



Independent Review Panel Investigation Into the
Destruction of Evidence At The Aurora Police Department
Final Report

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The Destruction of Evidence at the Aurora Police Department

In June of 2013, the Aurora Police Department (APD) discovered that DNA evidence in 455 cases had potentially been prematurely destroyed by members of the department's property storage unit staff. Chief Dan Oates convened both an internal audit group and an independent panel of five members of the law enforcement community to analyze the destruction of the evidence and to issue a report of the panel's findings.

The APD's internal audit group looked at each case possibly affected by the destruction of the evidence then handed the investigation to the independent panel for review. Over the course of the past 11 months, the panel met with members of the police department's executive staff, interviewed both officers and civilians of the unit, examined the processes, protocols and forms for property handling, toured the storage facility at the Aurora Police Department's headquarters, and consulted outside authorities in evidence retention and destruction practices. In addition, members of the panel reviewed the cases in which the DNA evidence was destroyed to assess whether the destruction was in compliance with Colorado's preservation of DNA evidence statutes.¹

The independent panel concludes that there was no willful misconduct in the Aurora property unit's destruction of the evidence. Any improper destruction was an oversight due to inadequate staff training, lack of close supervision, and lack of adherence to protocols during a specified time period from late-2011 to mid-2013. The destruction of the evidence was in no way done in bad faith or with malicious intent.

This report examines what happened at the Aurora Police Department's property unit that led to the destruction of the evidence and provides the panel's recommendations for the unit going forward.

The Destruction of Evidence

The Aurora Police Department ("APD") consists of approximately 650 police officers covering 145 square miles and serving more than 330,000 residents. The APD averages 22,000 arrests each year, collecting anywhere from 45,000 to 50,000 pieces of evidence annually. Like other police departments, the APD's officers collect evidence consistent with the forensic capabilities of the 21st century. Thus, with the advent of newer, sophisticated DNA technology, officers are cognizant to collect items whose evidentiary value may not be readily apparent at the time of the crime but may become a valuable source of biological evidence as an investigation develops.² With such forensic advancements comes a significant responsibility to maintain and store a greater quantity of physical evidence than ever before.

Like other departments of its size, the APD has several locations for the intake and storage of the nearly 300,000 pieces of evidence currently retained. The APD's main headquarters located at District 2 has a

¹ Colorado Revised Statutes §§18-1-1101 -1108.

² The contrary may also occur in which items of evidence are collected with a belief that they may have evidentiary value but further investigation concludes that they do not have evidentiary value.

modest space for the intake of evidence and some storage of jewelry, guns, drugs and biological evidence that needs refrigeration. The APD owns seven additional evidence storage locations throughout north and central Aurora.³ Except for one warehouse, the satellite locations are not independently staffed; rather the property unit employees at District 2 deliver and retrieve evidence from these facilities on a daily basis.

Because of the massive volume of evidence collected each month, it is crucial that the property unit also destroys evidence in cases in which it is proper to do so in order to create room for the new evidence coming in. The APD is not alone in its storage limitations; property units in Colorado and across the country are under constant pressure to identify and destroy property in order to create space for active case evidence. Evidence destruction, when done at the proper juncture and following the proper protocol, is as integral a part of the property unit's functions as evidence maintenance.

Historically, the APD property unit was supervised by a civilian employee of the police department. In 2004, the property custodian position was assigned to an APD sergeant, which remains the same today. The property unit usually consists of the sergeant, five civilian property technicians, six citizen volunteers and one or more temporary or limited-duty APD officers.

The chain of command of the property unit and staff responsibilities has been as follows:

- Captain (Technical Services Bureau): Oversees the property unit; conducts annual and semi-annual inspections
- Lieutenant (Technical Services Bureau): Oversees the property unit; conducts monthly audits
- Sergeant (Property Custodian): Oversees the property unit and staff
- Civilian Property Technicians: Intake, computer entry and determination of storage location, disposition letters, customer service (for officers logging in property and citizens inquiring about return of property), delivering property to and from storage locations, staffing warehouse (2-4 hours per day), quality control and destroying evidence
- Citizen Volunteers: Audit jewelry, remove disposed items from computer, pull invoices for destruction and match invoices to property before giving to property technicians for destruction
- Limited Duty, Light Duty or Temporary Assignment Officers: Case review for authorization of property destruction.

