§ 450.10 Disposal of stolen property.

1. When property, other than contraband including but not limited to those items subject to the provisions of sections 410.00, 415.00, 420.00 and 420.05 of this chapter, 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 applicaton 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.

5. 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.

6. 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 therefor, 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 245.80 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.