Disposition of Seized Firearms

Purpose

This Training Bulletin provides procedures for detectives on how to approve the release or destruction of firearms held in the Evidence Section at the police department. Refer to D.O. 360 (Procedure for Domestic Violence Response) and D.O. 630 (Procedure for Disposition of Evidence) for additional information on weapon disposition involving Domestic Violence cases.

Introduction

Many circumstances require the seizure of a firearm by police officers. These can include weapons being held as evidence, safekeeping, recovered property, found property, or weapons being held for observation. Each of these areas has specific steps for the final disposition of the firearm. Due to existing policy, new case law, liability exposure and limited storage space, the following procedures shall be followed to assist in the timely disposition of weapons retained in the SAPD Evidence Section. All firearm disposition requests will require approval from the case detective or detail sergeant, CSI supervisor, firearms examiner and Weapons Interdiction Team (WIT) detective.

I. Weapons Seized As Evidence

Weapons seized as evidence will be processed for disposition using a Firearms Tracking Sheet. The Firearms Tracking Sheet will be initiated by the Evidence Section or a member of the Weapons Interdiction Team. The process for disposition will be followed using the guidelines in this training bulletin and/or related Departmental Orders.

1. Forward the Firearm Tracking Sheet to the Crime Lab who will verify all requested lab, ballistic, and NIBIN exams have been completed. The firearms examiner will verify and identify the make, model, caliber and serial number of the firearm.
   a. In August 2008, the International Association of Chiefs of Police has expressed its full support for the 2008 Survey of Law Enforcement Forensic Evidence Processing which is being conducted by RTI International on behalf of the U.S. Department of Justice, National Institute of Justice (NIJ).
   i. This is to include estimating the types of forensic evidence (biologicals to include DNA, trace evidence, latent print, firearms/tool marks) that comprise the nation’s forensic evidence caseload for homicides, rapes, and property crimes.
2. Upon receipt of the request, the CAP Sergeant will:
   a. Review the crime report and verify the make, model, caliber, color and serial number of the firearm(s).
   b. Confirm the court disposition of the case such as conviction, dismissal, plea, pending, possible appeal, and statute of limitation of pertinent crimes.
   c. Confirm investigatory disposition of the case such as arrest, closed, inactive and any possibility of future need for the firearm.
3. A detective from WIT will review the crime report and verify the make, model, caliber, color and serial number of the firearm(s). He will then verify who the rightful owner is through computer checks, interviews, or other investigative methods. Many firearms will show no record on file in the Automated Firearms System. (Rifles and shotguns will not be reported in AFS). ATF can perform a trace on the firearm to determine the firearm's origin, including the dealer and purchaser information.
   a. When possible, all stolen firearms shall be returned to the owner reporting the weapon as stolen.

   i. PC§12028(f): No stolen weapon shall be sold or destroyed unless reasonable notice is given to its lawful owner, if the owner’s identity and address can be reasonably ascertained.

   b. PC 12021.3: Any person who claims title to any firearm that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm(s) returned to him or her shall make application for a determination by the Department of Justice as to whether he or she is eligible to possess a firearm.

   c. If the Department of Justice determines the individual is eligible to possess a firearm, the WIT detective will complete a comprehensive record check of the person requesting the firearm, the listed owner on the police report, and/or the registered owner of the weapon.

The records check will consist of the following:

1. Wants and warrants (968) for EPO, TRO, Domestic Violence restrictions per Civil Code 6218 and Family Code 527.6/527.8 and any outstanding warrant.
2. Criminal history/RAP sheet for prior felony arrest restrictions per PC 12021.1, prior misdemeanor restrictions per PC 12021(c)(1), probation restriction per PC 12021 (d), and any parole status.
3. CJI for any juvenile tried as an adult restriction pursuant to W&I 707(b) and described under PC 1203.073(b) and PC 12021(c)(1).<
4. SAPD record check for past contacts or any 5150/5250 detentions.
5. SAPD address query for prior contacts at the location for any narcotics, gang or mental health issues.
6. SAPD Field Interview card query for police contacts and associate information.
7. Cal-Gangs check for gang member restrictions per PC 12031(a)(2)(c) / 12031(a)(1)(c).
8. The WIT detective will authorize the return of the weapon to the owner when there are no restrictions or prohibitions, if the weapon is not registered to another, the
weapon is no longer of evidentiary value, and the weapon was purchased legally or was a gift from another.

