

## WHAT HAPPENS TO A WEAPON WHEN IT IS NO LONGER NEEDED AS EVIDENCE

Utah Code Ann. § 76-10-525 provides that after a weapon has been used for court purposes the law enforcement agency:

“shall determine the true owner of the weapon and return it to him; however, if unable to determine the true owner of the weapon, or if the true owner is the person committing the crime for which the weapon was used as evidence, the department shall confiscate it and it shall revert to that agency for their use and/or disposal as the head of the department determines.”

Although this statute appears to create an exception which would allow for the forfeiture of weapons without having to follow the procedures set forth in the Utah Uniform Forfeiture Procedures Act, case law indicates that the Due Process Clause of the United States Constitution's Fifth Amendment still requires that the owner receive notice and an opportunity for a hearing. *See Jones v. Salt Lake City Corp.*, 78 P.3d 988 (Utah App. 2003) ( the Due Process Clause of the Fifth Amendment applies to the seizure and retention of firearms); *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993) (at a minimum, the Due Process Clause requires notice of intent to retain or dispose of the firearms and a court hearing on the agency's intent to dispose of the firearms); *Cooper v. City of Greenwood, Miss.*, 904 F.2d 302 (5th Cir. 1990) (even if the true owner is convicted of a crime in which the firearm is used, the owner holds a constitutional due process right to notice, a hearing, and court order to sell, destroy, or keep the firearm).

Thus if a forfeiture action was never initiated, the prosecutor should still obtain a court order awarding the firearm to the law enforcement agency. This can be accomplished by seeking an order from the court at the time of sentencing when the defendant is present and has an opportunity to be heard, thereby meeting the minimal due process requirements. Upon order of the court, the agency can then sell, destroy, or keep the firearm without potential liability.