

**Senator Howard A. Stephenson** proposes the following substitute bill:

**ASSET FORFEITURE AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: John Knotwell

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**LONG TITLE**

**General Description:**

This bill modifies the Forfeiture and Disposition of Property Act by requiring annual reports from law enforcement agencies conducting forfeitures and a summary of the reports by the Commission on Criminal and Juvenile Justice.

**Highlighted Provisions:**

This bill:

- ▶ deletes current provisions regarding forfeiture reports;
- ▶ establishes detailed requirements for law enforcement agencies to prepare reports providing information regarding any forfeiture actions the agencies have taken;
- ▶ requires agency reports regarding any awards received under the State Asset Forfeiture Grant Program; and
- ▶ establishes a procedure for the compilation of the annual agency reports, the preparation of the reports by the Commission on Criminal and Juvenile Justice, and distribution of the reports to the Legislature.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **24-4-114**, as last amended by Laws of Utah 2014, Chapter 112

29 **24-4-117**, as last amended by Laws of Utah 2014, Chapter 171

30 ENACTS:

31 **24-4-118**, Utah Code Annotated 1953



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **24-4-114** is amended to read:

35 **24-4-114. Transfer and sharing procedures.**

36 (1) (a) Seizing agencies or prosecuting attorneys authorized to bring forfeiture  
37 proceedings under this chapter may not directly or indirectly transfer property held for  
38 forfeiture and not already named in a criminal indictment to any federal agency or any  
39 governmental entity not created under and subject to state law unless the court enters an order,  
40 upon petition of the prosecuting attorney, authorizing the property to be transferred.

41 (b) The court may not enter an order authorizing a transfer under Subsection (1)(a)  
42 unless:

43 (i) the conduct giving rise to the investigation or seizure is interstate in nature and  
44 sufficiently complex to justify the transfer;

45 (ii) the property may only be forfeited under federal law; or

46 (iii) pursuing forfeiture under state law would unreasonably burden prosecuting  
47 attorneys or state law enforcement agencies.

48 (c) A petition to transfer property to a federal agency under this section shall include:

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

50 (ii) the location where the property was seized;

51 (iii) the date the property was seized;

52 (iv) the case number assigned by the seizing law enforcement agency; and

53 (v) a declaration that:

54 (A) states the basis for relinquishing jurisdiction to a federal agency;

55 (B) contains the names and addresses of any claimants then known; and

56 (C) is signed by the prosecutor.

57 (d) The court may not authorize the transfer of property to the federal government if  
58 the transfer would circumvent the protections of the Utah Constitution or of this chapter that  
59 would otherwise be available to the property owner.

60 (e) (i) Prior to granting any order to transfer pursuant to this section, the court shall  
61 give any claimant the right to be heard with regard to the transfer by the mailing of a notice to  
62 each address contained in the declaration.

63 (ii) If no claimant objects to the petition to transfer property within 10 days of the  
64 mailing of the notice, the court shall issue its order under this section.

65 (iii) If the declaration does not include an address for a claimant, the court shall delay  
66 its order under this section for 20 days to allow time for the claimant to appear and make an  
67 objection.

68 (f) (i) If a claimant contests a petition to transfer property to a federal agency, the court  
69 shall promptly set the matter for hearing.

70 (ii) (A) The court shall determine whether the state may relinquish jurisdiction by a  
71 standard of preponderance of the evidence.

72 (B) In making the determination, the court shall consider evidence regarding hardship,  
73 complexity, judicial and law enforcement resources, and any other matter the court determines  
74 to be relevant.

75 (2) All property, money, or other things of value received by an agency pursuant to  
76 federal law, which authorizes the sharing or transfer of all or a portion of forfeited property or  
77 the proceeds of the sale of forfeited property to an agency:

78 (a) shall be used in compliance with federal laws and regulations relating to equitable  
79 sharing;

80 (b) may be used for those law enforcement purposes specified in Subsection  
81 24-4-117(9); and

82 (c) may not be used for those law enforcement purposes prohibited in Subsection  
83 24-4-117(10).

84 (3) A state or local law enforcement agency awarded any equitable share of property  
85 forfeited by the federal government may only use the award money after approval of the use by  
86 the agency's legislative body.

87 [~~4~~] Each year, every agency awarded any equitable share of property forfeited by the

88 federal government shall file with the commission:]  
89 [(a) a copy of that agency's federal equitable sharing certification; and]  
90 [(b) information, on a form provided by the commission, that details all awards  
91 received from the federal government during the preceding reporting period, including:]  
92 [(i) the agency's case number or other identification;]  
93 [(ii) the amount of the award;]  
94 [(iii) the date of the award;]  
95 [(iv) the identity of any federal agency involved in the forfeiture;]  
96 [(v) how the awarded property has been used; and]  
97 [(vi) a statement signed by both the agency's executive officer or designee and by the  
98 agency's legal counsel confirming that the agency has only used the awarded property for crime  
99 reduction or law enforcement purposes authorized under Section 24-4-117, and only upon  
100 approval by the agency's legislative body.]

