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Evidence Retention Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor:

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LONG TITLE

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General Description:

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This bill amends provisions related to evidence retention.

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Highlighted Provisions:

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This bill:

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- ▶ 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.

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Money Appropriated in this Bill:

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None

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Other Special Clauses:

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None

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Utah Code Sections Affected:

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AMENDS:

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

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

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

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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:

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

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

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- (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

31 prosecuting attorney that:

32 (a) identifies the evidence;

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

34 Subsection 77-11c-202(1)(a)(i); and

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

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

37 prosecution of the offense.

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

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

40 misdemeanor offense, the prosecuting attorney shall send a written notification to the

41 agency that explains the reason for which the prosecuting attorney is denying the

42 agency's request.]

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

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

45 misdemeanor offense, the prosecuting attorney shall provide written notice of the intent

46 to not retain the evidence that:]

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

48 proof of delivery, to:]

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

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

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

52 the prosecuting attorney.]

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

54 written objection to the return or disposal of the evidence by the agency no later than

55 30 days after the day on which the prosecuting attorney receives proof of delivery

56 under Subsection (3).]

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

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

59 which the prosecuting attorney is denying the agency's request.]

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

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

62 notification to the agency that grants the agency's request to return or dispose of the

63 evidence.]

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

65 ~~return or dispose of evidence, the prosecuting attorney shall]~~

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

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

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

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

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

80 (a) provide a notice of receipt to the agency within 15 days after the day on which the
81 prosecuting attorney receives the written request; and
82 (b) send a written notification to the agency of the prosecuting attorney's decision to
83 deny or grant an agency's written request within 60 days after the day on which the
84 prosecuting attorney receives the agency's written request.

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

89 (a) any individual who remains in custody based on a conviction related to the evidence;
90 (b) the private attorney or public defender of record for each individual described in
91 Subsection (3)(a);
92 (c) the entity that employed the private attorney or public defender described in
93 Subsection (3)(b) at the time of the criminal conviction; and
94 (d) if applicable, the prosecuting agency responsible for the prosecution of each
95 individual described in Subsection (3)(a).

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

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

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

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

111 (7) If a prosecuting attorney denies an agency's written request to return or dispose of
112 evidence under this section, or a person described in Subsection (3) objects to the
113 agency's written request, the agency shall retain the evidence in accordance with Section
114 77-11c-201.

115 [(7)] (8) The requirements of this section do not apply when the return or disposal of
116 evidence of a misdemeanor offense is in compliance with a memorandum of
117 understanding between the agency and the prosecuting attorney.

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

119 **77-11c-301 . Retention of evidence for felony offenses.**

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

122 (a) for the longer of:

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

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

125 (B) the felony offense remains unsolved;

126 (ii) the length of time that [any] an individual[convicted of the felony offense, or a

127 lesser included offense;] remains in custody[; if the individual is convicted of:

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

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

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

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

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

133 (F) kidnapping as described in Section 76-5-301;
134 (G) aggravated kidnapping as described in Section 76-5-302;
135 (H) rape as described in Section 76-5-402;
136 (I) rape of a child as described in Section 76-5-402.1;
137 (J) object rape as described in Section 76-5-402.2;
138 (K) object rape of a child as described in Section 76-5-402.3;
139 (L) forcible sodomy as described in Section 76-5-403;
140 (M) sodomy on a child as described in Section 76-5-403.1;
141 (N) forcible sexual abuse as described in Section 76-5-404;
142 (O) sexual abuse of a child as described in Section 76-5-404.1;
143 (P) aggravated sexual abuse of a child as described in Section 76-5-404.3;
144 (Q) aggravated sexual assault as described in Section 76-5-405;
145 (R) robbery as described in Section 76-6-301;
146 (S) aggravated robbery as described in Section 76-6-302;
147 (T) felony discharge of a firearm as described in Section 76-11-210; or
148 (U) aggravated assault resulting in bodily injury as described in Subsection
149 76-5-103(3)(b) or (c);
150 (iii) one year after the day on which all direct appeals of the final judgment for any
151 individual convicted of the felony offense, or a lesser included offense, are
152 exhausted; [or]
153 (iv) the length of time that a petition for postconviction relief brought under Title
154 78B, Chapter 9, Postconviction Remedies Act, and any appeal of the petition, is
155 pending if an individual convicted of the felony offense files the petition within
156 the one-year time period described in Subsection (1)(a)(iii);
157 (v) the length of time that a petition for a writ of habeas corpus brought under 28
158 U.S.C. Sec. 2254, and any appeal of the petition, is pending if an individual
159 convicted of the felony offense files the petition within the one-year time period
160 described in 28 U.S.C. Sec. 2244(d)(1); or
161 [(v)] (vi) 20 years from the day on which the evidence is collected if the evidence is
162 the contents of a sexual assault kit; or
163 (b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution
164 of the felony offense resulted in an acquittal or dismissal.
165 (2) An agency shall ensure that evidence of a felony offense is subject to a continuous chain
166 of custody.

