

## SB0120S01 compared with SB0120

~~text~~ shows text that was in SB0120 but was deleted in SB0120S01.

inserted text shows text that was not in SB0120 but was inserted into SB0120S01.

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Senator Wayne A. Harper proposes the following substitute bill:

### PROPERTY AND CONTRABAND AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: ~~\_\_\_\_\_~~ Ken Ivory

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#### LONG TITLE

##### General Description:

This bill amends provisions regarding property and contraband.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions regarding the seizure of property and contraband by a conservation officer for the Division of Wildlife Resources;
- ▶ recodifies Title 24, Forfeiture and Disposition of Property Act, to Title 77, Chapter 11a, Seizure and Retention of Property and Contraband, and Chapter 11b, Forfeiture of Seized Property;
- ▶ recodifies Title 53, Chapter 20, Forensic Biological Evidence Preservation, to Title 77, Chapter 11a, Seizure and Retention of Property and Contraband;

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- ▶ recodifies Title 77, Chapter 24a, Lost or Mislaid Personal Property, to Title 77, Chapter 11c, Lost or Mislaid Property;
- ▶ amends provisions related to the seizure of property and contraband;
- ▶ establishes the requirements for retaining property and contraband as evidence, including the time periods for retention;
- ▶ establishes the requirements for not retaining property and contraband as evidence;
- ▶ establishes the requirements for preserving evidence from property or contraband that is not required to be retained by an agency;
- ▶ provides the procedure for requesting the release or disposal of evidence that an agency determines is not required to be retained by an agency;
- ▶ addresses the retention of property or contraband as an exhibit;
- ▶ addresses the applicability of Title 77, Chapter 11a, Part 3, Retention of Property and Contraband as Evidence, and Part 4, Preservation of Biological Evidence for Violent Felony Offenses;
- ▶ amends provisions related to the release of property to an owner, interest holder, or person who asserts a claim to property that the agency seeks to forfeit;
- ▶ amends provisions related to the disposal of seized property and contraband;
- ▶ amends provisions related to the forfeiture of seized property; and
- ▶ makes technical and conforming changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

AMENDS:

**13-32a-104**, as last amended by Laws of Utah 2022, Chapter 201

**13-32a-109**, as last amended by Laws of Utah 2022, Chapters 201, 274

**13-32a-116.5**, as last amended by Laws of Utah 2022, Chapters 201, 274

**17-18a-405**, as last amended by Laws of Utah 2014, Chapter 189

**[23-20-1](#)**, as last amended by **[Laws of Utah 2013, Chapter 394](#)**

**41-6a-606**, as last amended by Laws of Utah 2022, Chapter 176

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**53-5c-201**, as last amended by Laws of Utah 2021, Chapter 137

**53-5c-202**, as last amended by Laws of Utah 2021, Chapter 137

**58-37a-6**, as last amended by Laws of Utah 2015, Chapter 258

**58-37c-15**, as last amended by Laws of Utah 2015, Chapter 258

**58-37d-7**, as last amended by Laws of Utah 2015, Chapter 258

**63A-16-1002**, as enacted by Laws of Utah 2022, Chapter 390 and last amended by  
Coordination Clause, Laws of Utah 2022, Chapter 390

**63I-1-263**, as last amended by Laws of Utah 2022, Chapters 23, 34, 68, 153, 218, 236,  
249, 274, 296, 313, 361, 362, 417, 419, and 472

**63J-1-602.1**, as last amended by Laws of Utah 2022, Chapters 48, 191, 255, 335, 415,  
and 451

**76-5-109.3**, as enacted by Laws of Utah 2022, Chapter 181

**76-6-111**, as last amended by Laws of Utah 2021, Chapters 57, 260

**76-6-501**, as last amended by Laws of Utah 2016, Chapter 117

**76-6-1303**, as last amended by Laws of Utah 2015, Chapter 258

**76-10-503**, as last amended by Laws of Utah 2021, Chapter 262

**76-10-1108**, as last amended by Laws of Utah 2015, Chapter 258

**76-10-1112**, as enacted by Laws of Utah 2020, Chapter 291

**77-37-3**, as last amended by Laws of Utah 2022, Chapter 430

**78B-9-104**, as last amended by Laws of Utah 2022, Chapter 120

### ENACTS:

**77-11a-301**, Utah Code Annotated 1953

**77-11a-302**, Utah Code Annotated 1953

**77-11a-303**, Utah Code Annotated 1953

**77-11a-304**, Utah Code Annotated 1953

~~†~~ ~~**77-11a-305**, Utah Code Annotated 1953~~

~~—~~ ~~**77-11a-401**, Utah Code Annotated 1953~~

† **77-11a-502**, Utah Code Annotated 1953

**77-11a-503**, Utah Code Annotated 1953

**77-11b-101**, Utah Code Annotated 1953

**77-11b-104**, Utah Code Annotated 1953

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### RENUMBERS AND AMENDS:

