

**8 GCA CRIMINAL PROCEDURE
CH. 150 DISPOSITION OF PROPERTY**

**CHAPTER 150
DISPOSITION OF PROPERTY**

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§ 150.10. Non-applicability to Property Subject to Seizure and Destruction Under Other Law.

This Chapter shall not apply to any property which is otherwise subject to seizure and destruction or forfeiture pursuant to law.

NOTE: Chapter 150 supersedes former §§ 1407 through 1411 and provided comprehensively for the disposition of property taken and held by any law enforcement agency.

Section 150.10 makes clear that specific provisions providing for forfeiture or destruction override the general disposition procedures provided here. See, *i.e.*, 9 GCA §§ 28.60 (destruction of obscene material); 65.20 (destruction of gambling devices).

§ 150.20. Attorney General to Establish Rules for Return of Property Not Needed as Evidence.

Property held by any law enforcement agency which is not needed for evidentiary purposes in a criminal action may be returned by the agency under rules and regulations established by the Attorney General.

NOTE: Section 150.20 provides the Attorney General with the administrative authority to determine whether and under what conditions property will be released. His rules and regulations should, of course, require the person to whom property is returned to show his identity and right to possession. However, if release is not obtained pursuant to this Section, a person claiming a right to possession may always proceed under §§ 150.30 through 150.50.

§ 150.30. Application for Release of Property if No Criminal Action Forthcoming; Notice, Hearing.

(a) When property is held by a law enforcement agency and a criminal action in which the property is needed is not filed within 90 days following the acquisition of the property by the agency, a person entitled to the

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possession of the property may apply for the release of the property to the Superior Court.

(b) The court shall give notice and an opportunity to be heard to the Attorney General and to the person from whom the property was taken when the application for release is filed by another person.

(c) After a hearing the court may either order the release of the property to the person who is entitled to possession it or permit the property to remain in the possession of the law enforcement agency without prejudice to a subsequent application for release.

NOTE: Section 150.30 provides a procedure for release where a criminal action is not filed. Compare §§ 150.40 and 150.50. Where release is not obtained - for example, where filing of an action in which the property will be needed is imminent - the applicant is not foreclosed from applying again at a later time.

§ 150.40. Court May Order Release: Who May Make Motion; Notice.

(a) In the course of a criminal action the trial court may order the release of any property received into evidence or held in connection with the criminal action by a law enforcement agency when it is possible to do so without prejudice to any party.

(b) A motion for the release of property may be made by either of the following:

(1) The person from whose possession the property was taken.

(2) Any other person asserting the right to possession of the property.

(c) The trial court shall give notice and an opportunity to be heard to the Attorney General and to the person from whom the property was taken when the application for release is filed by another person.

NOTE: Section 150.40 replaces and expands former §§ 1408 through 1410. The section applies to all types of property, rather than only to stolen or embezzled property, as did the former sections. Return is particularly appropriate where photographs and testimony can just as well be used as the actual property and the property is of a type which is bulky or perishable. Of course, nothing in this Section limits the authority to return property pursuant to § 35.45 (return to property unlawfully seized).

§ 150.50. Release of Property in Custody.

(a) When a criminal action has been finally determined, the trial court shall, upon application of the person entitled to the possession of any of the property in the custody of the court or a law enforcement agency, order the

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property released to that person unless good cause to the contrary is shown by the Attorney General. The court shall give notice and an opportunity to be heard to the Attorney General and to the person from whom the property was seized when the application for release is filed by another person.

(b) After the expiration of six months following the final determination of the criminal action, the trial court may make an order regarding any property which has not been released under Subsection (a) as follows:

(1) Property needed in any other criminal action or kept for historical purposes shall be retained.

(2) Property, the possession of which is prohibited by law, shall be delivered to the Attorney General for destruction or other disposition.

(3) Money shall be deposited in the general fund of the Territory.

(4) All other property shall be delivered to the Treasurer of the Territory who may retain it for public use by the Territory, sell it according to law, or destroy any property which is unusable.

(c) Thirty days prior to any order under Subsection (b), the clerk of the court shall have published one time in a newspaper of general circulation in the Territory, a description of the property which will be finally disposed of by court order unless the property is claimed in accordance with this Section.

NOTE: Section 150.50 replaces, expands and fulfills the "housekeeping" function performed by former § 1411.

Section 2. This Code shall become operative on January 1, 1978, and shall govern all proceedings in criminal actions commenced on or after that date and so far as just and practicable further proceedings in criminal actions pending on that date.

Section 3. This act shall become operative only if Bill Numbers 661 and 663 are chartered and become operative January 1, 1978, and, in such case become operative at the same time as Bill Numbers 661 and 663. Except as otherwise provided, this Code does not apply to proceedings in criminal actions commenced before its operative date and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this Code were not in force.

NOTE: Section 2 of this Act provides for a delayed operation date of January 1, 1978. The original operative date was July 1, 1977, but due to the fact that this Code was not published, nor contracted for publishing until approximately that date, the Legislature, by Public Law 14-41, extended the time before which this, and the Criminal & Correctional Code would become effective.

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With respect to the effect of this Code after its operative date, this Section is substantively the same as Rule 59 of the Federal Rules of Criminal Procedure, i.e., the code applies to all proceedings commenced after the operative date and although not retroactive, it does apply so far as is possible, to proceedings, although not cases, commenced after the effective date, even if the cases commenced earlier. For example, if a case was filed before the operative date, but trial commenced after the operative date, this Code would apply to the selection and composition of the jurors.
