

ASSET FORFEITURE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to asset forfeiture.

Highlighted Provisions:

This bill:

- ▶ clarifies provisions related to the seizure and forfeiture of property and contraband;
- ▶ addresses jurisdiction of a district court over seized property;
- ▶ provides, with certain exceptions, that seized property may not be transferred or shared with a federal agency or an agency of another state;
- ▶ requires that a disclaimer of seized property by an individual be knowing and voluntary;
- ▶ provides that law enforcement agencies have 30 days to process seized cash or negotiable instruments;
- ▶ requires the cash or negotiable instrument be deposited into an interest-bearing account;
- ▶ amends provisions related to the retention of property for court proceedings;
- ▶ reduces the length of time for an agency to present a written request for forfeiture to a prosecutor;
- ▶ allows an agency or prosecuting attorney to release property to an innocent owner;
- ▶ prohibits the forfeiture of property seized upon the sole offense of possession of a controlled substance;



28 ▶ permits grants to any agency involved in forfeiture activities regardless of whether
29 the agency contributed to the State Asset Forfeiture Fund;

30 ▶ requires certification of asset forfeiture specialists by Peace Officers Standards and
31 Training or Utah Prosecution Council; and

32 ▶ makes technical and conforming changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **24-1-102**, as last amended by Laws of Utah 2017, Chapters 285 and 362

40 **24-1-103**, as enacted by Laws of Utah 2013, Chapter 394

41 **24-2-102**, as enacted by Laws of Utah 2013, Chapter 394

42 **24-2-103**, as last amended by Laws of Utah 2017, Chapter 362

43 **24-3-101**, as enacted by Laws of Utah 2013, Chapter 394

44 **24-3-103**, as last amended by Laws of Utah 2017, Chapters 285 and 334

45 **24-3-104**, as enacted by Laws of Utah 2013, Chapter 394

46 **24-4-101**, as enacted by Laws of Utah 2013, Chapter 394

47 **24-4-102**, as last amended by Laws of Utah 2017, Chapter 362

48 **24-4-103**, as enacted by Laws of Utah 2013, Chapter 394

49 **24-4-104**, as last amended by Laws of Utah 2017, Chapter 362

50 **24-4-105**, as last amended by Laws of Utah 2014, Chapter 112

51 **24-4-109**, as enacted by Laws of Utah 2013, Chapter 394

52 **24-4-110**, as last amended by Laws of Utah 2017, Chapter 362

53 **24-4-111**, as enacted by Laws of Utah 2013, Chapter 394

54 **24-4-112**, as enacted by Laws of Utah 2013, Chapter 394

55 **24-4-113**, as enacted by Laws of Utah 2013, Chapter 394

56 **24-4-115**, as last amended by Laws of Utah 2017, Chapter 303

57 **24-4-116**, as enacted by Laws of Utah 2013, Chapter 394

58 **24-4-117**, as last amended by Laws of Utah 2015, Chapter 134

59 **24-4-118**, as last amended by Laws of Utah 2017, Chapter 303

60 ENACTS:

61 **24-2-102.5**, Utah Code Annotated 1953

62 **24-2-104**, Utah Code Annotated 1953

63 **24-2-107**, Utah Code Annotated 1953

64 **24-2-108**, Utah Code Annotated 1953

65 **24-3-101.5**, Utah Code Annotated 1953

66 **24-4-103.3**, Utah Code Annotated 1953

67 **24-4-103.5**, Utah Code Annotated 1953

68 **24-4-119**, Utah Code Annotated 1953

69 **53-13-110.5**, Utah Code Annotated 1953

70 RENUMBERS AND AMENDS:

71 **24-2-105**, (Renumbered from 24-4-114, as last amended by Laws of Utah 2015,

72 Chapter 134)

73 **24-2-106**, (Renumbered from 24-3-102, as enacted by Laws of Utah 2013, Chapter 394)

74 REPEALS:

75 **24-4-107**, as last amended by Laws of Utah 2017, Chapter 362

76 **24-4-108**, as enacted by Laws of Utah 2013, Chapter 394



78 *Be it enacted by the Legislature of the state of Utah:*

79 Section 1. Section **24-1-102** is amended to read:

80 **24-1-102. Definitions.**

81 As used in this title:

82 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section

83 **24-4-116**.

84 (2) (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not
85 guilty.

86 (b) "Acquitted" does not include:

87 (i) a verdict of guilty on a lesser or reduced charge;

88 (ii) a plea of guilty to a lesser or reduced charge; or

89 (iii) dismissal of a charge as a result of a negotiated plea agreement.

90 (3) (a) "Agency" means [~~any~~] an agency of [~~municipal, county, or state government,~~
91 ~~including law enforcement agencies, law enforcement personnel, and multijurisdictional task~~
92 ~~forces~~] this state or a political subdivision of this state.

93 (b) "Agency" includes a law enforcement agency or a multijurisdictional task force.

94 (4) "Claimant" means [~~any~~]:

95 (a) an owner of property as defined in this section;

96 (b) an interest holder as defined in this section; or

97 (c) [~~person~~] an individual or entity who asserts a claim to any property seized for
98 forfeiture under this title.

99 (5) "Commission" means the [~~Utah~~] State Commission on Criminal and Juvenile
100 Justice created in Section 63M-7-201.

101 (6) "Complaint" means a civil [~~in rem~~] or criminal complaint seeking the forfeiture of
102 any real or personal property under this title.

103 (7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other
104 high-speed data processing device that performs logical, arithmetic, and storage functions[;
105 ~~and~~].

106 (b) "Computer" includes any device that is used for the storage of digital or electronic
107 files, flash memory, software, or other electronic information.

108 [~~(b)~~] (c) "Computer" does not mean a computer server of an Internet or [~~an~~] electronic
109 service provider, or the service provider's employee, if used [~~for the purpose of compliance~~
110 ~~with obligations pursuant to~~] to comply with the requirements under 18 U.S.C. Sec. 2258A.

111 (8) "Constructive seizure" means a seizure of property where the property is left in the
112 control of the owner and [~~the seizing~~] an agency posts the property with a notice of intent to
113 seek forfeiture.

114 (9) (a) "Contraband" means any property, item, or substance that is unlawful to
115 produce or to possess under state or federal law.

116 [~~(b) All controlled substances that are~~]

117 (b) "Contraband" includes:

118 (i) a controlled substance that is possessed, transferred, distributed, or offered for
119 distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act[~~, are~~
120 ~~contraband.~~]; or

121 ~~[(c) A computer is contraband if it:]~~

122 (ii) a computer that:

123 ~~[(i)] (A)~~ contains or houses child pornography, or is used to create, download, transfer,
124 upload to a storage account, or store any electronic or digital files containing child

125 pornography; or

126 ~~[(ii)] (B)~~ contains the personal identifying information of another ~~[person]~~ individual,

127 as defined in Subsection ~~76-6-1102~~(1), whether that ~~[person]~~ individual is alive or deceased,

128 and the personal identifying information has been used to create false or fraudulent

129 identification documents or financial transaction cards in violation of Title 76, Chapter 6, Part
130 5, Fraud.

131 (10) "Forfeit" means to divest a claimant of an ownership interest in property seized
132 under this title.

133 ~~[(10)] (11)~~ "Innocent owner" means a claimant who:

134 (a) held an ownership interest in property at the time ~~[the conduct subjecting the~~
135 ~~property to forfeiture occurred]~~ of the commission of an offense subjecting the property to
136 forfeiture under this title, and:

137 (i) did not have actual knowledge of the ~~[conduct]~~ offense subjecting the property to
138 forfeiture; or

139 (ii) upon learning of the ~~[conduct subjecting the property to forfeiture]~~ commission of
140 the offense, took reasonable steps to prohibit the ~~[illegal]~~ use of the property in the commission

141 of the offense; or

142 (b) acquired an ownership interest in the property and had no knowledge that the
143 ~~[illegal conduct subjecting the property to forfeiture]~~ commission of the offense subjecting the

144 property to forfeiture under this title had occurred or that the property had been seized for
145 forfeiture, and:

146 (i) acquired the property in a bona fide transaction for value;

147 (ii) was ~~[a person]~~ an individual, including a minor child, who acquired an interest in
148 the property through probate or inheritance; or

149 (iii) was a spouse who acquired an interest in property through dissolution of marriage
150 or by operation of law.

151 ~~[(11)] (12)~~ (a) "Interest holder" means a secured party as defined in Section

152 70A-9a-102, a party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a
153 security interest or encumbrance pertaining to an interest in property, whose interest would be
154 perfected against a good faith purchaser for value.

155 (b) "Interest holder" does not mean a person:

156 (i) who holds property for the benefit of or as an agent or nominee for another
157 person^[7]; or

158 (ii) who is not in substantial compliance with any statute requiring an interest in
159 property to be recorded or reflected in public records in order to perfect the interest against a
160 good faith purchaser for value.

161 ~~[(12)]~~ (13) "Known address" means any address provided by a claimant to the peace
162 officer or agency at the time the property ~~[was]~~ is seized, or the claimant's most recent address
163 on record with a governmental entity if no address was provided at the time of the seizure.

164 ~~[(13)]~~ (14) "Legal costs" means the costs and expenses incurred by a party in a
165 forfeiture action.

166 ~~[(14)]~~ (15) "Legislative body" means:

167 (a) (i) the Legislature, county commission, county council, city commission, city
168 council, or town council that has fiscal oversight and budgetary approval authority over an
169 agency; or

170 (ii) the agency's governing political subdivision; or

171 (b) the lead governmental entity of a multijurisdictional task force, as designated in a
172 memorandum of understanding executed by the agencies participating in the task force.

173 ~~[(15)]~~ (16) "Multijurisdictional task force" means a law enforcement task force or other
174 agency comprised of ~~[persons]~~ individuals who are employed by or acting under the authority
175 of different governmental entities, including federal, state, county or municipal governments,
176 or any combination of ~~[these]~~ federal, state, county, or municipal agencies.

177 ~~[(16)]~~ (17) "Owner" means ~~[any person]~~ an individual or entity, other than an interest
178 holder, that possesses a bona fide legal or equitable interest in real or personal property.

179 (18) "Peace officer" means an employee:

180 (a) of an agency;

181 (b) whose duties consist primarily of the prevention and detection of violations of laws
182 of this state or a political subdivision of this state; and

183 (c) who is authorized by the agency to seize property under this title.

184 [(17)] (19) (a) "Proceeds" means:

185 (i) property of any kind that is obtained directly or indirectly as a result of the
186 commission of an offense [~~that gives rise to forfeiture~~]; or

187 (ii) any property acquired directly or indirectly from, produced through, realized
188 through, or caused by an act or omission regarding property under Subsection [(17)] (19)(a)(i).

189 (b) "Proceeds" includes any property of any kind without reduction for expenses
190 incurred in the acquisition, maintenance, or production of that property, or any other purpose
191 regarding property under Subsection [(17)] (19)(a)(i).

192 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that
193 [~~gives rise to forfeiture~~] subjects the property to forfeiture.

194 [(18)] (20) "Program" means the State Asset Forfeiture Grant Program [~~established~~]
195 created in Section 24-4-117.

196 [(19)] (21) (a) "Property" means all property, whether real or personal, tangible or
197 intangible[~~, but~~].

198 (b) "Property" does not include contraband.

199 [(20)] (22) "Prosecuting attorney" means:

200 (a) the attorney general and [~~any~~] an assistant attorney general;

201 (b) [~~any~~] a district attorney or deputy district attorney;

202 (c) [~~any~~] a county attorney or assistant county attorney; and

203 (d) [~~any other~~] an attorney authorized to commence an action on behalf of the state
204 under this title.

205 [(21)] (23) "Public interest use" means a:

206 (a) use by a government agency as determined by the legislative body of the agency's
207 jurisdiction; or

208 (b) donation of the property to a nonprofit charity registered with the state.

209 [(22)] (24) "Real property" means land [~~and includes~~], including any building, fixture,
210 improvement, appurtenance, structure, or other development that is affixed permanently to
211 land.

