

Effective 5/3/2023

Chapter 11a Seizure of Property and Contraband

Part 1 General Provisions

77-11a-101 Definitions.

As used in this chapter:

- (1)
 - (a) "Agency" means an agency of this state or a political subdivision of this state.
 - (b) "Agency" includes a law enforcement agency or a multijurisdictional task force.
- (2) "Claimant" means:
 - (a) an owner of property;
 - (b) an interest holder; or
 - (c) an individual or entity who asserts a claim to any property for which an agency seeks to forfeit.
- (3)
 - (a) "Computer" 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.
 - (b) "Computer" includes any device that is used for the storage of digital or electronic files, flash memory, software, or other electronic information.
 - (c) "Computer" does not mean 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.
- (4)
 - (a) "Contraband" means any property, item, or substance that is unlawful to produce or to possess under state or federal law.
 - (b) "Contraband" includes:
 - (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
 - (ii) a computer that:
 - (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
 - (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.
- (5) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- (6) "Court" means a municipal, county, or state court.
- (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.
- (8) "Evidence" means the same as that term is defined in Section 77-11c-101.
- (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:
- (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
 - (ii) the agency's governing political subdivision; or
 - (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.
- (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.
- (15) "Owner" means an individual or entity, other than an interest holder, that possesses a bona fide legal or equitable interest in property.
- (16) "Pawn or secondhand business" means the same as that term is defined in Section 13-32a-102.
- (17) "Peace officer" means an employee:
- (a) of an agency;

- (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
 - (c) who is authorized by the agency to seize property.
- (18)
- (a) "Proceeds" means:
 - (i) property of any kind that is obtained directly or indirectly as a result of the commission of an offense; or
 - (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).
 - (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).
 - (c) "Proceeds" is not limited to the net gain or profit realized from the offense that subjects the property to seizure.
- (19)
- (a) "Property" means all property, whether real or personal, tangible or intangible.
 - (b) "Property" does not include contraband.
- (20) "Prosecuting attorney" means:
- (a) the attorney general and an assistant attorney general;
 - (b) a district attorney or deputy district attorney;
 - (c) a county attorney or assistant county attorney; and
 - (d) an attorney authorized to commence an action on behalf of the state.
- (21) "Public interest use" means a:
- (a) use by a government agency as determined by the legislative body of the agency's jurisdiction; or
 - (b) donation of the property to a nonprofit charity registered with the state.
- (22) "Real property" means land, including any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.
- (23)
- (a) "Seized property" means property seized by a peace officer or agency in accordance with Section 77-11a-201.
 - (b) "Seized property" includes property that the agency seeks to forfeit under Chapter 11b, Forfeiture of Seized Property.

Amended by Chapter 80, 2024 General Session

77-11a-102 Venue.

In addition to Title 78B, Chapter 3a, Venue for Civil Actions, or any other provision of law, a person may bring an action or proceeding under this chapter in the judicial district in which:

- (1) the property is seized; or
- (2) any part of the property is found.

Amended by Chapter 401, 2023 General Session

Renumbered and Amended by Chapter 448, 2023 General Session

Part 2

Seizure of Property and Contraband

77-11a-201 Grounds for seizing property and contraband.

A peace officer may seize property or contraband:

- (1) upon a search warrant or administrative warrant that is issued in accordance with the Utah Code and the Utah Rules of Criminal Procedure;
- (2) when the seizure is incident to an arrest;
- (3) when the property seized is the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under Chapter 11b, Forfeiture of Seized Property; or
- (4) when the peace officer has probable cause to believe that the property or contraband:
 - (a) is directly or indirectly dangerous to health or safety;
 - (b) is evidence of an offense;
 - (c) has been used or was intended to be used to commit an offense; or
 - (d) is proceeds of an offense.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11a-202 Ownership interest in property or contraband seized by a peace officer.

- (1) To disclaim an ownership interest in property at the time of seizure, a person's disclaimer of the property must be knowing and voluntary.
- (2) A person may not assert an ownership interest in contraband seized by a peace officer.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11a-203 Procedure after seizure of property or contraband.

