

- 30 ▶ requires certification of asset forfeiture specialists by Peace Officers Standards and
- 31 Training or the 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

77

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~~[-]~~; 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 that is filed 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, a federal
377 criminal information, or a federal criminal complaint that is filed before the day on which the

378 agency with custody of the property is required to return the property if no criminal or civil
379 action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section
380 [24-4-103.5](#);

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

382 (ii) an agency of that state requests the transfer of the property before the day on which
383 the agency with custody of the property is required to return the property if no criminal or civil

384 action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section
385 [24-4-103.5](#); or

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

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

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

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

394 (ii) the location where the property was seized;
395 (iii) the date the property was seized;
396 (iv) the case number assigned by the agency; and
397 (v) a declaration that:
398 (A) states the basis for relinquishing jurisdiction to a federal agency or an agency of
399 another state;
400 (B) contains the names and addresses of any known claimant; and
401 (C) is signed by the prosecuting attorney or federal prosecutor.
402 (5) A district court may not authorize the transfer or release of seized property under
403 Subsection (3)(d), unless the district court finds, by a preponderance of the evidence:
404 (a) the property is evidence in, or subject to, a federal criminal indictment, a federal
405 criminal information, or a federal criminal complaint after the property is seized;
406 (b) the property may only be forfeited under federal law;
407 (c) forfeiting the property under state law would unreasonably burden the prosecuting
408 attorney or agency; or
409 (d) the property was subject to a federal criminal investigation before the property was
410 seized.
411 ~~[(e)(i) Prior to granting any order to transfer pursuant to this section, the court shall~~
412 ~~give any]~~
413 (6) (a) Before a district court may order the transfer of seized property in accordance
414 with this section, the court, the prosecuting attorney, or the federal prosecutor shall mail a
415 notice to:
416 (i) each address contained in the declaration under Subsection (4)(b)(v) to give a
417 claimant the right to be heard with regard to the transfer [by the mailing of a notice to each
418 address contained in the declaration.]; and
419 (ii)(A) if a federal prosecutor files the petition under Subsection (4), the prosecuting
420 attorney that is representing the agency with custody of the property; or
421 (B) if a prosecuting attorney files the petition under Subsection (4), the federal

422 prosecutor who will receive the property upon the transfer or release of the property.

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

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

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

431 ~~[(f)] (d) (i) If a claimant, or a party under Subsection (6)(a)(i), contests a petition to~~
432 ~~transfer the property to a federal agency or to another governmental entity not created or~~
433 ~~subject to the laws of this state, the district court shall promptly set the matter for hearing.~~

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

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

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

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

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

448 (b) may [be used for those law enforcement purposes specified] use the property,
449 money, or other things of value for a law enforcement purpose described in Subsection

450 ~~24-4-117[(9)](10); and~~

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

453 ~~24-4-117[(10)](11).~~

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

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

460 (a) a claimant under Subsection 24-2-107(1)(a), Section 24-3-104, or Section
 461 24-4-103.5;

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

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

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

466 ~~[24-3-102].~~ **24-2-106. Retention of property.**

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

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

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

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

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

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

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

477 (3) If the prosecuting attorney ~~[considers it necessary]~~ decides to retain control over the

478 [evidence] seized or forfeited property under Subsection (2)(a) in anticipation of possible
479 collateral attacks upon the judgment or for use in a potential prosecution, the [prosecutor]
480 prosecuting attorney may decline to authorize the disposal of the property [under this chapter].

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

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

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

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

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

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

491 (i) the claimant posts a surety bond or cash with the court in accordance with
492 Subsection (2);

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

494 (iii) a claimant establishes that the claimant is an innocent owner under Section
495 24-2-107; or

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

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

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

503 (i) the property if:

504 (A) the bond tendered is inadequate;

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

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

508 (ii) contraband.

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

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

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

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

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

517 (ii) preventing any individual from working;

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

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

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

521 (vi) leaving an individual homeless; or

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

523 (c) the hardship from the continued possession of the property by the agency outweighs
524 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if the
525 property is returned to the claimant during the pendency of the proceeding; and

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

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

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

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

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

534 (6) The court shall:

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

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

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

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

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

547 (a) contraband; or

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

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

551 **24-2-108. Innocent owners.**

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

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

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

556 (B) 30 days after the day on which the property was seized; and

557 (ii) providing the seizing agency with:

558 (A) evidence that establishes proof of ownership; and

559 (B) a brief description of the date, time, and place that the claimant mislaid or
560 relinquished possession of the seized property, or any evidence that the claimant is an innocent
561 owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

589 (5) If the court grants reasonable attorney fees and court costs under Subsection (3), the

590 attorney fees and court costs are not subject to the 50% cap under Subsection 24-4-110(2).

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

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

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

597 **CHAPTER 3. DISPOSAL OF PROPERTY**

598 **24-3-101. Title.**

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

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

601 **24-3-101.5. Application of this chapter.**

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

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

605 **24-3-103. Disposition of property.**

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

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

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

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

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

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

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

646 rightful owner of the property or ~~[if]~~ the rightful owner is not entitled to lawfully possess the
647 property, the agency may:

648 (i) apply the property to a public interest use;

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

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

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

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

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

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

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

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

664 **24-3-104. Petition to return property.**

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

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

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

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

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

673 ~~(c) [A copy of the petition shall be served]~~ A claimant shall serve a copy of the petition

674 on the prosecuting attorney and the agency [~~which has possession~~] with custody of the
675 property.

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

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

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

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

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

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

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

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

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

691 (a) is the rightful owner; and

692 (b) may lawfully possess the property.

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

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

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

698 **24-4-101. Title.**

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

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

702 **24-4-102. Property subject to forfeiture.**

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

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

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

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

710 (a) seized property that was used to facilitate the commission of an offense that is a
711 violation of federal or state law; and

712 (b) seized proceeds.

