

Effective 5/4/2022

77-38b-402 Preservation of assets.

(1)

(a) Before, or at the time, a criminal information, indictment charging a violation, or a petition alleging delinquency is filed, or at any time during the prosecution of the case, a prosecuting attorney may, if in the prosecuting attorney's best judgment there is a substantial likelihood that a conviction will be obtained and restitution will be ordered in the case, petition the court to:

- (i) enter a temporary restraining order, an injunction, or both;
- (ii) require the execution of a satisfactory performance bond; or
- (iii) take any other action to preserve the availability of property that may be necessary to satisfy an anticipated order for restitution.

(b) A prosecuting attorney may subpoena a document, witness, or other evidence that, in the prosecuting attorney's best judgment, may provide evidence relevant to the property described in Subsection (1)(a)(iii).

(2)

(a) Upon receiving a request from a prosecuting attorney under Subsection (1)(a), and after notice to a person appearing to have an interest in the property and affording the person an opportunity to be heard, the court may take action as requested by the prosecuting attorney if the court determines:

- (i) there is probable cause to believe that an offense has been committed and that the defendant committed the offense, and that failure to enter the order will likely result in the property being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or otherwise be made unavailable for restitution; and
- (ii) the need to preserve the availability of the property or prevent the property's sale, distribution, exhibition, destruction, or removal through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(b) In a hearing conducted in accordance with this section, a court may consider reliable hearsay as defined in Utah Rules of Evidence, Rule 1102.

(c) An order for an injunction entered under this section is effective for the period of time given in the order.

(3)

(a) Upon receiving a request for a temporary restraining order from a prosecuting attorney under this section, a court may enter a temporary restraining order against an owner with respect to specific property without notice or opportunity for a hearing if:

- (i) the prosecuting attorney demonstrates that there is a substantial likelihood that the property with respect to which the order is sought appears to be necessary to satisfy an anticipated restitution order under this chapter; and
- (ii) provision of notice would jeopardize the availability of the property to satisfy any judgment or order for restitution.

(b) The temporary order in this Subsection (3) expires no later than 10 days after the day on which the temporary order is entered unless extended for good cause shown or the party against whom the temporary order is entered consents to an extension.

(4) A hearing concerning an order entered under this section shall be held as soon as possible, and before the expiration of the temporary order.

Amended by Chapter 328, 2022 General Session