212 Section 2. Section 24-1-103 is amended to read:

213 **24-1-103. Venue.**

214 ~~[(1) A state district court has jurisdiction over any action filed in accordance with this~~
215 ~~title regarding:]~~

216 ~~[(a) all interests in property if the property is within this state at the time the action is~~
217 ~~filed; and]~~

218 ~~[(b) a claimant's interests in the property, if the claimant is subject to the personal~~
219 ~~jurisdiction of the district court.]~~

220 ~~[(2)(a)]~~ (1) In addition to the venue provided for under Title 78B, Chapter 3, Part 3,
221 Place of Trial -- Venue, or any other provisions of law, a proceeding ~~[for forfeiture]~~ under this
222 title may be maintained in the judicial district in which:

223 (a) the property is seized;

224 ~~[(i)]~~ (b) any part of the property is found; or

225 ~~[(ii)]~~ (c) a civil or criminal action could be maintained against a claimant for the
226 [conduct alleged to constitute grounds for forfeiture] offense subjecting the property to
227 forfeiture under this title.

228 ~~[(b)]~~ (2) A claimant may obtain a change of venue under Section [78B-3-309](#).

229 Section 3. Section **24-2-102** is amended to read:

230 **24-2-102. Grounds for seizing property.**

231 ~~[(1) Property may be seized by a peace officer or any other person authorized by law~~
232 ~~upon process issued by a court having jurisdiction over the property in accordance with the~~
233 ~~Utah Rules of Criminal Procedure relating to search warrants or administrative warrants.]~~

234 (1) A peace officer may seize property and contraband upon a search warrant or
235 administrative warrant that is issued in accordance with the Utah Rules of Criminal Procedure.

236 ~~(2) [Property may be seized]~~ A peace officer may seize property and contraband under
237 this chapter when:

238 (a) the seizure is incident to an arrest;

239 (b) the property seized is the subject of a prior judgment in favor of the state in a
240 criminal injunction or forfeiture proceeding under this title; or

241 (c) the peace officer ~~[or other person authorized by law]~~ has probable cause to believe
242 that the property:

243 (i) is directly or indirectly dangerous to health or safety;

244 (ii) is evidence of ~~[a crime]~~ an offense;

245 (iii) has been used or was intended to be used to commit [~~a crime~~] an offense; or
246 (iv) is proceeds of [~~a crime~~] an offense.

247 Section 4. Section **24-2-102.5** is enacted to read:

248 **24-2-102.5. Seizure of contraband.**

249 If a peace officer seizes contraband, a person may not assert an ownership interest in the
250 contraband under this title.

251 Section 5. Section **24-2-103** is amended to read:

252 **24-2-103. Property seized by a peace officer.**

253 (1) To disclaim an ownership interest in property at the time of seizure, an individual's
254 disclaimer of the property shall be knowing and voluntary.

255 [~~(1)(a) When~~] (2) If property is seized [by a peace officer], the peace officer or the
256 peace officer's employing agency shall provide a receipt to the person from [whom] which the
257 property [was] is seized.

258 [~~(b)~~] (3) The receipt shall describe the:

259 [~~(i)~~] (a) property seized;

260 [~~(ii)~~] (b) date of seizure; and

261 [~~(iii)~~] (c) name and contact information of the peace officer's employing agency.

262 [~~(e)~~] (4) In addition to the receipt, [the person from whom the property was seized shall
263 be provided with information regarding the forfeiture process, including:] the peace officer or
264 agency shall provide the person with:

265 (a) information on:

266 (i) the time periods for the forfeiture of property; and

267 (ii) what happens to property upon a conviction or acquittal of the offense subjecting
268 the property to seizure; and

269 (b) a web link or referral to the self-help webpage of the Utah Courts' website for
270 resources that may assist the person in making a claim for the return of seized property.

271 [~~(i) important time periods in the forfeiture process;~~]

272 [~~(ii) what happens to the property upon conviction or acquittal; and]~~

273 [~~(iii) how to make a claim for the return of the property.]~~

274 [~~(d) A copy of the receipt shall be maintained by the agency.]~~

275 (5) The agency shall maintain a copy of the receipt provided in accordance with

276 Subsection (2).

277 ~~[(e)] (6)~~ If custody of the property is transferred to another agency, ~~[a copy of the~~
278 ~~receipt under Subsection (1)(a) shall be provided with the property]~~ the transferring agency
279 shall provide the other agency a copy of the receipt under Subsection (2) and the name of the
280 person from which the property was seized.

281 ~~[(2) The agency responsible for maintaining the property shall:]~~

282 ~~[(a) hold all seized property in safe custody until it can be disposed of as provided in~~
283 ~~this title; and]~~

284 ~~[(b) maintain a record of the property that includes:]~~

285 ~~[(i) a detailed inventory of all property seized;]~~

286 ~~[(ii) the name of the person from whom it was seized; and]~~

287 ~~[(iii) the agency's case number.]~~

288 ~~[(3) Property seized under this title is not recoverable by replevin, but is considered in~~
289 ~~the agency's custody subject only to the orders of the court or the official having jurisdiction.]~~

290 ~~[(4) All controlled substances or other contraband that is seized by a peace officer may~~
291 ~~be processed for evidentiary or investigative purposes, including sampling or other preservation~~
292 ~~procedure prior to disposal or destruction.]~~

293 ~~[(5) (a) An agency shall deposit property in the form of cash or other readily negotiable~~
294 ~~instruments into a separate, restricted, interest-bearing account maintained by the agency solely~~
295 ~~for the purpose of managing and protecting the property from commingling, loss, or~~
296 ~~devaluation.]~~

297 ~~[(b) Each agency shall have written policies for the identification, tracking,~~
298 ~~management, and safekeeping of seized property, which shall include a prohibition against the~~
299 ~~transfer, sale, or auction of seized property to any employee of the agency.]~~

300 ~~[(6) If a peace officer or the officer's employing agency records an interview of a minor~~
301 ~~child during an investigation of a violation of Section [76-5-402.1](#), [76-5-402.3](#), [76-5-403.1](#), or~~
302 ~~[76-5-404.1](#), the agency shall retain a copy of the recording for 18 years following the date of~~
303 ~~the last recording unless the prosecuting attorney requests in writing that the recording be~~
304 ~~retained for an additional period of time.]~~

305 ~~[(7) Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction~~
306 ~~Information Act, governs the disposition of property held by a pawn or secondhand business in~~

307 ~~the course of its business.]~~

308 Section 6. Section **24-2-104** is enacted to read:

309 **24-2-104. Custody of seized property and contraband.**

310 (1) If a peace officer seizes property or contraband under Section [24-2-102](#), the
311 property and contraband:

312 (a) is not recoverable by replevin; and

313 (b) is considered in the custody of the agency that employed the peace officer.

314 (2) An agency with custody of seized property shall:

315 (a) hold the property in safe custody until the property is released or disposed of in
316 accordance with this title; and

317 (b) maintain a record of the property, including:

318 (i) a detailed inventory of all property seized;

319 (ii) the name of the person from whom the property was seized; and

320 (iii) the agency's case number.

321 (3) An agency may process property or contraband that is seized by a peace officer for
322 evidentiary or investigative purposes, including sampling or other preservation procedure,
323 before disposal or destruction.

324 (4) (a) Except as provided in Subsection (4)(b), no later than 30 days after the day on
325 which a peace officer seizes property in the form of cash or other readily negotiable
326 instruments under Section [24-2-102](#), an agency shall deposit the property into a separate,
327 restricted, interest-bearing account maintained by the agency solely for the purpose of
328 managing and protecting the property from commingling, loss, or devaluation.

329 (b) A prosecuting attorney may authorize one or more written extensions of the 30-day
330 period under Subsection (4)(a) if the property needs to maintain the form in which the property
331 was seized for evidentiary purposes or other good cause.

332 (c) An agency shall:

333 (i) have written policies for the identification, tracking, management, and safekeeping
334 of seized property; and

335 (ii) shall have a written policy that prohibits the transfer, sale, or auction of seized
336 property to an employee of the agency.

337 Section 7. Section **24-2-105**, which is renumbered from Section 24-4-114 is

338 renumbered and amended to read:

339 ~~[24-4-114].~~ **24-2-105. Transfer and sharing procedures.**

340 ~~[(1) (a) Seizing agencies or prosecuting attorneys authorized to bring forfeiture~~
341 ~~proceedings under this chapter may not directly or indirectly transfer property held for~~
342 ~~forfeiture and not already named in a criminal indictment to any federal agency or any~~
343 ~~governmental entity not created under and subject to state law unless the court enters an order,~~
344 ~~upon petition of the prosecuting attorney, authorizing the property to be transferred.]~~

345 ~~[(b) The court may not enter an order authorizing a transfer under Subsection (1)(a)~~
346 ~~unless:]~~

347 ~~[(i) the conduct giving rise to the investigation or seizure is interstate in nature and~~
348 ~~sufficiently complex to justify the transfer;]~~

349 ~~[(ii) the property may only be forfeited under federal law; or]~~

350 ~~[(iii) pursuing forfeiture under state law would unreasonably burden prosecuting~~
351 ~~attorneys or state law enforcement agencies.]~~

352 ~~[(c) A petition to transfer property to a federal agency under this section shall include:]~~

353 ~~[(i) a detailed description of the property seized;]~~

354 ~~[(ii) the location where the property was seized;]~~

355 ~~[(iii) the date the property was seized;]~~

356 ~~[(iv) the case number assigned by the seizing law enforcement agency; and]~~

357 ~~[(v) a declaration that:]~~

358 ~~[(A) states the basis for relinquishing jurisdiction to a federal agency;]~~

359 ~~[(B) contains the names and addresses of any claimants then known; and]~~

360 ~~[(C) is signed by the prosecutor.]~~

361 ~~[(d) The court may not authorize the transfer of property to the federal government if~~
362 ~~the transfer would circumvent the protections of the Utah Constitution or of this chapter that~~
363 ~~would otherwise be available to the property owner.]~~

364 (1) Except as provided in Subsections (3)(a), (b), and (c), upon the seizure of property
365 by a peace officer under this title, the property is subject to the exclusive jurisdiction of a
366 district court of this state.

367 (2) Except as provided in Subsection (3), a peace officer, agency, or prosecuting
368 attorney may not directly or indirectly transfer or release property seized under this title to a

369 federal agency or to a governmental entity not created or subject to the laws of this state.

370 (3) An agency or prosecuting attorney may transfer or release seized property to a
371 federal agency or to a governmental entity not created or subject to the laws of this state if:

372 (a) (i) the property is cash or another readily negotiable instrument; and

373 (ii) the property is evidence in, or subject to, a federal criminal indictment, a federal
374 criminal information, or a federal criminal complaint before the property is seized;

375 (b) (i) the property is not cash or another readily negotiable instrument; and

376 (ii) the property is evidence in, or subject to, a federal criminal indictment, federal
377 criminal information, or federal criminal complaint before the day on which the agency with
378 custody of the property is required to return the property if no criminal or civil action is filed by
379 the prosecuting attorney or a federal prosecutor in accordance with Section [24-4-103.5](#);

380 (c) (i) the property was used in the commission of an offense in another state; and

381 (ii) an agency of that state requests the transfer of the property before the day on which
382 the agency with custody of the property is required to return the property if no criminal or civil
383 action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section
384 [24-4-103.5](#); or

385 (d) a district court authorizes, in accordance with Subsection (5), the transfer or release
386 of the property to an agency of another state or a federal agency upon a petition by a
387 prosecuting attorney or a federal prosecutor.

388 (4) (a) A prosecuting attorney, or a federal prosecutor, may file a petition in the district
389 court for the transfer or release of seized property.

390 (b) If a prosecuting attorney, or a federal prosecutor, files a petition under Subsection
391 (4)(a), the petition shall include:

392 (i) a detailed description of the property seized;

393 (ii) the location where the property was seized;

394 (iii) the date the property was seized;

395 (iv) the case number assigned by the agency; and

396 (v) a declaration that:

397 (A) states the basis for relinquishing jurisdiction to a federal agency or an agency of
398 another state;

399 (B) contains the names and addresses of any known claimant; and

400 (C) is signed by the prosecuting attorney or federal prosecutor.

401 (5) A district court may not authorize the transfer or release of seized property under
402 Subsection (3)(d), unless the district court finds, by a preponderance of the evidence:

403 (a) the property is evidence in, or subject to, a federal criminal indictment, a federal
404 criminal information, or a federal criminal complaint after the property is seized;

405 (b) the property may only be forfeited under federal law;

406 (c) forfeiting the property under state law would unreasonably burden the prosecuting
407 attorney or agency; or

408 (d) the property was subject to a federal criminal investigation before the property was
409 seized.

