

SB0252S02 compared with SB0252

~~{Omitted text}~~ shows text that was in SB0252 but was omitted in SB0252S02

inserted text shows text that was not in SB0252 but was inserted into SB0252S02

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1

Digital Information Seizure Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor:

2

3 LONG TITLE

4 General Description:

5 This bill concerns digital information contained on a computer or portable communication device
seized by law enforcement.

7 Highlighted Provisions:

8 This bill:

9 ▶ defines terms and modifies definitions;

10 ▶ ~~{requires a law enforcement agency or prosecuting agency to make a copy}~~ provides specific
procedures and requirements regarding the copying of stored digital data ~~{on a seized computer~~
~~device}~~ and the return ~~{the computer device to the owner}~~ of certain seized computers or ~~{the~~
~~owner's authorized representative within a certain time frame under specified conditions}~~ portable
communication devices;

13 ▶ prohibits a law enforcement agency or prosecuting agency from conditioning the return of a
seized computer or portable communication device on the owner consenting to a search of the computer
or portable communication device or providing the owner's password or otherwise unlocking the
computer or portable communication device; and

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16 ▸ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

22 **AMENDS:**

23 **77-11a-101** , as last amended by Laws of Utah 2024, Chapter 80 , as last amended by Laws of Utah
2024, Chapter 80

24 **77-11a-301** , as last amended by Laws of Utah 2024, Chapter 80 , as last amended by Laws of Utah
2024, Chapter 80

25 **77-11a-305 , as last amended by Laws of Utah 2024, Chapter 150 , as last amended by Laws
of Utah 2024, Chapter 150**

26 **77-11c-101** , as last amended by Laws of Utah 2024, Chapter 234 , as last amended by Laws of Utah
2024, Chapter 234

27 **77-11c-202** , as last amended by Laws of Utah 2024, Chapters 150, 164 , as last amended by Laws
of Utah 2024, Chapters 150, 164

28 **77-11c-302** , as enacted by Laws of Utah 2024, Chapter 150 , as enacted by Laws of Utah 2024,
Chapter 150

29

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

31 Section 1. Section **77-11a-101** is amended to read:

32 **77-11a-101. Definitions.**

 As used in this chapter:

33 (1)

 (a) "Agency" means an agency of this state or a political subdivision of this state.

34 (b) "Agency" includes a law enforcement agency or a multijurisdictional task force.

35 (2) "Claimant" means:

36 (a) an owner of property;

37 (b) an interest holder; or

38 (c) an individual or entity who asserts a claim to any property for which an agency seeks to forfeit.

40 (3)

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- (a) "Computer{device}" means, except as provided in Subsection (3)(c), an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, and storage functions.
- 43 (b) "Computer{device}" includes any device that is used for the storage of digital or electronic files, flash memory, software, or other electronic information.
- 45 (c) "Computer{device}" does not [mean] include:
- 47 (i) a computer server of an Internet or electronic service provider, or the service provider's employee, if used to comply with the requirements under 18 U.S.C. Sec. 2258A(-) ;
- 50 (ii) a portable communication device; or
- 51 (iii) a device used for the purpose of taking protected wildlife regulated under Title 23A, Wildlife Resources Act, including a trail camera, unmanned aircraft, drone, or a similar device that is capable of recording data.
- 48 (4)
- (a) "Contraband" means any property, item, or substance that is unlawful to produce or to possess under state or federal law.
- 50 (b) "Contraband" includes:
- 51 (i) a controlled substance that is possessed, transferred, distributed, or offered for distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act; or
- 54 (ii) a computer or a portable communication device that:
- 55 (A) contains or houses child sexual abuse material, or is used to create, download, transfer, upload to a storage account, or store any electronic or digital files containing child sexual abuse material; or
- 58 (B) contains the personal identifying information of another individual, as defined in Section 76-6-1101, whether that individual is alive or deceased, and the personal identifying information has been used to create false or fraudulent identification documents or financial transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.
- 63 (5) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- 64 (6) "Court" means a municipal, county, or state court.
- 65 (7) "Division of Law Enforcement" means the division within the Department of Natural Resources created under Title 79, Chapter 2, Part 7, Division of Law Enforcement.
- 67 (8) "Evidence" means the same as that term is defined in Section 77-11c-101.
- 68

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(9) "Forfeit" means to divest a claimant of an ownership interest in property seized by a peace officer or agency.

