

**Representative Brad M. Daw** proposes the following substitute bill:

**DISPOSAL OF FIREARMS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad M. Daw**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies and enacts provisions related to the disposal of firearms.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires that the Department of Public Safety contract with a federally licensed firearms dealer to act as the state-approved dealer for the state;
- ▶ provides that when a governmental agency disposes of a confiscated or unclaimed firearm, the governmental agency shall:
  - sell the firearm at public auction;
  - give the firearm to the state-approved dealer to sell in accordance with the provisions of this bill; or
  - transfer the firearm to the Bureau of Forensic Services for testing;
- ▶ addresses the allocation of proceeds from the sale of a confiscated or unclaimed firearm; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **24-3-103**, as enacted by Laws of Utah 2013, Chapter 394

31 **53-5c-201**, as last amended by Laws of Utah 2015, Chapter 258

32 **53-5c-202**, as enacted by Laws of Utah 2013, Chapter 188

33 ENACTS:

34 **24-3-103.5**, Utah Code Annotated 1953



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

37 Section 1. Section **24-3-103** is amended to read:

38 **24-3-103. Property no longer needed as evidence -- Disposition of property.**

39 (1) When the prosecuting attorney determines that property no longer needs to be held  
40 as evidence, the prosecuting attorney may:

41 (a) petition the court to apply any property that is money towards restitution, fines,  
42 fees, or monetary judgments owed by the owner of the property;

43 (b) petition the court for an order transferring ownership of any weapons to the seizing  
44 agency for ~~[its]~~ the agency's use and disposal ~~[as the seizing agency determines]~~ in accordance  
45 with applicable law, if the owner:

46 (i) is the person who committed the crime for which the weapon was seized; or

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

48 (c) notify the agency that has possession of the property that the property may be:

49 (i) returned to the rightful owner, if the rightful owner may lawfully possess it; or

50 (ii) disposed of, if the property is contraband.

51 (2) The agency shall exercise due diligence in attempting to notify the rightful owner of  
52 the property to advise the owner that the property is to be returned.

53 (3) (a) Before the agency may release property to a person claiming ownership of the  
54 property, the person shall establish ~~[to the agency pursuant to]~~ in accordance with Subsection  
55 (3)(b) that the person:

56 (i) is the rightful owner; and

57 (ii) may lawfully possess the property.

58 (b) The person shall establish ownership under Subsection (3)(a) by providing to the  
59 agency:

60 (i) identifying proof or documentation of ownership of the property; or

61 (ii) a notarized statement, if proof or documentation is not available.

62 (4) (a) When property is returned to the owner, a receipt listing in detail the property  
63 returned shall be signed by the owner.

64 (b) The receipt shall be retained by the agency and a copy shall be provided to the  
65 owner.

66 (5) [H] (a) Except as provided in Subsection (5)(b), if the agency is unable to locate the  
67 rightful owner of the property or if the rightful owner is not entitled to lawfully possess the  
68 property, the agency may:

69 [~~a~~] (i) apply the property to a public interest use;

70 [~~b~~] (ii) sell the property at public auction and apply the proceeds of the sale to a  
71 public interest use; or

72 [~~c~~] (iii) destroy the property if [it] the property is unfit for a public interest use or for  
73 sale.

74 (b) If the property described in Subsection (5)(a) is a firearm, the agency shall dispose  
75 of the firearm in accordance with Section 24-3-103.5.

76 (6) Before applying the property or the proceeds from the sale of the property to a  
77 public interest use, the agency shall obtain from the legislative body of its jurisdiction:

78 (a) permission to apply the property or the proceeds to public interest use; and

79 (b) the designation and approval of the public interest use of the property or the  
80 proceeds.

81 Section 2. Section **24-3-103.5** is enacted to read:

82 **24-3-103.5. Disposition of firearms no longer needed as evidence.**

83 (1) As used in this section:

84 (a) "Confiscated or unclaimed firearm" means a firearm that is subject to disposal by  
85 an agency under Section 24-3-103 or 53-5c-202.

86 (b) "Department" means the Department of Public Safety created in Section 53-1-103.

87 (c) "Federally licensed firearms dealer" means a person:

88 (i) licensed as a dealer under 18 U.S.C. Sec. 923; and  
89 (ii) engaged in the business of selling firearms.  
90 (d) "State-approved dealer" means the federally licensed firearms dealer that contracts  
91 with the department under Subsection (4).

