

Shasta County Law Enforcement Evidence Retention Policy

802.1 CRITERIA BASED ON CASE STATUS

802.1.1 CASE NOT SUBMITTED TO THE DISTRICT ATTORNEY'S OFFICE

For any cases not submitted to the District Attorney because a suspect was never identified and no further investigation can be done or if there are identified suspect(s) but no corroborating evidence, all property can be purged at the statute of limitations (listed in Attachment 1) unless the case falls under the exceptions listed in Sections 2 and 3 of this document (Criteria Based on Case and Property Type sections).

802.1.2 CASE SUBMITTED TO DISTRICT ATTORNEY'S OFFICE, PROSECUTION DECLINED

The District Attorney's Office notifies the agency by way of a "Complaint Filing Declination (JUS 8715) form that a case has been declined due to a variety of other reasons, such as insufficient evidence or interest of justice. The returned declination will specifically state the reason for the declination. Once a "Complaint Filing Declination" form has been received, the case agent will notify the property section if they do not plan to re-submit the case to the District Attorney. The District Attorney will not move forward with the case unless the case agent submits further information.

802.1.3 CASE SUBMITTED TO DISTRICT ATTORNEY'S OFFICE, FILED, DEFENDANT FAILS TO APPEAR, BENCH WARRANT

When a case has been filed and the defendant has an outstanding warrant, whether an arrest warrant or bench warrant for failing to appear in court, then all property should be held until the suspect is apprehended or the case is dismissed and the warrant is recalled. If the case is dismissed, the District Attorney's Office will issue an Evidence Release Memo stating the reason for dismissal. See footnote 1 below for further information. EXCEPTION: Most misdemeanor cases may be purged after 7 years regardless of the defendant's warrant status. See Attachment 2 for a list of misdemeanor cases for which the property must be retained after 7 years where there is an active warrant.

802.1.4 CASE SUBMITTED TO DISTRICT ATTORNEY'S OFFICE, FILED, RESOLVED BY PLEA

For cases filed by the District Attorney which are resolved by defendant pleading guilty or no contest, the DA's Office will send an Evidence Release memo to the investigating agency after the case has been finally adjudicated and the defendant has been sentenced². EXCEPTION: In any case where there is a plea to a charge of PC § 187 or any other charge resulting in a life sentence, an Evidence Release memo will not be sent until the defendant is deceased or released from prison and on parole. If the defendant dies while in custody, this information may come to either the District Attorney or the local agency. Once this information is received, it is important

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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 defendant 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 Redding Parole. They will be able to provide you with parole status or a deceased notification. In cases where there are multiple defendants, this procedure pertains to all of them.

802.1.5 CASE SUBMITTED TO DISTRICT ATTORNEY'S OFFICE, FILED, DEFENDANT CONVICTED AT TRIAL

If convicted at trial, either by jury or judge (in the case of a court trial), 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 sentencing, and is for those cases in which an Evidence Release memo is received from the DA's Office. Property section managers should check back with the District Attorney's Office to ascertain whether a Notice of Appeal has been filed within the statutory time limit. EXCEPTION: In any case where the defendant is convicted of a charge of PC § 187 or any other charge resulting in a life sentence, an Evidence Release memo will not be sent until the defendant is deceased or released from prison and is on parole. If the defendant dies while in custody, this information may come to either the District Attorney 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 defendant 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 Redding Parole. They will be able to provide you with parole status or a deceased notification. In cases where there are multiple defendants, this procedure pertains to all of them.

802.1.6 CASE SUBMITTED TO DISTRICT ATTORNEY'S OFFICE, FILED, DISMISSED

The District Attorney's Office will send an Evidence Release memo for cases that are dismissed due to lack of sufficient evidence, in the interest of justice, or as a result of a negotiated disposition involving multiple cases. These evidence releases shall state the reason for the dismissal. EXCEPTION: No Evidence Release memo will be sent in felony matters dismissed for tactical reasons, where the District Attorney intends to re-file the case. Once an Evidence Release memo has been received, the property section will verify the case status with the case agent prior to disposal of property. In felony cases, if the case agent develops or intends to develop new evidence and resubmit the case, he or she may do so, however the District Attorney will not move forward with the case unless the case agent has further information.

802.1.7 CASE SUBMITTED TO DISTRICT ATTORNEY'S OFFICE, FILED, DEFENDANT DIVERTED

All evidence seized in criminal cases that result in diversion pursuant to PC § 1000 (narcotics) or PC § 1001.20, et.seq. (misdemeanors, defendant developmentally disabled) will be maintained until the defendant completes their diversion process. Once diversion is successfully completed, the DA's office will send an Evidence Release memo to the investigating agency. If the suspect fails to complete diversion, the evidence will remain active.

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802.2 CRITERIA BASED ON CASE TYPE

802.2.1 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 for some reason an Evidence Release memo is not received, the investigating agency may purge the property once the case shows closed in PUBSAFE (Public Safety Systems).

