

# **A VITAL FUNCTION OF THE JUDICIAL SYSTEM: LAW ENFORCEMENT PROPERTY AND EVIDENCE ROOMS**

## **SUMMARY**

The proper collection and retention of evidence is a foundational element of our judicial system. While most commonly attributed to the prosecution of criminal acts, it can also be of vital importance in the exoneration of the innocent. The results of the Grand Jury's review of management and control of property and evidence rooms in law enforcement agencies in San Luis Obispo County varied widely. Some agencies allocated the staff and budget resources needed to meet compliance, while others were not in compliance with their policies and acknowledged that improvements were needed.

## **ORIGIN**

The 2011-2012 San Luis Obispo County Grand Jury decided to examine all law enforcement agency property and evidence rooms within the county to determine compliance with recommended policies of recognized property/evidence organizations, as well as with their own internal policies.<sup>1</sup>

## **METHOD**

In order to determine whether the law enforcement agencies in San Luis Obispo County are following the proper procedures for the security and control of property and evidence, the Grand Jury:

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<sup>1</sup> The Grand Jury has no jurisdiction regarding state agencies, CHP and Cal Poly State University.

- Requested that agencies complete selected sections of the *Property & Evidence System Audit Guide* written by the California Commission on Peace Officer Standards and Training (POST)<sup>2</sup>
- Consulted with a representative of POST regarding available training/certifications
- Interviewed a consultant who specializes in the evaluation of property/evidence rooms throughout California
- Reviewed *Commission on Accreditation for Law Enforcement Agencies (CALEA)*<sup>3</sup> *Property and Control Standards*
- Reviewed International Association for Property and Evidence (IAPE)<sup>4</sup> audit policies
- Reviewed each agency's internal policies and procedures related to property and evidence room functions and audits
- Conducted on-site inspections of each agency's property and evidence room using the POST audit and safety policies
- Conducted interviews with the designated property and evidence room representative from each agency

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<sup>2</sup> POST: The State Commission on Peace Officer Standards and Training (POST) was established in 1959 to set minimum selection and training standards for California law enforcement.

<sup>3</sup> CALEA: A national Commission on Accreditation for Law Enforcement Agencies, Inc. created in 1979 as a credentialing authority. The purpose of this national accreditation program is to improve the delivery of public safety services, primarily by: maintaining a body of standards covering a wide range of up-to-date public safety initiatives; establishing and administering an accreditation process; and recognizing professional excellence.

<sup>4</sup> IAPE: International Property and Evidence Association is a non-profit organization offering training, certification and resources pertaining to all aspects of the handling, storage, maintenance, and disposal of law enforcement held property and evidence.

## NARRATIVE

This report first discusses general property/evidence room management practices and then reviews the results of the Grand Jury's inspection of each agency's property/evidence room.

Property/evidence rooms store not only evidence from crimes but also found property, property for safekeeping, contraband, and property for destruction. Evidence must be collected, packaged and properly stored. Often referred to as the "chain of evidence," documentation is necessary to show where the evidence is located, who located the evidence and every person who comes in possession of the evidence, from the initial collection through the judicial process. Ultimately, when the item is no longer of evidentiary value, it is returned to its owner, sold at auction or destroyed.

### Property/Evidence Room Management

Audits and inventories should be conducted to ensure the continuity of the custody of property and evidence. POST's *Property and Evidence System Audit Guide*, states "It is the responsibility of management to see that a sound system of internal control is developed and implemented."<sup>5</sup> The reason for periodic audits and inventories is "Audits and inventories, on an ongoing basis, will enhance the safekeeping of property and evidence and minimize mismanagement which can easily lead to court cases not being filed, loss of public confidence (and that of collateral criminal justice system agencies), personnel problems, litigation, and possible financial loss."<sup>6</sup>

As stated in the *Audit Guide*, "An inspection is conducted to determine whether:

- the property/evidence room is clean and orderly;
- the integrity of the property and evidence is being maintained;
- departmental provisions and policies are being followed;
- property/evidence is being protected from damage or deterioration;

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<sup>5</sup> *Property & Evidence System Audit Guide*, p. Intro, V.

<sup>6</sup> *Ibid.*, p. Intro, IV.

- employee health and safety is protected;
- property/evidence accountability procedures are being used; and
- property having no further value as evidence is being promptly disposed.”

More than 600 agencies statewide participate in the POST Program and are eligible to receive the Commission's services and benefits, which include training programs and management counseling through its Management Counseling Services Bureau (MCB). All law enforcement agencies in San Luis Obispo County, with the exception of Pismo Beach, adhere to the policies and procedures of POST. Pismo Beach is the only agency accredited by CALEA. However, since POST and CALEA are similar in nature, Pismo Beach effectively follows POST guidelines.

The Grand Jury's review of each agency's policies relating to property/evidence room management revealed that all agencies in the county have adopted or are in final draft review of policies provided by Lexipol, LLC, a provider of risk management resources for public safety organizations. The company uses a unique, web-based development system with an integrated training component. The Lexipol management system has aided law enforcement, custody and fire agencies in reducing litigation risk, while providing clear and concise policy guidance to public safety organizations and their employees. The Lexipol policy regarding evidence room inspections states:

*804.8 Inspections of the Evidence Room*

- (a) On a monthly 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 [Designated Officer].
- (c) An annual audit of evidence held by the department shall be conducted by a [Designated Officer] 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(s) not associated to the

property room or function to ensure that records are correct and all evidence/property is accounted for.

The Grand Jury found that management practices within agencies vary widely. Some comply with their policies, others do not. Audits and inventories in some agencies are far from routine, while others exercise strong management practices in this area. To their credit, some agencies recognized the need to address deficiencies prior to the Grand Jury inspections. Other agencies have made or are planning changes as a result of the Grand Jury's inquiries into the management practices of their property/evidence rooms.