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

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

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

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

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

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

730 (b) the operator of the vehicle was driving on a denied, suspended, revoked, or
 731 disqualified license[;] and;

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

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

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

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

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

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

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

740 (G) a criminal prohibition [~~that the person was charged with violating~~] as a result of a
 741 plea bargain after having been originally charged with violating one or more of the sections or
 742 ordinances described in Subsections (3)(b)(i)(A) through (F); or

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

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

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

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

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

753 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

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

757 (1) (a) If an agency seeks to forfeit property seized under this title, the agency shall

758 serve a notice of intent to seek forfeiture to any known claimant within 30 days after the day on
759 which the property is seized.

760 (b) The notice of intent to seek forfeiture shall describe ~~[the]~~:

761 (i) the date of the seizure;

762 (ii) the property seized;

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

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

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

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

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

770 (ii) personal service.

771 (d) ~~[The]~~ A court may void ~~[any]~~ a forfeiture made without notice under Subsection
772 (1)(a), unless the agency demonstrates:

773 (i) good cause for the failure to give notice to the claimant; or

774 (ii) that the claimant had actual notice of the seizure.

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

778 (2) If an agency sends a notice of intent to forfeit seized property under Subsection

779 24-4-103(1), an individual or entity may not alienate, convey, sequester, or attach the property
780 until a court:

781 (a) issues a final order to dismiss an action under this title; or

782 (b) orders the forfeiture of the property.

783 (3) (a) (i) If an agency has served each claimant with a notice of intent to seek

784 forfeiture, the agency shall present a written request for forfeiture to the prosecuting attorney of
785 the municipality or county where the property is seized.

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

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

789 (i) describe the property [to be forfeited] that the agency is seeking to forfeit; and

790 (ii) include a copy of all reports, supporting documents, and other evidence that is
791 necessary for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture
792 action.

793 (c) The prosecuting attorney shall:

794 (i) review the written request described in Subsection (3)(a)(i); and

795 (ii) within 75 days after the day on which the property is seized, decline or accept, in
796 writing, the agency's written request for the prosecuting attorney to initiate a proceeding to
797 forfeit the property.

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

799 **24-4-103.3. Sale of seized property.**

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

802 (i) be sold, leased, rented, or operated to satisfy a specified interest of any claimant; or

803 (ii) preserve the interests of any party on motion of that party.

804 (b) The court may enter an order under Subsection (1)(a) after:

805 (i) written notice to any person known to have an interest in the property has been
806 given; and

807 (ii) an opportunity for a hearing for any person known to have an interest in the
808 property has occurred.

809 (2) (a) A court may order a sale of property under Subsection (1) when:

810 (i) the property is liable to perish, waste, or be significantly reduced in value; or

811 (ii) the expenses of maintaining the property are disproportionate to the property's
812 value.

813 (b) A third party designated by the court shall:

814 (i) dispose of the property by a commercially reasonable public sale; and
815 (ii) distribute the proceeds in the following order of priority:
816 (A) first, for the payment of reasonable expenses incurred in connection with the sale;
817 (B) second, for the satisfaction of an interest, including an interest of an interest holder,
818 in the order of an interest holder's priority as determined by Title 70A, Uniform Commercial
819 Code; and
820 (C) third, any balance of the proceeds shall be preserved in the actual or constructive
821 custody of the court, in an interest-bearing account, subject to further proceedings under this
822 chapter.

823 Section 19. Section **24-4-103.5** is enacted to read:

824 **24-4-103.5. Mandatory return of seized property.**

825 (1) An agency shall promptly return property seized under this title, and the
826 prosecuting attorney may take no further action to forfeit the property, unless within 75 days
827 after the day on which the property is seized:

828 (a) the prosecuting attorney:

829 (i) files a criminal indictment or information under Subsection [24-4-105\(3\)](#);

830 (ii) files a petition to transfer the property to another agency in accordance with Section
831 [24-2-105](#);

832 (iii) files a civil forfeiture complaint under Section [24-4-104](#); or

833 (b) the prosecuting attorney or a federal prosecutor obtains a restraining order under
834 Subsection [24-4-105\(4\)](#).

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

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

840 (c) The prosecuting attorney may not file more than one petition under this Subsection
841 (2).

842 (3) If a prosecuting attorney is unable to file a civil forfeiture complaint under
843 Subsection (1)(a)(iii) because a claimant has filed a claim under Section 24-2-108 and the
844 claimant has an extension to provide additional information on the claim under Subsection
845 24-2-108(1)(d), the deadline under Subsection (1) may be extended by 15 days.

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

847 **24-4-104. Civil forfeiture procedure.**

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

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

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

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

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

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

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

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

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

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

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

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

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

870 (i) personal service;
871 (ii) certified mail, with a return receipt requested, to the claimant's known address; or
872 (iii) service by publication, if the prosecuting attorney demonstrates to the court that
873 service cannot reasonably be made by personal service or certified mail.

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

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

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

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

880 (i) personal service;

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

882 (ii) certified mail; or

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

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

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

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

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

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

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

896 (c) ~~[When the property subject to forfeiture]~~ If an agency is seeking to forfeit property
897 under Section [24-4-103](#) and the property is valued at less than \$10,000, the agency [that has

898 ~~custody of the property]~~ shall return the property to the claimant if:

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

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

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

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

916 (e) (i) The time limitations in Subsection (3)(c)(i) may be extended for up to 15 days if
917 a claimant timely seeks to recover possession of seized property [~~pursuant to Subsection~~
918 ~~24-4-107(8), but]~~ in accordance with Section 24-2-108.

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

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

924 (5) The court shall:

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

926 forfeiture proceeding; and

927 ~~(b) give [these proceedings]~~ a civil forfeiture proceeding the same priority as ~~[is given~~
928 ~~to criminal cases]~~ a criminal case.

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

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

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

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

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

940 ~~(i) committed the offense subjecting the property to forfeiture under Subsection~~
941 ~~24-4-102(1);~~

942 ~~(ii) knew of the offense subjecting the property to forfeiture under Subsection~~
943 ~~24-4-102(1) and allowed the property to be used in furtherance of the offense; or~~

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

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

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

952 ~~[(10) If the prosecutor establishes that the property is subject to forfeiture, but the~~
953 ~~claimant is subsequently criminally charged with the conduct giving rise to the forfeiture and is~~

954 ~~acquitted of that charge on the merits:]~~

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

958 ~~[(b) any payments required under this chapter regarding the costs of holding the~~
959 ~~property shall be paid to the claimant.]~~

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

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

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

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

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

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

975 (11) A civil forfeiture action under this section may be converted to a criminal
976 forfeiture action at any time after a prosecuting attorney files a criminal complaint, information,
977 or indictment for the offense subjecting the property to forfeiture under Subsection
978 24-4-102(1).

