

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-106
SENATE BILL 883**

AN ACT TO AMEND THE NOTIFICATION REQUIREMENT FOR MECKLENBURG COUNTY REGARDING THE DISPOSITION OF A SEIZED FIREARM AND TO PROVIDE THAT IN MECKLENBURG COUNTY EITHER THE SHERIFF OR THE CHIEF LAW ENFORCEMENT OFFICER OF THE AGENCY WITH JURISDICTION TO ENFORCE THE LAW WHERE THE FIREARM WAS SEIZED MAY DESTROY THE FIREARM IN ACCORDANCE WITH A COURT ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-11.1 reads as rewritten:

"§ 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, attorney or the legal representative for the agency storing the firearm, after notice to all

parties known or believed by the district attorney or the agency's legal representative 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.

If the owner is not known, then notice may be provided by publishing a notice in a newspaper of Mecklenburg County. The published notice shall include the following: (i) a statement that a firearm being stored by the agency is to be disposed of, and (ii) a reference to either an electronic Web site available to the general public or a list posted in a public place that provides a specific description of the firearm to be disposed of, sufficient in detail to identify the firearm. The firearm shall not be disposed of earlier than 30 days after the notice appears in the newspaper.

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~~ Mecklenburg County or the chief law enforcement officer storing the firearm, or by his ~~the~~ duly authorized agent. ~~agent of either the sheriff or the chief law enforcement officer as appropriate.~~ The sheriff or the chief law enforcement officer, as appropriate, shall maintain a record of the destruction of the firearm.

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.

(c) Any property, the forfeiture and disposition of which is specified in any general or special law, shall be disposed of in accordance therewith."

SECTION 2. This act applies only to Mecklenburg County.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives