

EVIDENCE RETENTION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the retention and disposal of evidence of an offense.

Highlighted Provisions:

This bill:

- ▶ clarifies the requirements for disposing of wildlife seized by the Division of Wildlife Resources;
- ▶ amends the time period for retaining evidence of a felony offense;
- ▶ clarifies that the time period requirements do not require an agency to return or dispose of evidence of a felony offense;
- ▶ provides that an agency is not required to retain evidence of a felony offense in certain circumstances;
- ▶ provides the requirements for an agency seeking to no longer retain evidence of a felony offense;
- ▶ amends the time period for retaining biological evidence of a violent felony offense;
- ▶ amends the notification requirements regarding the retention of biological evidence of a violent felony offense; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **23A-5-201**, as last amended by Laws of Utah 2023, Chapter 448 and renumbered and
33 amended by Laws of Utah 2023, Chapter 103

34 **77-11a-204**, as renumbered and amended by Laws of Utah 2023, Chapter 448

35 **77-11a-205**, as renumbered and amended by Laws of Utah 2023, Chapter 448

36 **77-11a-301**, as renumbered and amended by Laws of Utah 2023, Chapter 448

37 **77-11a-302**, as enacted by Laws of Utah 2023, Chapter 448

38 **77-11a-303**, as enacted by Laws of Utah 2023, Chapter 448

39 **77-11a-305**, as renumbered and amended by Laws of Utah 2023, Chapter 448

40 **77-11c-103**, as enacted by Laws of Utah 2023, Chapter 448

41 **77-11c-202**, as enacted by Laws of Utah 2023, Chapter 448

42 **77-11c-203**, as enacted by Laws of Utah 2023, Chapter 448

43 **77-11c-301**, as renumbered and amended by Laws of Utah 2023, Chapter 448

44 **77-11c-401**, as renumbered and amended by Laws of Utah 2023, Chapter 448

45 ENACTS:

46 **77-11c-302**, Utah Code Annotated 1953

47 **77-11c-303**, Utah Code Annotated 1953



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

50 Section 1. Section **23A-5-201** is amended to read:

51 **23A-5-201. Enforcement authority of conservation officers -- Seizure and**
52 **disposition of property.**

53 (1) A conservation officer shall enforce the provisions of this title in accordance with
54 the same procedures and requirements for a law enforcement officer of this state.

55 (2) (a) Except as provided in Subsection (2)(b), a conservation officer may seize
56 property or contraband in accordance with Title 77, Chapter 11a, Seizure of Property and
57 Contraband, and Title 77, Chapter 11b, Forfeiture of Seized Property.

58 (b) A conservation officer shall seize protected wildlife illegally taken or held.

59 (3) (a) If a conservation officer seizes wildlife as part of an investigation or prosecution
60 of an offense and the wildlife may reasonably be used to incriminate or exculpate a person for
61 the offense, the division is not required to retain the wildlife under Title 77, Chapter 11c,
62 Retention of Evidence.

63 (b) If the division does not retain wildlife under Subsection (3)(a), the division is
64 required to preserve sufficient evidence from the wildlife for use as evidence in the prosecution
65 of a person for the offense.

66 (4) (a) If a conservation officer seizes wildlife and the wildlife or parts of the wildlife
67 are perishable, the division may donate the wildlife or parts of the wildlife to be used for
68 charitable purposes.

69 (b) If wildlife or parts of the wildlife are perishable and are not fit to be donated for
70 charitable purposes under Subsection (4)(a), the division may dispose of the wildlife or parts of
71 the wildlife in a reasonable manner.

72 ~~[(5) (a) The court may order the division to sell or dispose of protected wildlife that is~~
73 ~~seized by a conservation officer if the division is permitted by law to sell or dispose of the~~
74 ~~wildlife.]~~

75 (5) (a) If a defendant is convicted of the offense for which protected wildlife is seized
76 and the division is permitted by law to sell or dispose of the protected wildlife, the division
77 may sell or dispose of the protected wildlife or part of the wildlife.

78 (b) The division may not sell migratory wildfowl but the division shall donate the
79 migratory wildfowl to be used for charitable purposes.

80 (c) The division shall deposit the proceeds from the sale of protected wildlife into the
81 Wildlife Resources Account.

82 (6) If the division disposes of wildlife and the defendant is acquitted of the offense for
83 which the wildlife is seized or the entire case for the offense is dismissed, the court may order
84 the division to:

85 (a) provide the owner of the disposed wildlife with wildlife that is reasonably
86 equivalent in value to the disposed wildlife within 180 days after the day on which the court
87 enters the order; or

88 (b) if the division is unable to obtain wildlife that is reasonably equivalent in value to
89 the disposed wildlife, pay the owner of the disposed wildlife for the non-trophy value of the

90 disposed wildlife in accordance with Subsection 23A-5-312(2) within 180 days after the day on
91 which the court enters the order.

92 (7) (a) If a conservation officer seizes a vehicle under Section 77-11a-201, the division
93 shall store the seized vehicle in a public or private garage, state impound lot, or any other
94 secured storage facility.

95 (b) The division shall release a seized vehicle to the owner no later than 30 days after
96 the day on which the vehicle is seized, unless the vehicle was used for the unlawful taking or
97 possessing of wildlife by a person charged with a felony under this title.

98 (c) The owner of a seized vehicle is liable for the payment of any impound fee if:

99 (i) the owner used the vehicle for the unlawful taking or possessing of wildlife; and

100 (ii) the owner is convicted of an offense under this title.

