| 1 | EVIDENCE RETENTION AMENDMENTS | |
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| 2 | 2024 GENERAL SESSION | |
| 3 | STATE OF UTAH | |
| 4 | Chief Sponsor: Wayne A. Harper | |
| 5 6 | House Sponsor: Ken Ivory | |
| 7 | LONG TITLE | |
| 8 | General Description: | |
| 9 | This bill amends provisions related to the retention and disposal of evidence of an | |
| 10 | offense. | |
| 11 | Highlighted Provisions: | |
| 12 | This bill: | |
| 13 | clarifies the requirements for disposing of wildlife seized by the Division of | |
| 14 | Wildlife Resources; | |
| 15 | amends the time period for retaining evidence of a felony offense; | |
| 16 | clarifies that the time period requirements do not require an agency to return or | |
| 17 | dispose of evidence of a felony offense; | |
| 18 | provides that an agency is not required to retain evidence of a felony offense in | |
| 19 | certain circumstances; | |
| 20 | provides the requirements for an agency seeking to no longer retain evidence of a | |
| 21 | felony offense; | |
| 22 | amends the time period for retaining biological evidence of a violent felony offense; | |
| 23 | amends the notification requirements regarding the retention of biological evidence | |
| 24 | of a violent felony offense; and | |
| 25 | makes technical and conforming changes. | |
| 26 | Money Appropriated in this Bill: | |
| 27 | None | |



| 28 | Other Special Clauses: |
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| 29 | None |
| 30 | Utah Code Sections Affected: |
| 31 | AMENDS: |
| 32 | 23A-5-201, as last amended by Laws of Utah 2023, Chapter 448 and renumbered and |
| 33 | amended by Laws of Utah 2023, Chapter 103 |
| 34 | 77-11a-204, as renumbered and amended by Laws of Utah 2023, Chapter 448 |
| 35 | 77-11a-205, as renumbered and amended by Laws of Utah 2023, Chapter 448 |
| 36 | 77-11a-301, as renumbered and amended by Laws of Utah 2023, Chapter 448 |
| 37 | 77-11a-302, as enacted by Laws of Utah 2023, Chapter 448 |
| 38 | 77-11a-303, as enacted by Laws of Utah 2023, Chapter 448 |
| 39 | 77-11a-305, as renumbered and amended by Laws of Utah 2023, Chapter 448 |
| 40 | 77-11c-103, as enacted by Laws of Utah 2023, Chapter 448 |
| 41 | 77-11c-202, as enacted by Laws of Utah 2023, Chapter 448 |
| 42 | 77-11c-203, as enacted by Laws of Utah 2023, Chapter 448 |
| 43 | 77-11c-301, as renumbered and amended by Laws of Utah 2023, Chapter 448 |
| 44 | 77-11c-401, as renumbered and amended by Laws of Utah 2023, Chapter 448 |
| 45 | ENACTS: |
| 46 | 77-11c-302 , Utah Code Annotated 1953 |
| 47 40 | 77-11c-303, Utah Code Annotated 1953 |
| 48 49 | Be it enacted by the Legislature of the state of Utah: |
| 50 | Section 1. Section 23A-5-201 is amended to read: |
| 51 | 23A-5-201. Enforcement authority of conservation officers Seizure and |
| 52 | disposition of property. |
| 53 | (1) A conservation officer shall enforce the provisions of this title in accordance with |
| 54 | the same procedures and requirements for a law enforcement officer of this state. |
| 55 | (2) (a) Except as provided in Subsection (2)(b), a conservation officer may seize |
| 56 | property or contraband in accordance with Title 77, Chapter 11a, Seizure of Property and |
| 57 | Contraband, and Title 77, Chapter 11b, Forfeiture of Seized Property. |
| 58 | (b) A conservation officer shall seize protected wildlife illegally taken or held. |

(3) (a) If a conservation officer seizes wildlife as part of an investigation or prosecution of an offense and the wildlife may reasonably be used to incriminate or exculpate a person for the offense, the division is not required to retain the wildlife under Title 77, Chapter 11c, Retention of Evidence.

- (b) If the division does not retain wildlife under Subsection (3)(a), the division is required to preserve sufficient evidence from the wildlife for use as evidence in the prosecution of a person for the offense.
- (4) (a) If a conservation officer seizes wildlife and the wildlife or parts of the wildlife are perishable, the division may donate the wildlife or parts of the wildlife to be used for charitable purposes.
- (b) If wildlife or parts of the wildlife are perishable and are not fit to be donated for charitable purposes under Subsection (4)(a), the division may dispose of the wildlife or parts of the wildlife in a reasonable manner.
- [(5) (a) The court may order the division to sell or dispose of protected wildlife that is seized by a conservation officer if the division is permitted by law to sell or dispose of the wildlife.]
- (5) (a) If a defendant is convicted of the offense for which protected wildlife is seized and the division is permitted by law to sell or dispose of the protected wildlife, the division may sell or dispose of the protected wildlife or part of the wildlife.
- (b) The division may not sell migratory wildfowl but the division shall donate the migratory wildfowl to be used for charitable purposes.
- (c) The division shall deposit the proceeds from the sale of protected wildlife into the Wildlife Resources Account.
- (6) If the division disposes of wildlife <u>and the defendant is acquitted of the offense for</u> which the wildlife is seized or the entire case for the offense is dismissed, the court may order the division to:
- (a) provide the owner of the disposed wildlife with wildlife that is reasonably equivalent in value to the disposed wildlife within 180 days after the day on which the court enters the order; or
- (b) if the division is unable to obtain wildlife that is reasonably equivalent in value to the disposed wildlife, pay the owner of the disposed wildlife for the non-trophy value of the

disposed wildlife in accordance with Subsection 23A-5-312(2) within 180 days after the day on which the court enters the order.

