

Effective 5/3/2023

**Chapter 11b
Forfeiture of Seized Property**

**Part 1
General Provisions**

77-11b-101 Definitions.

As used in this chapter:

- (1)
 - (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not guilty.
 - (b) "Acquitted" does not include:
 - (i) a verdict of guilty on a lesser or reduced charge;
 - (ii) a plea of guilty to a lesser or reduced charge; or
 - (iii) dismissal of a charge as a result of a negotiated plea agreement.
- (2) "Agency" means the same as that term is defined in Section 77-11a-101.
- (3) "Claimant" means the same as that term is defined in Section 77-11a-101.
- (4) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.
- (5) "Complaint" means a civil or criminal complaint seeking the forfeiture of any property under this chapter.
- (6) "Forfeit" means to divest a claimant of an ownership interest in property seized under Section 77-11a-201.
- (7) "Innocent owner" means the same as that term is defined in Section 77-11a-101.
- (8) "Interest holder" means the same as that term is defined in Section 77-11a-101.
- (9) "Known address" means:
 - (a) any address provided by a claimant to the peace officer or agency at the time the property is seized; or
 - (b) the claimant's most recent address on record with a governmental entity if no address was provided at the time of the seizure.
- (10) "Legal costs" means the costs and expenses incurred by a party in a forfeiture action.
- (11) "Legislative body" means the same as that term is defined in Section 77-11a-101.
- (12) "Peace officer" means the same as that term is defined in Section 77-11a-101.
- (13) "Proceeds" means the same as that term is defined in Section 77-11a-101.
- (14) "Program" means the State Asset Forfeiture Grant Program created in Section 77-11b-403.
- (15) "Property" means the same as that term is defined in Section 77-11a-101.
- (16) "Prosecuting attorney" means the same as that term is defined in Section 77-11a-101.
- (17) "Seized property" means the same as that term is defined in Section 77-11a-101.

Enacted by Chapter 448, 2023 General Session

77-11b-102 Property subject to forfeiture.

- (1)
 - (a) Except as provided in Subsection (2), (3), (4), or (5), an agency may seek to forfeit:
 - (i) seized property that was used to facilitate the commission of an offense that is a violation of federal or state law; or
 - (ii) seized proceeds.

- (b) An agency, or the prosecuting attorney, may not forfeit the seized property of an innocent owner or an interest holder.
- (2) If seized property is used to facilitate an offense that is a violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, an agency may not forfeit the property if the forfeiture would constitute a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15, or would otherwise unlawfully interfere with the exercise of the party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15.
- (3) If a motor vehicle is used in an offense that is a violation of Section 41-6a-502, 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection 76-5-102.1(2)(b), or Section 76-5-207, an agency may not seek forfeiture of the motor vehicle, unless:
 - (a) the operator of the vehicle has previously been convicted of an offense committed after May 12, 2009, that is:
 - (i) a felony driving under the influence violation under Section 41-6a-502 or Subsection 76-5-102.1(2)(a);
 - (ii) a felony violation under Subsection 76-5-102.1(2)(b);
 - (iii) a violation under Section 76-5-207; or
 - (iv) operating a motor vehicle with any amount of a controlled substance in an individual's body and causing serious bodily injury or death, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g); or
 - (b) the operator of the vehicle was driving on a denied, suspended, revoked, or disqualified license and:
 - (i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii) was imposed because of a violation under:
 - (A) Section 41-6a-502;
 - (B) Section 41-6a-517;
 - (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);
 - (D) Section 41-6a-520.1;
 - (E) operating a motor vehicle with any amount of a controlled substance in an individual's body and causing serious bodily injury or death, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);
 - (F) Section 76-5-102.1;
 - (G) Section 76-5-207; or
 - (H) a criminal prohibition as a result of a plea bargain after having been originally charged with violating one or more of the sections or ordinances described in Subsections (3)(b)(i) (A) through (G); or
 - (ii) the denial, suspension, revocation, or disqualification described in Subsection (3)(b)(i):
 - (A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension, revocation, or disqualification; and
 - (B) the original denial, suspension, revocation, or disqualification was imposed because of a violation described in Subsection (3)(b)(i).
- (4) If a peace officer seizes property incident to an arrest solely for possession of a controlled substance under Subsection 58-37-8(2)(a)(i) but not Subsection 58-37-8(2)(b)(i), an agency may not seek to forfeit the property that was seized in accordance with the arrest.
- (5) If a peace officer seizes an individual's firearm as the result of an offense under Section 76-10-529, an agency may not seek to forfeit the individual's firearm if the individual may lawfully possess the firearm.

Amended by Chapter 415, 2023 General Session
Amended by Chapter 422, 2023 General Session
Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-103 Trial by jury.

The right to trial by jury applies to forfeiture proceedings under this chapter.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-104 Venue.

Notwithstanding Title 78B, Chapter 3, Part 3, Place of Trial -- Venue, or any other provision of law, a person may bring an action or proceeding under this chapter in the judicial district in which:

- (1) the property is seized;
- (2) any part of the property is found; or
- (3) a civil or criminal action could be maintained against a claimant for the offense subjecting the property to forfeiture under this chapter.

