

RETURN OF WEAPONS AFTER USE IN COURT

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides criteria for the return of firearms in the possession of a law enforcement agency after use for court proceedings.

Highlighted Provisions:

This bill:

- ▶ requires a law enforcement agency to return a firearm to a legal owner within a certain time period after court proceedings unless the legal owner may not legally possess a firearm;
- ▶ authorizes a person to provide a sworn affidavit if the firearm's original proof of purchase is lost;
- ▶ requires a law enforcement agency to document the return of a firearm to a legal owner;
- ▶ allows a law enforcement agency to maintain possession of a firearm under certain criteria; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **76-10-525**, as enacted by Laws of Utah 1973, Chapter 196

30 **77-24-2**, as last amended by Laws of Utah 2012, Chapters 47 and 284



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

33 Section 1. Section **76-10-525** is amended to read:

34 **76-10-525. Disposition of firearm after use for court purposes.**

35 [~~All police departments and/or sheriff's departments which have in their possession a~~
36 ~~weapon]~~

37 (1) A law enforcement agency as defined in Section 53-1-102 that has in its possession
38 a firearm after it has been used for court [purposes] proceedings shall determine the [true] legal
39 owner of the [weapon and return it to him; however, if unable to determine the true owner of
40 the weapon, or if the true owner is the person committing the crime for which the weapon was
41 used as evidence, the department shall confiscate it and it shall revert to that agency for their
42 use and/or disposal as the head of the department determines.] firearm and return it to the
43 owner within 30 days after the conclusion of court proceedings.

44 (2) A law enforcement agency may retain the firearm for the law enforcement agency's
45 use or disposal pursuant to the agency's firearm disposal policy, if:

- 46 (a) it is unable to determine the legal owner of the firearm;
- 47 (b) the legal owner may not lawfully possess the firearm; or
- 48 (c) the legal owner was convicted of a crime for which the firearm was used as
49 evidence.

50 (3) A law enforcement agency shall accept a sworn affidavit of firearm ownership from
51 a person if the original proof of purchase is lost.

52 (4) A law enforcement agency shall document the disposition of any firearm.

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

54 **77-24-2. Property not needed as evidence -- Child interview retention -- Return**
55 **procedure -- Conflict resolution for secondhand merchandise.**

56 (1) Property [~~which~~] that is not needed as evidence shall be returned to the owner, if
57 the owner may lawfully possess it, or disposed of in accordance with this chapter.

58 (2) (a) When the peace officer or the officer's employing agency becomes aware that

59 the property is not needed as evidence, the officer or the agency shall inform the prosecuting
60 attorney that the property is not needed and provide a description and details of ownership.

61 (b) When the prosecuting attorney is informed or otherwise becomes aware that the
62 property is not needed as evidence, the prosecuting attorney shall authorize release of the
63 property to the owner.

64 (c) When the peace officer or the officer's employing agency becomes aware that any
65 property is to be returned to its owner, the officer or employing agency shall exercise due
66 diligence in attempting to notify the rightful owner that the property is to be returned.

67 (d) If the property is a [~~weapon, the peace officer~~] firearm, the law enforcement agency
68 shall return or dispose of [~~it~~] the firearm in accordance with Section 76-10-525.

69 (e) (i) Upon proof of ownership and of lawfulness of possession satisfactory to the
70 evidence custodian, the custodian shall release the property to the owner.

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

74 (3) (a) When property is received in evidence, the clerk of the court last receiving it
75 shall retain the property or the clerk shall return the property to the custody of the peace officer.
76 The property shall be retained by the clerk or the officer until all direct appeals and retrials are
77 final, at which time the property shall be returned to the owner in accordance with this chapter.
78 If the property was seized for forfeiture, it shall be held and disposed of as provided in Title 24,
79 Chapter 1, Utah Uniform Forfeiture Procedures Act.

80 (b) If the prosecuting attorney considers it necessary to retain control over the
81 evidence, in anticipation of possible collateral attacks upon the judgment or for use in a
82 potential prosecution, the prosecuting attorney may decline to authorize return of the property
83 to the owner.

84 (4) If a peace officer or the officer's employing agency records an interview of a minor
85 child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or
86 76-5-404.1, the peace officer's employing agency shall retain a copy of the recording for 18
87 years following the date of the last recording unless the prosecuting attorney requests in writing
88 that the recording be retained for an additional period of time.

89 (5) If a conflict exists between the provisions of this section and Title 13, Chapter 32a,

90 Pawnshop and Secondhand Merchandise Transaction Information Act, Title 13, Chapter 32a
91 governs regarding disposition of property held by a pawn or secondhand business in the course
92 of its business.

Legislative Review Note
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Office of Legislative Research and General Counsel