(10) "Innocent owner" means a claimant who:

(a) held an ownership interest in property at the time of the commission of an offense subjecting the property to seizure, and:

(i) did not have actual knowledge of the offense subjecting the property to seizure; or

(ii) upon learning of the commission of the offense, took reasonable steps to prohibit the use of the property in the commission of the offense; or

(b) acquired an ownership interest in the property and had no knowledge that the commission of the offense subjecting the property to seizure had occurred or that the property had been seized, and:

(i) acquired the property in a bona fide transaction for value;

(ii) was an individual, including a minor child, who acquired an interest in the property through probate or inheritance; or

(iii) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

(11)

(a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value.

(b) "Interest holder" does not mean a person:

(i) who holds property for the benefit of or as an agent or nominee for another person; or

(ii) who is not in substantial compliance with any statute requiring an interest in property to be:

(A) recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value; or

(B) held in control by a secured party, as defined in Section 70A-9a-102, in accordance with Section 70A-9a-314 in order to perfect the interest against a good faith purchaser for value.

(12) "Law enforcement agency" means:

(a) a municipal, county, state institution of higher education, or state police force or department;

(b) a sheriff's office; or

(c) a municipal, county, or state prosecuting authority.

(13) "Legislative body" means:

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- 104 (a)
- (i) the Legislature, county commission, county council, city commission, city council, or town council that has fiscal oversight and budgetary approval authority over an agency; or
- 107 (ii) the agency's governing political subdivision; or
- 108 (b) the lead governmental entity of a multijurisdictional task force, as designated in a memorandum of understanding executed by the agencies participating in the task force.
- 111 (14) "Multijurisdictional task force" means a law enforcement task force or other agency comprised of individuals who are employed by or acting under the authority of different governmental entities, including federal, state, county, or municipal governments, or any combination of federal, state, county, or municipal agencies.
- 115 (15) "Owner" means an individual or entity, other than an interest holder, that possesses a bona fide legal or equitable interest in property.
- 117 (16) "Pawn or secondhand business" means the same as that term is defined in Section 13-32a-102.
- 119 (17) "Peace officer" means an employee:
- 120 (a) of an agency;
- 121 (b) whose duties consist primarily of the prevention and detection of violations of laws of this state or a political subdivision of this state; and
- 123 (c) who is authorized by the agency to seize property.
- 130 (18)
- (a) "Portable communication device" means a portable electronic device designed to receive and transmit a text message, email, video, voice, or similar communication.
- 132 (b) "Portable communication device" includes:
- 133 (i) a smart phone;
- 134 (ii) a cellular phone that is not a smart phone;
- 135 (iii) a tablet; and
- 136 (iv) a substantially similar communication device used to initiate or receive communication, information, or data.
- 138 (c) "Portable communication device" does not include a device used for the purpose of taking protected wildlife regulated under Title 23A, Wildlife Resources Act, including a trail camera, unmanned aircraft, drone, or a similar device that is capable of recording data.
- 124 [(18)] (19)

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(a) "Proceeds" means:

- 125 (i) property of any kind that is obtained directly or indirectly as a result of the commission of an
offense; or
- 127 (ii) any property acquired directly or indirectly from, produced through, realized through, or caused
by an act or omission regarding property under Subsection ~~[(18)(a)(i)]~~ (19)(a)(i).
- 130 (b) "Proceeds" includes any property of any kind without reduction for expenses incurred in the
acquisition, maintenance, or production of that property, or any other purpose regarding property
under Subsection ~~[(18)(a)(i)]~~ (19)(a)(i).
- 133 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that subjects the property
to seizure.

135 ~~[(19)]~~ (20)

(a) "Property" means all property, whether real or personal, tangible or intangible.

136 (b) "Property" does not include contraband.

137 ~~[(20)]~~ (21) "Prosecuting attorney" means:

- 138 (a) the attorney general and an assistant attorney general;
- 139 (b) a district attorney or deputy district attorney;
- 140 (c) a county attorney or assistant county attorney; and
- 141 (d) an attorney authorized to commence an action on behalf of the state.

142 ~~[(21)]~~ (22) "Public interest use" means a:

- 143 (a) use by a government agency as determined by the legislative body of the agency's jurisdiction; or
- 145 (b) donation of the property to a nonprofit charity registered with the state.