Enacted by Chapter 448, 2023 General Session

77-11b-105 Training requirements.

- (1) As used in this section:
 - (a) "Council" means the Utah Prosecution Council created in Section 67-5a-1.
 - (b) "Division" means the Peace Officers Standards and Training Division created in Section 53-6-103.
- (2) To participate in the program, an agency shall have at least one employee who is certified by the division as an asset forfeiture specialist through the completion of an online asset forfeiture course by the division.
- (3) The division shall:
 - (a) develop an online asset forfeiture specialist course that is available to an agency for certification purposes;
 - (b) certify an employee of an agency who meets the course requirements to be an asset forfeiture specialist;
 - (c) recertify, every 36 months, an employee who is designated as an asset forfeiture specialist by an agency;
 - (d) submit annually a report to the commission no later than April 30 that contains a list of the names of the employees and agencies participating in the certification courses;
 - (e) review and update the asset forfeiture specialist course each year to comply with state and federal law; and
 - (f) provide asset forfeiture training to all peace officers in basic training programs.
- (4) To be reimbursed for costs under Subsection 77-11b-401(3)(b), a prosecuting agency shall have at least one employee who is certified by the council as an asset forfeiture specialist through the completion of an online asset forfeiture course.
- (5) The council shall:
 - (a) develop an online asset forfeiture specialist course that is available to a prosecuting agency for certification purposes;
 - (b) certify an employee of a prosecuting agency who meets the course requirements to be an asset forfeiture specialist;

- (c) submit annually a report to the commission no later than April 30 that contains a list of the names of the employees and prosecuting agencies participating in certification courses by the council; and
- (d) review and update the asset forfeiture specialist course each year to comply with state and federal law.

Renumbered and Amended by Chapter 448, 2023 General Session

Part 2

Initiating Forfeiture of Seized Property

77-11b-201 Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.

- (1)
 - (a) If an agency seeks to forfeit seized property, the agency shall serve a notice of intent to seek forfeiture to any known claimant within 30 days after the day on which the property is seized.
 - (b) The notice of intent to seek forfeiture shall describe:
 - (i) the date of the seizure;
 - (ii) the property seized;
 - (iii) the claimant's rights and obligations under this chapter and Chapter 11a, Seizure of Property and Contraband, including the availability of hardship relief in appropriate circumstances; and
 - (iv) the statutory basis for the forfeiture, including the judicial proceedings by which the property may be forfeited under this chapter.
 - (c) The agency shall serve the notice of intent to seek forfeiture by:
 - (i) certified mail, with a return receipt requested, to the claimant's known address; or
 - (ii) personal service.
 - (d) A court may void a forfeiture made without notice under Subsection (1)(a), unless the agency demonstrates:
 - (i) good cause for the failure to give notice to the claimant; or
 - (ii) that the claimant had actual notice of the seizure.
- (2) Before an agency serves a notice of intent to forfeit seized property under Subsection (1)(a), the agency shall conduct a search of public records applicable to the seized property, including county records or records of the Division of Corporations and Commercial Code, the Division of Motor Vehicles, or other state or federal licensing agencies, in order to obtain the name and address of each interest holder of the property.
- (3) If an agency serves a notice of intent to forfeit seized property under Subsection (1)(a), an individual or entity may not alienate, convey, sequester, or attach the property until a court:
 - (a) issues a final order to dismiss an action under this chapter; or
 - (b) orders the forfeiture of the property.
- (4)
 - (a)
 - (i) If an agency has served each claimant with a notice of intent to seek forfeiture, the agency shall present a written request for forfeiture to the prosecuting attorney of the municipality or county where the property is seized.
 - (ii) The agency shall provide the request under Subsection (4)(a)(i) no later than 45 days after the day on which the property is seized.

- (b) The written request described in Subsection (4)(a) shall:
 - (i) describe the property that the agency is seeking to forfeit; and
 - (ii) include a copy of all reports, supporting documents, and other evidence that is necessary for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture action.
- (c) The prosecuting attorney shall:
 - (i) review the written request described in Subsection (4)(a)(i); and
 - (ii) within 75 days after the day on which the property is seized, decline or accept, in writing, the agency's written request for the prosecuting attorney to initiate a proceeding to forfeit the property.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-202 Sale of seized property subject to forfeiture.

- (1)
 - (a) Except for property that is required to be retained or preserved under Chapter 11c, Retention of Evidence, the court may order seized property for which a forfeiture proceeding is pending to:
 - (i) be sold, leased, rented, or operated to satisfy a specified interest of any claimant; or
 - (ii) preserve the interests of any party on motion of that party.
 - (b) The court may only enter an order under Subsection (1)(a) after:
 - (i) written notice to any person known to have an interest in the property has been given; and
 - (ii) an opportunity for a hearing for any person known to have an interest in the property has occurred.
- (2)
 - (a) A court may order a sale of property under Subsection (1) when:
 - (i) the property is liable to perish, waste, or be significantly reduced in value; or
 - (ii) the expenses of maintaining the property are disproportionate to the property's value.
 - (b) A third party designated by the court shall:
 - (i) dispose of the property by a commercially reasonable public sale; and
 - (ii) distribute the proceeds in the following order of priority:
 - (A) first, for the payment of reasonable expenses incurred in connection with the sale;
 - (B) second, for the satisfaction of an interest, including an interest of an interest holder, in the order of an interest holder's priority as determined by Title 70A, Uniform Commercial Code; and
 - (C) 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.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-203 Mandatory return of seized property subject to forfeiture.