101 (d) The owner of a seized vehicle is not liable for the payment of any impound fee or,
102 if the fees have been paid, is entitled to reimbursement of the fees paid, if:

103 (i) no charges are filed or all charges are dropped that involve the use of the vehicle for
104 the unlawful taking or possessing of wildlife;

105 (ii) the person charged with using the vehicle for the unlawful taking or possessing of
106 wildlife is found by a court to be not guilty; or

107 (iii) the owner did not consent to a use of the vehicle that violates this chapter.

108 Section 2. Section 77-11a-204 is amended to read:

109 **77-11a-204. Custody of seized property and contraband.**

110 (1) An agency with custody of seized property or contraband shall:

111 (a) hold the property or contraband in safe custody until the property or contraband is
112 [~~released~~] returned or disposed of in accordance with:

113 (i) this chapter; and

114 (ii) Chapter 11c, Retention of Evidence; and

115 (b) maintain a record of the property or contraband, including:

116 (i) a detailed inventory of all property or contraband seized;

117 (ii) the name of the person from which the property or contraband was seized; and

118 (iii) the agency's case number.

119 (2) (a) Except as provided in Subsection (2)(b), no later than 30 days after the day on
120 which a peace officer seizes property in the form of cash or other readily negotiable

121 instruments, an agency shall deposit the property into a separate, restricted, interest-bearing
122 account maintained by the agency solely for the purpose of managing and protecting the
123 property from commingling, loss, or devaluation.

124 (b) A prosecuting attorney may authorize one or more written extensions of the 30-day
125 period under Subsection (2)(a) if the property needs to maintain the form in which the property
126 was seized for evidentiary purposes or other good cause.

127 (3) An agency shall:

128 (a) have written policies for the identification, tracking, management, and safekeeping
129 of seized property and contraband; and

130 (b) shall have a written policy that prohibits the transfer, sale, or auction of seized
131 property and contraband to an employee of the agency.

132 Section 3. Section **77-11a-205** is amended to read:

133 **77-11a-205. Transfer or release of seized property to another governmental entity**
134 **-- Requirements.**

135 (1) Except as provided in Subsections (3)(a) through (c), upon the seizure of property
136 by a peace officer, the property is subject to the exclusive jurisdiction of a district court of this
137 state.

138 (2) Except as provided in Subsection (3), a peace officer, agency, or prosecuting
139 attorney may not directly or indirectly transfer or release seized property to a federal agency or
140 to a governmental entity not created or subject to the laws of this state.

141 (3) An agency or prosecuting attorney may transfer or release seized property to a
142 federal agency or to a governmental entity not created or subject to the laws of this state if:

143 (a) (i) the property is cash or another readily negotiable instrument; and

144 (ii) the property is evidence in, or subject to, a federal criminal indictment, a federal
145 criminal information, or a federal criminal complaint that is filed before the property is seized;

146 (b) (i) the property is not cash or another readily negotiable instrument; and

147 (ii) the property is evidence in, or subject to, a federal criminal indictment, a federal
148 criminal information, or a federal criminal complaint that is filed before the day on which the
149 agency with custody of the property is required to return the property if no criminal or civil
150 action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section

151 [77-11b-203](#);

152 (c) (i) the property was used in the commission of an offense in another state; and

153 (ii) an agency of that state requests the transfer of the property before the day on which

154 the agency with custody of the property is required to return the property if no criminal or civil

155 action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section

156 [77-11b-203](#); or

157 (d) a district court authorizes, in accordance with Subsection (5), the transfer or release

158 of the property to an agency of another state or a federal agency upon a petition by a

159 prosecuting attorney or a federal prosecutor.

160 (4) (a) A prosecuting attorney, or a federal prosecutor, may file a petition in the district

161 court for the transfer or release of seized property.

162 (b) If a prosecuting attorney, or a federal prosecutor, files a petition under Subsection

163 (4)(a), the petition shall include:

164 (i) a detailed description of the property seized;

165 (ii) the location where the property was seized;

166 (iii) the date the property was seized;

167 (iv) the case number assigned by the agency; and

168 (v) a declaration that:

169 (A) states the basis for relinquishing jurisdiction to a federal agency or an agency of

170 another state;

171 (B) contains the names and addresses of any known claimant; and

172 (C) is signed by the prosecuting attorney or federal prosecutor.

173 (5) A district court may not authorize the transfer or release of seized property under

174 Subsection (3)(d), unless the district court finds, by a preponderance of the evidence:

175 (a) the property is evidence in, or subject to, a federal criminal indictment, a federal

176 criminal information, or a federal criminal complaint after the property is seized;

177 (b) the property may only be forfeited under federal law;

178 (c) forfeiting the property under state law would unreasonably burden the prosecuting

179 attorney or agency; or

180 (d) the property was subject to a federal criminal investigation before the property was

181 seized.

182 (6) (a) Before a district court may order the transfer of seized property in accordance

183 with this section, the court, the prosecuting attorney, or the federal prosecutor shall mail a
184 notice to:

185 (i) each address contained in the declaration under Subsection (4)(b)(v) to give a
186 claimant the right to be heard with regard to the transfer; and

187 (ii) (A) if a federal prosecutor files the petition under Subsection (4), the prosecuting
188 attorney that is representing the agency with custody of the property; or

189 (B) if a prosecuting attorney files the petition under Subsection (4), the federal
190 prosecutor who will receive the property upon the transfer or release of the property.

