

Todd Weiler proposes the following substitute bill:

Digital Information Seizure Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill concerns digital information contained on a computer or portable communication device seized by law enforcement.

Highlighted Provisions:

This bill:

- defines terms and modifies definitions;
- provides specific procedures and requirements regarding the copying of stored digital data and the return of certain seized computers or portable communication devices;
- prohibits a law enforcement agency or prosecuting agency from conditioning the return of a seized computer or portable communication device on the owner consenting to a search of the computer or portable communication device or providing the owner's password or otherwise unlocking the computer or portable communication device; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-11a-101, as last amended by Laws of Utah 2024, Chapter 80

77-11a-301, as last amended by Laws of Utah 2024, Chapter 80

77-11a-305, as last amended by Laws of Utah 2024, Chapter 150

77-11c-101, as last amended by Laws of Utah 2024, Chapter 234

77-11c-202, as last amended by Laws of Utah 2024, Chapters 150, 164

77-11c-302, as enacted by Laws of Utah 2024, Chapter 150

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

Section 1. Section **77-11a-101** is amended to read:

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~~ include:
- (i) [-]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[-];
 - (ii) a portable communication device; or
 - (iii) a device used for the purpose of taking protected wildlife regulated under Title 23A, Wildlife Resources Act, including a trail camera, unmanned aircraft, drone, or a similar device that is capable of recording data.
- (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 or a portable communication device 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

- 63 containing child sexual abuse material; or
- 64 (B) contains the personal identifying information of another individual, as defined
- 65 in Section 76-6-1101, whether that individual is alive or deceased, and the
- 66 personal identifying information has been used to create false or fraudulent
- 67 identification documents or financial transaction cards in violation of Title 76,
- 68 Chapter 6, Part 5, Fraud.
- 69 (5) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- 70 (6) "Court" means a municipal, county, or state court.
- 71 (7) "Division of Law Enforcement" means the division within the Department of Natural
- 72 Resources created under Title 79, Chapter 2, Part 7, Division of Law Enforcement.
- 73 (8) "Evidence" means the same as that term is defined in Section 77-11c-101.
- 74 (9) "Forfeit" means to divest a claimant of an ownership interest in property seized by a
- 75 peace officer or agency.
- 76 (10) "Innocent owner" means a claimant who:
- 77 (a) held an ownership interest in property at the time of the commission of an offense
- 78 subjecting the property to seizure, and:
- 79 (i) did not have actual knowledge of the offense subjecting the property to seizure; or
- 80 (ii) upon learning of the commission of the offense, took reasonable steps to prohibit
- 81 the use of the property in the commission of the offense; or
- 82 (b) acquired an ownership interest in the property and had no knowledge that the
- 83 commission of the offense subjecting the property to seizure had occurred or that the
- 84 property had been seized, and:
- 85 (i) acquired the property in a bona fide transaction for value;
- 86 (ii) was an individual, including a minor child, who acquired an interest in the
- 87 property through probate or inheritance; or
- 88 (iii) was a spouse who acquired an interest in property through dissolution of
- 89 marriage or by operation of law.
- 90 (11)(a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a
- 91 party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security
- 92 interest or encumbrance pertaining to an interest in property, whose interest would be
- 93 perfected against a good faith purchaser for value.
- 94 (b) "Interest holder" does not mean a person:
- 95 (i) who holds property for the benefit of or as an agent or nominee for another
- 96 person; or