- (1) Except for property that is required to be retained or preserved under Chapter 11c, Retention of Evidence, an agency shall promptly return seized property to a claimant and the prosecuting attorney may take no further action to forfeit the property, unless within 75 days after the day on which the property is seized:
 - (a) the prosecuting attorney:
 - (i) files a criminal indictment or information under Subsection 77-11b-301(3);

- (ii) files a petition to transfer the property to another agency in accordance with Section 77-11a-205; or
 - (iii) files a civil forfeiture complaint under Section 77-11b-302; or
 - (b) the prosecuting attorney or a federal prosecutor obtains a restraining order under Subsection 77-11b-301(4).
- (2)
- (a) The prosecuting attorney may file a petition to extend the deadline under Subsection (1) by 21 days.
 - (b) If a prosecuting attorney files a petition under Subsection (2)(a) and the prosecuting attorney provides good cause for extending the deadline, a court shall grant the petition.
 - (c) The prosecuting attorney may not file more than one petition under this Subsection (2).
- (3) If a prosecuting attorney is unable to file a civil forfeiture complaint under Subsection (1)(a) (iii) because a claimant has filed a claim under Section 77-11a-304 and the claimant has an extension to provide additional information on the claim under Subsection 77-11a-304(1)(d), the deadline under Subsection (1) may be extended by 15 days.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-204 Compensation for damaged property subject to forfeiture.

- (1) As used in this section:
- (a) "Damage or other injury" does not mean normal depreciation, deterioration, or ordinary wear and tear of the property.
 - (b) "Wildlife" means the same as that term is defined in Section 23A-1-101.
- (2) If seized property is returned under this chapter, a claimant has a civil right of action against an agency for a claim based upon the negligent destruction, loss, or damage or other injury to seized property while in the possession or custody of the agency.
- (3) This section does not apply to wildlife or parts of wildlife that are seized for an offense under Title 23A, Wildlife Resources Act.

Renumbered and Amended by Chapter 448, 2023 General Session

**Part 3
Forfeiture Proceedings**

77-11b-301 Forfeiture of seized property through the criminal case.

- (1) As used in this section, "defendant" means a claimant who is criminally prosecuted for the offense subjecting the property to forfeiture under Subsection 77-11b-102(1).
- (2) A prosecuting attorney may seek forfeiture of the defendant's interest in seized property through the criminal case.
- (3) If the prosecuting attorney seeks forfeiture of a defendant's interest in seized property through the criminal case, the prosecuting attorney shall state in the information or indictment the grounds for which the agency seeks to forfeit the property.
- (4)
- (a)
 - (i) A court may enter a restraining order or injunction or take any other reasonable action to preserve property being forfeited under this section.

- (ii) Before a court's decision under Subsection (4)(a)(i), a known claimant, who can be identified after due diligence, shall be:
 - (A) provided notice; and
 - (B) given an opportunity for a hearing.
 - (iii) A court shall grant an order under Subsection (4)(a)(i) if:
 - (A) there is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property being sold, transferred, destroyed, or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and
 - (B) the need to preserve the availability of the property or prevent the property's sale, transfer, destruction, or removal through the entry of the requested order outweighs the hardship against a claimant against which the order is to be entered.
 - (b) A court may enter a temporary restraining order ex parte upon application of the prosecuting attorney or a federal prosecutor before or after an information or indictment has been filed, with respect to the property, if the prosecuting attorney or federal prosecutor demonstrates that:
 - (i) there is probable cause to believe that the property with respect to which the order is sought would, in the event of a conviction, be forfeited under this section; and
 - (ii) providing notice to a claimant would jeopardize the availability of the property for forfeiture or would jeopardize an ongoing criminal investigation.
 - (c) The temporary order expires no more than 10 days after the day on which the order is entered unless extended for good cause shown or unless the claimant against whom the temporary order is entered consents to an extension.
 - (d) After service of the temporary order upon a claimant known to the prosecuting attorney or federal prosecutor, the court shall hold a hearing on the order as soon as practicable and before the expiration of the temporary order.
 - (e) The court is not bound by the Utah Rules of Evidence regarding evidence the court may receive and consider at a hearing under this section.
- (5) Upon conviction of a defendant for the offense subjecting the property to forfeiture, a court or jury shall find property forfeited to the state if the prosecuting attorney establishes, beyond a reasonable doubt, that:
- (a) the defendant:
 - (i) committed the offense subjecting the property to forfeiture under Subsection 77-11b-102(1);
 - (ii) knew of the offense subjecting the property to forfeiture under Subsection 77-11b-102(1) and allowed the property to be used in furtherance of the offense; or
 - (iii) acquired the property at the time of the offense subjecting the property to forfeiture under Subsection 77-11b-102(1), or within a reasonable time after the offense occurred; or
 - (b) there is no likely source for the purchase or acquisition of the property other than the commission of the offense subjecting the property to forfeiture under Subsection 77-11b-102(1).
- (6)
- (a) Upon conviction of a defendant for the offense subjecting the property to forfeiture and a finding by a court or jury that the property is forfeited, the court shall enter a judgment and order the property forfeited to the state upon the terms stated by the court in the court's order.
 - (b) Following the entry of an order declaring the property forfeited under Subsection (6)(a), and upon application by the prosecuting attorney, the court may:
 - (i) enter a restraining order or injunction;
 - (ii) require the execution of satisfactory performance bonds;
 - (iii) appoint a receiver, conservator, appraiser, accountant, or trustee; or