The sergeant in the property custodian position has not been a long-term position.⁴ During the transition to a new sergeant taking over supervision of the unit, there are several levels of mandated

³ These locations vary in size from a 9600-square foot warehouse to smaller storage pods in the former municipal jail cells of 732 square feet.

⁴ For example, since 2004 there have been six property custodians.

training.⁵ The incoming sergeant is trained by the departing sergeant. Training includes daily, weekly, monthly, quarterly, semi-annual and annual tasks and specifically includes five “high liability” items: DNA evidence, guns, drugs, cash and jewelry. In addition, the sergeants who supervised the unit from 2007 through 2013⁶ attended training classes offered by the International Association for Property and Evidence (IAPE)⁷. The sergeant who took over the property unit duties in 2011 also received training from the Colorado Association of Property & Evidence Technicians (CAPET).

The training of the rest of the property unit staff has operated in similar fashion: limited-duty officers trained incoming limited-duty officers; civilian property technicians trained incoming civilian property technicians; etc. While this has been the informal protocol, ultimately, the property custodian remained responsible for all staff training. From late 2011 to mid-2013, it appears that three new property technicians were hired and at least 19 limited or light-duty officers rotated in and out of the unit. There is little documentation indicating the training the property unit staff received during this time period or whether all members of the unit were consistently trained to the department’s formal/informal standards.

The intake of property to the APD follows a fairly routine protocol. Crime scene investigators, officers, or detectives bring evidence to one of the three APD district stations and complete a Property Sheet. Since no property technician staffs District 1 or District 3, the property that is stored in a safe or secured locker in these locations is picked up every morning and transported to District 2. A property technician at District 2 inputs the property information into the Versadex Report Managing System (“Versadex”) and the property is assigned a storage space either in the property facility at headquarters or at one of the other satellite locations. Evidence requiring refrigeration is stored in the property unit’s refrigerated unit or freezer at headquarters or at another properly equipped location in the former municipal jail.

To accommodate incoming evidence, the property unit regularly reviews cases that are more than three years old to determine whether the property must be retained. For uncharged cases, the statute of limitations for most felony cases is three years from the commission of the offense; the statute of limitations for sex offenses is generally 10 years.⁸ Thus, the first step in identifying appropriate cases for

⁵ See APD Policy 7.1.1. Required Training and Essentials Job Skills and APD Standard Operating Procedures 2006, revised February 23, 2013: Civilian Training.

⁶ The sergeant assigned as the property custodian from June of 2007 to September of 2011 had only received eight hours of training before taking over the unit. Recognizing this shortcoming, he then took it upon himself to reshape the practice of the property unit, attend outside training programs and ensure that the incoming sergeant received 40 hours of training before the new sergeant took over as official property custodian.

⁷ IAPE is a non-profit organization which has adopted professional standards and offers manuals and programs in property and evidence management training to become a Certified Property and Evidence Specialist.

⁸ The statutes of limitation for crimes committed in Colorado may be found in Colorado Revised Statutes §16-5-401. There are numerous provisions affecting the statute of limitations in sex assault cases when the victim is an

evidence destruction begins with cases whose statute of limitations have run. Prosecuted cases with DNA evidence, however, have more stringent destruction restrictions. The 18th Judicial District Attorney's Office created guidelines for APD to follow concerning the retention and destruction of evidence, including DNA evidence. These guidelines are found in the APD's Officer's Property and Evidence Manual and indicate that it is the responsibility of the property custodian to send a notice to the investigating officer, who then has 10 days to respond on whether evidence may be destroyed. With DNA evidence in cases resulting in a conviction, the officer must contact the district attorney's office for permission to destroy the evidence.⁹

It is the panel's informal observations that the day-to-day operations of the APD property unit appear to function smoothly. Indeed, this was substantiated by the last accreditation of the APD, which included the property unit, by the Commission on Accreditation for Law Enforcement ("CALEA") in 2012. In addition, a change-of-command audit was completed by APD at the end of August 2013. At the time of the audit 273,551 pieces of evidence were in storage. A random inquiry into 2,995 of those items found that all items were accounted for and only a few minor clerical and barcode label issues were noted. At the time of the audit in August of 2013, the destruction of evidence was still suspended, as explained below.