- (1) If a peace officer seizes property or contraband under Section 77-11a-201, the property and contraband:
 - (a) is not recoverable by replevin; and
 - (b) is considered in the custody of the agency that employed the peace officer.
- (2) If a peace officer seizes property under Section 77-11a-201, the peace officer or the peace officer's employing agency shall provide a receipt to the person from which the property is seized.
- (3) The receipt shall describe the:
 - (a) property seized;
 - (b) date of seizure; and
 - (c) name and contact information of the peace officer's employing agency.
- (4) In addition to the receipt, the peace officer or agency shall provide the person with:
 - (a) information on:
 - (i) the time periods for the forfeiture of property; and
 - (ii) what happens to property upon a conviction or acquittal of the offense subjecting the property to seizure; and
 - (b) a web link or referral to the self-help webpage of the Utah Courts' website for resources that may assist the person in making a claim for the return of seized property.
- (5) The agency shall maintain a copy of the receipt provided in accordance with Subsection (2).
- (6) If a peace officer seizes property that, at the time of seizure, is held by a pawn or secondhand business in the course of the pawn or secondhand business's business, the provisions of Section 13-32a-109.5 shall apply to the seizure of the property.

- (7) If custody of the property is transferred to another agency, the transferring agency shall provide the other agency a copy of the receipt under Subsection (2) and the name of the person from which the property was seized.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11a-204 Custody of seized property and contraband.

- (1) An agency with custody of seized property or contraband shall:
- (a) hold the property or contraband in safe custody until the property or contraband is returned or disposed of in accordance with:
 - (i) this chapter; and
 - (ii) Chapter 11c, Retention of Evidence; and
 - (b) maintain a record of the property or contraband, including:
 - (i) a detailed inventory of all property or contraband seized;
 - (ii) the name of the person from which the property or contraband was seized; and
 - (iii) the agency's case number.
- (2)
- (a) Except as provided in Subsection (2)(b), no later than 30 days after the day on which a peace officer seizes property in the form of cash or other readily negotiable instruments, an agency shall deposit the property into a separate, restricted, interest-bearing account maintained by the agency solely for the purpose of managing and protecting the property from commingling, loss, or devaluation.
 - (b) A prosecuting attorney may authorize one or more written extensions of the 30-day period under Subsection (2)(a) if the property needs to maintain the form in which the property was seized for evidentiary purposes or other good cause.
- (3) An agency shall:
- (a) have written policies for the identification, tracking, management, and safekeeping of seized property and contraband; and
 - (b) shall have a written policy that prohibits the transfer, sale, or auction of seized property and contraband to an employee of the agency.

Amended by Chapter 150, 2024 General Session

77-11a-205 Transfer or release of seized property to another governmental entity -- Requirements.

- (1) Except as provided in Subsections (3)(a) through (c), upon the seizure of property by a peace officer, the property is subject to the exclusive jurisdiction of a district court of this state.
- (2) Except as provided in Subsection (3), a peace officer, agency, or prosecuting attorney may not directly or indirectly transfer or release seized property to a federal agency or to a governmental entity not created or subject to the laws of this state.
- (3) An agency or prosecuting attorney may transfer or release seized property to a federal agency or to a governmental entity not created or subject to the laws of this state if:
- (a)
 - (i) the property is cash or another readily negotiable instrument; and
 - (ii) the property is evidence in, or subject to, a federal criminal indictment, a federal criminal information, or a federal criminal complaint that is filed before the property is seized;
 - (b)
 - (i) the property is not cash or another readily negotiable instrument; and