191 (b) If a claimant, or the party under Subsection (6)(a)(i), does not object to the petition
192 to transfer the property within 10 days after the day on which the notice is mailed, the district
193 court shall issue the district court's order in accordance with this section.

194 (c) If the declaration does not include an address for a claimant, the district court shall
195 delay the district court's order under this section for 20 days to allow time for the claimant to
196 appear and make an objection.

197 (d) (i) If a claimant, or a party under Subsection (6)(a)(i), contests a petition to transfer
198 the property to a federal agency or to another governmental entity not created or subject to the
199 laws of this state, the district court shall promptly set the matter for hearing.

200 (ii) In making a determination under Subsection (5), the district court shall consider
201 evidence regarding hardship, complexity, judicial and law enforcement resources, protections
202 afforded under state and federal law, pending state or federal investigations, and any other
203 relevant matter.

204 (7) If an agency receives property, money, or other things of value under a federal law
205 that authorizes the sharing or transfer of all or a portion of forfeited property, or the proceeds
206 from the sale of forfeited property, the agency:

207 (a) shall use the property, money, or other things of value in compliance with federal
208 laws and regulations relating to equitable sharing;

209 (b) may use the property, money, or other things of value for a law enforcement
210 purpose described in Subsection 77-11b-403(10); and

211 (c) may not use the property, money, or other thing of value for a law enforcement
212 purpose prohibited in Subsection 77-11b-403(11).

213 (8) An agency awarded an equitable share of property forfeited by the federal

214 government may use the award money only after approval of the use by the agency's legislative
215 body.

216 (9) If a district court exercises exclusive jurisdiction over seized property, the district
217 court's exclusive jurisdiction is terminated if ~~[the property is released by the agency with~~
218 ~~custody of the property]~~ the agency with custody of the property returns the property to a
219 claimant under:

220 (a) ~~[Part 3, Release of Seized Property to Claimant]~~ Part 3, Return of Seized Property
221 to Claimant; or

222 (b) Section 77-11b-203.

223 Section 4. Section 77-11a-301 is amended to read:

224 **Part 3. Return of Seized Property to Claimant**

225 **77-11a-301. Return of seized property to claimant -- Generally.**

226 (1) (a) An agency with custody of seized property, or the prosecuting attorney, may
227 ~~[release]~~ return the property to a claimant if the agency or the prosecuting attorney:

228 (i) determines that the agency does not need to retain or preserve the property as
229 evidence under Chapter 11c, Retention of Evidence; or

230 (ii) seeks to return the property to the claimant because the agency or prosecuting
231 attorney determines that the claimant is an innocent owner or an interest holder.

232 (b) An agency with custody of seized property, or the prosecuting attorney, may not
233 ~~[release]~~ return property under this Subsection (1) if the property is subject to retention or
234 preservation under Chapter 11c, Retention of Evidence.

235 (2) An agency with custody of the seized property, or the prosecuting attorney, shall
236 ~~[release]~~ return the property to a claimant if:

237 (a) the claimant posts a surety bond or cash with the court in accordance with Section
238 77-11a-302;

239 (b) the court orders the ~~[release]~~ return of property to the claimant for hardship
240 purposes under Section 77-11a-303;

241 (c) a claimant establishes that the claimant is an innocent owner or an interest holder
242 under Section 77-11a-304; or

243 (d) the court orders property retained as evidence to be ~~[released]~~ returned to the
244 claimant under Section 77-11a-305.

245 (3) (a) For a computer determined to be contraband, a court may order the reasonable
246 extraction and return of specifically described personal digital data to the owner of the
247 computer.

248 (b) The agency shall determine a reasonable cost to extract the data.

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

251 (4) If a peace officer for the Division of Wildlife Resources seizes a vehicle, the
252 Division of Wildlife Resources shall [~~release~~] return the vehicle to a claimant in accordance
253 with Section [23A-5-201](#).

254 (5) If an agency is not required, or is no longer required, to retain or preserve property
255 as evidence under Chapter 11c, Retention of Evidence, and the agency seeks to [~~release~~] return
256 or dispose of the property, the agency shall exercise due diligence in attempting to notify the
257 claimant of the property to advise the claimant that the property is to be returned.

258 (6) (a) Before an agency may [~~release~~] return seized property to a person claiming
259 ownership of the property, the person shall establish that the person:

260 (i) is the owner of the property; and

261 (ii) may lawfully possess the property.

262 (b) The person shall establish ownership under Subsection (6)(a) by providing to the
263 agency:

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

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

266 (c) When seized property is returned to the owner, the owner shall sign a receipt listing
267 in detail the property that is returned.

268 (d) The agency shall:

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

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

271 Section 5. Section **77-11a-302** is amended to read:

272 **77-11a-302. Return of seized property to claimant by surety bond or cash.**

273 (1) Except as provided in Subsection (2), a claimant may obtain [~~release~~] the return of
274 seized property by posting a surety bond or cash with the court that is in an amount equal to the
275 current fair market value of the property as determined by the court or a stipulation by the

276 parties.

277 (2) A court may refuse to order the [~~release~~] return of property under Subsection (1) if:

278 (a) the bond tendered for the property is inadequate;

279 (b) the property is subject to the retention or preservation requirements under Chapter
280 11c, Retention of Evidence;

281 (c) the property is particularly altered or designed for use in the commission of the
282 offense subjecting the property to forfeiture under Section 77-11b-102; or

283 (d) the property is contraband.

284 (3) If a surety bond or cash is posted and the court later determines that the property is
285 forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of the property.

