

ASSET FORFEITURE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to asset forfeiture.

Highlighted Provisions:

This bill:

- ▶ adds a definition;
- ▶ addresses grounds for seizing property;
- ▶ addresses custody and control of property, including removing a retention requirement for interviews of a minor;
- ▶ requires a court to make certain findings before the court can order property be returned to a person claiming property;
- ▶ addresses jurisdiction in state court;
- ▶ addresses voiding a forfeiture;
- ▶ addresses civil forfeiture;
- ▶ provides for release of property held for forfeiture on certain grounds;
- ▶ changes interest requirements;
- ▶ modifies transfer and sharing procedures;
- ▶ modifies grant provisions under the State Asset Forfeiture Grant Program;
- ▶ addresses forfeiture reporting requirements; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 24-1-102, as last amended by Laws of Utah 2017, Chapters 285 and 362

34 24-2-102, as enacted by Laws of Utah 2013, Chapter 394

35 24-2-103, as last amended by Laws of Utah 2017, Chapter 362

36 24-3-104, as enacted by Laws of Utah 2013, Chapter 394

37 24-4-103, as enacted by Laws of Utah 2013, Chapter 394

38 24-4-104, as last amended by Laws of Utah 2017, Chapter 362

39 24-4-108, as enacted by Laws of Utah 2013, Chapter 394

40 24-4-109, as enacted by Laws of Utah 2013, Chapter 394

41 24-4-114, as last amended by Laws of Utah 2015, Chapter 134

42 24-4-117, as last amended by Laws of Utah 2015, Chapter 134

43 24-4-118, as last amended by Laws of Utah 2017, Chapter 303

44

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

46 Section 1. Section 24-1-102 is amended to read:

47 **24-1-102. Definitions.**

48 As used in this title:

49 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
50 24-4-116.

51 (2) (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not
52 guilty.

53 (b) "Acquitted" does not include:

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

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

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

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

- 59 (4) "Claimant" means any:
- 60 (a) owner of property as defined in this section;
- 61 (b) interest holder as defined in this section; or
- 62 (c) person or entity who asserts a claim to any property seized for forfeiture under this
- 63 title.
- 64 (5) "Commission" means the Utah Commission on Criminal and Juvenile Justice.
- 65 (6) "Complaint" means a civil in rem complaint seeking the forfeiture of any real or
- 66 personal property under this title.
- 67 (7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other
- 68 high-speed data processing device that performs logical, arithmetic, and storage functions, and
- 69 includes any device that is used for the storage of digital or electronic files, flash memory,
- 70 software, or other electronic information.
- 71 (b) "Computer" does not mean a computer server of an Internet or an electronic service
- 72 provider, or the service provider's employee, if used for the purpose of compliance with
- 73 obligations pursuant to 18 U.S.C. Sec. 2258A.
- 74 (8) "Constructive seizure" means a seizure of property where the property is left in the
- 75 control of the owner and the seizing agency posts the property with a notice of intent to seek
- 76 forfeiture.
- 77 (9) (a) "Contraband" means any property, item, or substance that is unlawful to
- 78 produce or to possess under state or federal law.
- 79 (b) All controlled substances that are possessed, transferred, distributed, or offered for
- 80 distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act, are
- 81 contraband.
- 82 (c) A computer is contraband if it:
- 83 (i) contains or houses child pornography, or is used to create, download, transfer,
- 84 upload to a storage account, or store any electronic or digital files containing child
- 85 pornography; or
- 86 (ii) contains the personal identifying information of another person, as defined in
- 87 Subsection 76-6-1102(1), whether that person is alive or deceased, and the personal identifying
- 88 information has been used to create false or fraudulent identification documents or financial
- 89 transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.

90 (10) "Innocent owner" means a claimant who:

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

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

94 or

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

97 (b) acquired an ownership interest in the property and had no knowledge that the illegal
98 conduct subjecting the property to forfeiture had occurred or that the property had been seized
99 for forfeiture, and:

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

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

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

105 (11) (a) "Interest holder" means a secured party as defined in Section [70A-9a-102](#), a
106 party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security interest
107 or encumbrance pertaining to an interest in property, whose interest would be perfected against
108 a good faith purchaser for value.

109 (b) "Interest holder" does not mean a person who holds property for the benefit of or as
110 an agent or nominee for another person, or who is not in substantial compliance with any
111 statute requiring an interest in property to be recorded or reflected in public records in order to
112 perfect the interest against a good faith purchaser for value.

113 (12) "Known address" means any address provided by a claimant to the agency at the
114 time the property was seized, or the claimant's most recent address on record with a
115 governmental entity if no address was provided at the time of the seizure.

116 (13) "Legal costs" means the costs and expenses incurred by a party in a forfeiture
117 action.