- (ii) the property is evidence in, or subject to, a federal criminal indictment, a federal criminal information, or a federal criminal complaint that is filed before the day on which the agency with custody of the property is required to return the property if no criminal or civil action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section 77-11b-203;
 - (c)
 - (i) the property was used in the commission of an offense in another state; and
 - (ii) an agency of that state requests the transfer of the property before the day on which the agency with custody of the property is required to return the property if no criminal or civil action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section 77-11b-203; or
 - (d) a district court authorizes, in accordance with Subsection (5), the transfer or release of the property to an agency of another state or a federal agency upon a petition by a prosecuting attorney or a federal prosecutor.
- (4)
- (a) A prosecuting attorney, or a federal prosecutor, may file a petition in the district court for the transfer or release of seized property.
 - (b) If a prosecuting attorney, or a federal prosecutor, files a petition under Subsection (4)(a), the petition shall include:
 - (i) a detailed description of the property seized;
 - (ii) the location where the property was seized;
 - (iii) the date the property was seized;
 - (iv) the case number assigned by the agency; and
 - (v) a declaration that:
 - (A) states the basis for relinquishing jurisdiction to a federal agency or an agency of another state;
 - (B) contains the names and addresses of any known claimant; and
 - (C) is signed by the prosecuting attorney or federal prosecutor.
 - (5) A district court may not authorize the transfer or release of seized property under Subsection (3)(d), unless the district court finds, by a preponderance of the evidence:
 - (a) the property is evidence in, or subject to, a federal criminal indictment, a federal criminal information, or a federal criminal complaint after the property is seized;
 - (b) the property may only be forfeited under federal law;
 - (c) forfeiting the property under state law would unreasonably burden the prosecuting attorney or agency; or
 - (d) the property was subject to a federal criminal investigation before the property was seized.
- (6)
- (a) Before a district court may order the transfer of seized property in accordance with this section, the court, the prosecuting attorney, or the federal prosecutor shall mail a notice to:
 - (i) each address contained in the declaration under Subsection (4)(b)(v) to give a claimant the right to be heard with regard to the transfer; and
 - (ii)
 - (A) if a federal prosecutor files the petition under Subsection (4), the prosecuting attorney that is representing the agency with custody of the property; or
 - (B) if a prosecuting attorney files the petition under Subsection (4), the federal prosecutor who will receive the property upon the transfer or release of the property.

- (b) If a claimant, or the party under Subsection (6)(a)(i), does not object to the petition to transfer the property within 10 days after the day on which the notice is mailed, the district court shall issue the district court's order in accordance with this section.
- (c) If the declaration does not include an address for a claimant, the district court shall delay the district court's order under this section for 20 days to allow time for the claimant to appear and make an objection.
- (d)
 - (i) If a claimant, or a party under Subsection (6)(a)(i), contests a petition to transfer the property to a federal agency or to another governmental entity not created or subject to the laws of this state, the district court shall promptly set the matter for hearing.
 - (ii) In making a determination under Subsection (5), the district court shall consider evidence regarding hardship, complexity, judicial and law enforcement resources, protections afforded under state and federal law, pending state or federal investigations, and any other relevant matter.
- (7) If an agency receives property, money, or other things of value under a federal law that authorizes the sharing or transfer of all or a portion of forfeited property, or the proceeds from the sale of forfeited property, the agency:
 - (a) shall use the property, money, or other things of value in compliance with federal laws and regulations relating to equitable sharing;
 - (b) may use the property, money, or other things of value for a law enforcement purpose described in Subsection 77-11b-403(10); and
 - (c) may not use the property, money, or other thing of value for a law enforcement purpose prohibited in Subsection 77-11b-403(11).
- (8) An agency awarded an equitable share of property forfeited by the federal government may use the award money only after approval of the use by the agency's legislative body.
- (9) If a district court exercises exclusive jurisdiction over seized property, the district court's exclusive jurisdiction is terminated if the agency with custody of the property returns the property to a claimant under:
 - (a) Part 3, Return of Seized Property to Claimant; or
 - (b) Section 77-11b-203.

Amended by Chapter 150, 2024 General Session

Part 3

Return of Seized Property to Claimant

77-11a-301 Return of seized property to claimant -- Generally.

- (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:
 - (i) determines that the agency does not need to retain or preserve the property as evidence under Chapter 11c, Retention of Evidence; or
 - (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.

- (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.
- (2) An agency with custody of the seized property, or the prosecuting attorney, shall return the property to a claimant if:
 - (a) the claimant posts a surety bond or cash with the court in accordance with Section 77-11a-302;
 - (b) the court orders the return of property to the claimant for hardship purposes under Section 77-11a-303;
 - (c) a claimant establishes that the claimant is an innocent owner or an interest holder under Section 77-11a-304; or
 - (d) the court orders property retained as evidence to be returned to the claimant under Section 77-11a-305.
- (3)
 - (a) For a computer 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.
 - (b) The agency shall determine a reasonable cost to extract the data.
 - (c) At the time of the request to extract the data, the owner of the computer shall pay the agency the cost to extract the data.
- (4) 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.
- (5) 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.
- (6)
 - (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) 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.