### **Staffing and Training**

It is of vital importance that each Property/Evidence Technician effectively manages the property/evidence room function to maintain the highest standards. Each law enforcement agency in San Luis Obispo County operates its own property/evidence room and, depending on staffing, incurs considerable expense to conform to its own policies. Based on information provided by the agencies (with the exception of Paso Robles which was unable to provide this information), the yearly salary and benefit expenditures for the property/evidence room function in county law enforcement agencies total nearly \$700,000.

The Grand Jury learned through its investigation that San Mateo County is considering consolidating individual police property/evidence rooms into one central evidence room. Consolidation could possibly increase the efficiency of operations and reduce costs.

To ensure proper operation, each Property/Evidence Technician should receive ongoing training to remain current with evidence case law and new procedures/policies. Most personnel assigned to the property/evidence rooms within the county have had some training either through CAPE (California Association for Property and Evidence)<sup>7</sup> or POST.

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<sup>7</sup> CAPE was formed to promote professionalism in property and evidence gathering, processing and retention. Emphasis is placed on information sharing, training and support.

POST offers a single course in Property and Evidence and has no certification program for property and evidence. It does, however, provide management guides, such as the *Property & Evidence System Audit Guide* referenced in this report. The guides are excellent and allow agencies to conduct a self-assessment of their property/evidence management practices.

## **Tracking and Inventory**

In each agency, documentation of all property/evidence is computer-controlled. The software provides a detailed custody history from the receipt of the item through release or disposal. All property/evidence is labeled with a bar code generated from the evidence tracking software. By scanning the bar code, all information relevant to the evidence, such as case number, item number, type of property, date, officer name, and description of the item, can be examined. All agencies in the county utilize the PsNet software with the exception of the San Luis Obispo Police Department, which uses Spillman software.<sup>8</sup>

## **Purging/Disposal Process**

Managing a property/evidence room is a formidable task. Each agency has a limited amount of space and staff and management does not know from day-to-day how much evidence may await processing by the Property/Evidence Technician. Certain evidence, such as that from a homicide, is kept indefinitely, while other evidence must be kept under refrigeration, sometimes for years, depending on the case. Other evidence may be discarded after the statute of limitations has elapsed. For certain offenses that have been referred to the District Attorney's Office for prosecution, an order must be issued prior to the return/disposal of evidence. Depending on the nature of the offense, if the conviction is appealed, evidence may be held for years after a conviction. The purge process can be complicated and time-consuming.

During the Grand Jury interviews, several agencies reported a delay in obtaining destruction authorization from the District Attorney's Office for evidence held in their property/evidence

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<sup>8</sup> PsNet and Spillman: Public safety software covering areas of dispatch, records management, mobile digital communications, and web-based applications.

rooms. The primary concern was storing marijuana occupied excessive space in their property/evidence rooms and requests for disposal were not processed in a timely fashion. During its inspection of the Sheriff's Department, the Grand Jury also viewed carts of evidence (not marijuana) waiting for destruction authorization.

The Grand Jury reviewed the topic of evidence destruction with a representative from the District Attorney's Office and found that it does not have a formal policy/procedure governing the purging/disposal of evidence. The Grand Jury found that other counties do have formal policies/guidelines that concisely set out purging/disposal procedures. As an example, a copy of Butte County's policy is attached as Appendix A. Another guideline was developed in Santa Clara County,<sup>9</sup> but it was not included as an appendix due to its length (64 pages).

The District Attorney's Office provides each agency with monthly Agency Case Disposition Reports. It is incumbent upon each agency, with some exceptions, to review the disposition reports to determine if evidence may be destroyed.

The process to determine if evidence can properly be destroyed is complex. If each case is not reviewed properly, prosecution or exoneration of a person may be jeopardized in the event that evidence is improperly destroyed. While not all-inclusive, some of the criteria to be considered for disposal of evidence are:

- Statute of limitations
- Post conviction
  - a. Plea or no contest
  - b. Convicted by Jury
  - c. Murder case (187 Penal Code) and life sentence cases
- Post dismissal/cases not filed
  - a. Dismissed due to lack of evidence or interest of justice
- DNA evidence, required length of evidence retention

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<sup>9</sup> Santa Clara Regional Association for Property and Evidence (SCRAPE)

- Sexually Violent Predators, required length of evidence retention
- Domestic Violence/Elder Abuse/Child Abuse (Evidence Code 1109), length of retention
- Drug Diversion Cases
- Search Warrant evidence (1136 Penal Code)
- Weapons Destruction Order (12028 Penal Code)
- Narcotics Destruction Order (11367,11473,11473.5 Health & Safety Code)

The District Attorney's Office is in the process of establishing Memoranda of Understanding (MOUs) with local jurisdictions regarding medical marijuana held as evidence. Once agreement is reached, property/evidence technicians will have guidance regarding the retention, release and/or disposal of medical marijuana only.

Some purged items have monetary value and are eligible for auction. All agencies in the county use a service called propertyroom.com. This service collects items of value and performs the auction in accordance with Civil Code Section 2080 et al.<sup>10</sup> A percentage of the sale is returned to the jurisdictions. Contraband, drugs, guns, and hazardous materials are not auctioned. They are transported to specific disposal sites where law enforcement personnel witness their destruction.

The Grand Jury calculated a purge rate for each agency by comparing the number of items taken as evidence in the past five years to the number of items purged/disposed of during the same five year period. A higher percentage reflects a more efficient operation and use of space. Purge rates ranged from 20% to 87%.

The following pages summarize the results of the Grand Jury's inspections of the individual agencies.

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<sup>10</sup> California Civil Code Section 2080 et al. provides regulations for the proper care and disposition of found property.

## **Arroyo Grande Police Department**

Facility: The Arroyo Grande property/evidence room is approximately 247 square feet and contained 3,211 items of evidence (near capacity) at the time the POST audit form was completed. The Support Services Technician indicated that an additional 150 square feet would be beneficial. Personnel access to the room is limited. The Grand Jury found that the items inside the caged, secure area appeared to be packaged properly and were stored in an orderly fashion.