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

980 **24-4-105. Criminal forfeiture procedure.**

981 (1) As used in this section, "defendant" means a claimant who is criminally prosecuted

982 for the offense subjecting the property to forfeiture under Subsection 24-4-102(1).

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

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

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

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

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

1000 (A) provided notice; and

1001 (B) given an opportunity for a hearing.

1002 (iii) A court shall grant an order under Subsection (4)(a)(i) if:

1003 ~~[(i)]~~ (A) there is a substantial probability that the state will prevail on the issue of
1004 forfeiture and that failure to enter the order will result in the property being sold, transferred,
1005 destroyed, or removed from the jurisdiction of the court or otherwise made unavailable for
1006 forfeiture; and

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

1010 entered.

1011 (b) A ~~[temporary restraining order may be entered]~~ court may enter a temporary
1012 restraining order ex parte upon application of the prosecuting attorney or a federal prosecutor
1013 before or after an information or indictment has been filed, with respect to the property, if the
1014 prosecuting attorney or federal prosecutor demonstrates that:

1015 (i) there is probable cause to believe that the property with respect to which the order is
1016 sought would, in the event of a conviction, be ~~[subject to forfeiture]~~ forfeited under this
1017 section; and

1018 (ii) ~~[provision of notice]~~ providing notice to a claimant would jeopardize the
1019 availability of the property for forfeiture or would jeopardize an ongoing criminal investigation.

1020 (c) The temporary order expires ~~[not]~~ no more than 10 days after ~~[entry]~~ the day on
1021 which the order is entered unless extended for good cause shown or unless the ~~[party]~~ claimant
1022 against whom ~~[it]~~ the temporary order is entered consents to an extension.

1023 (d) After service of the temporary order upon ~~[any claimants]~~ a claimant known to the
1024 prosecuting attorney~~[, a hearing concerning the order entered under this section shall be held]~~
1025 or federal prosecutor, the court shall hold a hearing on the order as soon as practicable and
1026 ~~[prior to]~~ before the expiration of the temporary order.

1027 (e) The court is not bound by the Utah Rules of Evidence regarding evidence ~~[it]~~ the
1028 court may receive and consider at ~~[any]~~ a hearing under this section.

1029 ~~[(4)(a) Upon conviction of a claimant for conduct giving rise to criminal forfeiture, the~~
1030 ~~prosecutor shall ask the finder of fact to make a specific finding as to whether the property or~~
1031 ~~any part of it is subject to forfeiture.]~~

1032 ~~[(b) A determination of whether property is subject to forfeiture under this section shall~~
1033 ~~be proven beyond a reasonable doubt.]~~

1034 (5) Upon conviction of a defendant for the offense subjecting the property to forfeiture,
1035 a court or jury shall find property forfeited to the agency if the prosecuting attorney establishes,
1036 beyond a reasonable doubt, that:

1037 (a) the defendant:

1038 (i) committed the offense subjecting the property to forfeiture under Subsection
1039 24-4-102(1);

1040 (ii) knew of the offense subjecting the property to forfeiture under Subsection
1041 24-4-102(1) and allowed the property to be used in furtherance of the offense; or

1042 (iii) acquired the property at the time of the offense subjecting the property to forfeiture
1043 under Subsection 24-4-102(1), or within a reasonable time after the offense occurred; or

1044 (b) there is no likely source for the purchase or acquisition of the property other than
1045 the commission of the offense subjecting the property to forfeiture under Subsection
1046 24-4-102(1).

1047 ~~[(5)]~~ (6) (a) Upon conviction of a ~~[claimant for violating any provision of state law~~
1048 ~~subjecting a claimant's property to forfeiture]~~ defendant for the offense subjecting the property
1049 to forfeiture and a finding by ~~[the trier of fact]~~ a court or jury that the property ~~[is subject to~~
1050 ~~forfeiture]~~ is forfeited, the court shall enter a judgment and order the property forfeited to the
1051 ~~[state]~~ agency upon the terms stated by the court in ~~[its]~~ the court's order.

1052 (b) Following the entry of an order declaring the property forfeited under Subsection
1053 (6)(a), and upon application by the prosecuting attorney, the court may~~[-, upon application of~~
1054 ~~the prosecuting attorney,];~~

1055 (i) enter [appropriate restraining orders or injunctions,] a restraining order or
1056 injunction;

1057 (ii) require the execution of satisfactory performance bonds[-];

1058 (iii) appoint [receivers, conservators, appraisers, accountants, or trustees,] a receiver,
1059 conservator, appraiser, accountant, or trustee; or

1060 (iv) take any other action to protect the [interest of the state] the agency's interest in
1061 property ordered forfeited.

1062 ~~[(6)]~~ (7) (a) (i) After property is ordered forfeited under this section, the ~~[seizing]~~
1063 agency shall direct the disposition of the property under Section 24-4-115.

1064 ~~[(ii) Any property right or interest under this Subsection (6)(a) not exercisable by or~~
1065 ~~transferable for value to the state expires and does not revert to the defendant.]~~

1066 (ii) If property under Subsection (7)(a)(i) is not transferrable for value to the agency, or
1067 the agency is not able to exercise an ownership interest in the property, the property may not
1068 revert to the defendant.

1069 (iii) ~~[The defendant or any person]~~ A defendant, or a person acting in concert with or
1070 on behalf of the defendant, is not eligible to purchase forfeited property at any sale held by the
1071 ~~[seizing]~~ agency unless approved by the judge.

