

**Evidence Retention Amendments**

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor:

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**LONG TITLE****General Description:**

This bill amends provisions related to evidence retention.

**Highlighted Provisions:**

This bill:

- amends requirements related to a request by a law enforcement agency to return or dispose of evidence in a misdemeanor case;
- amends the timelines that a law enforcement agency is required to retain evidence of felony offenses; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

**77-11c-203**, as last amended by Laws of Utah 2024, Chapter 150

**77-11c-301**, as last amended by Laws of Utah 2024, Chapters 150, 164

**77-11c-303**, as enacted by Laws of Utah 2024, Chapter 150

**77-11c-401**, as last amended by Laws of Utah 2024, Chapters 150, 164

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

Section 1. Section **77-11c-203** is amended to read:

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

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

prosecuting attorney that:

(a) identifies the evidence;

(b) explains the reason for which the agency is not required to retain the evidence under Subsection 77-11c-202(1)(a)(i); and

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

~~[(2) If the prosecuting attorney receives a written request under Subsection (1) and determines that the agency needs to retain the evidence for a prosecution of the misdemeanor offense, the prosecuting attorney shall send a written notification to the agency that explains the reason for which the prosecuting attorney is denying the agency's request.]~~

~~[(3) If the prosecuting attorney receives a written request under Subsection (1) and determines that the agency does not need to retain the evidence for a prosecution of the misdemeanor offense, the prosecuting attorney shall provide written notice of the intent to not retain the evidence that:]~~

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

~~[(i) any individual charged with or adjudicated for the offense; and]~~

~~[(ii) the individual's most recent attorney of record; and]~~

~~[(b) explains that the individual receiving the notice may submit a written objection to the prosecuting attorney.]~~

~~[(4)(a) An individual, who is charged with or adjudicated for the offense, may submit a written objection to the return or disposal of the evidence by the agency no later than 30 days after the day on which the prosecuting attorney receives proof of delivery under Subsection (3).]~~

~~[(b) If an individual submits a written objection under Subsection (4)(a), the prosecuting attorney shall send a written notification to the agency that explains the reason for which the prosecuting attorney is denying the agency's request.]~~

~~[(c) If the prosecuting attorney does not receive a written objection within the time period described in Subsection (4)(a), the prosecuting attorney shall send a written notification to the agency that grants the agency's request to return or dispose of the evidence.]~~

~~[(5)(a) If a prosecuting attorney receives a written request from an agency seeking to~~

return or dispose of evidence, the prosecuting attorney shall:]

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

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

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

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

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

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

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

(3) If an agency sends a written request described in Subsection (1) to the prosecuting attorney, the agency shall also send the written request by certified mail, return receipt requested, or a delivery service, including an electronic delivery service, that provides proof of delivery, to:

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

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

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

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

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

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

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

(6) If an agency does not receive a notice of receipt under Subsection (2)(a) or a written notification under Subsection (2)(b), the agency may send the written request to the district attorney, county attorney, attorney general, or other prosecuting attorney who directly oversees and supervises the prosecuting attorney.

(7) If a prosecuting attorney denies an agency's written request to return or dispose of evidence under this section, or a person described in Subsection (3) objects to the agency's written request, the agency shall retain the evidence in accordance with Section 77-11c-201.

[<7)] (8) The requirements of this section do 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.

Section 2. Section **77-11c-301** is amended to read:

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

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

(a) for the longer of:

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

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

(B) the felony offense remains unsolved;

(ii) the length of time that ~~[any]~~ an individual~~[convicted of the felony offense, or a lesser included offense,]~~ remains in custody~~[;]~~ if the individual is convicted of:

(A) aggravated murder as described in Section 76-5-202;

(B) murder as described in Section 76-5-203;

(C) manslaughter as described in Section 76-5-205;

(D) child abuse homicide as described in Section 76-5-208;

(E) homicide by assault as described in Section 76-5-209;

