

COLLECTION AND PRESERVATION OF EVIDENCE

STANDARD NO(S):

NYSLEAP: Chapter 7 & 51

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REFER TO:

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I. OBJECTIVE:

The proper collection and preservation of physical evidence is extremely important to both the prosecution and defense in criminal cases. In many instances, it is superior to other forms of evidence, particularly oral testimony, such as admissions, statements pertaining to eyewitness identifications, etc. The application of guidelines established in this policy can result in more firmly connecting a suspect to the crime or help eliminate a person wrongly suspected of committing the crime.

II. POLICY:

It shall be the policy of this department to protect crime scenes, to search crime scenes; to identify, collect and preserve evidentiary items; and to maintain the chain of custody for presentation of the collected evidence in court. The SCSO utilizes an electronic **B**ar Coded **E**vidence **A**nalysis **S**tatistics and **T**racking system referred to as "BEAST" for intake, custody, processing, and disposition of every piece of evidence secured.

III. DETAILS:

A. Definitions -

Chain of Evidence: The continuity of the custody of physical evidence from time of original collection to final disposal that may be introduced in a judicial proceeding.

Impounding Officer: Any member of the SCSO who initially receives evidence and initiates the chain of custody.

Physical Evidence: Any substance or material found or recovered in connection with a criminal investigation.

Evidence Coordinator: Designated SCSO member(s) accountable for controlling and maintaining all evidence accepted by or stored in the SCSO evidence room and is responsible for the cleanliness and order of the SCSO property/evidence storage areas. The Sheriff may appoint an aide to the evidence coordinator to assist with the maintaining of evidence. There will not be more than one Evidence Coordinator Aide.

1. The Evidence Coordinator and any appointed aide must successfully complete a course in property/evidence room management within one year of being assigned such duties.

SCSO Property/Evidence Room: Facilities used by the SCSO to store evidence and other items secured for safekeeping.

B. General Responsibilities at a Crime Scene -

1. Initial Responding Officer(s) will:
 - a. Arrest perpetrator if circumstances permit.
 - b. Render first aid.
 - c. Protect the crime scene in order to prevent evidence contaminated, destroyed or removed.
 - d. Notify the duty supervisor if there is a need for a CID Investigator to process a crime scene or secure evidence. When photographs are not taken or when physical evidence is not recovered from the scene of a serious crime against person or property, the officer will indicate the reason why in the narrative of the SPILLMAN report filed in connection with the case.
 - e. Restrict access to a crime scene to those personnel who have official investigatory interest in the incident.
 - f. Transfer command of the scene upon the arrival of the Investigator. The initial responding officer shall promptly pass on to the Investigator all pertinent information relating to the incident and complete all necessary written reports.
 - g. Continue to maintain security of the scene until otherwise directed by the supervisory personnel or Investigator(s).
2. SCSO Uniform Members have the ancillary function of being Evidence Technicians. Every member has received training in proper evidence collection procedures during their initial basic police officer training course.
3. Once a complaint is received where evidence collection work is required, the SCSO uniform member will identify, collect and secure such physical evidence. Most likely, the SCSO uniform member will be limited to gathering evidence relating to misdemeanor crimes and traffic offenses which may include taking photographs and preparing crime scene sketches.

4. Cases involving Felony or serious Misdemeanor crimes may require the expertise of a CID Investigator who has received specialized advanced training in the collection and processing of physical evidence which may include, but not limited to:
 - a. Recovery of latent fingerprints
 - b. Photography
 - c. Crime Scene Sketch
 - d. Collection and preservation of DNA physical evidence