410 ~~[(e) (i) Prior to granting any order to transfer pursuant to this section, the court shall~~
411 ~~give any]~~

412 (6) (a) Before a district court may order the transfer of seized property in accordance
413 with this section, the court, the prosecuting attorney, or the federal prosecutor shall mail a
414 notice to:

415 (i) each address contained in the declaration under Subsection (4)(b)(v) to give a
416 claimant the right to be heard with regard to the transfer ~~[by the mailing of a notice to each~~
417 ~~address contained in the declaration.]; and~~

418 (ii)(A) if a federal prosecutor files the petition under Subsection (4), the prosecuting
419 attorney that is representing the agency with custody of the property; or

420 (B) if a prosecuting attorney files the petition under Subsection (4), the federal
421 prosecutor who will receive the property upon the transfer or release of the property.

422 ~~[(ii) If no claimant objects to the petition to transfer property within 10 days of the~~
423 ~~mailing of the notice;]~~

424 (b) If a claimant, or the party under Subsection (6)(a)(i), does not object to the petition
425 to transfer the property within 10 days after the day on which the notice is mailed, the court
426 shall issue [its] the court's order [under] in accordance with this section.

427 ~~[(iii)]~~ (c) If the declaration does not include an address for a claimant, the court shall
428 delay [its] the court's order under this section for 20 days to allow time for the claimant to
429 appear and make an objection.

430 ~~[(f)]~~ (d) (i) If a claimant, or a party under Subsection (6)(a)(i), contests a petition to

431 transfer the property to a federal agency or to another governmental entity not created or
 432 subject to the laws of this state, the district court shall promptly set the matter for hearing.

433 ~~[(ii) (A) The court shall determine whether the state may relinquish jurisdiction by a~~
 434 ~~standard of preponderance of the evidence.]~~

435 ~~[(B)]~~ (ii) In making ~~[the]~~ a determination under Subsection (5), the district court shall
 436 consider evidence regarding hardship, complexity, judicial and law enforcement resources,
 437 protections afforded under state and federal law, pending state or federal investigations, and
 438 any other relevant matter [the court determines to be relevant].

439 ~~[(2) All property, money, or other things of value received by an agency pursuant to~~
 440 ~~federal law, which authorizes the sharing or transfer of all or a portion of forfeited property or~~
 441 ~~the proceeds of the sale of forfeited property to an agency:]~~

442 (7) If an agency receives property, money, or other things of value under a federal law
 443 that authorizes the sharing or transfer of all or a portion of forfeited property, or the proceeds
 444 from the sale of forfeited property, the agency:

445 (a) shall ~~[be used]~~ use the property, money, or other things of value in compliance with
 446 federal laws and regulations relating to equitable sharing;

447 (b) may ~~[be used for those law enforcement purposes specified]~~ use the property,
 448 money, or other things of value for a law enforcement purpose described in Subsection
 449 24-4-117[(9)](10); and

450 (c) may not ~~[be used for those law enforcement purposes]~~ use the property, money, or
 451 other thing of value for a law enforcement purpose prohibited in Subsection
 452 24-4-117[(10)](11).

453 ~~[(3)]~~ (8) ~~[A state or local law enforcement]~~ An agency awarded [any] an equitable
 454 share of property forfeited by the federal government may [only] use the award money only
 455 after approval of the use by the agency's legislative body.

456 (9) If a district court exercises exclusive control over seized property, the district
 457 court's exclusive control is terminated if the property is released by the agency with custody of
 458 the property to:

459 (a) a claimant under Subsection 24-2-107(1)(a), Section 24-3-104, or Section
 460 24-4-103.5;

461 (b) a rightful owner under Section 24-3-103; or

462 (c) an innocent owner under Section 24-2-108.

463 Section 8. Section **24-2-106**, which is renumbered from Section 24-3-102 is
464 renumbered and amended to read:

465 ~~[24-3-102].~~ **24-2-106. Retention of property.**

466 (1) ~~[When property is received in evidence by the court]~~ If seized property is admitted
467 into evidence during a court proceeding, the clerk of the court shall:

468 (a) retain the property; or ~~[the clerk shall]~~

469 (b) return the property to the custody ~~[of the peace officer or the agency employing the~~
470 ~~peace officer]~~ of the agency.

471 ~~[(2) The property shall be retained by the clerk or the officer or the officer's agency]~~

472 (2) (a) The agency shall retain seized or forfeited property:

473 (i) at the discretion of the prosecuting attorney; or

474 (ii) until all direct appeals and retrials are final ~~[, at which time the property shall be~~
475 ~~disposed of in accordance with this title].~~

476 (3) If the prosecuting attorney ~~[considers it necessary]~~ decides to retain control over the
477 ~~[evidence]~~ seized or forfeited property under Subsection (2)(a) in anticipation of possible
478 collateral attacks upon the judgment or for use in a potential prosecution, the ~~[prosecutor]~~
479 prosecuting attorney may decline to authorize the disposal of the property ~~[under this chapter].~~

480 Section 9. Section **24-2-107** is enacted to read:

481 **24-2-107. Release of seized property to a claimant -- Release by surety bond or**
482 **cash - Release for hardship.**

483 (1) (a) An agency with custody of seized property or the prosecuting attorney may
484 release the property to a claimant if the agency or the prosecuting attorney:

485 (i) determines that retention of the property is unnecessary; or

486 (ii) seeks to return the property to the claimant because the agency or prosecuting
487 attorney determines that the claimant is an innocent owner.

488 (b) An agency with custody of the seized property, or the prosecuting attorney, shall
489 release the property to a claimant if:

490 (i) the claimant posts a surety bond or cash with the court in accordance with

491 Subsection (2);

492 (ii) the court orders the release of property for hardship purposes under Subsection (3);

493 (iii) a claimant establishes that the claimant is an innocent owner under Section
494 24-2-107; or

495 (iv) the court orders property retained as evidence to be released to a rightful owner
496 under Section 24-3-104.

497 (2) (a) Except as provided in Subsection (2)(b), a claimant may obtain release of seized
498 property by posting a surety bond or cash with the court that is in an amount equal to the
499 current fair market value of the property as determined by the court or a stipulation by the
500 parties.

501 (b) A court may refuse to order the release under Subsection (2)(a) of:

502 (i) the property if:

503 (A) the bond tendered is inadequate;

504 (B) the property is retained as evidence; or

505 (C) the property is particularly altered or designed for use in the commission of the
506 offense subjecting the property to forfeiture; or

507 (ii) contraband.

508 (c) If a surety bond or cash is posted and the court later determines that the property is
509 forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of the property.

510 (3) A claimant is entitled to the immediate release of seized property for which the
511 agency has filed a notice of intent to forfeit under Section 24-4-103 if:

512 (a) the claimant had a possessory interest in the property at the time of seizure;

513 (b) continued possession by the agency pending a forfeiture proceeding will cause
514 substantial hardship to the claimant, including:

515 (i) preventing the functioning of a legitimate business;

516 (ii) preventing any individual from working;

517 (iii) preventing any child from attending elementary or secondary school;

518 (iv) preventing or hindering an individual from receiving necessary medical care;

519 (v) preventing the care of a dependent child or adult who is elderly or disabled;

520 (vi) leaving an individual homeless; or

521 (vii) any other condition that the court determines causes a substantial hardship;

522 (c) the hardship from the continued possession of the property by the agency outweighs
523 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if the

524 property is returned to the claimant during the pendency of the proceeding; and

525 (d) the determination of substantial hardship under this Subsection (3) is based upon
526 the property's use before the seizure.

527 (4) A claimant may file a motion or petition for hardship release under Subsection (3):

528 (a) in the court in which forfeiture proceedings have commenced; or

529 (b) in a district court where there is venue if a forfeiture proceeding has not yet
530 commenced.

531 (5) The motion or petition for hardship release shall be served upon the agency with
532 custody of the property within five days after the day on which the motion or petition is filed.

533 (6) The court shall:

534 (a) schedule a hearing on the motion or petition within 14 days after the day on which
535 the motion or petition is filed; and

536 (b) render a decision on a motion or petition for hardship filed under this section no
537 later than 20 days after the day of the hearing, unless this period is extended by the agreement
538 of both parties or by the court for good cause shown.

539 (7) (a) If the claimant demonstrates substantial hardship under Subsection (3), the court
540 shall order the property immediately released to the claimant pending completion of any
541 forfeiture proceeding.

542 (b) The court may place conditions on release of the property as the court finds
543 necessary and appropriate to preserve the availability of the property or the property's
544 equivalent for forfeiture.

545 (8) The hardship release under this section does not apply to:

546 (a) contraband; or

547 (b) property that is likely to be used to commit additional offenses if returned to the
548 claimant.

549 Section 10. Section **24-2-108** is enacted to read:

550 **24-2-108. Innocent owners.**

551 (1) (a) A claimant alleged to be an innocent owner may recover possession of seized
552 property by:

553 (i) submitting a written request with the seizing agency before the later of:

554 (A) the commencement of a civil asset forfeiture proceeding; or

555 (B) 30 days after the day on which the property was seized; and
556 (ii) providing the seizing agency with:
557 (A) evidence that establishes proof of ownership; and
558 (B) a brief description of the date, time, and place that the claimant mislaid or
559 relinquished possession of the seized property, or any evidence that the claimant is an innocent
560 owner.

561 (b) If a seizing agency receives a claim under Subsection (1)(a), the seizing agency
562 shall issue a written response to the claimant within 30 days after the day on which the seizing
563 agency receives the claim.

564 (c) A response under Subsection (1)(b) from the seizing agency shall indicate whether
565 the claim has been granted, denied on the merits, or denied for failure to provide the
566 information required by Subsection (1)(a)(ii).

567 (d) (i) If a seizing agency denies a claim for failure to provide the information required
568 by Subsection (1)(a)(ii), the claimant has 15 days after the day on which the claim is denied to
569 submit additional information.

570 (ii) If a prosecuting attorney has not filed a civil action seeking to forfeit the property
571 and a seizing agency has denied a claim for failure to provide the information required by
572 Subsection (1)(a)(ii), the prosecuting attorney may not commence a civil action until:

573 (A) the claimant has submitted information under Subsection (1)(d)(i); or

574 (B) the deadline for the claimant to submit information under Subsection (1)(d)(i) has
575 passed.

576 (e) If a seizing agency fails to issue a written response within 30 days after the day on
577 which the seizing agency receives the response, the seizing agency shall return the property.

578 (2) If a claim under Subsection (1)(a) is granted, or the property is returned because the
579 seizing agency fails to respond within 30 days, a claimant may not receive any expenses, costs,
580 or attorney fees for the returned property.

581 (3) A claimant may collect reasonable attorney fees and court costs if:

582 (a) a claimant filed a claim under Subsection (1)(a);

583 (b) the seizing agency denies the claim on the merits; and

584 (c) a court determines that the claimant is an innocent owner in a civil asset forfeiture
585 proceeding.

586 (4) If a court grants reasonable attorney fees and court costs, the amount of the attorney
 587 fees begins to accrue from the day on which the seizing agency denied the claim.

588 (5) If the court grants reasonable attorney fees and court costs under Subsection (3), the
 589 attorney fees and court costs are not subject to the 50% cap under Subsection 24-4-110(2).

590 (6) A communication between parties regarding a claim submitted under Subsection
 591 (3) and any evidence provided to the parties in connection with a claim is subject to the Utah
 592 Rules of Evidence, Rules 408 and 410.

593 (7) An agency and the prosecuting attorney may not forfeit the seized property of an
 594 innocent owner.

595 Section 11. Section **24-3-101** is amended to read:

596 **CHAPTER 3. DISPOSAL OF PROPERTY**

597 **24-3-101. Title.**

598 This chapter is known as [~~"Property Held as Evidence."~~] "Disposal of Property."

599 Section 12. Section **24-3-101.5** is enacted to read:

600 **24-3-101.5. Application of this chapter.**

601 The provisions of this chapter do not apply to property for which an agency has filed a
 602 notice of intent to seek forfeiture under Section 23-4-103.