146 ~~[(22)]~~ (23) "Real property" means land, including any building, fixture, improvement, appurtenance,
structure, or other development that is affixed permanently to land.

148 ~~[(23)]~~ (24)

(a) "Seized property" means property seized by a peace officer or agency in accordance with Section
77-11a-201.

150 (b) "Seized property" includes property that the agency seeks to forfeit under Chapter 11b, Forfeiture of
Seized Property.

171 (25) "Smart phone" means a portable electronic device that combines a cellular phone with a hand-held
computer, typically offering Internet access, data storage, and text, email, and similar capabilities.

174 (26) "Tablet" means a portable electronic device that:

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- 175 (a) is equipped with a mobile operating system, touchscreen display, and rechargeable battery; and
177 (b) has the ability to support access to a cellular network.
- 178 Section 2. Section **77-11a-301** is amended to read:
- 179 **77-11a-301. Return of seized property to claimant -- Generally --** ~~{Special procedure for~~
~~noncontraband computer}~~ Noncontraband computer or portable communication device.
- 155 (1)
- (a) An agency with custody of seized property, or the prosecuting attorney, may return the property to a claimant if the agency or the prosecuting attorney:
- 157 (i) determines that the agency does not need to retain or preserve the property as evidence under Chapter 11c, Retention of Evidence; or
- 159 (ii) seeks to return the property to the claimant because the agency or prosecuting attorney determines that the claimant is an innocent owner or an interest holder.
- 161 (b) An agency with custody of seized property, or the prosecuting attorney, may not return property under this Subsection (1) if the property is subject to retention or preservation under Chapter 11c, Retention of Evidence.
- 164 (2) An agency with custody of the seized property, or the prosecuting attorney, shall return the property to a claimant if:
- 166 (a) the claimant posts a surety bond or cash with the court in accordance with Section 77-11a-302;
- 168 (b) the court orders the return of property to the claimant for hardship purposes under Section 77-11a-303;
- 170 (c) a claimant establishes that the claimant is an innocent owner or an interest holder under Section 77-11a-304;{~~f~~ or}
- 172 (d) the court orders property retained as evidence to be returned to the claimant under Section 77-11a-305{~~f~~{~~}~~ ~~or~~}
- 174 ~~{(e) the property is a computer device that is not alleged to be contraband, under the procedure described in Subsection (4).}~~
- 176 (3)
- (a)
- (i) For a computer or portable communication device determined to be contraband, a court may order the reasonable extraction and return of specifically described personal digital data to the owner of the computer or portable communication device.

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- 179 ~~[(b)]~~ (ii) The agency shall determine a reasonable cost to extract the data described in Subsection (3)(a)
(i).
- 180 ~~[(e)]~~ (iii) At the time of the request to extract the data, the owner of the computer or portable
communication device shall pay the agency the cost to extract the data described in Subsection (3)
(a)(i).
- 209 (b)
- (i) For a computer or portable communication device that is not alleged to be contraband but is alleged
to contain evidence in the form of digital data contained on the computer or portable communication
device, the computer or portable communication device may be returned under this section, or the
owner of the computer or portable communication device may follow the procedures described in
Section 77-11a-305 to regain possession of the computer or portable communication device.
- 216 (ii) The cost of the copying or extraction of data from a computer or portable communication device
described in Subsection (3)(b)(i) may not be charged to the owner of the computer or portable
communication device.
- 219 (iii) A law enforcement agency or prosecuting agency may not condition the return of a computer or
portable communication device described in Subsection (3)(b)(i):
- 221 (A) on the owner providing the owner's password or otherwise unlocking, accessing, or de-encrypting
the computer or portable communication device; or
- 223 (B) on the owner consenting to a search of the digital contents of the computer or portable
communication device.
- 182 (4)
- ~~{(a) For a computer device that is not alleged to be contraband and that the law enforcement agency~~
~~or prosecuting agency alleges may contain evidence in the form of digital information stored on~~
~~the computer device, the law enforcement agency or prosecuting agency with possession of the~~
~~computer device shall: }~~
- 186 ~~{(i) if possible, make a reasonable effort to determine the owner of the computer device, including~~
~~before seizing the computer device; }~~
- 188 ~~{(ii) make a digital copy, clone, or other reproduction of the digital information stored on the~~
~~computer device within 72 hours of the seizure of the computer device; }~~
- 190 ~~{(iii) notify the owner of the computer device of the location where the computer device will be~~
~~available for retrieval during regular business hours; and }~~

