

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: November 18, 2016

NUMBER: 3.22 - INVESTIGATIONS

SUBJECT: PLACING AND RELEASING HOLDS ON PAWNED
PROPERTY

RELATED POLICY: N/A

ORIGINATING DIVISION: INVESTIGATIONS I

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: DP 3.22 – 08/30/2012

I. PURPOSE

This Department procedure establishes guidelines for placing and releasing holds on pawned property.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

It is the intent of this section to establish a set of procedures for officers to identify and recover property from secondhand dealers, pawnbrokers, and coin dealers. The 90-day hold is a useful investigative tool, which can be used prior to the actual physical seizure of an item or, in some instances, when seizure is not anticipated.

IV. DEFINITIONS

A. The 30-day holding period is a State-mandated timeframe, during which property received by a pawnbroker, secondhand dealer, or junk dealer must be held in the store. The holding period begins on the date the acquisition was reported to the

Chief of Police and pertains to all property taken in trade, pawn, or consignment, per section 21636 of the Business and Professions Code.

- B. Pawn means that a loan has been made on the property taken into a pawnshop. The property pawned can be redeemed any time during the loan period. The length of a loan period is four months. If any pledged article is not redeemed during the four-month loan period, the pawnbroker must notify the borrower of the termination of the loan period and extend the right of redemption for a period of ten days from date of mailing, per section 21201 of the Financial Code.
- C. The 90-day hold is the time period during which a pawnbroker, secondhand dealer, or coin dealer must retain property if a peace officer places a hold on such property because the peace officer has probable cause to believe the property is stolen, per section 21647 of the Business and Professions Code, and section 21203 of the Financial Code.

V. WHEN TO UTILIZE THE 90-DAY HOLD PROCEDURE

- A. A 90-day hold should be used when the officer has probable cause to believe property is stolen and additional time is needed to make a positive identification or have the victim view the property. This type of hold does not preclude the actual physical seizure of the item at a later time.
- B. The hold procedure should be used unless the following three factors are present:
 - 1. There is no question that the property in question is stolen;
 - 2. There is no question related to the identity of the property; and,
 - 3. There is a reasonable likelihood a case will be issued by the prosecuting agency.

If these three factors are present, then the detective may seize and impound the property.

VI. PROCEDURE TO PLACE PROPERTY ON A 90-DAY HOLD

- A. Any peace officer may place a verbal hold on stolen property found in a pawn or secondhand shop. All verbal holds must be followed up by a written notification. Only written notification legally obligates the storeowner to hold the property, per section 21647(a) of the Business and Professions Code.

- B. The officer will notify the Police Permits and Licensing Unit of the verbal hold and provide the case number, location, description of the property, the name of the pledger or seller, the date of the transaction, and the loan/buy number.
- C. The Police Permits and Licensing Unit will follow-up by calling the store, verifying hold information, issuing an official hold number, forwarding written notification to the shop operator, and documenting the action in the "hold book" in accordance with section 21647(a) of the Business and Professions Code.
- D. The written notification includes the hold number (assigned by the Police Permits and Licensing Unit), loan/buy number, area station conducting the investigation, and date the hold expires.
- E. The Police Permits and Licensing Unit will forward a copy of the transaction slip and the 90-day hold notification letter to the assigned detective.
- F. The investigator shall notify the Police Permits and Licensing Unit within the 90-day hold period regarding the disposition of the case and the property.
- G. If any disagreements or problems arise with the shop owner or employees while placing the hold on an item, the officer should immediately call the Police Permits and Licensing Unit at (619) 531-2250 for clarification or assistance. If this is not feasible, and if the issue is not resolved satisfactorily, then the officer should seize the property and report the incident to Permits and Licensing Unit as soon possible.

