

TITLE 19  
CRIMINAL PROCEDURE

CHAPTER 38  
DISPOSAL OF PROPERTY ILLEGALLY HELD BY DEFENDANT

19-3801. DISPOSAL OF STOLEN PROPERTY. When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

[(19-3801) Cr. Prac. 1864, sec. 589, p. 285; R.S., R.C., & C.L., sec. 8238; C.S., sec. 9192; I.C.A., sec. 19-3701.]

19-3802. ORDER FOR DELIVERY. On satisfactory proof of the ownership of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling it, must order it to be delivered to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

[(19-3802) Cr. Prac. 1864, sec. 590, p. 286; R.S., R.C., & C.L., sec. 8239; C.S., sec. 9193; I.C.A., sec. 19-3702.]

19-3803. DELIVERY TO OWNER. If property stolen or embezzled comes into custody of the magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

[(19-3803) Cr. Prac. 1864, sec. 591, p. 286; R.S., R.C., & C.L., sec. 8240; C.S., sec. 9194; I.C.A., sec. 19-3703.]

19-3804. COURT MAY ORDER DELIVERY. If the property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

[(19-3804) Cr. Prac. 1864, sec. 592, p. 286; R.S., R.C., & C.L., sec. 8241; C.S., sec. 9195; I.C.A., sec. 19-3704.]

19-3805. DELIVERY TO COUNTY TREASURER. If the property stolen or embezzled is not claimed by the owner before the expiration of six (6) months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody must, on the payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer, by whom it must be sold and the proceeds paid into the county treasury.

[(19-3805) Cr. Prac. 1864, sec. 593, p. 286; R.S., R.C., & C.L., sec. 8242; C.S., sec. 9196; I.C.A., sec. 19-3705.]

19-3806. RECEIPT FOR PROPERTY TAKEN FROM DEFENDANT. When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must, at the time, give duplicate receipts therefor, specifying particularly the amount of money or the kind of prop-

erty taken; one of which receipts he must deliver to the defendant, and the other of which he must forthwith file with the clerk of the court to which the depositions and statement are to be sent.

[(19-3806) Cr. Prac. 1864, sec. 594, p. 286; R.S., R.C., & C.L., sec. 8243; C.S., sec. 9197; I.C.A., sec. 19-3706.]

19-3807. CONFISCATION OF FIREARMS, EXPLOSIVES OR CONTRABAND UPON CONVICTION. (1) At the time any person is convicted of a felony in any court of the state of Idaho, firearms, ammunition, bombs, nitroglycerin, or explosives of any nature, including illegal fireworks, or any other deadly weapons or contraband of any kind found in his possession or under his control at the time of his arrest may be confiscated and disposed of in accordance with the order of the court before which such person was tried. "Contraband" as used in this section shall mean any personal property, possession of which is illegal under the laws of the state of Idaho or the United States.

(2) Notice of confiscation proceedings shall be given to each owner or person who is believed to have an interest in the property in question by serving a copy of the state's motion describing the property with a notice of hearing on the motion as follows:

(a) Upon each owner or interested party whose name and address is known, by mailing a copy of the state's motion to confiscate and notice of hearing by certified mail to the owner or party's last known address, or to his attorney;

(b) Upon all other owners or interested parties whose addresses are unknown, but who are believed to have an interest in the property, by publishing one (1) notice in a newspaper of general circulation in the county where the property was seized.

(3) Within twenty (20) days after the mailing or publication of the notice, the owner of the property in question and any other interested party may file with the court a claim to the property described in the motion to confiscate.

(4) If one (1) or more claims are filed, the confiscation proceeding shall be set for hearing at least thirty (30) days after the last timely claim is filed.

(5) At the confiscation hearing any person who has filed a timely claim may show by competent evidence that the property in question was not in the possession or control of the defendant at the time of his arrest or that the owner is innocent of any involvement in the acts which led to the defendant's arrest, in which case the court may return the property to the owner or interested person or order any other disposition which is appropriate under the circumstances.

(6) If no claim has been filed within twenty (20) days after the state's motion to confiscate and notice of hearing has been mailed or published, the court shall hear evidence concerning the defendant's possession and control of the property in question at the time of arrest. If it finds that the property was in the defendant's possession and control at the time of arrest or, if pursuant to subsection (5) of this section, the court rejects any claim which has been filed, the court may direct the delivery to the law enforcement agency which apprehended the defendant, for its use or for any other disposition in its discretion or, in the case of a firearm or ammunition, the court shall direct the delivery to the law enforcement agency which appre-

hended the defendant for disposition in accordance with section [55-403](#)(4), Idaho Code.

[19-3807, added 1941, ch. 53, sec. 1, p. 112; am. 1984, ch. 177, sec. 1, p. 424; am. 2005, ch. 217, sec. 1, p. 690.]