603 Section 13. Section **24-3-103** is amended to read:

604 **24-3-103. Disposition of property.**

605 (1) [~~When the~~] If a prosecuting attorney determines that seized property no longer
 606 needs to be [held as evidence] retained for court proceedings, the prosecuting attorney may:

607 (a) petition the court to apply [~~any~~] the property that is money towards restitution,
 608 fines, fees, or monetary judgments owed by the owner of the property;

609 (b) petition the court for an order transferring ownership of any weapons to the
 610 [~~seizing~~] agency with custody for the agency's use and disposal in accordance with [~~applicable~~
 611 ~~law~~] Section 24-3-103.5, if the owner:

612 (i) is the [~~person~~] individual who committed the [~~crime~~] offense for which the weapon
 613 was seized; or

614 (ii) may not lawfully possess the weapon; or

615 (c) notify the agency [~~that has possession~~] with custody of the property [~~that the~~
 616 ~~property may be:~~] or contraband that:

- 617 (i) the property may be returned to the rightful owner[;] if the rightful owner may
618 lawfully possess [it] the property; or
- 619 (ii) the contraband may be disposed of or destroyed[~~if the property is contraband~~].
- 620 (2) The agency shall exercise due diligence in attempting to notify the rightful owner of
621 the property to advise the owner that the property is to be returned.
- 622 (3) (a) For a computer determined to be contraband, a court may order the reasonable
623 extraction and return of specifically described personal digital data to the rightful owner.
- 624 (b) The law enforcement agency shall determine a reasonable cost to [provide] extract
625 the data[~~which shall be paid by the owner at the time of the request to extract the data~~].
- 626 (c) At the time of the request to extract the data, the owner of the computer shall pay
627 the agency the cost to extract the data.
- 628 (4) (a) Before [the] an agency may release seized property to a person claiming
629 ownership of the property, the person shall establish in accordance with Subsection (4)(b) that
630 the person:
- 631 (i) is the rightful owner; and
632 (ii) may lawfully possess the property.
- 633 (b) The person shall establish ownership under Subsection (4)(a) by providing to the
634 agency:
- 635 (i) identifying proof or documentation of ownership of the property; or
636 (ii) a notarized statement[;] if proof or documentation is not available.
- 637 (5) (a) When seized property is returned to the owner, the owner shall sign a receipt
638 listing in detail the property that is returned [~~shall be signed by the owner~~].
- 639 [~~(b) The receipt shall be retained by the agency and a copy shall be provided to the~~
640 ~~owner.~~]
- 641 (b) The agency shall:
- 642 (i) retain a copy of the receipt; and
643 (ii) provide a copy of the receipt to the owner.
- 644 (6) (a) Except as provided in Subsection (6)(b), if the agency is unable to locate the
645 rightful owner of the property or [if] the rightful owner is not entitled to lawfully possess the
646 property, the agency may:
- 647 (i) apply the property to a public interest use;

648 (ii) sell the property at public auction and apply the proceeds of the sale to a public
649 interest use; or

650 (iii) destroy the property if the property is unfit for a public interest use or for sale.

651 (b) If the property described in Subsection (6)(a) is a firearm, the agency shall dispose
652 of the firearm in accordance with Section [24-3-103.5](#).

653 (7) Before applying the property or the proceeds from the sale of the property to a
654 public interest use, the agency shall obtain from the legislative body of ~~[its]~~ the agency's
655 jurisdiction:

656 (a) permission to apply the property or the proceeds to public interest use; and

657 (b) the designation and approval of the public interest use of the property or the
658 proceeds.

659 (8) If a peace officer seizes property that at the time of seizure is held by a pawn or
660 secondhand business in the course of the pawn or secondhand business's business, the
661 provisions of Section [13-32a-116](#) shall apply to the disposition of the property.

662 Section 14. Section **24-3-104** is amended to read:

663 **24-3-104. Petition to return property.**

664 (1) (a) A ~~[person claiming ownership of property held as evidence]~~ claimant may file a
665 petition with the court for the return of the property that is being retained as evidence.

666 ~~[(b) The petition may be filed in:]~~

667 (b) The claimant may file the petition in:

668 (i) the court in which criminal proceedings have commenced regarding the ~~[conduct]~~
669 offense for which the property is ~~[held as]~~ being retained as evidence; or

670 (ii) the district court ~~[of the jurisdiction where the property was seized;]~~ with venue
671 under Section [24-1-103](#) if there are no pending criminal proceedings.

672 (c) ~~[A copy of the petition shall be served]~~ A claimant shall serve a copy of the petition
673 on the prosecuting attorney and the agency ~~[which has possession]~~ with custody of the
674 property.

675 (2) (a) The court shall provide an opportunity for an expedited hearing.

676 (b) After the opportunity for an expedited hearing, the court may order that the property
677 ~~[be]~~ is:

678 ~~[(a)]~~ (i) returned to the rightful owner as determined by the court;

679 ~~[(b)]~~ (ii) if the offense subjecting the property to seizure results in a conviction, applied
 680 directly or by proceeds of the sale of the property toward restitution, fines, or fees owed by the
 681 rightful owner in an amount set by the court;

682 ~~[(c)]~~ (iii) converted to a public interest use;

683 ~~[(d)]~~ (iv) held for further legal action;

684 ~~[(e)]~~ (v) sold at public auction and the proceeds of the sale applied to a public interest
 685 use; or

686 ~~[(f)]~~ (vi) destroyed.

687 (3) Before the court can order property be returned to a ~~[person claiming ownership of~~
 688 ~~property, the person]~~ claimant, the claimant shall establish, by clear and convincing evidence,
 689 that the ~~[person]~~ claimant:

690 (a) is the rightful owner; and

691 (b) may lawfully possess the property.

692 (4) If the court orders the property to be returned to the claimant, the agency ~~[that~~
 693 ~~possesses]~~ with custody of the property shall return the property to the claimant as
 694 expeditiously as possible.

695 Section 15. Section **24-4-101** is amended to read:

696 **CHAPTER 4. FORFEITURE OF SEIZED PROPERTY**

697 **24-4-101. Title.**

698 This chapter is known as ~~["Property Held for Forfeiture."] "~~Forfeiture of Seized
 699 Property."

700 Section 16. Section **24-4-102** is amended to read:

701 **24-4-102. Property subject to forfeiture.**

702 ~~[(1) Except as provided in Subsection (3), property that has been used to facilitate the~~
 703 ~~commission of a federal or state criminal offense and any proceeds of criminal activity may be~~
 704 ~~forfeited under this chapter, including:]~~

705 ~~[(a) real property, including things growing on, affixed to, and found in land; and]~~

706 ~~[(b) tangible and intangible personal property, including money, rights, privileges,~~
 707 ~~interests, claims, and securities of any kind.]~~

708 (1) Except as provided in Subsection (2), (3), or (4), an agency may seek to forfeit:

709 (a) seized property that was used to facilitate the commission of an offense that is a

710 violation of federal or state law; and

711 (b) seized proceeds.

712 (2) If ~~[the]~~ seized property is used to facilitate ~~[a]~~ an offense that is a violation of
713 Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, [the property subject to
714 forfeiture under this section is limited to property, the seizure or forfeiture of which would not]
715 an agency may not forfeit the property if the forfeiture would constitute a prior restraint on the
716 exercise of an affected party's rights under the First Amendment to the Constitution of the
717 United States or Utah Constitution, Article I, Section 15, or would ~~[not]~~ otherwise unlawfully
718 interfere with the exercise of ~~[those]~~ the party's rights under the First Amendment to the
719 Constitution of the United States or Utah Constitution, Article I, Section 15.

720 (3) ~~[A]~~ If a motor vehicle is used in ~~[a]~~ an offense that is a violation of Section
721 41-6a-502, 41-6a-517, a local ordinance that complies with the requirements of Subsection
722 41-6a-510(1), Subsection 58-37-8(2)(g), or Section 76-5-207 [may not be forfeited unless], an
723 agency may not seek forfeiture of the motor vehicle, unless:

724 (a) the operator of the vehicle has previously been convicted of ~~[a violation,] an~~
725 offense committed after May 12, 2009, ~~[of]~~ that is:

726 (i) a felony driving under the influence violation under Section 41-6a-502;

727 (ii) a felony violation under Subsection 58-37-8(2)(g); or

728 (iii) automobile homicide under Section 76-5-207; or

729 (b) the operator of the vehicle was driving on a denied, suspended, revoked, or
730 disqualified license~~;~~ and:

731 (i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii)
732 was imposed because of a violation under:

733 (A) Section 41-6a-502;

734 (B) Section 41-6a-517;

735 (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);

736 (D) Section 41-6a-520;

737 (E) Subsection 58-37-8(2)(g);

738 (F) Section 76-5-207; or

739 (G) a criminal prohibition ~~[that the person was charged with violating]~~ as a result of a
740 plea bargain after having been originally charged with violating one or more of the sections or

741 ordinances described in Subsections (3)(b)(i)(A) through (F); or

742 (ii) the denial, suspension, revocation, or disqualification described in Subsections
743 (3)(b)(i)(A) through (G):

744 (A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension,
745 revocation, or disqualification; and

746 (B) the original denial, suspension, revocation, or disqualification was imposed
747 because of a violation described in Subsections (3)(b)(i)(A) through (G).

748 (4) If a peace officer seizes property incident to an arrest solely for possession of a
749 controlled substance under Subsection 58-37-8(2)(a)(i) but not Subsection 53-37-8(2)(b)(i), an
750 agency may not seek to forfeit the property that was seized in accordance with the arrest.

751 Section 17. Section **24-4-103** is amended to read:

752 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

753 ~~[(1) (a) Within 30 days from the date that property is seized, an agency seeking to~~
754 ~~forfeit property shall serve a notice of intent to seek forfeiture upon any claimants known to the~~
755 ~~agency.]~~

756 (1) (a) If an agency seeks to forfeit property seized under this title, the agency shall
757 serve a notice of intent to seek forfeiture to any known claimant within 30 days after the day on
758 which the property is seized.

759 (b) The notice of intent to seek forfeiture shall describe ~~the~~:

760 (i) the date of the seizure;

761 (ii) the property seized;

762 (iii) the claimant's rights and obligations under this chapter, including the availability
763 of hardship relief in appropriate circumstances; and

764 (iv) the statutory basis for the forfeiture, including the judicial proceedings by which
765 the property may be forfeited under this chapter.

766 ~~[(c) The notice of intent to seek forfeiture shall be served by:]~~

767 (c) The agency shall serve the notice of intent to seek forfeiture by:

768 (i) certified mail, with a return receipt requested, to the claimant's known address; or

769 (ii) personal service.

770 (d) ~~[The]~~ A court may void ~~[any]~~ a forfeiture made without notice under Subsection

771 (1)(a), unless the agency demonstrates:

- 772 (i) good cause for the failure to give notice to the claimant; or
773 (ii) that the claimant had actual notice of the seizure.

774 ~~[(2) (a) Once the agency has served each claimant with a notice of intent to seek~~
775 ~~forfeiture, but no later than 60 days from the date that property is seized, the agency shall~~
776 ~~present a written request for forfeiture to the prosecuting attorney.]~~

777 (2) If an agency sends a notice of intent to forfeit seized property under Subsection
778 24-4-103(1), an individual or entity may not alienate, convey, sequester, or attach the property
779 until a court:

- 780 (a) issues a final order to dismiss an action under this title; or
781 (b) orders the forfeiture of the property.

782 (3) (a) (i) If an agency has served each claimant with a notice of intent to seek
783 forfeiture, the agency shall present a written request for forfeiture to the prosecuting attorney of
784 the municipality or county where the property is seized.

785 (ii) The agency shall provide the request under Subsection (3)(a)(i) no later than 45
786 days after the day on which the property is seized.

787 (b) The written request described in Subsection (3)(a) shall:

- 788 (i) describe the property ~~[to be forfeited]~~ that the agency is seeking to forfeit; and
789 (ii) include a copy of all reports, supporting documents, and other evidence that is
790 necessary for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture
791 action.

792 (c) The prosecuting attorney shall:

- 793 (i) review the written request described in Subsection (3)(a)(i); and
794 (ii) within 75 days after the day on which the property is seized, decline or accept, in
795 writing, the agency's written request for the prosecuting attorney to initiate a proceeding to
796 forfeit the property.

797 Section 18. Section **24-4-103.3** is enacted to read:

798 **24-4-103.3. Sale of seized property.**

799 (1) (a) Subject to Subsection (2), the court may order seized property, for which a
800 forfeiture proceeding is pending, to:

- 801 (i) be sold, leased, rented, or operated to satisfy a specified interest of any claimant; or
802 (ii) preserve the interests of any party on motion of that party.