Amended by Chapter 80, 2024 General Session

77-11a-302 Return of seized property to claimant by surety bond or cash.

- (1) Except as provided in Subsection (2), a claimant may obtain the return of seized property by posting a surety bond or cash with the court that is in an amount equal to the current fair market value of the property as determined by the court or a stipulation by the parties.
- (2) A court may refuse to order the return of property under Subsection (1) if:
 - (a) the bond tendered for the property is inadequate;

- (b) the property is subject to the retention or preservation requirements under Chapter 11c, Retention of Evidence;
 - (c) the property is particularly altered or designed for use in the commission of the offense subjecting the property to forfeiture under Section 77-11b-102; or
 - (d) the property is contraband.
- (3) If a surety bond or cash is posted and the court later determines that the property is forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of the property.

Amended by Chapter 150, 2024 General Session

77-11a-303 Return of seized property subject to forfeiture to claimant for hardship.

- (1) A claimant is entitled to the immediate return of seized property for which the agency has filed a notice of intent to forfeit under Section 77-11b-201 if:
- (a) the claimant had a possessory interest in the property at the time of seizure;
 - (b) continued possession by the agency pending a forfeiture proceeding will cause substantial hardship to the claimant, including:
 - (i) preventing the functioning of a legitimate business;
 - (ii) preventing any individual from working;
 - (iii) preventing any child from attending elementary or secondary school;
 - (iv) preventing or hindering an individual from receiving necessary medical care;
 - (v) preventing the care of a dependent child or adult who is elderly or disabled;
 - (vi) leaving an individual homeless; or
 - (vii) any other condition that the court determines causes a substantial hardship;
 - (c) the hardship from the continued possession of the property by the agency outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if the property is returned to the claimant during the pendency of the proceeding; and
 - (d) the determination of substantial hardship under this Subsection (1) is based upon the property's use before the seizure.
- (2) A claimant may file a motion or petition for hardship release under this section:
- (a) in the court in which forfeiture proceedings have commenced; or
 - (b) in a district court where there is venue under Section 77-11a-102 if a forfeiture proceeding has not yet commenced.
- (3) The motion or petition for hardship release shall be served upon the agency with custody of the property within five days after the day on which the motion or petition is filed.
- (4) The court shall:
- (a) schedule a hearing on the motion or petition within 14 days after the day on which the motion or petition is filed; and
 - (b) render a decision on a motion or petition for hardship filed under this section no later than 20 days after the day of the hearing, unless this period is extended by the agreement of both parties or by the court for good cause shown.
- (5) If the claimant demonstrates substantial hardship under Subsection (1), the court shall order the agency to immediately return the property to the claimant pending completion of any forfeiture proceeding.
- (6) The court may place conditions on the return of the property as the court finds necessary and appropriate to preserve the availability of the property or the property's equivalent for forfeiture.
- (7) The hardship release under this section does not apply to:
- (a) contraband;

- (b) property that is subject to the retention or preservation requirements under Chapter 11c, Retention of Evidence; or
- (c) property that is likely to be used to commit additional offenses if returned to the claimant.

Amended by Chapter 150, 2024 General Session

77-11a-304 Release of seized property to innocent owner or interest holder.