- 97 (ii) who is not in substantial compliance with any statute requiring an interest in
98 property to be:
- 99 (A) recorded or reflected in public records in order to perfect the interest against a
100 good faith purchaser for value; or
- 101 (B) held in control by a secured party, as defined in Section 70A-9a-102, in
102 accordance with Section 70A-9a-314 in order to perfect the interest against a
103 good faith purchaser for value.
- 104 (12) "Law enforcement agency" means:
- 105 (a) a municipal, county, state institution of higher education, or state police force or
106 department;
- 107 (b) a sheriff's office; or
- 108 (c) a municipal, county, or state prosecuting authority.
- 109 (13) "Legislative body" means:
- 110 (a)(i) the Legislature, county commission, county council, city commission, city
111 council, or town council that has fiscal oversight and budgetary approval authority
112 over an agency; or
- 113 (ii) the agency's governing political subdivision; or
- 114 (b) the lead governmental entity of a multijurisdictional task force, as designated in a
115 memorandum of understanding executed by the agencies participating in the task
116 force.
- 117 (14) "Multijurisdictional task force" means a law enforcement task force or other agency
118 comprised of individuals who are employed by or acting under the authority of different
119 governmental entities, including federal, state, county, or municipal governments, or any
120 combination of federal, state, county, or municipal agencies.
- 121 (15) "Owner" means an individual or entity, other than an interest holder, that possesses a
122 bona fide legal or equitable interest in property.
- 123 (16) "Pawn or secondhand business" means the same as that term is defined in Section
124 13-32a-102.
- 125 (17) "Peace officer" means an employee:
- 126 (a) of an agency;
- 127 (b) whose duties consist primarily of the prevention and detection of violations of laws
128 of this state or a political subdivision of this state; and
- 129 (c) who is authorized by the agency to seize property.
- 130 (18)(a) "Portable communication device" means a portable electronic device designed to

131 receive and transmit a text message, email, video, voice, or similar communication.

132 (b) "Portable communication device" includes:

133 (i) a smart phone;

134 (ii) a cellular phone that is not a smart phone;

135 (iii) a tablet; and

136 (iv) a substantially similar communication device used to initiate or receive

137 communication, information, or data.

138 (c) "Portable communication device" does not include a device used for the purpose of

139 taking protected wildlife regulated under Title 23A, Wildlife Resources Act,

140 including a trail camera, unmanned aircraft, drone, or a similar device that is capable

141 of recording data.

142 [~~18~~] (19)(a) "Proceeds" means:

143 (i) property of any kind that is obtained directly or indirectly as a result of the
144 commission of an offense; or

145 (ii) any property acquired directly or indirectly from, produced through, realized
146 through, or caused by an act or omission regarding property under Subsection [
147 ~~(18)(a)(i)~~ (19)(a)(i).

148 (b) "Proceeds" includes any property of any kind without reduction for expenses
149 incurred in the acquisition, maintenance, or production of that property, or any other
150 purpose regarding property under Subsection [~~(18)(a)(i)~~ (19)(a)(i).

151 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that
152 subjects the property to seizure.

153 [~~19~~] (20)(a) "Property" means all property, whether real or personal, tangible or
154 intangible.

155 (b) "Property" does not include contraband.

156 [~~20~~] (21) "Prosecuting attorney" means:

157 (a) the attorney general and an assistant attorney general;

158 (b) a district attorney or deputy district attorney;

159 (c) a county attorney or assistant county attorney; and

160 (d) an attorney authorized to commence an action on behalf of the state.

161 [~~21~~] (22) "Public interest use" means a:

162 (a) use by a government agency as determined by the legislative body of the agency's
163 jurisdiction; or

164 (b) donation of the property to a nonprofit charity registered with the state.

- 165 ~~[(22)]~~ (23) "Real property" means land, including any building, fixture, improvement,
166 appurtenance, structure, or other development that is affixed permanently to land.
- 167 ~~[(23)]~~ (24)(a) "Seized property" means property seized by a peace officer or agency in
168 accordance with Section 77-11a-201.
- 169 (b) "Seized property" includes property that the agency seeks to forfeit under Chapter
170 11b, Forfeiture of Seized Property.
- 171 (25) "Smart phone" means a portable electronic device that combines a cellular phone with
172 a hand-held computer, typically offering Internet access, data storage, and text, email,
173 and similar capabilities.
- 174 (26) "Tablet" means a portable electronic device that:
- 175 (a) is equipped with a mobile operating system, touchscreen display, and rechargeable
176 battery; and
- 177 (b) has the ability to support access to a cellular network.
- 178 Section 2. Section **77-11a-301** is amended to read:
- 179 **77-11a-301 . Return of seized property to claimant -- Generally --**
- 180 **Noncontraband computer or portable communication device.**
- 181 (1)(a) An agency with custody of seized property, or the prosecuting attorney, may
182 return the property to a claimant if the agency or the prosecuting attorney:
- 183 (i) determines that the agency does not need to retain or preserve the property as
184 evidence under Chapter 11c, Retention of Evidence; or
- 185 (ii) seeks to return the property to the claimant because the agency or prosecuting
186 attorney determines that the claimant is an innocent owner or an interest holder.
- 187 (b) An agency with custody of seized property, or the prosecuting attorney, may not
188 return property under this Subsection (1) if the property is subject to retention or
189 preservation under Chapter 11c, Retention of Evidence.
- 190 (2) An agency with custody of the seized property, or the prosecuting attorney, shall return
191 the property to a claimant if:
- 192 (a) the claimant posts a surety bond or cash with the court in accordance with Section
193 77-11a-302;
- 194 (b) the court orders the return of property to the claimant for hardship purposes under
195 Section 77-11a-303;
- 196 (c) a claimant establishes that the claimant is an innocent owner or an interest holder
197 under Section 77-11a-304; or
- 198 (d) the court orders property retained as evidence to be returned to the claimant under