- (F) kidnapping as described in Section 76-5-301;  
 (G) aggravated kidnapping as described in Section 76-5-302;  
 (H) rape as described in Section 76-5-402;  
 (I) rape of a child as described in Section 76-5-402.1;  
 (J) object rape as described in Section 76-5-402.2;  
 (K) object rape of a child as described in Section 76-5-402.3;  
 (L) forcible sodomy as described in Section 76-5-403;  
 (M) sodomy on a child as described in Section 76-5-403.1;  
 (N) forcible sexual abuse as described in Section 76-5-404;  
 (O) sexual abuse of a child as described in Section 76-5-404.1;  
 (P) aggravated sexual abuse of a child as described in Section 76-5-404.3;  
 (Q) aggravated sexual assault as described in Section 76-5-405;  
 (R) robbery as described in Section 76-6-301;  
 (S) aggravated robbery as described in Section 76-6-302;  
 (T) felony discharge of a firearm as described in Section 76-11-210; or  
 (U) aggravated assault resulting in bodily injury as described in Subsection 76-5-103(3)(b) or (c);  
 (iii) one year after the day on which all direct appeals of the final judgment for any individual convicted of the felony offense, or a lesser included offense, are exhausted; ~~or~~  
 (iv) the length of time that a petition for postconviction relief brought under Title 78B, Chapter 9, Postconviction Remedies Act, and any appeal of the petition, is pending if an individual convicted of the felony offense files the petition within the one-year time period described in Subsection (1)(a)(iii);  
 (v) the length of time that a petition for a writ of habeas corpus brought under 28 U.S.C. Sec. 2254, and any appeal of the petition, is pending if an individual convicted of the felony offense files the petition within the one-year time period described in 28 U.S.C. Sec. 2244(d)(1); or  
~~(v)~~ (vi) 20 years from the day on which the evidence is collected if the evidence is the contents of a sexual assault kit; or  
 (b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution of the felony offense resulted in an acquittal or dismissal.
- (2) An agency shall ensure that evidence of a felony offense is subject to a continuous chain of custody.

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

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

Section 3. Section **77-11c-303** is amended to read:

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

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

(a) identifies the evidence;

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

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

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

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

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

(3) If an agency sends a written request described in Subsection (1) to the prosecuting attorney, the agency shall also send the written request by certified mail, return receipt requested, or a delivery service, including an electronic delivery service, that provides proof of delivery, to:

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

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

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

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

(e) the Utah attorney general.

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

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

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

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

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

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

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

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

(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;

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

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

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

(10) If a prosecuting attorney denies the agency's written request or a person described in

Subsection (3) objects to the agency's written request, the agency shall retain the evidence of a felony offense as described in Section 77-11c-301 until:

- (a) the agency obtains a court order granting the agency's request to return or dispose of the evidence as described in Subsection (8); or
- (b) the time periods described in Section 77-11c-301 have expired.

(11) The requirements of this section do 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.

Section 4. Section **77-11c-401** is amended to read:

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

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

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

(a) for the longer of:

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

- (A) no charges are filed for the violent felony offense; or
- (B) the violent felony offense remains unsolved;

(ii) the length of time that ~~[any] an individual [convicted of the violent felony offense, or a lesser included offense,] remains in custody[;]~~ if the individual is convicted of:

- (A) aggravated murder as described in Section 76-5-202;
- (B) murder as described in Section 76-5-203;
- (C) manslaughter as described in Section 76-5-205;
- (D) child abuse homicide as described in Section 76-5-208;
- (E) homicide by assault as described in Section 76-5-209;
- (F) kidnapping as described in Section 76-5-301;
- (G) aggravated kidnapping as described in Section 76-5-302;
- (H) rape as described in Section 76-5-402;
- (I) rape of a child as described in Section 76-5-402.1;
- (J) object rape as described in Section 76-5-402.2;
- (K) object rape of a child as described in Section 76-5-402.3;
- (L) forcible sodomy as described in Section 76-5-403;