118 (14) "Legislative body" means:

119 (a) (i) the Legislature, county commission, county council, city commission, city
120 council, or town council that has fiscal oversight and budgetary approval authority over an

121 agency; or

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

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

125 (15) "Multijurisdictional task force" means a law enforcement task force or other
126 agency comprised of persons who are employed by or acting under the authority of different
127 governmental entities, including federal, state, county or municipal governments, or any
128 combination of these agencies.

129 (16) "Owner" means any person or entity, other than an interest holder, that possesses a
130 bona fide legal or equitable interest in real or personal property.

131 (17) (a) "Proceeds" means:

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

134 (ii) any property acquired directly or indirectly from, produced through, realized
135 through, or caused by an act or omission regarding property under Subsection (17)(a)(i).

136 (b) "Proceeds" includes any property of any kind without reduction for expenses
137 incurred in the acquisition, maintenance, or production of that property, or any other purpose
138 regarding property under Subsection (17)(a)(i).

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

141 (18) "Program" means the State Asset Forfeiture Grant Program established in Section
142 [24-4-117](#).

143 (19) "Property" means all property, whether real or personal, tangible or intangible, but
144 does not include contraband.

145 (20) "Property held for forfeiture" means property that is or has been in the control of
146 an agency or prosecuting attorney authorized to bring a forfeiture proceeding under this title
147 under circumstances that suggest that the agency or prosecuting attorney planned to pursue a
148 civil or criminal forfeiture claim, or transfer control of the property to another government for a
149 forfeiture claim, whether or not a notice of intent to seek forfeiture is served.

150 [~~20~~] (21) "Prosecuting attorney" means:

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

- 152 (b) any district attorney or deputy district attorney;
- 153 (c) any county attorney or assistant county attorney; and
- 154 (d) any other attorney authorized to commence an action on behalf of the state under
- 155 this title.

156 [~~(21)~~] (22) "Public interest use" means a:

157 (a) use by a government agency as determined by the legislative body of the agency's

158 jurisdiction; or

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

160 [~~(22)~~] (23) "Real property" means land and includes any building, fixture,

161 improvement, appurtenance, structure, or other development that is affixed permanently to

162 land.

163 Section 2. Section **24-2-102** is amended to read:

164 **24-2-102. Grounds for seizing property.**

165 (1) Property may be seized by a peace officer or any other person authorized by law

166 upon process issued by a court having jurisdiction over the property in accordance with the

167 Utah Rules of Criminal Procedure relating to search warrants or administrative warrants.

168 (2) Property may be seized under this chapter when:

169 [~~(a) the seizure is incident to an arrest;~~]

170 [~~(b)~~] (a) the property seized is the subject of a prior judgment in favor of the state in a

171 criminal injunction or forfeiture proceeding under this title; or

172 [~~(c)~~] (b) the peace officer or other person authorized by law has probable cause to

173 believe that the property:

- 174 (i) is directly or indirectly dangerous to health or safety;
- 175 (ii) is evidence of a crime;
- 176 (iii) has been used or was intended to be used to commit a crime; or
- 177 (iv) is proceeds of a crime.

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

179 **24-2-103. Property seized by a peace officer -- Custody and control of property.**

180 (1) (a) When property is seized by a peace officer, the peace officer or the peace

181 officer's employing agency shall provide a receipt to the person from whom the property was

182 seized.

- 183 (b) The receipt shall describe the:
- 184 (i) property seized;
- 185 (ii) date of seizure; and
- 186 (iii) name and contact information of the peace officer's employing agency.
- 187 (c) In addition to the receipt, the person from whom the property [~~was~~] is seized shall
- 188 be provided with information regarding the forfeiture process, including:
- 189 (i) important time periods in the forfeiture process;
- 190 (ii) what happens to the property upon conviction or acquittal; and
- 191 (iii) how to make a claim for the return of the property.
- 192 (d) A copy of the receipt shall be maintained by the agency.
- 193 (e) If custody of the property is transferred to another agency, a copy of the receipt
- 194 under Subsection (1)(a) shall be provided with the property.
- 195 (2) The agency responsible for maintaining the property shall:
- 196 (a) hold all seized property in safe physical custody until [~~it~~] the seized property can be
- 197 disposed of as provided in this title; and
- 198 (b) maintain a record of the property that includes:
- 199 (i) a detailed inventory of all property seized;
- 200 (ii) the name of the person from whom [~~it was~~] the property is seized; and
- 201 (iii) the agency's case number.
- 202 (3) Property seized under this title is not recoverable by replevin, but is considered in
- 203 the agency's physical custody subject only to the orders of the court or the official having
- 204 jurisdiction.
- 205 (4) [~~All controlled~~] Controlled substances or other contraband that is seized by a peace
- 206 officer may be processed for evidentiary or investigative purposes, including sampling or other
- 207 preservation procedure [~~prior to~~] before disposal or destruction.
- 208 (5) (a) An agency shall deposit property in the form of cash or other readily negotiable
- 209 instruments into a separate, restricted, interest-bearing account maintained by the agency solely
- 210 for the purpose of managing and protecting the property from commingling, loss, or
- 211 devaluation.
- 212 (b) [~~Each~~] An agency shall have written policies for the identification, tracking,
- 213 management, and safekeeping of seized property, which shall include a prohibition against the

214 transfer, sale, or auction of seized property to any employee of the agency.