199 Section 77-11a-305.

200 (3)(a)(i) For a computer or portable communication device determined to be
201 contraband, a court may order the reasonable extraction and return of specifically
202 described personal digital data to the owner of the computer or portable
203 communication device.

204 [(b)] (ii) The agency shall determine a reasonable cost to extract the data described in
205 Subsection (3)(a)(i).

206 [(e)] (iii) At the time of the request to extract the data, the owner of the computer or
207 portable communication device shall pay the agency the cost to extract the data
208 described in Subsection (3)(a)(i).

209 (b)(i) For a computer or portable communication device that is not alleged to be
210 contraband but is alleged to contain evidence in the form of digital data contained
211 on the computer or portable communication device, the computer or portable
212 communication device may be returned under this section, or the owner of the
213 computer or portable communication device may follow the procedures described
214 in Section 77-11a-305 to regain possession of the computer or portable
215 communication device.

216 (ii) The cost of the copying or extraction of data from a computer or portable
217 communication device described in Subsection (3)(b)(i) may not be charged to the
218 owner of the computer or portable communication device.

219 (iii) A law enforcement agency or prosecuting agency may not condition the return of
220 a computer or portable communication device described in Subsection (3)(b)(i):
221 (A) on the owner providing the owner's password or otherwise unlocking,
222 accessing, or de-encrypting the computer or portable communication device; or
223 (B) on the owner consenting to a search of the digital contents of the computer or
224 portable communication device.

225 (4) If a natural resources officer for the Division of Law Enforcement seizes a vehicle, the
226 Division of Law Enforcement shall return the vehicle to a claimant in accordance with
227 Section 23A-5-201.

228 (5) If an agency is not required, or is no longer required, to retain or preserve property as
229 evidence under Chapter 11c, Retention of Evidence, and the agency seeks to return or
230 dispose of the property, the agency shall exercise due diligence in attempting to notify
231 the claimant of the property to advise the claimant that the property is to be returned.

232 (6)(a) Before an agency may return seized property to a person claiming ownership of

- 233 the property, the person shall establish that the person:
- 234 (i) is the owner of the property; and
- 235 (ii) may lawfully possess the property.
- 236 (b) The person shall establish ownership under Subsection (6)(a) by providing to the
- 237 agency:
- 238 (i) identifying proof or documentation of ownership of the property; or
- 239 (ii) a notarized statement if proof or documentation is not available.
- 240 (c) When seized property is returned to the owner, the owner shall sign a receipt listing
- 241 in detail the property that is returned.
- 242 (d) The agency shall:
- 243 (i) retain a copy of the receipt; and
- 244 (ii) provide a copy of the receipt to the owner.