- (iv) take any other action to protect the state's interest in property ordered forfeited.
- (7)
- (a)
 - (i) After property is ordered forfeited under this section, the agency shall direct the disposition of the property under Section 77-11b-401.
 - (ii) If property under Subsection (7)(a)(i) is not transferrable for value to the agency, or the agency is not able to exercise an ownership interest in the property, the property may not revert to the defendant.
 - (iii) A defendant, or a person acting in concert with or on behalf of the defendant, is not eligible to purchase forfeited property at any sale held by the agency unless approved by the judge.
 - (b) A court may stay the sale or disposition of the property pending the conclusion of any appeal of the offense subjecting the property to forfeiture if the claimant demonstrates that proceeding with the sale or disposition of the property may result in irreparable injury, harm, or loss.
- (8) If a defendant is acquitted of the offense subjecting the property to forfeiture under this section on the merits:
- (a)
 - (i) the property for which forfeiture is sought shall be returned to the claimant; or
 - (ii) the open market value of the property for the property for which forfeiture is sought shall be awarded to the claimant if the property has been disposed of under Section 77-11b-202; and
 - (b) any payment requirement under this chapter related to the holding of property shall be paid to the claimant.
- (9) Except as provided under Subsection (4) or (12), a claimant claiming an interest in property that is being forfeited under this section:
- (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of the property; and
 - (b) may not commence an action at law or equity concerning the validity of the claimant's alleged interests in the property subsequent to the filing of an indictment or an information alleging that the property is being forfeited under this section.
- (10) A court that has jurisdiction of a case under this part may enter orders under this section without regard to the location of any property that is or has been ordered forfeited under this section.
- (11) To facilitate the identification or location of property forfeited under this section, and to facilitate the disposition of a petition for remission or mitigation of forfeiture after the entry of an order declaring property forfeited to the agency, the court may, upon application of the prosecuting attorney, order:
- (a) the testimony of any witness relating to the forfeited property be taken by deposition; and
 - (b) any book, paper, document, record, recording, or other material is produced in accordance with the Utah Rules of Civil Procedure.
- (12)
- (a) If a court orders property forfeited under this section, the prosecuting attorney shall publish notice of the intent to dispose of the property.
 - (b) Service by publication shall be by publication of two notices, in two successive weeks, of the forfeiture proceeding:
 - (i) in a newspaper of general circulation in the county in which the seizure of the property occurred; and
 - (ii) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).

- (c) The prosecuting attorney shall also send written notice to any claimants, other than the defendant, known to the prosecuting attorney to have an interest in the property, at the claimant's known address.
- (13)
- (a) A claimant, other than the defendant, may petition the court for a hearing to adjudicate the validity of the claimant's alleged interest in property forfeited under this section.
 - (b) A claimant shall file a petition within 30 days after the earlier of the day on which a notice is published or the day on which the claimant receives written notice under Subsection (12)(a).
- (14) The petition under Subsection (13) shall:
- (a) be in writing and signed by the claimant under penalty of perjury;
 - (b) set forth the nature and extent of the claimant's right, title, or interest in the property, the time and circumstances of the claimant's acquisition of the right, title, or interest in the property; and
 - (c) set forth any additional facts supporting the claimant's claim and the relief sought.
- (15)
- (a) The court shall expedite the trial or hearing under this Subsection (15) to the extent practicable.
 - (b) Any party may request a jury to decide any genuine issue of material fact.
 - (c) The court may consolidate a trial or hearing on the petition under Subsection (11)(b) and any other petition filed by a claimant, other than the defendant, under this section.
 - (d) For a petition under this section, the court shall permit the parties to conduct pretrial discovery in accordance with the Utah Rules of Civil Procedure.
 - (e)
 - (i) At the trial or hearing, the claimant may testify and present evidence and witnesses on the claimant's own behalf and cross-examine witnesses who appear at the hearing.
 - (ii) The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the claim to the property and cross-examine witnesses who appear.
 - (f) In addition to testimony and evidence presented at the trial or hearing, the court may consider the relevant portion of the record of the criminal case that resulted in the order of forfeiture.
 - (g) A trial or hearing shall be conducted in accordance with the Utah Rules of Evidence.
- (16) The court shall amend the order of forfeiture in accordance with the court's determination, if after the trial or hearing under Subsection (15), the court or jury determines that the claimant has established, by a preponderance of the evidence, that:
- (a)
 - (i) the claimant has a legal right, title, or interest in the property; and
 - (ii) the claimant's right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the claimant rather than the defendant, or was superior to any right, title, or interest of the defendant at the time of the commission of the offense subjecting the property to forfeiture under Subsection 77-11b-102(1); or
 - (b) the claimant acquired the right, title, or interest in the property in a bona fide transaction for value, and, at the time of acquisition, the claimant did not know that the property could be forfeited under this chapter.
- (17) An agency has clear title to the property and may transfer title to a purchaser or transferee if:
- (a) the court issued a disposition on all petitions under Subsection (13) denying any claimant's right, title, or interest to the property; or
 - (b) a petition was not filed under the timelines provided in Subsection (13)(b).
- (18) If the prosecuting attorney seeks to discontinue a forfeiture proceeding under this section and transfer the action to another state or federal agency that has initiated a civil or criminal