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- 192 ~~{(iv) make the computer device available for the owner or the owner's authorized representative to~~
 ~~retrieve on the first business day after the day on which the digital copy of the computer device~~
 ~~described in Subsection (4)(a)(ii) is made.}~~
- 195 ~~{(b)}~~
- ~~{(i) Either the owner or the owner's authorized representative may pick up a seized computer device~~
 ~~under Subsection (4)(a).}~~
- 197 ~~{(ii) When returning a seized computer device to the owner, a law enforcement agency or prosecuting~~
 ~~agency shall follow the procedures described in Subsection (7).}~~
- 199 ~~{(iii) When returning a seized computer device to the owner's authorized representative, a law~~
 ~~enforcement agency or prosecuting agency shall:}~~
- 201 ~~{(A) confirm the authorized representative's identity with a government-issued identification;}~~
- 203 ~~{(B) require the authorized representative to provide either a valid power of attorney that identifies~~
 ~~the authorized representative as having the authority to act on behalf of the owner, or a notarized~~
 ~~statement signed by the owner that identifies the authorized representative as having the authority to~~
 ~~take possession of the computer device; and}~~
- 208 ~~{(C) comply with the receipt provisions described in Subsections (7)(c) and (d), using the authorized~~
 ~~representative in the place of the owner.}~~
- 210 ~~{(c) A law enforcement agency or prosecuting agency may not condition the return of the computer~~
 ~~device:}~~
- 212 ~~{(i) on the owner providing the owner's password or otherwise unlocking, accessing, or de-encrypting~~
 ~~the computer device; or}~~
- 214 ~~{(ii) on the owner consenting to a search of the digital contents of the computer device.}~~
- 215 ~~{(d) {Digital information obtained from a computer device under Subsection (4)(a)(ii) remains subject~~
 ~~to warrant requirements and evidentiary procedures.}~~
- 217 ~~{(5)}~~ If a natural resources officer for the Division of Law Enforcement seizes a vehicle, the Division
 of Law Enforcement shall return the vehicle to a claimant in accordance with Section 23A-5-201.
- 220 ~~{(5)}~~ ~~{(6)}~~ If an agency is not required, or is no longer required, to retain or preserve property as
 evidence under Chapter 11c, Retention of Evidence, and the agency seeks to return or dispose of the
 property, the agency shall exercise due diligence in attempting to notify the claimant of the property
 to advise the claimant that the property is to be returned.
- 224 ~~{(6)}~~ ~~{(7)}~~

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(a) Before an agency may return seized property to a person claiming ownership of the property, the person shall establish that the person:

(i) is the owner of the property; and

(ii) may lawfully possess the property.

(b) The person shall establish ownership under Subsection ~~{(6)(a){}}~~ ~~(7)(a)~~ by providing to the agency:

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

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

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

(d) The agency shall:

(i) retain a copy of the receipt; and

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

Section 3. Section 77-11a-305 is amended to read:

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

(1)

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

(b) The claimant may file the petition in:

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

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

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

(2)

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

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

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

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- (ii) if the offense subjecting the property to seizure results in a conviction, applied directly or by proceeds of the sale of the property toward restitution, fines, or fees owed by the claimant in an amount set by the court;
- 264 (iii) converted to a public interest use;
- 265 (iv) held for further legal action;
- 266 (v) sold at public auction and the proceeds of the sale applied to a public interest use; or
- 268 (vi) destroyed.
- 269 (3) Before the court can order property be returned to a claimant, the claimant shall establish, by clear and convincing evidence, that the claimant:
- 271 (a) is the owner of the property; and
- 272 (b) may lawfully possess the property.
- 273 (4)
- (a) [If] Subject to the provisions in Subsections (4)(b), (c), and (d), the court orders the property to be returned to the claimant, the agency with custody of the property shall return the property to the claimant as expeditiously as possible.
- 276 (b) If the property at issue is a computer or a portable communication device that is not alleged to be contraband and that the law enforcement agency or prosecuting agency alleges may contain evidence in the form of digital information stored on the computer or portable communication device, the law enforcement agency or prosecuting agency with possession of the computer or portable communication device shall:
- 282 (i) make a digital copy, clone, or other reproduction of the digital information stored on the computer or portable communication device within:
- 284 (A) for a portable communication device, 30 days after the day on which the claimant files the petition described in Subsection (1)(a); or
- 286 (B) for a computer, 120 days after the day on which the claimant files the petition described in Subsection (1)(a); and
- 288 (ii) allow the claimant to regain possession of the computer or portable communication device if ordered by the court on an expedited basis in accordance with Subsection (4)(a).
- 291 (c) If the law enforcement agency or prosecuting agency with possession of the computer or portable communication device is unable to make a digital copy, clone, or other reproduction of the digital

