

1 **CONTRABAND DEVICE DESTRUCTION**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Justin L. Fawson**

5 Senate Sponsor: Curtis S. Bramble

6

LONG TITLE

7 **General Description:**

8 This bill defines a computer and provides for a computer to be considered contraband
9 under certain circumstances.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines a computer containing child pornography or being used for fraud or
- 13 identification theft as being contraband; and
- 14 ▶ provides for the extraction of personal information for the owner before destruction
- 15 of the computer.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **24-1-102**, as last amended by Laws of Utah 2014, Chapter 112

23 **24-3-103**, as enacted by Laws of Utah 2013, Chapter 394

24

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

25 Section 1. Section **24-1-102** is amended to read:



28 **24-1-102. Definitions.**

29 As used in this title:

30 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
31 [24-4-116](#).32 (2) (a) "Acquittal" means a finding by a jury or a judge at trial that a claimant is not
33 guilty.

34 (b) An acquittal does not include:

35 (i) a verdict of guilty on a lesser or reduced charge;

36 (ii) a plea of guilty to a lesser or reduced charge; or

37 (iii) dismissal of a charge as a result of a negotiated plea agreement.

38 (3) "Agency" means any agency of municipal, county, or state government, including
39 law enforcement agencies, law enforcement personnel, and multijurisdictional task forces.

40 (4) "Claimant" means any:

41 (a) owner of property as defined in this section;

42 (b) interest holder as defined in this section; or

43 (c) person or entity who asserts a claim to any property seized for forfeiture under this
44 title.

45 (5) "Commission" means the Utah Commission on Criminal and Juvenile Justice.

46 (6) "Complaint" means a civil in rem complaint seeking the forfeiture of any real or
47 personal property under this title.48 (7) ~~§~~ **→** **(a)** ~~←~~ ~~§~~ "Computer" means an electronic, magnetic, optical, electrochemical, or
48a other49 high-speed data processing device that performs logical, arithmetic, and storage functions, and
50 includes any device that is used for the storage of digital or electronic files, flash memory,
51 software, or other electronic information.51a ~~§~~ **→** **(b) "Computer" does not mean a computer server of an Internet or an electronic**
51b **service provider, or the service provider's employee, if used for the purpose of compliance with**
51c **obligations pursuant to 18 USC 2258A.** ~~←~~ ~~§~~52 ~~[(7)]~~ **(8)** "Constructive seizure" means a seizure of property where the property is left
53 in the control of the owner and the seizing agency posts the property with a notice of intent to
54 seek forfeiture.55 ~~[(8)]~~ **(9)** (a) "Contraband" means any property, item, or substance that is unlawful to
56 produce or to possess under state or federal law.57 (b) All controlled substances that are possessed, transferred, distributed, or offered for
58 distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act, are

59 contraband.

60 (c) A computer is contraband if it:

61 (i) contains or houses child pornography, or is used to create, download, transfer,
62 upload to a storage account, or store any electronic or digital files containing child

63 pornography; or

64 (ii) contains the personal identifying information of another person, as defined in
65 Subsection 76-6-1102(1), whether that person is alive or deceased, and the personal identifying
66 information has been used to create false or fraudulent identification documents or financial
67 transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.

68 [~~9~~] (10) "Innocent owner" means a claimant who:

69 (a) held an ownership interest in property at the time the conduct subjecting the
70 property to forfeiture occurred, and:

71 (i) did not have actual knowledge of the conduct subjecting the property to forfeiture;

72 or

73 (ii) upon learning of the conduct subjecting the property to forfeiture, took reasonable
74 steps to prohibit the illegal use of the property; or

75 (b) acquired an ownership interest in the property and who had no knowledge that the
76 illegal conduct subjecting the property to forfeiture had occurred or that the property had been
77 seized for forfeiture, and:

78 (i) acquired the property in a bona fide transaction for value;

79 (ii) was a person, including a minor child, who acquired an interest in the property
80 through probate or inheritance; or

81 (iii) was a spouse who acquired an interest in property through dissolution of marriage
82 or by operation of law.

83 [~~10~~] (11) (a) "Interest holder" means a secured party as defined in Section
84 70A-9a-102, a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance
85 pertaining to an interest in property, whose interest would be perfected against a good faith
86 purchaser for value.

87 (b) "Interest holder" does not mean a person who holds property for the benefit of or as
88 an agent or nominee for another person, or who is not in substantial compliance with any
89 statute requiring an interest in property to be recorded or reflected in public records in order to

90 perfect the interest against a good faith purchaser for value.

91 ~~[(11)]~~ (12) "Known address" means any address provided by a claimant to the agency
92 at the time the property was seized, or the claimant's most recent address on record with a
93 governmental entity if no address was provided at the time of the seizure.

94 ~~[(12)]~~ (13) "Legal costs" means the costs and expenses incurred by a party in a
95 forfeiture action.