Staffing: The Support Services Technician has primary control and two other supervisory personnel have authorized access. The Support Services Technician also performs other duties in the agency not related to property/evidence. He estimated approximately 30 hours per week are allocated to the property/evidence function. Based on salary information provided to the Grand Jury, annualized salary with benefits (prorated to 30 hours per week) totals \$77,922.

Purging/Disposal: In view of Arroyo Grande's limited space, the purging or disposal of evidence is critical to managing the property/evidence room. In the past five years, a total of 5,234 items of evidence were accepted into property/evidence. During the same time period, 1,042 items were purged/disposed of. The purge rate of 20% was the lowest in the county.

Audits/Inventories: The Arroyo Grande Police Department is not in compliance with their stated Lexipol policies:

- 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.
  - o The last inventory was conducted two years ago.
- 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(s) not associated to the property room or function to ensure that records are correct and all evidence property is accounted for.

- o The Evidence Technician has been in that assignment for approximately three years and no inventory was conducted at the time of his initial assignment.

Safety Policies: The Grand Jury found that the Arroyo Grande Police Department was in compliance with safety policies with the exception of the following:

- No ventilation system exists to outside air, required for drug/narcotics storage<sup>11</sup>
- Appropriate storage containers for flammables are not explosion-proof (storage area for flammables is located outside)
- Storage area for flammables is not appropriately ventilated
- Safety manuals are not provided to employees
- No emergency evacuation plan is established

### **Atascadero Police Department**

The Atascadero Police Department's property/evidence room is excellent in both management and day-to-day operation. Over the past several years, and during several police administrations, there has been a commitment to continued improvement in the operation of the property/evidence function. It is a model for other agencies to follow.

In 2005, the department began auditing and improving its property/evidence room. The Atascadero Police Department is the only agency in the county which contracts with an outside consultant to audit its property/evidence room. The department implemented the consultant's recommendations and another audit was authorized in 2008. The 2008 audit set forth additional recommendations that were also implemented. The consultant's last audit was conducted in June 2010 and the agency received the highest rating, "MEETS STANDARDS++." The consultant commented in his report that in over 60 performance audits he has conducted over 12 years, no other agency has been rated so highly. Consequently, the consultant rates the Atascadero Police Department in the top 10-15% of property/evidence rooms in California.

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<sup>11</sup> A requirement of *POST Evidence Management Guide* 3-3, 66261.4 CCR.

Facility: At the time of the Grand Jury inspection, the 368 square foot property/evidence room was neat and orderly, and examined evidence appeared to be packaged properly. Data is backed-up and access to the system is limited to authorized police administrators. The evidence area is secure and only the Property/Evidence Specialist has primary access. The Grand Jury members were required to sign an entry log prior to entering the secure area, an excellent security procedure. The size of the property/evidence area is adequate to meet the needs of the agency.

Staffing: Atascadero has one Property/Evidence Specialist assigned to the property/evidence room. Additional duties include crime scene investigation. The Specialist has attended training from CAPE, has had five years of in-house training, and additional basic and advanced crime scene investigation training. The position is full-time and total compensation, including benefits, is \$92,307.

Purging/Disposal: At the time the audit survey was completed, there were 4,154 items in property/evidence. In the past five years, 22,035 items of property/evidence were logged into the property/evidence room and, during that same period, 19,224 were purged/disposed of. The purge rate is outstanding at 87%.

Audits/Inventories: Atascadero Police Department will be adopting the Lexipol policy. At the time of the Grand Jury inspection, the policy was in “draft” form and had not yet been adopted. At the time of the Grand Jury inspection, the department was in compliance with its existing policy and (as indicated in the consultant’s report) it is also in compliance with the following policies: CALEA Property and Control Standards, CAPE, IAPE, California POST, and IACP guidelines (International Association of Chiefs of Police).

Safety Policies: Atascadero Police Department complies with nearly all the safety guidelines as outlined in the POST audit. Two exceptions were noted in their survey response:

- No appropriate explosion-proof containers are available
- A lack of appropriate safety signage

## **Grover Beach Police Department**

Facility: The Grover Beach Police Department property/evidence room is neat and orderly, containing approximately 4,400 items. The room is adequate but is close to or at capacity. The square footage was not provided. The evidence examined by the Grand Jury members was packaged properly, stored neatly and bar coded. The room is secure and the Property Room Technician and the Division Lieutenant are the only people allowed access. An access log is maintained for any other people requesting access to the controlled area. The Grand Jury learned during interviews that the department has tentative plans to convert a larger office space into the property/evidence room because the current evidence room does not have required ventilation and the proposed space is ventilated.

Staffing: Currently, there is one Property/Evidence Technician who is also assigned to the Records Division. The Technician has received POST training. The time spent solely for the property/evidence function is estimated at 600 hours per year. The pro-rated salary, plus benefits, for the Property/Evidence Technician totals \$19,332 per year.

Purging/Disposal: In view of the space constraints, purging/disposal of property/evidence is important in maintaining an orderly property/evidence room. In the past five years, 7,835 items of evidence were placed into evidence and 2,618 items were purged/disposed of during that same period. The purge rate is 33%.

Audits/Inventories: The Grand Jury learned through interviews that, prior to 2009, no purging or audits had been conducted for at least 18 to 20 years. However, the administration of the department as well as management of the property/evidence room has improved in the past three years. In April 2011, the Grover Beach Police Department adopted the Lexipol policies for property/evidence room procedures as well as for other functions of the agency. The policy exceptions to property/evidence inspections/audits are:

- On a monthly 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.

- o The Division Lieutenant estimated that monthly inspections occur 75% of the time.
- An annual audit of evidence held by the department shall be conducted by a Division Lieutenant (as appointed by the Chief of Police) who is not routinely or directly connected with evidence control.
  - o A full audit of the property/evidence room is currently underway and the estimated completion date is April 2012. The Division Lieutenant who is responsible for evidence control is conducting the audit. Technically, the *other* Division Lieutenant, who is not connected with evidence control, should conduct the audit. There is no record of any previously conducted audits.
- 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(s) not associated with the property room or function to ensure that records are correct and all evidence property is accounted for.
  - o The last personnel change occurred in 2009. A full audit is now in progress.