286 Section 6. Section 77-11a-303 is amended to read:

287 **77-11a-303. Return of seized property subject to forfeiture to claimant for**
288 **hardship.**

289 (1) A claimant is entitled to the immediate [~~release~~] return of seized property for which
290 the agency has filed a notice of intent to forfeit under Section 77-11b-201 if:

291 (a) the claimant had a possessory interest in the property at the time of seizure;

292 (b) continued possession by the agency pending a forfeiture proceeding will cause
293 substantial hardship to the claimant, including:

294 (i) preventing the functioning of a legitimate business;

295 (ii) preventing any individual from working;

296 (iii) preventing any child from attending elementary or secondary school;

297 (iv) preventing or hindering an individual from receiving necessary medical care;

298 (v) preventing the care of a dependent child or adult who is elderly or disabled;

299 (vi) leaving an individual homeless; or

300 (vii) any other condition that the court determines causes a substantial hardship;

301 (c) the hardship from the continued possession of the property by the agency outweighs
302 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if the
303 property is returned to the claimant during the pendency of the proceeding; and

304 (d) the determination of substantial hardship under this Subsection (1) is based upon
305 the property's use before the seizure.

306 (2) A claimant may file a motion or petition for hardship release under this section:

307 (a) in the court in which forfeiture proceedings have commenced; or
308 (b) in a district court where there is venue under Section 77-11a-102 if a forfeiture
309 proceeding has not yet commenced.

310 (3) The motion or petition for hardship release shall be served upon the agency with
311 custody of the property within five days after the day on which the motion or petition is filed.

312 (4) The court shall:

313 (a) schedule a hearing on the motion or petition within 14 days after the day on which
314 the motion or petition is filed; and

315 (b) render a decision on a motion or petition for hardship filed under this section no
316 later than 20 days after the day of the hearing, unless this period is extended by the agreement
317 of both parties or by the court for good cause shown.

318 (5) If the claimant demonstrates substantial hardship under Subsection (1), the court
319 shall order the agency to immediately return the property [~~immediately released~~] to the
320 claimant pending completion of any forfeiture proceeding.

321 (6) The court may place conditions on [~~release~~] the return of the property as the court
322 finds necessary and appropriate to preserve the availability of the property or the property's
323 equivalent for forfeiture.

324 (7) The hardship release under this section does not apply to:

325 (a) contraband;

326 (b) property that is subject to the retention or preservation requirements under Chapter
327 11c, Retention of Evidence; or

328 (c) property that is likely to be used to commit additional offenses if returned to the
329 claimant.

330 Section 7. Section 77-11a-305 is amended to read:

331 **77-11a-305. Release of seized property to claimant when seized property is**
332 **retained as evidence.**

333 (1) (a) A claimant may file a petition with the court for the return of the property that is
334 being retained as evidence in accordance with Chapter 11c, Retention of Evidence.

335 (b) The claimant may file the petition in:

336 (i) the court in which criminal proceedings have commenced regarding the offense for
337 which the property is being retained as evidence; or

338 (ii) the district court with venue under Section 77-11a-102 if there are no pending
339 criminal proceedings.

340 (c) A claimant shall serve a copy of the petition on the prosecuting attorney or federal
341 prosecutor and the agency with custody of the property.

342 (2) (a) The court shall provide an opportunity for an expedited hearing.

343 (b) After the opportunity for an expedited hearing, the court may order that the property
344 is:

345 (i) returned to the claimant if the claimant is the owner as determined by the court;

346 (ii) if the offense subjecting the property to seizure results in a conviction, applied
347 directly or by proceeds of the sale of the property toward restitution, fines, or fees owed by the
348 claimant in an amount set by the court;

349 (iii) converted to a public interest use;

350 (iv) held for further legal action;

351 (v) sold at public auction and the proceeds of the sale applied to a public interest use;

352 or

353 (vi) destroyed.

354 (3) Before the court can order property be returned to a claimant, the claimant shall
355 establish, by clear and convincing evidence, that the claimant:

356 (a) is the owner of the property; and

357 (b) may lawfully possess the property.

358 (4) If the court orders the property to be returned to the claimant, the agency with
359 custody of the property shall return the property to the claimant as expeditiously as possible.

360 Section 8. Section 77-11c-103 is amended to read:

361 **77-11c-103. Disposal or return of evidence.**

362 When evidence is no longer subject to retention under this chapter, the agency shall:

363 (1) return evidence that is property to a claimant under [~~Title 77, Chapter 11a, Part 3,~~
364 ~~Release of Seized Property to Claimant~~] Chapter 11a, Part 3, Return of Seized Property to
365 Claimant; or

366 (2) dispose of evidence that is property or contraband in accordance with [~~Title 77,~~
367 ~~Chapter 11a, Part 4, Disposal of Seized Property and Contraband~~] Chapter 11a, Part 4,
368 Disposal of Seized Property and Contraband.

369 Section 9. Section 77-11c-202 is amended to read:

370 **77-11c-202. Requirements for not retaining evidence of a misdemeanor offense --**

371 **Preservation of sufficient evidence.**

372 (1) An agency is not required to retain evidence of a misdemeanor offense under

373 Section 77-11c-201 if:

374 (a) (i) the agency determines that:

375 (A) the size, bulk, or physical character of the evidence renders retention

376 impracticable; or

377 (B) the evidence poses a security or safety problem for the agency;

378 (ii) the agency preserves sufficient evidence of the property, contraband, item, or
379 substance for use as evidence in a prosecution of the offense [~~in accordance with this section~~];

380 (iii) the agency sends a written request under Subsection 77-11c-203(1) to the

381 prosecuting attorney for permission to [~~release~~] return or dispose of the evidence; and

382 (iv) the prosecuting attorney grants the agency's written request in accordance with

383 Section 77-11c-203;

384 (b) a court orders the agency to return evidence that is property to a claimant under

385 Section 77-11a-305; or

386 (c) the evidence is wildlife or parts of wildlife.

