

1 **RETURN OF WEAPONS RECOVERED BY LAW**

2 **ENFORCEMENT**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Keven J. Stratton**

6 Senate Sponsor: John L. Valentine

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the procedures for the return or disposal of weapons recovered by law
11 enforcement.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ requires a law enforcement agency to return a firearm in its possession to the legal
15 owner under certain requirements; and

16 ▶ provides for a sworn declaration as acceptable evidence of ownership of property.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **77-24-2**, as last amended by Laws of Utah 2012, Chapters 47 and 284

24 REPEALS:

25 **76-10-525**, as enacted by Laws of Utah 1973, Chapter 196

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

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

29 **77-24-2. Property not needed as evidence -- Child interview retention -- Return**

30 **procedure -- Conflict resolution for secondhand merchandise.**

31 (1) Property which is not needed as evidence shall be returned to the owner, if the
32 owner may lawfully possess it, or disposed of in accordance with this chapter.

33 (2) (a) When the peace officer or the officer's employing agency becomes aware that
34 the property is not needed as evidence, the officer or the agency shall inform the prosecuting
35 attorney that the property is not needed and provide a description and details of ownership.

36 (b) When the prosecuting attorney is informed or otherwise becomes aware that the
37 property is not needed as evidence, the prosecuting attorney shall authorize release of the
38 property to the owner.

39 (c) When the peace officer or the officer's employing agency becomes aware that any
40 property is to be returned to its owner, the officer or employing agency shall exercise due
41 diligence in attempting to notify the rightful owner that the property is to be returned.

42 (d) If the property is a weapon, the peace officer [~~shall dispose of it in accordance with~~
43 ~~Section 76-10-525.~~] or the peace officer's employing agency shall retain or dispose of a weapon
44 pursuant to the agency's weapon disposal policy, if:

45 (i) the peace officer or the peace officer's employing agency is unable to determine the
46 legal owner of the weapon;

47 (ii) the legal owner may not lawfully possess the weapon; or

48 (iii) the legal owner was convicted of a crime for which the weapon was held as
49 evidence.

50 (e) (i) Upon proof of ownership and of lawfulness of possession satisfactory to the
51 evidence custodian, the custodian shall release the property to the owner.

52 (ii) The evidence custodian shall receive and consider a sworn declaration of
53 ownership to establish ownership of the property.

54 [(†)] (iii) If the evidence custodian is unable to locate an owner of the property or if the
55 owner is not entitled to lawfully possess the property, the agency having custody of the
56 property shall dispose of the property in accordance with Section 77-24-4.

57 (f) If the property was seized from a pawnshop or a secondhand business, the

58 procedure in Section 13-32a-109.5 shall be followed to return the property to the pawnshop or
59 secondhand business.

60 (3) (a) When property is received in evidence, the clerk of the court last receiving it
61 shall retain the property or the clerk shall return the property to the custody of the peace officer.
62 The property shall be retained by the clerk or the officer until all direct appeals and retrials are
63 final, at which time the property shall be returned to the owner in accordance with this chapter.
64 If the property was seized for forfeiture, it shall be held and disposed of as provided in Title 24,
65 Chapter 1, Utah Uniform Forfeiture Procedures Act.

66 (b) If the prosecuting attorney considers it necessary to retain control over the
67 evidence, in anticipation of possible collateral attacks upon the judgment or for use in a
68 potential prosecution, the prosecuting attorney may decline to authorize return of the property
69 to the owner.

70 (4) If a peace officer or the officer's employing agency records an interview of a minor
71 child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or
72 76-5-404.1, the peace officer's employing agency shall retain a copy of the recording for 18
73 years following the date of the last recording unless the prosecuting attorney requests in writing
74 that the recording be retained for an additional period of time.

75 (5) If a conflict exists between the provisions of this section and Title 13, Chapter 32a,
76 Pawnshop and Secondhand Merchandise Transaction Information Act, Title 13, Chapter 32a
77 governs regarding disposition of property held by a pawn or secondhand business in the course
78 of its business.

79 **Section 2. Repealer.**

80 This bill repeals:

81 **Section 76-10-525, Disposition of weapons after use for court purposes.**