245 Section 3. Section **77-11a-305** is amended to read:

246 **77-11a-305 . Release of seized property to claimant when seized property is**

247 **retained as evidence.**

- 248 (1)(a) A claimant may file a petition with the court for the return of the property that is
- 249 being retained as evidence in accordance with Chapter 11c, Retention of Evidence.
- 250 (b) The claimant may file the petition in:
- 251 (i) the court in which criminal proceedings have commenced regarding the offense
- 252 for which the property is being retained as evidence; or
- 253 (ii) the district court with venue under Section 77-11a-102 if there are no pending
- 254 criminal proceedings.
- 255 (c) A claimant shall serve a copy of the petition on the prosecuting attorney or federal
- 256 prosecutor and the agency with custody of the property.
- 257 (2)(a) The court shall provide an opportunity for an expedited hearing.
- 258 (b) After the opportunity for an expedited hearing, the court may order that the property
- 259 is:
- 260 (i) returned to the claimant if the claimant is the owner as determined by the court;
- 261 (ii) if the offense subjecting the property to seizure results in a conviction, applied
- 262 directly or by proceeds of the sale of the property toward restitution, fines, or fees
- 263 owed by the claimant in an amount set by the court;
- 264 (iii) converted to a public interest use;
- 265 (iv) held for further legal action;
- 266 (v) sold at public auction and the proceeds of the sale applied to a public interest use;

- 267 or
268 (vi) destroyed.
- 269 (3) Before the court can order property be returned to a claimant, the claimant shall
270 establish, by clear and convincing evidence, that the claimant:
- 271 (a) is the owner of the property; and
272 (b) may lawfully possess the property.
- 273 (4)(a) [Hf-] Subject to the provisions in Subsections (4)(b), (c), and (d), if the court orders
274 the property to be returned to the claimant, the agency with custody of the property
275 shall return the property to the claimant as expeditiously as possible.
- 276 (b) If the property at issue is a computer or a portable communication device that is not
277 alleged to be contraband and that the law enforcement agency or prosecuting agency
278 alleges may contain evidence in the form of digital information stored on the
279 computer or portable communication device, the law enforcement agency or
280 prosecuting agency with possession of the computer or portable communication
281 device shall:
- 282 (i) make a digital copy, clone, or other reproduction of the digital information stored
283 on the computer or portable communication device within:
- 284 (A) for a portable communication device, 30 days after the day on which the court
285 orders the return of the portable communication device; or
- 286 (B) for a computer, 120 days after the day on which the court orders the return of
287 the computer; and
- 288 (ii) allow the claimant to regain possession of the computer or portable
289 communication device if ordered by the court on an expedited basis in accordance
290 with Subsection (4)(a).
- 291 (c) If the law enforcement agency or prosecuting agency with possession of the
292 computer or portable communication device is unable to make a digital copy, clone,
293 or other reproduction of the digital information stored on the computer or portable
294 communication device within the deadlines described in Subsection (4)(b)(i), or
295 alleges that continued possession of the computer or portable communication device
296 itself, as opposed to a copy, clone, or reproduction, is necessary:
- 297 (i) the law enforcement agency or prosecuting agency shall provide to the court:
- 298 (A) an explanation as to why the digital copy, clone, or other reproduction has not
299 been completed and, if applicable, an estimate as to when the digital copy,
300 clone, or other reproduction will be completed; or

301 (B) if applicable, the reasons as to why the law enforcement agency or prosecuting
302 agency contends that continued possession of the computer or portable
303 communication device itself is necessary, as opposed to a digital copy, clone,
304 or other reproduction; and

305 (ii) the court shall:

306 (A) consider the information described in Subsection (4)(c)(i), including, if
307 applicable, whether the law enforcement agency or prosecuting agency has
308 demonstrated that continued possession of the computer or portable
309 communication device itself, as opposed to a digital copy, clone, or other
310 reproduction, is reasonable under the circumstances of the case; and

311 (B) retain jurisdiction over the matter, including making any necessary orders,
312 until the property has been returned or the matter has otherwise been resolved.

313 (d) Digital information obtained from a computer or portable communication device
314 under Subsection (4)(b)(i) remains subject to warrant requirements and evidentiary
315 procedures.

316 Section 4. Section **77-11c-101** is amended to read:

317 **77-11c-101 . Definitions.**

318 As used in this chapter:

319 (1) "Acquitted" means the same as that term is defined in Section 77-11b-101.

