

Principled Asset Forfeiture Policing for Protection

David Spatafore, Utah Police Chiefs

PROPOSED LEGISLATION



JURISDICTION (*SAVELY*)



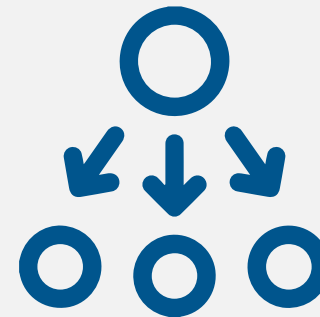
TRANSPARENCY



UNIFORM APPLICATION



TRAINING/EDUCATION



OVERSIGHT



The Problem

Utah: Crossroads of the West

Definitions

Drug Trafficking Organizations (DTO)

Money Laundering Organizations (MLO)

Transnational Criminal Organizations (TCO)

DTO

Drug Trafficking Organizations



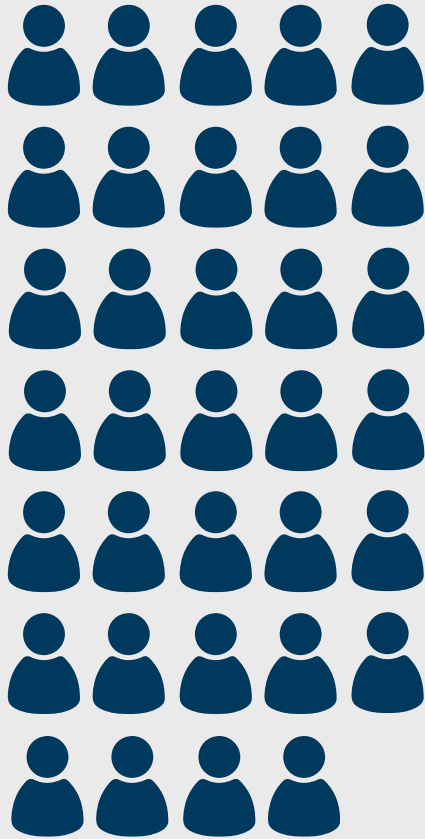
323

Total members of all
DTOs and MLOs