215 ~~[(6) If a peace officer or the officer's employing agency records an interview of a minor~~
216 ~~child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or~~
217 ~~76-5-404.1, the agency shall retain a copy of the recording for 18 years following the date of~~
218 ~~the last recording unless the prosecuting attorney requests in writing that the recording be~~
219 ~~retained for an additional period of time.]~~

220 [(7)] (6) Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction
221 Information Act, governs the disposition of property held by a pawn or secondhand business in
222 the course of [its] the pawn or secondhand's business.

223 Section 4. Section **24-3-104** is amended to read:

224 **24-3-104. Petition to return property held as evidence.**

225 (1) (a) A person claiming ownership of property held as evidence may file a petition
226 with the court for the return of the property.

227 (b) The petition may be filed in:

228 (i) the court in which criminal proceedings have commenced regarding the conduct for
229 which the property is held as evidence; or

230 (ii) the district court of the jurisdiction where the property was seized, if there ~~[are]~~ is
231 no pending criminal ~~[proceedings]~~ proceeding.

232 (c) A copy of the petition shall be served on the prosecuting attorney and the agency
233 ~~[which]~~ that has possession of the property.

234 (2) The court shall provide an opportunity for an expedited hearing. After the
235 opportunity for an expedited hearing, the court may order that the property be:

236 (a) returned to the rightful owner as determined by the court;

237 (b) applied directly or by proceeds of the sale of the property toward restitution, fines,
238 or fees owed by the rightful owner in an amount set by the court;

239 (c) converted to a public interest use;

240 (d) held for further legal action;

241 (e) sold at public auction and the proceeds of the sale applied to a public interest use;

242 or

243 (f) destroyed.

244 (3) Before the court can order property be returned to a person claiming ownership of

245 property, the ~~[person shall establish]~~ court shall enter findings establishing by clear and
 246 convincing evidence that the person:

247 (a) is the rightful owner; and

248 (b) may lawfully possess the property.

249 (4) If the court orders the property to be returned, the agency that possesses the
 250 property shall return the property to the claimant as expeditiously as possible.

251 Section 5. Section **24-4-103** is amended to read:

252 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

253 (1) (a) Property held for forfeiture is immediately subject to the legal custody and sole
 254 in rem jurisdiction of the state court of competent jurisdiction.

255 (b) The state court of competent jurisdiction is the state district court:

256 (i) where a forfeiture proceeding is initiated; or

257 (ii) in the jurisdiction where the property is seized, if no criminal or forfeiture
 258 proceeding is commenced or initiated.

259 ~~[(+)]~~ (2) (a) Within 30 days from the date that property is seized, an agency seeking to
 260 forfeit property shall serve a notice of intent to seek forfeiture upon any ~~[claimants]~~ claimant
 261 known to the agency.

262 (b) The notice of intent to seek forfeiture shall describe the:

263 (i) date of the seizure;

264 (ii) property seized;

265 (iii) claimant's rights and obligations under this chapter, including the availability of
 266 hardship relief in appropriate circumstances; and

267 (iv) statutory basis for the forfeiture, including the judicial proceedings by which
 268 property may be forfeited under this chapter.

269 (c) The notice of intent to seek forfeiture shall be served by:

270 (i) certified mail, return receipt requested, to the claimant's known address; or

271 (ii) personal service.

272 (d) The court ~~[may void any]~~ shall void a forfeiture made without notice under

273 Subsection ~~[(+)]~~ (2)(a), unless the agency demonstrates:

274 (i) good cause for the failure to give notice to the claimant; or

275 (ii) that the claimant had actual notice of the seizure.

276 ~~[(2)]~~ (3) (a) Once the agency has served each claimant with a notice of intent to seek
277 forfeiture, but no later than 60 days from the date that property is seized, the agency shall
278 present a written request for forfeiture to the prosecuting attorney.

279 (b) The written request shall:

280 (i) describe the property to be forfeited; and

281 (ii) include a copy of ~~[aH]~~ the reports, supporting documents, and other evidence
282 necessary for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture
283 action.