387 (2) (a) Subsection (1) does not require an agency to return or dispose of evidence of a
388 misdemeanor offense.

389 (b) Subsection (1)(a) does not apply when the [~~release~~] return or disposal of evidence
390 of a misdemeanor offense is in compliance with a memorandum of understanding between the
391 agency and the prosecuting attorney.

392 (3) If [~~evidence~~] the evidence described in Subsection (1) is a controlled substance, an
393 agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance
394 by:

395 (a) collecting and preserving a sample of the controlled substance [~~and a sample of~~
396 ~~biological evidence from the controlled substance~~] for independent testing and use as evidence;

397 (b) taking a photographic or video record of the controlled substance with identifying
398 case numbers;

399 (c) maintaining a written report of a chemical analysis of the controlled substance if a

400 chemical analysis was performed by the agency; and

401 (d) if the controlled substance exceeds 10 pounds, retain at least one pound of the
402 controlled substance that is randomly selected from the controlled substance.

403 (4) If [evidence] the evidence described in Subsection (1) is drug paraphernalia, an
404 agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia
405 by:

406 (a) collecting and preserving a sample of the controlled substance from the drug
407 paraphernalia for independent testing and use as evidence;

408 (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a
409 chemical analysis was performed by the agency; and

410 (c) taking a photographic or video record of the drug paraphernalia with identifying
411 case numbers.

412 (5) If [evidence] the evidence described in Subsection (1) is a computer, the agency
413 shall preserve sufficient evidence under Subsection (1)(a)(ii) of the computer by:

414 (a) extracting all data from the computer that would be evidence in a prosecution of an
415 individual for the offense; and

416 ~~[(b) collecting a sample of biological evidence from the computer for independent
417 testing and use as evidence; and]~~

418 ~~[(c)]~~ (b) taking a photographic or video record of the computer with identifying case
419 numbers.

420 (6) For any other type of evidence, the agency shall preserve sufficient evidence under
421 Subsection (1)(a)(ii) of the property, contraband, item, or substance by ~~[(a) collecting and
422 preserving a sample of biological evidence from the property, contraband, item, or substance
423 for independent testing and use as evidence; and (b)]~~ taking a photographic or video record of
424 the property, contraband, item, or substance with identifying case numbers.

425 Section 10. Section **77-11c-203** is amended to read:

426 **77-11c-203. Request to prosecuting attorney by agency -- Notification to**
427 **defendant.**

428 (1) If an agency determines that the agency is not required to retain evidence of a
429 misdemeanor offense under Subsection **77-11c-202(1)(a)(i)** and the agency seeks to ~~[release]~~
430 return or dispose of the evidence, the agency shall send a written request to the prosecuting

431 attorney that:

432 (a) identifies the evidence;

433 (b) explains the reason for which the agency is not required to retain the evidence

434 under Subsection [77-11c-202\(1\)\(a\)\(i\)](#); and

435 (c) explains the steps that the agency will take, or has taken, to preserve sufficient

436 evidence of the property, contraband, item, or substance for use as evidence in a prosecution of

437 the offense.

438 (2) If the prosecuting attorney receives a written request under Subsection (1) and

439 determines that the agency needs to retain the evidence for a prosecution of the misdemeanor

440 offense, the prosecuting attorney shall send a written notification to the agency that explains

441 the reason for which the prosecuting attorney is denying the agency's request.

442 (3) If the prosecuting attorney receives a written request under Subsection (1) and

443 determines that the agency does not need to retain the evidence for a prosecution of the

444 misdemeanor offense, the prosecuting attorney shall provide written notice of the intent to not

445 retain the evidence that:

446 (a) is sent by certified mail, return receipt requested, or a delivery service that provides

447 proof of delivery, to:

448 (i) any individual charged with or adjudicated for the offense; and

449 (ii) the individual's most recent attorney of record; and

450 (b) explains that the individual receiving the notice may submit a written objection to

451 the prosecuting attorney.

452 (4) (a) An individual, who is charged with or adjudicated for the offense, may submit a

453 written objection to the ~~[disposal or release]~~ return or disposal of the evidence by the agency no

454 later than 30 days after the day on which the prosecuting attorney receives proof of delivery

455 under Subsection (3).

456 (b) If an individual submits a written objection under Subsection (4)(a), the prosecuting

457 attorney shall send a written notification to the agency that explains the reason for which the

458 prosecuting attorney is denying the agency's request.

459 (c) If the prosecuting attorney does not receive a written objection within the time

460 period described in Subsection (4)(a), the prosecuting attorney shall send a written notification

461 to the agency that grants the agency's request to ~~[release]~~ return or dispose of the evidence.

462 (5) (a) If a prosecuting attorney receives a written request from an agency seeking to
463 ~~[release]~~ return or dispose of evidence, the prosecuting attorney shall:

464 (i) provide a notice of receipt to the agency within 15 days after the day on which the
465 prosecuting attorney receives the written request; and

466 (ii) send a written notification to the agency of the prosecuting attorney's decision to
467 deny or grant an agency's written request within 60 days after the day on which the prosecuting
468 attorney receives the agency's written request.