C. Processing evidence at a crime scene –

1. All personnel responsible for processing crime scenes have received specialized training approved by the NYS Division of Criminal Justice Services of how to properly process a crime scene.
 - a. If specialized crime scene processing is required, the Sheriff or his designee may request the services of a crime scene specialist (i.e. Forensic Specialists from the New York State Police, Medial Examiners Office FBI, BATF or other specialized crime scene processing units). If practical, all crime scene processing should be suspended until the arrival of the crime scene specialist(s).
 - b. If crime scene specialists are requested to assist the SCSO in processing a crime scene, the command of the scene remains with the SCSO; however, we will accept their help and will cooperate fully with their suggestions or directions for processing the scene.
2. Duties of Uniformed or CID member assigned to process a crime scene.
 - a. Respond promptly to the crime scene
 - b. Reconstruct the events by methodically searching, identifying and preserving the physical and biological evidence to be collected.
 - c. The collection of evidence shall be in a systematic, organized and recorded manner. Whenever practical, evidence found at a crime scene shall be properly processed (photographed, dusted for prints, etc.) before being moved
 - d. All evidence collected shall be given “Item #” and shall be marked with some identifying mark by the collector preferably by his initials or badge number.
 - e. If appropriate, each item should be packaged in an evidence bag, can or jar. The information on the bag shall be completely filled out by the collector. If evidence is placed in a container without a pre-printed evidence label, the member will complete an evidence label and affix it to the evidence container. Proper marking is essential for positive identification in later court situations.

- f. Evidence containers shall be properly tagged, sealed and stored in accordance with policy. Each article of evidence shall be stored in separate containers to avoid contamination.
 - g. All items taken as evidence must be documented on a SCSO Property Receipt/Evidence Log and Tracking Form and submitted with the evidence into a temporary evidence storage locker.
 - h. Packaging is based upon the item, its size, composition and future processing needs. The appropriate size package should fit the property. In general a more compact package better facilitates storage of the evidence.
 - i. Personnel will use the following to package evidence: Clear plastic evidence bags, paper evidence bags, manila evidence envelopes, metal evidence cans and evidence boxes. Items too large to package—(e.g. bicycles, appliances, furniture), will have an evidence label affixed to them.
 - j. Packaging of items of evidence in a plastic bag will be sealed by means of a heat—(integrity), seal or by use of approved evidence tape. Staples will not be used to seal any package. Boxes and cans will also be sealed with approved evidence tape.
 - k. The officer sealing the package will place his or her initials, in permanent ink, so that they are partially on the package and partially on the evidence tape or seal.
 - l. Anytime a package must be reopened after having been sealed, the package will be neatly cut open—at the bottom when possible), and resealed with approved evidence tape. The person who opened the package will reseal the package and initial the seal.
 - m. Items should be packaged separately if they will be disposed of in different manners.
3. Personnel will collect materials and substances from known sources whenever available, for submission to the forensic laboratory for comparison with physical evidence collected (control sample).
 4. A crime scene sketch made pursuant to the collection and preservation of evidence will include, at a minimum, the following:
 - a. Dimensions of the scene
 - b. Relation of the crime scene to other buildings, geographical features of roads
 - c. Address, floor or room number
 - d. Location of significant features of the scene, including the victim
 - e. Date and time of preparation
 - f. Names of the persons preparing the sketch
 - g. Direction of north
 - h. Location of items of physical evidence recovered
 - i. Notation that the sketch is either “To Scale” or “Not to Scale”.
 - j. Case Number

5. Photographs taken pursuant to the collection and preservation of evidence will include, at a minimum the following:
 - a. Exterior and interior perimeters of the crime scene. The exterior perimeter should physically show the address, approach and escape routes, and the scene in relation to other objects in the area.
 - b. If a central point of the crime exists, such as a homicide victim, four (4) photographs should be taken of the victim as a point of reference encompassing a complete 360 degree circumference.
 - c. All items of an evidentiary nature that will be collected shall be photographed in their natural state prior to being moved.
 - d. All digital photographs, as well as all audio and video recordings will be stored electronically in a secure location on the SCSO computerized systems under the control of the CID Lieutenant.
 - e. If a scene is video taped, photographs are still necessary.
 - f. Nothing in this policy precludes the use of a photo log which may be utilized on major or serious cases.