1072 (b) ~~[The]~~ A court may stay the sale or disposition of the property pending the
1073 conclusion of any appeal of ~~[the criminal case giving rise to the forfeiture]~~ the offense
1074 subjecting the property to forfeiture if the ~~[defendant]~~ claimant demonstrates that proceeding
1075 with the sale or disposition of the property may result in irreparable injury, harm, or loss.

1076 (8) If a defendant is acquitted of the offense subjecting the property to forfeiture under
1077 this section on the merits:

1078 (a) (i) the property for which forfeiture is sought shall be returned to the claimant; or

1079 (ii) the open market value of the property for the property for which forfeiture is sought
1080 shall be awarded to the claimant if the property has been disposed of under Section [24-4-103.3](#);
1081 and

1082 (b) any payment requirement under this chapter related to the holding of property shall
1083 be paid to the claimant.

1084 ~~[(7)]~~ (9) Except as provided under Subsection ~~[(3) or (10)]~~ (4) or (12), a ~~[party]~~
1085 claimant claiming an interest in property ~~[subject to forfeiture]~~ that is being forfeited under this
1086 section:

1087 (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of
1088 the property ~~[under this section]~~; and

1089 (b) may not commence an action at law or equity concerning the validity of the
1090 ~~[party's]~~ claimant's alleged interests in the property subsequent to the filing of an indictment or
1091 an information alleging that the property is ~~[subject to forfeiture]~~ being forfeited under this
1092 section.

1093 ~~[(8) The district]~~ (10) A court that has jurisdiction of a case under this part may enter

1094 orders under this section without regard to the location of any property that ~~[may be subject to~~
1095 ~~forfeiture]~~ is or has been ordered forfeited under this section ~~[or that has been ordered forfeited~~
1096 ~~under this section].~~

1097 ~~[(9)]~~ (11) To facilitate the identification or location of property ~~[declared forfeited]~~
1098 ~~forfeited under this section,~~ and to facilitate the disposition of ~~[petitions]~~ a petition for
1099 remission or mitigation of forfeiture after the entry of an order declaring property forfeited to
1100 the ~~[state]~~ agency, the court may, upon application of the prosecuting attorney, order ~~[that]~~:

1101 (a) the testimony of any witness relating to the forfeited property be taken by
1102 deposition~~;~~; and ~~[that]~~

1103 (b) any book, paper, document, record, recording, or other material ~~[shall be]~~ is
1104 produced ~~[as provided for depositions and discovery under]~~ in accordance with the Utah Rules
1105 of Civil Procedure.

1106 ~~[(10)]~~ (12) (a) ~~[(i) Following the entry of an order of forfeiture under this section]~~ If a
1107 court orders property forfeited under this section, the prosecuting attorney shall publish notice
1108 of the ~~[order's]~~ intent to dispose of the property ~~[by publication].~~

1109 (b) Service by publication shall be by publication of two notices, in two successive
1110 weeks, of the forfeiture proceeding:

1111 ~~[(A)]~~ (i) in a newspaper of general circulation in the county in which the seizure of the
1112 property occurred; and

1113 ~~[(B)]~~ (ii) on Utah's Public Legal Notice Website established in Subsection
1114 45-1-101(2)(b).

1115 ~~[(ii)]~~ (c) The prosecuting attorney shall also send written notice to any claimants, other
1116 than the defendant, known to the prosecuting attorney to have an interest in the property, at the
1117 claimant's known address.

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

1122 the claimant's alleged interest in ~~[the]~~ property forfeited under this section.

1123 ~~[(ii) Any genuine issue of material fact, including issues of standing, may be tried to a~~
1124 ~~jury upon demand of any party.]~~

1125 (b) A claimant shall file a petition within 30 days after the earlier of the day on which a
1126 notice is published or the day on which the claimant receives written notice under Subsection
1127 (12)(a).

1128 ~~[(c)]~~ (14) The petition under Subsection (13) shall:

1129 ~~[(i)]~~ (a) be in writing and signed by the claimant under penalty of perjury;

1130 ~~[(ii)]~~ (b) set forth the nature and extent of the claimant's right, title, or interest in the
1131 property, the time and circumstances of the claimant's acquisition of the right, title, or interest
1132 in the property; and

1133 ~~[(iii)]~~ (c) set forth any additional facts supporting the claimant's claim and the relief
1134 sought.

1135 ~~[(d) The trial or hearing on the petition shall be expedited to the extent practicable.]~~

1136 (15) (a) The court shall expedite the trial or hearing under this Subsection (15) to the
1137 extent practicable.

1138 (b) Any party may request a jury to decide any genuine issue of material fact.

1139 (c) The court may consolidate a trial or hearing on the petition under Subsection
1140 (11)(b) and any other petition filed by ~~[any]~~ a claimant, other than the defendant, under this
1141 section.

1142 ~~[(The)]~~ For a petition under this section, the court shall permit the parties to conduct
1143 pretrial discovery ~~[pursuant to]~~ in accordance with the Utah Rules of Civil Procedure.

1144 (e) (i) At the trial or hearing, the claimant may testify and present evidence and
1145 witnesses on the claimant's own behalf and cross-examine witnesses who appear at the hearing.

1146 (ii) The prosecuting attorney may present evidence and witnesses in rebuttal and in
1147 defense of the claim to the property and cross-examine witnesses who appear.

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

1150 order of forfeiture.

1151 ~~[(iii)]~~ (g) ~~[Any]~~ A trial or hearing shall be conducted ~~[pursuant to]~~ in accordance with
1152 the Utah Rules of Evidence.

1153 ~~[(f)]~~ (16) The court shall amend the order of forfeiture in accordance with ~~[its]~~ the
1154 court's determination, if after the trial or hearing under Subsection (15), the court or jury
1155 determines that the ~~[petitioner]~~ claimant has established, by a preponderance of the evidence,
1156 that:

1157 (a) (i) the claimant has a legal right, title, or interest in the property~~[-]~~; and

1158 (ii) the claimant's right, title, or interest renders the order of forfeiture invalid in whole
1159 or in part because the right, title, or interest was vested in the claimant rather than the
1160 defendant, or was superior to any right, title, or interest of the defendant at the time ~~[of the~~
1161 ~~commission of the acts or conduct that gave rise to the forfeiture of the property under this~~
1162 ~~section]~~ of the commission of the offense subjecting the property to forfeiture under Subsection
1163 24-4-102(1); or

1164 ~~[(ii)]~~ (b) the claimant acquired the right, title, or interest in the property in a bona fide
1165 transaction for value, and, at the time of acquisition, the claimant did not know that the
1166 property ~~[was subject to forfeiture]~~ could be forfeited under this chapter.

