

Ryan D. Wilcox 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 and return of digital data on certain seized computers or portable communication devices;
- prohibits a law enforcement agency or prosecuting agency from conditioning the return of digital data from 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;
- requires a prosecuting attorney to notify the agency with custody of a seized computer or portable communication device within a specific time period when the prosecuting attorney determines that the computer or portable communication device no longer needs to be retained as evidence; 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

- 29 **77-11a-301**, as last amended by Laws of Utah 2024, Chapter 80
30 **77-11a-402**, as last amended by Laws of Utah 2024, Chapter 332
31 **77-11c-101**, as last amended by Laws of Utah 2024, Chapter 234
32 **77-11c-202**, as last amended by Laws of Utah 2024, Chapters 150, 164
33 **77-11c-302**, as enacted by Laws of Utah 2024, Chapter 150
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35 *Be it enacted by the Legislature of the state of Utah:*

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

37 **77-11a-101 . Definitions.**

38 As used in this chapter:

- 39 (1)(a) "Agency" means an agency of this state or a political subdivision of this state.
40 (b) "Agency" includes a law enforcement agency or a multijurisdictional task force.
41 (2) "Claimant" means:
42 (a) an owner of property;
43 (b) an interest holder; or
44 (c) an individual or entity who asserts a claim to any property for which an agency seeks
45 to forfeit.
46 (3)(a) "Computer" means, except as provided in Subsection (3)(c), an electronic,
47 magnetic, optical, electrochemical, or other high-speed data processing device that
48 performs logical, arithmetic, and storage functions.
49 (b) "Computer" includes any device that is used for the storage of digital or electronic
50 files, flash memory, software, or other electronic information.
51 (c) "Computer" does not [~~mean~~] include:
52 (i) [-]a computer server of an Internet or electronic service provider, or the service
53 provider's employee, if used to comply with the requirements under 18 U.S.C.
54 Sec. 2258A[-] ;
55 (ii) a portable communication device; or
56 (iii) a device used for the purpose of taking protected wildlife regulated under Title
57 23A, Wildlife Resources Act, including a trail camera, unmanned aircraft, drone,
58 or a similar device that is capable of recording data.
59 (4)(a) "Contraband" means any property, item, or substance that is unlawful to produce
60 or to possess under state or federal law.
61 (b) "Contraband" includes:
62 (i) a controlled substance that is possessed, transferred, distributed, or offered for

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

97 interest or encumbrance pertaining to an interest in property, whose interest would be
98 perfected against a good faith purchaser for value.

99 (b) "Interest holder" does not mean a person:

100 (i) who holds property for the benefit of or as an agent or nominee for another
101 person; or

102 (ii) who is not in substantial compliance with any statute requiring an interest in
103 property to be:

104 (A) recorded or reflected in public records in order to perfect the interest against a
105 good faith purchaser for value; or

106 (B) held in control by a secured party, as defined in Section 70A-9a-102, in
107 accordance with Section 70A-9a-314 in order to perfect the interest against a
108 good faith purchaser for value.

109 (12) "Law enforcement agency" means:

110 (a) a municipal, county, state institution of higher education, or state police force or
111 department;

112 (b) a sheriff's office; or

113 (c) a municipal, county, or state prosecuting authority.

114 (13) "Legislative body" means:

115 (a)(i) the Legislature, county commission, county council, city commission, city
116 council, or town council that has fiscal oversight and budgetary approval authority
117 over an agency; or

118 (ii) the agency's governing political subdivision; or

119 (b) the lead governmental entity of a multijurisdictional task force, as designated in a
120 memorandum of understanding executed by the agencies participating in the task
121 force.

122 (14) "Multijurisdictional task force" means a law enforcement task force or other agency
123 comprised of individuals who are employed by or acting under the authority of different
124 governmental entities, including federal, state, county, or municipal governments, or any
125 combination of federal, state, county, or municipal agencies.

126 (15) "Owner" means an individual or entity, other than an interest holder, that possesses a
127 bona fide legal or equitable interest in property.

128 (16) "Pawn or secondhand business" means the same as that term is defined in Section
129 13-32a-102.