92 (2) An agency shall dispose of a confiscated or unclaimed firearm by:  
93 (a) selling or destroying the confiscated or unclaimed firearm in accordance with  
94 Subsection (3);  
95 (b) giving the confiscated or unclaimed firearm to the state-approved dealer to sell or  
96 destroy in accordance with Subsection (4) and the agreement between the state-approved dealer  
97 and the department; or

98 (c) after the agency obtains approval from the legislative body of the agency's  
99 jurisdiction, transferring the confiscated or unclaimed firearm to the Bureau of Forensic  
100 Services, created in Section [53-10-401](#), for testing.

101 (3) (a) An agency that elects to dispose of a confiscated or unclaimed firearm under  
102 Subsection (2)(a) shall:

103 (i) sell the confiscated or unclaimed firearm at public auction and apply the proceeds of  
104 the sale to a public interest use; or

105 (ii) if the agency determines that the condition of a confiscated or unclaimed firearm  
106 makes the firearm unfit for sale, destroy the firearm.

107 (b) Before an agency applies the proceeds of a sale of a confiscated or unclaimed  
108 firearm to a public interest use, the agency shall obtain from the legislative body of the agency's  
109 jurisdiction:

110 (i) permission to apply the proceeds of the sale to a public interest use; and

111 (ii) the designation and approval of the public interest use to which the agency applies  
112 the proceeds.

113 (4) (a) (i) The department shall, in accordance with Title 63G, Chapter 6a, Utah  
114 Procurement Code, contract with a federally licensed firearms dealer to sell or destroy all  
115 confiscated or unclaimed firearms in the state.

116 (ii) The term of an agreement executed in accordance with this Subsection (4) may not  
117 exceed five years.

118 (iii) Nothing in this Subsection (4) prevents the department from contracting with the

119 same federally licensed firearms dealer more than once.

120 (b) An agreement executed in accordance with Subsection (4)(a) shall:

121 (i) address the amount of money that the federally licensed firearms dealer is entitled to  
122 retain from the sale of each confiscated or unclaimed firearm as compensation for the federally  
123 licensed firearms dealer's performance under the agreement;

124 (ii) require the federally licensed firearms dealer to donate, on behalf of the state, all  
125 proceeds from the sale of a confiscated or unclaimed firearm, except the amount described in  
126 Subsection (4)(b)(i), to an organization that:

127 (A) is exempt from taxation under Section 501(c)(3), Internal Revenue Code;

128 (B) complies with any applicable licensing or registration requirements in the state;

129 (C) primarily helps the families of law enforcement officers in the state who die in the  
130 line of duty;

131 (D) gives financial assistance to the families of law enforcement officers in the state  
132 who die in the line of duty; and

133 (E) provides other assistance to children of active law enforcement officers, including  
134 scholarships;

135 (iii) state that if the federally licensed firearms dealer determines that the condition of a  
136 confiscated or unclaimed firearm makes the firearm unfit for sale, the federally licensed  
137 firearms dealer shall destroy the firearm; and

138 (iv) provide a procedure by which the department can ensure that the federally licensed  
139 firearms dealer complies with the provisions of the agreement and applicable law.

140 Section 3. Section **53-5c-201** is amended to read:

141 **53-5c-201. Voluntary commitment of a firearm by owner cohabitant -- Law**  
142 **enforcement to hold firearm.**

143 (1) (a) An owner cohabitant may voluntarily commit a firearm to a law enforcement  
144 agency for safekeeping if the owner cohabitant believes that another cohabitant is an immediate  
145 threat to:

146 (i) himself or herself;

147 (ii) the owner cohabitant; or

148 (iii) any other person.

149 (b) A law enforcement agency may not hold a firearm under this section if the law

150 enforcement agency obtains the firearm in a manner other than the owner cohabitant  
151 voluntarily presenting, of [~~his or her~~] the owner cohabitant's own free will, the firearm to the  
152 law enforcement agency at the agency's office.

153 (2) Unless a firearm is an illegal firearm subject to Section 53-5c-202, a law  
154 enforcement agency that receives a firearm in accordance with this chapter shall:

155 (a) record:

156 (i) the owner cohabitant's name, address, and phone number;

157 (ii) the firearm serial number; and

158 (iii) the date that the firearm was voluntarily committed;

159 (b) require the owner cohabitant to sign a document attesting that the owner cohabitant  
160 has an ownership interest in the firearm;

161 (c) hold the firearm in safe custody for 60 days after the day on which [it] the firearm is  
162 voluntarily committed; and

163 (d) upon proof of identification, return the firearm to:

164 (i) the owner cohabitant after the expiration of the 60-day period or, if the owner  
165 cohabitant requests return of the firearm before the expiration of the 60-day period, at the time  
166 of the request; or

167 (ii) [~~to~~] an owner other than the owner cohabitant in accordance with Section  
168 53-5c-202.