284 Section 6. Section **24-4-104** is amended to read:

285 **24-4-104. Civil forfeiture procedure.**

286 (1) (a) The law enforcement agency shall promptly return seized property, and the
287 prosecuting attorney may take no further action to effect the forfeiture of the property, unless
288 within 75 days after the property is seized the prosecuting attorney:

289 (i) files a criminal indictment or information under Subsection [24-4-105\(2\)](#);

290 (ii) obtains a restraining order under Subsection [24-4-105\(3\)](#);

291 (iii) files a petition under Subsection [24-4-114\(1\)](#); or

292 (iv) files a civil forfeiture complaint.

293 (b) A complaint for civil forfeiture shall describe with reasonable particularity the:

294 (i) property that is the subject of the forfeiture proceeding;

295 (ii) date and place of seizure; and

296 (iii) factual allegations that constitute a basis for forfeiture.

297 (2) (a) After a complaint is filed, the prosecuting attorney shall serve a copy of the
298 complaint and summons upon each claimant known to the prosecuting attorney within 30 days.

299 (b) The prosecuting attorney is not required to serve a copy of the complaint or the
300 summons upon any claimant who has disclaimed, in writing, an ownership interest in the
301 seized property.

302 (c) Service of the complaint and summons shall be by:

303 (i) personal service;

304 (ii) certified mail, return receipt requested, to the claimant's known address; or

305 (iii) service by publication, if the prosecuting attorney demonstrates to the court that
306 service cannot reasonably be made by personal service or certified mail.

307 (d) Service by publication shall be by publication of two notices, in two successive
308 weeks, of the forfeiture proceeding:

309 (i) in a newspaper of general circulation in the county in which the seizure occurred;
310 and

311 (ii) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).

312 (e) Service is effective upon the earlier of:

313 (i) personal service;

314 (ii) mailing of a written notice; or

315 (iii) publication.

316 (f) Upon motion of the prosecuting attorney and a showing of good cause, the court
317 may extend the period to complete service under this section for an additional 60 days.

318 (3) (a) In any case where the prosecuting attorney files a complaint for forfeiture, a
319 claimant may file an answer to the complaint.

320 (b) The answer shall be filed within 30 days after the complaint is served upon the
321 claimant as provided in Subsection (2)(b).

322 (c) When the property subject to forfeiture is valued at less than \$10,000, the agency
323 that has custody of the property shall return the property to the claimant if:

324 (i) (A) the prosecuting attorney has filed a forfeiture complaint, and the claimant has
325 filed an answer through an attorney or pro se, in accordance with Subsections (3)(a) and (b);
326 and

327 (B) the prosecuting attorney has not filed an information or indictment for criminal
328 conduct giving rise to the forfeiture within 60 days after the date that service of the forfeiture
329 complaint on the claimant was completed, or has not timely moved a court of competent
330 jurisdiction and demonstrated reasonable cause for an extension of time to file such an
331 information or indictment; or

332 (ii) the information or indictment for criminal conduct giving rise to the forfeiture was
333 dismissed and the prosecuting attorney has not refiled the information or indictment within
334 seven days of the dismissal.

335 (d) The return of property to the claimant under Subsection (3)(c) does not include any
336 expenses, costs, or attorney fees.

337 (e) The time limitations in Subsection (3)(c)(i) may be extended for up to 15 days if a

338 claimant timely seeks to recover possession of seized property pursuant to Subsection
339 24-4-107(8), but shall resume immediately upon the seizing agency's or prosecuting attorney's
340 timely denial of the claim on the merits.

341 (4) Except as otherwise provided in this chapter, forfeiture proceedings are governed
342 by the Utah Rules of Civil Procedure.

343 (5) The court shall take all reasonable steps to expedite civil forfeiture proceedings and
344 shall give these proceedings the same priority as is given to criminal cases.

345 (6) In [~~all suits or actions~~] a suit or action brought under this section for the civil
346 forfeiture of any property, the burden of proof is on the prosecuting attorney to establish by
347 clear and convincing evidence that [~~the claimant engaged in conduct giving rise to the~~]
348 property is subject to forfeiture.

349 (7) A claimant may file an answer to a complaint for civil forfeiture without posting
350 bond with respect to the property subject to forfeiture.

351 (8) Property is subject to forfeiture under this chapter if the prosecuting attorney
352 establishes that:

353 (a) (i) the claimant has engaged in conduct giving rise to forfeiture;

354 [~~(b)~~] (ii) the property [~~was~~] is acquired by the claimant during that portion of the
355 conduct that gives rise to forfeiture, or within a reasonable time after that conduct is
356 committed; and

357 [~~(c)~~] (iii) there is no likely source for the purchase or acquisition of the property other
358 than the conduct that gives rise to forfeiture~~[-];~~ or

359 (b) (i) there is no known claimant;

360 (ii) there is cause to believe that the property has been used to commit a crime or is
361 proceeds of a crime; and

362 (iii) the prosecuting attorney has complied with the notice requirements of Subsection
363 (2)(d).