96 ~~[(13)]~~ (14) "Legislative body" means:

97 (a) (i) the Legislature, county commission, county council, city commission, city
98 council, or town council that has fiscal oversight and budgetary approval authority over an
99 agency; or

100 (ii) the agency's governing political subdivision; or

101 (b) the lead governmental entity of a multijurisdictional task force, as designated in a
102 memorandum of understanding executed by the agencies participating in the task force.

103 ~~[(14)]~~ (15) "Multijurisdictional task force" means a law enforcement task force or other
104 agency comprised of persons who are employed by or acting under the authority of different
105 governmental entities, including federal, state, county or municipal governments, or any
106 combination of these agencies.

107 ~~[(15)]~~ (16) "Owner" means any person or entity, other than an interest holder, that
108 possesses a bona fide legal or equitable interest in real or personal property.

109 ~~[(16)]~~ (17) (a) "Proceeds" means:

110 (i) property of any kind that is obtained directly or indirectly as a result of the
111 commission of an offense that gives rise to forfeiture; or

112 (ii) any property acquired directly or indirectly from, produced through, realized
113 through, or caused by an act or omission regarding property under Subsection ~~[(16)]~~ (17)(a)(i).

114 (b) "Proceeds" includes any property of any kind without reduction for expenses
115 incurred in the acquisition, maintenance, or production of that property, or any other purpose
116 regarding property under Subsection ~~[(16)]~~ (17)(a)(i).

117 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that
118 gives rise to forfeiture.

119 ~~[(17)]~~ (18) "Program" means the State Asset Forfeiture Grant Program established in
120 Section [24-4-117](#).

121 [~~(18)~~] (19) "Property" means all property, whether real or personal, tangible or
122 intangible, but does not include contraband.

123 [~~(19)~~] (20) "Prosecuting attorney" means:

124 (a) the attorney general and any assistant attorney general;

125 (b) any district attorney or deputy district attorney;

126 (c) any county attorney or assistant county attorney; and

127 (d) any other attorney authorized to commence an action on behalf of the state under
128 this title.

129 [~~(20)~~] (21) "Public interest use" means a:

130 (a) use by a government agency as determined by the legislative body of the agency's
131 jurisdiction; or

132 (b) donation of the property to a nonprofit charity registered with the state.

133 [~~(21)~~] (22) "Real property" means land and includes any building, fixture,
134 improvement, appurtenance, structure, or other development that is affixed permanently to
135 land.

136 Section 2. Section **24-3-103** is amended to read:

137 **24-3-103. Property no longer needed as evidence -- Disposition of property.**

138 (1) When the prosecuting attorney determines that property no longer needs to be held
139 as evidence, the prosecuting attorney may:

140 (a) petition the court to apply any property that is money towards restitution, fines,
141 fees, or monetary judgments owed by the owner of the property;

142 (b) petition the court for an order transferring ownership of any weapons to the seizing
143 agency for its use and disposal as the seizing agency determines, if the owner:

144 (i) is the person who committed the crime for which the weapon was seized; or

145 (ii) may not lawfully possess the weapon; or

146 (c) notify the agency that has possession of the property that the property may be:

147 (i) returned to the rightful owner, if the rightful owner may lawfully possess it; or

148 (ii) disposed of or destroyed, if the property is contraband.

149 (2) The agency shall exercise due diligence in attempting to notify the rightful owner of
150 the property to advise the owner that the property is to be returned.

151 (3) For a computer determined to be contraband, a court may order the reasonable

152 extraction and return of specifically described personal digital data to the rightful owner. The
153 law enforcement agency shall determine a reasonable cost to provide the data, which shall be
154 paid by the owner at the time of the request to extract the data.

155 ~~[(3)]~~ (4) (a) Before the agency may release property to a person claiming ownership of
156 the property, the person shall establish to the agency pursuant to Subsection ~~[(3)]~~ (4)(b) that the
157 person:

- 158 (i) is the rightful owner; and
- 159 (ii) may lawfully possess the property.

160 (b) The person shall establish ownership under Subsection ~~[(3)]~~ (4)(a) by providing to
161 the agency:

- 162 (i) identifying proof or documentation of ownership of the property; or
- 163 (ii) a notarized statement, if proof or documentation is not available.

164 ~~[(4)]~~ (5) (a) When property is returned to the owner, a receipt listing in detail the
165 property returned shall be signed by the owner.

166 (b) The receipt shall be retained by the agency and a copy shall be provided to the
167 owner.

168 ~~[(5)]~~ (6) If the agency is unable to locate the rightful owner of the property or if the
169 rightful owner is not entitled to lawfully possess the property, the agency may:

- 170 (a) apply the property to a public interest use;
- 171 (b) sell the property at public auction and apply the proceeds of the sale to a public
172 interest use; or
- 173 (c) destroy the property if it is unfit for a public interest use or for sale.

174 ~~[(6)]~~ (7) Before applying the property or the proceeds from the sale of the property to a
175 public interest use, the agency shall obtain from the legislative body of its jurisdiction:

- 176 (a) permission to apply the property or the proceeds to public interest use; and
- 177 (b) the designation and approval of the public interest use of the property or the
178 proceeds.