320 (2) "Adjudicated" means that:

321 (a)(i) a judgment of conviction by plea or verdict of an offense has been entered by a
322 court; and

323 (ii) a sentence has been imposed by the court; or

324 (b) a judgment has been entered for an adjudication of an offense by a juvenile court
325 under Section 80-6-701.

326 (3) "Adjudication" means:

327 (a) a judgment of conviction by plea or verdict of an offense; or

328 (b) an adjudication for an offense by a juvenile court under Section 80-6-701.

329 (4) "Agency" means the same as that term is defined in Section 77-11a-101.

330 (5) "Appellate court" means the Utah Court of Appeals, the Utah Supreme Court, or the
331 United States Supreme Court.

332 (6)(a) "Biological evidence" means an item that contains blood, semen, hair, saliva,
333 epithelial cells, latent fingerprint evidence that may contain biological material
334 suitable for DNA testing, or other identifiable human biological material that:

- 335 (i) is collected as part of an investigation or prosecution of a violent felony offense;
336 and
- 337 (ii) may reasonably be used to incriminate or exculpate a person for the violent
338 felony offense.
- 339 (b) "Biological evidence" includes:
- 340 (i) material that is catalogued separately, including:
- 341 (A) on a slide or swab; or
- 342 (B) inside a test tube, if the evidentiary sample that previously was inside the test
343 tube has been consumed by testing;
- 344 (ii) material that is present on other evidence, including clothing, a ligature, bedding,
345 a drinking cup, a cigarette, or a weapon, from which a DNA profile may be
346 obtained;
- 347 (iii) the contents of a sexual assault kit; and
- 348 (iv) for a violent felony offense, material described in this Subsection (6) that is in
349 the custody of an evidence collecting or retaining entity on May 4, 2022.
- 350 (7) "Claimant" means the same as that term is defined in Section 77-11a-101.
- 351 (8) "Computer" means the same as that term is defined in Section 77-11a-101.
- 352 (9) "Continuous chain of custody" means:
- 353 (a) for a law enforcement agency or a court, that legal standards regarding a continuous
354 chain of custody are maintained; and
- 355 (b) for an entity that is not a law enforcement agency or a court, that the entity maintains
356 a record in accordance with legal standards required of the entity.
- 357 (10) "Contraband" means the same as that term is defined in Section 77-11a-101.
- 358 (11) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- 359 (12) "Court" means a municipal, county, or state court.
- 360 (13) "DNA" means deoxyribonucleic acid.
- 361 (14) "DNA profile" means a unique identifier of an individual derived from DNA.
- 362 (15) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.
- 363 (16) "Evidence" means property, contraband, or an item or substance that:
- 364 (a) is seized or collected as part of an investigation or prosecution of an offense; and
- 365 (b) may reasonably be used to incriminate or exculpate an individual for an offense.
- 366 (17)(a) "Evidence collecting or retaining entity" means an entity within the state that
367 collects, stores, or retrieves biological evidence.
- 368 (b) "Evidence collecting or retaining entity" includes:

- 369 (i) a medical or forensic entity;
- 370 (ii) a law enforcement agency;
- 371 (iii) a court; and
- 372 (iv) an official, employee, or agent of an entity or agency described in this Subsection
- 373 (17).
- 374 ~~[(v)]~~ (c) "Evidence collecting or retaining entity" does not include a collecting facility
- 375 defined in Section 53-10-902.
- 376 (18) "Exhibit" means property, contraband, or an item or substance that is admitted into
- 377 evidence for a court proceeding.
- 378 (19) "In custody" means an individual who:
- 379 (a) is incarcerated, civilly committed, on parole, or on probation; or
- 380 (b) is required to register under Title 77, Chapter 41, Sex, Kidnap, and Child Abuse
- 381 Offender Registry.
- 382 (20) "Law enforcement agency" means the same as that term is defined in Section
- 383 77-11a-101.
- 384 (21) "Medical or forensic entity" means a private or public hospital, medical facility, or
- 385 other entity that secures biological evidence or conducts forensic examinations related to
- 386 criminal investigations.
- 387 (22) "Physical evidence" includes evidence that:
- 388 (a) is related to:
- 389 (i) an investigation;
- 390 (ii) an arrest; or
- 391 (iii) a prosecution that resulted in a judgment of conviction; and
- 392 (b) is in the actual or constructive possession of a law enforcement agency or a court or
- 393 an agent of a law enforcement agency or a court.
- 394 (23) "Portable communication device" means the same as that term is defined in Section
- 395 77-11a-101.
- 396 ~~[(23)]~~ (24) "Property" means the same as that term is defined in Section 77-11a-101.
- 397 ~~[(24)]~~ (25) "Prosecuting attorney" means the same as that term is defined in Section
- 398 77-11a-101.
- 399 ~~[(25)]~~ (26) "Sexual assault kit" means the same as that term is defined in Section 53-10-902.
- 400 ~~[(26)]~~ (27) "Victim" means the same as that term is defined in Section 53-10-902.
- 401 ~~[(27)]~~ (28) "Violent felony offense" means the same as the term "violent felony" is defined
- 402 in Section 76-3-203.5.