364 (9) A finding by the court that property is the proceeds of conduct giving rise to
365 forfeiture does not require proof that the property was the proceeds of any particular exchange
366 or transaction.

367 (10) If the prosecutor establishes that the property is subject to forfeiture, but the
368 claimant is subsequently criminally charged with the conduct giving rise to the forfeiture and is

369 acquitted of that charge on the merits:

370 (a) the property subject to the forfeiture or the open market value of the property, if the
371 property has been disposed of under Subsection 24-4-108(13), shall be returned to the
372 claimant; and

373 (b) any payments required under this chapter regarding the costs of holding the
374 property shall be paid to the claimant.

375 Section 7. Section 24-4-108 is amended to read:

376 **24-4-108. Release of property held for forfeiture on certain grounds.**

377 (1) After ~~[the]~~ a seizing agency gives notice ~~[that the property is to be held for~~
378 ~~forfeiture]~~ pursuant to Subsection 24-4-103(2), a person ~~[or entity]~~ may not alienate, convey,
379 sequester, or attach that property until the court issues a final order of dismissal or an order of
380 forfeiture regarding the property.

381 (2) The seizing agency or the prosecuting attorney may authorize the release of
382 property held for forfeiture to a claimant if retention of actual custody is unnecessary.

383 (3) ~~[With]~~ Subject to Subsection 24-4-114(1)(c), with the consent of a court of
384 competent jurisdiction, the prosecuting attorney may discontinue forfeiture proceedings and
385 transfer the action to another state or federal agency that has initiated forfeiture proceedings
386 involving the same property.

387 (4) Property held for forfeiture is ~~[considered to be in the custody of the district court~~
388 ~~and]~~ subject only to:

389 (a) the orders and decrees of the state court ~~[having jurisdiction over the property or the~~
390 ~~forfeiture proceedings]~~ identified in Subsection 24-4-103(1); and

391 (b) the acts of the agency that possesses the property or the prosecuting attorney
392 pursuant to this chapter.

393 (5) (a) A claimant may obtain release of property held for forfeiture by posting with the
394 district court a surety bond or cash in an amount equal to the current fair market value of the
395 property as determined by the court or by the parties' stipulation.

396 (b) The district court may refuse to order the release of the property if:

397 (i) the bond tendered is inadequate;

398 (ii) the property is contraband or is retained as evidence; or

399 (iii) the property is particularly altered or designed for use in conduct giving cause for

400 forfeiture.

401 (c) If a surety bond or cash is posted and the court later determines that the property is
402 subject to forfeiture, the court shall order the forfeiture of the surety bond or cash in lieu of the
403 property.

404 (6) A claimant is entitled to the immediate release of property held for forfeiture
405 pending the final determination of forfeiture if:

406 (a) the claimant had a possessory interest in the property at the time of seizure;

407 (b) continued possession by the agency or the state pending the final disposition of the
408 forfeiture proceedings will cause substantial hardship to the claimant, such as:

409 (i) preventing the functioning of a legitimate business;

410 (ii) preventing any individual from working;

411 (iii) preventing any child from attending elementary or secondary school;

412 (iv) preventing or hindering any person from receiving necessary medical care;

413 (v) hindering the care of an elderly or disabled dependent child or adult;

414 (vi) leaving any individual homeless; or

415 (vii) any other condition that the court determines causes a substantial hardship;

416 (c) the hardship from the continued possession of the property by the agency outweighs
417 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is
418 returned to the claimant during the pendency of the proceeding; and

419 (d) determination of substantial hardship under this Subsection (6) is based upon the
420 property's use [~~prior to~~] before the seizure.

421 (7) After the seizing agency gives notice that the property is to be held for forfeiture, a
422 claimant may file a motion for hardship release:

423 (a) in the court in which forfeiture proceedings have commenced; or

424 (b) in any district court having jurisdiction over the property, if forfeiture proceedings
425 have not yet commenced.

426 (8) The motion for hardship release shall also be served upon the prosecuting attorney
427 or the seizing agency within 10 days after filing the motion.

428 (9) The court shall render a decision on a motion for hardship filed under this section
429 not later than 20 days after the date of filing, or 10 days after service upon the prosecuting
430 attorney or seizing agency, whichever is earlier, unless this period is extended by the agreement

431 of both parties or by the court for good cause shown.

432 (10) (a) If the claimant demonstrates substantial hardship pursuant to this section, the
433 court shall order the property immediately released to the claimant pending completion of
434 proceedings by the government to obtain forfeiture of the property.

435 (b) The court may place conditions on release of the property as it finds necessary and
436 appropriate to preserve the availability of the property or its equivalent for forfeiture.