D. Stolen/Recovered Vehicles –

1. Processing recovered stolen vehicles shall be authorized by the Road Shift Supervisor, or his designee, if appropriate. The chain of evidence shall be maintained and the vehicle and its contents shall be processed for items of evidentiary value. See “**Vehicles Seized, Impounded and Towing**”, this manual. The following criteria may be used to determine if processing of the vehicle will produce substantive results:
 - a. Location of vehicle
 - b. Length of time vehicle was reported stolen
 - c. Used in commission of violent felony
 - d. Upon request of another agency
 - e. Weather conditions

SPECIAL NOTE REGARDING STOLEN/RECOVERED VEHICLES

The Road Shift Supervisor or his designee shall ensure that the reporting agency, owner and other appropriate person receive prompt notification of the recovered vehicle. The vehicle may be released after it no longer holds any evidentiary value, provided that the SCSO member complies with NYS PL Section 450.10(4)(c) which mandates “*A motor vehicle alleged to have been stolen but not alleged to have been used in connection with any crime or criminal transaction other than the theft or unlawful use of said motor vehicle, which is in the custody of a police officer, a peace officer or a district attorney, may be released expeditiously to its registered owner or the owner's representative without prior notice to the defendant. Before such release, evidentiary photographs shall be taken of such motor vehicle. Such photographs shall include the vehicle identification number, registration on windshield, license plates, each side of the vehicle, including vent windows, door locks and handles, the front and back of the vehicle, the interior of the vehicle, including ignition lock, seat to floor clearance, center console, radio receptacle and*”

dashboard area, the motor, and any other interior or exterior surfaces showing any and all damage to the vehicle. Notice of such release, and the photographs taken of said vehicle, shall be furnished to the defendant within fifteen days after arraignment or after counsel initially appears on behalf of the defendant or respondent, whichever occurs later.”

E. Physical Evidence Records –

1. A “Property Receipt/Evidence Log & Tracking Form” (SCSO-LE-040) will be prepared by the collecting personnel on all evidence collected and shall contain the following:
 - a. Item number
 - b. Quantity
 - c. Description of the item (including make, model number, and serial number, if any)
 - d. Location where obtained
 - e. Name of person collecting the item(s).
 - f. Name of officer, along with the date and time evidence was placed in temporary evidence locker or refrigerator.
2. The Property Receipt/Evidence Log & Tracking Form, (SCSO-LE-040) is a two copy report. One copy goes to the Records Division and one copy goes with the evidence and is secured in a temporary evidence locker in the patrol office of the LEC. In the case of an evidentiary item requiring refrigeration, one copy is placed in the Evidence Coordinators mail slot on the Property/Evidence Room Door, so the Evidence Coordinator is aware of a refrigerated evidence sample for processing. Copies are to be made for CID case file and other needs.

F. Member reporting requirements -

1. Prepare a SPILLMAN report of events that transpire at the scene to include:
 - a. Date and time of arrival at scene.
 - b. Location of the crime.
 - c. Name of the victim(s), if known.
 - d. Name of the suspect(s), if known.
 - e. Noting observations of the scene and actions taken during the processing of the scene, including photographs, measurements, sketches, and any other duties performed to further the investigation.
 - f. A list of physical evidence recovered.
 - g. Case file reference number.

G. Temporary evidence lockers – secure refrigerator

1. The SCSO has twenty temporary evidence lockers located in the patrol room at the LEC for the short term storage of evidence secured by the SCSO. The Temporary lockers automatically lock when closed and are accessible only by the Evidence Coordinator from within the secure confines of the SCSO Property/Evidence Room.
2. Evidentiary items of a perishable nature, such as fresh blood, blood stained objects, other physiological stains and tissues, and biological materials are placed in a secure refrigerator located in the patrol office of the LEC. The Officer submits the yellow copy of the form to the Evidence Coordinator who enters the refrigerated evidence item into BEAST and secures it a secure refrigerated unit within the secure confines of the Property/Evidence Room.