803 (b) The court may enter an order under Subsection (1)(a) after:
804 (i) written notice to any person known to have an interest in the property has been
805 given; and
806 (ii) an opportunity for a hearing for any person known to have an interest in the
807 property has occurred.
808 (2) (a) A court may order a sale of property under Subsection (1) when:
809 (i) the property is liable to perish, waste, or be significantly reduced in value; or
810 (ii) the expenses of maintaining the property are disproportionate to the property's
811 value.
812 (b) A third party designated by the court shall:
813 (i) dispose of the property by a commercially reasonable public sale; and
814 (ii) distribute the proceeds in the following order of priority:
815 (A) first, for the payment of reasonable expenses incurred in connection with the sale;
816 (B) second, for the satisfaction of an interest, including an interest of an interest holder,
817 in the order of an interest holder's priority as determined by Title 70A, Uniform Commercial
818 Code; and
819 (C) third, any balance of the proceeds shall be preserved in the actual or constructive
820 custody of the court, in an interest-bearing account, subject to further proceedings under this
821 chapter.
822 Section 19. Section **24-4-103.5** is enacted to read:
823 **24-4-103.5. Mandatory return of seized property.**
824 (1) An agency shall promptly return property seized under this title, and the
825 prosecuting attorney may take no further action to forfeit the property, unless within 75 days
826 after the day on which the property is seized:
827 (a) the prosecuting attorney:
828 (i) files a criminal indictment or information under Subsection [24-4-105\(3\)](#);
829 (ii) files a petition to transfer the property to another agency in accordance with Section
830 [24-2-105](#);
831 (iii) files a civil forfeiture complaint under Section [24-4-104](#); or
832 (b) the prosecuting attorney or a federal prosecutor obtains a restraining order under
833 Subsection [24-4-105\(4\)](#).

834 (2) (a) The prosecuting attorney may file a petition to extend the deadline under
835 Subsection (1) by 21 days.

836 (b) If a prosecuting attorney files a petition under Subsection (2)(a), and the
837 prosecuting attorney provides good cause for extending the deadline, a court shall grant the
838 petition.

839 (c) The prosecuting attorney may not file more than one petition under this Subsection
840 (2).

841 (3) If a prosecuting attorney is unable to file a civil forfeiture complaint under
842 Subsection (1)(a)(iii) because a claimant has filed a claim under Section 24-2-108 and the
843 claimant has an extension to provide additional information on the claim under Subsection
844 24-2-108(1)(d), the deadline under Subsection (1) may be extended by 15 days.

845 Section 20. Section **24-4-104** is amended to read:

846 **24-4-104. Civil forfeiture procedure.**

847 ~~[(1) (a) The law enforcement agency shall promptly return seized property, and the~~
848 ~~prosecuting attorney may take no further action to effect the forfeiture of the property, unless~~
849 ~~within 75 days after the property is seized the prosecuting attorney:]~~

850 ~~[(i) files a criminal indictment or information under Subsection 24-4-105(2);]~~

851 ~~[(ii) obtains a restraining order under Subsection 24-4-105(3);]~~

852 ~~[(iii) files a petition under Subsection 24-4-114(1); or]~~

853 ~~[(iv) files a civil forfeiture complaint.]~~

854 (1) (a) A prosecuting attorney may commence a civil action to forfeit seized property
855 by filing a complaint.

856 ~~(b) [A complaint for civil forfeiture]~~ The complaint under Subsection (1)(a) shall
857 describe with reasonable particularity [the]:

858 (i) the property that [is the subject of the forfeiture proceeding] the agency is seeking to
859 forfeit;

860 (ii) the date and place of seizure; and

861 (iii) the factual allegations that constitute a basis for forfeiture.

862 (2) (a) After a complaint is filed, the prosecuting attorney shall serve a copy of the
863 complaint and summons upon each claimant known to the prosecuting attorney within 30 days
864 after the day on which the complaint is filed.

865 (b) The prosecuting attorney is not required to serve a copy of the complaint or the
866 summons upon ~~[any]~~ a claimant ~~[who]~~ which has disclaimed, in writing, an ownership interest
867 in the seized property.

868 (c) Service of the complaint and summons shall be by:

869 (i) personal service;

870 (ii) certified mail, with a return receipt requested, to the claimant's known address; or

871 (iii) service by publication, if the prosecuting attorney demonstrates to the court that
872 service cannot reasonably be made by personal service or certified mail.

873 (d) Service by publication shall be by publication of two notices, in two successive
874 weeks, of the forfeiture proceeding:

875 (i) in a newspaper of general circulation in the county in which the seizure occurred;
876 and

877 (ii) on Utah's Public Legal Notice Website established in Subsection [45-1-101\(2\)\(b\)](#).

878 (e) Service is effective upon the earlier of:

879 (i) personal service;

880 ~~[(ii) mailing of a written notice; or]~~

881 (ii) certified mail; or

882 (iii) publication in accordance with Subsection (2)(d).

883 (f) ~~[Upon motion of the prosecuting attorney and a showing of good cause, the]~~ The
884 court may extend the period to complete service under this section for an additional 60 days~~[:]~~
885 if the prosecuting attorney:

886 (i) moves the court to extend the period to complete service; and

887 (ii) has shown good cause for extending service.

888 (3) (a) ~~[In any case where the]~~ If a prosecuting attorney files a complaint for forfeiture
889 as described in Subsection (1), a claimant may file an answer to the complaint.

890 ~~[(b) The answer shall be filed within 30 days after the complaint is served upon the~~
891 ~~claimant as provided in Subsection (2)(b).]~~

892 (b) If a claimant files an answer in accordance with Subsection (3)(a), the claimant
893 shall file the answer within 30 days after the day on which the complaint is served upon the
894 claimant.

895 (c) ~~[When the property subject to forfeiture]~~ If an agency is seeking to forfeit property

896 under Section 24-4-103 and the property is valued at less than \$10,000, the agency [that has
897 custody of the property] shall return the property to the claimant if:

898 (i) (A) the prosecuting attorney has filed a forfeiture complaint, and the claimant has
899 filed an answer [~~through an attorney or pro se~~], in accordance with Subsections (3)(a) and (b);
900 and

901 (B) the prosecuting attorney has not filed an information or indictment for [~~criminal~~
902 ~~conduct giving rise to the forfeiture~~] the offense for which the property is seized within 60 days
903 after the [~~date that service of the forfeiture complaint on the claimant was completed~~] day on
904 which the prosecuting attorney served the claimant with the complaint, or the prosecuting
905 attorney has not timely moved a court [of competent jurisdiction] and demonstrated reasonable
906 cause for [an extension of time to file such an] extending the time to file the information or
907 indictment; or

908 (ii) the information or indictment for [~~criminal conduct giving rise to the forfeiture~~] the
909 offense for which the property was seized was dismissed and the prosecuting attorney has not
910 refiled the information or indictment within seven days [~~of the dismissal~~] after the day on
911 which the information or indictment was dismissed.

912 (d) [~~The~~] A claimant is not entitled to any expenses, costs, or attorney fees for the
913 return of property to the claimant under Subsection (3)(c) [does not include any expenses,
914 costs, or attorney fees].

915 (e) (i) The time limitations in Subsection (3)(c)(i) may be extended for up to 15 days if
916 a claimant timely seeks to recover possession of seized property [~~pursuant to Subsection~~
917 ~~24-4-107(8), but~~] in accordance with Section 24-2-108.

918 (ii) If the time limitations are extended under Subsection (3)(c)(i), the time limitations
919 in Subsection (3)(c)(i) shall resume immediately upon the [seizing] agency's or prosecuting
920 attorney's timely denial of [the] a claim under Section 24-2-108 on the merits.

921 (4) Except as otherwise provided in this chapter, [~~forfeiture proceedings are~~] a civil
922 action for a forfeiture proceeding is governed by the Utah Rules of Civil Procedure.

923 (5) The court shall:

924 (a) take all reasonable steps to expedite [~~civil forfeiture proceedings and shall~~] a civil
925 forfeiture proceeding; and

926 (b) give [~~these proceedings~~] a civil forfeiture proceeding the same priority as [is given

927 ~~to criminal cases]~~ a criminal case.

928 ~~[(6) In all suits or actions brought under this section for the civil forfeiture of any~~
 929 ~~property, the burden of proof is on the prosecuting attorney to establish by clear and convincing~~
 930 ~~evidence that the claimant engaged in conduct giving rise to the forfeiture.]~~

931 ~~[(7)]~~ (6) A claimant may file an answer to a complaint for civil forfeiture without
 932 posting bond with respect to the property ~~[subject to forfeiture]~~ that the agency seeks to forfeit.

933 ~~[(8)]~~ (7) ~~[Property is subject to forfeiture under this chapter]~~ A court shall grant an
 934 agency's request to forfeit property if the prosecuting attorney establishes, by clear and
 935 convincing evidence, that:

936 (a) the claimant ~~[has engaged in conduct giving rise to forfeiture];~~

937 ~~[(b) the property was acquired by the claimant during that portion of the conduct that~~
 938 ~~gives rise to forfeiture, or within a reasonable time after that conduct is committed; and]~~

939 (i) committed the offense subjecting the property to forfeiture under Subsection
 940 24-4-102(1);

941 (ii) knew of the offense subjecting the property to forfeiture under Subsection
 942 24-4-102(1) and allowed the property to be used in furtherance of the offense; or

943 (iii) acquired the property at the time of the offense subjecting the property to forfeiture
 944 under Subsection 24-4-102(1), or within a reasonable time after the offense occurred; or

945 ~~[(c)]~~ (b) there is no likely source for the purchase or acquisition of the property other
 946 than ~~[the conduct that gives rise to forfeiture]~~ the commission of the offense subjecting the
 947 property to forfeiture under Subsection 24-4-102(1).

948 ~~[(9) A finding by the court that property is the proceeds of conduct giving rise to~~
 949 ~~forfeiture does not require proof that the property was the proceeds of any particular exchange~~
 950 ~~or transaction.]~~

951 ~~[(10) If the prosecutor establishes that the property is subject to forfeiture, but the~~
 952 ~~claimant is subsequently criminally charged with the conduct giving rise to the forfeiture and is~~
 953 ~~acquitted of that charge on the merits.]~~

954 ~~[(a) the property subject to the forfeiture or the open market value of the property, if~~
 955 ~~the property has been disposed of under Subsection 24-4-108(13), shall be returned to the~~
 956 ~~claimant; and]~~

957 ~~[(b) any payments required under this chapter regarding the costs of holding the~~

958 ~~property shall be paid to the claimant.]~~

959 (8) If a court finds that the property is the proceeds of an offense that subjects the
 960 proceeds to forfeiture under Subsection 24-4-102(1), the prosecuting attorney does not need to
 961 prove that the property was the proceeds of a particular exchange or transaction.

962 (9) If a claimant is acquitted of the offense subjecting the property to forfeiture under
 963 this section:

964 (a) (i) the property for which forfeiture is sought shall be returned to the claimant; or

965 (ii) the open market value of the property for the property for which forfeiture is sought
 966 shall be awarded to the claimant if the property has been disposed of under Section 24-4-103.3;
 967 and

968 (b) any payment requirement under this chapter related to the holding of property shall
 969 be paid to the claimant.

970 (10) If the prosecuting attorney seeks to discontinue a forfeiture proceeding under this
 971 section and transfer the action to another state or federal agency that has initiated a civil or
 972 criminal proceeding involving the same property, the prosecuting attorney shall file a petition
 973 to transfer the property in accordance with Section 24-2-105.

974 (11) A civil forfeiture action under this section may be converted to a criminal
 975 forfeiture action at any time after a prosecuting attorney files a criminal complaint, information,
 976 or indictment for the offense subjecting the property to forfeiture under Subsection
 977 24-4-102(1).

978 Section 21. Section **24-4-105** is amended to read:

979 **24-4-105. Criminal forfeiture procedure.**

980 (1) As used in this section, "defendant" means a claimant who is criminally prosecuted
 981 for the offense subjecting the property to forfeiture under Subsection 24-4-102(1).