- (7) (a) If a conservation officer seizes a vehicle under Section 77-11a-201, the division shall store the seized vehicle in a public or private garage, state impound lot, or any other secured storage facility.
- (b) The division shall release a seized vehicle to the owner no later than 30 days after the day on which the vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of wildlife by a person charged with a felony under this title.
 - (c) The owner of a seized vehicle is liable for the payment of any impound fee if:
 - (i) the owner used the vehicle for the unlawful taking or possessing of wildlife; and
 - (ii) the owner is convicted of an offense under this title.
- (d) The owner of a seized vehicle is not liable for the payment of any impound fee or, if the fees have been paid, is entitled to reimbursement of the fees paid, if:
- (i) no charges are filed or all charges are dropped that involve the use of the vehicle for the unlawful taking or possessing of wildlife;
- (ii) the person charged with using the vehicle for the unlawful taking or possessing of wildlife is found by a court to be not guilty; or
 - (iii) the owner did not consent to a use of the vehicle that violates this chapter.
- Section 2. Section **77-11a-204** is amended to read:

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 [released] returned or disposed of in accordance with:
 - (i) this chapter; and

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- (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
- 118 (iii) the agency's case number.
- 119 (2) (a) Except as provided in Subsection (2)(b), no later than 30 days after the day on 120 which a peace officer seizes property in the form of cash or other readily negotiable

| 121 | instruments, an agency shall deposit the property into a separate, restricted, interest-bearing | |
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| 122 | account maintained by the agency solely for the purpose of managing and protecting the | |
| 123 | property from commingling, loss, or devaluation. | |
| 124 | (b) A prosecuting attorney may authorize one or more written extensions of the 30-day | |
| 125 | period under Subsection (2)(a) if the property needs to maintain the form in which the property | |
| 126 | was seized for evidentiary purposes or other good cause. | |
| 127 | (3) An agency shall: | |
| 128 | (a) have written policies for the identification, tracking, management, and safekeeping | |
| 129 | of seized property and contraband; and | |
| 130 | (b) shall have a written policy that prohibits the transfer, sale, or auction of seized | |
| 131 | property and contraband to an employee of the agency. | |
| 132 | Section 3. Section 77-11a-205 is amended to read: | |
| 133 | 77-11a-205. Transfer or release of seized property to another governmental entity | |
| 134 | Requirements. | |
| 135 | (1) Except as provided in Subsections (3)(a) through (c), upon the seizure of property | |
| 136 | by a peace officer, the property is subject to the exclusive jurisdiction of a district court of this | |
| 137 | state. | |
| 138 | (2) Except as provided in Subsection (3), a peace officer, agency, or prosecuting | |
| 139 | attorney may not directly or indirectly transfer or release seized property to a federal agency or | |
| 140 | to a governmental entity not created or subject to the laws of this state. | |
| 141 | (3) An agency or prosecuting attorney may transfer or release seized property to a | |
| 142 | federal agency or to a governmental entity not created or subject to the laws of this state if: | |
| 143 | (a) (i) the property is cash or another readily negotiable instrument; and | |
| 144 | (ii) the property is evidence in, or subject to, a federal criminal indictment, a federal | |
| 145 | criminal information, or a federal criminal complaint that is filed before the property is seized; | |
| 146 | (b) (i) the property is not cash or another readily negotiable instrument; and | |
| 147 | (ii) the property is evidence in, or subject to, a federal criminal indictment, a federal | |
| 148 | criminal information, or a federal criminal complaint that is filed before the day on which the | |
| 149 | agency with custody of the property is required to return the property if no criminal or civil | |
| 150 | action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section | |
| 151 | 77-11b-203; | |

| 152 | (c) (i) the property was used in the commission of an offense in another state; and | |
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| 153 | (ii) an agency of that state requests the transfer of the property before the day on which | |
| 154 | the agency with custody of the property is required to return the property if no criminal or civil | |
| 155 | action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section | |
| 156 | 77-11b-203; or | |
| 157 | (d) a district court authorizes, in accordance with Subsection (5), the transfer or release | |
| 158 | of the property to an agency of another state or a federal agency upon a petition by a | |
| 159 | prosecuting attorney or a federal prosecutor. | |
| 160 | (4) (a) A prosecuting attorney, or a federal prosecutor, may file a petition in the district | |
| 161 | court for the transfer or release of seized property. | |
| 162 | (b) If a prosecuting attorney, or a federal prosecutor, files a petition under Subsection | |
| 163 | (4)(a), the petition shall include: | |
| 164 | (i) a detailed description of the property seized; | |
| 165 | (ii) the location where the property was seized; | |
| 166 | (iii) the date the property was seized; | |
| 167 | (iv) the case number assigned by the agency; and | |
| 168 | (v) a declaration that: | |
| 169 | (A) states the basis for relinquishing jurisdiction to a federal agency or an agency of | |
| 170 | another state; | |
| 171 | (B) contains the names and addresses of any known claimant; and | |
| 172 | (C) is signed by the prosecuting attorney or federal prosecutor. | |
| 173 | (5) A district court may not authorize the transfer or release of seized property under | |
| 174 | Subsection (3)(d), unless the district court finds, by a preponderance of the evidence: | |
| 175 | (a) the property is evidence in, or subject to, a federal criminal indictment, a federal | |
| 176 | criminal information, or a federal criminal complaint after the property is seized; | |
| 177 | (b) the property may only be forfeited under federal law; | |
| 178 | (c) forfeiting the property under state law would unreasonably burden the prosecuting | |
| 179 | attorney or agency; or | |
| 180 | (d) the property was subject to a federal criminal investigation before the property was | |
| 181 | seized. | |
| 182 | (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