101 Section 2. Section 24-4-117 is amended to read:

102 **24-4-117. State Asset Forfeiture Grant Program.**

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

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

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

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

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

111 (d) encouraging cooperation between local, state, and multijurisdictional law  
112 enforcement agencies;

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

115 (f) increasing the equitability and accountability of the use of forfeited property used to  
116 assist law enforcement in reducing and preventing crime; and

117 (g) providing aid to victims of criminally injurious conduct, as defined in Section  
118 63M-7-502, who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office

119 for Victims of Crime.

120 (3) (a) When property is forfeited under this chapter and transferred to the account,  
121 upon appropriation the commission shall allocate and administer grants to state agencies, local  
122 law enforcement agencies, multijurisdictional law enforcement agencies, or political  
123 subdivisions of the state in compliance with this section and to further the program purposes  
124 under Subsection (2).

125 (b) The commission may retain up to 3% of the annual appropriation from the account  
126 to pay for administrative costs incurred by the commission, including salary and benefits,  
127 equipment, supplies, or travel costs that are directly related to the administration of the  
128 program.

129 (4) Agencies or political subdivisions shall apply for an award from the program by  
130 completing and submitting forms specified by the commission.

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

133 (a) demonstrated needs of the agency;

134 (b) demonstrated ability of the agency to appropriately use the award;

135 (c) degree to which the agency's need is offset through the agency's participation in  
136 federal equitable sharing or through other federal and state grant programs; and

137 (d) agency's cooperation with other state and local agencies and task forces.

138 (6) Applying agencies or political subdivisions shall demonstrate compliance with all  
139 reporting and policy requirements applicable under this chapter and under Title 63M, Chapter  
140 7, Criminal Justice and Substance Abuse, in order to qualify as a potential award recipient.

141 (7) (a) Recipient law enforcement agencies may only use award money after approval  
142 by the agency's legislative body.

143 (b) The award money is nonlapsing.

144 (8) A recipient state agency, local law enforcement agency, multijurisdictional law  
145 enforcement agency, or political subdivision shall use awards only for law enforcement  
146 purposes as described in this section or for victim reparations as described in Subsection (2)(g),  
147 and only as these purposes are specified by the agency or political subdivision in its application  
148 for the award.

149 (9) Permissible law enforcement purposes for which award money may be used

150 include:

- 151 (a) controlled substance interdiction and enforcement activities;
- 152 (b) drug court programs;
- 153 (c) activities calculated to enhance future law enforcement investigations;
- 154 (d) law enforcement training that includes:
  - 155 (i) implementation of the Fourth Amendment to the United States Constitution and
  - 156 Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's
  - 157 right of due process;
  - 158 (ii) protection of the rights of innocent property holders; and
  - 159 (iii) the Tenth Amendment to the United States Constitution regarding states'
  - 160 sovereignty and the states' reserved rights;
  - 161 (e) law enforcement or detention facilities;
  - 162 (f) law enforcement operations or equipment that are not routine costs or operational
  - 163 expenses;
  - 164 (g) drug, gang, or crime prevention education programs that are sponsored in whole or
  - 165 in part by the law enforcement agency or its legislative body;
  - 166 (h) matching funds for other state or federal law enforcement grants; and
  - 167 (i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture
  - 168 actions.

169 (10) Law enforcement purposes for which award money may not be granted or used

170 include:

- 171 (a) payment of salaries, retirement benefits, or bonuses to any person;
- 172 (b) payment of expenses not related to law enforcement;
- 173 (c) uses not specified in the agency's award application;
- 174 (d) uses not approved by the agency's legislative body;
- 175 (e) payments, transfers, or pass-through funding to entities other than law enforcement
- 176 agencies; or
- 177 (f) uses, payments, or expenses that are not within the scope of the agency's functions.