Concerns regarding the improper destruction of DNA evidence were first realized in May of 2013 when an APD detective was notified that a possible match of a DNA profile collected from a 2009 sex assault case was detected in CODIS.¹⁰ The detective went to the APD property unit to retrieve the original DNA sample and was told it was destroyed along with all the other case evidence.

Shortly thereafter, the APD suspended evidence destruction and conducted an internal audit of all evidence destroyed from March 18, 2009, through June 27, 2013.¹¹ The APD internal audit group included four sergeants, four detectives and two lieutenants. Members of the internal audit group could not review their own cases and in cases where a property custodian authorized the destruction of evidence, the case was reviewed by a lieutenant. Crimes included sex assaults, aggravated assaults, traffic accidents, homicides, burglaries, motor vehicle thefts and robberies. The internal audit group

adult, the minimum statute of limitations being 10 years from the commission of the offense. There is no statute of limitations of sexual assault of a child.

⁹ It should be noted that the APD has policy and protocols in place for the collection, packaging and storing of evidence as well. This panel did not conduct a critical review of those policies, and except for what is recommended in the next section, the policies and procedures appear to be comprehensive and would allow for the proper handling of DNA evidence if such policies and procedures are followed.

¹⁰ CODIS is the Combined DNA Index System, a computer software program that houses local, state and national databases of DNA profiles from convicted offenders, unsolved crime scene evidence and missing persons.

¹¹ Colorado enacted a DNA evidence retention statute that went into effect on March 18, 2009. June 27, 2013, is the date that the review of all destroyed DNA evidence began and destruction was put on hold.

compiled a list of the cases and their analysis of whether the destruction was proper for the panel's review.

The internal audit group found that 893 pieces of DNA evidence were destroyed in 455 cases. The internal audit group reviewed reports, summarized the facts and determined the investigatory or prosecutorial stage of each case. However, not all of the DNA evidence was directly "relevant to a disputed issue in the investigation and prosecution of the case."¹² The independent panel found that the APD's definition of "DNA evidence" was quite broad and overly inclusive. For example, if there was blood on a victim's shirt that was determined to be the victim's blood, the APD considered that DNA evidence; however, the panel did not consider that to be DNA evidence as defined by the statute because the victim's blood would not be a disputed issue. Similarly, a defendant's own buccal swab, which could be replaced by taking a new buccal swab, was also treated as DNA evidence by the APD but not by the panel. The panel did agree, however, with the APD's internal audit's finding that the bulk of the destroyed evidence happened from September 2011 until its discovery in June of 2013.

Approximately 19 limited-duty officers had rotated through the property unit during this time period and authorized the destruction of much of the evidence; however, several detectives and crime scene investigation personnel also authorized DNA evidence to be destroyed without following the established protocol.

The breakdown in protocol during this time period happened in several ways:

- Property unit staff members sent letters to case detectives inquiring about destroying evidence. The case detectives would either not know or not remember that the evidence would have possible DNA value and would authorize the destruction of the evidence. The property unit staff member would then destroy the evidence without regard to whether it was DNA evidence.
- The case detective signed off on property destruction and either did not know that notice had to go to the district attorney's office before destroying DNA evidence or assumed that even if they signed off on it, the property custodian would "catch" that it was a DNA case and seek district attorney's office approval before destroying it.
- Property unit staff sent letters to case detectives and detectives never responded. Property unit staff destroyed the evidence.
- Property unit staff did not know the protocol for notifying the property custodian or the district attorney's office about DNA evidence that they wanted to destroy. Even if the evidence was marked "DNA," the staff member destroyed it because they did not know it required property custodian approval.