- 77-11a-101**, (Renumbered from 24-1-102, as last amended by Laws of Utah 2022, Chapter 179)
- 77-11a-102**, (Renumbered from 24-1-103, as last amended by Laws of Utah 2021, Chapter 230)
- 77-11a-201**, (Renumbered from 24-2-102, as last amended by Laws of Utah 2021, Chapter 230)
- 77-11a-202**, (Renumbered from 24-2-102.5, as enacted by Laws of Utah 2021, Chapter 230)
- 77-11a-203**, (Renumbered from 24-2-103, as last amended by Laws of Utah 2021, Chapter 230)
- 77-11a-204**, (Renumbered from 24-2-104, as last amended by Laws of Utah 2022, Chapters 120, 274)
- 77-11a-205**, (Renumbered from 24-2-105, as last amended by Laws of Utah 2022, Chapter 179)
- ~~{77-11a-402}~~; **77-11a-401**, (Renumbered from 53-20-102, as enacted by Laws of Utah 2022, Chapter 120)
- ~~{77-11a-403}~~; **77-11a-402**, (Renumbered from 53-20-103, as enacted by Laws of Utah 2022, Chapter 120)
- ~~{77-11a-404}~~; **77-11a-403**, (Renumbered from 53-20-104, as enacted by Laws of Utah 2022, Chapter 120)
- 77-11a-501**, (Renumbered from 24-2-107, as last amended by Laws of Utah 2022, Chapters 120, 179)
- 77-11a-504**, (Renumbered from 24-2-108, as last amended by Laws of Utah 2022, Chapters 120, 179)
- 77-11a-505**, (Renumbered from 24-3-104, as last amended by Laws of Utah 2021, Chapter 230)
- 77-11a-601**, (Renumbered from 24-3-101.5, as last amended by Laws of Utah 2022, Chapters 120, 274)
- 77-11a-602**, (Renumbered from 24-3-103, as last amended by Laws of Utah 2021, Chapter 230)

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- 77-11a-603**, (Renumbered from 24-3-103.5, as enacted by Laws of Utah 2017, Chapter 334)
- 77-11b-102**, (Renumbered from 24-4-102, as last amended by Laws of Utah 2022, Chapters 116, 274)
- 77-11b-103**, (Renumbered from 24-4-106, as enacted by Laws of Utah 2013, Chapter 394)
- 77-11b-105**, (Renumbered from 24-4-119, as enacted by Laws of Utah 2021, Chapter 230)
- 77-11b-201**, (Renumbered from 24-4-103, as last amended by Laws of Utah 2022, Chapter 179)
- 77-11b-202**, (Renumbered from 24-4-103.3, as last amended by Laws of Utah 2022, Chapter 120)
- 77-11b-203**, (Renumbered from 24-4-103.5, as last amended by Laws of Utah 2022, Chapter 120)
- 77-11b-204**, (Renumbered from 24-4-111, as last amended by Laws of Utah 2021, Chapter 230)
- 77-11b-301**, (Renumbered from 24-4-105, as last amended by Laws of Utah 2022, Chapter 179)
- 77-11b-302**, (Renumbered from 24-4-104, as last amended by Laws of Utah 2021, Chapter 230)
- 77-11b-303**, (Renumbered from 24-4-113, as last amended by Laws of Utah 2021, Chapter 230)
- 77-11b-304**, (Renumbered from 24-4-109, as last amended by Laws of Utah 2021, Chapter 230)
- 77-11b-305**, (Renumbered from 24-4-110, as last amended by Laws of Utah 2021, Chapter 230)
- 77-11b-306**, (Renumbered from 24-4-112, as last amended by Laws of Utah 2021, Chapter 230)
- 77-11b-401**, (Renumbered from 24-4-115, as last amended by Laws of Utah 2022, Chapter 179)
- 77-11b-402**, (Renumbered from 24-4-116, as last amended by Laws of Utah 2021,

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Chapter 230)

**77-11b-403**, (Renumbered from 24-4-117, as last amended by Laws of Utah 2021,  
Chapter 230)

**77-11b-404**, (Renumbered from 24-4-118, as last amended by Laws of Utah 2022,  
Chapter 274)

**77-11c-101**, (Renumbered from 77-24a-1, as repealed and reenacted by Laws of Utah  
2013, Chapter 394)

**77-11c-102**, (Renumbered from 77-24a-2, as last amended by Laws of Utah 2013,  
Chapter 394)

**77-11c-103**, (Renumbered from 77-24a-3, as last amended by Laws of Utah 2013,  
Chapter 394)

**77-11c-104**, (Renumbered from 77-24a-4, as last amended by Laws of Utah 2013,  
Chapter 394)

**77-11c-105**, (Renumbered from 77-24a-5, as last amended by Laws of Utah 2013,  
Chapter 394)

### REPEALS:

**24-1-101**, as enacted by Laws of Utah 2013, Chapter 394

**24-2-101**, as enacted by Laws of Utah 2013, Chapter 394

**24-2-106**, as last amended by Laws of Utah 2022, Chapter 120

**24-3-101**, as last amended by Laws of Utah 2021, Chapter 230

**24-4-101**, as last amended by Laws of Utah 2021, Chapter 230

**53-20-101**, as enacted by Laws of Utah 2022, Chapter 120

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

Section 1. Section **13-32a-104** is amended to read:

