

**24-4-108 Release of property held for forfeiture on certain grounds.**

- (1) After the seizing agency gives notice that the property is to be held for forfeiture, a person or entity may not alienate, convey, sequester, or attach that property until the court issues a final order of dismissal or an order of forfeiture regarding the property.
- (2) The seizing agency or the prosecuting attorney may authorize the release of property held for forfeiture to a claimant if retention of actual custody is unnecessary.
- (3) With the consent of a court of competent jurisdiction, the prosecuting attorney may discontinue forfeiture proceedings and transfer the action to another state or federal agency that has initiated forfeiture proceedings involving the same property.
- (4) Property held for forfeiture is considered to be in the custody of the district court and subject only to:
  - (a) the orders and decrees of the court having jurisdiction over the property or the forfeiture proceedings; and
  - (b) the acts of the agency that possesses the property or the prosecuting attorney pursuant to this chapter.
- (5)
  - (a) A claimant may obtain release of property held for forfeiture by posting with the district court a surety bond or cash in an amount equal to the current fair market value of the property as determined by the court or by the parties' stipulation.
  - (b) The district court may refuse to order the release of the property if:
    - (i) the bond tendered is inadequate;
    - (ii) the property is contraband or is retained as evidence; or
    - (iii) the property is particularly altered or designed for use in conduct giving cause for forfeiture.
  - (c) If a surety bond or cash is posted and the court later determines that the property is subject to forfeiture, the court shall order the forfeiture of the surety bond or cash in lieu of the property.
- (6) A claimant is entitled to the immediate release of property held for forfeiture pending the final determination of forfeiture if:
  - (a) the claimant had a possessory interest in the property at the time of seizure;
  - (b) continued possession by the agency or the state pending the final disposition of the forfeiture proceedings will cause substantial hardship to the claimant, such as:
    - (i) preventing the functioning of a legitimate business;
    - (ii) preventing any individual from working;
    - (iii) preventing any child from attending elementary or secondary school;
    - (iv) preventing or hindering any person from receiving necessary medical care;
    - (v) hindering the care of an elderly or disabled dependent child or adult;
    - (vi) leaving any individual homeless; or
    - (vii) any other condition that the court determines causes a substantial hardship;
  - (c) the hardship from the continued possession of the property by the agency outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and
  - (d) determination of substantial hardship under this Subsection (6) is based upon the property's use prior to the seizure.
- (7) After the seizing agency gives notice that the property is to be held for forfeiture, a claimant may file a motion for hardship release:
  - (a) in the court in which forfeiture proceedings have commenced; or
  - (b) in any district court having jurisdiction over the property, if forfeiture proceedings have not yet commenced.

- (8) The motion for hardship release shall also be served upon the prosecuting attorney or the seizing agency within 10 days after filing the motion.
- (9) The court shall render a decision on a motion for hardship filed under this section not later than 20 days after the date of filing, or 10 days after service upon the prosecuting attorney or seizing agency, whichever is earlier, unless this period is extended by the agreement of both parties or by the court for good cause shown.
- (10)
  - (a) If the claimant demonstrates substantial hardship pursuant to this section, the court shall order the property immediately released to the claimant pending completion of proceedings by the government to obtain forfeiture of the property.
  - (b) The court may place conditions on release of the property as it finds necessary and appropriate to preserve the availability of the property or its equivalent for forfeiture.
- (11) The hardship release under this section does not apply to:
  - (a) contraband;
  - (b) currency or other monetary instrument or electronic funds; or
  - (c) property that is likely to be used to commit additional illegal acts if returned to the claimant.
- (12)
  - (a) The court may order property that is held for forfeiture to be sold, as allowed by Subsection (13), leased, rented, or operated to satisfy a specified interest of any claimant, or to preserve the interests of any party on motion of that party.
  - (b) The court may enter orders under Subsection (12)(a) after written notice to persons known to have an interest in the property, and after an opportunity for a hearing.
- (13)
  - (a) A sale may be ordered under Subsection (12) when the property is liable to perish, waste, or be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to its value.
  - (b) A third party designated by the court shall dispose of the property by commercially reasonable public sale and distribute the proceeds in the following order of priority:
    - (i) first, for the payment of reasonable expenses incurred in connection with the sale;
    - (ii) second, for the satisfaction of any interests, including those of interest holders, in the order of their priority as determined by Title 70A, Uniform Commercial Code; and
    - (iii) third, any balance of the proceeds shall be preserved in the actual or constructive custody of the court, in an interest-bearing account, subject to further proceedings under this chapter.

Enacted by Chapter 394, 2013 General Session