1167 ~~[(g)]~~ ~~Following the court's disposition of all petitions filed under this Subsection (10),~~
1168 ~~or if no petitions are filed following the expiration of the period provided in Subsection (10)(b)~~
1169 ~~for the filing of petitions, the state has clear title to property subject to the order of forfeiture~~
1170 ~~and may warrant good title to any subsequent purchaser or transferee.]~~

1171 (17) An agency has clear title to the property and may transfer title to a purchaser or
1172 transferee if:

1173 (a) the court issued a disposition on all petitions under Subsection (13) denying any
1174 claimant's right, title, or interest to the property; or

1175 (b) a petition was not filed under the timelines provided in Subsection (13)(b).

1176 (18) If the prosecuting attorney seeks to discontinue a forfeiture proceeding under this
1177 section and transfer the action to another state or federal agency that has initiated a civil or

1178 criminal proceeding involving the same property, the prosecuting attorney shall file a petition
1179 to transfer the property in accordance with Section 24-2-105.

1180 Section 22. Section **24-4-109** is amended to read:

1181 **24-4-109. Postjudgment interest.**

1182 In ~~[any]~~ a proceeding to forfeit currency or other negotiable instruments under this
1183 chapter, the court shall award postjudgment interest to a prevailing party ~~[postjudgment~~
1184 ~~interest]~~ on the currency or negotiable instruments at the interest rate established under Section
1185 15-1-4.

1186 Section 23. Section **24-4-110** is amended to read:

1187 **24-4-110. Attorney fees and costs.**

1188 (1) In ~~[any]~~ a forfeiture proceeding under this chapter, ~~[the]~~ a court shall award ~~[a~~
1189 ~~prevailing claimant reasonable:]~~ reasonable legal costs and attorney fees to a prevailing
1190 claimant.

1191 ~~[(a) legal costs; and]~~

1192 ~~[(b) attorney fees.]~~

1193 ~~(2) [The legal costs and attorney fees awarded by the court to the prevailing party]~~ If a
1194 court awards legal costs and attorney fees to a prevailing claimant under Subsection (1), the
1195 award may not exceed 50% of the value of the seized property.

1196 (3) A claimant who prevails only in part is entitled to recover reasonable legal costs
1197 and attorney fees only on ~~[those issues]~~ an issue on which the party prevailed~~[, as determined~~
1198 ~~by the court].~~

1199 Section 24. Section **24-4-111** is amended to read:

1200 **24-4-111. Compensation for damaged property.**

1201 (1) As used in this section, "damage or other injury" does not mean normal
1202 depreciation, deterioration, or ordinary wear and tear of the property.

1203 ~~[(1)]~~ (2) If ~~[property seized for forfeiture]~~ seized property is returned ~~[by operation of]~~
1204 under this chapter, a claimant has a civil right of action against ~~[a seizing]~~ an agency for ~~[any]~~ a
1205 claim based upon the negligent destruction, loss, or damage~~;~~ or other injury to seized property

1206 while in the possession or custody of the agency.

1207 ~~[(2) As used in this section, "damage or other injury" does not include normal~~
1208 ~~depreciation, deterioration, or ordinary wear and tear.]~~

1209 Section 25. Section **24-4-112** is amended to read:

1210 **24-4-112. Limitation on fees for holding seized property.**

1211 In any civil or criminal proceeding under this chapter in which a judgment is entered in
1212 favor of a claimant, or where a forfeiture proceeding against a claimant is voluntarily dismissed
1213 by the prosecuting attorney, ~~[the seizing]~~ an agency may not charge ~~[that]~~ a claimant any fee or
1214 cost for holding seized property.

1215 Section 26. Section **24-4-113** is amended to read:

1216 **24-4-113. Proportionality.**

1217 (1) (a) A claimant's interest in property that is used to facilitate ~~[a crime, excluding~~
1218 ~~contraband, is not subject to forfeiture]~~ an offense may not be forfeited under any provision of
1219 state law if the forfeiture is substantially disproportionate to the use of the property in
1220 committing or facilitating ~~[a]~~ an offense that is a violation of state law and the value of the
1221 property.

1222 (b) ~~[Forfeiture of property]~~ If property is used solely in a manner that is merely
1223 incidental and not instrumental to the commission or facilitation of [a violation of law] an
1224 offense, a forfeiture of the property is not proportional.

1225 (2) (a) In determining proportionality, the court shall consider:

1226 (i) the ~~[conduct giving cause for the forfeiture]~~ offense subjecting the property to
1227 forfeiture under Subsection 24-4-102(1);

1228 (ii) what portion of the forfeiture, if any, is remedial in nature;

1229 (iii) the gravity of the conduct for which the claimant is responsible in light of the
1230 offense; and

1231 (iv) the value of the property.

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

1234 forfeiture~~;~~ as ~~it~~ the court finds appropriate.

1235 (3) ~~The~~ A prosecuting attorney has the burden ~~to demonstrate~~ of demonstrating that
 1236 ~~any~~ a forfeiture is proportional to the ~~conduct giving rise to the forfeiture~~ offense subjecting
 1237 the property to forfeiture under Subsection 24-4-102(1).

1238 (4) In all cases, the court shall decide questions of proportionality.

1239 (5) ~~Forfeiture~~ A forfeiture of any proceeds used to facilitate the commission of an
 1240 offense that is a violation of federal or state law is proportional.

1241 Section 27. Section **24-4-115** is amended to read:

1242 **24-4-115. Disposition and allocation of forfeiture property.**

1243 (1) ~~Upon finding that property is subject to forfeiture under this chapter~~ If a court
 1244 finds that property is forfeited under this chapter, the court shall order the property forfeited to
 1245 the ~~state~~ agency.

