

CRIMINAL EVIDENCE RETENTION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill specifies a time period for retaining evidence and returning evidence to its owner.

Highlighted Provisions:

This bill:

- requires that property not needed to prosecute an action be returned to the owner within 90 days;
- provides an exception to the 90 day limitation for prosecutors;
- sets other requirements for evidence held by an agency after prosecution or conviction; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

24-3-103, as last amended by Laws of Utah 2021, Chapter 230

Be it enacted by the Legislature of the state of Utah:



28 Section 1. Section **24-3-103** is amended to read:

29 **24-3-103. Disposition of property.**

30 (1) ~~[If a]~~ Property that is no longer needed as evidence shall be disposed of:

31 (a) unless, within 90 days the prosecuting attorney determines that the seized property
32 [no longer] needs to be retained [for court proceedings, the] longer, at which time the
33 prosecutor may file a motion with the court to retain the evidence and the court may grant a
34 retention extension for a specific period of time;

35 (b) within 90 days of the death of the defendant if the property is not needed for
36 another prosecution;

37 (c) in the case of a conviction, 90 days after the time for appeal has expired, or the
38 statute of limitations for post-conviction relief, including the time for appeal from
39 post-conviction relief has expired, whichever is later; or

40 (d) for evidence returned to the agency by the court, in accordance with Code of
41 Judicial Administration Rule 4-206.

42 (2) The prosecuting attorney may:

43 (a) petition the court to apply ~~[the]~~ property that is money towards restitution, fines,
44 fees, or monetary judgments owed by the owner of the property;

45 (b) petition the court for an order transferring ownership of any weapons to the agency
46 with custody for the agency's use and disposal in accordance with Section **24-3-103.5**, if the
47 owner:

48 (i) is the individual who committed the offense for which the weapon was seized; or

49 (ii) may not lawfully possess the weapon; or

50 (c) notify the agency with custody of the property or contraband that:

51 (i) the property may be returned to the rightful owner if the rightful owner may
52 lawfully possess the property; or

53 (ii) the contraband may be disposed of or destroyed.

54 ~~[(2)]~~ (3) The agency shall exercise due diligence in attempting to notify the rightful
55 owner of the property to advise the owner that the property is to be returned.

56 ~~[(3)]~~ (4) (a) For a computer determined to be contraband, a court may order the
57 reasonable extraction and return of specifically described personal digital data to the rightful
58 owner.

59 (b) The law enforcement agency shall determine a reasonable cost to extract the data.

60 (c) At the time of the request to extract the data, the owner of the computer shall pay
61 the agency the cost to extract the data.

62 [~~(4)~~] (5) (a) Before an agency may release seized property to a person claiming
63 ownership of the property, the person shall establish in accordance with Subsection [~~(4)~~] (5)(b)
64 that the person:

65 (i) is the rightful owner; and

66 (ii) may lawfully possess the property.

67 (b) The person shall establish ownership under Subsection [~~(4)~~] (5)(a) by providing to
68 the agency:

69 (i) identifying proof or documentation of ownership of the property; or

70 (ii) a notarized statement if proof or documentation is not available.

71 [~~(5)~~] (6) (a) When seized property is returned to the owner, the owner shall sign a
72 receipt listing in detail the property that is returned.

73 (b) The agency shall:

74 (i) retain a copy of the receipt; and

75 (ii) provide a copy of the receipt to the owner.

76 [~~(6)~~] (7) (a) Except as provided in Subsection [~~(6)~~] (7)(b), if the agency is unable to
77 locate the rightful owner of the property or the rightful owner is not entitled to lawfully possess
78 the property, the agency may:

79 (i) apply the property to a public interest use;

80 (ii) sell the property at public auction and apply the proceeds of the sale to a public
81 interest use; or

82 (iii) destroy the property if the property is unfit for a public interest use or for sale.

83 (b) If the property described in Subsection [~~(6)~~] (7)(a) is a firearm, the agency shall
84 dispose of the firearm in accordance with Section [24-3-103.5](#).

85 [~~(7)~~] (8) Before applying the property or the proceeds from the sale of the property to a
86 public interest use, the agency shall obtain from the legislative body of the agency's
87 jurisdiction:

88 (a) permission to apply the property or the proceeds to public interest use; and

89 (b) the designation and approval of the public interest use of the property or the

90 proceeds.

91 [~~(8)~~] (9) If a peace officer seizes property that at the time of seizure is held by a pawn
92 or secondhand business in the course of the pawn or secondhand business's business, the
93 provisions of Section [13-32a-116](#) shall apply to the disposition of the property.