| 214 | government may use the award money only after approval of the use by the agency's legislative |
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| 215 | body. |
| 216 | (9) If a district court exercises exclusive jurisdiction over seized property, the district |
| 217 | court's exclusive jurisdiction is terminated if [the property is released by the agency with |
| 218 | custody of the property the agency with custody of the property returns the property to a |
| 219 | claimant under: |
| 220 | (a) [Part 3, Release of Seized Property to Claimant] Part 3, Return of Seized Property |
| 221 | to Claimant; or |
| 222 | (b) Section 77-11b-203. |
| 223 | Section 4. Section 77-11a-301 is amended to read: |
| 224 | Part 3. Return of Seized Property to Claimant |
| 225 | 77-11a-301. Return of seized property to claimant Generally. |
| 226 | (1) (a) An agency with custody of seized property, or the prosecuting attorney, may |
| 227 | [release] return the property to a claimant if the agency or the prosecuting attorney: |
| 228 | (i) determines that the agency does not need to retain or preserve the property as |
| 229 | evidence under Chapter 11c, Retention of Evidence; or |
| 230 | (ii) seeks to return the property to the claimant because the agency or prosecuting |
| 231 | attorney determines that the claimant is an innocent owner or an interest holder. |
| 232 | (b) An agency with custody of seized property, or the prosecuting attorney, may not |
| 233 | [release] return property under this Subsection (1) if the property is subject to retention or |
| 234 | preservation under Chapter 11c, Retention of Evidence. |
| 235 | (2) An agency with custody of the seized property, or the prosecuting attorney, shall |
| 236 | [release] return the property to a claimant if: |
| 237 | (a) the claimant posts a surety bond or cash with the court in accordance with Section |
| 238 | 77-11a-302; |
| 239 | (b) the court orders the [release] return of property to the claimant for hardship |
| 240 | purposes under Section 77-11a-303; |
| 241 | (c) a claimant establishes that the claimant is an innocent owner or an interest holder |
| 242 | under Section 77-11a-304; or |
| 243 | (d) the court orders property retained as evidence to be [released] returned to the |
| 244 | claimant under Section 77-11a-305. |

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| 245 | (3) (a) For a computer determined to be contraband, a court may order the reasonable | |
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| 246 | extraction and return of specifically described personal digital data to the owner of the | |
| 247 | computer. | |
| 248 | (b) The agency shall determine a reasonable cost to extract the data. | |
| 249 | (c) At the time of the request to extract the data, the owner of the computer shall pay | |
| 250 | the agency the cost to extract the data. | |
| 251 | (4) If a peace officer for the Division of Wildlife Resources seizes a vehicle, the | |
| 252 | Division of Wildlife Resources shall [release] return the vehicle to a claimant in accordance | |
| 253 | with Section 23A-5-201. | |
| 254 | (5) If an agency is not required, or is no longer required, to retain or preserve property | |
| 255 | as evidence under Chapter 11c, Retention of Evidence, and the agency seeks to [release] return | |
| 256 | or dispose of the property, the agency shall exercise due diligence in attempting to notify the | |
| 257 | claimant of the property to advise the claimant that the property is to be returned. | |
| 258 | (6) (a) Before an agency may [release] return seized property to a person claiming | |
| 259 | ownership of the property, the person shall establish that the person: | |
| 260 | (i) is the owner of the property; and | |
| 261 | (ii) may lawfully possess the property. | |
| 262 | (b) The person shall establish ownership under Subsection (6)(a) by providing to the | |
| 263 | agency: | |
| 264 | (i) identifying proof or documentation of ownership of the property; or | |
| 265 | (ii) a notarized statement if proof or documentation is not available. | |
| 266 | (c) When seized property is returned to the owner, the owner shall sign a receipt listing | |
| 267 | in detail the property that is returned. | |
| 268 | (d) The agency shall: | |
| 269 | (i) retain a copy of the receipt; and | |
| 270 | (ii) provide a copy of the receipt to the owner. | |
| 271 | Section 5. Section 77-11a-302 is amended to read: | |
| 272 | 77-11a-302. Return of seized property to claimant by surety bond or cash. | |

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 [release] 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

| 276 | parties. | |
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| 277 | (2) A court may refuse to order the [release] return of property under Subsection (1) if: | |
| 278 | (a) the bond tendered for the property is inadequate; | |
| 279 | (b) the property is subject to the retention or preservation requirements under Chapter | |
| 280 | 11c, Retention of Evidence; | |
| 281 | (c) the property is particularly altered or designed for use in the commission of the | |
| 282 | offense subjecting the property to forfeiture under Section 77-11b-102; or | |
| 283 | (d) the property is contraband. | |
| 284 | (3) If a surety bond or cash is posted and the court later determines that the property is | |
| 285 | forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of the property. | |
| 286 | Section 6. Section 77-11a-303 is amended to read: | |
| 287 | 77-11a-303. Return of seized property subject to forfeiture to claimant for | |
| 288 | hardship. | |
| 289 | (1) A claimant is entitled to the immediate [release] return of seized property for which | |
| 290 | the agency has filed a notice of intent to forfeit under Section 77-11b-201 if: | |
| 291 | (a) the claimant had a possessory interest in the property at the time of seizure; | |
| 292 | (b) continued possession by the agency pending a forfeiture proceeding will cause | |
| 293 | substantial hardship to the claimant, including: | |
| 294 | (i) preventing the functioning of a legitimate business; | |
| 295 | (ii) preventing any individual from working; | |
| 296 | (iii) preventing any child from attending elementary or secondary school; | |
| 297 | (iv) preventing or hindering an individual from receiving necessary medical care; | |
| 298 | (v) preventing the care of a dependent child or adult who is elderly or disabled; | |
| 299 | (vi) leaving an individual homeless; or | |
| 300 | (vii) any other condition that the court determines causes a substantial hardship; | |
| 301 | (c) the hardship from the continued possession of the property by the agency outweighs | |
| 302 | the risk that the property will be destroyed, damaged, lost, concealed, or transferred if the | |
| 303 | property is returned to the claimant during the pendency of the proceeding; and | |
| 304 | (d) the determination of substantial hardship under this Subsection (1) is based upon | |
| 305 | the property's use before the seizure. | |
| 306 | (2) A claimant may file a motion or petition for hardship release under this section: | |