1246 (2) (a) If the property is not currency, the ~~seizing~~ agency shall authorize a public or
 1247 otherwise commercially reasonable sale of that property ~~that~~ if the property is not required by
 1248 law to be destroyed and ~~that~~ is not harmful to the public.

1249 (b) If the property forfeited is an alcoholic product as defined in Section **32B-1-102**,
 1250 ~~it~~ the property shall be disposed of as follows:

1251 (i) an alcoholic product shall be sold if the alcoholic product is:

1252 (A) unadulterated, pure, and free from any crude, unrectified, or impure form of ethylic
 1253 alcohol, or any other deleterious substance or liquid; and

1254 (B) otherwise in saleable condition; or

1255 (ii) an alcoholic product and ~~its~~ the alcoholic product's package shall be destroyed if
 1256 the alcoholic product is impure, adulterated, or otherwise unfit for sale.

1257 (c) If the property forfeited is a cigarette or other tobacco product as defined in Section
 1258 **59-14-102**, ~~it~~ the property shall be destroyed, except that ~~prior to the destruction of any~~
 1259 ~~cigarette or other tobacco product seized pursuant to this part,~~ the lawful holder of the
 1260 trademark rights in the cigarette or tobacco product brand ~~shall be~~ is permitted to inspect the
 1261 cigarette before the destruction of the cigarette or tobacco product.

1262 (d) The proceeds of the sale of forfeited property shall remain segregated from other
1263 property, equipment, or assets of the [seizing] agency until transferred [to the state] in
1264 accordance with this chapter.

1265 (3) ~~[From the forfeited property, both]~~ Before transferring currency and the proceeds or
1266 revenue from the sale of the property in accordance with this chapter, the [seizing] agency
1267 shall:

1268 (a) deduct the [seizing] agency's direct costs, expense of reporting under Section
1269 [24-4-118](#), and [expenses] expense of obtaining and maintaining the property pending a
1270 forfeiture proceeding; and

1271 (b) if the prosecuting agency that employed the prosecuting attorney has met the
1272 requirements of Subsection [24-4-119\(3\)](#), pay the [office of the] prosecuting attorney the legal
1273 costs associated with the litigation of the forfeiture proceeding, and up to 20% of the value of
1274 the forfeited property in attorney fees.

1275 (4) If the forfeiture arises from [any] a violation relating to wildlife resources, the
1276 agency shall deposit any remaining currency and the proceeds or revenue from the sale of the
1277 property ~~[shall be deposited in]~~ into the Wildlife Resources Account created in Section
1278 [23-14-13](#).

1279 (5) The agency shall transfer any remaining currency, [and] the proceeds, or revenue
1280 from the sale of the property ~~[shall then be transferred]~~ to the commission and deposited into
1281 the account.

1282 Section 28. Section **24-4-116** is amended to read:

1283 **24-4-116. Criminal Forfeiture Restricted Account.**

1284 (1) There is created within the General Fund a restricted account known as the
1285 "Criminal Forfeiture Restricted Account."

1286 (2) ~~[Proceeds]~~ Except as provided in Section [24-4-115](#), the commission shall deposit
1287 any proceeds from forfeited property and forfeited money through ~~[state forfeitures shall be~~
1288 ~~deposited into the account]~~ a forfeiture proceeding under this chapter into the account.

1289 (3) Money in the account shall be appropriated to the commission for implementing the

1290 program under Section [24-4-117](#).

1291 Section 29. Section **24-4-117** is amended to read:

1292 **24-4-117. State Asset Forfeiture Grant Program.**

1293 (1) There is created the State Asset Forfeiture Grant Program.

1294 (2) The program shall fund crime prevention, crime victim reparations, and law
1295 enforcement activities that have the purpose of:

1296 (a) deterring crime by depriving criminals of the profits and proceeds of their illegal
1297 activities;

1298 (b) weakening criminal enterprises by removing the instrumentalities of crime;

1299 (c) reducing crimes involving substance abuse by supporting the creation,
1300 administration, or operation of drug court programs throughout the state;

1301 (d) encouraging cooperation between ~~[local, state, and multijurisdictional law~~
1302 ~~enforcement]~~ agencies;

1303 (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited
1304 proceeds of crime;

1305 (f) increasing the equitability and accountability of the use of forfeited property used to
1306 assist ~~[law enforcement]~~ agencies in reducing and preventing crime; and

1307 (g) providing aid to victims of criminally injurious conduct, as defined in Section
1308 [63M-7-502](#), who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office
1309 for Victims of Crime.

1310 (3) (a) ~~[When property is forfeited under this chapter and transferred to the account,~~
1311 ~~upon appropriation]~~ Upon appropriation of funds from the account, the commission shall
1312 allocate and administer grants to ~~[state agencies, local law enforcement agencies,~~
1313 ~~multijurisdictional law enforcement agencies, or political subdivisions]~~ an agency or political
1314 subdivision of the state in compliance with this section and Subsection [24-4-119\(2\)](#) and to
1315 further the program purposes under Subsection (2).

1316 (b) The commission may retain up to 3% of the annual appropriation from the account
1317 to pay for administrative costs incurred by the commission, including salary and benefits,

1318 equipment, supplies, or travel costs that are directly related to the administration of the
1319 program.

1320 (4) ~~[Agencies or political subdivisions]~~ An agency or political subdivision shall apply
1321 for an award from the program by completing and submitting forms specified by the
1322 commission.

1323 (5) In granting the awards, the commission shall ensure that the amount of each award
1324 takes into consideration the:

1325 (a) demonstrated needs of the agency or political subdivision;

1326 (b) demonstrated ability of the agency or political subdivision to appropriately use the
1327 award;

1328 (c) degree to which the agency's or political subdivision's need is offset through the
1329 agency's or political subdivision's participation in federal equitable sharing or through other
1330 federal and state grant programs; and

1331 (d) agency's or political subdivision's cooperation with other state and local agencies
1332 and task forces.

1333 (6) The commission may award a grant to any agency or political subdivision engaged
1334 in activities associated with Subsection (2) even if the agency has not contributed to the fund.