7

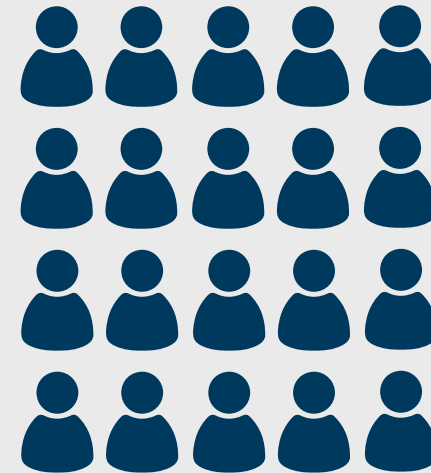
Average members of
each DTO



34

Members in
largest DTO

Trafficked
primarily in
heroin and
meth



20

Members in
second largest
DTO

Trafficked
primarily in
cocaine and
heroin

DTO

Drug Trafficking Organizations

Primary Source Area from 2014-2018

Mexico: **110**

Utah: **88**

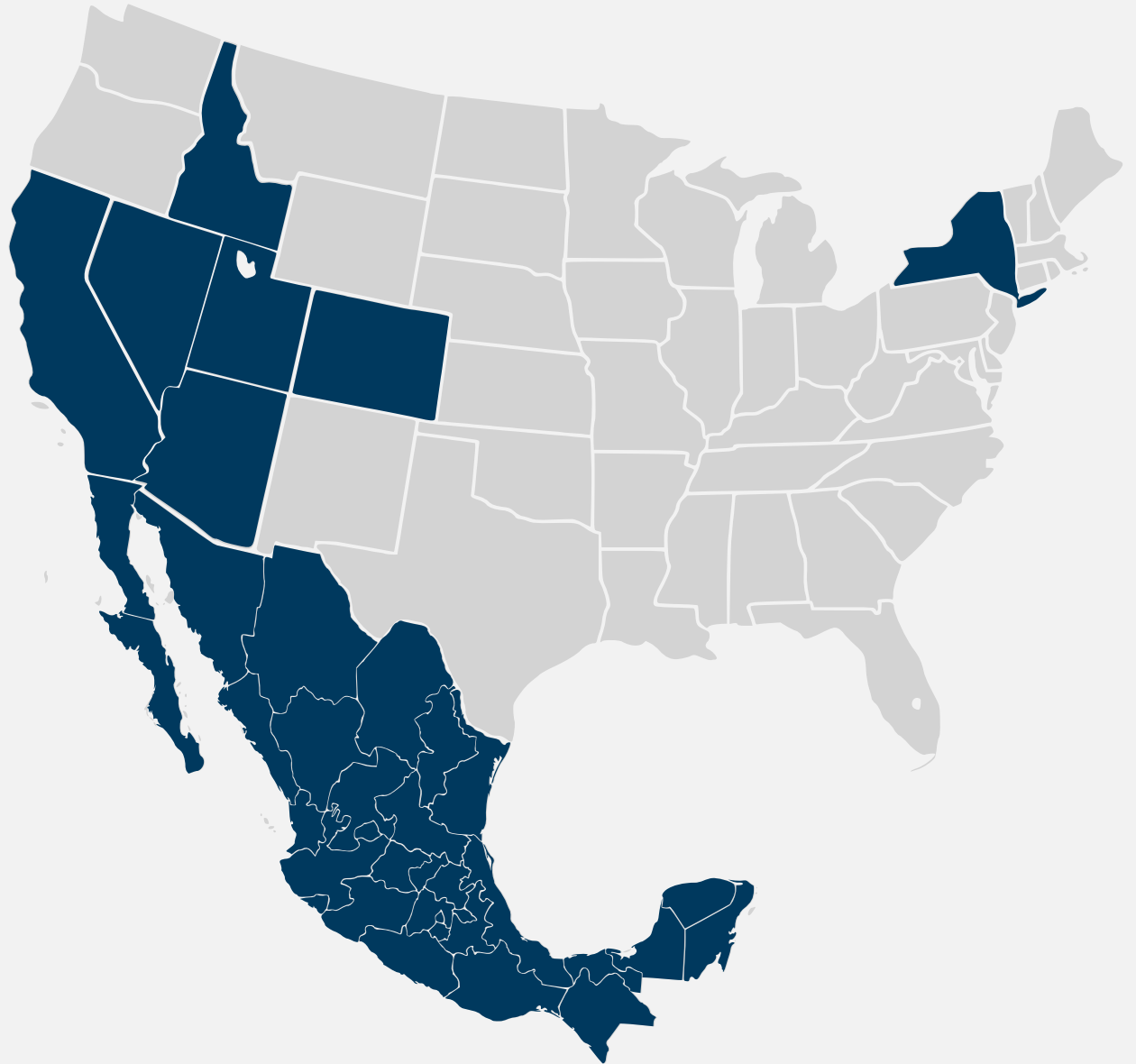
California: **86**

Arizona: **46**

Nevada: **45**

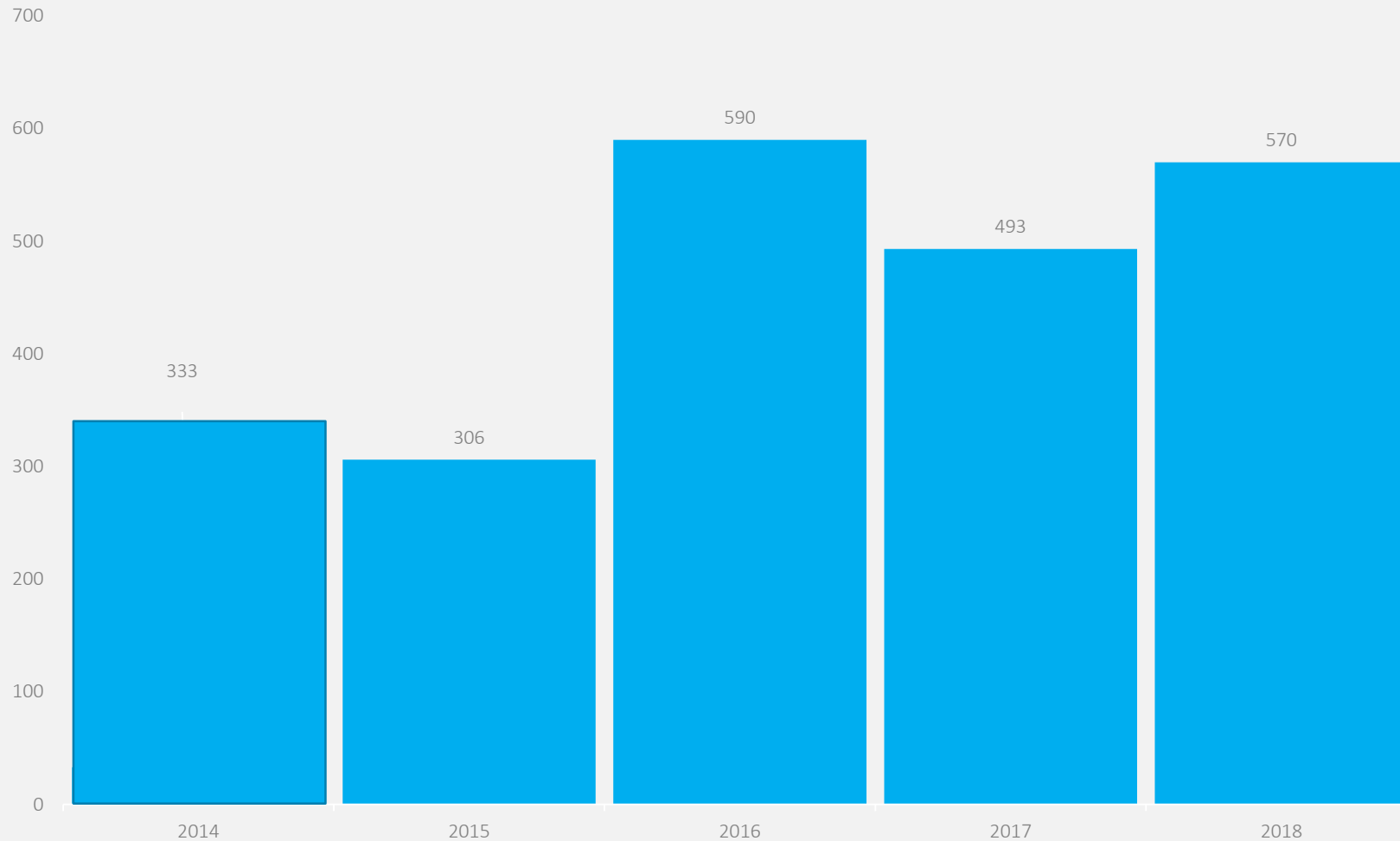
NY, CO, ID: **20**

Unknown: **25**



Methamphetamine

SEIZURES IN POUNDS FROM 2014-2018



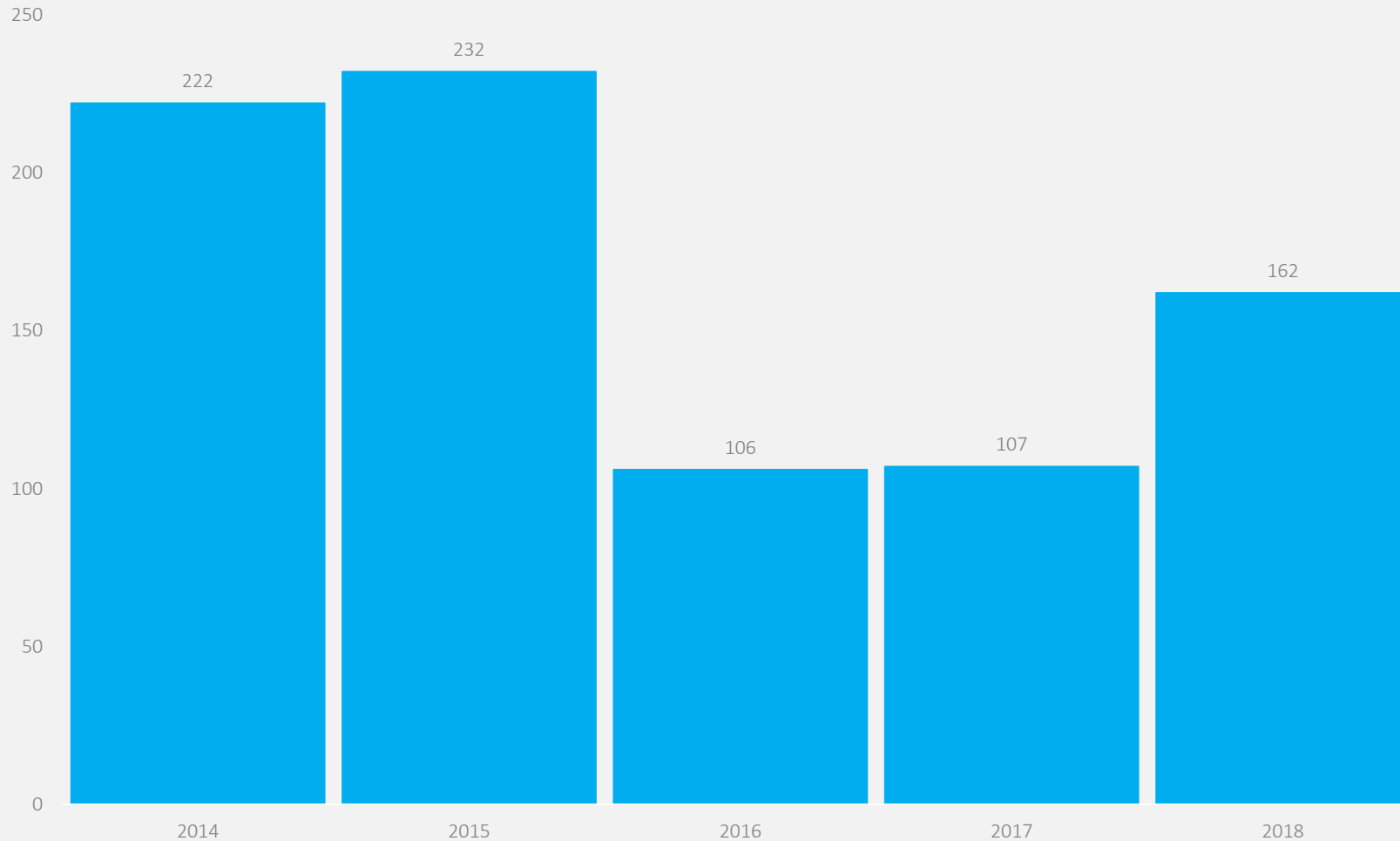
Increased 71%
from 2014-2018

701 Overdose deaths
from 2014-2018

Felony arrests
from 2014-2018 **2119**

Heroin

SEIZURES IN POUNDS FROM 2014-2018



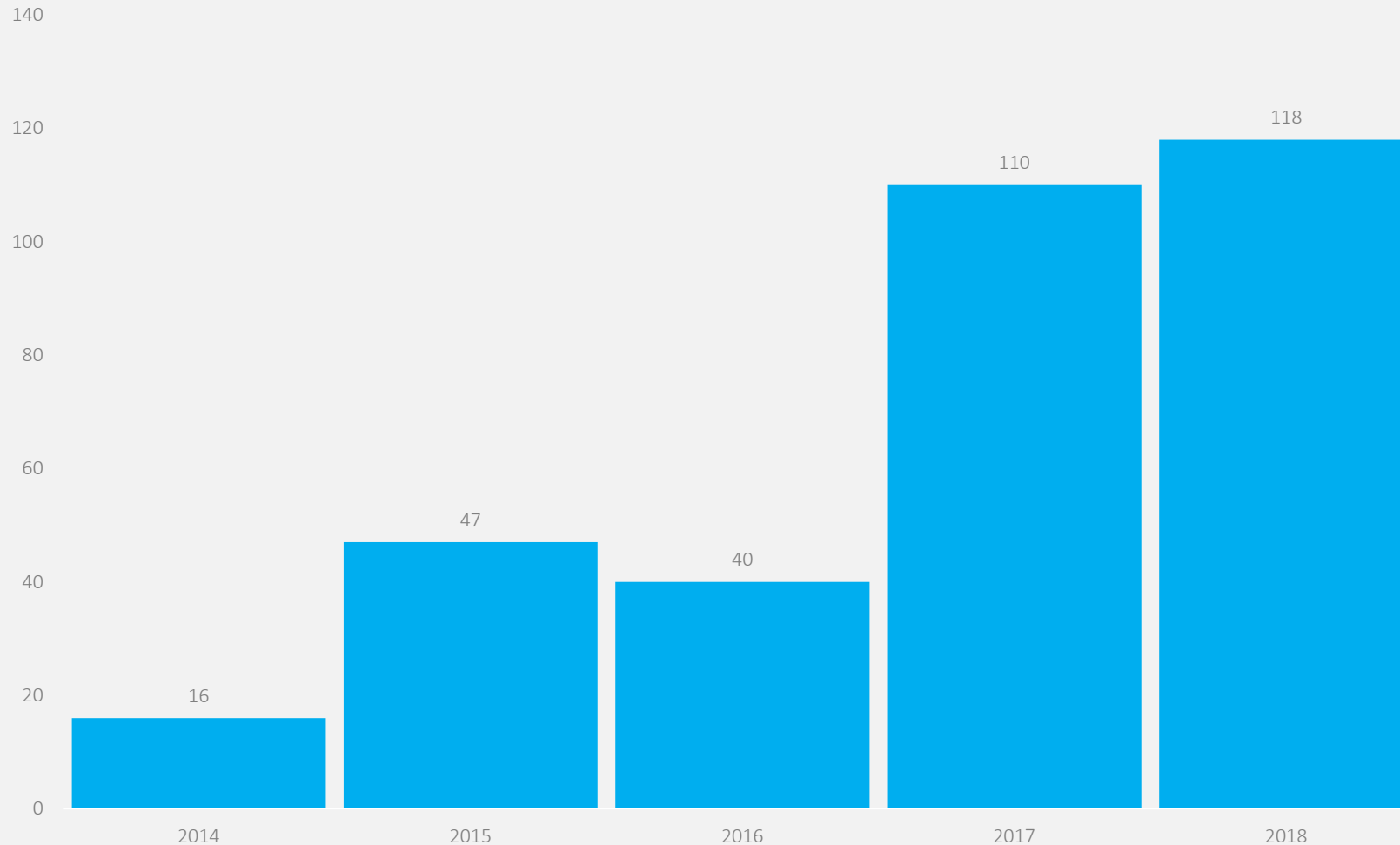
829 Pounds
Total Seized

774 Overdose deaths
from 2014-2018

Felony arrests
from 2014-2018 **1084**

Cocaine

SEIZURES IN POUNDS FROM 2014-2018



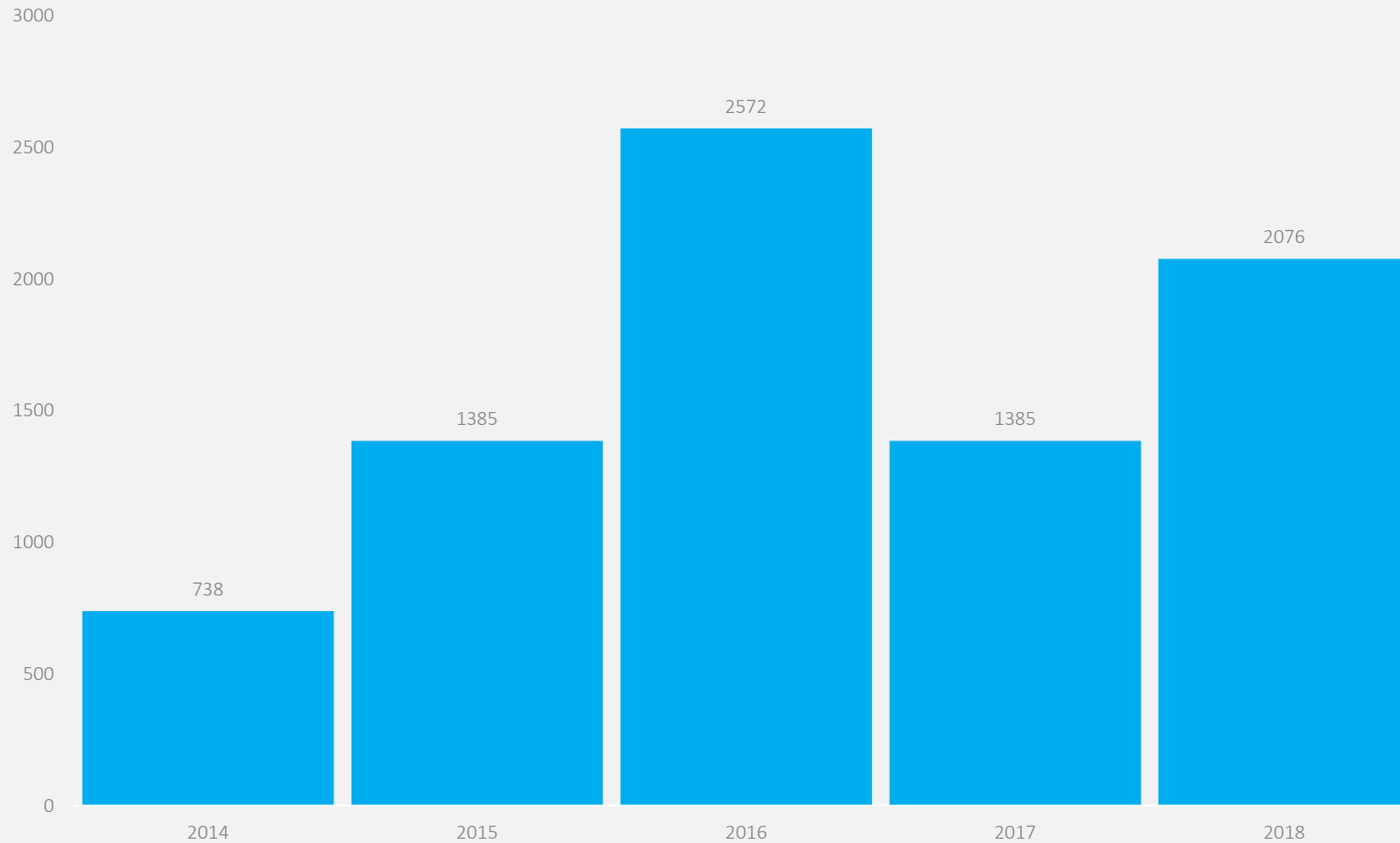
Increased 738%
From 2014-2018

226 Overdose deaths
from 2014-2018

Felony arrests
from 2014-2018 **215**

Marijuana

SEIZURES IN POUNDS FROM 2014-2018



Increased 281%
From 2014-2018

719 Felony arrests
from 2014-2018



The Asset Forfeiture Process



STEP 1

The SEIZURE

STEP 1

The SEIZURE

(UCA 24-4-102)

Officer seizes “property that has been used to facilitate the commission of a federal or state criminal offense[.]”

Often, officers may interrupt an ongoing criminal enterprise, but not seize property because the amounts are de minimus or too cumbersome to pursue.





STEP 1

The SEIZURE



STEP 2

Notice of Intent to Forfeit

STEP 2

Notice of Intent to Forfeit

(within 30 days of seizure)

UCA 21-4-103

The law enforcement agency must give notice to anyone who has a claim to the property that the agency seeks (or intends) to forfeit.



Stolen goods

Prosecutor notifies pawnshops of intent to forfeit the stolen goods because investigators will need at least six months to identify the owners of the stolen goods.



Drugs

After learning that an individual he has arrested for engaging in a narcotics transaction will be released after booking because the jail is full, the officer notifies the suspect that the \$500 cash in his possession will be seized.



STEP 1

The SEIZURE



STEP 2

Notice of Intent to Forfeit



STEP 3

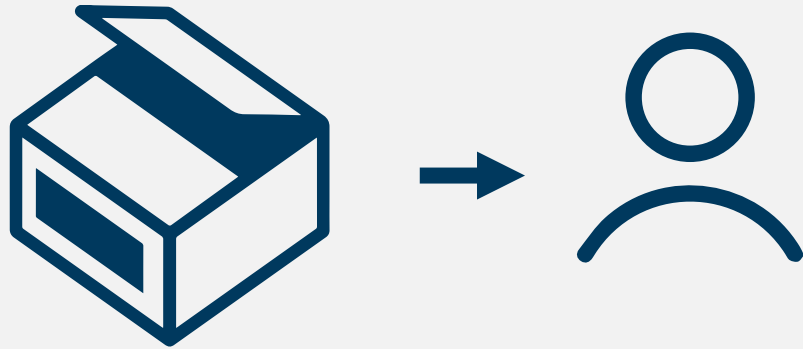
Written Request to Prosecutor

STEP 3 Written Request to Prosecutor

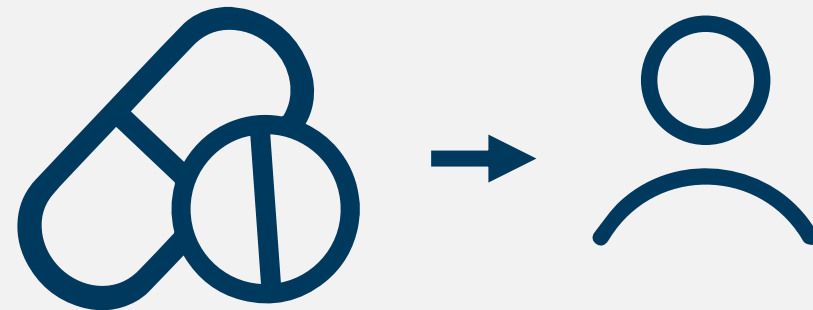
(UCA 24-4-103(2))

Within 60 days of the seizure, the law enforcement agency must formally request that the prosecutor begin a forfeiture action and must provide all "reports, supporting documents, and other evidence necessary" for filing a forfeiture action.

