

O.C.G.A. § 17-5-50

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*** Current Through the 2016 Regular Session ***

TITLE 17. CRIMINAL PROCEDURE
CHAPTER 5. SEARCHES AND SEIZURES
ARTICLE 3. DISPOSITION OF PROPERTY SEIZED

O.C.G.A. § 17-5-50 (2016)

§ 17-5-50. Property unlawfully obtained; rights of owner; hearing; admissibility of photographs in lieu of original property; representation of unknown or absent defendants; statements made by defendant or agent at trial

(a) The clerk or person having charge of the property section for any police department, sheriff's office, or other law enforcement agency in this state shall enter in a suitable book a description of every article of property alleged to be stolen, embezzled, or otherwise unlawfully obtained and brought into the office or taken from the person of a prisoner and shall attach a number to each article and make a corresponding entry thereof.

(b) (1) Any person claiming ownership of such allegedly stolen, embezzled, or otherwise unlawfully obtained property may make application to the law enforcement agency for the return of such property. Upon such an application being filed, the clerk or person in charge of the property section shall serve upon the person from whom custody of the property was taken a copy of such application. Such person from whom custody of the property was taken shall have a reasonable opportunity to claim ownership of such property and to request a hearing on forms provided by the person in charge of the property section.

(2) If the person from whom custody of the property was taken fails to assert a claim to such property, upon any applicant furnishing satisfactory proof of ownership of such property and presentation of proper personal identification, the person in charge of the property section may deliver such property to the applicant. The person to whom property is delivered shall sign, under penalty of false swearing, a declaration of ownership, which shall be retained by the person in charge of the property section. Such declaration, absent any other proof of ownership, shall be deemed satisfactory proof of ownership for the purposes of this Code section; provided, however, that, in the case of motor vehicles, trailers, tractors, or motorcycles which are required to be registered with the state revenue commissioner, any such stolen vehicle shall be returned to the person evidencing ownership of such vehicle through a certificate of title, tag receipt, bill of sale, or other such evidence. The stolen vehicle shall be returned to the person evidencing ownership within two days after such person makes application for the return of such vehicle unless a hearing on the ownership of such vehicle is required under this Code section or unless

law enforcement needs the stolen vehicle for further criminal investigation purposes. Prior to such delivery, such person in charge of the property section shall make and retain a complete photographic record of such property. Such delivery shall be without prejudice to the state or to the person from whom custody of the property was taken or to any other person who may have a claim against the property.

(3) If the person from whom custody of the property was taken asserts a claim to such property and requests a hearing, the court which examines the charge against the person accused of stealing, embezzling, or otherwise unlawfully obtaining the property, or the court before whom the trial is had for stealing, embezzling, or otherwise unlawfully obtaining the property shall conduct the hearing to determine the ownership of such property.

(4) The provisions of this subsection shall not apply to any contraband or property subject to forfeiture under any provision of law.

(c) Photographs, video tapes, or other identification or analysis of the property involved, duly identified in writing by the law enforcement officer originally taking custody of the property as accurately representing such property, shall be admissible at trial in lieu of the original property.

(d) In the case of unknown or unapprehended defendants or defendants willfully absent from the jurisdiction, the court shall have discretion to appoint a guardian ad litem to represent the interest of the unknown or absent defendants.

(e) Statements made by the defendant or a person representing the defendant at a hearing provided for in subsection (b) of this Code section shall not be admissible for use against the defendant at trial.

HISTORY: Orig. Code 1863, § 4637; Code 1868, § 4661; Code 1873, § 4759; Code 1882, § 4759; Penal Code 1895, § 1245; Penal Code 1910, § 1327; Code 1933, § 27-302; Ga. L. 1978, p. 2260, § 1; Ga. L. 1979, p. 761, § 1; Ga. L. 1982, p. 2336, § 1; Ga. L. 1986, p. 158, § 1; Ga. L. 2002, p. 415, § 17; Ga. L. 2005, p. 334, § 7-1/HB 501.

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O.C.G.A. § 17-5-51 (2016)

§ 17-5-51. Civil forfeiture of weapons used in commission of crime, possession of which constitutes crime or delinquent act, or illegal concealment generally

Any device which is used as a weapon in the commission of any crime against any person or any attempt to commit any crime against any person, any weapon the possession or carrying of which constitutes a crime or delinquent act, and any weapon for which a person has been convicted of violating Code Section 16-11-126 are declared to be contraband and shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9, notwithstanding the time frames set forth in Code Section 9-16-7.

HISTORY: Ga. L. 1967, p. 749, § 1; Ga. L. 1977, p. 1131, § 1; Ga. L. 1994, p. 963, § 1; Ga. L. 2010, p. 963, § 2-10/SB 308; Ga. L. 2012, p. 1285, § 2/SB 350; Ga. L. 2015, p. 693, § 3-14/HB 233.