1335 ~~[(6)]~~ (7) ~~[Applying agencies or political subdivisions]~~ An applying agency or political
1336 subdivision shall demonstrate compliance with all reporting and policy requirements applicable
1337 under this chapter and under Title 63M, Chapter 7, Criminal Justice and Substance Abuse, in
1338 order to qualify as a potential award recipient.

1339 ~~[(7)]~~ (8) (a) ~~[Recipient law enforcement agencies]~~ A recipient agency may only use
1340 award money after approval by the agency's legislative body.

1341 (b) The award money is nonlapsing.

1342 ~~[(8)]~~ (9) A recipient ~~[state agency, local law enforcement agency, multijurisdictional~~
1343 ~~law enforcement]~~ agency[;] or political subdivision shall use ~~[awards]~~ an award:

1344 (a) only for law enforcement purposes [as] described in this section, or for victim
1345 reparations as described in Subsection (2)(g)[, and only as these]; and

1346 (b) for the purposes ~~[are]~~ specified by the agency or political subdivision in ~~[its]~~ the
1347 agency's or political subdivision's application for the award.

1348 ~~[(9)] (10) [Permissible law enforcement purposes]~~ A permissible law enforcement
1349 purpose for which award money may be used ~~[include]~~ includes:

1350 (a) controlled substance interdiction and enforcement activities;

1351 (b) drug court programs;

1352 (c) activities calculated to enhance future law enforcement investigations;

1353 (d) law enforcement training that includes:

1354 (i) implementation of the Fourth Amendment to the United States Constitution and
1355 Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's
1356 right of due process;

1357 (ii) protection of the rights of innocent property holders; and

1358 (iii) the Tenth Amendment to the United States Constitution regarding states'
1359 sovereignty and the states' reserved rights;

1360 (e) law enforcement or detention facilities;

1361 (f) law enforcement operations or equipment that are not routine costs or operational
1362 expenses;

1363 (g) drug, gang, or crime prevention education programs that are sponsored in whole or
1364 in part by the law enforcement agency or its legislative body;

1365 (h) matching funds for other state or federal law enforcement grants; and

1366 (i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture
1367 actions.

1368 ~~[(10)] (11) [Law enforcement purposes]~~ A law enforcement purpose for which award
1369 money may not be granted or used ~~[include]~~ includes:

1370 (a) payment of salaries, retirement benefits, or bonuses to any ~~[person]~~ individual;

1371 (b) payment of expenses not related to law enforcement;

1372 (c) uses not specified in the agency's award application;

1373 (d) uses not approved by the agency's legislative body;

1374 (e) payments, transfers, or pass-through funding to [~~entities other than law enforcement~~
1375 ~~agencies~~] an entity other than an agency; or

1376 (f) uses, payments, or expenses that are not within the scope of the agency's functions.

1377 Section 30. Section **24-4-118** is amended to read:

1378 **24-4-118. Forfeiture reporting requirements.**

1379 (1) [~~On and after January 1, 2016, every state, county, municipal, or other law~~
1380 ~~enforcement~~] An agency shall provide all reasonably available data described in Subsection

1381 (5)[~~, along with the transfer of any applicable forfeited property~~]:

1382 (a) [~~when~~] if transferring the forfeited property resulting from the final disposition of
1383 any civil or criminal forfeiture matter to the [~~Commission on Criminal and Juvenile Justice~~]

1384 commission as required under Subsection **24-4-115(5)**; or

1385 (b) [~~when~~] if the agency has been awarded [~~any~~] an equitable share of property
1386 forfeited by the federal government.

1387 (2) The [~~Commission on Criminal and Juvenile Justice~~] commission shall develop a
1388 standardized report format that each agency shall use in reporting the data required under this
1389 section.

1390 (3) The [~~Commission on Criminal and Juvenile Justice~~] commission shall annually, on
1391 or before April 30, prepare a summary report of the case data submitted by each agency under
1392 Subsection (1) during the prior calendar year.

1393 (4) (a) If an agency does not comply with the reporting requirements under this section,
1394 the [~~Commission on Criminal and Juvenile Justice~~] commission shall contact the agency and
1395 request that the agency comply with the required reporting provisions.

1396 (b) If an agency fails to comply with the reporting requirements under this section
1397 within 30 days after receiving the request to comply, the [~~Commission on Criminal and~~
1398 ~~Juvenile Justice~~] commission shall report the noncompliance to the [~~Utah~~] attorney general, the
1399 speaker of the House of Representatives, and the president of the Senate.

1400 (5) The data for any civil or criminal forfeiture matter for which final disposition has
1401 been made under Subsection (1) shall include:

- 1402 (a) the agency that conducted the seizure;
- 1403 (b) the case number or other identification;
- 1404 (c) the date or dates on which the seizure was conducted;
- 1405 (d) the number of individuals having a known property interest in each seizure of
- 1406 property;
- 1407 (e) the type of property seized;
- 1408 (f) the alleged offense that was the cause for seizure of the property;
- 1409 (g) whether any criminal charges were filed regarding the alleged offense, and if so, the
- 1410 final disposition of each charge, including the conviction, acquittal, or dismissal, or whether
- 1411 action on a charge is pending;
- 1412 (h) the type of enforcement action that resulted in the seizure, including an
- 1413 enforcement stop, a search warrant, or an arrest warrant;
- 1414 (i) whether the forfeiture procedure was civil or criminal;
- 1415 (j) the value of the property seized, including currency and the estimated market value
- 1416 of any tangible property;
- 1417 (k) the final disposition of the matter, including whether final disposition was entered
- 1418 by stipulation of the parties, including the amount of property returned to any claimant, by
- 1419 default, by summary judgment, by jury award, or by guilty plea or verdict in a criminal
- 1420 forfeiture;
- 1421 (l) if the property was forfeited by the federal government, the amount of forfeited
- 1422 money awarded to the agency;
- 1423 (m) the agency's direct costs, expense of reporting under this section, and expenses for
- 1424 obtaining and maintaining the seized property, as described in Subsection [24-4-115\(3\)\(a\)](#);
- 1425 (n) the legal costs and attorney fees paid to the prosecuting attorney, as described in
- 1426 Subsection [24-4-115\(3\)\(b\)](#); and
- 1427 (o) if the property was transferred to a federal agency or any governmental entity not
- 1428 created under and subject to state law:
- 1429 (i) the date of the transfer;

1430 (ii) the name of the federal agency or entity to which the property was transferred;

1431 (iii) a reference to which reason under Subsection ~~[24-4-114(1)(a)]~~ 24-2-106(3)

1432 justified the transfer;

1433 (iv) the court or agency where the forfeiture case was heard;

1434 (v) the date of the order of transfer of the property; and

1435 (vi) the value of the property transferred to the federal agency, including currency and
1436 the estimated market value of any tangible property.