H. Items secured as evidence for laboratory analysis –

1. Items of an evidentiary nature that require forensic examination shall be submitted to a laboratory in a timely manner. Items of a perishable nature, such as fresh blood, blood stained objects, other physiological stains and tissues, and biological materials shall be packaged in accordance with generally accepted best practice standards. Refrigerated evidentiary items that are not submitted to a forensic laboratory shall be stored in an appropriate location in the department's evidence storage area.
2. The Sheriff, or his designee, shall authorize all requests for laboratory examinations of evidentiary items, and request that written results of laboratory examinations or analysis be forwarded to the Sheriff, or his designee. The SCSO contracts with the Monroe County Public Safety Laboratory in Rochester, New York. The SCSO Evidence Coordinator will generate within the BEAST system an Evidence Intake Form for any physical evidence submitted to the lab for examination which will include:
 - a. The SCSO case number
 - b. Offense(s)
 - c. NYS Offense Code
 - d. Case Investigator
 - e. Investigator telephone number
 - f. Defendants name, DOB, race and sex.
 - g. SCSO Evidence Item number
 - h. Description of evidence
 - i. Evidence collection location
 - j. Name of Officer collecting evidence and date of collection
 - k. Source (ie: victim/suspect) where applicable
 - l. Laboratory analysis requested.
3. Evidence for laboratory analysis shall be delivered to the laboratory by the evidence coordinator or his designee. The evidence coordinator shall

maintain communication with the laboratory to ensure smooth and timely submission and retrieval of evidence.

I. Evidence Intake – The SCSO utilizes an electronic **B**ar Coded **E**vidence **A**nalysis **S**tatistics and **T**racking system referred to as (BEAST), manufactured by Porter-Lee Corporation.

1. Once the Evidence Coordinator receives evidence and the Property Receipt/Evidence Log & Tracking Form from either the temporary evidence locker, or from the secured evidence refrigerator, the Evidence Coordinator completes the following electronic evidence intake screens in the BEAST. The electronic intake entry screens are identified as follows: (a) Case Information, (b) Case Names, (c) Items, (d) Custody, (e) Submission. Each particular evidence intake screen is described more fully below:

- a. Case Information includes:

- SCSO case number
 - Any related SCSO case numbers
 - Case Officer
 - Offense Date/Time
 - Offense Location
 - Offense Type
 - Expiration date
(automatically entered by BEAST based on offense type)
 - Jurisdiction
 - Court Date
 - Disposition
 - Disposition date
 - Case comments

- b. Case Names – all names associated with specific case to include

- Defendant
 - Victim
 - Person Interviewed

- c. Case Items – all items of evidence secured by Officer including, but not limited to:

- Collection date/time
 - Collection purpose
 - Collected by
 - Collection location
 - Packaging/Quantity/Item Type
 - Detail description
 - Owner
 - Current custody information
 - Process

Item notes

- d. The evidence coordinator completes the Chain of Custody screen for each individual item of evidence and enters the current location within the SCSO Property/Evidence Room where the specific item of evidence will be stored.

After each individual piece of evidence is entered into BEAST, a unique BARCODE is generated automatically which identifies exclusively the particular item of evidence. This unique barcode is affixed to the evidentiary item or to the storage location identified in the custody information screen.

- e. Individual pieces of evidence which must undergo laboratory examination and analysis are migrated and populated into the Evidence Intake Form (Screen 5) from the Case Item Form (Screen 3) from the specific case.

J. Evidentiary items delivered to/picked up from a laboratory -

1. The Evidence Coordinator downloads the Evidence Intake Form onto the BEAST Palm Pilot, scans the barcode on the particular piece of evidence to be submitted to the laboratory, which populates the date, time and Officer signing out the evidence to be transported to a laboratory. Once at the laboratory the Evidence Coordinator scans the evidence barcode and requires laboratory intake personnel to sign the digital signature pad on the BEAST palm pilot. Upon returning to the SCSO Property/Evidence Room, the Evidence Coordinator downloads the change in custody information to show the evidentiary item is located at a laboratory.
2. When testing of evidence located at a laboratory has been completed, the Evidence Coordinator will scan the barcode of evidentiary item at the laboratory into the BEAST palm pilot and sign for picking up the item of evidence.
3. In all cases, whenever evidence is transported to or from any laboratory, the SCSO member will travel the most direct route to and from the laboratory.
4. Whenever evidence is transported to any laboratory a laboratory submission form will be completed that details a complete, descriptive list of items submitted along with testing to be performed. A copy of the submission form will be added to the evidence records. Upon completion of the testing the results of the laboratory testing will also be added to the evidence records.