Safety Policies: The Grand Jury inspection revealed the following safety issues:

- Respirators are not supplied.
- The property/evidence room is not ventilated.

## **Morro Bay Police Department**

Facility: The Morro Bay Police Department property/evidence room is limited in size with approximately 230 square feet. Additional storage for large items, such as bicycles, is located off-site. The room is neat and orderly, and the evidence inspected was packaged properly. Security was adequate; no entry log is maintained to document who enters the secure area beyond the property/evidence technician. There have been recent improvements to the property/evidence room. Grant funds were used to purchase new evidence lockers that include a refrigerated locker for perishable evidence. Once removed from the refrigerated evidence locker, items are placed in a larger refrigerator inside the evidence room for long-term storage.

Staffing: The recently filled Property/Evidence Technician position had been vacant since 2009. The new position is part-time, without benefits, and is funded by a yearly grant in the amount of \$17,000. The agency has provided in-house training to the Property/Evidence Technician and further training is being considered through CAPE.

Purging/Disposal: The disposal or purge rate of evidence for the past five years exceeds the amount taken in during the same five-year period. Evidence had not been purged in many years, thus 4,099 items were purged and 2,217 were taken in during the same period. Recognizing that the evidence room was disorganized, the Chief of Police authorized a full audit/inventory in 2009 and property/evidence no longer of significance was purged or disposed of. Currently, there are 2,217 items of evidence in the property/evidence areas and items are purged when authorized by either the District Attorney's Office or by department policy.

Audits/Inventories: The Morro Bay Police Department inspection practice exceeds the Lexipol policy. The Grand Jury was advised that the Police Commander, who is not affiliated with the property/evidence function, conducts monthly inspections. Now, monthly inspections by the Commander focus on adherence to policies, unannounced inspections and monthly audits in lieu of annual audits. The Support Services Manager completed the last full audit/inventory in March 2009 due to a personnel change. Another audit/inventory is planned with the recent hiring of the new, part-time Property/Evidence Technician.

Safety Policies: Appropriate safety procedures are in place. The property/evidence room is ventilated and policies are in place for the handling of biohazards, hazardous and flammable items. The Grand Jury noted only one exception:

- Respirators are not provided for the evidence technician

## **Paso Robles Police Department**

Facility: The Paso Robles Police Department is located in a relatively new building (2003) that is also the headquarters for the Department of Emergency Services. The main property/evidence room is located inside the main building. At the time the agency completed the audit form for

the Grand Jury, a total of 10,570 items were located in the main area as well as in secondary secure, storage areas. The combined property/evidence area totals 898 square feet.

While the main evidence area is spacious, items requiring additional security (guns, money and drugs) are located in a separate secure room. Those items were not stored in an orderly fashion. Guns, money and drugs were piled on top of each other; some guns were stored in evidence boxes while others, not boxed, were lying on shelves. Additional space for these items is needed to permit orderly storage.

Staffing: A Supervising Lieutenant and two detectives currently staff the property/evidence room. A previous full-time dedicated position was eliminated from the budget. The staff typically rotates every two to four years. At the time of the Grand Jury inspection, the plan was to train two dispatchers to staff the evidence room, in addition to the Supervising Lieutenant and two detectives, for a total of five personnel. The agency was unable to provide labor expense figures for the property/evidence room operation.

Purging/Disposal: The agency uses PsNet tracking software. Unfortunately, data entry errors over a period of time listed items checked out as “Disposed” evidence when in fact they were checked out for court, lab analysis or other valid reasons. The disposition of “Disposed” evidence items was not changed when the item(s) was returned to the property/evidence room. Due to this property/evidence documentation tracking error, the Supervising Lieutenant and two detectives planned a full audit of every item beginning in February 2012. The full inventory was expected to take approximately one month to complete.

In view of the PsNet entry error, the purge rate could not be calculated. Of the 10,570 items at the time of survey, 7,916 were taken into evidence in the past five years. Because the number of items purged/disposed of was not available, the purge rate could not be calculated.

Audits/Inventories: The Paso Robles Police Department is in partial compliance with its Lexipol policy pertaining to evidence room inspections:

- On a monthly 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
  - o According to the Supervising Lieutenant, a few evidence items are checked monthly on a random basis

The department is not in compliance with its remaining policies. The last partial inventory was completed in June 2011 and pertained to drug evidence only. Prior to that date, an inventory of guns, money and drugs was conducted in 2009. The last full inventory was conducted in 2003. A full audit is planned for 2012.

Safety Policies: With regard to health and safety for evidence room personnel, the agency is in compliance with the policy guidelines set forth in the POST audit form, with only two exceptions:

- Ammunition/black powder is not being stored separately from other property
- Explosion-proof storage containers are not provided

### **Pismo Beach Police Department**

The Pismo Beach Police Department is the only agency in the county to receive CALEA accreditation, a process that took several years. After meeting all CALEA proofs of compliance, the department became an accredited agency in 2007. The administration and staff are to be commended for their dedication in obtaining the accreditation.

Facility: The property/evidence room is located inside the police department, and is clean and well-organized. The 445 square foot area is secure and only the primary Property/Evidence Technician has routine access. All others requesting access must sign the entry log, document their purpose, and be escorted by the technician or the supervisor of the property/evidence room. During the Grand Jury's inspection, inspected evidence was properly packaged and the labeling was consistent with standard practices.

Staffing: The Property/Evidence Room Technician has been employed by the agency for the past nine years and maintains a neat and well-organized evidence room. The technician is also the president of the local property/evidence room association, CAPE. The technician's dedication to her position, as well as promotion of the professionalism of the property/evidence room function throughout the county, is to be commended. The annual expense (salary and benefits) for the full-time Property/Evidence Room Technician totals \$82,659.

Purging/Disposal: At the time the audit form was completed, there were approximately 11,065 items of evidence. In the past five years, 5,984 items were entered into evidence and 2,586 were purged/disposed of. The purge rate is 43%.