130 (17) "Peace officer" means an employee:

- 131 (a) of an agency;
- 132 (b) whose duties consist primarily of the prevention and detection of violations of laws
133 of this state or a political subdivision of this state; and
- 134 (c) who is authorized by the agency to seize property.
- 135 (18)(a) "Portable communication device" means a portable electronic device designed to
136 receive and transmit a text message, email, video, voice, or similar communication.
- 137 (b) "Portable communication device" includes:
- 138 (i) a smart phone;
- 139 (ii) a cellular phone that is not a smart phone;
- 140 (iii) a tablet; and
- 141 (iv) a substantially similar communication device used to initiate or receive
142 communication, information, or data.
- 143 (c) "Portable communication device" does not include a device used for the purpose of
144 taking protected wildlife regulated under Title 23A, Wildlife Resources Act,
145 including a trail camera, unmanned aircraft, drone, or a similar device that is capable
146 of recording data.
- 147 ~~[(18)]~~ (19)(a) "Proceeds" means:
- 148 (i) property of any kind that is obtained directly or indirectly as a result of the
149 commission of an offense; or
- 150 (ii) any property acquired directly or indirectly from, produced through, realized
151 through, or caused by an act or omission regarding property under Subsection [
152 ~~(18)(a)(i)]~~ (19)(a)(i).
- 153 (b) "Proceeds" includes any property of any kind without reduction for expenses
154 incurred in the acquisition, maintenance, or production of that property, or any other
155 purpose regarding property under Subsection [~~(18)(a)(i)]~~ (19)(a)(i).
- 156 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that
157 subjects the property to seizure.
- 158 ~~[(19)]~~ (20)(a) "Property" means all property, whether real or personal, tangible or
159 intangible.
- 160 (b) "Property" does not include contraband.
- 161 ~~[(20)]~~ (21) "Prosecuting attorney" means:
- 162 (a) the attorney general and an assistant attorney general;
- 163 (b) a district attorney or deputy district attorney;
- 164 (c) a county attorney or assistant county attorney; and

- 165 (d) an attorney authorized to commence an action on behalf of the state.
- 166 [~~(21)~~] (22) "Public interest use" means a:
- 167 (a) use by a government agency as determined by the legislative body of the agency's
- 168 jurisdiction; or
- 169 (b) donation of the property to a nonprofit charity registered with the state.
- 170 [~~(22)~~] (23) "Real property" means land, including any building, fixture, improvement,
- 171 appurtenance, structure, or other development that is affixed permanently to land.
- 172 [~~(23)~~] (24)(a) "Seized property" means property seized by a peace officer or agency in
- 173 accordance with Section 77-11a-201.
- 174 (b) "Seized property" includes property that the agency seeks to forfeit under Chapter
- 175 11b, Forfeiture of Seized Property.
- 176 (25) "Smart phone" means a portable electronic device that combines a cellular phone with
- 177 a hand-held computer, typically offering Internet access, data storage, and text, email,
- 178 and similar capabilities.
- 179 (26) "Tablet" means a portable electronic device that:
- 180 (a) is equipped with a mobile operating system, touchscreen display, and rechargeable
- 181 battery; and
- 182 (b) has the ability to support access to a cellular network.
- 183 Section 2. Section **77-11a-301** is amended to read:
- 184 **77-11a-301 . Return of seized property to claimant -- Generally -- Computer or**
- 185 **portable communication device.**
- 186 (1)(a) An agency with custody of seized property, or the prosecuting attorney, may
- 187 return the property to a claimant if the agency or the prosecuting attorney:
- 188 (i) determines that the agency does not need to retain or preserve the property as
- 189 evidence under Chapter 11c, Retention of Evidence; or
- 190 (ii) seeks to return the property to the claimant because the agency or prosecuting
- 191 attorney determines that the claimant is an innocent owner or an interest holder.
- 192 (b) An agency with custody of seized property, or the prosecuting attorney, may not
- 193 return property under this Subsection (1) if the property is subject to retention or
- 194 preservation under Chapter 11c, Retention of Evidence.
- 195 (2) An agency with custody of the seized property, or the prosecuting attorney, shall return
- 196 the property to a claimant if:
- 197 (a) the claimant posts a surety bond or cash with the court in accordance with Section
- 198 77-11a-302;

- 199 (b) the court orders the return of property to the claimant for hardship purposes under
200 Section 77-11a-303;
- 201 (c) a claimant establishes that the claimant is an innocent owner or an interest holder
202 under Section 77-11a-304; or
- 203 (d) the court orders property retained as evidence to be returned to the claimant under
204 Section 77-11a-305.
- 205 (3)(a)(i) For a computer or portable communication device determined to be
206 contraband, a court may order the reasonable extraction and return of specifically
207 described personal digital data to the owner of the computer or portable
208 communication device.
- 209 ~~[(b)]~~ (ii) The agency shall determine a reasonable cost to extract the data described in
210 Subsection (3)(a)(i).
- 211 ~~[(e)]~~ (iii) At the time of the request to extract the data, the owner of the computer or
212 portable communication device shall pay the agency the cost to extract the data
213 described in Subsection (3)(a)(i).
- 214 (b)(i) For a computer or portable communication device that is not alleged to be
215 contraband, but is alleged to contain evidence in the form of digital data contained
216 on the computer or portable communication device, the owner of the computer or
217 portable communication device may request that the law enforcement agency or
218 prosecuting agency extract and return to the owner specifically described personal
219 digital data.
- 220 (ii)(A) The law enforcement agency or prosecuting agency may charge the owner
221 a reasonable cost for the extraction and return of the digital data described in
222 Subsection (3)(b)(i), and shall provide the owner with an estimate of the cost in
223 advance of the extraction.
- 224 (B) The owner of the computer or portable communication device described in
225 Subsection (3)(b)(i) shall pay the cost described in Subsection (3)(b)(ii)(A)
226 before the extraction occurs.
- 227 (iii) If the law enforcement agency or prosecuting agency refuses to extract and
228 return to the owner the personal digital data described in Subsection (3)(b)(i), or if
229 the owner seeks the return of the computer or portable communication device
230 itself, the owner may follow the procedures in Section 77-11a-302, 77-11a-303,
231 77-11a-304, or 77-11a-305.
- 232 (iv) A law enforcement agency or prosecuting agency may not condition the

233 extraction and return of digital data from a computer or portable communication
234 device described in Subsection (3)(b)(i):
235 (A) on the owner providing the owner's password or otherwise unlocking,
236 accessing, or de-encrypting the computer or portable communication device; or
237 (B) on the owner consenting to a search of the digital contents of the computer or
238 portable communication device.

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

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

246 (6)(a) Before an agency may return seized property to a person claiming ownership of
247 the property, the person shall establish that the person:

248 (i) is the owner of the property; and
249 (ii) may lawfully possess the property.

250 (b) The person shall establish ownership under Subsection (6)(a) by providing to the
251 agency:

252 (i) identifying proof or documentation of ownership of the property; or
253 (ii) a notarized statement if proof or documentation is not available.

254 (c) When seized property is returned to the owner, the owner shall sign a receipt listing
255 in detail the property that is returned.

256 (d) The agency shall:

257 (i) retain a copy of the receipt; and
258 (ii) provide a copy of the receipt to the owner.

259 Section 3. Section **77-11a-402** is amended to read:

260 **77-11a-402 . Disposition of seized property and contraband -- Return of seized**
261 **property.**

262 (1)(a) Except as provided in Subsection (1)(b), if a prosecuting attorney determines that
263 seized property no longer needs to be retained as evidence under Chapter 11c,
264 Retention of Evidence, the prosecuting attorney may:

265 (i) petition the court to apply the property that is money towards restitution, fines,
266 fees, or monetary judgments owed by the owner of the property;

- 267 (ii) petition the court for an order transferring ownership of weapons to the agency
268 with custody for the agency's use and disposal in accordance with Section
269 77-11a-403 if the owner:
- 270 (A) is the individual who committed the offense for which the weapon was seized;
271 or
272 (B) may not lawfully possess the weapon; or
- 273 (iii) notify the agency with custody of the property or contraband that:
274 (A) the property may be returned to the owner in accordance with Section
275 77-11a-301 if the owner may lawfully possess the property; or
276 (B) the contraband may be disposed of or destroyed.
- 277 (b) If a prosecuting attorney determines that a firearm seized from an individual as a
278 result of an offense committed under Subsection 76-10-529(2)(a)(i) no longer needs
279 to be retained for court proceedings, the prosecuting attorney shall notify the agency
280 with custody of the firearm that the property shall be returned to the individual if the
281 individual may lawfully possess the firearm.
- 282 (c) If the seized property is a computer or portable communication device that is not
283 alleged to contain contraband, the notification described in Subsection (1)(a)(iii) shall
284 occur within thirty days after the day on which the prosecuting attorney determines
285 that the seized property no longer needs to be retained as evidence.
- 286 (2) Before returning a firearm to an individual, the agency returning the firearm shall
287 confirm, through the Bureau of Criminal Identification, that the individual is eligible to
288 lawfully possess and receive firearms.
- 289 (3)(a) Except as provided in Subsection (3)(b), if the agency is unable to locate the
290 owner of the property or the owner is not entitled to lawfully possess the property,
291 the agency may:
- 292 (i) apply the property to a public interest use;
293 (ii) sell the property at public auction and apply the proceeds of the sale to a public
294 interest use; or
295 (iii) destroy the property if the property is unfit for a public interest use or for sale.
- 296 (b) If the property described in Subsection (3)(a) is a firearm, the agency shall dispose of
297 the firearm in accordance with Section 77-11a-403.
- 298 (4) Before applying the property or the proceeds from the sale of the property to a public
299 interest use, the agency shall obtain from the legislative body of the agency's jurisdiction:
300 (a) permission to apply the property or the proceeds to public interest use; and

301 (b) the designation and approval of the public interest use of the property or the proceeds.
302 (5) If a peace officer seizes property that at the time of seizure is held by a pawn or
303 secondhand business in the course of the pawn or secondhand business's business, the
304 provisions of Section 13-32a-116 shall apply to the disposition of the property.

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

306 **77-11c-101 . Definitions.**

307 As used in this chapter:

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

309 (2) "Adjudicated" means that:

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

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

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

315 (3) "Adjudication" means:

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

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

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

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

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

324 (i) is collected as part of an investigation or prosecution of a violent felony offense;
325 and

326 (ii) may reasonably be used to incriminate or exculpate a person for the violent
327 felony offense.

328 (b) "Biological evidence" includes:

329 (i) material that is catalogued separately, including:

330 (A) on a slide or swab; or

331 (B) inside a test tube, if the evidentiary sample that previously was inside the test
332 tube has been consumed by testing;

333 (ii) material that is present on other evidence, including clothing, a ligature, bedding,
334 a drinking cup, a cigarette, or a weapon, from which a DNA profile may be

- 335 obtained;
- 336 (iii) the contents of a sexual assault kit; and
- 337 (iv) for a violent felony offense, material described in this Subsection (6) that is in
- 338 the custody of an evidence collecting or retaining entity on May 4, 2022.
- 339 (7) "Claimant" means the same as that term is defined in Section 77-11a-101.
- 340 (8) "Computer" means the same as that term is defined in Section 77-11a-101.
- 341 (9) "Continuous chain of custody" means:
- 342 (a) for a law enforcement agency or a court, that legal standards regarding a continuous
- 343 chain of custody are maintained; and
- 344 (b) for an entity that is not a law enforcement agency or a court, that the entity maintains
- 345 a record in accordance with legal standards required of the entity.
- 346 (10) "Contraband" means the same as that term is defined in Section 77-11a-101.
- 347 (11) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- 348 (12) "Court" means a municipal, county, or state court.
- 349 (13) "DNA" means deoxyribonucleic acid.
- 350 (14) "DNA profile" means a unique identifier of an individual derived from DNA.
- 351 (15) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.
- 352 (16) "Evidence" means property, contraband, or an item or substance that:
- 353 (a) is seized or collected as part of an investigation or prosecution of an offense; and
- 354 (b) may reasonably be used to incriminate or exculpate an individual for an offense.
- 355 (17)(a) "Evidence collecting or retaining entity" means an entity within the state that
- 356 collects, stores, or retrieves biological evidence.
- 357 (b) "Evidence collecting or retaining entity" includes:
- 358 (i) a medical or forensic entity;
- 359 (ii) a law enforcement agency;
- 360 (iii) a court; and
- 361 (iv) an official, employee, or agent of an entity or agency described in this Subsection
- 362 (17).
- 363 ~~(c)~~ (c) "Evidence collecting or retaining entity" does not include a collecting facility
- 364 defined in Section 53-10-902.
- 365 (18) "Exhibit" means property, contraband, or an item or substance that is admitted into
- 366 evidence for a court proceeding.
- 367 (19) "In custody" means an individual who:
- 368 (a) is incarcerated, civilly committed, on parole, or on probation; or