469 (b) If an agency does not receive a notice of receipt under Subsection (5)(a)(i) or a
470 written notification under Subsection (5)(a)(ii), the agency may send the written request to the
471 district attorney, county attorney, attorney general, or other prosecuting attorney who directly
472 oversees and supervises the prosecuting attorney.

473 (6) If a prosecuting attorney denies an agency's written request to ~~[release]~~ return or
474 dispose of evidence under this section, the agency shall retain the evidence in accordance with
475 Section [77-11c-201](#).

476 (7) The requirements of this section do not apply when the ~~[release]~~ return or disposal
477 of evidence of a misdemeanor offense is in compliance with a memorandum of understanding
478 between the agency and the prosecuting attorney.

479 Section 11. Section **77-11c-301** is amended to read:

480 **77-11c-301. Retention of evidence for felony offenses.**

481 ~~[(1) Except as provided in Subsection (4) and Subsection [23A-5-201](#)(3), an agency
482 shall retain evidence of a felony offense:]~~

483 ~~[(a) at the discretion of the prosecuting attorney; or]~~

484 ~~[(b) until all direct appeals and retrials are final.]~~

485 ~~[(2) If the prosecuting attorney decides to retain control over the evidence of the felony
486 offense in anticipation of possible collateral attacks upon the judgment or for use in a potential
487 prosecution, the prosecuting attorney may decline to authorize the disposal of the evidence.]~~

488 (1) Except as provided in Subsection (4), an agency shall retain evidence of a felony
489 offense:

490 (a) for the longer of:

491 (i) the length of the statute of limitations for the felony offense if:

492 (A) charges are not filed for the felony offense; or

- 493 (B) the felony offense remains unsolved;
494 (ii) the length of time that any individual convicted of the felony offense, or a lesser
495 included offense, remains in custody;
496 (iii) one year after the day on which all direct appeals of the final judgment for any
497 individual convicted of the felony offense, or a lesser included offense, are exhausted; or
498 (iv) the length of time that a petition for postconviction relief, and any appeal of the
499 petition, is pending if an individual convicted of the felony offense files the petition within the
500 one-year time period described in Subsection (1)(c); or
501 (b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution
502 of the felony offense resulted in an acquittal or dismissal.

503 ~~[(3)]~~ (2) An agency shall ensure that evidence of a felony offense is subject to a
504 continuous chain of custody.

505 (3) Subsection (1) does not require an agency to return or dispose of evidence of a
506 felony offense.

507 (4) An agency shall retain and preserve biological evidence of a violent felony offense
508 in accordance with Part 4, Preservation of Biological Evidence for Violent Felony Offenses.

509 Section 12. Section 77-11c-302 is enacted to read:

510 **77-11c-302. Requirements for not retaining evidence of felony offense --**

511 **Preservation of sufficient evidence.**

512 (1) An agency is not required to retain evidence of a felony offense under Section
513 77-11c-301 if:

514 (a) (i) the agency determines that:

515 (A) the size, bulk, or physical character of the evidence renders retention impracticable
516 or the evidence poses a security or safety problem for the agency; and

517 (B) the evidence no longer has any significant evidentiary value;

518 (ii) the agency preserves sufficient evidence from the property, contraband, item, or
519 substance for use as evidence in a prosecution of the offense; and

520 (iii) a prosecuting attorney or a court authorizes the agency to return or dispose of the
521 evidence as described in Subsection 77-11c-303;

522 (b) a court orders the agency to return evidence that is property to a claimant under
523 Section 77-11a-305; or

524 (c) the evidence is wildlife or parts of wildlife.

525 (2) Subsection (1) does not require an agency to return or dispose of evidence of a
526 felony offense.

527 (3) Subsection (1) does not apply to biological evidence of a violent felony offense
528 because an agency is required to retain biological evidence of a violent felony offense as
529 described in Part 4, Preservation of Biological Evidence for Violent Felony Offenses.

530 (4) If the evidence described in Subsection (1) is a controlled substance, an agency
531 shall preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by:

532 (a) collecting and preserving a sample of the controlled substance for independent
533 testing and use as evidence;

534 (b) taking a photographic or video record of the controlled substance with identifying
535 case numbers;

536 (c) maintaining a written report of a chemical analysis of the controlled substance if a
537 chemical analysis was performed by the agency;

538 (d) if the controlled substance exceeds 10 pounds, retaining at least one pound of the
539 controlled substance that is randomly selected from the controlled substance; and

540 (e) for a violent felony offense, collecting and preserving biological evidence from the
541 controlled substance as described in Section [77-11c-401](#).

542 (5) If the evidence described in Subsection (1) is drug paraphernalia, an agency shall
543 preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:

544 (a) collecting and preserving a sample of the controlled substance from the drug
545 paraphernalia for independent testing and use as evidence;

546 (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a
547 chemical analysis was performed by the agency;

548 (c) taking a photographic or video record of the drug paraphernalia with identifying
549 case numbers; and

550 (d) for a violent felony offense, collecting and preserving biological evidence from the
551 drug paraphernalia as described in Section [77-11c-401](#).

552 (6) If the evidence described in Subsection (1) is a computer, the agency shall preserve
553 sufficient evidence under Subsection (1)(a)(ii) of the computer by:

554 (a) extracting all data from the computer that would be evidence in a prosecution of an

555 individual for the offense;

556 (b) taking a photographic or video record of the computer with identifying case
557 numbers; and

558 (c) for a violent felony offense, collecting and preserving biological evidence from the
559 computer as described in Section [77-11c-401](#).