Audits/Inventories: In addition to using CALEA standards regarding property and evidence control, Pismo Beach relies on Lexipol policies in other areas of operation. CALEA and Lexipol policies are very similar in form and content. The CALEA standard for inspections/audits states:<sup>12</sup>

84.1.6 In order to maintain a high degree of evidentiary integrity over agency-controlled property and evidence, the following documented inspections, inventory, and audits shall be completed:

- a. An inspection to determine adherence to procedures used for the control of property is conducted semi-annually by the person responsible for the property and evidence control function or his/her designee;
- b. An inventory of property occurs whenever the property and evidence custodian is assigned to and/or transferred from the position and is conducted jointly by the newly designated property and evidence custodian and a designee of the CEO to ensure that records are correct and property annotated;
- c. An annual audit of property and evidence held by the agency is conducted by a supervisor not routinely or directly connected with the control of property and evidence; and

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<sup>12</sup> Commission on Accreditation for Law Enforcement Agencies (CALEA)<sup>12</sup> Property and Control Standards

- d. Unannounced inspections of property storage areas are conducted, as directed by the agency's CEO, at least once a year.

The Pismo Beach Police Department is in compliance with all CALEA policies. Their last annual audit was completed in June 2011.

Safety Policies: In view of the POST audit pertaining to safety, the following deficiencies were found:

- Respirators are not provided
- Safe storage for chemicals is not provided
- The flammable storage area is not appropriately ventilated
- No outside storage for flammables exists
- Designated storage containers are not explosion-proof

### **San Luis Obispo Police Department**

The San Luis Obispo Police Department is the largest municipal police agency in the county. The department tracks all property/evidence through Spillman software. If the system is not accessible, the Evidence Clerk has devised a manual filing system that allows for the retrieval of evidence based on date. This system is unique to the San Luis Obispo Police Department and the Evidence Clerk should be commended for implementing a simple, logical, back-up filing system.

Facility: Due to space limitations, property/evidence is stored in several different locations. The combined space totals 1,685 square feet. All areas are properly secured. As a result of the Grand Jury inspection, an entry log for escorted persons will be implemented. The evidence room areas were neat and orderly, with the exception of hand gun storage.

Numerous hand guns were piled on a shelf, limiting the orderly removal/examination of a particular firearm. Many agencies in the county place guns in evidence boxes designed for safe storage. It is the preference of the Evidence Clerk to be able to examine the weapon to ensure that it is unloaded and in safe condition prior to acceptance into the property/evidence room.

The approach is logical. However, if the agency prefers to store handguns without packaging, it should store them individually, in a neat and orderly manner.

Staffing: The primary control of the property/evidence room is assigned to one full-time Property/Evidence Clerk who is responsible for the day-to-day operation. The Property/Evidence Clerk has attended IAPE and CAPE training. The clerk has been in the position for approximately seven years with an annual compensation (salary and benefits) reported to be \$100,000 per year.

Purging/Disposal: There were 26,043 items in evidence at the time the audit survey was completed. A total of 38,471 items were logged into evidence during the past five years and 31,524 items were purged/disposed of during that time. The purge rate is an impressive 82%. It is noteworthy that the San Luis Obispo Police Department donates unclaimed bicycles to at-risk youth.

Audit/Inspections: The San Luis Obispo Police Department is in compliance with its audit/inspection policy. The current policy is that the Property/Evidence Technician, assisted by the Investigation Sergeant and Investigation Lieutenant, conducts an audit every six months. Audits were conducted in March and October 2011. The audits focused on three areas: firearms, money and drug/narcotics. Per their policy, all firearms and money are examined during the audits, as well as forty randomly selected narcotics cases and forty random pieces of evidence. Audited items are checked for proper sealing, packaging and identification. A report of the findings is forwarded to the Chief of Police, noting any discrepancies. A full inventory of every item is scheduled for March 2012.

The San Luis Obispo Police Department is in the process of changing its department policies, and will adopt the Lexipol standard in the near future. The department is currently reviewing each Lexipol policy prior to acceptance and implementation. Some policies may be modified to best suit the needs of the agency. Once the Lexipol policies are adopted, those provisions pertaining to evidence room inspections/audits will be followed.

Safety Policies: A review of the POST audit forms on safety shows that the department is in compliance with POST standards, with one exception:

- Annual biohazard update training.

## **San Luis Obispo County Sheriff's Department**

Facility: The security of the County Sheriff's property/evidence room is adequate; however, at 2,500 square feet, the building size is not adequate for the volume of property/evidence stored. The property/evidence room currently contains over 75,000 items in a space that is not well designed or orderly. Additionally, the surplus shelving in use does not maximize the current space. While the evidence area is cluttered, the evidence observed was packaged properly and the evidence tracking software is used properly. Sheriff Ian Parkinson described the space as a "disaster"<sup>13</sup> and he has made correcting the property/evidence room deficiencies a top priority.

Plans have been approved to move the evidence room to another site approximately twice as large as the current property/evidence room, with additional adjacent space available when needed. Funding has been secured; the new location is expected to be fully operational and compliant with policy and standards by the end of 2012.

Staffing: The agency has two full-time, non-sworn, property technicians who are responsible for the property/evidence room function. Recently, the agency added a part-time employee to assist in managing the high volume of evidence. The total cost of all employees to operate and maintain the property/evidence room, including benefits, is \$300,070.

Purging/Disposal: In the past five years, according to property system records, 516,284 items of evidence were logged into evidence; of that number, 242,910 items were purged/disposed of. The purge rate is 47%. The Sheriff's Department is proactive in the management of its available space, but their authority to dispose of certain types of evidence has been slowed awaiting

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<sup>13</sup> C. Lambert, (Top 10 Stories of 2011: No. 10: Parkinson Brings Changes to County Sheriff's Office. *The Tribune*, December 23, 2011

approval by the District Attorney's Office. The Grand Jury viewed carts of evidence waiting approval by the District Attorney's Office; some disposal requests date as far back as 2009.