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

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

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

172 **77-11c-303 . Procedure for authorizing the return or disposal of evidence of a
173 felony offense.**

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

177 (a) identifies the evidence;

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

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

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

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

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

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

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

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

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

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

201 (e) the Utah attorney general.

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

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

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

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

214 (a) the prosecuting attorney denies the agency's written request or does not respond to an
215 agency's written request within the time periods described in Subsection (2); or
216 (b) a person described in Subsection (3) objects to the agency's written request.

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

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

222 (a) the size, bulk, or physical character of the evidence renders retention impracticable or
223 the evidence poses a security or safety problem for the agency;
224 (b) the evidence no longer has any significant evidentiary value; and
225 (c) the agency will take, or has taken, steps to preserve sufficient evidence from the
226 property, contraband, item, or substance for use as evidence in a prosecution of the
227 offense.

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

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

235 Subsection (3) objects to the agency's written request, the agency shall retain the
236 evidence of a felony offense as described in Section 77-11c-301 until:
237 (a) the agency obtains a court order granting the agency's request to return or dispose of
238 the evidence as described in Subsection (8); or
239 (b) the time periods described in Section 77-11c-301 have expired.

240 (11) The requirements of this section do not apply when the return or disposal of evidence
241 of a misdemeanor offense is in compliance with a memorandum of understanding
242 between the agency and the prosecuting attorney.

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

244 **77-11c-401 . Preservation of biological evidence -- Procedures -- Inventory**
245 **request.**

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

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

251 (a) for the longer of:

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

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

254 (B) the violent felony offense remains unsolved;

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

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

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

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

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

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

262 (F) kidnapping as described in Section 76-5-301;

263 (G) aggravated kidnapping as described in Section 76-5-302;

264 (H) rape as described in Section 76-5-402;

265 (I) rape of a child as described in Section 76-5-402.1;

266 (J) object rape as described in Section 76-5-402.2;

267 (K) object rape of a child as described in Section 76-5-402.3;

268 (L) forcible sodomy as described in Section 76-5-403;

269 (M) sodomy on a child as described in Section 76-5-403.1;
270 (N) forcible sexual abuse as described in Section 76-5-404;
271 (O) sexual abuse of a child as described in Section 76-5-404.1;
272 (P) aggravated sexual abuse of a child as described in Section 76-5-404.3;
273 (Q) aggravated sexual assault as described in Section 76-5-405;
274 (R) robbery as described in Section 76-6-301;
275 (S) aggravated robbery as described in Section 76-6-302;
276 (T) felony discharge of a firearm as described in Section 76-11-210; or
277 (U) aggravated assault resulting in bodily injury as described in Subsection
278 76-5-103(3)(b) or (c);
279 (iii) one year after the day on which all direct appeals of the judgment for any
280 individual convicted of the violent felony offense, or a lesser included offense, are
281 exhausted;
282 (iv) the length of time that a petition for postconviction relief brought under Title
283 78B, Chapter 9, Postconviction Remedies Act, and any appeal of the petition, is
284 pending if an individual convicted of the violent felony offense files the petition
285 within the one-year time period described in Subsection (2)(a)(iii);
286 (v) the length of time that a petition for a writ of habeas corpus brought under 28
287 U.S.C. Sec. 2254, and any appeal of the petition, is pending if an individual
288 convicted of the felony offense files the petition within the one-year time period
289 described in 28 U.S.C. Sec. 2244(d)(1); or
290 [(v)] (vi) 20 years from the day on which the biological evidence is collected if the
291 biological evidence is the contents of a sexual assault kit; or
292 (b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution
293 of the violent felony offense resulted in an acquittal or dismissal.
294 (3) An evidence collecting or retaining entity shall ensure that biological evidence under
295 Subsection (2) is:
296 (a) preserved in an amount and manner sufficient to:
297 (i) develop a DNA profile; and
298 (ii) if practicable, allow for independent testing of the biological evidence by a
299 defendant; and
300 (b) subject to a continuous chain of custody.
301 (4)(a) Upon request by a defendant under Title 63G, Chapter 2, Government Records
302 Access and Management Act, the evidence collecting or retaining entity shall prepare

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

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

308 (i) describes the efforts taken to locate the biological evidence; and
309 (ii) affirms that the biological evidence could not be located.

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

314 (i) is sent by certified mail, return receipt requested, or a delivery service that
315 provides proof of delivery, to:
316 (A) an individual who remains in custody based on a criminal conviction related
317 to the biological evidence;
318 (B) the private attorney or public defender of record for each individual described
319 in Subsection (5)(a)(i)(A);
320 (C) the entity that employed the private attorney or public defender at the time of
321 the criminal conviction;
322 (D) if applicable, the prosecuting agency responsible for the prosecution of each
323 individual described in Subsection (5)(a)(i)(A); and
324 (E) the Utah attorney general; and
325 (ii) explains that the party receiving the notice may:
326 (A) file a motion for testing of biological evidence under Section 78B-9-301 if the
327 party is the individual convicted of the violent felony offense; or
328 (B) submit a written request that the evidence collecting or retaining entity retain
329 the biological evidence.

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

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

336 (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.