560 (7) For any other type of evidence, the agency shall preserve sufficient evidence under
561 Subsection (1)(a)(ii) of the property, contraband, item, or substance by:

562 (a) taking a photographic or video record of the property, contraband, item, or
563 substance with identifying case numbers; and

564 (b) for a violent felony offense, collecting and preserving biological evidence as
565 described in Section [77-11c-401](#).

566 Section 13. Section **77-11c-303** is enacted to read:

567 **77-11c-303. Procedure for authorizing the return or disposal of evidence of a**
568 **felony offense.**

569 (1) If an agency determines that the agency is not required to retain evidence of a
570 felony offense under Subsection [77-11c-302](#)(1)(a)(i), and the agency seeks to return or dispose
571 of the evidence, the agency shall send a written request to the prosecuting attorney that:

572 (a) identifies the evidence;

573 (b) explains the reason that the agency is not required to retain the evidence under
574 Subsection [77-11c-302](#)(1)(a)(i); and

575 (c) explains the steps that the agency will take, or has taken, to preserve sufficient
576 evidence from the property, contraband, item, or substance for use as evidence in a prosecution
577 of the offense.

578 (2) If a prosecuting attorney receives a written request described in Subsection (1), the
579 prosecuting attorney shall:

580 (a) provide a notice of receipt to the agency within 15 days after the day on which the
581 prosecuting attorney receives the written request; and

582 (b) send a written notification to the agency of the prosecuting attorney's decision to
583 deny or grant an agency's written request within 60 days after the day on which the prosecuting
584 attorney receives the agency's written request.

585 (3) If an agency sends a written request described in Subsection (1) to the prosecuting

586 attorney, the agency shall also send the written request by certified mail, return receipt
587 requested, or a delivery service that provides proof of delivery, to:

588 (a) any individual who remains in custody based on a conviction related to the
589 evidence;

590 (b) the private attorney or public defender of record for each individual described in
591 Subsection (3)(a);

592 (c) the entity that employed the private attorney or public defender described in
593 Subsection (3)(b) at the time of the criminal conviction;

594 (d) if applicable, the prosecuting agency responsible for the prosecution of each
595 individual described in Subsection (3)(a); and

596 (e) the Utah attorney general.

597 (4) (a) If a person described in Subsection (3) receives a written request from an agency
598 seeking to return or dispose of evidence of the felony offense, the person may object to the
599 agency's written request to return or dispose of evidence of the felony offense.

600 (b) To object to an agency's request under Subsection (4)(a), the person must send a
601 written objection to the agency and prosecuting attorney within 60 days after the day on which
602 the person receives the agency's written request.

603 (5) If the prosecuting attorney receives a written request under Subsection (2) and
604 determines that the agency needs to retain the evidence for a prosecution of the felony offense,
605 the prosecuting attorney shall send a written notification to the agency that explains the reason
606 for which the prosecuting attorney is denying the agency's request.

607 (6) The agency may petition the court for an order granting the agency's request to
608 return or dispose of the evidence of a felony offense if:

609 (a) the prosecuting attorney denies the agency's written request or does not respond to
610 an agency's written request within the time periods described in Subsection (2); or

611 (b) a person described in Subsection (3) objects to the agency's written request.

612 (7) The court shall hold a hearing on the agency's petition to determine whether an
613 agency's request to return or dispose of evidence should be granted.

614 (8) After a hearing on the agency's petition, the court shall grant an agency's request to
615 return or dispose of evidence of a felony offense if the court determines, by a preponderance of
616 the evidence, that:

617 (a) the size, bulk, or physical character of the evidence renders retention impracticable
618 or the evidence poses a security or safety problem for the agency;

619 (b) the evidence no longer has any significant evidentiary value; and

620 (c) the agency will take, or has taken, steps to preserve sufficient evidence from the
621 property, contraband, item, or substance for use as evidence in a prosecution of the offense.

622 (9) If the court determines that a prosecuting attorney, or a person described in
623 Subsection (3), objects to an agency's request to dispose or return of physical evidence of a
624 felony offense because the physical evidence contains biological evidence that would be
625 evidence in a prosecution of the offense, the court may require the agency to collect and
626 preserve biological evidence from the physical evidence before the agency returns or disposes
627 of the evidence.

628 (10) If a prosecuting attorney denies the agency's written request or a person described
629 in Subsection (3) objects to the agency's written request, the agency shall retain the evidence of
630 a felony offense as described in Section 77-11c-301 until:

631 (a) the agency obtains a court order granting the agency's request to return or dispose of
632 the evidence as described in Subsection (8); or

633 (b) the time periods described in Section 77-11c-301 have expired.

634 Section 14. Section 77-11c-401 is amended to read:

635 **77-11c-401. Preservation of biological evidence -- Procedures -- Inventory**
636 **request.**

637 (1) Except as provided in Section 77-11c-402, an evidence collecting or retaining
638 entity shall preserve biological evidence of a violent felony offense in accordance with this
639 part.