Audit/Inspections: The Sheriff's Department is not in compliance with its Lexipol policies on audit procedures. The last audit was four years ago.

Safety Policies: According to the POST audit forms completed by the department, only minimal safety equipment is supplied (respirators, gloves and protective clothing). Specific deficiencies include:

- No safety manuals
- Annual safety training does not take place
- Emergency evacuation plans do not exist

## CONCLUSION

All agencies use computerized inventory methodology, which, when managed correctly, provides excellent tracking and control of property and evidence.

All agencies have adopted, or are about to adopt, the Lexipol property/evidence room policies for audits and inspections. The Lexipol policies are fundamentally consistent with those of other recognized organizations, such as IAPE, CALEA and POST. While all agencies have similar policies, not all agencies comply with their stated policies.

There are several independent consulting firms that perform property/evidence room audits on a contract basis. Such firms provide an unbiased perspective on the management and operation of law enforcement agency property/evidence rooms. The City of Atascadero has utilized such an independent auditor for many years and, as a result, the operation and maintenance of its property/evidence room has continuously improved.

Some county agencies could benefit from POST management counseling, which can be requested by any agency. The POST Management Counseling Services Bureau (MCB) provides many services to local law enforcement agencies to improve the quality of police services at each level of the organization. The authority to provide counseling is pursuant to California Penal Code Section, 13513.<sup>14</sup> Local agencies in San Luis Obispo County can request management counseling services from POST related to the operation of Property/Evidence rooms. For example, POST conducted an exhaustive property/evidence room audit in 2006 for the Berkeley Police Department after the internal theft of drugs.<sup>15</sup>

There are several professional organizations that offer standards and training, and promote the proper operation of property/evidence rooms. IAPE, for example, offers a certification. POST

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<sup>14</sup> California Penal Code section, 13513: Upon the request of a local jurisdiction, the commission shall provide a counseling service to such local jurisdiction for the purpose of improving the administration, management or operations of a police agency and may aid such jurisdiction in implementing improved practices and techniques.

<sup>15</sup> City of Berkeley, Policy Review Commission Police Report, Evidence of Theft within the Berkeley Police Department, October 12, 2007.

offers only guidelines. Given the numerous certificate programs offered by POST, the Grand Jury was surprised to learn that POST does not offer a certificate program for Property/Evidence Technicians.

In the purging process, all agencies in the county use propertyroom.com for the auctioning of eligible items. There is one notable exception to this practice. San Luis Obispo Police Department donates its bicycles to the Sheriff's Department for repair prior to being donated to their juvenile delinquency program. This practice benefits the community by providing projects for inmates, as well as benefiting at-risk youth.

Several agencies commented that destruction requests to the District Attorney's Office are not processed promptly and the delay reduces available storage space. The Sheriff's Department, for example, has requests dating as far back as 2009 that have had no response. The delay has adversely affected their ability to properly manage the property/evidence room. The primary complaint was that they were not receiving disposal authorization for marijuana stored at their facilities.

There is a variety of management practices of property/evidence rooms within San Luis Obispo County and property/evidence retention/disposal requirements are complex. However, the county lacks a standardized policy/procedure for all law enforcement agencies in the county.

At present, county law enforcement agencies spend approximately \$700,000 for property/evidence room employee salaries and benefits. Supervision, material, transportation, and facility costs increase this number and are difficult to quantify. There may be significant cost savings available if the multiple property/evidence rooms in the county were consolidated into one.

## **FINDINGS**

1. The Police Departments of Arroyo Grande, Grover Beach, and Paso Robles, and the Sheriff's Department are not in full compliance with their respective policies pertaining to evidence room inspections.
2. The Police Departments of Atascadero, Morro Bay, Pismo Beach, and the City of San Luis Obispo are in compliance with their respective policies pertaining to evidence room inspections.
3. The Grover Beach Police Department is currently conducting a full inventory of its evidence room.
4. Morro Bay Police Department advised that it will complete a full inventory of its evidence room with the hiring of a new Property/Evidence Technician.
5. Paso Robles Police Department was unable to advise the number of evidence items purged due to a data entry error that occurred routinely over a period of time.
6. Paso Robles Police Department has advised the Grand Jury that it will complete a full inventory within the year.
7. Paso Robles Police Department does not store guns, money and drugs in a neat and orderly manner.
8. In the Paso Robles Police Department, five people have access to the evidence room and staff rotates every two to four years.
9. Arroyo Grande Police Department and the Grover Beach Police Department do not have ventilated property/evidence rooms for storage of drugs/narcotics.
10. The San Luis Obispo Police Department does not store handguns in a neat and orderly manner.
11. The San Luis Obispo Police Department is planning a full inventory within the year.
12. The Sheriff's Department has advised that it will move its property/evidence room operation to a new facility.
13. The District Attorney's office does not have formal, written property/evidence retention policies.
14. The District Attorney's Office is currently establishing a Memorandum of Understanding with each jurisdiction regarding the retention/destruction of medical marijuana.

15. As a result of the Grand Jury audit, changes are already being made to improve the property/evidence room function in some of the law enforcement agencies in the county.

## **RECOMMENDATIONS**

1. All law enforcement agencies in the County should adhere to their respective policies relating to property/evidence room inspections.
2. The Arroyo Grande and Grover Beach Police Departments should ventilate their evidence rooms containing drugs/narcotics.
3. The Paso Robles Police Department should maintain their property/evidence room in a neat and orderly manner.
4. The Paso Robles Police Department should consider using the services of POST or an independent consulting service to conduct a full review of its property/evidence room function.
5. To reduce audit-related personnel costs, the Paso Robles Police Department should consider staffing the property/evidence room with a single dedicated Property/Evidence Technician.
6. The San Luis Obispo Police Department should store handguns in a safe, neat and orderly manner.
7. The District Attorney's Office should develop a formal property retention policy that will assist each law enforcement agency with the proper retention/destruction of property evidence.
8. The District Attorney's Office should establish a liaison between its office and each law enforcement jurisdiction to regularly review existing and new property/evidence laws and procedures.
9. All personnel assigned to property/evidence rooms in the county should continue their training and/or update their knowledge through professional organizations. It is also highly recommended that they join the county chapter of CAPE.
10. The Grand Jury encourages the county law enforcement agencies to utilize the services of either POST for management assistance or a qualified consultant specializing in property/evidence room management.