1437 (6) ~~[On and after January 1, 2016, every state, county, municipal, or other law~~
1438 ~~enforcement]~~ An agency shall annually on or before April 30 submit a report for the prior
1439 calendar year to the ~~[Commission on Criminal and Juvenile Justice which]~~ commission that
1440 states:

1441 (a) whether the agency received an award from the State Asset Forfeiture Grant
1442 Program under Section 24-4-117 and, if so, the following information for each award:

1443 (i) the amount of the award;

1444 (ii) the date of the award;

1445 (iii) how the award was used or is planned to be used; and

1446 (iv) a statement signed by both the agency's executive officer or designee and by the
1447 agency's legal counsel, that:

1448 (A) the agency has complied with all inventory, policy, and reporting requirements
1449 under Section 24-4-117; and

1450 (B) all awards were used for crime reduction or law enforcement purposes as specified
1451 in the application and that the awards were used only upon approval by the agency's legislative
1452 body; and

1453 (b) whether the agency received any property, money, or other things of value
1454 ~~[pursuant to]~~ in accordance with federal law as described in Subsection ~~[24-4-114(2)]~~

1455 24-2-106(6) and, if so, the following information for each piece of property, money, or other
1456 thing of value:

1457 (i) the case number or other case identification;

1458 (ii) the value of the award and the property, money, or other things of value received by
1459 the agency;

1460 (iii) the date of the award;

1461 (iv) the identity of any federal agency involved in the forfeiture;

1462 (v) how the awarded property has been used or is planned to be used; and

1463 (vi) a statement signed by both the agency's executive officer or designee and by the
1464 agency's legal counsel, that the agency has only used the award for crime reduction or law
1465 enforcement purposes authorized under Section [24-4-117](#), and that the award was used only
1466 upon approval by the agency's legislative body.

1467 (7) (a) On or before July 1 of each year, the [~~Commission on Criminal and Juvenile~~
1468 ~~Justice~~] commission shall submit notice of the annual reports in Subsection (3) and Subsection
1469 (6), in electronic format, to:

1470 (i) the [~~Utah~~] attorney general;

1471 (ii) the speaker of the House of Representatives, for referral to any House standing or
1472 interim committees with oversight over law enforcement and criminal justice;

1473 (iii) the president of the Senate, for referral to any Senate standing or interim
1474 committees with oversight over law enforcement and criminal justice; and

1475 (iv) each law enforcement agency.

1476 (b) The reports described in Subsection (3) and Subsection (6), as well as the
1477 individual case data described in Subsection (1) for the previous calendar year, shall be
1478 published on the Utah Open Government website at open.utah.gov on or before July 15 of each
1479 year.

1480 Section 31. Section **24-4-119** is enacted to read:

1481 **24-4-119. Training requirements.**

1482 (1) As used in this section:

1483 (a) "Council" means the Utah Prosecution Council created in Section [67-5a-1](#).

1484 (b) "Division" means the Peace Officers Standards and Training Division created in
1485 Section [53-6-103](#).

1486 (2) To participate in the program, an agency shall have at least one employee who is
1487 certified by the division as an asset forfeiture specialist through the completion of an online
1488 asset forfeiture course by the division.

1489 (3) The division shall:

1490 (a) develop an online asset forfeiture specialist course that is available to an agency for
1491 certification purposes;

1492 (b) certify an employee of an agency who meets the course requirements to be an asset
1493 forfeiture specialist;

1494 (c) recertify, every 36 months, an employee who is designated as an asset forfeiture
1495 specialist by an agency;

1496 (d) submit annually a report to the commission no later than April 30 that contains a
1497 list of the names of the employees and agencies participating in the certification courses;

1498 (e) review and update the asset forfeiture specialist course each year to comply with
1499 state and federal law; and

1500 (f) provide asset forfeiture training to all peace officers in basic training programs.

1501 (4) To be reimbursed for costs under Subsection [24-4-115\(3\)\(b\)](#), a prosecuting agency
1502 shall have at least one employee who is certified by the council as an asset forfeiture specialist
1503 through the completion of an online asset forfeiture course.

1504 (5) The council shall:

1505 (a) develop an online asset forfeiture specialist course that is available to a prosecuting
1506 agency for certification purposes;

1507 (b) certify an employee of a prosecuting agency who meets the course requirements to
1508 be an asset forfeiture specialist;

1509 (c) submit annually a report to the commission no later than April 30 that contains a
1510 list of the names of the employees and prosecuting agencies participating in certification
1511 courses by the council; and

1512 (d) review and update the asset forfeiture specialist course each year to comply with
1513 state and federal law.

1514 Section 32. Section **53-13-110.5** is enacted to read:

1515 **53-13-110.5. Retention of records of interviews of minors.**

1516 If a peace officer, or the officer's employing agency, records an interview of a minor
1517 during an investigation of a violation of Section [76-5-402.1](#), [76-5-402.3](#), [76-5-403.1](#), or
1518 [76-5-404.1](#), the agency shall retain a copy of the recording for 18 years after the day on which
1519 the last recording of the interview is made, unless the prosecuting attorney requests in writing
1520 that the recording be retained for an additional period of time.

1521 Section 33. **Repealer.**

1522 This bill repeals:

1523 Section [24-4-107](#), **Innocent owners.**

1524 Section [24-4-108](#), **Release of property held for forfeiture on certain grounds.**