982 ~~[(1)]~~ (2) [If a claimant is criminally prosecuted for conduct giving rise to the forfeiture;
 983 ~~the] A prosecuting attorney may [elect to] seek forfeiture of [the claimant's] the defendant's
 984 interest in [the property] seized property through the criminal case.~~

985 ~~[(2)]~~ (3) If the prosecuting attorney [elects to seek] seeks forfeiture of [the claimant's] a
 986 defendant's interest in [the property] seized property through the criminal case, [the information
 987 or indictment shall state that the claimant's interest in the property is subject to forfeiture and
 988 the basis for the forfeiture] the prosecuting attorney shall state in the information or indictment

989 the grounds for which the agency seeks to forfeit the property.

990 ~~[(3)(a) Upon application of the prosecuting attorney, the court may enter restraining~~
991 ~~orders or injunctions, or take other reasonable actions to preserve for forfeiture under this~~
992 ~~section, any property subject to forfeiture if, after notice to known claimants and claimants who~~
993 ~~can be identified after due diligence and who are known to have an interest in the property, and~~
994 ~~after affording those persons an opportunity for a hearing, the court determines that:]~~

995 (4) (a) (i) A court may enter a restraining order or injunction or take any other
996 reasonable action to preserve property being forfeited under this section.

997 (ii) Before a court's decision under Subsection (4)(a)(i), a known claimant, who can be
998 identified after due diligence, shall be:

999 (A) provided notice; and

1000 (B) given an opportunity for a hearing.

1001 (iii) A court shall grant an order under Subsection (4)(a)(i) if:

1002 ~~[(i)]~~ (A) there is a substantial probability that the state will prevail on the issue of
1003 forfeiture and that failure to enter the order will result in the property being sold, transferred,
1004 destroyed, or removed from the jurisdiction of the court or otherwise made unavailable for
1005 forfeiture; and

1006 ~~[(ii)]~~ (B) the need to preserve the availability of the property or prevent ~~[its]~~ the
1007 property's sale, transfer, destruction, or removal through the entry of the requested order
1008 outweighs the hardship against ~~[any party]~~ a claimant against ~~[whom]~~ which the order is to be
1009 entered.

1010 ~~(b) A [temporary restraining order may be entered]~~ court may enter a temporary
1011 restraining order ex parte upon application of the prosecuting attorney or a federal prosecutor
1012 before or after an information or indictment has been filed, with respect to the property, if the
1013 prosecuting attorney or federal prosecutor demonstrates that:

1014 (i) there is probable cause to believe that the property with respect to which the order is
1015 sought would, in the event of a conviction, be ~~[subject to forfeiture]~~ forfeited under this
1016 section; and

1017 (ii) ~~[provision of notice]~~ providing notice to a claimant would jeopardize the
1018 availability of the property for forfeiture or would jeopardize an ongoing criminal investigation.

1019 (c) The temporary order expires ~~[not]~~ no more than 10 days after ~~[entry]~~ the day on

1020 which the order is entered unless extended for good cause shown or unless the [party] claimant
1021 against whom [it] the temporary order is entered consents to an extension.

1022 (d) After service of the temporary order upon [any claimants] a claimant known to the
1023 prosecuting attorney[, ~~a hearing concerning the order entered under this section shall be held~~]
1024 or federal prosecutor, the court shall hold a hearing on the order as soon as practicable and
1025 [~~prior to~~] before the expiration of the temporary order.

1026 (e) The court is not bound by the Utah Rules of Evidence regarding evidence [it] the
1027 court may receive and consider at [any] a hearing under this section.

1028 [~~(4) (a) Upon conviction of a claimant for conduct giving rise to criminal forfeiture, the~~
1029 ~~prosecutor shall ask the finder of fact to make a specific finding as to whether the property or~~
1030 ~~any part of it is subject to forfeiture.~~]

1031 [~~(b) A determination of whether property is subject to forfeiture under this section shall~~
1032 ~~be proven beyond a reasonable doubt.~~]

1033 (5) Upon conviction of a defendant for the offense subjecting the property to forfeiture,
1034 a court or jury shall find property forfeited to the agency if the prosecuting attorney establishes,
1035 beyond a reasonable doubt, that:

1036 (a) the defendant:

1037 (i) committed the offense subjecting the property to forfeiture under Subsection
1038 24-4-102(1);

1039 (ii) knew of the offense subjecting the property to forfeiture under Subsection
1040 24-4-102(1) and allowed the property to be used in furtherance of the offense; or

1041 (iii) acquired the property at the time of the offense subjecting the property to forfeiture
1042 under Subsection 24-4-102(1), or within a reasonable time after the offense occurred; or

1043 (b) there is no likely source for the purchase or acquisition of the property other than
1044 the commission of the offense subjecting the property to forfeiture under Subsection
1045 24-4-102(1).

1046 [~~(5)~~] (6) (a) Upon conviction of a [claimant for violating any provision of state law
1047 ~~subjecting a claimant's property to forfeiture~~] defendant for the offense subjecting the property
1048 to forfeiture and a finding by [the trier of fact] a court or jury that the property [is subject to
1049 ~~forfeiture~~] is forfeited, the court shall enter a judgment and order the property forfeited to the
1050 [state] agency upon the terms stated by the court in [its] the court's order.

1051 (b) Following the entry of an order declaring the property forfeited under Subsection
 1052 (6)(a), and upon application by the prosecuting attorney, the court may~~[, upon application of~~
 1053 ~~the prosecuting attorney,]~~:

1054 (i) enter ~~[appropriate restraining orders or injunctions,]~~ a restraining order or
 1055 injunction;

1056 (ii) require the execution of satisfactory performance bonds[;];

1057 (iii) appoint ~~[receivers, conservators, appraisers, accountants, or trustees,]~~ a receiver,
 1058 conservator, appraiser, accountant, or trustee; or

1059 (iv) take any other action to protect the ~~[interest of the state]~~ the agency's interest in
 1060 property ordered forfeited.

1061 ~~[(6)]~~ (7) (a) (i) After property is ordered forfeited under this section, the ~~[seizing]~~
 1062 agency shall direct the disposition of the property under Section [24-4-115](#).

1063 ~~[(ii) Any property right or interest under this Subsection (6)(a) not exercisable by or~~
 1064 ~~transferable for value to the state expires and does not revert to the defendant.]~~

1065 (ii) If property under Subsection (7)(a)(i) is not transferrable for value to the agency, or
 1066 the agency is not able to exercise an ownership interest in the property, the property may not
 1067 revert to the defendant.

1068 (iii) ~~[The defendant or any person]~~ A defendant, or a person acting in concert with or
 1069 on behalf of the defendant, is not eligible to purchase forfeited property at any sale held by the
 1070 [seizing] agency unless approved by the judge.

1071 (b) ~~[The]~~ A court may stay the sale or disposition of the property pending the
 1072 conclusion of any appeal of ~~[the criminal case giving rise to the forfeiture]~~ the offense
 1073 subjecting the property to forfeiture if the ~~[defendant]~~ claimant demonstrates that proceeding
 1074 with the sale or disposition of the property may result in irreparable injury, harm, or loss.

1075 (8) If a defendant is acquitted of the offense subjecting the property to forfeiture under
 1076 this section on the merits:

1077 (a) (i) the property for which forfeiture is sought shall be returned to the claimant; or

1078 (ii) the open market value of the property for the property for which forfeiture is sought
 1079 shall be awarded to the claimant if the property has been disposed of under Section [24-4-103.3](#);
 1080 and

1081 (b) any payment requirement under this chapter related to the holding of property shall

1082 be paid to the claimant.

1083 ~~[(7)]~~ (9) Except as provided under Subsection ~~[(3) or (10)]~~ (4) or (12), a [party]
1084 claimant claiming an interest in property [~~subject to forfeiture~~] that is being forfeited under this
1085 section:

1086 (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of
1087 the property [~~under this section~~]; and

1088 (b) may not commence an action at law or equity concerning the validity of the
1089 [~~party's~~] claimant's alleged interests in the property subsequent to the filing of an indictment or
1090 an information alleging that the property is [~~subject to forfeiture~~] being forfeited under this
1091 section.

1092 ~~[(8) The district]~~ (10) A court that has jurisdiction of a case under this part may enter
1093 orders under this section without regard to the location of any property that [~~may be subject to~~
1094 forfeiture] is or has been ordered forfeited under this section [~~or that has been ordered forfeited~~
1095 under this section].

1096 ~~[(9)]~~ (11) To facilitate the identification or location of property [~~declared forfeited~~]
1097 forfeited under this section, and to facilitate the disposition of [~~petitions~~] a petition for
1098 remission or mitigation of forfeiture after the entry of an order declaring property forfeited to
1099 the [~~state~~] agency, the court may, upon application of the prosecuting attorney, order [~~that~~]:

1100 (a) the testimony of any witness relating to the forfeited property be taken by
1101 deposition[;]; and [~~that~~]

1102 (b) any book, paper, document, record, recording, or other material [~~shall be~~] is
1103 produced [~~as provided for depositions and discovery under~~] in accordance with the Utah Rules
1104 of Civil Procedure.

1105 ~~[(10)]~~ (12) (a) [~~(i) Following the entry of an order of forfeiture under this section~~] If a
1106 court orders property forfeited under this section, the prosecuting attorney shall publish notice
1107 of the [~~order's~~] intent to dispose of the property [~~by publication~~].

1108 (b) Service by publication shall be by publication of two notices, in two successive
1109 weeks, of the forfeiture proceeding:

1110 ~~[(A)]~~ (i) in a newspaper of general circulation in the county in which the seizure of the
1111 property occurred; and

1112 ~~[(B)]~~ (ii) on Utah's Public Legal Notice Website established in Subsection

1113 ~~45-1-101~~(2)(b).

1114 ~~[(ii)]~~ (c) The prosecuting attorney shall also send written notice to any claimants, other
1115 than the defendant, known to the prosecuting attorney to have an interest in the property, at the
1116 claimant's known address.

1117 ~~[(b)(i) Any]~~ (13) (a) A claimant, other than the defendant, ~~[asserting a legal interest in~~
1118 ~~property that has been ordered forfeited to the state under this section may, within 30 days after~~
1119 ~~the notice has been published or the claimant receives the written notice under Subsection~~
1120 ~~(10)(a), whichever is earlier,]~~ may petition the court for a hearing to adjudicate the validity of
1121 the claimant's alleged interest in ~~[the]~~ property forfeited under this section.

1122 ~~[(ii) Any genuine issue of material fact, including issues of standing, may be tried to a~~
1123 ~~jury upon demand of any party.]~~

1124 (b) A claimant shall file a petition within 30 days after the earlier of the day on which a
1125 notice is published or the day on which the claimant receives written notice under Subsection
1126 (12)(a).

1127 ~~[(e)]~~ (14) The petition under Subsection (13) shall:

1128 ~~[(i)]~~ (a) be in writing and signed by the claimant under penalty of perjury;

1129 ~~[(ii)]~~ (b) set forth the nature and extent of the claimant's right, title, or interest in the
1130 property, the time and circumstances of the claimant's acquisition of the right, title, or interest
1131 in the property; and

1132 ~~[(iii)]~~ (c) set forth any additional facts supporting the claimant's claim and the relief
1133 sought.

1134 ~~[(d) The trial or hearing on the petition shall be expedited to the extent practicable.]~~

1135 (15) (a) The court shall expedite the trial or hearing under this Subsection (15) to the
1136 extent practicable.

1137 (b) Any party may request a jury to decide any genuine issue of material fact.

1138 (c) The court may consolidate a trial or hearing on the petition under Subsection
1139 (11)(b) and any other petition filed by ~~[any]~~ a claimant, other than the defendant, under this
1140 section.

1141 (d) [The] For a petition under this section, the court shall permit the parties to conduct
1142 pretrial discovery ~~[pursuant to]~~ in accordance with the Utah Rules of Civil Procedure.

1143 (e) (i) At the trial or hearing, the claimant may testify and present evidence and

1144 witnesses on the claimant's own behalf and cross-examine witnesses who appear at the hearing.

1145 (ii) The prosecuting attorney may present evidence and witnesses in rebuttal and in
1146 defense of the claim to the property and cross-examine witnesses who appear.

1147 [(ii)] (f) In addition to testimony and evidence presented at the trial or hearing, the
1148 court may consider the relevant portion of the record of the criminal case that resulted in the
1149 order of forfeiture.

1150 [(iii)] (g) ~~[Any]~~ A trial or hearing shall be conducted ~~[pursuant to]~~ in accordance with
1151 the Utah Rules of Evidence.