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

802.2.2 SEXUAL ASSAULT CASES

Due to the special circumstances of child sexual assaults, evidence collected during the investigation of a child sexual assault case shall be retained for 75 years after the disposition of the case, even if there is no prosecution, pursuant to Penal Code section 290.08.

For adult sexual assault cases Penal Code section 290.08 requires the District Attorney's Office to retain records relating to a person convicted of an offense for which registration is required pursuant to Penal Code section 290 for a period of 75 years after disposition of the case. Therefore, no evidence should be released without prior approval by the District Attorney's Office in cases where the defendant was ordered to register under Penal Code section 290.

For the retention of any DNA evidence, refer to the DNA portion in the Criteria Based on Evidence Type section of this document. All property, other than photos and interviews, may be purged once the Evidence Release memo is received from the District Attorney's Office.

802.2.3 DOMESTIC VIOLENCE, ELDER ABUSE, AND CHILD PHYSICAL ABUSE CASES

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 physical abuse convictions. This is pursuant to Evidence Code § 1109, which permits all prior convictions of such crimes to be admissible for future cases. This allows the District Attorney to show a pattern of behavior by the defendant 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.

802.2.4 HOMICIDE CASES

For cases in which the defendant(s) is convicted, all evidence and records shall be maintained until the defendant(s) is deceased or released from prison and is on parole. This includes juvenile defendants.

For unsolved homicide cases, all evidence and records shall be maintained indefinitely.

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802.2.5 OFFICE INVOLVED SHOOTING CASES - NO PROSECUTION

For cases in which the suspect(s) is deceased and the District Attorney's Office has declined to file charges, evidence will be retained for a period of 5 years unless an evidence release by the DA's Office stating otherwise has been received.

802.3 CRITERIA BASED ON PROPERTY TYPE

802.3.1 CONTROLLED SUBSTANCES

Even though the District Attorney will issue an Evidence Release memo on narcotics cases, a court order pursuant to HS § 11473, 11473.5 and/or 11474 is required. A sample of a "blanket" HS § 11473 Order is contained in Attachment 3 of this document.

All agencies are authorized to destroy all needles/syringes/glass smoking pipes taken as evidence of Business and Professions Code Section 4140 and Health and Safety Code Section 11364 after the seizing officer photographs 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 the contents shall be collected in a vial for storage and sent to DOJ for testing if requested by the prosecutor.

802.3.2 DNA AND BIOLOGICAL EVIDENCE

DNA evidence used to convict must be maintained until the defendant is released from prison, unless authorized by the District Attorney. The defendant 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 defendant, the defense attorney, the District Attorney, 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.

802.3.3 FIREARMS

The District Attorney will request and forward to the investigating agency an order pursuant to PC § 12028 for the disposition or destruction of any firearm used in a criminal case for which a conviction is obtained. This order will accompany the Evidence Release memo.

Firearms taken in cases in which there is an arrest or bench warrant, 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.

802.3.4 CURRENCY

Any currency taken into the custody of local law enforcement agencies (CAL-MMET, SINTF or SCSO MET) as part of a narcotics sales case will be handled by the respective agency. CAL-MMET handles collected currency for CAL-MMET and SCSO MET. SINTF handles currency from their own cases only.

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In embezzlement cases, the money may be returned to the victim upon case adjudication. The DA's Office will send an Evidence Release memo to the investigating agency after the case has been finally adjudicated and the defendant has been sentenced². If the victim has filed a claim with their insurance company and received compensation, the money should still be released to the victim, absent a court order directing otherwise. This avoids putting your agency in the middle of any dispute between the victim and their insurance carrier.

802.3.5 STOLEN/RECOVERED PROPERTY

With the exception of firearms or other items which are illegal to possess, stolen/recovered items should be photographed and released to the victim/owner. 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 victim with the items to be returned. The victim must also be informed to maintain possession of this property until the criminal case is adjudicated, in case it is needed for prosecution.

802.4 CRITERIA BASED ON METHOD OF SEIZURE

802.4.1 PROPERTY TAKEN BY SEARCH WARRANT

Property taken by search warrant is held by the investigative agency at the direction of, and under the control of, the court. An investigating agency holds the property per PC § 1536.3

All evidence taken as part of a search warrant must have a court order pursuant to PC § 1536 prior to the return or purging of any property. If the original warrant service included a return order, the property can be released by an evidence memo issued by the District Attorney upon case adjudication. Attachment 4 is a sample of an order per PC § 1536 for the return of property. If the return order does not allow for return or purge of the seized property, the DA will request a court order for release of the property at the conclusion of the case.

NOTE: With respect to the exceptions noted in Section 3, if for some reason an Evidence Release memo was never sent after a criminal case was declined, dismissed, or adjudicated and the statute of limitations have expired, the property may be purged without further notice by DA's Office.