¹² The DNA evidence preservation statute defines "DNA evidence" as follows: "'DNA evidence' means all evidence collected by law enforcement in a criminal investigation, which evidence may be reasonably believed to contain DNA that is relevant to a disputed issue in the investigation and prosecution of the case." Section 18-1-1101(3), C.R.S.

- The property custodian did not follow the established procedure for evaluating DNA evidence for destruction and did not communicate to the staff that DNA evidence has different protocols. Property unit staff did not know to separate out DNA evidence for property custodian approval.
- Both detectives and the property unit staff misapplied the statute of limitations on unsolved and unfiled sexual assault investigations as well as post-conviction retention requirements.

It is important to note that the panel found that the destruction of evidence during this time period was not done to thwart an investigation, hinder a prosecution or defense, or intended for any other malevolent reason. The temporary, light duty or limited duty officers were not properly trained and were not in the unit for sufficient time to gain the requisite knowledge to do the jobs properly. Nor were these officers in a position to “take ownership” of their work in the unit. Thus, the destruction of DNA evidence during this time period was due to a breakdown in the training, lack of following of protocol and lack of supervision. The panel surmised that the addition of new and temporary staff created serious gaps in continuity, accountability and adherence to protocols. These gaps, taken in conjunction with an apparent lack of close supervision, created the unintended consequence of officers with little knowledge and no authority making critical, independent evidence destruction decisions.

The independent panel also notes that both the statute of limitations statutes and the preservation of DNA evidence statutes are complex and difficult to decipher. Indeed, it was not until after much discussion among the independent panel members and consultation with outside sources that a consensus was reached about the scope and requirements of the DNA evidence retention statutes.

The Cases

Evidence was destroyed in 455 cases: 373 cases originated in Arapahoe County and 82 originated in Adams County. The panel reviewed each case and the effect of the evidence destruction on the case.

In 339 cases, the panel found no violation of the DNA evidence retention statutes. No violation was found for a number of reasons including that DNA was not present on the evidence collected; the DNA collected was simply the defendant’s buccal swabs in which case new buccal swabs could be obtained if needed; the DNA evidence was not relevant to a disputed issue; the statute of limitations had expired on charging a crime so that it was proper to destroy the evidence; and the investigations in several cases resulted in findings of no criminal activity.

In 58 cases, DNA evidence was destroyed in technical violation of the retention statutes, but the cases had been investigated and it had been determined that charges were not going to be filed. Many of the cases in this category had been presented to the district attorney’s offices and the district attorneys had declined to prosecute. Thus, it may have been a technical violation to destroy the evidence before the statute of limitations on the potential crime had run, but the cases were not likely to ever be prosecuted.

In 32 cases, the evidence had been destroyed during the time in which the defendant could file a post-conviction motion for collateral attack¹³ of the conviction. For most felony crimes, defendants have three years from the date of conviction in which to challenge the conviction at the district court level. In these 32 cases, the defendants had all been convicted but the time for collateral attack had not yet expired. While there is no evidence retention requirement mandated by statute during the time allowed for collateral attack, it has been the recommendation of the district attorney's offices to maintain the evidence in the event of a successful post-conviction motion.

In 20 cases, the defendants had been convicted of felony crimes and the evidence should have been retained for the life of the defendant. The district attorney's offices are evaluating the merit of notifying these defendants of the destruction of evidence.

Finally, in six cases it is possible that charges cannot be brought because of the destruction of evidence. All of the cases involve sexual assaults or attempted sexual assaults. In two completed sexual assault cases, one from Arapahoe County, one from Adams County, DNA profiles had been developed by the Colorado Bureau of Investigation (CBI), and the profiles have been entered into the CODIS database awaiting a match to a named offender. Because the profiles are already in the CODIS database, it is possible that an offender could still be identified. It would be at that time that the district attorneys and Aurora Police Department would have to determine whether the case would still be prosecutable with the remaining evidence and any new evidence that results from the re-opening of the investigation. The victim in the Arapahoe County case has been notified of the destruction of the evidence; attempts to locate the Adams County victim have been unsuccessful to date. In the remaining four cases, the DNA evidence had not been submitted to CBI; thus, with the destruction of the evidence, it is unlikely that the cases will be able to be prosecuted.