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O.C.G.A. § 17-5-52 (2016)

§ 17-5-52. Disposition of weapons used in commission of crime or delinquent act involving possession; civil forfeiture

When a final judgment is entered finding a defendant guilty of the commission or attempted commission of a crime against any person or guilty of the commission of a crime or delinquent act involving the illegal possession or carrying of a weapon, any device which was used as a weapon in the commission of the crime or delinquent act shall be turned over by the person having custody of the weapon or device to the sheriff, chief of police, or other executive officer of the law enforcement agency that originally confiscated the weapon or device when the weapon or device is no longer needed for evidentiary purposes. Within one year after receiving the weapon or device, the sheriff, chief of police, or other executive officer of the law enforcement agency shall return or sell the weapon as provided in Code Section 17-5-54, or if the weapon or device is subject to forfeiture, the procedures set forth in Chapter 16 of Title 9 shall be followed notwithstanding the time frames set forth in Code Section 9-16-7. A state attorney seeking forfeiture under this Code section shall commence civil forfeiture proceedings within 60 days of the entry of a final judgment as contemplated by this Code section; the remaining provisions of Chapter 16 of Title 9 shall be applicable.

HISTORY: Ga. L. 1967, p. 749, § 3; Ga. L. 1976, p. 167, § 1; Ga. L. 1994, p. 963, § 2; Ga. L. 2008, p. 344, § 1/HB 333; Ga. L. 2012, p. 1285, § 3/SB 350; Ga. L. 2015, p. 693, § 3-15/HB 233.

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O.C.G.A. § 17-5-53 (2016)

§ 17-5-53. Disposition of devices with historical or instructional value

(a) After a forfeiture of a device used in a crime, in the event the director of the Division of Archives and History or the commissioner of public safety, in that order or priority, shall desire to receive and retain a device described in Code Section 17-5-51 for historical or instructional purposes of his or her division or department and gives written notice thereof to the sheriff, either prior to the sheriff's advertisement of the device for sale or within ten days thereafter, the sheriff shall forthwith deliver the device to the requesting division or department which shall retain the device for such purposes. A device delivered to either the division or the department in accordance with this Code section shall become the property of the state.

(b) This Code section shall prevail over Code Section 17-5-52.

HISTORY: Ga. L. 1976, p. 749, § 4; Ga. L. 2002, p. 532, § 5.

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O.C.G.A. § 17-5-54 (2016)

§ 17-5-54. Definitions; disposition of personal property in custody of law enforcement agency

(a) As used in this Code section, the term:

(1) "Civil forfeiture proceeding" shall have the same meaning as set forth in Code Section 9-16-2.

(2) "Firearm" means any handgun, rifle, shotgun, or similar device or weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge.

(3) "Law enforcement agency" means a law enforcement agency of this state or a political subdivision of this state, including the Department of Natural Resources.

(4) "Rightful owner" means a person claiming ownership of property which is the subject of a crime or has been abandoned.

(b) This Code section shall not apply to:

(1) Personal property which is the subject of any civil forfeiture proceeding;

(2) Any property which is the subject of a disposition pursuant to Code Sections 17-5-50 through 17-5-53; and

(3) Any abandoned motor vehicle for which the provisions of Chapter 11 of Title 40 are applicable.

(c) (1) Except as provided in Chapter 16 of Title 9, Code Sections 17-5-55 and 17-5-56, and subsection (b) of this Code section, when a law enforcement agency assumes custody of any personal property which is the subject of a crime or has been abandoned, a disposition of such property shall be made in accordance with the provisions of this Code section.

(2) When a final verdict and judgment is entered finding a defendant guilty of the commission of a crime, any personal property used as evidence in the trial shall be returned to the rightful owner of the property within 30 days following the final judgment; provided, however, that if the judgment is appealed or if the defendant files a motion for a new trial and if photographs, videotapes, or other identification or analysis of the personal property will not be sufficient evidence for the appeal of the case or new trial of the case, such personal property shall be returned to the rightful owner within 30 days of the conclusion of the appeal or new trial, whichever occurs last.

(3) Any person claiming to be a rightful owner of property shall make an application to the entity holding his or her property and shall furnish satisfactory proof of ownership of such property and present personal identification. The person in charge of such property may return such property to the applicant. The person to whom property is delivered shall sign, under penalty of false swearing, a declaration of ownership, which shall be retained by the person in charge of the property. Such declaration, absent any other proof of ownership, shall be deemed satisfactory proof of ownership for the purposes of this Code section; provided, however, that with respect to motor vehicles, paragraph (3) of subsection (b) and subsection (f) of this Code section shall govern the return of motor vehicles.

(4) If more than one person claims ownership of property, a court with jurisdiction over the property shall conduct a hearing to determine the ownership of such property.

(d) After a period of 90 days following the final verdict and judgment, when personal property that is in the custody of a law enforcement agency was used as evidence in a criminal trial or was abandoned, it shall be subject to disposition as provided in subsection (e) of this Code section if the property is not a firearm and as provided in subsection (g) of this Code section if the property is a firearm if it is:

(1) No longer needed in a criminal investigation or for evidentiary purposes in accordance with Code Section 17-5-55 or 17-5-56;

(2) Not claimed pursuant to Code Section 17-5-50; and

(3) Not claimed pursuant to subsection (c) of this Code section.