proceeding involving the same property, the prosecuting attorney shall file a petition to transfer the property in accordance with Section 77-11a-205.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-302 Civil forfeiture of seized property.

- (1)
 - (a) A prosecuting attorney may commence a civil action to forfeit seized property by filing a complaint.
 - (b) The complaint under Subsection (1)(a) shall describe with reasonable particularity:
 - (i) the property that the agency is seeking to forfeit;
 - (ii) the date and place of seizure; and
 - (iii) the factual allegations that constitute a basis for forfeiture.
- (2)
 - (a) After a complaint is filed, the prosecuting attorney shall serve a copy of the complaint and summons upon each claimant known to the prosecuting attorney within 30 days after the day on which the complaint is filed.
 - (b) The prosecuting attorney is not required to serve a copy of the complaint or the summons upon a claimant which has disclaimed, in writing, an ownership interest in the seized property.
 - (c) Service of the complaint and summons shall be by:
 - (i) personal service;
 - (ii) certified mail, with a return receipt requested, to the claimant's known address; or
 - (iii) service by publication, if the prosecuting attorney demonstrates to the court that service cannot reasonably be made by personal service or certified mail.
 - (d) Service by publication shall be by publication of two notices, in two successive weeks, of the forfeiture proceeding:
 - (i) in a newspaper of general circulation in the county in which the seizure occurred; and
 - (ii) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).
 - (e) Service is effective upon the earlier of:
 - (i) personal service;
 - (ii) certified mail; or
 - (iii) publication in accordance with Subsection (2)(d).
 - (f) The court may extend the period to complete service under this section for an additional 60 days if the prosecuting attorney:
 - (i) moves the court to extend the period to complete service; and
 - (ii) has shown good cause for extending service.
- (3)
 - (a) If a prosecuting attorney files a complaint for forfeiture as described in Subsection (1), a claimant may file an answer to the complaint.
 - (b) If a claimant files an answer in accordance with Subsection (3)(a), the claimant shall file the answer within 30 days after the day on which the complaint is served upon the claimant.
 - (c) If an agency is seeking to forfeit property that is valued at less than \$10,000, the agency shall return the property to the claimant if:
 - (i)
 - (A) the prosecuting attorney has filed a forfeiture complaint, and the claimant has filed an answer, in accordance with Subsections (3)(a) and (b); and
 - (B) the prosecuting attorney has not filed an information or indictment for the offense for which the property is seized within 60 days after the day on which the prosecuting attorney

- served the claimant with the complaint, or the prosecuting attorney has not timely moved a court and demonstrated reasonable cause for extending the time to file the information or indictment; or
- (ii) the information or indictment for the offense for which the property was seized was dismissed and the prosecuting attorney has not refiled the information or indictment within seven days after the day on which the information or indictment was dismissed.
- (d) A claimant is not entitled to any expenses, costs, or attorney fees for the return of property to the claimant under Subsection (3)(c).
- (e)
 - (i) The time limitations in Subsection (3)(c)(i) may be extended for up to 15 days if a claimant timely seeks to recover possession of seized property in accordance with Section 77-11a-304.
 - (ii) If the time limitations are extended under Subsection (3)(c)(i), the time limitations in Subsection (3)(c)(i) shall resume immediately upon the agency's or prosecuting attorney's timely denial of a claim under Section 77-11a-304 on the merits.
- (4) Except as otherwise provided in this chapter, a civil action for a forfeiture proceeding is governed by the Utah Rules of Civil Procedure.
- (5) The court shall:
 - (a) take all reasonable steps to expedite a civil forfeiture proceeding; and
 - (b) give a civil forfeiture proceeding the same priority as a criminal case.
- (6) A claimant may file an answer to a complaint for civil forfeiture without posting bond with respect to the property that the agency seeks to forfeit.
- (7) A court shall grant an agency's request to forfeit property if the prosecuting attorney establishes, by clear and convincing evidence, that:
 - (a) the claimant:
 - (i) committed the offense subjecting the property to forfeiture under Subsection 77-11b-102(1);
 - (ii) knew of the offense subjecting the property to forfeiture under Subsection 77-11b-102(1)(a) and allowed the property to be used in furtherance of the offense; or
 - (iii) acquired the property at the time of the offense subjecting the property to forfeiture under Subsection 77-11b-102(1), or within a reasonable time after the offense occurred; or
 - (b) there is no likely source for the purchase or acquisition of the property other than the commission of the offense subjecting the property to forfeiture under Subsection 77-11b-102(1).
- (8) If a court finds that the property is the proceeds of an offense that subjects the proceeds to forfeiture under Subsection 77-11b-102(1), the prosecuting attorney does not need to prove that the property was the proceeds of a particular exchange or transaction.
- (9) If a claimant is acquitted of the offense subjecting the property to forfeiture under this section:
 - (a)
 - (i) the property for which forfeiture is sought shall be returned to the claimant; or
 - (ii) the open market value of the property for the property for which forfeiture is sought shall be awarded to the claimant if the property has been disposed of under Section 77-11b-202; and
 - (b) any payment requirement under this chapter related to the holding of property shall be paid to the claimant.
- (10) If the prosecuting attorney seeks to discontinue a forfeiture proceeding under this section and transfer the action to another state or federal agency that has initiated a civil or criminal proceeding involving the same property, the prosecuting attorney shall file a petition to transfer the property in accordance with Section 77-11a-205.