¹³ A motion for collateral attack on the conviction is governed by the time limits found in Section 16-5-402, C.R.S.

Panel Recommendations for the Aurora Police Department

After careful review, the panel's recommendations focus on comprehensive oversight of the property unit. Specific elements include the property unit's staffing, training of property unit employees, labelling DNA evidence, establishing clear protocols for the release of evidence, and working with both district attorneys' offices from the 17th and 18th Judicial Districts to review the protocols for destroying DNA evidence. To minimize the risk of future unintended destruction of DNA evidence, the panel offers the following recommendations for the APD and its property unit.¹⁴

Restructure the property unit's staffing and facilities

- Create a professional civilian supervisor position. This person will be responsible for overseeing the unit and will answer to the lieutenant or captain who oversees the property unit. The position should be a full time, "career" position. This person needs to implement a strict "checks and balances" system going forward, and also account for the thousands of pieces of evidence still in storage without proper labels.
- Staff the unit with primarily civilian employees. The panel recommends a minimum staffing of 7 civilian employees. This number of employees would allow for one employee to be assigned to intake, one to make the rounds collecting evidence from any of the seven APD evidence storage locations, and the remainder to tend to daily tasks. A larger staff will also allow for sick and vacation coverage.
- Severely restrict limited duty, light duty or temporary officer authority in the property unit. These officers must receive formal, documented training, as discussed in the next section.
- The APD should consider whether extending property unit hours or creating two shifts to cover property unit responsibilities would be feasible and desirable. Adding an evening and/or weekend shift (without adding evening/weekend "window" hours) may allow for greater ability to manage the flow of evidence in and out of the property unit.
- It's the panel's observation that the primary District 2 Property Section physical space is inadequate and could benefit from independent subject matter expert analysis, redesign and expansion.

Mandate training and certification for property unit employees

- The Colorado Association of Property and Evidence Technicians (CAPET) conducts two types of annual trainings. In the spring, there is a one-day training class; in the fall there is a 2 ½-day training class. All property unit employees should complete these training courses within a

¹⁴ These recommendations do not address how evidence is collected, packaged, stored or otherwise preserved for retention.

certain amount of time (allowing for staffing to remain at APD while employees are attending training).

- The International Association for Property and Evidence (IAPE) has an on-line training program and a certification process. The panel recommends that property unit employees be recertified through IAPE every three years.
- The civilian supervisor should provide annual training to all employees within the unit to ensure consistency in filling out paperwork and entering information into Versadex. Each employee's training should be documented and retained in property unit files.
- Ensure that the property unit continues to meet both the CALEA standards for accreditation and internal audit practices of the APD.
- Track and document all training the property and evidence unit personnel receive. Provide refresher training annually, as noted below.
- Provide training to property unit staff and detectives on the DNA retention statutes' requirements including mandated notification procedures, forms and waivers, as well as the applicable statutes of limitation and post-conviction retention requirements.

Labelling DNA evidence

- APD should explore investing in a more comprehensive evidence tracking computer system. The panel is aware that a new system may have considerable budgetary implications; however, it appears that at least for now, the APD's Versadex system is not able to be modified without spending significant dollars to include special notations for DNA evidence.¹⁵
- Special care should be taken in marking such evidence, perhaps with distinctive "DNA" stickers or similar "HOMICIDE," "SEX ASSAULT," or "DO NOT DESTROY" stickers to flag to anyone handling that piece of evidence that the item is of high value, may need to be preserved for the life of the defendant, and extra precaution should be taken before destruction.
- At the time of the August 2013 change-of-command audit, APD had already begun marking both the property forms and the actual packages containing DNA evidence with a red DNA stamp. The panel recommends that this practice continue.
- The panel recommends that when the property unit begins its initial review for possible property destruction, it begin with property that had been collected at least four years prior to that initial review rather than three years. This additional year recognizes that the district court process often takes at least one year from the time of initial filing until resolution.