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information stored on the computer or portable communication device within the deadlines described in Subsection (4)(b)(i):

- 295 (i) the law enforcement agency or prosecuting agency shall explain to the court why the action has not
taken place and provide an estimate as to when the action will be completed; and
- 298 (ii) the court shall retain jurisdiction over the matter until the property has been returned or the matter
has otherwise been resolved.
- 300 (d) Digital information obtained from a computer or portable communication device under Subsection
(4)(b)(i) remains subject to warrant requirements and evidentiary procedures.

303 Section 4. Section **77-11c-101** is amended to read:

304 **77-11c-101. Definitions.**

As used in this chapter:

- 240 (1) "Acquitted" means the same as that term is defined in Section 77-11b-101.
- 241 (2) "Adjudicated" means that:
- 242 (a)
- (i) a judgment of conviction by plea or verdict of an offense has been entered by a court; and
- 244 (ii) a sentence has been imposed by the court; or
- 245 (b) a judgment has been entered for an adjudication of an offense by a juvenile court under Section
80-6-701.
- 247 (3) "Adjudication" means:
- 248 (a) a judgment of conviction by plea or verdict of an offense; or
- 249 (b) an adjudication for an offense by a juvenile court under Section 80-6-701.
- 250 (4) "Agency" means the same as that term is defined in Section 77-11a-101.
- 251 (5) "Appellate court" means the Utah Court of Appeals, the Utah Supreme Court, or the United States
Supreme Court.
- 253 (6)
- (a) "Biological evidence" means an item that contains blood, semen, hair, saliva, epithelial cells,
latent fingerprint evidence that may contain biological material suitable for DNA testing, or other
identifiable human biological material that:
- 256 (i) is collected as part of an investigation or prosecution of a violent felony offense; and
- 258 (ii) may reasonably be used to incriminate or exculpate a person for the violent felony offense.
- 260 (b) "Biological evidence" includes:

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- 261 (i) material that is catalogued separately, including:
262 (A) on a slide or swab; or
263 (B) inside a test tube, if the evidentiary sample that previously was inside the test tube has been
consumed by testing;
265 (ii) material that is present on other evidence, including clothing, a ligature, bedding, a drinking cup, a
cigarette, or a weapon, from which a DNA profile may be obtained;
268 (iii) the contents of a sexual assault kit; and
269 (iv) for a violent felony offense, material described in this Subsection (6) that is in the custody of an
evidence collecting or retaining entity on May 4, 2022.
271 (7) "Claimant" means the same as that term is defined in Section 77-11a-101.
272 (8) "Computer{~~device~~}" means the same as that term is defined in Section 77-11a-101.
273 (9) "Continuous chain of custody" means:
274 (a) for a law enforcement agency or a court, that legal standards regarding a continuous chain of
custody are maintained; and
276 (b) for an entity that is not a law enforcement agency or a court, that the entity maintains a record in
accordance with legal standards required of the entity.
278 (10) "Contraband" means the same as that term is defined in Section 77-11a-101.
279 (11) "Controlled substance" means the same as that term is defined in Section 58-37-2.
280 (12) "Court" means a municipal, county, or state court.
281 (13) "DNA" means deoxyribonucleic acid.
282 (14) "DNA profile" means a unique identifier of an individual derived from DNA.
283 (15) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.
284 (16) "Evidence" means property, contraband, or an item or substance that:
285 (a) is seized or collected as part of an investigation or prosecution of an offense; and
286 (b) may reasonably be used to incriminate or exculpate an individual for an offense.
287 (17)
(a) "Evidence collecting or retaining entity" means an entity within the state that collects, stores, or
retrieves biological evidence.
289 (b) "Evidence collecting or retaining entity" includes:
290 (i) a medical or forensic entity;
291 (ii) a law enforcement agency;