- 403 [(28)] (29) "Wildlife" means the same as that term is defined in Section 23A-1-101.
404 Section 5. Section 77-11c-202 is amended to read:
405 **77-11c-202 . Requirements for not retaining evidence of a misdemeanor offense --**
406 **Preservation of sufficient evidence.**
- 407 (1) An agency is not required to retain evidence of a misdemeanor offense under Section
408 77-11c-201 if:
- 409 (a)(i) the agency determines that:
- 410 (A) the size, bulk, or physical character of the evidence renders retention
411 impracticable; or
412 (B) the evidence poses a security or safety problem for the agency;
- 413 (ii) the agency preserves sufficient evidence of the property, contraband, item, or
414 substance for use as evidence in a prosecution of the offense;
- 415 (iii) the agency sends a written request under Subsection 77-11c-203(1) to the
416 prosecuting attorney for permission to return or dispose of the evidence; and
417 (iv) the prosecuting attorney grants the agency's written request in accordance with
418 Section 77-11c-203;
- 419 (b) a court orders the agency to return evidence that is property to a claimant under
420 Section 77-11a-305; or
421 (c) the evidence is wildlife or parts of wildlife.
- 422 (2) Notwithstanding Subsection (1), the agency may not dispose of evidence of a
423 misdemeanor offense that is a sexual assault kit before the day on which the time period
424 described in Section 77-11c-201 expires if:
- 425 (a) the agency sends a notice to the victim as described in Section 53-10-905; and
426 (b) the victim submits a written request for retention of the evidence within the 180-day
427 period described in Section 53-10-905.
- 428 (3)(a) Subsection (1) does not require an agency to return or dispose of evidence of a
429 misdemeanor offense.
- 430 (b) Subsection (1)(a) does not apply when the return or disposal of evidence of a
431 misdemeanor offense is in compliance with a memorandum of understanding
432 between the agency and the prosecuting attorney.
- 433 (4) If the evidence described in Subsection (1) is a controlled substance, an agency shall
434 preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by:
- 435 (a) collecting and preserving a sample of the controlled substance for independent
436 testing and use as evidence;

- 437 (b) taking a photographic or video record of the controlled substance with identifying
438 case numbers;
- 439 (c) maintaining a written report of a chemical analysis of the controlled substance if a
440 chemical analysis was performed by the agency; and
- 441 (d) if the controlled substance exceeds 10 pounds, retain at least one pound of the
442 controlled substance that is randomly selected from the controlled substance.
- 443 (5) If the evidence described in Subsection (1) is drug paraphernalia, an agency shall
444 preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:
- 445 (a) collecting and preserving a sample of the controlled substance from the drug
446 paraphernalia for independent testing and use as evidence;
- 447 (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a
448 chemical analysis was performed by the agency; and
- 449 (c) taking a photographic or video record of the drug paraphernalia with identifying case
450 numbers.
- 451 (6) If the evidence described in Subsection (1) is a computer or portable communication
452 device, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the
453 computer or portable communication device by:
- 454 (a) extracting all data from the computer or portable communication device that would
455 be evidence in a prosecution of an individual for the offense; and
- 456 (b) taking a photographic or video record of the computer or portable communication
457 device with identifying case numbers.
- 458 (7) For any other type of evidence, the agency shall preserve sufficient evidence under
459 Subsection (1)(a)(ii) of the property, contraband, item, or substance by taking a
460 photographic or video record of the property, contraband, item, or substance with
461 identifying case numbers.