9. The WIT detective will authorize the return of the weapon to the arrestee when the case has been closed, dismissed, or otherwise concluded, and there are no restrictions/prohibitions.

10. Alternatives to destroying or returning weapons: The weapon may be added to the SAPD reference library or utilized by the department as deemed necessary and in accordance with the law as well as with the CAP, Commander’s approval.

II. Weapons Reported As Found, Turned In for Destruction, Taken Into Safekeeping, Recovered Property or Under Observation

1. These types of seizures are usually documented on Information reports.

2. The most common reasons are:
   a. **Domestic Violence**, EPO and TRO seizures refer to D.O. 360 and PC 12028.5.
   b. **W&I 5250 Commitments**: Subjects are prohibited from owning or possessing firearms for 5 years or life. Notify the owner of the option to sell the weapon to a FFL Dealer or recommend destruction of the weapon. DOJ will confirm 5250 status.
   c. **W&I 5150 Detainees**: Weapons are held for observation only and are no longer prohibited. If there are no other restrictions, the weapon must be returned. DOJ will confirm 5150 status.
   d. **Search Warrant Seizures**: Requires a comprehensive background check as listed previously and notification to the owner of the necessary procedures before the firearm can be returned. Ballistics exams may apply and must be requested promptly. Priority can be obtained through the WIT detective.
   e. **Found, Turned in for Safekeeping, Recovered Property**: Requires a complete background of the weapon, the registered owner, and a NIBIN entry. Then apply appropriate disposition.
   f. **Under Observation as Possible Evidence or Suspected Stolen Property**: Requires a comprehensive background check, and appropriate lab, ballistic, and NIBIN exam. Then apply appropriate disposition.
   g. **Turned in for Destruction**: Requires a comprehensive background check, NIBIN entry and lab exams. Then apply appropriate disposition.
   h. **Safekeeping During a Legal Detention**: Is the same as the search warrant procedures listed previously.

3. All weapons that are not seized as evidence must be processed as quickly as possible in order to avoid liability and storage issues.

4. The WIT detective can assist with questions and complications you may encounter concerning the proper disposition of any firearm.

**NOTE**: A firearm shall not be released to any individual unless the person seeking its return presents and approved DOJ eligibility letter (LEGR) and is listed in DOJ’s Automated Firearms System (AFS) as the owner of the firearm.
III. Other Disposition Requests

A. Court Ordered Destruction

The WIT detective will:

1. Review the case to verify status and weapon description.
2. Ensure ballistic entries were completed.
3. Perform comprehensive background check.
4. Insure firearm is not registered to an uninvolved party. If so, mail a notice to the owner.
5. Complete a Disposition Request Form.

B. Outside Agency Teletype Advising of Our Recovered Stolen Firearm

1. Records will forward a teletype to the WIT Detective who will review the teletype and case file.
2. The WIT detective will contact the outside agency to determine the status of their case.
3. The WIT detective will have the weapon delivered to our agency, either by mail or other means, if the victim is located.
4. The WIT detective will ensure the weapon is entered into the NIBIN.
5. The WIT detective will complete a comprehensive background check on the owner and firearm.
6. The WIT detective will complete a Firearm Tracking Sheet as previously described.
7. The WIT detective will notify the owner of the disposition of the firearm.

C. Our Recovery of Outside Agency Stolen Firearm

1. The case detective will review the case file to verify the firearm is no longer evidence and request a NIBIN examination.
2. The WIT detective will complete a Firearm Tracking Sheet directing the firearm be sent/mailed to the agency reporting the weapon stolen for return to the owner.

D. DOJ Letter of Advisement of Mental Prohibition

1. Federal law can prohibit firearm possession for life due to a mental commitment, per Title 18 Section 922(g)(4)
2. DOJ will send a letter when a prohibited person has purchased a
3. The WIT detective will complete a comprehensive background check on the subject.
4. The WIT detective will telephone DOJ Mental Health information to confirm the letter.

5. The WIT detective will contact the local ATF Agent at 714-347-9100 for Federal prosecution.

6. The WIT detective will make a copy of the letter for case documentation purposes.

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Revised By: Detective Jim Garcia

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