



## INVESTIGATIVE REPORT

### Finding of Record and Closure

#### Public Report

*(edited to remove confidential information pursuant to AS 24.55.160)*

Ombudsman Complaint A2007-0557

June 1, 2007

### SUMMARY OF COMPLAINT

The Office of the Ombudsman received a complaint from an inmate at Ketchikan Correctional Center (KCC) on May 4, 2007. The complainant alleged that a piece of jewelry was taken from his property storage and given to someone else by Department of Corrections (DOC) staff.

The ombudsman rewrote the allegation to comport with ombudsman statutes and regulations:

***Contrary to Law: Department of Corrections staff illegally seized and disposed of personal property belonging to the complainant.***

Assistant Ombudsman J. Kate Burkhart investigated this allegation. Based upon the facts uncovered in this investigation, the ombudsman finds this allegation ***not supported.***

### INVESTIGATION

The complainant was arrested December 1, 2005 and charged with murder and associated charges. When booked into DOC custody at KCC the day of arrest, the complainant had in his possession a piece of jewelry, a woman's gold ring. The ring and the complainant's other property were inventoried and placed in the complainant's property storage area, and a receipt was issued, all according to DOC Policy 811.05.

KCC Superintendent Alan Bailey reported to the investigator that the personal representatives of the estate of the murder victim, who was the rightful owner of the jewelry, came to his office approximately one month before the complainant's trial. The personal representatives requested return of the victim's jewelry, as authorized by the probate court and AS 13.16.355. The personal representatives identified the ring that the complainant had in his possession at booking. The personal representatives maintained that the complainant stole it from the victim at or shortly after her murder.

There being no specific policy governing this situation, Superintendent Bailey said that he consulted the Attorney General's Office, the Director of Institutions, and the Commissioner of DOC. All agreed that it was appropriate to return the jewelry, and Superintendent Bailey did so.

He informed the booking officer on duty, but no record was made of the return of the property. Further, no notice of the return of the property was given to the complainant.

The complainant learned of the return of the property after his trial, at which he was found guilty. On or about January 25, 2007, the complainant filed a lost property report and made a report to the Alaska State Troopers. In a prisoner grievance dated "1-12-07" but evidently filed in early April 2007, the complainant alleged that the jewelry was a gift from the owner – the murder victim. Superintendent Bailey responded to the lost property report, stating the jewelry "was returned to the family . . . The Commissioner and Deputy Director was [sic] informed of this action." Replacement of the ring was denied.

## ANALYSIS AND FINDING

DOC has no policy addressing the return of stolen property in the possession of a person upon admission to DOC custody. According to Superintendent Bailey, this situation arises rarely, and therefore does not warrant a specific policy. However, the policy governing the handling of prisoners' personal property is applied in such situations.

DOC policy and procedure requires that prisoners receive a receipt at the time of booking for "any personal property seized as contraband or not authorized for retention" as well as for "all personal property accepted for storage." (DOC Policy 811.05 C. 2-3). Policy 811.05 requires that "a copy of each receipt is to be placed in the prisoner's case record." Policy 811.05 also requires that "when property is taken from a prisoner by institutional staff, other than during emergency situations, the prisoner shall receive a completed receipt for property seized, within 48 hours, utilizing Property Seizure Report/Receipt (form 20-808.08A)."

The jewelry in question was inventoried and stored according to DOC policy and procedure. Absent an express policy on return of stolen property, Superintendent Bailey properly communicated with his supervisors and DOC legal counsel. The decision to return the jewelry was not contrary to law. Superintendent Bailey stated that he believed the personal representatives' claim to the property was credible, given that they were authorized to probate the estate, identified the jewelry, and offered support for the claim of ownership. Regarding his decision not to notify the complainant, Superintendent Bailey stated that he reasonably believed that the complainant posed a risk to the safety of the family.

Superintendent Bailey admitted to the investigator that he did not complete a Property Seizure Report/Receipt or otherwise document the return of the jewelry. The fact that he consulted with his supervisors and the Attorney General's Office — and notified the booking officer on duty — indicates that the decision was not made arbitrarily. Instead, the failure to document the return of the jewelry was an oversight attributable to the absence of a policy or procedure for such a situation.

Based upon the foregoing, the ombudsman finds this allegation *not supported*. The ombudsman suggests that DOC staff complete a Property Seizure Report/Receipt when an item of property is permanently removed or otherwise disposed of from a prisoner's property storage. The ombudsman further suggests that the prisoner be given a copy of such Property Seizure Report/Receipt as notice, unless reasonable safety or security concerns argue against giving such notice.

Because this finding is not critical of DOC's actions, no agency response was required.

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