(11) A civil forfeiture action under this section may be converted to a criminal forfeiture action at any time after a prosecuting attorney files a criminal complaint, information, or indictment for the offense subjecting the property to forfeiture under Subsection 77-11b-102(1).

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-303 Proportionality of forfeiture.

- (1)
- (a) A claimant's interest in property that is used to facilitate an offense may not be forfeited under any provision of state law if the forfeiture is substantially disproportionate to the use of the property in committing or facilitating an offense that is a violation of state law and the value of the property.
 - (b) If property is used solely in a manner that is merely incidental and not instrumental to the commission or facilitation of an offense, a forfeiture of the property is not proportional.
- (2)
- (a) In determining proportionality, the court shall consider:
 - (i) the offense subjecting the property to forfeiture under Subsection 77-11b-102(1);
 - (ii) what portion of the forfeiture, if any, is remedial in nature;
 - (iii) the gravity of the conduct for which the claimant is responsible in light of the offense; and
 - (iv) the value of the property.
 - (b) If the court finds that the forfeiture is substantially disproportional to an offense for which the claimant is responsible, the court shall reduce or eliminate the forfeiture as the court finds appropriate.
- (3) A prosecuting attorney has the burden of demonstrating that a forfeiture is proportional to the offense subjecting the property to forfeiture under Subsection 77-11b-102(1).
- (4) In all cases, the court shall decide questions of proportionality.
- (5) A forfeiture of any proceeds used to facilitate the commission of an offense that is a violation of federal or state law is proportional.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-304 Postjudgment interest to prevailing party in forfeiture proceeding.

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

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-305 Attorney fees and costs for forfeiture proceeding.

- (1) In a forfeiture proceeding under this chapter, a court shall award reasonable legal costs and attorney fees to a prevailing claimant.
- (2) If a court awards legal costs and attorney fees to a prevailing claimant under Subsection (1), the award may not exceed 50% of the value of the seized property.
- (3) A claimant who prevails only in part is entitled to recover reasonable legal costs and attorney fees only on an issue on which the party prevailed.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-306 Limitation on fees for holding seized property subject to forfeiture.

In any civil or criminal proceeding under this part in which a judgment is entered in favor of a claimant, or where a forfeiture proceeding against a claimant is voluntarily dismissed by the prosecuting attorney, an agency may not charge a claimant any fee or cost for holding seized property.

Renumbered and Amended by Chapter 448, 2023 General Session

**Part 4
Disposal and Allocation of Forfeited Property**

77-11b-401 Disposition and allocation of forfeited property.

- (1) If a court finds that property is forfeited under this chapter, the court shall order the property forfeited to the state.
- (2)
 - (a) If the property is not currency, the agency shall authorize a public or otherwise commercially reasonable sale of that property if the property is not required by law to be destroyed and is not harmful to the public.
 - (b) If the property forfeited is an alcoholic product as defined in Section 32B-1-102, the property shall be disposed of as follows:
 - (i) an alcoholic product shall be sold if the alcoholic product is:
 - (A) unadulterated, pure, and free from any crude, unrectified, or impure form of ethylic alcohol, or any other deleterious substance or liquid; and
 - (B) otherwise in saleable condition; or
 - (ii) an alcoholic product and the alcoholic product's package shall be destroyed if the alcoholic product is impure, adulterated, or otherwise unfit for sale.
 - (c) If the property forfeited is a cigarette or other tobacco product as defined in Section 59-14-102, the property shall be destroyed, except that the lawful holder of the trademark rights in the cigarette or tobacco product brand is permitted to inspect the cigarette before the destruction of the cigarette or tobacco product.
 - (d) The proceeds of the sale of forfeited property shall remain segregated from other property, equipment, or assets of the agency until transferred in accordance with this chapter.
- (3) Before transferring currency and the proceeds or revenue from the sale of the property in accordance with this chapter, the agency shall:
 - (a) deduct the agency's direct costs, expense of reporting under Section 77-11b-404, and expense of obtaining and maintaining the property pending a forfeiture proceeding; and
 - (b) if the prosecuting agency that employed the prosecuting attorney has met the requirements of Subsection 77-11b-105(3), pay the prosecuting attorney the legal costs associated with the litigation of the forfeiture proceeding, and up to 20% of the value of the forfeited property in attorney fees.
- (4) If the forfeiture arises from a violation relating to wildlife resources, the agency shall deposit any remaining currency and the proceeds or revenue from the sale of the property into the Wildlife Resources Account created in Section 23A-3-201.
- (5) The agency shall transfer any remaining currency, the proceeds, or revenue from the sale of the property to the commission and deposited into the Criminal Forfeiture Restricted Account created in Section 77-11b-402.