| 307 | (a) in the court in which forfeiture proceedings have commenced; or | |
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| 308 | (b) in a district court where there is venue under Section 77-11a-102 if a forfeiture | |
| 309 | proceeding has not yet commenced. | |
| 310 | (3) The motion or petition for hardship release shall be served upon the agency with | |
| 311 | custody of the property within five days after the day on which the motion or petition is filed. | |
| 312 | (4) The court shall: | |
| 313 | (a) schedule a hearing on the motion or petition within 14 days after the day on which | |
| 314 | the motion or petition is filed; and | |
| 315 | (b) render a decision on a motion or petition for hardship filed under this section no | |
| 316 | later than 20 days after the day of the hearing, unless this period is extended by the agreement | |
| 317 | of both parties or by the court for good cause shown. | |
| 318 | (5) If the claimant demonstrates substantial hardship under Subsection (1), the court | |
| 319 | shall order the agency to immediately return the property [immediately released] to the | |
| 320 | claimant pending completion of any forfeiture proceeding. | |
| 321 | (6) The court may place conditions on [release] the return of the property as the court | |
| 322 | finds necessary and appropriate to preserve the availability of the property or the property's | |
| 323 | equivalent for forfeiture. | |
| 324 | (7) The hardship release under this section does not apply to: | |
| 325 | (a) contraband; | |
| 326 | (b) property that is subject to the retention or preservation requirements under Chapter | |
| 327 | 11c, Retention of Evidence; or | |
| 328 | (c) property that is likely to be used to commit additional offenses if returned to the | |
| 329 | claimant. | |
| 330 | Section 7. Section 77-11a-305 is amended to read: | |
| 331 | 77-11a-305. Release of seized property to claimant when seized property is | |
| 332 | retained as evidence. | |
| 333 | (1) (a) A claimant may file a petition with the court for the return of the property that is | |
| 334 | being retained as evidence in accordance with Chapter 11c, Retention of Evidence. | |
| 335 | (b) The claimant may file the petition in: | |
| 336 | (i) the court in which criminal proceedings have commenced regarding the offense for | |
| 337 | which the property is being retained as evidence; or | |

| 338 | (ii) the district court with venue under Section 77-11a-102 if there are no pending | |
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| 339 | criminal proceedings. | |
| 340 | (c) A claimant shall serve a copy of the petition on the prosecuting attorney or federal | |
| 341 | prosecutor and the agency with custody of the property. | |
| 342 | (2) (a) The court shall provide an opportunity for an expedited hearing. | |
| 343 | (b) After the opportunity for an expedited hearing, the court may order that the property | |
| 344 | is: | |
| 345 | (i) returned to the claimant if the claimant is the owner as determined by the court; | |
| 346 | (ii) if the offense subjecting the property to seizure results in a conviction, applied | |
| 347 | directly or by proceeds of the sale of the property toward restitution, fines, or fees owed by the | |
| 348 | claimant in an amount set by the court; | |
| 349 | (iii) converted to a public interest use; | |
| 350 | (iv) held for further legal action; | |
| 351 | (v) sold at public auction and the proceeds of the sale applied to a public interest use; | |
| 352 | or | |
| 353 | (vi) destroyed. | |
| 354 | (3) Before the court can order property be returned to a claimant, the claimant shall | |
| 355 | establish, by clear and convincing evidence, that the claimant: | |
| 356 | (a) is the owner of the property; and | |
| 357 | (b) may lawfully possess the property. | |
| 358 | (4) If the court orders the property to be returned to the claimant, the agency with | |
| 359 | custody of the property shall return the property to the claimant as expeditiously as possible. | |
| 360 | Section 8. Section 77-11c-103 is amended to read: | |
| 361 | 77-11c-103. Disposal or return of evidence. | |
| 362 | When evidence is no longer subject to retention under this chapter, the agency shall: | |
| 363 | (1) return evidence that is property to a claimant under [Title 77, Chapter 11a, Part 3, | |
| 364 | Release of Seized Property to Claimant] Chapter 11a, Part 3, Return of Seized Property to | |
| 365 | Claimant; or | |
| 366 | (2) dispose of evidence that is property or contraband in accordance with [Title 77, | |
| 367 | Chapter 11a, Part 4, Disposal of Seized Property and Contraband] Chapter 11a, Part 4, | |
| 368 | Disposal of Seized Property and Contraband. | |