- K.** The Evidence Coordinator will keep a file of all copies of the Property Receipt/Evidence Log & Tracking Form, (SCSO-LE-040) filed by complaint number, so that all evidence stored can be easily located.

1. Any time that evidence is transferred to and from evidence storage for any other reason than already stated a complete record will be recorded that contains descriptive information for the item, date and time of transfer, the person's identity who receives the item(s), the reason for transfer and the name and location to which the item was transferred. The manner of recording will be via the BEAST system as previously described in section I., J. and K.

L. Security –

1. All evidence is to be secured in an approved, secured evidence location at the completion of officer's tour of duty. At no time shall evidence be stored in an unsecured, unapproved location (i.e. office, personal locker, patrol vehicle).
2. Access to the SCSO property/evidence room is restricted to certain designated SCSO members and Command Staff.

M. Additional Security and Control Measures –

Enhanced security and control measures are in place within the SCSO property/evidence room to safeguard all money, firearms, controlled substances and other high value items within the protective custody of the SCSO.

N. Annual Quality Control Audits--SCSO Evidence/Property Room -

Every year Sheriff will cause both an annual Inventory and an annual Audit to be conducted by a Command staff member not normally charged with the custody of property held by the SCSO. The inventory and audit will include tracking multiple samples of various classifications of evidence to include:

1. Money
2. Firearms
3. Controlled Substances
4. High-Value Items of Evidence

The **INVENTORY** is an "eyes on" review of a sampling of property to verify physical accountability. The inventory will consist of 10% of the total Evidence/Property Room or 100 items—whichever is less.

The **AUDIT** is a complete review of a sampling of property that includes a thorough examination of all records relating to that property. The audit will consist of 5% of the Evidence/Property Room or 50 items—whichever is less.

For quality control purposes, the Command Staff member conducting such sample audit and inventory will conduct the Inventory and Audit at different times; they may not be conducted within 4 months of each other.

During the Audit the Command Staff member will track the intake, forensic testing, storage and disposition of such samples to ensure compliance with generally accepted evidence handling practices.

The member conducting the sample inventory and audit will prepare a report to be forwarded to the Sheriff detailing the findings of such audit and inventory.

In all cases where a new Evidence Coordinator is designated a Command Staff member will perform a sampling audit and inventory and report those findings to the Sheriff.

O. Disposal of Evidence -

1. It will be the duty of the Evidence Coordinator to obtain the required documentation or otherwise information and approve disposal of property.
2. When no longer needed for evidentiary purposes, all evidence, with the exception of firearms and contraband, shall be returned to its lawful owner unless title to the evidence is transferred to this or other jurisdictions by court order. (See “**NYS Penal Law, Section 450.10**”) If the lawful owner fails to claim the evidence, the agency may, as permitted under state law.
 - a. Destroy it
 - b. Dispose of it by public auction or
 - c. Retain it for use by the jurisdiction.
3. Firearms and other non-drug contraband shall be physically destroyed unless
 - a. Court order authorizes use of the item by this agency; or
 - b. The firearm is required by state law to be returned to its lawful owner.
5. Firearms, drugs and other non-drug contraband will be destroyed in an approved DEC incinerator with two witnesses present, one being a law enforcement officer. All appropriate paperwork must be obtained and filed per NYS Law before and after any such evidence or property is destroyed.

P. Disposal of stolen property.

1. Any evidence in the possession of the SCSO which may be returned to the rightful owner(s) pursuant to the provisions of New York State Penal Law Section 450.10 will be returned according to law.