Amended by Chapter 34, 2023 General Session
Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-402 Criminal Forfeiture Restricted Account.

- (1) There is created within the General Fund a restricted account known as the "Criminal Forfeiture Restricted Account."
- (2) Except as provided in Section 77-11b-401, the commission shall deposit any proceeds from property forfeited through a forfeiture proceeding under this chapter into the Criminal Forfeiture Restricted Account.
- (3) The Legislature shall appropriate money in the Criminal Forfeiture Restricted Account to the commission for the purpose of implementing the State Asset Forfeiture Grant Program described in Section 77-11b-403.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-403 State Asset Forfeiture Grant Program.

- (1) There is created the State Asset Forfeiture Grant Program.
- (2) The program shall fund crime prevention, crime victim reparations, and law enforcement activities that have the purpose of:
 - (a) deterring crime by depriving criminals of the profits and proceeds of their illegal activities;
 - (b) weakening criminal enterprises by removing the instrumentalities of crime;
 - (c) reducing crimes involving substance abuse by supporting the creation, administration, or operation of drug court programs throughout the state;
 - (d) encouraging cooperation between agencies;
 - (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited proceeds of crime;
 - (f) increasing the equitability and accountability of the use of forfeited property used to assist agencies in reducing and preventing crime; and
 - (g) providing aid to victims of criminally injurious conduct, as defined in Section 63M-7-502, who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office for Victims of Crime.
- (3)
 - (a) Upon appropriation of funds from the Criminal Forfeiture Restricted Account, the commission shall allocate and administer grants to an agency or political subdivision of the state in compliance with this section and Subsection 77-11b-105(2) and to further the program purposes under Subsection (2).
 - (b) The commission may retain up to 3% of the annual appropriation from the Criminal Forfeiture Restricted Account to pay for administrative costs incurred by the commission, including salary and benefits, equipment, supplies, or travel costs that are directly related to the administration of the program.
- (4) An agency or political subdivision shall apply for an award from the program by completing and submitting forms specified by the commission.
- (5) In granting the awards, the commission shall ensure that the amount of each award takes into consideration the:
 - (a) demonstrated needs of the agency or political subdivision;
 - (b) demonstrated ability of the agency or political subdivision to appropriately use the award;

- (c) degree to which the agency's or political subdivision's need is offset through the agency's or political subdivision's participation in federal equitable sharing or through other federal and state grant programs; and
 - (d) agency's or political subdivision's cooperation with other state and local agencies and task forces.
- (6) The commission may award a grant to any agency or political subdivision engaged in activities associated with Subsection (2) even if the agency has not contributed to the fund.
- (7) An applying agency or political subdivision shall demonstrate compliance with all reporting and policy requirements applicable under this chapter and under Title 63M, Chapter 7, Criminal Justice and Substance Abuse, in order to qualify as a potential award recipient.
- (8)
- (a) A recipient agency may only use award money after approval by the agency's legislative body.
 - (b) The award money is nonlapsing.
- (9) A recipient agency or political subdivision shall use an award:
- (a) only for law enforcement purposes described in this section, or for victim reparations as described in Subsection (2)(g); and
 - (b) for the purposes specified by the agency or political subdivision in the agency's or political subdivision's application for the award.
- (10) A permissible law enforcement purpose for which award money may be used includes:
- (a) controlled substance interdiction and enforcement activities;
 - (b) drug court programs;
 - (c) activities calculated to enhance future law enforcement investigations;
 - (d) law enforcement training that includes:
 - (i) implementation of the Fourth Amendment to the United States Constitution and Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's right of due process;
 - (ii) protection of the rights of innocent property holders; and
 - (iii) the Tenth Amendment to the United States Constitution regarding states' sovereignty and the states' reserved rights;
 - (e) law enforcement or detention facilities;
 - (f) law enforcement operations or equipment that are not routine costs or operational expenses;
 - (g) drug, gang, or crime prevention education programs that are sponsored in whole or in part by the law enforcement agency or its legislative body;
 - (h) matching funds for other state or federal law enforcement grants; and
 - (i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture actions.
- (11) A law enforcement purpose for which award money may not be granted or used includes:
- (a) payment of salaries, retirement benefits, or bonuses to any individual;
 - (b) payment of expenses not related to law enforcement;
 - (c) uses not specified in the agency's award application;
 - (d) uses not approved by the agency's legislative body;
 - (e) payments, transfers, or pass-through funding to an entity other than an agency; or
 - (f) uses, payments, or expenses that are not within the scope of the agency's functions.

