERTY/EVIDENCE**

A. Following receipt of an approved Property Release Authorization form the property custodian shall prepare a Property Release Notice form and mail it to the owner of the property via certified mail.

1. If the property to be returned is either stolen or embezzled and was taken from the custody of a person, not the owner, the property custodian shall mail, via certified mail, a Notice of Claim of Ownership for the Stolen or Embezzled Property form to the person from whom the property was taken.

a. Disputed Ownership

1. If the person who is served with the Notice of Claim of Ownership for Stolen or Embezzled Property form does not respond with a claim to the property within 15 days from the date of receipt of the service, the property shall be returned to the owner or disposed of in accordance with the provisions of this Order.
2. If a person, who is served with a notice of Claim of Ownership for Stolen or Embezzled Property form does respond with a claim of ownership, the person from whose

custody the property was taken shall be told to apply to the court of jurisdiction for determination of ownership.

- b. Prior to the return of stolen or embezzled property, the property custodian shall cause a photograph to be made of the property. This photographic record shall be downloaded into Tracker Products and linked to said item.
  - c. If the property that is stolen or embezzled is not claimed by the owner within three months from the date of receipt of the service of the Property Release Notice form, the property shall be disposed of in accordance with provisions of this Order.
2. If property to be returned is found property, and (a) **no owner** has proved ownership within 90 days, and (b) the finder has stated on a Found Property Affidavit his or her desire to claim the property, the following procedures shall apply.
    - a. If the property is valued at less than \$250, it may be released to the finder after he or she signs the Item Transfer Receipt.
    - b. If the property is valued at \$250 or more, the property custodian shall cause notice of the property to be published in a newspaper of general circulation in the county. If no person claims ownership within 7 days after the first publication the property may be released to the finder upon the finder paying cost of publication and signing the Item Transfer Receipt.
  3. An owner, who claims found property, shall pay any cost which may have been incurred for the storage and care of the property.
  4. If property, that is found property, is not claimed by the owner or finder within 90 days from the date of deposit in the Property Section, the property shall be disposed of in accordance with the provisions of this Order.
  5. Property found in the course of employment by an employee of any public agency shall be sold at public auction unless the item of property is illegal to possess, in which case, the property item(s) shall be destroyed.

B. Property shall be released to the owner only after the owner has:

1. Provided satisfactory proof of ownership; and
2. Presented proper personal identification; and
3. Signed the Item Transfer Receipt

## **V. SALE OF UNCLAIMED PROPERTY/EVIDENCE**

Once each year or more often if need be, property, which has not been released in accordance with Part IV of this Order, and which is not required to be destroyed, shall be sold at the Delmar Police Department's public auction.

## **VI. PROPERTY/EVIDENCE, MAY BE ACQUIRED FOR DEPARTMENTAL OR OTHER PUBLIC USE**

- A. Property, including money, which is deposited in the Property Section, may be acquired for agency or other public use; all property shall be disposed of in accordance with the provisions of this Order.
- B. Money, which has been deposited into the Delmar Police Departments Asset Forfeiture Account by the property custodian, and which cannot be lawfully returned to its owner, after consultation with the appropriate prosecuting attorney, shall either remain within such account or be transferred into the appropriate fund.

## **VII. DESTRUCTION OF PROPERTY/EVIDENCE**

### **A. Controlled Substances and Assorted Paraphernalia**

#### **1. Destruction Pursuant to a Court Order**

- a. The property custodian shall make application for a court order to destroy all controlled substances, and associated paraphernalia.
- b. The application shall list descriptions, quantities, weights, responsible officer, and case number of all separate items to be destroyed.
- c. Upon receipt of the court order the material shall be destroyed as specified by this order.
  - 1. Destruction of controlled substances shall be accomplished by burning or another method approved by the Chief of Police.
  - 2. Destruction of the material shall be witnessed by the property custodian and one other employee.

### **B. Firearms**

- 1. It shall be the policy of the Delmar Police Department to dispose of all firearms received as evidence or as found property in a proper manner.
  - a. The firearm shall either be made available for public auction by or traded or sold to a properly licensed business which also possesses

a valid federal and state firearms dealer license or destroyed in accordance with state law and federal law.

- b. A firearm may not be auctioned, traded or destroyed until all judicial proceedings are complete and a reasonable attempt has been made to identify the owner and notify him or her by certified mail of intent to dispose of the weapon and to give him or her at least 90 days in which to appeal the decision to dispose of the weapon or to reclaim the weapon.
- c. Before any firearm can be traded or sold, at least three bids, from licensed dealers, must be submitted to the Chief of Police, who will approve the highest bid.
- d. When a dealer picks up the firearms he will give the property custodian a receipt for the number of firearms traded/sold and the dollar value (credit) of the firearms traded/sold. Additionally, the dealer will prepare an invoice stating what was obtained for the trade and what was the dollar amount of the item(s) obtained, or if he gives the Department credit for a balance due he will state on the invoice the dollar amount of the credit and the balance due, if any.
- e. When firearm(s) have been auctioned, the auctioneer shall provide to the property custodian and the chief of police a list of firearms and the amount that each firearm was sold for. The auctioneer shall provide to the Delmar Police Department, proceeds of the auction minus the auctioneer's commission. Commission rates shall be agreed upon between the auctioneer and the Chief of Police prior to the auction.
- f. All records generated as a result of a firearms transaction must be kept on file for at least 10 years.