2. Any member releasing evidence pursuant to law will complete a Property Release Notice (SCSO-LE-041) and file such Notice with the Records Division, Evidence Coordinator, Defendant or Defendant's Attorney, District Attorney and case file.

NOTE – Applicable statute cited below -

NYS PENAL LAW SECTION 450.10

1. When property, other than contraband including but not limited to those items subject to the provisions of sections 410.00 (equipment used in photographing, filming, producing, manufacturing, projecting or distributing pornographic still or motion pictures); 415.00 (vehicles, vessels and aircraft used to transport or conceal gambling records); 420.00 and 420.05 (equipment used in the production of unauthorized recordings) of the New York State Criminal Procedure Law, alleged to have been stolen is in the custody of a police officer, a peace officer or a district attorney and a request for its release is made prior to or during the criminal proceeding, it **may not be released except as provided in subdivisions two, three and four of this section.** When a request is made for the return of stolen property under this section, the police officer, peace officer or district attorney in possession of such property must provide written notice to the defendant or his counsel of such request as soon as practicable. Such notice shall advise the defendant or his counsel of the date on which the property will be released and the name and address of a person with whom arrangements can be made for the examination, testing, photographing, photocopying or other reproduction of said property.
2. Both the defendant's counsel and the prosecutor thereafter shall make a diligent effort to examine, test and photograph, photocopy or otherwise reproduce the property. Either party may apply to the court for an extension of any period allowed for examination, testing, photographing, photocopying or otherwise reproducing the property. For good cause shown the court may order retention of the property for use as evidence by either party. Unless extended by a court order sought by either party on notice to the other, the property shall be released no later than the time periods for retention set forth in subdivisions three and four of this section to the person making such request after satisfactory proof of such person's entitlement to the possession thereof. Unless a court, upon application of either party with notice to the other, orders otherwise, the release of property in accordance with the provisions of this section shall be unconditional.
3. Except as provided in subdivision four of this section, when a request is made for the release of property described in subdivision one of this section, the property shall be retained until either the expiration of a fifteen day period from receipt by the defendant or his counsel of the notice of the request, or the examination testing and photographing, photocopying or other reproduction of such property, by the parties,

whichever event occurs first. The fifteen day period may be extended by up to five additional days by agreement between the parties.

4. (a) Except as provided in paragraphs (b) and (c) of this subdivision and in subdivision eleven of this section, when a request is made for the release of property described in subdivision one of this section, and the property shall consist of perishables, fungible retail items, motor vehicles or any other property release of which is necessary for either the operation of a business or the health or welfare of any person, the property shall be retained until either the expiration of a forty-eight hour period from the receipt by the defendant's counsel of the notice of the request, or the examination, testing and photocopying, photographing or other reproduction of such property, by the parties whichever event occurs first. The forty-eight hour period may be extended by up to twenty-four additional hours by agreement between the parties. For the purposes of this section, perishables shall mean any property likely to spoil or decay or diminish significantly in value within twenty days of the initial retention of the property.

(b) If, upon oral or written application by the district attorney with notice to the defendant or his counsel, a court determines that immediate release of property described in paragraph (a) of this subdivision is required under the attendant circumstances, the court shall issue an order releasing the property and, if requested by either party, setting, as a part of such order, any condition appropriate in the furtherance of justice.

(c) A motor vehicle alleged to have been stolen but not alleged to have been used in connection with any crime or criminal transaction other than the theft or unlawful use of said motor vehicle, which is in the custody of a police officer, a peace officer or a district attorney, may be released expeditiously to its registered owner or the owner's representative without prior notice to the defendant. Before such release, evidentiary photographs shall be taken of such motor vehicle. Such photographs shall include the vehicle identification number, registration on windshield, license plates, each side of the vehicle, including vent windows, door locks and handles, the front and back of the vehicle, the interior of the vehicle, including ignition lock, seat to floor clearance, center console, radio receptacle and dashboard area, the motor, and any other interior or exterior surfaces showing any and all damage to the vehicle. Notice of such release, and the photographs taken of said vehicle, shall be furnished to the defendant within fifteen days after arraignment or after counsel initially appears on behalf of the defendant or respondent, whichever occurs later.