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- 292 (iii) a court; and
- 293 (iv) an official, employee, or agent of an entity or agency described in this Subsection (17).
- 295 ~~[(v)]~~ (c) "Evidence collecting or retaining entity" does not include a collecting facility defined in
Section 53-10-902.
- 297 (18) "Exhibit" means property, contraband, or an item or substance that is admitted into evidence for a
court proceeding.
- 299 (19) "In custody" means an individual who:
- 300 (a) is incarcerated, civilly committed, on parole, or on probation; or
- 301 (b) is required to register under Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry.
- 303 (20) "Law enforcement agency" means the same as that term is defined in Section 77-11a-101.
- 305 (21) "Medical or forensic entity" means a private or public hospital, medical facility, or other entity that
secures biological evidence or conducts forensic examinations related to criminal investigations.
- 308 (22) "Physical evidence" includes evidence that:
- 309 (a) is related to:
- 310 (i) an investigation;
- 311 (ii) an arrest; or
- 312 (iii) a prosecution that resulted in a judgment of conviction; and
- 313 (b) is in the actual or constructive possession of a law enforcement agency or a court or an agent of a
law enforcement agency or a court.
- 381 ~~(23)~~ (24) "Portable communication device" means the same as that term is defined in Section 77-11a-101.
- 315 ~~(23)~~ (24) "Property" means the same as that term is defined in Section 77-11a-101.
- 316 ~~(24)~~ (25) "Prosecuting attorney" means the same as that term is defined in Section 77-11a-101.
- 317 ~~(25)~~ (26) "Sexual assault kit" means the same as that term is defined in Section 53-10-902.
- 318 ~~(26)~~ (27) "Victim" means the same as that term is defined in Section 53-10-902.
- 319 ~~(27)~~ (28) "Violent felony offense" means the same as the term "violent felony" is defined in Section
76-3-203.5.
- 321 ~~(28)~~ (29) "Wildlife" means the same as that term is defined in Section 23A-1-101.
- 391 Section 5. Section **77-11c-202** is amended to read:
- 392 **77-11c-202. Requirements for not retaining evidence of a misdemeanor offense --**
Preservation of sufficient evidence.
- 325 (1) An agency is not required to retain evidence of a misdemeanor offense under Section 77-11c-201 if:

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- 327 (a)
- 328 (i) the agency determines that:
- 329 (A) the size, bulk, or physical character of the evidence renders retention impracticable; or
- 330 (B) the evidence poses a security or safety problem for the agency;
- 331 (ii) the agency preserves sufficient evidence of the property, contraband, item, or substance for use as evidence in a prosecution of the offense;
- 332 (iii) the agency sends a written request under Subsection 77-11c-203(1) to the prosecuting attorney for permission to return or dispose of the evidence; and
- 333 (iv) the prosecuting attorney grants the agency's written request in accordance with Section 77-11c-203;
- 334 (b) a court orders the agency to return evidence that is property to a claimant under Section 77-11a-305;
- 335 or
- 336 (c) the evidence is wildlife or parts of wildlife.
- 337 (2) Notwithstanding Subsection (1), the agency may not dispose of evidence of a misdemeanor offense that is a sexual assault kit before the day on which the time period described in Section 77-11c-201 expires if:
- 338 (a) the agency sends a notice to the victim as described in Section 53-10-905; and
- 339 (b) the victim submits a written request for retention of the evidence within the 180-day period described in Section 53-10-905.
- 340 (3)
- 341 (a) Subsection (1) does not require an agency to return or dispose of evidence of a misdemeanor offense.
- 342 (b) Subsection (1)(a) does not apply when the return or disposal of evidence of a misdemeanor offense is in compliance with a memorandum of understanding between the agency and the prosecuting attorney.
- 343 (4) If the evidence described in Subsection (1) is a controlled substance, an agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by:
- 344 (a) collecting and preserving a sample of the controlled substance for independent testing and use as evidence;
- 345 (b) taking a photographic or video record of the controlled substance with identifying case numbers;
- 346 (c) maintaining a written report of a chemical analysis of the controlled substance if a chemical analysis was performed by the agency; and