- (1)
 - (a) Except for property required to be retained or preserved under Chapter 11c, Retention of Evidence, a claimant alleged to be an innocent owner or an interest holder may recover possession of seized property by:
 - (i) submitting a written request with the seizing agency before the later of:
 - (A) the commencement of a civil forfeiture proceeding under Section 77-11b-302; or
 - (B) 30 days after the day on which the property was seized; and
 - (ii) providing the seizing agency with:
 - (A) evidence that establishes proof of ownership; and
 - (B) a brief description of the date, time, and place that the claimant mislaid or relinquished possession of the seized property, or any evidence that the claimant is an innocent owner or an interest holder.
 - (b) If a seizing agency receives a claim under Subsection (1)(a), the seizing agency shall issue a written response to the claimant within 30 days after the day on which the seizing agency receives the claim.
 - (c) A response under Subsection (1)(b) from the seizing agency shall indicate whether the claim has been granted, denied on the merits, or denied for failure to provide the information required by Subsection (1)(a)(ii).
 - (d)
 - (i) If a seizing agency denies a claim for failure to provide the information required by Subsection (1)(a)(ii), the claimant has 15 days after the day on which the claim is denied to submit additional information.
 - (ii) If a prosecuting attorney has not filed a civil action seeking to forfeit the property under Section 77-11b-302, and a seizing agency has denied a claim for failure to provide the information required by Subsection (1)(a)(ii), the prosecuting attorney may not commence a civil action until:
 - (A) the claimant has submitted information under Subsection (1)(d)(i); or
 - (B) the deadline for the claimant to submit information under Subsection (1)(d)(i) has passed.
 - (e) If a seizing agency fails to issue a written response within 30 days after the day on which the seizing agency receives the response, the seizing agency shall return the property.
- (2) If a claim under Subsection (1)(a) is granted, or the property is returned because the seizing agency fails to respond within 30 days, a claimant may not receive any expenses, costs, or attorney fees for the returned property.
- (3) A claimant may collect reasonable attorney fees and court costs if:
 - (a) a claimant filed a claim under Subsection (1)(a);
 - (b) the seizing agency denies the claim on the merits; and
 - (c) a court determines that the claimant is an innocent owner or an interest holder in a civil asset forfeiture proceeding.
- (4) If a court grants reasonable attorney fees and court costs, the amount of the attorney fees begins to accrue from the day on which the seizing agency denied the claim.

- (5) If the court grants reasonable attorney fees and court costs under Subsection (3), the attorney fees and court costs are not subject to the 50% cap under Subsection 77-11b-305(2).
- (6) A communication between parties regarding a claim submitted under Subsection (3) and any evidence provided to the parties in connection with a claim is subject to the Utah Rules of Evidence, Rules 408 and 410.

Renumbered and Amended by Chapter 448, 2023 General Session

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;
 - (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;
 - (iii) converted to a public interest use;
 - (iv) held for further legal action;
 - (v) sold at public auction and the proceeds of the sale applied to a public interest use; or
 - (vi) destroyed.
- (3) Before the court can order property be returned to a claimant, the claimant shall establish, by clear and convincing evidence, that the claimant:
 - (a) is the owner of the property; and
 - (b) may lawfully possess the property.
- (4) If 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.

Amended by Chapter 150, 2024 General Session

Part 4
Disposal of Seized Property and Contraband

77-11a-401 Applicability of this part.

The provisions of this part do not apply to property or contraband:

- (1) for which an agency has filed a notice of intent to seek forfeiture under Chapter 11b, Forfeiture of Seized Property; or
- (2) until the property or contraband is no longer subject to the retention or preservation requirements under Chapter 11c, Retention of Evidence.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11a-402 Disposition of seized property and contraband -- Return of seized property.

- (1) Except as provided in Subsection (2), if a prosecuting attorney determines that seized property no longer needs to be retained as evidence under Chapter 11c, Retention of Evidence, the prosecuting attorney may:
 - (a) petition the court to apply the 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 weapons to the agency with custody for the agency's use and disposal in accordance with Section 77-11a-403 if the owner:
 - (i) is the individual who committed the offense for which the weapon was seized; or
 - (ii) may not lawfully possess the weapon; or
 - (c) notify the agency with custody of the property or contraband that:
 - (i) the property may be returned to the owner in accordance with Section 77-11a-301 if the owner may lawfully possess the property; or
 - (ii) the contraband may be disposed of or destroyed.
- (2)
 - (a) If an individual is charged with a crime that would not make the individual a restricted person under Section 76-11-302 or 76-11-303 or federal law if convicted and the prosecuting attorney determines that any firearm seized from the individual as a result of the offense allegedly committed by the individual no longer needs to be retained for court proceedings, the prosecuting attorney shall notify the agency with custody of the firearm that the firearm shall be returned to the individual if the individual may lawfully possess the firearm.
 - (b) This Subsection (2) does not prohibit a law enforcement agency from performing a background check on an individual described in Subsection (2)(a) to determine if the individual may lawfully possess firearms.
- (3) Before returning a firearm to an individual, the agency returning the firearm shall confirm, through the Bureau of Criminal Identification, that the individual is eligible to lawfully possess and receive firearms.
- (4)
 - (a) Except as provided in Subsection (4)(b), if the agency is unable to locate the owner of the property or the owner is not entitled to lawfully possess the property, the agency may:
 - (i) apply the property to a public interest use;
 - (ii) sell the property at public auction and apply the proceeds of the sale to a public interest use; or
 - (iii) destroy the property if the property is unfit for a public interest use or for sale.
 - (b) If the property described in Subsection (4)(a) is a firearm, the agency shall dispose of the firearm in accordance with Section 77-11a-403.
- (5) 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 the agency's 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.