1152 [(f)] (16) The court shall amend the order of forfeiture in accordance with [its] the
1153 court's determination, if after the trial or hearing under Subsection (15), the court or jury
1154 determines that the ~~[petitioner]~~ claimant has established, by a preponderance of the evidence,
1155 that:

1156 (a) (i) the claimant has a legal right, title, or interest in the property[;]; and

1157 (ii) the claimant's right, title, or interest renders the order of forfeiture invalid in whole
1158 or in part because the right, title, or interest was vested in the claimant rather than the
1159 defendant, or was superior to any right, title, or interest of the defendant at the time ~~[of the~~
1160 ~~commission of the acts or conduct that gave rise to the forfeiture of the property under this~~
1161 ~~section]~~ of the commission of the offense subjecting the property to forfeiture under Subsection
1162 24-4-102(1); or

1163 [(ii)] (b) the claimant acquired the right, title, or interest in the property in a bona fide
1164 transaction for value, and, at the time of acquisition, the claimant did not know that the
1165 property ~~[was subject to forfeiture]~~ could be forfeited under this chapter.

1166 [(g)] ~~Following the court's disposition of all petitions filed under this Subsection (10);~~
1167 ~~or if no petitions are filed following the expiration of the period provided in Subsection (10)(b)~~
1168 ~~for the filing of petitions, the state has clear title to property subject to the order of forfeiture~~
1169 ~~and may warrant good title to any subsequent purchaser or transferee.]~~

1170 (17) An agency has clear title to the property and may transfer title to a purchaser or
1171 transferee if:

1172 (a) the court issued a disposition on all petitions under Subsection (13) denying any
1173 claimant's right, title, or interest to the property; or

1174 (b) a petition was not filed under the timelines provided in Subsection (13)(b).

1175 (18) If the prosecuting attorney seeks to discontinue a forfeiture proceeding under this
 1176 section and transfer the action to another state or federal agency that has initiated a civil or
 1177 criminal proceeding involving the same property, the prosecuting attorney shall file a petition
 1178 to transfer the property in accordance with Section [24-2-105](#).

1179 Section 22. Section **24-4-109** is amended to read:

1180 **24-4-109. Postjudgment interest.**

1181 In ~~[any]~~ a proceeding to forfeit currency or other negotiable instruments under this
 1182 chapter, the court shall award postjudgment interest to a prevailing party ~~[postjudgment~~
 1183 ~~interest]~~ on the currency or negotiable instruments at the interest rate established under Section
 1184 [15-1-4](#).

1185 Section 23. Section **24-4-110** is amended to read:

1186 **24-4-110. Attorney fees and costs.**

1187 (1) In ~~[any]~~ a forfeiture proceeding under this chapter, ~~[the]~~ a court shall award ~~[a~~
 1188 ~~prevailing claimant reasonable:]~~ reasonable legal costs and attorney fees to a prevailing
 1189 claimant.

1190 ~~[(a) legal costs; and]~~

1191 ~~[(b) attorney fees.]~~

1192 (2) ~~[The legal costs and attorney fees awarded by the court to the prevailing party]~~ If a
 1193 court awards legal costs and attorney fees to a prevailing claimant under Subsection (1), the
 1194 award may not exceed 50% of the value of the seized property.

1195 (3) A claimant who prevails only in part is entitled to recover reasonable legal costs
 1196 and attorney fees only on ~~[those issues]~~ an issue on which the party prevailed~~[, as determined~~
 1197 ~~by the court].~~

1198 Section 24. Section **24-4-111** is amended to read:

1199 **24-4-111. Compensation for damaged property.**

1200 (1) As used in this section, "damage or other injury" does not mean normal
 1201 depreciation, deterioration, or ordinary wear and tear of the property.

1202 ~~[(+)]~~ (2) If ~~[property seized for forfeiture]~~ seized property is returned ~~[by operation of]~~
 1203 under this chapter, a claimant has a civil right of action against ~~[a seizing]~~ an agency for ~~[any]~~ a
 1204 claim based upon the negligent destruction, loss, or damage~~;~~ or other injury to seized property
 1205 while in the possession or custody of the agency.

1206 ~~[(2) As used in this section, "damage or other injury" does not include normal~~
1207 ~~depreciation, deterioration, or ordinary wear and tear.]~~

1208 Section 25. Section **24-4-112** is amended to read:

1209 **24-4-112. Limitation on fees for holding seized property.**

1210 In any civil or criminal proceeding under this chapter in which a judgment is entered in
1211 favor of a claimant, or where a forfeiture proceeding against a claimant is voluntarily dismissed
1212 by the prosecuting attorney, ~~[the seizing]~~ an agency may not charge ~~[that]~~ a claimant any fee or
1213 cost for holding seized property.

1214 Section 26. Section **24-4-113** is amended to read:

1215 **24-4-113. Proportionality.**

1216 (1) (a) A claimant's interest in property that is used to facilitate ~~[a crime, excluding~~
1217 ~~contraband, is not subject to forfeiture]~~ an offense may not be forfeited under any provision of
1218 state law if the forfeiture is substantially disproportionate to the use of the property in
1219 committing or facilitating ~~[a]~~ an offense that is a violation of state law and the value of the
1220 property.

1221 (b) ~~[Forfeiture of property]~~ If property is used solely in a manner that is merely
1222 incidental and not instrumental to the commission or facilitation of [a violation of law] an
1223 offense, a forfeiture of the property is not proportional.

1224 (2) (a) In determining proportionality, the court shall consider:

1225 (i) the ~~[conduct giving cause for the forfeiture]~~ offense subjecting the property to
1226 forfeiture under Subsection [24-4-102\(1\)](#);

1227 (ii) what portion of the forfeiture, if any, is remedial in nature;

1228 (iii) the gravity of the conduct for which the claimant is responsible in light of the
1229 offense; and

1230 (iv) the value of the property.

1231 (b) If the court finds that the forfeiture is substantially disproportional to ~~[the conduct]~~
1232 an offense for which the claimant is responsible, ~~[it]~~ the court shall reduce or eliminate the
1233 forfeiture~~;~~ as ~~[it]~~ the court finds appropriate.

1234 (3) ~~[The]~~ A prosecuting attorney has the burden ~~[to demonstrate]~~ of demonstrating that
1235 ~~[any]~~ a forfeiture is proportional to the ~~[conduct giving rise to the forfeiture]~~ offense subjecting
1236 the property to forfeiture under Subsection [24-4-102\(1\)](#).

1237 (4) In all cases, the court shall decide questions of proportionality.

1238 (5) ~~[Forfeiture]~~ A forfeiture of any proceeds used to facilitate the commission of an
1239 offense that is a violation of federal or state law is proportional.

1240 Section 27. Section ~~24-4-115~~ is amended to read:

1241 **24-4-115. Disposition and allocation of forfeiture property.**

1242 (1) ~~[Upon finding that property is subject to forfeiture under this chapter]~~ If a court
1243 finds that property is forfeited under this chapter, the court shall order the property forfeited to
1244 the ~~[state]~~ agency.

1245 (2) (a) If the property is not currency, the ~~[seizing]~~ agency shall authorize a public or
1246 otherwise commercially reasonable sale of that property ~~[that]~~ if the property is not required by
1247 law to be destroyed and ~~[that]~~ is not harmful to the public.

1248 (b) If the property forfeited is an alcoholic product as defined in Section ~~32B-1-102~~,
1249 ~~[it]~~ the property shall be disposed of as follows:

1250 (i) an alcoholic product shall be sold if the alcoholic product is:

1251 (A) unadulterated, pure, and free from any crude, unrectified, or impure form of ethylic
1252 alcohol, or any other deleterious substance or liquid; and

1253 (B) otherwise in saleable condition; or

1254 (ii) an alcoholic product and ~~[its]~~ the alcoholic product's package shall be destroyed if
1255 the alcoholic product is impure, adulterated, or otherwise unfit for sale.

1256 (c) If the property forfeited is a cigarette or other tobacco product as defined in Section
1257 ~~59-14-102~~, ~~[it]~~ the property shall be destroyed, except that ~~[prior to the destruction of any~~
1258 ~~cigarette or other tobacco product seized pursuant to this part,]~~ the lawful holder of the
1259 trademark rights in the cigarette or tobacco product brand ~~[shall be]~~ is permitted to inspect the
1260 cigarette before the destruction of the cigarette or tobacco product.

1261 (d) The proceeds of the sale of forfeited property shall remain segregated from other
1262 property, equipment, or assets of the ~~[seizing]~~ agency until transferred ~~[to the state]~~ in
1263 accordance with this chapter.

1264 (3) ~~[From the forfeited property, both]~~ Before transferring currency and the proceeds or
1265 revenue from the sale of the property in accordance with this chapter, the ~~[seizing]~~ agency
1266 shall:

1267 (a) deduct the ~~[seizing]~~ agency's direct costs, expense of reporting under Section

1268 24-4-118, and [~~expenses~~] expense of obtaining and maintaining the property pending a
1269 forfeiture proceeding; and

1270 (b) if the prosecuting agency that employed the prosecuting attorney has met the
1271 requirements of Subsection 24-4-119(3), pay the [~~office of the~~] prosecuting attorney the legal
1272 costs associated with the litigation of the forfeiture proceeding, and up to 20% of the value of
1273 the forfeited property in attorney fees.

1274 (4) If the forfeiture arises from [~~any~~] a violation relating to wildlife resources, the
1275 agency shall deposit any remaining currency and the proceeds or revenue from the sale of the
1276 property [~~shall be deposited in~~] into the Wildlife Resources Account created in Section
1277 23-14-13.

1278 (5) The agency shall transfer any remaining currency, [~~and~~] the proceeds, or revenue
1279 from the sale of the property [~~shall then be transferred~~] to the commission and deposited into
1280 the account.

1281 Section 28. Section **24-4-116** is amended to read:

1282 **24-4-116. Criminal Forfeiture Restricted Account.**

1283 (1) There is created within the General Fund a restricted account known as the
1284 "Criminal Forfeiture Restricted Account."

1285 (2) [~~Proceeds~~] Except as provided in Section 24-4-115, the commission shall deposit
1286 any proceeds from forfeited property and forfeited money through [~~state forfeitures shall be~~
1287 deposited into the account] a forfeiture proceeding under this chapter into the account.

1288 (3) Money in the account shall be appropriated to the commission for implementing the
1289 program under Section 24-4-117.

1290 Section 29. Section **24-4-117** is amended to read:

1291 **24-4-117. State Asset Forfeiture Grant Program.**

1292 (1) There is created the State Asset Forfeiture Grant Program.

1293 (2) The program shall fund crime prevention, crime victim reparations, and law
1294 enforcement activities that have the purpose of:

1295 (a) deterring crime by depriving criminals of the profits and proceeds of their illegal
1296 activities;

1297 (b) weakening criminal enterprises by removing the instrumentalities of crime;

1298 (c) reducing crimes involving substance abuse by supporting the creation,

1299 administration, or operation of drug court programs throughout the state;

1300 (d) encouraging cooperation between [~~local, state, and multijurisdictional law~~
1301 ~~enforcement~~] agencies;

1302 (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited
1303 proceeds of crime;

1304 (f) increasing the equitability and accountability of the use of forfeited property used to
1305 assist [~~law enforcement~~] agencies in reducing and preventing crime; and

1306 (g) providing aid to victims of criminally injurious conduct, as defined in Section
1307 [63M-7-502](#), who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office
1308 for Victims of Crime.

1309 (3) (a) [~~When property is forfeited under this chapter and transferred to the account,~~
1310 ~~upon appropriation~~] Upon appropriation of funds from the account, the commission shall
1311 allocate and administer grants to [~~state agencies, local law enforcement agencies,~~
1312 ~~multijurisdictional law enforcement agencies, or political subdivisions~~] an agency or political
1313 subdivision of the state in compliance with this section and Subsection [24-4-119\(2\)](#) and to
1314 further the program purposes under Subsection (2).

1315 (b) The commission may retain up to 3% of the annual appropriation from the account
1316 to pay for administrative costs incurred by the commission, including salary and benefits,
1317 equipment, supplies, or travel costs that are directly related to the administration of the
1318 program.

1319 (4) [~~Agencies or political subdivisions~~] An agency or political subdivision shall apply
1320 for an award from the program by completing and submitting forms specified by the
1321 commission.

