

1                                   **DISPOSAL OF EVIDENCE IN CRIMINAL**  
2   **PROCEEDINGS**

3   2003 GENERAL SESSION  
4   STATE OF UTAH

5                                   **Sponsor: J. Stuart Adams**

6   **This act modifies Code of Criminal Procedure provisions regarding disposal of property**  
7   **received by a peace officer by amending provisions for returning property to an owner to**  
8   **reflect the role of the agency's evidence custodian in the process.**

9   This act affects sections of Utah Code Annotated 1953 as follows:

10   AMENDS:

11           **77-24-2**, as last amended by Chapter 10, Laws of Utah 1992

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

13           Section 1. Section **77-24-2** is amended to read:

14           **77-24-2. Return of property not needed as evidence -- Procedure.**

15           (1) Custodial property which is not needed as evidence shall be returned to the owner  
16   in accordance with this chapter if [he] the owner may lawfully possess it.

17           (2) (a) When the peace officer or the officer's employing agency [~~by which he is~~  
18   ~~employed~~] becomes aware that the property is not needed as evidence, the officer or the agency  
19   shall advise the prosecuting attorney [~~shall be so advised, giving~~] that the property is not  
20   needed and shall provide a description and details of ownership.

21           (b) When the prosecuting attorney [~~by such notice or otherwise,~~] is advised or  
22   otherwise becomes aware that the property is not needed as evidence, [~~he~~] the prosecutor shall  
23   [~~give written notice~~] authorize release of the property to the owner.

24           (c) (i) Upon proof of ownership and of lawfulness of possession satisfactory to the  
25   [~~prosecuting attorney, the prosecuting attorney shall give~~] evidence custodian, the custodian  
26   shall release the property to the owner [~~written authorization which shall entitle the owner to~~  
27   receive the property from the person having custody of it].



28            (ii) If the evidence custodian is unable to locate an owner of the property or if the  
29 owner is not entitled to lawfully possess the property, the agency having custody of the  
30 property shall dispose of the property in accordance with Section 77-24-4.

31            (3) (a) When custodial property is received in evidence, [it shall be retained by] the  
32 clerk of the court last receiving it shall retain the property or the clerk shall [be returned by  
33 him] return the property to the custody of the peace officer. The property shall be retained by  
34 the clerk or the officer until all direct appeals and retrials are final, at which time the property  
35 shall be returned to the owner in accordance with this [section. In the event that] chapter.

36            (b) If the prosecuting attorney considers it necessary to retain control over the  
37 evidence, in anticipation of possible collateral attacks upon the judgment or [of] for use in  
38 [some] a potential prosecution, he may decline to authorize return of the property to the owner.

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**Legislative Review Note**  
**as of 1-16-03 4:10 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0104**

**Disposal of Evidence in Criminal Proceedings**

*03-Feb-03*

*10:44 AM*

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**State Impact**

It is estimated that provisions of this bill can be implemented with existing resources.

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**Individual and Business Impact**

No significant fiscal impact.

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**Office of the Legislative Fiscal Analyst**