178 ~~[(11)(a) For each fiscal year, any state, local, or multijurisdictional agency or political~~  
179 ~~subdivision that received an award shall prepare, and file with the commission, a report in a~~  
180 ~~form specified by the commission.]~~

181 ~~[(b) The report shall include the following regarding each award:]~~  
182 ~~[(i) the agency's name;]~~  
183 ~~[(ii) the amount of the award;]~~  
184 ~~[(iii) the date of the award;]~~  
185 ~~[(iv) how the award has been used; and]~~  
186 ~~[(v) a statement signed by both the agency's or political subdivision's executive officer~~  
187 ~~or designee and by the agency's legal counsel, that:]~~

188 ~~[(A) the agency or political subdivision has complied with all inventory, policy, and~~  
189 ~~reporting requirements of this chapter; and]~~

190 ~~[(B) all awards were used for crime reduction, crime victim reparations, or law~~  
191 ~~enforcement purposes as specified in the application and only upon approval by the agency's or~~  
192 ~~political subdivision's legislative body.]~~

193 ~~[(12) (a) The commission shall report in writing to the legislative Law Enforcement~~  
194 ~~and Criminal Justice Interim Committee annually regarding the forfeited property transferred to~~  
195 ~~the account, awards made by the program, uses of program awards, and any equitable share of~~  
196 ~~property forfeited by the federal government as reported by agencies pursuant to Subsection~~  
197 ~~24-4-114(4).]~~

198 ~~[(b) The report shall be submitted annually on or before November 1.]~~

199 Section 3. Section **24-4-118** is enacted to read:

200 **24-4-118. Forfeiture reporting requirements.**

201 (1) On and after January 1, 2016, every state, county, municipal, or other law  
202 enforcement agency shall, when transferring the final disposition of any civil or criminal  
203 forfeiture matter to the Commission on Criminal and Juvenile Justice as required under this  
204 chapter, provide all available data described in Subsection (5), along with the transfer of any  
205 applicable forfeited property.

206 (2) The Commission on Criminal and Juvenile Justice shall develop a standardized  
207 report format that each agency shall use in reporting the data required under this section.

208 (3) The Commission on Criminal and Juvenile Justice shall annually, on or before  
209 April 30, prepare a summary report of the case data submitted by each agency under Subsection  
210 (1) during the prior calendar year.

211 (4) (a) If an agency does not comply with the reporting requirements under this section,

212 the Commission on Criminal and Juvenile Justice shall contact the agency and request that the  
213 agency comply with the required reporting provisions.

214 (b) If an agency fails to comply with the reporting requirements under this section  
215 within 30 days after receiving the request to comply, the Commission on Criminal and Juvenile  
216 Justice shall report the noncompliance to the Utah attorney general, the speaker of the House of  
217 Representatives, and the president the Senate.

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

220 (a) the agency that conducted the seizure;

221 (b) the case number or other identification;

222 (c) the date or dates on which the seizure was conducted;

223 (d) each named potential interest holder for each seizure of property;

224 (e) the type of property seized, including identifying marks or numbers, the year, make,  
225 and model, or other unique identifiers, as applicable;

226 (f) the alleged offense that was the cause for seizure of the property;

227 (g) whether the forfeiture procedure was civil or criminal;

228 (h) the final disposition of the matter, including whether final disposition was entered  
229 by stipulation of the parties, including the amount of property returned to any claimant, by  
230 default, by summary judgment, by jury award, or by guilty plea or verdict in a criminal  
231 forfeiture; and

232 (i) if the property was transferred to a federal agency or any governmental entity not  
233 created under and subject to state law:

234 (i) the date of the transfer;

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

236 (iii) a reference to which reason under Subsection [24-4-114\(1\)\(a\)](#) justified the transfer;

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

238 (v) the date of the order of transfer of the property;

239 (vi) the market value of the property as estimated by the court hearing the forfeiture  
240 case; and

241 (vii) the value of the property transferred to the federal agency, including currency and  
242 the estimated market value of any tangible property.



243 (6) On and after January 1, 2016, every state, county, municipal, or other law  
244 enforcement agency shall annually on or before April 30 submit a report for the prior calendar  
245 year to the Commission on Criminal and Juvenile Justice which states:

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

248 (i) the amount of the award;

249 (ii) the date of the award;

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

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

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

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

258 (b) whether the agency received any property, money, or other things of value pursuant  
259 to federal law as described in Subsection 24-4-114(2) and, if so, the following information for  
260 each piece of property, money, or other thing of value:

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

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

264 (iii) the date of the award;

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

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

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

271 (7) (a) On or before July 1 of each year, the Commission on Criminal and Juvenile  
272 Justice shall submit the reports in Subsection (3) and in Subsection (6) to:

273 (i) the Utah attorney general;

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

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

278 (iv) each state, county, municipal, and other law enforcement agency.

279 (b) The reports described in Subsection (3) and Subsection (6), as well as the  
280 individual case data described in Subsection (1) for the previous calendar year, shall be  
281 published on the Utah Open Government website at [open.utah.gov](http://open.utah.gov) on or before July 15 of each  
282 year.

283 Section 4. **Effective date.**

284 This bill takes effect on July 1, 2015.