

§ 15-11.1. Seizure, custody and disposition of articles; exceptions.

(a) If a law-enforcement officer seizes property pursuant to lawful authority, he shall safely keep the property under the direction of the court or magistrate as long as necessary to assure that the property will be produced at and may be used as evidence in any trial. Upon application by the lawful owner or a person, firm or corporation entitled to possession or upon his own determination, the district attorney may release any property seized pursuant to his lawful authority if he determines that such property is no longer useful or necessary as evidence in a criminal trial and he is presented with satisfactory evidence of ownership. If the district attorney refuses to release such property, the lawful owner or a person, firm or corporation entitled to possession may make application to the court for return of the property. The court, after notice to all parties, including the defendant, and after hearing, may in its discretion order any or all of the property returned to the lawful owner or a person, firm or corporation entitled to possession. The court may enter such order as may be necessary to assure that the evidence will be available for use as evidence at the time of trial, and will otherwise protect the rights of all parties. Notwithstanding any other provision of law, photographs or other identification or analyses made of the property may be introduced at the time of the trial provided that the court determines that the introduction of such substitute evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial.

(b) In the case of unknown or unapprehended defendants or of defendants willfully absent from the jurisdiction, the court shall determine whether an attorney should be appointed as guardian ad litem to represent and protect the interest of such unknown or absent defendants. Appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services. The judicial findings concerning identification or value that are made at such hearing whereby property is returned to the lawful owner or a person, firm, or corporation entitled to possession, may be admissible into evidence at the trial. After final judgment all property lawfully seized by or otherwise coming into the possession of law-enforcement authorities shall be disposed of as the court or magistrate in its discretion orders, and may be forfeited and either sold or destroyed in accordance with due process of law.

(b1) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal trial, the district attorney, after notice to all parties known or believed by the district attorney to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm. The judge, after hearing, may order the disposition of the firearm in one of the following ways:

- (1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.
- (2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner of the firearm, and the defendant is not otherwise ineligible to possess such firearm.
- (3) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the firearm was seized or by his duly authorized agent if the firearm does not have a legible, unique identification number or is unsafe for use because of wear, damage, age, or modification. The sheriff shall maintain a record of the destruction of the firearm.

- (4) By ordering the firearm turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.

This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of firearms used only in connection with a violation of Article 22 of Chapter 113 of the General Statutes or any local wildlife hunting ordinance.

(b2) Notwithstanding subsections (a), (b), and (b1) of this section or any other provision of law, if the property seized is retail property or other property that is evidence of a violation of Article 16, Article 16A, or Article 18 of Chapter 14 of the General Statutes, or a violation of G.S. 14-100, upon request of the lawful owner or a person, firm, or corporation entitled to possession or upon his own determination, the district attorney may make application to the court for an order authorizing the return of the property to the lawful owner or person, firm, or corporation entitled to possession prior to any trial of the offenses for which the property was seized as evidence. Upon application to the court, the district attorney shall notify the defendant of the request for return of the property and provide the defendant 10 business days to inspect and photograph the property. The court, after notice to all parties, including the defendant, and after hearing, shall order any or all of the property returned to the lawful owner or a person, firm, or corporation entitled to possession if the court finds all of the following:

- (1) The defendant has been given notice and an opportunity to inspect and photograph the property prior to the hearing.
- (2) Photographs or other identification or analyses made of the property will provide sufficient evidence at the time of trial.
- (3) The introduction of such substitute evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial.
- (4) There is satisfactory evidence of ownership.

Photographs or other identification or analyses made of any property returned pursuant to this subsection shall be presumed admissible in lieu of the actual property at any subsequent criminal trial for violation of Article 16, Article 16A, or Article 18 of Chapter 14 of the General Statutes, or violation of G.S. 14-100. Any property returned pursuant to this subsection does not need to be made available for evidence at the time of trial and may be sold or disposed of in any lawful manner by the lawful owner or person, firm, or corporation entitled to possession.

(c) Any property, the forfeiture and disposition of which is specified in any general or special law, shall be disposed of in accordance therewith. (1977, c. 613; 1979, c. 593; 1994, Ex. Sess., c. 16, s. 1; 2000-144, s. 27; 2005-287, s. 1; 2013-158, s. 1; 2014-115, s. 24.5; 2022-30, s. 4.)