Renumbered and Amended by Chapter 448, 2023 General Session

77-11b-404 Forfeiture reporting requirements.

- (1) An agency shall provide all reasonably available data described in Subsection (5):

- (a) if transferring the forfeited property resulting from the final disposition of any civil or criminal forfeiture matter to the commission as required under Subsection 77-11b-401(5); or
 - (b) if the agency has been awarded an equitable share of property forfeited by the federal government.
- (2) The commission shall develop a standardized report format that each agency shall use in reporting the data required under this section.
- (3) The commission shall annually, on or before April 30, prepare a summary report of the case data submitted by each agency under Subsection (1) during the prior calendar year.
- (4)
- (a) If an agency does not comply with the reporting requirements under this section, the commission shall contact the agency and request that the agency comply with the required reporting provisions.
 - (b) If an agency fails to comply with the reporting requirements under this section within 30 days after receiving the request to comply, the commission shall report the noncompliance to the attorney general, the speaker of the House of Representatives, and the president of the Senate.
- (5) The data for any civil or criminal forfeiture matter for which final disposition has been made under Subsection (1) shall include:
- (a) the agency that conducted the seizure;
 - (b) the case number or other identification;
 - (c) the date or dates on which the seizure was conducted;
 - (d) the number of individuals having a known property interest in each seizure of property;
 - (e) the type of property seized;
 - (f) the alleged offense that was the cause for seizure of the property;
 - (g) whether any criminal charges were filed regarding the alleged offense, and if so, the final disposition of each charge, including the conviction, acquittal, or dismissal, or whether action on a charge is pending;
 - (h) the type of enforcement action that resulted in the seizure, including an enforcement stop, a search warrant, or an arrest warrant;
 - (i) whether the forfeiture procedure was civil or criminal;
 - (j) the value of the property seized, including currency and the estimated market value of any tangible property;
 - (k) the final disposition of the matter, including whether final disposition was entered by stipulation of the parties, including the amount of property returned to any claimant, by default, by summary judgment, by jury award, or by guilty plea or verdict in a criminal forfeiture;
 - (l) if the property was forfeited by the federal government, the amount of forfeited money awarded to the agency;
 - (m) the agency's direct costs, expense of reporting under this section, and expenses for obtaining and maintaining the seized property, as described in Subsection 77-11b-401(3)(a);
 - (n) the legal costs and attorney fees paid to the prosecuting attorney, as described in Subsection 77-11b-401(3)(b); and
 - (o) if the property was transferred to a federal agency or any governmental entity not created under and subject to state law:
 - (i) the date of the transfer;
 - (ii) the name of the federal agency or entity to which the property was transferred;
 - (iii) a reference to which reason under Subsection 77-11a-205(3) justified the transfer;
 - (iv) the court or agency where the forfeiture case was heard;

- (v) the date of the order of transfer of the property; and
 - (vi) the value of the property transferred to the federal agency, including currency and the estimated market value of any tangible property.
- (6) An agency shall annually on or before April 30 submit a report for the prior calendar year to the commission that states:
- (a) whether the agency received an award from the State Asset Forfeiture Grant Program under Section 77-11b-403 and, if so, the following information for each award:
 - (i) the amount of the award;
 - (ii) the date of the award;
 - (iii) how the award was used or is planned to be used; and
 - (iv) a statement signed by both the agency's executive officer or designee and by the agency's legal counsel, that:
 - (A) the agency has complied with all inventory, policy, and reporting requirements under Section 77-11b-403; and
 - (B) all awards were used for crime reduction or law enforcement purposes as specified in the application and that the awards were used only upon approval by the agency's legislative body; and
 - (b) whether the agency received any property, money, or other things of value in accordance with federal law as described in Subsection 77-11a-205(7) and, if so, the following information for each piece of property, money, or other thing of value:
 - (i) the case number or other case identification;
 - (ii) the value of the award and the property, money, or other things of value received by the agency;
 - (iii) the date of the award;
 - (iv) the identity of any federal agency involved in the forfeiture;
 - (v) how the awarded property has been used or is planned to be used; and
 - (vi) a statement signed by both the agency's executive officer or designee and by the agency's legal counsel, that the agency has only used the award for crime reduction or law enforcement purposes authorized under Section 77-11b-403, and that the award was used only upon approval by the agency's legislative body.
- (7)
- (a) On or before July 1 of each year, the commission shall submit notice of the annual reports in Subsection (3) and Subsection (6), in electronic format, to:
 - (i) the attorney general;
 - (ii) the speaker of the House of Representatives, for referral to any House standing or interim committees with oversight over law enforcement and criminal justice;
 - (iii) the president of the Senate, for referral to any Senate standing or interim committees with oversight over law enforcement and criminal justice; and
 - (iv) each law enforcement agency.
 - (b) The reports described in Subsection (3) and Subsection (6), as well as the individual case data described in Subsection (1) for the previous calendar year, shall be published on the Utah Open Government website at open.utah.gov on or before July 15 of each year.

Renumbered and Amended by Chapter 448, 2023 General Session