| 309 | Section 9. Section //-11c-202 is amended to read: | |
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| 370 | 77-11c-202. Requirements for not retaining evidence of a misdemeanor offense | |
| 371 | Preservation of sufficient evidence. | |
| 372 | (1) An agency is not required to retain evidence of a misdemeanor offense under | |
| 373 | Section 77-11c-201 if: | |
| 374 | (a) (i) the agency determines that: | |
| 375 | (A) the size, bulk, or physical character of the evidence renders retention | |
| 376 | impracticable; or | |
| 377 | (B) the evidence poses a security or safety problem for the agency; | |
| 378 | (ii) the agency preserves sufficient evidence of the property, contraband, item, or | |
| 379 | substance for use as evidence in a prosecution of the offense [in accordance with this section]; | |
| 380 | (iii) the agency sends a written request under Subsection 77-11c-203(1) to the | |
| 381 | prosecuting attorney for permission to [release] return or dispose of the evidence; and | |
| 382 | (iv) the prosecuting attorney grants the agency's written request in accordance with | |
| 383 | Section 77-11c-203; | |
| 384 | (b) a court orders the agency to return evidence that is property to a claimant under | |
| 385 | Section 77-11a-305; or | |
| 386 | (c) the evidence is wildlife or parts of wildlife. | |
| 387 | (2) (a) Subsection (1) does not require an agency to return or dispose of evidence of a | |
| 388 | misdemeanor offense. | |
| 389 | (b) Subsection (1)(a) does not apply when the [release] return or disposal of evidence | |
| 390 | of a misdemeanor offense is in compliance with a memorandum of understanding between the | |
| 391 | agency and the prosecuting attorney. | |
| 392 | (3) If [evidence] the evidence described in Subsection (1) is a controlled substance, an | |
| 393 | agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance | |
| 394 | by: | |
| 395 | (a) collecting and preserving a sample of the controlled substance [and a sample of | |
| 396 | biological evidence from the controlled substance] for independent testing and use as evidence | |
| 397 | (b) taking a photographic or video record of the controlled substance with identifying | |
| 398 | case numbers; | |
| 399 | (c) maintaining a written report of a chemical analysis of the controlled substance if a | |

chemical analysis was performed by the agency; and
(d) if the controlled substance exceeds 10 pounds, retain at least one pound of the
controlled substance that is randomly selected from the controlled substance.

(4) If [evidence] the evidence described in Subsection (1) is drug paraphernalia, and

- (4) If [evidence] the evidence described in Subsection (1) is drug paraphernalia, an agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:
- (a) collecting and preserving a sample of the controlled substance from the drug paraphernalia for independent testing and use as evidence;
- (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a chemical analysis was performed by the agency; and
- (c) taking a photographic or video record of the drug paraphernalia with identifying case numbers.
- (5) If [evidence] the evidence described in Subsection (1) is a computer, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the computer by:
- (a) extracting all data from the computer that would be evidence in a prosecution of an individual for the offense; <u>and</u>
- [(b) collecting a sample of biological evidence from the computer for independent testing and use as evidence; and]
- [(c)] (b) taking a photographic or video record of the computer with identifying case numbers.
- (6) For any other type of evidence, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the property, contraband, item, or substance by [: (a) collecting and preserving a sample of biological evidence from the property, contraband, item, or substance for independent testing and use as evidence; and (b)] taking a photographic or video record of the property, contraband, item, or substance with identifying case numbers.
 - Section 10. 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 [release] return or dispose of the evidence, the agency shall send a written request to the prosecuting

| 431 | attorney that: |
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- (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 [disposal or release] 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 [release] return or dispose of the evidence.

| 462 | (5) (a) If a prosecuting attorney receives a written request from an agency seeking to |
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| 463 | [release] return or dispose of evidence, the prosecuting attorney shall: |
| 464 | (i) provide a notice of receipt to the agency within 15 days after the day on which the |
| 465 | prosecuting attorney receives the written request; and |
| 466 | (ii) send a written notification to the agency of the prosecuting attorney's decision to |
| 467 | deny or grant an agency's written request within 60 days after the day on which the prosecuting |
| 468 | attorney receives the agency's written request. |
| 469 | (b) If an agency does not receive a notice of receipt under Subsection (5)(a)(i) or a |
| 470 | written notification under Subsection (5)(a)(ii), the agency may send the written request to the |
| 471 | district attorney, county attorney, attorney general, or other prosecuting attorney who directly |
| 472 | oversees and supervises the prosecuting attorney. |
| 473 | (6) If a prosecuting attorney denies an agency's written request to [release] return or |
| 474 | dispose of evidence under this section, the agency shall retain the evidence in accordance with |
| 475 | Section 77-11c-201. |
| 476 | (7) The requirements of this section do not apply when the [release] return or disposal |
| 477 | of evidence of a misdemeanor offense is in compliance with a memorandum of understanding |
| 478 | between the agency and the prosecuting attorney. |
| 479 | Section 11. Section 77-11c-301 is amended to read: |
| 480 | 77-11c-301. Retention of evidence for felony offenses. |
| 481 | [(1) Except as provided in Subsection (4) and Subsection 23A-5-201(3), an agency |
| 482 | shall retain evidence of a felony offense:] |
| 483 | [(a) at the discretion of the prosecuting attorney; or] |
| 484 | [(b) until all direct appeals and retrials are final.] |
| 485 | [(2) If the prosecuting attorney decides to retain control over the evidence of the felony |
| 486 | offense in anticipation of possible collateral attacks upon the judgment or for use in a potential |
| 487 | prosecution, the prosecuting attorney may decline to authorize the disposal of the evidence.] |
| 488 | (1) Except as provided in Subsection (4), an agency shall retain evidence of a felony |
| 489 | offense: |
| 490 | (a) for the longer of: |
| 491 | (i) the length of the statute of limitations for the felony offense if: |
| 492 | (A) charges are not filed for the felony offense; or |