6. If stolen property comes into the custody of a court, it must, unless temporary retention be deemed necessary in furtherance of justice, be delivered to the owner, on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the court.

7. If stolen property has not been delivered to the owner, the court before which a trial is had for stealing it, may, on proof of his title order it to be restored to the owner.
7. If stolen property is not claimed by the owner, before the expiration of six months from the conviction of a person for stealing it, the court or other officer having it in custody must, on payment of the necessary expenses incurred in its preservation, deliver it to the county commissioner of social services, or in the city of New York, to the commissioner of social services, to be applied for the benefit of the poor of the county or city, as the case may be.
8. Except in the city of New York, when money or other property is taken from a defendant, arrested upon a charge of an offense, the officer taking it must, at the time, give duplicate receipts therefore, specifying particularly the amount of property taken, one of which receipts he must deliver to the defendant, and the other of which he must forthwith file with the court in which the criminal action is pending.
9. The commissioners of police of the city of New York may designate some person to take charge of all property alleged to be stolen, and which may be brought into the police office, and all property taken from the person of a prisoner, and may prescribe regulations in regard to the duties of the clerk or clerks so designated, and to require and take security for the faithful performance of the duties imposed by this subdivision, and it shall be the duty of every officer into whose possession such property may come, to deliver the same forthwith to the person so designated.
10. Where there has been a failure to comply with the provisions of this section, and where the district attorney does not demonstrate to the satisfaction of the court that such failure has not caused the defendant prejudice, the court shall instruct the jury that it may consider such failure in determining the weight to be given such evidence and may also impose any other sanction set forth in subdivision one of section 240.70 of the criminal procedure law; provided, however, that unless the defendant has convinced the court that such failure has caused him undue prejudice, the court shall not preclude the district attorney from introducing into evidence the property, photographs, photocopies, or other reproductions of the property or, where appropriate, testimony concerning its value and condition, where such evidence is otherwise properly authenticated and admissible under the rules of evidence. Failure to comply with any one or more of the provisions of this section shall not for that reason alone be grounds for dismissal of the accusatory instrument.
11. When a request for the release of stolen property is made pursuant to paragraph (a) of subdivision four of this section and the defendant is not

represented by counsel the notice required pursuant to subdivision one of this section shall be personally delivered to the defendant and release of said property shall not occur for a period less than five days: from (a) the delivery of such notice; or (b) in the case of delivery to such person in custody, from the first appearance before the court, whichever is later.

- Q. SPECIAL CIRCUMSTANCES** – In special cases of civil process, it may be necessary to post a deputy sheriff to guard seized property. In this event, cost of labor will be charged and will be paid in advance of any seizure
- R. RIGHT OF REFUSAL** – The Evidence Coordinator has the right and authority to refuse evidence submissions when problems with the submissions are identified. Examples of such problems are:
1. Improper and/or incomplete chain of custody.
 2. Improper and/or incomplete data relating to the location of the seizure.
 3. Improper and/or incomplete packaging of evidence pursuant to established procedures.
 4. Safety issues including, but not limited to, improper and/or incomplete packaging of accelerates, bio-hazards, sharps and weapons.

If the submitting officer and Evidence Coordinator are both present at the time of submission and refusal the Evidence Coordinator will advise the submitting officer the reason for refusal and advise remedial action needed. The submitting officer will maintain custody of the evidence, take remedial action and then re-submit.

If the submitting officer is not present at the time of refusal the Evidence Coordinator will maintain the evidence in temporary evidence storage and notify the submitting officer in writing the reason for the refusal and remedial action required. It will then be the responsibility of the submitting officer to meet with the Evidence Coordinator at the earliest opportunity to remedy the problems.