- 369 (b) is required to register under Title 77, Chapter 41, Sex, Kidnap, and Child Abuse
370 Offender Registry.
- 371 (20) "Law enforcement agency" means the same as that term is defined in Section
372 77-11a-101.
- 373 (21) "Medical or forensic entity" means a private or public hospital, medical facility, or
374 other entity that secures biological evidence or conducts forensic examinations related to
375 criminal investigations.
- 376 (22) "Physical evidence" includes evidence that:
377 (a) is related to:
378 (i) an investigation;
379 (ii) an arrest; or
380 (iii) a prosecution that resulted in a judgment of conviction; and
381 (b) is in the actual or constructive possession of a law enforcement agency or a court or
382 an agent of a law enforcement agency or a court.
- 383 (23) "Portable communication device" means the same as that term is defined in Section
384 77-11a-101.
- 385 [~~(23)~~] (24) "Property" means the same as that term is defined in Section 77-11a-101.
- 386 [~~(24)~~] (25) "Prosecuting attorney" means the same as that term is defined in Section
387 77-11a-101.
- 388 [~~(25)~~] (26) "Sexual assault kit" means the same as that term is defined in Section 53-10-902.
- 389 [~~(26)~~] (27) "Victim" means the same as that term is defined in Section 53-10-902.
- 390 [~~(27)~~] (28) "Violent felony offense" means the same as the term "violent felony" is defined
391 in Section 76-3-203.5.
- 392 [~~(28)~~] (29) "Wildlife" means the same as that term is defined in Section 23A-1-101.
- 393 Section 5. Section **77-11c-202** is amended to read:
394 **77-11c-202 . Requirements for not retaining evidence of a misdemeanor offense --**
395 **Preservation of sufficient evidence.**
- 396 (1) An agency is not required to retain evidence of a misdemeanor offense under Section
397 77-11c-201 if:
398 (a)(i) the agency determines that:
399 (A) the size, bulk, or physical character of the evidence renders retention
400 impracticable; or
401 (B) the evidence poses a security or safety problem for the agency;
402 (ii) the agency preserves sufficient evidence of the property, contraband, item, or

- 403 substance for use as evidence in a prosecution of the offense;
- 404 (iii) the agency sends a written request under Subsection 77-11c-203(1) to the
- 405 prosecuting attorney for permission to return or dispose of the evidence; and
- 406 (iv) the prosecuting attorney grants the agency's written request in accordance with
- 407 Section 77-11c-203;
- 408 (b) a court orders the agency to return evidence that is property to a claimant under
- 409 Section 77-11a-305; or
- 410 (c) the evidence is wildlife or parts of wildlife.
- 411 (2) Notwithstanding Subsection (1), the agency may not dispose of evidence of a
- 412 misdemeanor offense that is a sexual assault kit before the day on which the time period
- 413 described in Section 77-11c-201 expires if:
- 414 (a) the agency sends a notice to the victim as described in Section 53-10-905; and
- 415 (b) the victim submits a written request for retention of the evidence within the 180-day
- 416 period described in Section 53-10-905.
- 417 (3)(a) Subsection (1) does not require an agency to return or dispose of evidence of a
- 418 misdemeanor offense.
- 419 (b) Subsection (1)(a) does not apply when the return or disposal of evidence of a
- 420 misdemeanor offense is in compliance with a memorandum of understanding
- 421 between the agency and the prosecuting attorney.
- 422 (4) If the evidence described in Subsection (1) is a controlled substance, an agency shall
- 423 preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by:
- 424 (a) collecting and preserving a sample of the controlled substance for independent
- 425 testing and use as evidence;
- 426 (b) taking a photographic or video record of the controlled substance with identifying
- 427 case numbers;
- 428 (c) maintaining a written report of a chemical analysis of the controlled substance if a
- 429 chemical analysis was performed by the agency; and
- 430 (d) if the controlled substance exceeds 10 pounds, retain at least one pound of the
- 431 controlled substance that is randomly selected from the controlled substance.
- 432 (5) If the evidence described in Subsection (1) is drug paraphernalia, an agency shall
- 433 preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:
- 434 (a) collecting and preserving a sample of the controlled substance from the drug
- 435 paraphernalia for independent testing and use as evidence;
- 436 (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a

- 437 chemical analysis was performed by the agency; and
- 438 (c) taking a photographic or video record of the drug paraphernalia with identifying case
439 numbers.
- 440 (6) If the evidence described in Subsection (1) is a computer or portable communication
441 device, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the
442 computer or portable communication device by:
- 443 (a) extracting all data from the computer or portable communication device that would
444 be evidence in a prosecution of an individual for the offense; and
- 445 (b) taking a photographic or video record of the computer or portable communication
446 device with identifying case numbers.
- 447 (7) For any other type of evidence, the agency shall preserve sufficient evidence under
448 Subsection (1)(a)(ii) of the property, contraband, item, or substance by taking a
449 photographic or video record of the property, contraband, item, or substance with
450 identifying case numbers.