(e) For any unclaimed personal property that is not a firearm, the sheriff, chief of police, or other executive officer of a law enforcement agency shall make application to the superior court for an order to retain, sell, or discard such property. In the application the officer shall state each item of personal property to be retained, sold, or discarded. Upon the superior court's granting an order for the law enforcement agency to retain such property, the law enforcement agency shall retain such property for official use. Upon the superior court's granting an order which authorizes that the property be discarded, the law enforcement agency shall dispose of the property as other salvage or nonserviceable equipment. Upon the superior court's granting an order for the sale of personal property, the officer shall provide for a notice to be placed once a week for four weeks in the legal organ of the county specifically describing each item and advising possible owners of items of the method of contacting the law enforcement agency; provided, however, that

miscellaneous items having an estimated fair market value of \$75.00 or less may be advertised or sold, or both, in lots. Such notice shall also stipulate a date, time, and place said items will be placed for public sale if not claimed. Such notice shall also stipulate whether said items or groups of items are to be sold in blocks, by lot numbers, by entire list of items, or separately. Such unclaimed personal property shall be sold at a sale which shall be conducted not less than seven nor more than 15 days after the final advertised notice has been run. The sale shall be to the highest bidder. If such personal property has not been bid on in two successive sales, the law enforcement agency may retain the property for official use or the property will be considered as salvage and disposed of as other county or municipal salvage or nonserviceable equipment. With respect to unclaimed perishable personal property or animals or other wildlife, an officer may make application to the superior court for an order authorizing the disposition of such property prior to the expiration of 90 days.

(f) With respect to a motor vehicle which is the subject of a crime or has been abandoned but which is not the subject of any civil forfeiture proceeding, the law enforcement agency shall be required to contact the Georgia Crime Information Center to determine if such motor vehicle has been stolen and to follow generally the procedures of Code Section 40-11-2 to ascertain the registered owner of such vehicle.

(g) (1) With respect to unclaimed firearms, if the sheriff, chief of police, agency director, or designee of such official certifies that a firearm is unsafe because of wear, damage, age, or modification or because any federal or state law prohibits the sale or distribution of such firearm, at the discretion of such official, it shall be transferred to the Division of Forensic Sciences of the Georgia Bureau of Investigation, a municipal or county law enforcement forensic laboratory for training or experimental purposes, or be destroyed.

(2) Otherwise, an unclaimed firearm:

(A) Possessed by a municipal corporation shall be disposed of as provided for in Code Section 36-37-6; provided, however, that municipal corporations shall not have the right to reject any bids or to cancel any proposed sale of such firearms, and all sales shall be to persons who are licensed as firearms collectors, dealers, importers, or manufacturers under the provisions of 18 U.S.C. Section 921, et seq., and who are authorized to receive such firearms under the terms of such license; or

(B) Possessed by the state or a political subdivision other than a municipal corporation, shall be disposed of by sale at public auction to persons who are licensed as firearms collectors, dealers, importers, or manufacturers under the provisions of 18 U.S.C. Section 921, et seq., and who are authorized to receive such firearms under the terms of such license. Auctions required by this subparagraph may occur online on a rolling basis or at live events, but in no event shall such auctions occur less frequently than once every 12 months during any time in which the political subdivision or state custodial agency has an inventory of five or more saleable firearms.

(3) If no bids from eligible recipients are received within six months from when bidding opened on a firearm offered for sale pursuant to paragraph (2) of this subsection, the firearm shall be transferred to the Division of Forensic Sciences of the Georgia Bureau of Investigation,

a municipal or county law enforcement forensic laboratory for training or experimental purposes, or be destroyed.

(h) Records shall be maintained showing the manner in which each personal property item came into possession of the law enforcement agency, a description of the property, all efforts to locate the owner, any case or docket number, the date of publication of any newspaper notices, and the date on which the property was retained by the law enforcement agency, sold, or discarded. All agencies subject to the provisions of this Code section shall keep records of the firearms acquired and disposed of as provided by this Code section as well as records of the proceeds of the sales thereof and the disbursement of such proceeds in accordance with records retention schedules adopted in accordance with Article 5 of Chapter 18 of Title 50, the "Georgia Records Act."

(i) The proceeds from the sale of personal property by the sheriff or other county law enforcement agency pursuant to this Code section shall be paid into the general fund of the county treasury. The proceeds from the sale of personal property by a municipal law enforcement agency pursuant to this Code section shall be paid into the general fund of the municipal treasury. The proceeds from the sale of personal property by a state agency pursuant to this Code section shall be paid into the general fund of the state.

(j) Neither the state nor any political subdivision of the state nor any of its officers, agents, or employees shall be liable to any person, including the purchaser of a firearm, for personal injuries or damage to property arising from the sale of a firearm under subsection (g) of this Code section unless the state or political subdivision acted with gross negligence or willful or wanton misconduct.

HISTORY: Code 1981, § 17-5-54, enacted by Ga. L. 1991, p. 944, § 1; Ga. L. 1995, p. 909, § 1; Ga. L. 2004, p. 575, § 1; Ga. L. 2012, p. 1285, § 5/SB 350; Ga. L. 2015, p. 693, § 3-17/HB 233.