1322 (5) In granting the awards, the commission shall ensure that the amount of each award
1323 takes into consideration the:

1324 (a) demonstrated needs of the agency or political subdivision;

1325 (b) demonstrated ability of the agency or political subdivision to appropriately use the
1326 award;

1327 (c) degree to which the agency's or political subdivision's need is offset through the
1328 agency's or political subdivision's participation in federal equitable sharing or through other
1329 federal and state grant programs; and

1330 (d) agency's or political subdivision's cooperation with other state and local agencies
1331 and task forces.

1332 (6) The commission may award a grant to any agency or political subdivision engaged
1333 in activities associated with Subsection (2) even if the agency has not contributed to the fund.

1334 ~~[(6)]~~ (7) ~~[Applying agencies or political subdivisions]~~ An applying agency or political
1335 subdivision shall demonstrate compliance with all reporting and policy requirements applicable
1336 under this chapter and under Title 63M, Chapter 7, Criminal Justice and Substance Abuse, in
1337 order to qualify as a potential award recipient.

1338 ~~[(7)]~~ (8) (a) ~~[Recipient law enforcement agencies]~~ A recipient agency may only use
1339 award money after approval by the agency's legislative body.

1340 (b) The award money is nonlapsing.

1341 ~~[(8)]~~ (9) A recipient ~~[state agency, local law enforcement agency, multijurisdictional~~
1342 ~~law enforcement]~~ agency~~;~~ or political subdivision shall use ~~[awards]~~ an award:

1343 (a) only for law enforcement purposes ~~[as]~~ described in this section, or for victim
1344 reparations as described in Subsection (2)(g)~~;~~ and only as these; and

1345 (b) for the purposes ~~[are]~~ specified by the agency or political subdivision in ~~[its]~~ the
1346 agency's or political subdivision's application for the award.

1347 ~~[(9)]~~ (10) ~~[Permissible law enforcement purposes]~~ A permissible law enforcement
1348 purpose for which award money may be used ~~[include]~~ includes:

1349 (a) controlled substance interdiction and enforcement activities;

1350 (b) drug court programs;

1351 (c) activities calculated to enhance future law enforcement investigations;

1352 (d) law enforcement training that includes:

1353 (i) implementation of the Fourth Amendment to the United States Constitution and
1354 Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's
1355 right of due process;

1356 (ii) protection of the rights of innocent property holders; and

1357 (iii) the Tenth Amendment to the United States Constitution regarding states'
1358 sovereignty and the states' reserved rights;

1359 (e) law enforcement or detention facilities;

1360 (f) law enforcement operations or equipment that are not routine costs or operational

1361 expenses;

1362 (g) drug, gang, or crime prevention education programs that are sponsored in whole or
1363 in part by the law enforcement agency or its legislative body;

1364 (h) matching funds for other state or federal law enforcement grants; and

1365 (i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture
1366 actions.

1367 ~~[(10)]~~ (11) ~~[Law enforcement purposes]~~ A law enforcement purpose for which award
1368 money may not be granted or used ~~[include]~~ includes:

1369 (a) payment of salaries, retirement benefits, or bonuses to any ~~[person]~~ individual;

1370 (b) payment of expenses not related to law enforcement;

1371 (c) uses not specified in the agency's award application;

1372 (d) uses not approved by the agency's legislative body;

1373 (e) payments, transfers, or pass-through funding to ~~[entities other than law enforcement~~
1374 agencies] an entity other than an agency; or

1375 (f) uses, payments, or expenses that are not within the scope of the agency's functions.

1376 Section 30. Section **24-4-118** is amended to read:

1377 **24-4-118. Forfeiture reporting requirements.**

1378 (1) ~~[On and after January 1, 2016, every state, county, municipal, or other law~~
1379 enforcement] An agency shall provide all reasonably available data described in Subsection
1380 (5) ~~[, along with the transfer of any applicable forfeited property]:~~

1381 (a) ~~[when]~~ if transferring the forfeited property resulting from the final disposition of
1382 any civil or criminal forfeiture matter to the ~~[Commission on Criminal and Juvenile Justice]~~
1383 commission as required under Subsection **24-4-115(5)**; or

1384 (b) ~~[when]~~ if the agency has been awarded ~~[any]~~ an equitable share of property
1385 forfeited by the federal government.

1386 (2) The ~~[Commission on Criminal and Juvenile Justice]~~ commission shall develop a
1387 standardized report format that each agency shall use in reporting the data required under this
1388 section.

1389 (3) The ~~[Commission on Criminal and Juvenile Justice]~~ commission shall annually, on
1390 or before April 30, prepare a summary report of the case data submitted by each agency under
1391 Subsection (1) during the prior calendar year.

1392 (4) (a) If an agency does not comply with the reporting requirements under this section,
1393 the [~~Commission on Criminal and Juvenile Justice~~] commission shall contact the agency and
1394 request that the agency comply with the required reporting provisions.

1395 (b) If an agency fails to comply with the reporting requirements under this section
1396 within 30 days after receiving the request to comply, the [~~Commission on Criminal and~~
1397 ~~Juvenile Justice~~] commission shall report the noncompliance to the [~~Utah~~] attorney general, the
1398 speaker of the House of Representatives, and the president of the Senate.

1399 (5) The data for any civil or criminal forfeiture matter for which final disposition has
1400 been made under Subsection (1) shall include:

1401 (a) the agency that conducted the seizure;

1402 (b) the case number or other identification;

1403 (c) the date or dates on which the seizure was conducted;

1404 (d) the number of individuals having a known property interest in each seizure of
1405 property;

1406 (e) the type of property seized;

1407 (f) the alleged offense that was the cause for seizure of the property;

1408 (g) whether any criminal charges were filed regarding the alleged offense, and if so, the
1409 final disposition of each charge, including the conviction, acquittal, or dismissal, or whether
1410 action on a charge is pending;

1411 (h) the type of enforcement action that resulted in the seizure, including an
1412 enforcement stop, a search warrant, or an arrest warrant;

1413 (i) whether the forfeiture procedure was civil or criminal;

1414 (j) the value of the property seized, including currency and the estimated market value
1415 of any tangible property;

1416 (k) the final disposition of the matter, including whether final disposition was entered
1417 by stipulation of the parties, including the amount of property returned to any claimant, by
1418 default, by summary judgment, by jury award, or by guilty plea or verdict in a criminal
1419 forfeiture;

1420 (l) if the property was forfeited by the federal government, the amount of forfeited
1421 money awarded to the agency;

1422 (m) the agency's direct costs, expense of reporting under this section, and expenses for

1423 obtaining and maintaining the seized property, as described in Subsection 24-4-115(3)(a);
1424 (n) the legal costs and attorney fees paid to the prosecuting attorney, as described in
1425 Subsection 24-4-115(3)(b); and
1426 (o) if the property was transferred to a federal agency or any governmental entity not
1427 created under and subject to state law:
1428 (i) the date of the transfer;
1429 (ii) the name of the federal agency or entity to which the property was transferred;
1430 (iii) a reference to which reason under Subsection ~~24-4-114(1)(a)~~ 24-2-106(3)
1431 justified the transfer;
1432 (iv) the court or agency where the forfeiture case was heard;
1433 (v) the date of the order of transfer of the property; and
1434 (vi) the value of the property transferred to the federal agency, including currency and
1435 the estimated market value of any tangible property.
1436 (6) ~~[On and after January 1, 2016, every state, county, municipal, or other law~~
1437 ~~enforcement]~~ An agency shall annually on or before April 30 submit a report for the prior
1438 calendar year to the ~~[Commission on Criminal and Juvenile Justice which]~~ commission that
1439 states:
1440 (a) whether the agency received an award from the State Asset Forfeiture Grant
1441 Program under Section 24-4-117 and, if so, the following information for each award:
1442 (i) the amount of the award;
1443 (ii) the date of the award;
1444 (iii) how the award was used or is planned to be used; and
1445 (iv) a statement signed by both the agency's executive officer or designee and by the
1446 agency's legal counsel, that:
1447 (A) the agency has complied with all inventory, policy, and reporting requirements
1448 under Section 24-4-117; and
1449 (B) all awards were used for crime reduction or law enforcement purposes as specified
1450 in the application and that the awards were used only upon approval by the agency's legislative
1451 body; and
1452 (b) whether the agency received any property, money, or other things of value
1453 ~~[pursuant to]~~ in accordance with federal law as described in Subsection ~~24-4-114(2)~~

1454 [24-2-106\(6\)](#) and, if so, the following information for each piece of property, money, or other
1455 thing of value:

- 1456 (i) the case number or other case identification;
1457 (ii) the value of the award and the property, money, or other things of value received by
1458 the agency;
1459 (iii) the date of the award;
1460 (iv) the identity of any federal agency involved in the forfeiture;
1461 (v) how the awarded property has been used or is planned to be used; and
1462 (vi) a statement signed by both the agency's executive officer or designee and by the
1463 agency's legal counsel, that the agency has only used the award for crime reduction or law
1464 enforcement purposes authorized under Section [24-4-117](#), and that the award was used only
1465 upon approval by the agency's legislative body.

1466 (7) (a) On or before July 1 of each year, the [~~Commission on Criminal and Juvenile~~
1467 ~~Justice~~] commission shall submit notice of the annual reports in Subsection (3) and Subsection
1468 (6), in electronic format, to:

- 1469 (i) the [~~Utah~~] attorney general;
1470 (ii) the speaker of the House of Representatives, for referral to any House standing or
1471 interim committees with oversight over law enforcement and criminal justice;
1472 (iii) the president of the Senate, for referral to any Senate standing or interim
1473 committees with oversight over law enforcement and criminal justice; and
1474 (iv) each law enforcement agency.

1475 (b) The reports described in Subsection (3) and Subsection (6), as well as the
1476 individual case data described in Subsection (1) for the previous calendar year, shall be
1477 published on the Utah Open Government website at open.utah.gov on or before July 15 of each
1478 year.

1479 Section 31. Section **24-4-119** is enacted to read:

1480 **24-4-119. Training requirements.**

1481 (1) As used in this section:

1482 (a) "Council" means the Utah Prosecution Council created in Section [67-5a-1](#).

1483 (b) "Division" means the Peace Officers Standards and Training Division created in
1484 Section [53-6-103](#).

1485 (2) To participate in the program, an agency shall have at least one employee who is
1486 certified by the division as an asset forfeiture specialist through the completion of an online
1487 asset forfeiture course by the division.

1488 (3) The division shall:

1489 (a) develop an online asset forfeiture specialist course that is available to an agency for
1490 certification purposes;

1491 (b) certify an employee of an agency who meets the course requirements to be an asset
1492 forfeiture specialist;

1493 (c) recertify, every 36 months, an employee who is designated as an asset forfeiture
1494 specialist by an agency;

1495 (d) submit annually a report to the commission no later than April 30 that contains a
1496 list of the names of the employees and agencies participating in the certification courses;

1497 (e) review and update the asset forfeiture specialist course each year to comply with
1498 state and federal law; and

1499 (f) provide asset forfeiture training to all peace officers in basic training programs.

1500 (4) To be reimbursed for costs under Subsection [24-4-115\(3\)\(b\)](#), a prosecuting agency
1501 shall have at least one employee who is certified by the council as an asset forfeiture specialist
1502 through the completion of an online asset forfeiture course.

1503 (5) The council shall:

1504 (a) develop an online asset forfeiture specialist course that is available to a prosecuting
1505 agency for certification purposes;

1506 (b) certify an employee of a prosecuting agency who meets the course requirements to
1507 be an asset forfeiture specialist;

1508 (c) submit annually a report to the commission no later than April 30 that contains a
1509 list of the names of the employees and prosecuting agencies participating in certification
1510 courses by the council; and

1511 (d) review and update the asset forfeiture specialist course each year to comply with
1512 state and federal law.

1513 Section 32. Section **53-13-110.5** is enacted to read:

1514 **53-13-110.5. Retention of records of interviews of minors.**

1515 If a peace officer, or the officer's employing agency, records an interview of a minor

1516 during an investigation of a violation of Section [76-5-402.1](#), [76-5-402.3](#), [76-5-403.1](#), or
1517 [76-5-404.1](#), the agency shall retain a copy of the recording for 18 years after the day on which
1518 the last recording of the interview is made, unless the prosecuting attorney requests in writing
1519 that the recording be retained for an additional period of time.

1520 Section 33. **Repealer.**

1521 This bill repeals:

1522 Section [24-4-107](#), **Innocent owners.**

1523 Section [24-4-108](#), **Release of property held for forfeiture on certain grounds.**