- (M) sodomy on a child as described in Section 76-5-403.1;  
(N) forcible sexual abuse as described in Section 76-5-404;  
(O) sexual abuse of a child as described in Section 76-5-404.1;  
(P) aggravated sexual abuse of a child as described in Section 76-5-404.3;  
(Q) aggravated sexual assault as described in Section 76-5-405;  
(R) robbery as described in Section 76-6-301;  
(S) aggravated robbery as described in Section 76-6-302;  
(T) felony discharge of a firearm as described in Section 76-11-210; or  
(U) aggravated assault resulting in bodily injury as described in Subsection 76-5-103(3)(b) or (c);
- (iii) one year after the day on which all direct appeals of the judgment for any individual convicted of the violent felony offense, or a lesser included offense, are exhausted;
- (iv) the length of time that a petition for postconviction relief brought under Title 78B, Chapter 9, Postconviction Remedies Act, and any appeal of the petition, is pending if an individual convicted of the violent felony offense files the petition within the one-year time period described in Subsection (2)(a)(iii);
- (v) the length of time that a petition for a writ of habeas corpus brought under 28 U.S.C. Sec. 2254, and any appeal of the petition, is pending if an individual convicted of the felony offense files the petition within the one-year time period described in 28 U.S.C. Sec. 2244(d)(1); or
- [(v)] (vi) 20 years from the day on which the biological evidence is collected if the biological evidence is the contents of a sexual assault kit; or
- (b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution of the violent felony offense resulted in an acquittal or dismissal.
- (3) An evidence collecting or retaining entity shall ensure that biological evidence under Subsection (2) is:
- (a) preserved in an amount and manner sufficient to:
- (i) develop a DNA profile; and
- (ii) if practicable, allow for independent testing of the biological evidence by a defendant; and
- (b) subject to a continuous chain of custody.
- (4)(a) Upon request by a defendant under Title 63G, Chapter 2, Government Records Access and Management Act, the evidence collecting or retaining entity shall prepare

an inventory of the biological evidence preserved in connection with the defendant's criminal case.

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

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

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

(5)(a) If the evidence collecting or retaining entity intends to dispose of biological evidence of a violent felony offense before the day on which the period described in Subsection (2) expires, the evidence collecting or retaining entity shall send a notice of intent to dispose of the biological evidence that:

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

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

(B) the private attorney or public defender of record for each individual described in Subsection (5)(a)(i)(A);

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

(D) if applicable, the prosecuting agency responsible for the prosecution of each individual described in Subsection (5)(a)(i)(A); and

(E) the Utah attorney general; and

(ii) explains that the party receiving the notice may:

(A) file a motion for testing of biological evidence under Section 78B-9-301 if the party is the individual convicted of the violent felony offense; or

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

(b) An individual ~~[must]~~ shall file a motion, or submit a written request, described in Subsection (5)(a)(ii) within 180 days after the day on which the evidence collecting or retaining entity receives proof of delivery under Subsection (5)(a).

(c) An evidence collecting or retaining entity shall send a notice of intent to dispose of biological evidence that is the contents of a sexual assault kit to a victim in accordance with Section 53-10-905.

(6) The evidence collecting or retaining entity may not dispose of biological evidence of a

337 violent felony offense before the day on which the time period described in Subsection  
338 (2) expires if:

339 (a) the evidence collecting or retaining entity is required by federal or state law to  
340 preserve the biological evidence; or

341 (b)(i) the evidence collecting or retaining entity sends notice in accordance with:

342 (A) Subsection (5); and

343 (B) Section 53-10-905 if the biological evidence is the contents of a sexual assault  
344 kit; and

345 (ii) an individual notified under Subsection (5)(a) or Section 53-10-905:

346 (A) files a motion for testing of the biological evidence under Section 78B-9-301  
347 within the 180-day period described in Subsection (5)(b); or

348 (B) submits a written request for retention of the biological evidence within the  
349 180-day period described in Subsection (5)(b) or Section 53-10-905.

350 (7)(a) Subject to Subsections (7)(b) and (c), if the evidence collecting or retaining entity  
351 receives a written request to retain the biological evidence, the evidence collecting or  
352 retaining entity shall retain the biological evidence for the time period described in  
353 Subsection (2).

354 (b) Subject to Subsection (7)(c), the evidence collecting or retaining entity may only  
355 return or dispose of physical evidence as described in Part 3, Retention of Evidence  
356 for Felony Offenses.

357 (c) If the evidence collecting or retaining entity is not required to retain physical  
358 evidence of the violent felony offense under Part 3, Retention of Evidence for Felony  
359 Offenses, before returning or disposing of the physical evidence, the evidence  
360 collecting or retaining entity shall:

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

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

365 (8) To comply with the preservation requirements described in this section, a law  
366 enforcement agency or a court may:

367 (a) retain the biological evidence; or

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

371           Section 5. **Effective Date.**  
372           This bill takes effect on May 6, 2026.