VII. PROPERTY IDENTIFICATION

- A. The victim/witness should be accompanied to the shop by an officer, whenever possible.
- B. If the officer is unable to be present, he/she must make prior arrangements for the victim/witness to look at the property. The officer will provide the shop with the person's name, the time of the viewing, and the items to be viewed.
- C. Officers should obtain statements regarding identifying marks prior to the victim/witness viewing the property.
- D. The officer should advise the victim/witness not to make any statements about the case in the presence of shop employees.

VIII. PROCEDURE FOR RELEASING HOLDS

Once it is determined the property is not stolen, or the item is no longer needed in a criminal investigation, the hold shall be released.

- A. When the hold is no longer necessary, the officer shall notify the Police Permits and Licensing Unit. The officer will provide the hold number and information as to whether a person other than the secondhand dealer is authorized to receive the property.
- B. The officer shall contact the Police Permits and Licensing Unit with release information, including name and address of the person to receive the property if different than the dealer.
- C. The Police Permits and Licensing Unit shall complete a Hold/Release form (PD-89) in triplicate. If the person to receive the property is someone other than the dealer, the original form (white copy) and second page (yellow copy) will be provided to the victim. The victim shall be instructed to take the original form to the store within 60 days (per section 21647(c)(3) of the Business and Professions Code), and the yellow copy is for the victim's records. The pink copy will be retained in the Police Permits and Licensing Unit. If the property is being released to the dealer, the original form (white copy) shall be mailed to the store. The Police Permits and Licensing Unit shall retain the yellow and pink copies.
- D. The Hold/Release form (PD-89) advises the person claiming ownership that the law "neither requires nor prohibits payment of a fee or other condition in return for the surrender of the property" (per section 21647(c)(2) of the Business and Professions Code).
- E. The law does not require a person claiming ownership to buy the property back, but it does not preclude a pawnbroker, secondhand dealer, or coin dealer from asking for reimbursement of his or her costs.
- F. If the person claiming ownership or rightful owner decides not to reimburse the pawnbroker or the secondhand dealer, and the dealer refuses to return the property, the person claiming ownership may regain the property by negotiating an agreement with the pawnbroker or by seeking civil remedy.
- G. A pawnbroker, secondhand dealer, or coin dealer may recover out of pocket expenses paid in the acquisition of alleged stolen property, if the owner chooses not to participate in the prosecution of an identified alleged thief. The property owner must pay under these circumstances, but the secondhand dealer may not realize a profit, in accordance with section 21647(c)(2) of the Business and Professions Code.

IX. PROPERTY REQUIRED AS EVIDENCE FOR COURT

- A. The investigating officer will determine which shop employee accepted the property and obtain their name, address and telephone number, and the type of identification used by the suspect. If appropriate, the investigating officer may charge Penal Code section 484.1, in addition to the other charges against the suspect. If a violation of Section 484.1 is issued, the pawnbroker would be a victim for purposes of obtaining restitution from the defendant, and such status may assist the court in resolving ownership claims.
 - 1. This information is to be included by the investigating officer in the District Attorney's packet on the witness list and within the investigator's report to the District Attorney's Office.
 - 2. The property and the employee may be subpoenaed by the District Attorney's Office.

- B. Property needed as evidence in a criminal case should be impounded pursuant to Department Procedure 3.02, Impound, Release, and Disposal of Property, Evidence, and Articles Missing Identification Marks.
 - 1. If the property is introduced into evidence in the criminal trial, or if the property is seized with a search warrant, the Court is bound to adjudicate competing ownership claims.
 - 2. The investigating officer should notify the pawnbroker of any Court hearing to return property.

- C. The investigating officer shall notify the Police Permits and Licensing Unit when property is seized from the shop as evidence for court.

- D. When the actual item is not needed as evidence in court, the investigating officer must then follow the procedures outlined in Department Procedure 3.02, Impound, Release, and Disposal of Property, Evidence, and Articles Missing Identification Marks.

- E. It is unlawful to seize property from a dealer for the purpose of returning it to a victim. Property seizures must be based on probable cause and with a good faith belief that the property is necessary as evidence for a criminal case.