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- 359 (d) if the controlled substance exceeds 10 pounds, retain at least one pound of the controlled substance
that is randomly selected from the controlled substance.
- 361 (5) If the evidence described in Subsection (1) is drug paraphernalia, an agency shall preserve sufficient
evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:
- 363 (a) collecting and preserving a sample of the controlled substance from the drug paraphernalia for
independent testing and use as evidence;
- 365 (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a chemical analysis
was performed by the agency; and
- 367 (c) taking a photographic or video record of the drug paraphernalia with identifying case numbers.
- 369 (6) If the evidence described in Subsection (1) is a computer or portable communication device, the
agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the computer or portable
communication device by:
- 371 (a) extracting all data from the computer or portable communication device that would be evidence in a
prosecution of an individual for the offense; and
- 373 (b) taking a photographic or video record of the computer or portable communication device with
identifying case numbers.
- 375 (7) For any other type of evidence, the agency shall preserve sufficient evidence under Subsection (1)
(a)(ii) of the property, contraband, item, or substance by taking a photographic or video record of
the property, contraband, item, or substance with identifying case numbers.
- 449 Section 6. Section **77-11c-302** is amended to read:
- 450 **77-11c-302. Requirements for not retaining evidence of felony offense -- Preservation of
sufficient evidence.**
- 382 (1) An agency is not required to retain evidence of a felony offense under Section 77-11c-301 if:
- 384 (a)
- (i) the agency determines that:
- 385 (A) the size, bulk, or physical character of the evidence renders retention impracticable or the
evidence poses a security or safety problem for the agency; and
- 388 (B) the evidence no longer has any significant evidentiary value;
- 389 (ii) the agency preserves sufficient evidence from the property, contraband, item, or substance for use as
evidence in a prosecution of the offense; and

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- (iii) a prosecuting attorney or a court authorizes the agency to return or dispose of the evidence as described in Subsection 77-11c-303;
- 393 (b) a court orders the agency to return evidence that is property to a claimant under Section 77-11a-305;
- or
- 395 (c) the evidence is wildlife or parts of wildlife.
- 396 (2) Notwithstanding Subsection (1), the agency may not dispose of evidence of a felony offense that is a sexual assault kit before the day on which the time period described in Section 77-11c-301 expires if:
- 399 (a) the agency sends a notice to the victim in accordance with Section 53-10-905; and
- 400 (b) the victim submits a written request for retention of the evidence within the 180-day period described in Section 53-10-905.
- 402 (3) Subsection (1) does not require an agency to return or dispose of evidence of a felony offense.
- 404 (4) Subsection (1) does not apply to biological evidence of a violent felony offense because an agency is required to retain biological evidence of a violent felony offense as described in Part 4, Preservation of Biological Evidence for Violent Felony Offenses.
- 407 (5) If the evidence described in Subsection (1) is a controlled substance, an agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by:
- 409 (a) collecting and preserving a sample of the controlled substance for independent testing and use as evidence;
- 411 (b) taking a photographic or video record of the controlled substance with identifying case numbers;
- 413 (c) maintaining a written report of a chemical analysis of the controlled substance if a chemical analysis was performed by the agency;
- 415 (d) if the controlled substance exceeds 10 pounds, retaining at least one pound of the controlled substance that is randomly selected from the controlled substance; and
- 417 (e) for a violent felony offense, collecting and preserving biological evidence from the controlled substance as described in Section 77-11c-401.
- 419 (6) If the evidence described in Subsection (1) is drug paraphernalia, an agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:
- 421 (a) collecting and preserving a sample of the controlled substance from the drug paraphernalia for independent testing and use as evidence;

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

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

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

429 (7) If the evidence described in Subsection (1) is a computer or portable communication device, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the computer or portable communication device by:

431 (a) extracting all data from the computer or portable communication device that would be evidence in a prosecution of an individual for the offense;

433 (b) taking a photographic or video record of the computer or portable communication device with identifying case numbers; and

435 (c) for a violent felony offense, collecting and preserving biological evidence from the computer or portable communication device as described in Section 77-11c-401.

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

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

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

514 Section 7. **Effective date.**

This bill takes effect on May 7, 2025.

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