

PART II. PRE-ARRAIGNMENT PROVISIONS  
Article 5. Search and Seizure  
Preliminary Draft No. 3

PROPOSED AMENDMENTS BY SUBCOMMITTEE NO. 2

August 1972

Section 36. Handling and disposition of things seized. (1) The provisions of subsections (2), (3) and (4) of this section apply to all cases of seizure, except for a seizure made under a search warrant.

(2) If an officer makes an arrest in connection with the seizure, he shall, as soon thereafter as is reasonably possible, make a written list of the things seized and furnish a copy of the list to the defendant.

(3) If no claim to rightful possession has been established under section 37 of this Article, the court shall order that the things be delivered to the officials having responsibility under the applicable laws for selling, destroying or otherwise disposing of contraband, forfeited or unclaimed goods in official custody.

(4) If things seized in connection with an arrest or under section 29 of this Article are not needed for evidentiary purposes, and if a person having a rightful claim establishes his identity and right to possession beyond a reasonable doubt to the satisfaction of the seizing officer, the officer may summarily return the things seized to their rightful possessor. If the things seized are perishable and it is not possible to return them to their rightful possessor, the seizing officer may dispose of the items as justice and the necessities of the case require.

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(NOTE: Sections 37 to 40 which follow, are based on section 37, Search and Seizure, Preliminary Draft No. 3. The change is suggested to improve the structure and readability of the draft. D.L.P.)

Section 37. Motions for return or restoration of things seized.

(1) Within 90 days after actual notice of any seizure, or at such later date as the court in its discretion may allow:

(a) An individual from whose person, property or premises things have been seized may move the appropriate court to return things seized to the person or premises from which they were seized.

(b) Any other person asserting a claim to rightful possession of the things seized may move the appropriate court to restore the things seized to the movant.

(2) The appropriate court in which to file the motion is:

(a) The court having ultimate trial jurisdiction over any crime charged in connection with the seizure; or

(b) If no crime is charged in connection with the seizure, the court to which the warrant was returned; or

(c) If the seizure was not made under a warrant and no crime is charged in connection with the seizure, any court having authority to issue search warrants in the county in which the seizure was made.

PART II, PRE-ARRAIGNMENT PROVISIONS

Article 5. Search and Seizure

Preliminary Draft No. 3

Section 38. Grounds for motion for return or restoration of things seized. A motion for the return or restoration of things seized shall be based on the ground that the movant has a valid claim to rightful possession thereof, because:

(1) The things had been stolen or otherwise converted, and the movant is the owner or rightful possessor; or

(2) The things seized were not in fact subject to seizure under this Article; or

(3) The movant, by license or otherwise, is lawfully entitled to possess things otherwise subject to seizure under this Article; or

(4) Although the things seized were subject to seizure under this Article, the movant is or will be entitled to their return or restoration upon the court's determination that they are no longer needed for evidentiary purposes; or

(5) The parties in the case have stipulated that the things seized may be returned to the movant.

PART II. PRE-ARRAIGNMENT PROVISIONS  
Article 5. Search and Seizure  
Preliminary Draft No. 3

Section 39. Postponement of return or restoration; appellate review. (1) In granting a motion for return or restoration of things seized, the court <sup>shall</sup> ~~may~~ postpone execution of the order until such time as the things in question need no longer remain available for evidentiary use.

(2) An order granting a motion for return or restoration of things seized shall be reviewable on appeal in regular course. An order denying such a motion or entered under section 40 of this Article shall be reviewable on appeal upon certification by the court having custody of the things in question that they are no longer needed for evidentiary purposes.

PART II. PRE-ARRAIGNMENT PROVISIONS  
Article 5. Search and Seizure  
Preliminary Draft No. 3

Section 40. Disputed possession rights. (1) If, upon consideration of a motion for return or restoration of things seized, it appears to the court that the things should be returned or restored, but there is a substantial question (whether they should be returned to the person from whose possession they were seized or <sup>restored</sup> to some other person, or a substantial question) among several claimants to rightful possession, the court may:

(a) Return the things to the person from whose possession they were seized; or

(b) Impound the things seized and set a further hearing, assuring that all persons with a possible possessory interest in the things in question receive due notice and an opportunity to be heard; and

(c) Upon completion of the hearing provided for in paragraph (b) of subsection (1) of this section, enter <sup>an</sup> such order for the return or restoration <sup>of the things seized</sup> ~~as appears to the court to be fair and just.~~

(2) Instead of conducting the hearing provided for in paragraph (b) of subsection (1) of this section, the court, in its discretion, may remit the several claimants to appropriate civil process for the determination of the claims.