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| 493 | (B) the felony offense remains unsolved; |
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| 494 | (ii) the length of time that any individual convicted of the felony offense, or a lesser |
| 495 | included offense, remains in custody; |
| 496 | (iii) one year after the day on which all direct appeals of the final judgment for any |
| 497 | individual convicted of the felony offense, or a lesser included offense, are exhausted; or |
| 498 | (iv) the length of time that a petition for postconviction relief, and any appeal of the |
| 499 | petition, is pending if an individual convicted of the felony offense files the petition within the |
| 500 | one-year time period described in Subsection (1)(c); or |
| 501 | (b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution |
| 502 | of the felony offense resulted in an acquittal or dismissal. |
| 503 | [(3)] (2) An agency shall ensure that evidence of a felony offense is subject to a |
| 504 | continuous chain of custody. |
| 505 | (3) Subsection (1) does not require an agency to return or dispose of evidence of a |
| 506 | felony offense. |
| 507 | (4) An agency shall retain and preserve biological evidence of a violent felony offense |
| 508 | in accordance with Part 4, Preservation of Biological Evidence for Violent Felony Offenses. |
| 509 | Section 12. Section 77-11c-302 is enacted to read: |
| 510 | 77-11c-302. Requirements for not retaining evidence of felony offense |
| 511 | Preservation of sufficient evidence. |
| 512 | (1) An agency is not required to retain evidence of a felony offense under Section |
| 513 | <u>77-11c-301 if:</u> |
| 514 | (a) (i) the agency determines that: |
| 515 | (A) the size, bulk, or physical character of the evidence renders retention impracticable |
| 516 | or the evidence poses a security or safety problem for the agency; and |
| 517 | (B) the evidence no longer has any significant evidentiary value; |
| 518 | (ii) the agency preserves sufficient evidence from the property, contraband, item, or |
| 519 | substance for use as evidence in a prosecution of the offense; and |
| 520 | (iii) a prosecuting attorney or a court authorizes the agency to return or dispose of the |
| 521 | evidence as described in Subsection 77-11c-303; |
| 522 | (b) a court orders the agency to return evidence that is property to a claimant under |
| 523 | Section 77-11a-305; or |

| 524 | (c) the evidence is wildlife or parts of wildlife. |
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| 525 | (2) Subsection (1) does not require an agency to return or dispose of evidence of a |
| 526 | felony offense. |
| 527 | (3) Subsection (1) does not apply to biological evidence of a violent felony offense |
| 528 | because an agency is required to retain biological evidence of a violent felony offense as |
| 529 | described in Part 4, Preservation of Biological Evidence for Violent Felony Offenses. |
| 530 | (4) If the evidence described in Subsection (1) is a controlled substance, an agency |
| 531 | shall preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by: |
| 532 | (a) collecting and preserving a sample of the controlled substance for independent |
| 533 | testing and use as evidence; |
| 534 | (b) taking a photographic or video record of the controlled substance with identifying |
| 535 | case numbers; |
| 536 | (c) maintaining a written report of a chemical analysis of the controlled substance if a |
| 537 | chemical analysis was performed by the agency; |
| 538 | (d) if the controlled substance exceeds 10 pounds, retaining at least one pound of the |
| 539 | controlled substance that is randomly selected from the controlled substance; and |
| 540 | (e) for a violent felony offense, collecting and preserving biological evidence from the |
| 541 | controlled substance as described in Section 77-11c-401. |
| 542 | (5) If the evidence described in Subsection (1) is drug paraphernalia, an agency shall |
| 543 | preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by: |
| 544 | (a) collecting and preserving a sample of the controlled substance from the drug |
| 545 | paraphernalia for independent testing and use as evidence; |
| 546 | (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a |
| 547 | chemical analysis was performed by the agency; |
| 548 | (c) taking a photographic or video record of the drug paraphernalia with identifying |
| 549 | case numbers; and |
| 550 | (d) for a violent felony offense, collecting and preserving biological evidence from the |
| 551 | drug paraphernalia as described in Section 77-11c-401. |
| 552 | (6) If the evidence described in Subsection (1) is a computer, the agency shall preserve |
| 553 | sufficient evidence under Subsection (1)(a)(ii) of the computer by: |
| 554 | (a) extracting all data from the computer that would be evidence in a prosecution of an |

| 555 | individual for the offense; |
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| 556 | (b) taking a photographic or video record of the computer with identifying case |
| 557 | numbers; and |
| 558 | (c) for a violent felony offense, collecting and preserving biological evidence from the |
| 559 | computer as described in Section 77-11c-401. |
| 560 | (7) For any other type of evidence, the agency shall preserve sufficient evidence under |
| 561 | Subsection (1)(a)(ii) of the property, contraband, item, or substance by: |
| 562 | (a) taking a photographic or video record of the property, contraband, item, or |
| 563 | substance with identifying case numbers; and |
| 564 | (b) for a violent felony offense, collecting and preserving biological evidence as |
| 565 | described in Section 77-11c-401. |
| 566 | Section 13. Section 77-11c-303 is enacted to read: |
| 567 | 77-11c-303. Procedure for authorizing the return or disposal of evidence of a |
| 568 | felony offense. |
| 569 | (1) If an agency determines that the agency is not required to retain evidence of a |
| 570 | felony offense under Subsection 77-11c-302(1)(a)(i), and the agency seeks to return or dispose |
| 571 | of the evidence, the agency shall send a written request to the prosecuting attorney that: |
| 572 | (a) identifies the evidence; |
| 573 | (b) explains the reason that the agency is not required to retain the evidence under |
| 574 | Subsection 77-11c-302(1)(a)(i); and |
| 575 | (c) explains the steps that the agency will take, or has taken, to preserve sufficient |
| 576 | evidence from the property, contraband, item, or substance for use as evidence in a prosecution |
| 577 | of the offense. |
| 578 | (2) If a prosecuting attorney receives a written request described in Subsection (1), the |
| 579 | prosecuting attorney shall: |
| 580 | (a) provide a notice of receipt to the agency within 15 days after the day on which the |
| 581 | prosecuting attorney receives the written request; and |
| 582 | (b) send a written notification to the agency of the prosecuting attorney's decision to |
| 583 | deny or grant an agency's written request within 60 days after the day on which the prosecuting |
| 584 | attorney receives the agency's written request. |
| 585 | (3) If an agency sends a written request described in Subsection (1) to the prosecuting |

| 586 | attorney, the agency shall also send the written request by certified mail, return receipt |
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| 587 | requested, or a delivery service that provides proof of delivery, to: |
| 588 | (a) any individual who remains in custody based on a conviction related to the |
| 589 | evidence; |
| 590 | (b) the private attorney or public defender of record for each individual described in |
| 591 | Subsection (3)(a); |
| 592 | (c) the entity that employed the private attorney or public defender described in |
| 593 | Subsection (3)(b) at the time of the criminal conviction; |
| 594 | (d) if applicable, the prosecuting agency responsible for the prosecution of each |
| 595 | individual described in Subsection (3)(a); and |
| 596 | (e) the Utah attorney general. |
| 597 | (4) (a) If a person described in Subsection (3) receives a written request from an agency |
| 598 | seeking to return or dispose of evidence of the felony offense, the person may object to the |
| 599 | agency's written request to return or dispose of evidence of the felony offense. |
| 600 | (b) To object to an agency's request under Subsection (4)(a), the person must send a |
| 501 | written objection to the agency and prosecuting attorney within 60 days after the day on which |
| 502 | the person receives the agency's written request. |
| 503 | (5) If the prosecuting attorney receives a written request under Subsection (2) and |
| 504 | determines that the agency needs to retain the evidence for a prosecution of the felony offense, |
| 505 | the prosecuting attorney shall send a written notification to the agency that explains the reason |
| 506 | for which the prosecuting attorney is denying the agency's request. |
| 507 | (6) The agency may petition the court for an order granting the agency's request to |
| 508 | return or dispose of the evidence of a felony offense if: |
| 509 | (a) the prosecuting attorney denies the agency's written request or does not respond to |
| 510 | an agency's written request within the time periods described in Subsection (2); or |
| 511 | (b) a person described in Subsection (3) objects to the agency's written request. |
| 512 | (7) The court shall hold a hearing on the agency's petition to determine whether an |
| 513 | agency's request to return or dispose of evidence should be granted. |
| 514 | (8) After a hearing on the agency's petition, the court shall grant an agency's request to |
| 615 | return or dispose of evidence of a felony offense if the court determines, by a preponderance of |
| 516 | the evidence, that: |

| 61/ | (a) the size, bulk, or physical character of the evidence renders retention impracticable |
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| 618 | or the evidence poses a security or safety problem for the agency; |
| 619 | (b) the evidence no longer has any significant evidentiary value; and |
| 620 | (c) the agency will take, or has taken, steps to preserve sufficient evidence from the |
| 621 | property, contraband, item, or substance for use as evidence in a prosecution of the offense. |
| 622 | (9) If the court determines that a prosecuting attorney, or a person described in |
| 623 | Subsection (3), objects to an agency's request to dispose or return of physical evidence of a |
| 624 | felony offense because the physical evidence contains biological evidence that would be |
| 625 | evidence in a prosecution of the offense, the court may require the agency to collect and |
| 626 | preserve biological evidence from the physical evidence before the agency returns or disposes |
| 627 | of the evidence. |
| 628 | (10) If a prosecuting attorney denies the agency's written request or a person described |
| 629 | in Subsection (3) objects to the agency's written request, the agency shall retain the evidence of |
| 630 | a felony offense as described in Section 77-11c-301 until: |
| 631 | (a) the agency obtains a court order granting the agency's request to return or dispose of |
| 632 | the evidence as described in Subsection (8); or |
| 633 | (b) the time periods described in Section 77-11c-301 have expired. |
| 634 | Section 14. Section 77-11c-401 is amended to read: |
| 635 | 77-11c-401. Preservation of biological evidence Procedures Inventory |
| 636 | request. |
| 637 | (1) Except as provided in Section 77-11c-402, an evidence collecting or retaining |
| 638 | entity shall preserve biological evidence of a violent felony offense in accordance with this |
| 639 | part. |
| 640 | (2) An evidence collecting or retaining entity shall preserve biological evidence of a |
| 641 | violent felony offense: |
| 642 | (a) for the longer of: |
| 643 | (i) the length of the statute of limitations for the violent felony offense if: |
| 644 | (A) no charges are filed for the violent felony offense; or |
| 645 | (B) the violent felony offense remains unsolved; |
| 646 | [(ii) the length of time that the individual convicted of the violent felony offense or any |
| 647 | lesser included violent offense remains in custody; or] |
| | |