169 (3) The law enforcement agency shall hold the firearm for an additional 60 days:

170 (a) if the initial 60-day period expires; and

171 (b) the owner cohabitant requests that the law enforcement agency hold the firearm for  
172 an additional 60 days.

173 (4) A law enforcement agency may not request or require that the owner cohabitant  
174 provide the name or other information of the cohabitant who poses an immediate threat or any  
175 other cohabitant.

176 (5) Notwithstanding an ordinance or policy to the contrary adopted in accordance with  
177 Section 63G-2-701, a law enforcement agency shall destroy a record created under Subsection  
178 (2), Subsection 53-5c-202(4)(b)(iii), or any other record created in the application of this  
179 chapter no later than five days after:

180 (a) returning a firearm in accordance with Subsection (2)(d); or

181 (b) [~~appropriating, selling, or destroying~~] disposing of the firearm in accordance with  
 182 Section [53-5c-202](#).

183 (6) Unless otherwise provided, the provisions of Title 77, Chapter 24a, Lost or Mislaid  
 184 Personal Property, do not apply to a firearm received by a law enforcement agency in  
 185 accordance with this chapter.

186 (7) A law enforcement agency shall adopt a policy for the safekeeping of a firearm held  
 187 in accordance with this chapter.

188 Section 4. Section **53-5c-202** is amended to read:

189 **53-5c-202. Illegal firearms confiscated -- Disposition of unclaimed firearm.**

190 (1) If a law enforcement agency receives a firearm in accordance with Section  
 191 [53-5c-201](#), and the firearm is an illegal firearm, the law enforcement agency shall:

192 (a) notify the owner cohabitant attempting to voluntarily commit the firearm that the  
 193 firearm is an illegal firearm; and

194 (b) confiscate the firearm and dispose of [~~it as the head of the law enforcement agency~~  
 195 ~~determines~~] the firearm in accordance with Section [24-3-103.5](#).

196 (2) (a) If a law enforcement agency cannot, after a reasonable attempt, locate an owner  
 197 cohabitant to return a firearm in accordance with Section [53-5c-201](#), the law enforcement  
 198 agency [~~may:~~] shall dispose of the firearm in accordance with Section [24-3-103.5](#).

199 [~~(i) appropriate the firearm to public interest use as provided in Subsection (3);]~~

200 [~~(ii) sell the firearm at public auction as provided by law and appropriate the proceeds~~  
 201 ~~of the sale to public interest use; or]~~

202 [~~(iii) destroy the firearm if unfit for sale.]~~

203 (b) A law enforcement agency [~~may take an action in accordance with~~] may not  
 204 dispose of a firearm under Subsection (2)(a) [~~no earlier than~~] before one year after the day on  
 205 which the owner cohabitant initially voluntarily commits the firearm in accordance with  
 206 Section [53-5c-201](#).

207 [~~(3) Before appropriating the firearm to public interest use, the law enforcement~~  
 208 ~~agency, having possession of the firearm, shall obtain from the legislative body of its~~  
 209 ~~jurisdiction:]~~

210 [~~(a) permission to appropriate the firearm to public interest use; and]~~

211 [~~(b) the designation and approval of the public interest use of the firearm.]~~

212           ~~[(4)]~~ (3) (a) If a person other than an owner cohabitant who voluntarily commits a  
213 firearm in accordance with Section 53-5c-201 claims ownership of the firearm, the person may:

214           (i) request that the law enforcement agency return the firearm in accordance with  
215 Subsection ~~[(4)]~~ (3)(b); or

216           (ii) petition the court for the firearm's return in accordance with Subsection ~~[(4)]~~ (3)(c).

217           (b) Except as provided in Section 53-5c-201, the law enforcement agency shall return a  
218 firearm to a person other than an owner cohabitant who claims ownership of the firearm if:

219           (i) the 60-day period described in Section 53-5c-201 has expired;

220           (ii) the person provides identification; and

221           (iii) the person signs a document attesting that the person has an ownership interest in  
222 the firearm.

223           (c) After sufficient notice is given to the prosecutor, the court may order that the  
224 firearm be:

225           (i) returned to the rightful owner as determined by the court; or

226           ~~[(ii) converted to public interest use; or]~~

227           ~~[(iii) destroyed.]~~

228           (ii) disposed of in accordance with Section 24-3-103.5.

229           (d) A law enforcement agency shall return a firearm ordered returned to the rightful  
230 owner as expeditiously as possible after a court determination.

231           Section 5. **Effective date.**

232           This bill takes effect on January 1, 2018.