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

452 **77-11c-302 . Requirements for not retaining evidence of felony offense --**

453 **Preservation of sufficient evidence.**

- 454 (1) An agency is not required to retain evidence of a felony offense under Section
455 77-11c-301 if:
- 456 (a)(i) the agency determines that:
- 457 (A) the size, bulk, or physical character of the evidence renders retention
458 impracticable or the evidence poses a security or safety problem for the
459 agency; and
- 460 (B) the evidence no longer has any significant evidentiary value;
- 461 (ii) the agency preserves sufficient evidence from the property, contraband, item, or
462 substance for use as evidence in a prosecution of the offense; and
- 463 (iii) a prosecuting attorney or a court authorizes the agency to return or dispose of the
464 evidence as described in Subsection 77-11c-303;
- 465 (b) a court orders the agency to return evidence that is property to a claimant under
466 Section 77-11a-305; or
- 467 (c) the evidence is wildlife or parts of wildlife.
- 468 (2) Notwithstanding Subsection (1), the agency may not dispose of evidence of a felony
469 offense that is a sexual assault kit before the day on which the time period described in
470 Section 77-11c-301 expires if:

- 471 (a) the agency sends a notice to the victim in accordance with Section 53-10-905; and
472 (b) the victim submits a written request for retention of the evidence within the 180-day
473 period described in Section 53-10-905.
- 474 (3) Subsection (1) does not require an agency to return or dispose of evidence of a felony
475 offense.
- 476 (4) Subsection (1) does not apply to biological evidence of a violent felony offense because
477 an agency is required to retain biological evidence of a violent felony offense as
478 described in Part 4, Preservation of Biological Evidence for Violent Felony Offenses.
- 479 (5) If the evidence described in Subsection (1) is a controlled substance, an agency shall
480 preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by:
481 (a) collecting and preserving a sample of the controlled substance for independent
482 testing and use as evidence;
483 (b) taking a photographic or video record of the controlled substance with identifying
484 case numbers;
485 (c) maintaining a written report of a chemical analysis of the controlled substance if a
486 chemical analysis was performed by the agency;
487 (d) if the controlled substance exceeds 10 pounds, retaining at least one pound of the
488 controlled substance that is randomly selected from the controlled substance; and
489 (e) for a violent felony offense, collecting and preserving biological evidence from the
490 controlled substance as described in Section 77-11c-401.
- 491 (6) If the evidence described in Subsection (1) is drug paraphernalia, an agency shall
492 preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:
493 (a) collecting and preserving a sample of the controlled substance from the drug
494 paraphernalia for independent testing and use as evidence;
495 (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a
496 chemical analysis was performed by the agency;
497 (c) taking a photographic or video record of the drug paraphernalia with identifying case
498 numbers; and
499 (d) for a violent felony offense, collecting and preserving biological evidence from the
500 drug paraphernalia as described in Section 77-11c-401.
- 501 (7) If the evidence described in Subsection (1) is a computer or portable communication
502 device, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the
503 computer or portable communication device by:
504 (a) extracting all data from the computer or portable communication device that would

- 505 be evidence in a prosecution of an individual for the offense;
- 506 (b) taking a photographic or video record of the computer or portable communication
- 507 device with identifying case numbers; and
- 508 (c) for a violent felony offense, collecting and preserving biological evidence from the
- 509 computer or portable communication device as described in Section 77-11c-401.
- 510 (8) For any other type of evidence, the agency shall preserve sufficient evidence under
- 511 Subsection (1)(a)(ii) of the property, contraband, item, or substance by:
- 512 (a) taking a photographic or video record of the property, contraband, item, or substance
- 513 with identifying case numbers; and
- 514 (b) for a violent felony offense, collecting and preserving biological evidence as
- 515 described in Section 77-11c-401.

516 Section 7. **Effective Date.**

517 This bill takes effect on May 7, 2025.