

1 **DISPOSAL OF EVIDENCE IN CRIMINAL**
2 **PROCEEDINGS**

3 2003 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: J. Stuart Adams**

6 **This act modifies Code of Criminal Procedure provisions regarding disposal of property**
7 **received by a peace officer by amending provisions for returning property to an owner to**
8 **reflect the role of the agency's evidence custodian in the process.**

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **77-24-2**, as last amended by Chapter 10, Laws of Utah 1992

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

13 Section 1. Section **77-24-2** is amended to read:

14 **77-24-2. Return of property not needed as evidence -- Procedure.**

15 (1) Custodial property which is not needed as evidence shall be returned to the owner
16 in accordance with this chapter if ~~[he]~~ the owner may lawfully possess it.

17 (2) (a) When the peace officer or the officer's employing agency ~~[by which he is~~
18 ~~employed]~~ becomes aware that the property is not needed as evidence, the officer or the agency
19 shall advise the prosecuting attorney ~~[shall be so advised, giving]~~ that the property is not
20 needed and shall provide a description and details of ownership.

21 (b) When the prosecuting attorney~~[-, by such notice or otherwise,]~~ is advised or
22 otherwise becomes aware that the property is not needed as evidence, ~~[he]~~ the prosecutor shall
23 ~~[give written notice]~~ authorize release of the property to the owner.

24 (c) (i) Upon proof of ownership and of lawfulness of possession satisfactory to the
25 ~~[prosecuting attorney, the prosecuting attorney shall give]~~ evidence custodian, the custodian
26 shall release the property to the owner ~~[written authorization which shall entitle the owner to~~
27 ~~receive the property from the person having custody of it].~~



28 (ii) If the evidence custodian is unable to locate an owner of the property or if the
29 owner is not entitled to lawfully possess the property, the agency having custody of the
30 property shall dispose of the property in accordance with Section 77-24-4.

31 (3) (a) When custodial property is received in evidence, [it shall be retained by] the
32 clerk of the court last receiving it shall retain the property or the clerk shall [be returned by
33 him] return the property to the custody of the peace officer. The property shall be retained by
34 the clerk or the officer until all direct appeals and retrials are final, at which time the property
35 shall be returned to the owner in accordance with this [section. In the event that] chapter.

36 (b) If the prosecuting attorney considers it necessary to retain control over the
37 evidence, in anticipation of possible collateral attacks upon the judgment or [of] for use in
38 [some] a potential prosecution, he may decline to authorize return of the property to the owner.

Legislative Review Note
as of 1-16-03 4:10 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0104

Disposal of Evidence in Criminal Proceedings

03-Feb-03

10:44 AM

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst