

Chapter 3 Property Held as Evidence

24-3-101 Title.

This chapter is known as "Property Held as Evidence."

Enacted by Chapter 394, 2013 General Session

24-3-102 Property received in evidence.

- (1) When property is received in evidence by the court, the clerk of the court shall retain the property or the clerk shall return the property to the custody of the peace officer or the agency employing the peace officer.
- (2) The property shall be retained by the clerk or the officer or the officer's agency until all direct appeals and retrials are final, at which time the property shall be disposed of in accordance with this title.
- (3) If the prosecuting attorney considers it necessary to retain control over the evidence in anticipation of possible collateral attacks upon the judgment or for use in a potential prosecution, the prosecutor may decline to authorize the disposal of the property under this chapter.

Enacted by Chapter 394, 2013 General Session

24-3-103 Property no longer needed as evidence -- Disposition of property.

- (1) When the prosecuting attorney determines that property no longer needs to be held as evidence, the prosecuting attorney may:
 - (a) petition the court to apply any property that is money towards restitution, fines, fees, or monetary judgments owed by the owner of the property;
 - (b) petition the court for an order transferring ownership of any weapons to the seizing agency for its use and disposal as the seizing agency determines, if the owner:
 - (i) is the person who committed the crime for which the weapon was seized; or
 - (ii) may not lawfully possess the weapon; or
 - (c) notify the agency that has possession of the property that the property may be:
 - (i) returned to the rightful owner, if the rightful owner may lawfully possess it; or
 - (ii) disposed of, if the property is contraband.
- (2) The agency shall exercise due diligence in attempting to notify the rightful owner of the property to advise the owner that the property is to be returned.
- (3)
 - (a) Before the agency may release property to a person claiming ownership of the property, the person shall establish to the agency pursuant to Subsection (3)(b) that the person:
 - (i) is the rightful owner; and
 - (ii) may lawfully possess the property.
 - (b) The person shall establish ownership under Subsection (3)(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.
- (4)
 - (a) When property is returned to the owner, a receipt listing in detail the property returned shall be signed by the owner.

- (b) The receipt shall be retained by the agency and a copy shall be provided to the owner.
- (5) If the agency is unable to locate the rightful owner of the property or if the rightful owner is not entitled to lawfully possess the property, the agency may:
 - (a) apply the property to a public interest use;
 - (b) sell the property at public auction and apply the proceeds of the sale to a public interest use;
or
 - (c) destroy the property if it is unfit for a public interest use or for sale.
- (6) Before applying the property or the proceeds from the sale of the property to a public interest use, the agency shall obtain from the legislative body of its jurisdiction:
 - (a) permission to apply the property or the proceeds to public interest use; and
 - (b) the designation and approval of the public interest use of the property or the proceeds.

Enacted by Chapter 394, 2013 General Session

24-3-104 Petition to return property held as evidence.

- (1)
 - (a) A person claiming ownership of property held as evidence may file a petition with the court for the return of the property.
 - (b) The petition may be filed in:
 - (i) the court in which criminal proceedings have commenced regarding the conduct for which the property is held as evidence; or
 - (ii) the district court of the jurisdiction where the property was seized, if there are no pending criminal proceedings.
 - (c) A copy of the petition shall be served on the prosecuting attorney and the agency which has possession of the property.
- (2) The court shall provide an opportunity for an expedited hearing. After the opportunity for an expedited hearing, the court may order that the property be:
 - (a) returned to the rightful owner as determined by the court;
 - (b) applied directly or by proceeds of the sale of the property toward restitution, fines, or fees owed by the rightful owner in an amount set by the court;
 - (c) converted to a public interest use;
 - (d) held for further legal action;
 - (e) sold at public auction and the proceeds of the sale applied to a public interest use; or
 - (f) destroyed.
- (3) Before the court can order property be returned to a person claiming ownership of property, the person shall establish by clear and convincing evidence that the person:
 - (a) is the rightful owner; and
 - (b) may lawfully possess the property.
- (4) If the court orders the property to be returned, the agency that possesses the property shall return the property to the claimant as expeditiously as possible.

Enacted by Chapter 394, 2013 General Session