11. The following police departments shall submit evidence of a full property/evidence room audit to the Grand Jury: Arroyo Grande, Grover Beach, Morro Bay, Paso Robles, San Luis Obispo, and the Sheriff's Department.
12. The Grand Jury recommends that the police chiefs and County Sheriff explore the feasibility of a county-wide property/evidence room consolidation, possibly under a joint powers agreement.
13. While the Grand Jury does not have jurisdiction over a state agency, it would highly recommend that the California POST Commission consider a statewide certification program for Property/Evidence Technicians that establishes minimum training, education and experience requirements.

## COMMENDATIONS

The Atascadero Police Department is to be commended for its continued commitment to improving the operation and management of its property/evidence room. Since 2005, the department has retained the services of an independent property/evidence room consultant. Based on the consultant's recommendations and follow-up inspections in 2008 and 2010, continued improvements were made resulting in Atascadero being rated one of the best property/evidence rooms in California. The current Property/Evidence Technician, Ryan Infantino, as well as his predecessors, are to be commended.

The Pismo Beach Police Department has demonstrated its support and dedication to the property/evidence room function through its CALEA certification and adherence to POST standards. Specifically, Property/Evidence Technician Rachelle LaPan is to be commended for her management of the property/evidence room and her contribution as President of the local CAPE chapter.

The San Luis Obispo County Sheriff's Department recognized the necessity of moving its property/evidence room to larger facilities and reorganizing the manner in which evidence is stored. The move and reorganization are underway and the new facility should be operational by the end of 2012. Sheriff Ian Parkinson included the auditing of the property/evidence room as a top priority prior to his election as Sheriff. He is to be commended for keeping his pre-election promise.

## REQUIRED RESPONSES

The Police Department of Arroyo Grande is required to respond to Findings 1 and 9, and Recommendations 1, 2, 9, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of Atascadero is required to respond to Recommendations 1, 9 and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of Grover Beach is required to respond to Findings 1, 3 and 9, and Recommendations 1, 2, 9, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of Morro Bay is required to respond to Finding 4 and Recommendations 1, 9, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of Paso Robles is required to respond to Findings 1, 5, 6, 7, and 8, and Recommendations 1, 3, 4, 5, 9, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of Pismo Beach is required to respond to Recommendations 1, 9 and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The Police Department of San Luis Obispo is required to respond to Findings 10 and 11, and Recommendations 1, 6, 9, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 4, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The San Luis Obispo County Sheriff is required to respond to Findings 1 and 12, and Recommendations, 1, 9, 10, 11, and 12. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **August 6, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The San Luis Obispo County District Attorney is required to respond to Findings 13 and 14, and Recommendations 7 and 8. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **August 6, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The mailing addresses for delivery are:

<b>Presiding Judge</b>	<b>Grand Jury</b>
Presiding Judge Barry T. LaBarbera Superior Court of California 1050 Monterey Street San Luis Obispo, CA 93408	San Luis Obispo County Grand Jury P.O. Box 4910 San Luis Obispo, CA 93402

The e-mail address for the Grand Jury is: [GrandJury@co.slo.ca.us](mailto:GrandJury@co.slo.ca.us)

## **APPENDIX A**

### **BUTTE COUNTY PROPERTY RETENTION POLICY**

#### **PURPOSE**

The purpose of this policy is to establish standard criteria for Law Enforcement Agencies with regard to property retention.

#### **POLICY**

This document gives all agencies within \_\_\_\_\_ the authority to purge all property taken into their possession based on meeting the criteria outlined below. This was created with the input of all Butte County Law Enforcement Agencies, in conjunction with the Butte County District Attorney's Office.

#### **PROCEDURE**

##### **Evidence Retention Considerations**

- 1) Post conviction
- 2) Post dismissal
- 3) Case not filed
- 4) DNA/Biological evidence
- 5) Sexually Violent Predators (SVP) cases
- 6) Domestic Violence/Elder Abuse/Child Abuse
- 7) Juvenile cases
- 8) Drug diversion cases
- 9) Bench warrant vs. arrest warrant
- 10) Search warrant
- 11) General purge considerations
  - a) Statute of limitations considerations
  - b) Agency may initiate
  - c) Currency
- 12) Photograph and release option

##### **Attachments**

- 1) Statute of limitations

- 2) Warrant purge criteria
- 3) Return of service order (1536 PC)
- 4) Weapons destruction order (12028 PC)
- 5) Narcotics destruction order (11367, 11473, and 11473.5 H&S)

### **Purge criteria**

Absent a directive by the District Attorney, the following criteria shall apply permitting the purging of property or evidence.

#### **1) Post conviction**

If case was a plea or no contest, the investigating agency can purge property as soon as they receive the Butte County District Attorney's Evidence Release Memo (hereinafter referred to as Evidence Release Memo). There is no need to hold onto the evidence any longer.

If convicted by jury, evidence shall be held for 60 days on misdemeanors and 90 days on felonies for possible appeals. This time is based on the date of the case adjudication and is for those cases in which an Evidence Release Memo is received.

In 187 PC and life sentence cases, there will not be an Evidence Release Memo sent until the (s) is deceased or released from prison and is on parole. If the (s) dies while in custody, this information may come to either the DA or the local agency. Once this information is received, it is important that both are made aware of this information. Therefore, always ensure the other party involved has been contacted and is aware of the status. Once the suspect has been released from prison or is deceased, the property can be purged. In order to check on the status of a particular inmate, contact Chico Parole. They will be able to provide you with parole information or a deceased notification on your suspect.