437 (11) The hardship release under this section does not apply to:

438 (a) contraband;

439 (b) currency or other monetary instrument or electronic funds; or

440 (c) property that is likely to be used to commit additional illegal acts if returned to the
441 claimant.

442 (12) (a) The court may order property that is held for forfeiture to be sold, as allowed
443 by Subsection (13), leased, rented, or operated to satisfy a specified interest of any claimant, or
444 to preserve the interests of any party on motion of that party.

445 (b) The court may enter orders under Subsection (12)(a) after written notice to persons
446 known to have an interest in the property, and after an opportunity for a hearing.

447 (13) (a) A sale may be ordered under Subsection (12) when the property is liable to
448 perish, waste, or be significantly reduced in value, or when the expenses of maintaining the
449 property are disproportionate to its value.

450 (b) A third party designated by the court shall dispose of the property by commercially
451 reasonable public sale and distribute the proceeds in the following order of priority:

452 (i) first, for the payment of reasonable expenses incurred in connection with the sale;

453 (ii) second, for the satisfaction of any interests, including those of interest holders, in
454 the order of their priority as determined by Title 70A, Uniform Commercial Code; and

455 (iii) third, any balance of the proceeds shall be preserved in the actual or constructive
456 custody of the court, in an interest-bearing account, subject to further proceedings under this
457 chapter.

458 Section 8. Section **24-4-109** is amended to read:

459 **24-4-109. Postseizure interest.**

460 In ~~[any]~~ a proceeding to forfeit currency or other negotiable instruments under this
461 chapter, the court shall award a prevailing party ~~[postjudgment]~~ postseizure interest on the

462 currency or negotiable instruments at the interest rate established under Section 15-1-4.

463 Section 9. Section 24-4-114 is amended to read:

464 **24-4-114. Transfer and sharing procedures.**

465 (1) (a) ~~[Seizing agencies or prosecuting attorneys]~~ A seizing agency or prosecuting
466 attorney who is authorized to bring forfeiture proceedings under this chapter may not directly
467 or indirectly transfer property held for forfeiture and not already named in a criminal
468 indictment to any federal agency or any governmental entity not created under and subject to
469 state law unless the court enters an order, upon petition of the prosecuting attorney, authorizing
470 the property to be transferred.

471 (b) An agency that is found to have intentionally violated the transfer provisions of this
472 chapter is ineligible to participate in the program during the following fiscal year.

473 ~~[(b) The]~~ (c) A court may not enter an order authorizing a transfer under Subsection
474 (1)(a) unless:

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

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

478 (iii) pursuing forfeiture under state law would unreasonably burden a prosecuting
479 ~~[attorneys]~~ attorney or state law enforcement ~~[agencies]~~ agency.

480 ~~[(c)]~~ (d) A petition to transfer property to a federal agency under this section shall
481 include:

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

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

484 (iii) the date the property was seized;

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

486 (v) a declaration that:

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

488 (B) contains the ~~[names and addresses of any claimants]~~ name and address of any
489 claimant then known; and

490 (C) is signed by the prosecutor.

491 ~~[(d)]~~ (e) The court may not authorize the transfer of property to the federal government
492 if the transfer would circumvent the protections of the Utah Constitution or of this chapter that

493 would otherwise be available to the property owner.

494 ~~[(e)(i) Prior to]~~ (f) (i) Before granting ~~[any]~~ an order to transfer pursuant to this
 495 section, the court shall give any claimant the right to be heard with regard to the transfer by the
 496 mailing of a notice to each address contained in the declaration.

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

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

502 ~~[(f)]~~ (g) (i) If a claimant contests a petition to transfer property to a federal agency, the
 503 court shall promptly set the matter for hearing.

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

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

509 (2) ~~[AH]~~ The property, money, or other things of value received by an agency pursuant
 510 to federal law, which authorizes the sharing or transfer of all or a portion of forfeited property
 511 or the proceeds of the sale of forfeited property to an agency~~[:]~~ shall be transferred to the
 512 account.

513 ~~[(a) shall be used in compliance with federal laws and regulations relating to equitable~~
 514 ~~sharing;]~~

515 ~~[(b) may be used for those law enforcement purposes specified in Subsection~~
 516 ~~24-4-117(9); and]~~

517 ~~[(c) may not be used for those law enforcement purposes prohibited in Subsection~~
 518 ~~24-4-117(10).]~~

519 ~~[(3) A state or local law enforcement agency awarded any equitable share of property~~
 520 ~~forfeited by the federal government may only use the award money after approval of the use by~~
 521 ~~the agency's legislative body.]~~

522 Section 10. Section ~~24-4-117~~ is amended to read:

523 **24-4-117. State Asset Forfeiture Grant Program.**

- 524 (1) There is created the State Asset Forfeiture Grant Program.
- 525 (2) The program shall fund crime prevention, crime victim reparations, and law
526 enforcement activities that have the purpose of:
- 527 (a) deterring crime by depriving [~~criminals~~] a criminal of the profits and proceeds of
528 [~~their~~] the criminal's illegal activities;
- 529 (b) weakening criminal enterprises by removing the instrumentalities of crime;
- 530 (c) reducing crimes involving substance abuse by supporting the creation,
531 administration, or operation of drug court programs throughout the state;
- 532 (d) encouraging cooperation between local, state, and multijurisdictional law
533 enforcement agencies;
- 534 (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited
535 proceeds of crime;
- 536 (f) increasing the equitability and accountability of the use of forfeited property used to
537 assist law enforcement in reducing and preventing crime; and
- 538 (g) providing aid to victims of criminally injurious conduct, as defined in Section
539 [63M-7-502](#), who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office
540 for Victims of Crime.
- 541 (3) (a) When property is forfeited under this chapter and transferred to the account,
542 upon appropriation the commission shall allocate and administer grants to state agencies, local
543 law enforcement agencies, multijurisdictional law enforcement agencies, or political
544 subdivisions of the state in compliance with this section and to further the program purposes
545 under Subsection (2).
- 546 (b) The commission may retain up to 3% of the annual appropriation from the account
547 to pay for administrative costs incurred by the commission, including salary and benefits,
548 equipment, supplies, or travel costs that are directly related to the administration of the
549 program.
- 550 (4) [~~Agencies or political subdivisions~~] An agency or political subdivision shall apply
551 for an award from the program by completing and submitting forms specified by the
552 commission.
- 553 (5) In granting [~~the awards~~] an award, the commission shall ensure that the amount of
554 each award takes into consideration the:

555 (a) demonstrated needs of the agency;
556 (b) demonstrated ability of the agency to appropriately use the award; and
557 ~~[(c) degree to which the agency's need is offset through the agency's participation in~~
558 ~~federal equitable sharing or through other federal and state grant programs; and]~~

559 ~~[(d)]~~ (c) agency's cooperation with other state and local agencies and task forces.

560 (6) The commission may not disqualify an agency from being awarded a grant based
561 on the agency's participation in state or federal forfeiture.

562 ~~[(6) Applying agencies or political subdivisions]~~

563 (7) (a) An applying agency or political subdivision shall demonstrate compliance with
564 ~~[aH]~~ the reporting and policy requirements applicable under this chapter and under Title 63M,
565 Chapter 7, Criminal Justice and Substance Abuse, ~~[in order]~~ to qualify as a potential award
566 recipient.

567 (b) A law enforcement agency that fails to provide a report of its forfeiture activities
568 may not be awarded a grant during the following calendar year.

569 ~~[(7)]~~ (8) (a) [Recipient] A recipient law enforcement ~~[agencies]~~ agency may only use
570 award money after approval by the agency's legislative body.

571 (b) The award money is nonlapsing.

572 ~~[(8)]~~ (9) A recipient state agency, local law enforcement agency, multijurisdictional
573 law enforcement agency, or political subdivision shall use awards only for law enforcement
574 purposes as described in this section or for victim reparations as described in Subsection (2)(g),
575 and only as these purposes are specified by the agency or political subdivision in its application
576 for the award.

577 ~~[(9)]~~ (10) Permissible law enforcement purposes for which award money may be used
578 include:

579 (a) controlled substance interdiction and enforcement activities;

580 (b) drug court programs;

581 (c) activities calculated to enhance future law enforcement investigations;

582 (d) law enforcement training that includes:

583 (i) implementation of the Fourth Amendment to the United States Constitution and
584 Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's
585 right of due process;

- 586 (ii) protection of the rights of innocent property holders; and
 587 (iii) the Tenth Amendment to the United States Constitution regarding states'
 588 sovereignty and the states' reserved rights;
 589 (e) law enforcement or detention facilities;
 590 (f) law enforcement operations or equipment that are not routine costs or operational
 591 expenses;
 592 (g) drug, gang, or crime prevention education programs that are sponsored in whole or
 593 in part by the law enforcement agency or its legislative body;
 594 (h) matching funds for other state or federal law enforcement grants; and
 595 (i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture
 596 actions.

597 ~~[(10)]~~ (11) Law enforcement purposes for which award money may not be granted or
 598 used include:

- 599 (a) payment of salaries, retirement benefits, or bonuses to any person;
 600 (b) payment of expenses not related to law enforcement;
 601 (c) uses not specified in the agency's award application;
 602 (d) uses not approved by the agency's legislative body;
 603 (e) payments, transfers, or pass-through funding to ~~[entities]~~ an entity other than a law
 604 enforcement ~~[agencies]~~ agency; or
 605 (f) uses, payments, or expenses that are not within the scope of the agency's functions.