462 Section 6. Section **77-11c-302** is amended to read:

463 **77-11c-302 . Requirements for not retaining evidence of felony offense --**
464 **Preservation of sufficient evidence.**

- 465 (1) An agency is not required to retain evidence of a felony offense under Section
466 77-11c-301 if:
- 467 (a)(i) the agency determines that:
- 468 (A) the size, bulk, or physical character of the evidence renders retention
469 impracticable or the evidence poses a security or safety problem for the
470 agency; and

- 471 (B) the evidence no longer has any significant evidentiary value;
- 472 (ii) the agency preserves sufficient evidence from the property, contraband, item, or
473 substance for use as evidence in a prosecution of the offense; and
- 474 (iii) a prosecuting attorney or a court authorizes the agency to return or dispose of the
475 evidence as described in Subsection 77-11c-303;
- 476 (b) a court orders the agency to return evidence that is property to a claimant under
477 Section 77-11a-305; or
- 478 (c) the evidence is wildlife or parts of wildlife.
- 479 (2) Notwithstanding Subsection (1), the agency may not dispose of evidence of a felony
480 offense that is a sexual assault kit before the day on which the time period described in
481 Section 77-11c-301 expires if:
- 482 (a) the agency sends a notice to the victim in accordance with Section 53-10-905; and
483 (b) the victim submits a written request for retention of the evidence within the 180-day
484 period described in Section 53-10-905.
- 485 (3) Subsection (1) does not require an agency to return or dispose of evidence of a felony
486 offense.
- 487 (4) Subsection (1) does not apply to biological evidence of a violent felony offense because
488 an agency is required to retain biological evidence of a violent felony offense as
489 described in Part 4, Preservation of Biological Evidence for Violent Felony Offenses.
- 490 (5) If the evidence described in Subsection (1) is a controlled substance, an agency shall
491 preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by:
- 492 (a) collecting and preserving a sample of the controlled substance for independent
493 testing and use as evidence;
- 494 (b) taking a photographic or video record of the controlled substance with identifying
495 case numbers;
- 496 (c) maintaining a written report of a chemical analysis of the controlled substance if a
497 chemical analysis was performed by the agency;
- 498 (d) if the controlled substance exceeds 10 pounds, retaining at least one pound of the
499 controlled substance that is randomly selected from the controlled substance; and
- 500 (e) for a violent felony offense, collecting and preserving biological evidence from the
501 controlled substance as described in Section 77-11c-401.
- 502 (6) If the evidence described in Subsection (1) is drug paraphernalia, an agency shall
503 preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:
- 504 (a) collecting and preserving a sample of the controlled substance from the drug

- 505 paraphernalia for independent testing and use as evidence;
- 506 (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a
507 chemical analysis was performed by the agency;
- 508 (c) taking a photographic or video record of the drug paraphernalia with identifying case
509 numbers; and
- 510 (d) for a violent felony offense, collecting and preserving biological evidence from the
511 drug paraphernalia as described in Section 77-11c-401.
- 512 (7) If the evidence described in Subsection (1) is a computer or portable communication
513 device, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the
514 computer or portable communication device by:
- 515 (a) extracting all data from the computer or portable communication device that would
516 be evidence in a prosecution of an individual for the offense;
- 517 (b) taking a photographic or video record of the computer or portable communication
518 device with identifying case numbers; and
- 519 (c) for a violent felony offense, collecting and preserving biological evidence from the
520 computer or portable communication device as described in Section 77-11c-401.
- 521 (8) For any other type of evidence, the agency shall preserve sufficient evidence under
522 Subsection (1)(a)(ii) of the property, contraband, item, or substance by:
- 523 (a) taking a photographic or video record of the property, contraband, item, or substance
524 with identifying case numbers; and
- 525 (b) for a violent felony offense, collecting and preserving biological evidence as
526 described in Section 77-11c-401.

527 Section 7. **Effective Date.**

528 This bill takes effect on May 7, 2025.