| 648 | [(iii) the length of time that a co-defendant remains in custody;] |
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| 649 | (ii) the length of time that any individual convicted of the violent felony offense, or a |
| 650 | lesser included offense, remains in custody; |
| 651 | (iii) one year after the day on which all direct appeals of the judgment for any |
| 652 | individual convicted of the violent felony offense, or a lesser included offense, are exhausted; |
| 653 | <u>or</u> |
| 654 | (iv) the length of time that a petition for postconviction relief, and any appeal of the |
| 655 | petition, is pending if an individual convicted of the violent felony offense files the petition |
| 656 | within the one-year time period described in Subsection (2)(a)(iii); or |
| 657 | (b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution |
| 658 | of the violent felony offense resulted in an acquittal or dismissal. |
| 659 | [(b)] (3) An evidence collecting or retaining entity shall ensure that biological evidence |
| 660 | under Subsection (2) is: |
| 661 | (a) preserved in an amount and manner sufficient to: |
| 662 | (i) develop a DNA profile; and |
| 663 | (ii) if practicable, allow for independent testing of the biological evidence by a |
| 664 | defendant; and |
| 665 | [(c)] (b) subject to a continuous chain of custody. |
| 666 | [(3)] (4) (a) Upon request by a defendant under Title 63G, Chapter 2, Government |
| 667 | Records Access and Management Act, the evidence collecting or retaining entity shall prepare |
| 668 | an inventory of the biological evidence preserved in connection with the defendant's criminal |
| 669 | case. |
| 670 | (b) If the evidence collecting or retaining entity cannot locate biological evidence |
| 671 | requested under Subsection $[(3)(a)]$ $(4)(a)$, the custodian for the entity shall provide a sworn |
| 672 | affidavit to the defendant that: |
| 673 | (i) describes the efforts taken to locate the biological evidence; and |
| 674 | (ii) affirms that the biological evidence could not be located. |
| 675 | [(4)] (5) The evidence collecting or retaining entity may dispose of biological evidence |
| 676 | before the day on which the period described in Subsection [(2)(a)] (2) expires if: |
| 677 | (a) no other provision of federal or state law requires the evidence collecting or |
| 678 | retaining entity to preserve the biological evidence; |
| | |

| 679 | (b) the evidence collecting or retaining entity sends notice in accordance with |
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| 680 | Subsection $[(5)]$ (6) ; and |
| 681 | (c) an individual notified under Subsection [(5)(a)] (6)(a) does not within 180 days |
| 682 | after the day on which the evidence collecting or retaining entity receives proof of delivery |
| 683 | under Subsection [(5)] <u>(6)</u> : |
| 684 | (i) file a motion for testing of the biological evidence under Section 78B-9-301; or |
| 685 | (ii) submit a written request under Subsection [(5)(b)(ii)] (6)(b)(ii). |
| 686 | [(5)] (6) If the evidence collecting or retaining entity intends to dispose of the |
| 687 | biological evidence before the day on which the period described in Subsection $[\frac{(2)(a)}{2}]$ |
| 688 | expires, the evidence collecting or retaining entity shall send a notice of intent to dispose of the |
| 689 | biological evidence that: |
| 690 | (a) is sent by certified mail, return receipt requested, or a delivery service that provides |
| 691 | proof of delivery, to: |
| 692 | (i) an individual who remains in custody based on a criminal conviction related to the |
| 693 | biological evidence; |
| 694 | (ii) the private attorney or public defender of record for each individual described in |
| 695 | Subsection $\left[\frac{(5)(a)(i)}{(6)(a)(i)}\right]$ |
| 696 | (iii) the entity that employed the private attorney or public defender at the time of the |
| 697 | criminal conviction; |
| 698 | [(iii)] (iv) if applicable, the prosecuting agency responsible for the prosecution of each |
| 699 | individual described in Subsection $[(5)(a)(i)]$ $(6)(a)(i)$; and |
| 700 | $[\frac{(iv)}{(v)}]$ the Utah attorney general; and |
| 701 | (b) explains that the party receiving the notice may: |
| 702 | (i) file a motion for testing of biological evidence under Section 78B-9-301; or |
| 703 | (ii) submit a written request that the evidence collecting or retaining entity retain the |
| 704 | biological evidence. |
| 705 | [6] (a) Subject to Subsections $[6]$ (b) and (c), if the evidence collecting or |
| 706 | retaining entity receives a written request to retain the biological evidence under Subsection |
| 707 | [(5)(b)(ii)] (6)(b)(ii), the evidence collecting or retaining entity shall retain the biological |
| 708 | evidence while the defendant remains in custody. |
| 709 | (b) Subject to Subsection (6)(c), the evidence collecting or retaining entity may only |

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| 710 | return or dispose of physical evidence of a violent felony offense as described in Part 3, |
| 711 | Retention of Evidence for Felony Offenses. |
| 712 | [(b) Subject to Subsection (6)(c), the evidence collecting or retaining entity is not |
| 713 | required to preserve physical evidence that may contain biological evidence if the physical |
| 714 | evidence's size, bulk, or physical character renders retention impracticable.] |
| 715 | (c) If the evidence collecting or retaining entity [determines that retention is |
| 716 | impracticable] is not required to retain physical evidence of the violent felony offense under |
| 717 | Part 3, Retention of Evidence for Felony Offenses, before returning or disposing of the physical |
| 718 | evidence, the evidence collecting or retaining entity shall: |
| 719 | (i) remove the portions of the physical evidence likely to contain biological evidence |
| 720 | related to the violent felony offense; and |
| 721 | (ii) preserve the removed biological evidence in a quantity sufficient to permit future |
| 722 | DNA testing. |
| 723 | [(7)] (8) To comply with the preservation requirements described in this section, a law |
| 724 | enforcement agency or a court may: |
| 725 | (a) retain the biological evidence; or |
| 726 | (b) if a continuous chain of custody can be maintained, return the biological evidence |
| 727 | to the custody of the other law enforcement agency that originally provided the biological |
| 728 | evidence to the law enforcement agency. |
| 729 | Section 15. Effective date. |
| 730 | This bill takes effect on May 1, 2024. |