Frequently Asked Questions from Law Enforcement Submitting Requests for Destruction, Disposition or Return of Seized Property

What should the documents look like?
There are no standardized forms for making a request for destruction, disposition or return of property. Each agency must draft its own documents. The documents should be drafted on pleading paper since the request is submitted to the Court. Pleading paper is a standard template that can be found in any word processing program. See sample attached.

How should the documents be captioned?
The request is regarding the evidence being held, not an individual. Therefore, the documents should be captioned: "In re the disposition [destruction, return, etc.] of [basic description of the evidence (i.e., controlled substances, property seized pursuant to warrant, etc.] in the possession of [agency name]." Do not style the caption of the documents as a proceeding against an individual unless the application is submitted in an existing court case, in which the specific case number must be used. The request would need to be made in the specific Superior Court case. If there is no specific Superior Court case, the caption should never be "People v. [An Individual Name]" or "Police v. "An Individual Name]." Rather, the caption should be, for example, "In re the Destruction of Contraband in the Possession of [Name of Police Department]."

What is an application?
Many requests do not contain a proper application. An application is a document that sets out the legal authority upon which the agency relies to support disposition of the property. Why do we ask for an application? In general the court must be asked to act. The proper way to ask the court to act is via a motion or application. The application must set out the specific statutory authority to support the disposition being requested. Please note that, citing to the generic authority that requires an agency to hold evidence until a court order is obtained, is not authority permitting the destruction or return of such evidence. It is not sufficient to provide a laundry list of statutes. It must be clear in the application what authority supports the disposition of each item.

How much detail is needed in the request?
The requests must be precise. The Court needs to know what property the agency has in its possession, how the property was obtained, what the proposed disposition is, and what authority permits disposition of the property. The authority is to be clearly set out in the application. The supporting evidence, usually a declaration, needs to provide the balance of the information. It is not sufficient to attach a long list of items to be destroyed or returned with no information as to how the items came into the agency's possession or how long the items have been held. Generic, vague applications cannot be verified and therefore cannot be granted.

Can the declaration simply state that either no charges are pending or the cases have been adjudicated or otherwise legally resolved?
No, this is not sufficient. If a case has been adjudicated, it has a court case number and the case number must be provided. Also, the Court is required to ensure, not only that the case has been adjudicated, but that the time to appeal has passed. The only way to verify such is through the Superior Court case number. The declaration needs to be specific. A vague statement, such as "otherwise legally resolved," has no meaning. It is not enough to state that no charges are pending. If the District Attorney declined to prosecute, the declaration should provide that information. If the declaration states that no charges have been filed, and the Court cannot readily determine that the evidence has been in the agency's possession for over a year, it is insufficient, as the time to bring charges has not run.

What should the evidence list look like?
Most requests contain a lengthy list of the evidence sought to be disposed of, oftentimes many pages. For an exhibit list to have any evidentiary value, it must be attached to a properly signed and sworn declaration as an exhibit. "Attached" means properly affixed in some permanent manner. A binder clip is not sufficient. Once the clip is removed to review the list, the list can easily become shuffled and out of order, particularly where the pages are not sequentially number. The lines of evidence set out in the attachment should be numbered, so the Court has a numbered reference in the event that an application is granted in part and denied in part. The information contained in the exhibit should be fully explained, meaning that the columns should have a complete descriptive caption, so the Court can readily determine what information is set out in the column. For example, a column simply titled "Case No." fails to identify whether it refers to a law enforcement case number, a District Attorney case number, or a Superior Court case number.

Does the declaration need to be signed before its submission to the Court?
Yes, an unsigned declaration is of no evidentiary value, and the request will be denied. The declaration must also be properly sworn and must fully comply with CCP §2015.5 or it is of no evidentiary value.

What if the property was seized pursuant to a search warrant?
If the property for which the request seeks to dispose was seized pursuant to a search warrant, the warrant number must be included in the caption of all the documents. A copy of the warrant must also be included with the request. Because the Court must file the order in the warrant file, requests involving more than one warrant may not be combined; nor can other items not related to the warrant be included in the request.

What if the agency has a Superior Court case number?
If an agency seeks disposition of evidence related to a specific Superior Court case, the application must be made in that specific Court case and should only include the evidence from that case. The only permitted exception is where the agency seeks destruction of controlled substances or paraphernalia, the cases have been adjudicated, and the time for appeal has passed. In this situation, the agency may include the requests for destruction of evidence from a number of cases in one application.

What should the proposed order look like?
The proposed order should be on pleading paper as described above. The proposed order must be a standalone document and may not be combined with, or be a continuation of, any other document. The proposed order must have a proper caption as described above. The proposed order must have a line where the Presiding Judge can sign. The proposed order should name the current Presiding Judge, not a past Presiding Judge. The proposed order should only include the signature of the Presiding Judge; there should be no other signatures on the proposed order. The proposed order will be a Court order; it is not an order from the agency and should not contain any watermark, etc. from the agency. Oftentimes, agencies only provide one copy of the evidence list, but a proper proposed order should also have the evidence list attached. It is helpful to provide two copies of the evidence list, one attached to the declaration and one attached to the proposed order, so if the Court grants the request, the Court is not required to make a copy of the evidence list to attach to the order.

If the agency requests the return of property, should the person to whom the property will be returned be named?
Yes, if the agency requests the return of property seized pursuant to a warrant because there is no indicia of a crime, the request must be specific as to whom the property will be returned. The law specifically provides that the property must be restored to the person from whom it was taken. The Court is required to verify this information. It is insufficient to state that the property will be returned to the rightful owner. The declaration must identify the rightful owner. If the rightful owner has not yet been ascertained, the application is premature.

What if the property sought to be destroyed, etc. is a firearm?
Any request that involves the disposition of a firearm must be very specific. The declaration must identify how the firearm or firearms came into the agency's possession and what statutory authority supports the proposed disposition of each firearm. The declaration must also demonstrate that the proper notice procedures were followed and that all statutory requirements were satisfied with respect each specific firearm. Providing a laundry list of statutes is not sufficient. The declaration must identify which specific statute applies to each piece of evidence.