Law enforcement regularly returns seized property at this point due to insufficient evidence.



Investigators provide notes and reports to prosecutor. In AGO model, prosecutor has already been involved.



Law enforcement officer turns investigative notes and reports over to prosecutor.



STEP 1

The SEIZURE



STEP 2

Notice of Intent to Forfeit



STEP 3

Written Request to Prosecutor



STEP 4

Return Property or File Complaint

STEP 4

Return Property or File Complaint

(UCA 24-4-104(4))

RETURNS PROPERTY

The prosecutor conducts a review and determines that there is not “**clear and convincing evidence**” that the property was part of a criminal enterprise. The property is returned to the claimants.

FILES COMPLAINT

Within 75 days, the prosecutor files a criminal indictment or information, a restraining order, a petition for transfer, or a **civil complaint**.

STEP 4 Return Property or File Complaint

(UCA 24-4-104(4))



Stolen goods in a pawnshop

Prosecutor files a civil forfeiture action and serve various retailers asking them to make claims to the stolen merchandise. Absent civil forfeiture, the stolen property would be given back to the pawnshop, which could sell it while the investigation is underway.

STEP 4 Return Property or File Complaint

(UCA 24-4-104(4))



Drugs

Absent civil forfeiture the drug dealer will have the \$500 released to him upon being booked and released. He can be back in business in time for evening sales at Pioneer Park.

STEP 4

Return Property or File Complaint

(UCA 24-4-104(4))

WHY FILE A CIVIL COMPLAINT

Explanation



STEP 1

The SEIZURE



STEP 2

Notice of Intent to Forfeit



STEP 3

Written Request to Prosecutor



STEP 4

Return Property or File Complaint



STEP 5

Civil Complaint Filed and Discovery

STEP 5

Civil Complaint Filed and Discovery

(UCA 24-4-105)

Establish the property was involved in criminal activity.

The prosecutor must establish by “**clear and convincing evidence**” that the property was used in commission of a crime.





STEP 1

The SEIZURE



STEP 2

Notice of Intent to Forfeit



STEP 3

Written Request to Prosecutor



STEP 4

Return Property or File Complaint



STEP 5

Civil Complaint Filed and Discovery



STEP 6

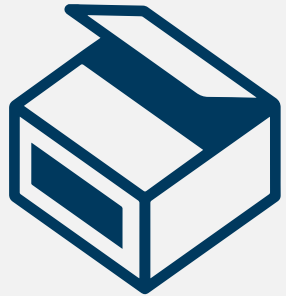
Settlement/Final Disposition



STEP 6

Settlement/Final Disposition

Prosecutor reaches a settlement with claimants or obtains a court judgement. An innocent owner's property cannot be forfeited.



Stolen goods



Drugs



CASE STUDY

Gambling Machines (2017)

Utah reached a settlement with the owner of the gambling machines that required them to remove all machines from the state.

CCJJ Distributes

(UCA 24-4-115 and 24-4-117)

- The money is distributed to statewide agencies, courts, and law enforcement through the grant process. The agency and prosecutor may deduct some costs, as specified by statute.
- Funds are deposited in the Criminal Forfeiture Restricted Account, managed by CCJJ.
- Applicants apply through the State Asset Forfeiture Grant Program, regardless of whether they have contributed seized funds.
- Applicants may use the funds for crime prevention, crime victim reparations, and law enforcement activities.





Highlights of the Proposed Legislation

Highlights

- Addresses the Utah Supreme Court's *Savelly* decision
 - Defines “held for forfeiture;” and
 - How and when a court acquires jurisdiction over seized property.
- Clarifies existing language .
- Encourages criminal, rather than civil, forfeiture while still permitting civil asset forfeiture when necessary.
- Requires prosecutors and law enforcement agencies to have at least one employee receive asset forfeiture training and be certified as an asset forfeiture specialist in order to participate in the State Asset Forfeiture Grant Program but eliminates the requirement to contribute to the fund in order to receive funds.
- Makes possession of more than \$1,500 a third-degree felony if the money was used to facilitate certain illegal drug activities.