¹⁵ Training in the recognition and labelling of DNA evidence should extend beyond the property unit staff to include responding officers, detectives and crime scene investigators with the objective of having this evidence identified from the inception of the investigation.

Refresher training on evidence retention/destruction with entire APD (sworn and civilian personnel)

The entire APD needs annual in-service refresher training on the practices and procedures of the property unit and evidence retention requirements. This could take any or all of the following forms:

- Department Directives reviewed by all officers.
- Video/live trainings at daily briefings.
- Additions to the Standard Operating Procedures Manual.
- The civilian supervisor should proactively seek input, identify resources and conduct needs assessments in an effort to stay informed of best practices in property retention and destruction.

Review Procedures with the District Attorney's Offices

- The District Attorney's Offices recognize the need to continuously destroy evidence to make room for new evidence. As such, APD should work with the elected district attorneys to review the established protocol and decide whether to retain the current practice or make some modifications. For example, the two entities should agree whether the APD should continue to initiate the destruction process or whether it should be a joint effort with a representative in each district attorney's office. Both entities should renew their commitment to each other that notices will be sent, followed up within certain time frames, and returned to the property unit within certain time frames.¹⁶ To the extent possible, the responsibility for communications between the agencies should be assigned to a minimum number of personnel (named by position or title). The decision to destroy property should not be left solely in the hands of individuals staffing the property unit.
- The district attorneys and APD should work together to identify cases now appropriate for destruction in an effort to manage volume. The panel notes that property destruction ceased in June of 2013 upon realization of the improper destruction of evidence. The APD's storage, while burgeoning before, is now also behind in the evidence destruction schedule.
- Consider an agreement with the district attorney's offices that at the disposition of a case after sentencing, some type of notification is automatically sent to the property unit with instructions for all related case evidence. Thus, if the DNA evidence is to be retained for the life of the defendant, the district attorneys may want to consider notifying APD.

¹⁶ A good springboard for this discussion can be found on p. 42 of The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers, published by the National Institute of Standards and Technology in April of 2013.

- Collaborate on reviewing standardized forms with signature lines depending on type of evidence and what level of permission (perhaps naming the newly identified liaison as described above) needed before destroying.
- The district attorney's offices could consider making it routine practice that defendants sign a release of evidence form at the time a guilty plea is entered. In the alternative, defendants could specifically identify the property item (by APD property item number) that they would like preserved post-conviction.

Conclusion

The panel deems that the destruction of the majority of the evidence during the specified time period was proper and that the evidence that was prematurely destroyed was an aberration in the practices of the APD and not a sign of a systemic problem with the APD, command staff or officers. Furthermore, the APD took immediate responsibility for the mistake, admitted areas of weakness, and was genuinely interested in the panel's recommendations to improve the property unit. The APD's effort in forming the audit team, documenting their investigation, answering the panel's questions, making all members of the APD staff readily available, and complying with every request of the panel assured the panel that with some modifications in the property unit practices and staffing, along with better organization, training and supervision, the APD will be successful in efficiently and responsibly maintaining their property unit in the future.

Panel Members

It has been an honor and privilege to be part of this review, and we sincerely hope our contribution brings value to the practices of the APD property unit.

Terry Jones, Deputy Chief of Police, Aurora Police Department

Fran Gomez, Deputy Chief of Police, Commerce City Police Department (retired Commander, Aurora Police Department)

Tim McCormack, Senior Chief Trial Deputy District Attorney, District Attorney's Office for the 17th Judicial District

Richard Myers, Chief of Police, Newport News, VA (retired Chief of Police, Colorado Springs Police Department)

Wendy Rich-Goldschmidt, Independent Consultant (retired Chief of Police, Colorado State University)

Julie Selsberg, First Assistant Attorney General, Colorado Attorney General's Office

Ann Tomsic, Chief Deputy District Attorney, District Attorney's Office for the 18th Judicial District