640 (2) An evidence collecting or retaining entity shall preserve biological evidence of a
641 violent felony offense:

642 (a) for the longer of:

643 (i) the length of the statute of limitations for the violent felony offense if:

644 (A) no charges are filed for the violent felony offense; or

645 (B) the violent felony offense remains unsolved;

646 ~~[(ii) the length of time that the individual convicted of the violent felony offense or any~~
647 ~~lesser included violent offense remains in custody; or]~~

648 ~~[(iii) the length of time that a co-defendant remains in custody;]~~
649 (ii) the length of time that any individual convicted of the violent felony offense, or a
650 lesser included offense, remains in custody;

651 (iii) one year after the day on which all direct appeals of the judgment for any
652 individual convicted of the violent felony offense, or a lesser included offense, are exhausted;
653 or

654 (iv) the length of time that a petition for postconviction relief, and any appeal of the
655 petition, is pending if an individual convicted of the violent felony offense files the petition
656 within the one-year time period described in Subsection (2)(a)(iii); or

657 (b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution
658 of the violent felony offense resulted in an acquittal or dismissal.

659 ~~[(b)]~~ (3) An evidence collecting or retaining entity shall ensure that biological evidence
660 under Subsection (2) is:

661 (a) preserved in an amount and manner sufficient to:

662 (i) develop a DNA profile; and

663 (ii) if practicable, allow for independent testing of the biological evidence by a
664 defendant; and

665 ~~[(c)]~~ (b) subject to a continuous chain of custody.

666 ~~[(3)]~~ (4) (a) Upon request by a defendant under Title 63G, Chapter 2, Government
667 Records Access and Management Act, the evidence collecting or retaining entity shall prepare
668 an inventory of the biological evidence preserved in connection with the defendant's criminal
669 case.

670 (b) If the evidence collecting or retaining entity cannot locate biological evidence
671 requested under Subsection ~~[(3)(a)]~~ (4)(a), the custodian for the entity shall provide a sworn
672 affidavit to the defendant that:

673 (i) describes the efforts taken to locate the biological evidence; and

674 (ii) affirms that the biological evidence could not be located.

675 ~~[(4)]~~ (5) The evidence collecting or retaining entity may dispose of biological evidence
676 before the day on which the period described in Subsection ~~[(2)(a)]~~ (2) expires if:

677 (a) no other provision of federal or state law requires the evidence collecting or
678 retaining entity to preserve the biological evidence;

679 (b) the evidence collecting or retaining entity sends notice in accordance with
680 Subsection ~~[(5)]~~ (6); and

681 (c) an individual notified under Subsection ~~[(5)(a)]~~ (6)(a) does not within 180 days
682 after the day on which the evidence collecting or retaining entity receives proof of delivery
683 under Subsection ~~[(5)]~~ (6):

684 (i) file a motion for testing of the biological evidence under Section 78B-9-301; or

685 (ii) submit a written request under Subsection ~~[(5)(b)(ii)]~~ (6)(b)(ii).

686 ~~[(5)]~~ (6) If the evidence collecting or retaining entity intends to dispose of the
687 biological evidence before the day on which the period described in Subsection ~~[(2)(a)]~~ (2)
688 expires, the evidence collecting or retaining entity shall send a notice of intent to dispose of the
689 biological evidence that:

690 (a) is sent by certified mail, return receipt requested, or a delivery service that provides
691 proof of delivery, to:

692 (i) an individual who remains in custody based on a criminal conviction related to the
693 biological evidence;

694 (ii) the private attorney or public defender of record for each individual described in
695 Subsection ~~[(5)(a)(i)]~~ (6)(a)(i);

696 (iii) the entity that employed the private attorney or public defender at the time of the
697 criminal conviction;

698 ~~[(iii)]~~ (iv) if applicable, the prosecuting agency responsible for the prosecution of each
699 individual described in Subsection ~~[(5)(a)(i)]~~ (6)(a)(i); and

700 ~~[(iv)]~~ (v) the Utah attorney general; and

701 (b) explains that the party receiving the notice may:

702 (i) file a motion for testing of biological evidence under Section 78B-9-301; or

703 (ii) submit a written request that the evidence collecting or retaining entity retain the
704 biological evidence.

705 ~~[(6)]~~ (7) (a) Subject to Subsections ~~[(6)(b)]~~ (7)(b) and (c), if the evidence collecting or
706 retaining entity receives a written request to retain the biological evidence under Subsection
707 ~~[(5)(b)(ii)]~~ (6)(b)(ii), the evidence collecting or retaining entity shall retain the biological
708 evidence while the defendant remains in custody.

709 (b) Subject to Subsection (6)(c), the evidence collecting or retaining entity may only

710 return or dispose of physical evidence of a violent felony offense as described in Part 3,
711 Retention of Evidence for Felony Offenses.

712 ~~[(b) Subject to Subsection (6)(c), the evidence collecting or retaining entity is not~~
713 ~~required to preserve physical evidence that may contain biological evidence if the physical~~
714 ~~evidence's size, bulk, or physical character renders retention impracticable.]~~

715 (c) If the evidence collecting or retaining entity [~~determines that retention is~~
716 ~~impracticable~~] is not required to retain physical evidence of the violent felony offense under
717 Part 3, Retention of Evidence for Felony Offenses, before returning or disposing of the physical
718 evidence, the evidence collecting or retaining entity shall:

719 (i) remove the portions of the physical evidence likely to contain biological evidence
720 related to the violent felony offense; and

721 (ii) preserve the removed biological evidence in a quantity sufficient to permit future
722 DNA testing.

723 ~~[(7)]~~ (8) To comply with the preservation requirements described in this section, a law
724 enforcement agency or a court may:

725 (a) retain the biological evidence; or

726 (b) if a continuous chain of custody can be maintained, return the biological evidence
727 to the custody of the other law enforcement agency that originally provided the biological
728 evidence to the law enforcement agency.

729 Section 15. **Effective date.**

730 This bill takes effect on May 1, 2024.