606 Section 11. Section **24-4-118** is amended to read:

607 **24-4-118. Forfeiture reporting requirements.**

608 (1) ~~[On and after January 1, 2016, every]~~ A state, county, municipal, or other law
 609 enforcement agency shall provide ~~[all]~~ the reasonably available data described in Subsection
 610 (5), along with the transfer of any applicable forfeited property:

611 (a) when ~~[transferring the forfeited property resulting from]~~ the final disposition ~~[of~~
 612 any] has been made for a civil or criminal forfeiture matter ~~[to the Commission on Criminal~~
 613 and Juvenile Justice as required under Subsection 24-4-115(5)]; or

614 (b) when the agency has been awarded any equitable share of property forfeited by the
 615 federal government.

616 (2) The ~~[Commission on Criminal and Juvenile Justice]~~ commission shall develop a

617 standardized report format that each agency shall use in reporting the data required under this
618 section.

619 (3) The [~~Commission on Criminal and Juvenile Justice~~] commission shall annually, on
620 or before April 30, prepare a summary report of the case data submitted by each agency under
621 Subsection (1) during the prior calendar year.

622 (4) (a) If an agency does not comply with the reporting requirements under this section,
623 the [~~Commission on Criminal and Juvenile Justice~~] commission shall contact the agency and
624 request that the agency comply with the required reporting provisions.

625 (b) If an agency fails to comply with the reporting requirements under this section
626 within 30 days after receiving the request to comply, the [~~Commission on Criminal and
627 Juvenile Justice~~] commission shall report the noncompliance to the Utah attorney general, the
628 speaker of the House of Representatives, and the president of the Senate.

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

631 (a) the agency that conducted the seizure;

632 (b) the case number or other identification;

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

634 (d) the number of individuals having a known property interest in each seizure of
635 property;

636 (e) the type of property seized;

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

638 (g) whether any criminal charges were filed regarding the alleged offense, and if so, the
639 final disposition of each charge, including the conviction, acquittal, or dismissal, or whether
640 action on a charge is pending;

641 (h) the type of enforcement action that resulted in the seizure, including an
642 enforcement stop, a search warrant, or an arrest warrant;

643 (i) whether the forfeiture procedure was civil or criminal;

644 (j) the value of the property seized, including currency and the estimated market value
645 of any tangible property;

646 (k) the final disposition of the matter, including whether final disposition was entered
647 by stipulation of the parties, including the amount of property returned to any claimant, by

648 default, by summary judgment, by jury award, or by guilty plea or verdict in a criminal
649 forfeiture;

650 (l) if the property was forfeited by the federal government, the amount of forfeited
651 money awarded to the agency;

652 (m) the agency's direct costs, expense of reporting under this section, and expenses for
653 obtaining and maintaining the seized property, as described in Subsection 24-4-115(3)(a);

654 (n) the legal costs and attorney fees paid to the prosecuting attorney, as described in
655 Subsection 24-4-115(3)(b); and

656 (o) if the property was transferred to a federal agency or any governmental entity not
657 created under and subject to state law:

658 (i) the date of the transfer;

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

660 (iii) a reference to which reason under Subsection 24-4-114(1)(a) justified the transfer;

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

662 (v) the date of the order of transfer of the property; and

663 (vi) the value of the property transferred to the federal agency, including currency and
664 the estimated market value of any tangible property.

665 (6) On and after January 1, 2016, [every] a state, county, municipal, or other law
666 enforcement agency shall annually on or before April 30 submit a report for the prior calendar
667 year to the [~~Commission on Criminal and Juvenile Justice which~~] commission that states:

668 (a) whether the agency received an award from the [~~State Asset Forfeiture Grant~~
669 ~~Program~~] program under Section 24-4-117 and, if so, the following information for each
670 award:

671 (i) the amount of the award;

672 (ii) the date of the award;

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

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

676 (A) the agency has complied with [aH] the inventory, policy, and reporting
677 requirements under Section 24-4-117; and

678 (B) [aH] the awards were used for crime reduction or law enforcement purposes as

679 specified in the application and that the awards were used only upon approval by the agency's
680 legislative body; and

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

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

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

687 (iii) the date of the award;

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

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

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

694 (7) (a) On or before July 1 of each year, the [~~Commission on Criminal and Juvenile~~
695 ~~Justice~~] commission shall submit notice of the annual reports in Subsection (3) and Subsection
696 (6), in electronic format, to:

697 (i) the Utah attorney general;

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

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

702 (iv) each law enforcement agency.

703 (b) The reports described in Subsection (3) and Subsection (6), as well as the
704 individual case data described in Subsection (1) for the previous calendar year, shall be
705 published on the Utah Open Government website at open.utah.gov on or before July 15 of each
706 year.