- (6) If a peace officer seizes property that at the time of seizure is held by a pawn or secondhand business in the course of the pawn or secondhand business's business, the provisions of Section 13-32a-116 shall apply to the disposition of the property.

Amended by Chapter 173, 2025 General Session

Amended by Chapter 208, 2025 General Session

Amended by Chapter 431, 2025 General Session

77-11a-403 Disposition of firearms no longer needed as evidence.

- (1) As used in this section:

- (a) "Confiscated or unclaimed firearm" means a firearm that is subject to disposal by an agency under Section 53-5a-503 or 77-11a-402.
- (b) "Department" means the Department of Public Safety created in Section 53-1-103.
- (c) "Federally licensed firearms dealer" means a person:
 - (i) licensed as a dealer under 18 U.S.C. Sec. 923; and
 - (ii) engaged in the business of selling firearms.
- (d) "State-approved dealer" means the federally licensed firearms dealer that contracts with the department under Subsection (4).

- (2) An agency shall dispose of a confiscated or unclaimed firearm by:

- (a) selling or destroying the confiscated or unclaimed firearm in accordance with Subsection (3);
- (b) giving the confiscated or unclaimed firearm to the state-approved dealer to sell or destroy in accordance with Subsection (4) and the agreement between the state-approved dealer and the department; or
- (c) after the agency obtains approval from the legislative body of the agency's jurisdiction, transferring the confiscated or unclaimed firearm to the Bureau of Forensic Services, created in Section 53-10-401, or another public forensic laboratory for testing.

- (3)

- (a) An agency that elects to dispose of a confiscated or unclaimed firearm under Subsection (2)

(a) shall:

- (i) sell the confiscated or unclaimed firearm to a federally licensed firearms dealer and apply the proceeds from the sale to a public interest use; or
 - (ii) destroy the firearm, if the agency determines that:
 - (A) the condition of a confiscated or unclaimed firearm makes the firearm unfit for sale; or
 - (B) the confiscated or unclaimed firearm is associated with a notorious crime.
- (b) Before an agency applies the proceeds of a sale of a confiscated or unclaimed firearm to a public interest use, the agency shall obtain from the legislative body of the agency's jurisdiction:
- (i) permission to apply the proceeds of the sale to a public interest use; and
 - (ii) the designation and approval of the public interest use to which the agency applies the proceeds.

- (4)

(a)

- (i) The department shall, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, contract with a federally licensed firearms dealer to sell or destroy all confiscated or unclaimed firearms in the state.
- (ii) The term of an agreement executed in accordance with this Subsection (4) may not exceed five years.

- (iii) Nothing in this Subsection (4) prevents the department from contracting with the same federally licensed firearms dealer more than once.
- (b) An agreement executed in accordance with Subsection (4)(a) shall:
 - (i) address the amount of money that the federally licensed firearms dealer is entitled to retain from the sale of each confiscated or unclaimed firearm as compensation for the federally licensed firearms dealer's performance under the agreement;
 - (ii) require the federally licensed firearms dealer to donate, on behalf of the state, all proceeds from the sale of a confiscated or unclaimed firearm, except the amount described in Subsection (4)(b)(i), to an organization that:
 - (A) is exempt from taxation under Section 501(c)(3), Internal Revenue Code;
 - (B) complies with any applicable licensing or registration requirements in the state;
 - (C) primarily helps the families of law enforcement officers in the state who die in the line of duty;
 - (D) gives financial assistance to the families of law enforcement officers in the state who die in the line of duty; and
 - (E) provides other assistance to children of active law enforcement officers, including scholarships;
 - (iii) state that if the federally licensed firearms dealer determines that the condition of a confiscated or unclaimed firearm makes the firearm unfit for sale, the federally licensed firearms dealer shall destroy the firearm; and
 - (iv) provide a procedure by which the department can ensure that the federally licensed firearms dealer complies with the provisions of the agreement and applicable law.

Amended by Chapter 208, 2025 General Session