#### **2) Post dismissal**

The District Attorney's office shall send an Evidence Release Memo for cases that are dismissed due to lack of sufficient evidence or in the interest of justice. These evidence releases shall state the reason for the dismissal. Once an Evidence Release Memo has been received, the property section will verify the status with their case agent prior to disposal of property. The District Attorney will not move forward with the case unless the case agent has further information.

In co-defendant cases, the first Evidence Release Memo will state the fact there is a co-defendant. The subsequent release will state the final release of evidence.

### **3) Case not filed**

The District Attorney's office shall send an Evidence Release Memo for cases that are either declined due to lack of sufficient evidence, or declined in the interest of justice. These Evidence Release Memos shall state the reason of the case being declined. Once an Evidence Release Memo has been received, the property section will check with their case agent prior to disposal of property. The District Attorney will not move forward with the case unless the case agent has further information.

For any cases without an arrest, all property can be purged at statute of limitations. For further information regarding statute of limitations, see Attachment 1.

### **4) DNA/Biological evidence**

DNA evidence used to convict must be maintained until the (s) is released from prison, unless authorized by the District Attorney. The (s) has the right to have the DNA evidence retested at any point in time during their incarceration. However, if the proper documents have been signed by the (s), the (s) attorney, the DA, and the judge, all property can be purged after conviction. This documentation would accompany any evidence release memo sent by the District Attorney.

Each agency shall be held responsible for the retention of evidence when there is a John Doe warrant issued based on DNA. The agency shall verify status of any potential warrants prior to the disposal of DNA evidence at the statute of limitations.

### **5) Sexually Violent Predators (SVP) cases**

CART interviews shall be conducted using DVD media and forwarded to the individual agencies.

Sexual assault cases have a statute of limitations of ten (10) years. No evidence in such cases, unless unfounded, can be purged prior to the statute of limitations. For the retention of any DNA evidence, refer to the DNA section of this document.

### **6) Domestic Violence/Elder Abuse/Child Abuse**

All photos and interviews shall be maintained for a period of ten (10) years from the date of incident on all domestic violence/elder abuse/child abuse convictions. This is pursuant to

California Evidence Code Section 1109. This is due to the fact that all prior convictions of such a crime are admissible for future cases. This allows the District Attorney to attempt to show a pattern of this behavior for the (s) to include motive, intent, and opportunity.

All property, other than photos and interviews, may be purged once the Evidence Release Memo is received from the District Attorney's office.

## **7) Juvenile cases**

The District Attorney's office will send an Evidence Release Memo on Juvenile cases based on case adjudication. Property may be purged upon receiving these releases.

If an Evidence Release Memo is not received, each agency may look up the case status in HOD. Once the case shows closed in HOD, the investigating agency may purge the property.

For cases without a suspect, property may be purged based on statute of limitations (see Attachment 1).

## **8) Drug diversion cases**

All evidence seized in criminal cases that result in drug diversion will be maintained until the suspect completes their diversion process. Once diversion is successfully completed, an Evidence Release Memo will be sent to the investigating agency. If the suspect fails to complete diversion, the evidence will remain active. In all narcotics cases, the evidence will be considered active until an evidence release memo is received by the investigating agency.

In cases in which the suspect pleads, an Evidence Release Memo will be sent prior to the completion of drug diversion. The evidence will no longer be needed and can be purged.

All agencies are authorized to destroy all needles/syringes taken as evidence of Business and Professions Code Section 4140 after the seizing officer photographs (Xerox is also acceptable) the item and identifies the same with the agency case number. Hypodermic syringes containing suspected controlled substances are subject to the same procedure with the addition that a portion of the contents should be presumptively tested for proper criminal charging. The contents are then to be placed into a vacuum tube (void of preservative) and sent to the lab for analysis.

## **9) Bench warrant vs. arrest warrant**

Bench warrant is issued after a person has appeared in court, but fails to show for additional court appearances.

Arrest warrants are issued for persons law enforcement maintains is a (s) in a case, but has yet to arrest with regard to the incident.

Firearms taken in cases in which there is an arrest or bench warrant, it can be purged after one year on possession cases only. Law Enforcement must document and photograph the firearm thoroughly, but can purge it as abandoned property after one year.

For purge criteria on misdemeanor cases, refer to Attachment 2. *This criteria is for those misdemeanor cases over seven (7) years old that have gone to warrant.*

## **10) Search warrant**

All evidence taken as part of a search warrant must have a court order (1536 PC) prior to the return or purging of any property. If the original warrant service included a return (1536 PC) order, the property can be released by an evidence memo issued by the District Attorney upon case adjudication. All property considered to be stolen/recovered will be photographed and released to the rightful owner, refer to Attachment 3.

## **11) General purge considerations**

### **a) Statute of limitations considerations**

Purging of property in criminal cases is sometimes based on the statute of limitations. If there has not been an arrest on a case and there is not an outstanding warrant, purging is based on the statute of limitations. For the most part, the statute of limitations runs one (1) year on misdemeanor crimes and three (3) years on felony crimes. However, this is not a set standard. For clarification based on criminal code section, see Attachment 1. An example of crimes that do not meet this basic statute of limitations would be sex crimes or violent crimes against person.

**b) Agency may initiate**

Individual agencies may have individual purge criteria set up for various non-criminal or civil cases. A list of such cases includes, but is not limited to: 27491 GC, traffic collisions, and cases they deem are unfounded.

**c) Currency**

Any currency taken into the custody of local law enforcement agencies as part of a narcotics sales case will be handled by the District Attorney-Asset Forfeiture Unit.

In embezzlement cases, the money may be returned to the victim upon case adjudication. If the victim has filed a claim with their insurance company and received compensation, the money would then be released to the insurance company.

**12) Photograph and release procedure**

Stolen/Recovered items will be photographed and released to the (v). There is no need to maintain stolen/recovered property as evidence. Proper documentation (which includes obtaining and photographing the serial numbers) and photographing of all evidence must occur prior to the release of any property. These photos should include the (v) with the items to be returned. The (v) must also be informed to maintain possession of this property until the criminal case is adjudicated, in case it is needed for prosecution.