**13-32a-104. Tickets required to be maintained -- Contents -- Identification of items -- Exceptions -- Prohibition against pawning or selling certain property.**

(1) A pawn or secondhand business shall keep a ticket for property a person pawns or sells to the pawn or secondhand business. A pawn or secondhand business shall document on the ticket the following information regarding the property:

(a) the date and time of the transaction;

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- (b) whether the transaction is a pawn or purchase;
- (c) the ticket number;
- (d) the date by which the property must be redeemed, if the property is pawned;
- (e) the following information regarding the individual who pawns or sells the property:
  - (i) the individual's full name and date of birth as they appear on the individual's identification and the individual's residence address and telephone number;
  - (ii) the unique number and type of identification presented to the pawn or secondhand business;
  - (iii) the individual's signature; and
  - (iv) (A) subject to any rule made under Subsection (8), an electronic or tangible legible fingerprint of the individual's right index finger, or if the right index finger cannot be fingerprinted, a legible fingerprint of the individual with a notation identifying the fingerprint and the reason why the right index fingerprint was unavailable; and  
(B) notwithstanding the other provisions of this Subsection (1), an electronic legible fingerprint is not required to be documented on the ticket;
- (f) the amount loaned on, paid for, or value for trade-in of each article of property;
- (g) the full name of the individual conducting the pawn transaction or secondhand merchandise transaction on behalf of the pawn or secondhand business or the initials or a unique identifying number of the individual, if the pawn or secondhand business maintains a record of the initials or unique identifying number of the individual; and
- (h) an accurate description of each article of property, with available identifying marks, including:
  - (i) (A) names, brand names, numbers, serial numbers, model numbers, IMEI numbers, color, manufacturers' names, and size;
  - (B) metallic composition, and any jewels, stones, or glass;
  - (C) any other marks of identification or indicia of ownership on the property;
  - (D) the weight of the property, if the payment is based on weight;
  - (E) any other unique identifying feature; and
  - (F) gold content, if indicated; or
  - (ii) if multiple articles of property of a similar nature are delivered together in one transaction and the articles of property do not bear serial or model numbers and do not include

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precious metals or gemstones, such as musical or video recordings, books, or hand tools, the description of the articles is adequate if it includes the quantity of the articles and a description of the type of articles delivered.

(2) (a) A pawn or secondhand business may not accept property if, upon inspection, it is apparent that:

(i) a serial number or another form of indicia of ownership has been removed, altered, defaced, or obliterated;

(ii) the property is not a numismatic item and has indicia of being new, but is not accompanied by a written receipt or other satisfactory proof of ownership other than the seller's own statement; or

(iii) except as provided in Subsection 13-32a-103.1(3), the property is a gift card, transaction card, or other physical or digital card or certificate evidencing store credit.

(b) A pawn or secondhand business is not subject to Subsection (2)(a)(ii) if the pawn or secondhand business is the original seller of the property and is accepting a return of the property as provided by the pawn or secondhand business' established return policy.

(c) Property is presumed to have had indicia of being new at the time of a transaction if the property is subsequently advertised by the pawn or secondhand business as being new.

(3) (a) An individual may not pawn or sell any property to a business regulated under this chapter if the property is subject to being turned over to a law enforcement agency in accordance with [~~Title 77, Chapter 24a, Lost or Mislaid Personal Property~~] Title 77, Chapter 11c, Lost or Mislaid Property.

(b) If an individual attempts to sell or pawn property to a business regulated under this chapter and the employee or owner of the business knows or has reason to know that the property is subject to [~~Title 77, Chapter 24a, Lost or Mislaid Personal Property~~] Title 77, Chapter 11c, Lost or Mislaid Property, the employee or owner shall advise the individual of the requirements of [~~Title 77, Chapter 24a, Lost or Mislaid Personal Property~~] Title 77, Chapter 11c, Lost or Mislaid Property, and may not receive the property in pawn or sale.

(4) A coin dealer is subject to Section 13-32a-104.5 and not subject to this section.

(5) An automated recycling kiosk operator is subject to Section 13-32a-104.6 and is not subject to this section.

(6) A catalytic converter purchaser is subject to Section 13-32a-104.7 and is not subject



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to this section.

(7) A violation of this section is a class B misdemeanor and is also subject to civil penalties under Section 13-32a-110.

(8) The division shall establish standards and criteria for fingerprint legibility by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(9) (a) As used in this Subsection (9), "jewelry" means:

(i) any jewelry purchased by the pawn or secondhand business, including scrap jewelry and watches; or

(ii) any jewelry pawned to a pawnbroker and the contract period between the pawnbroker and the pledgor has expired, including scrap jewelry and watches.

(b) On and after January 1, 2020, a pawn or secondhand business shall obtain:

(i) a color digital photograph clearly and accurately depicting:

(A) each item of jewelry; and

(B) if an item of jewelry has one or more engravings, an additional color digital photograph specifically depicting any engraving; and

(ii) a color digital photograph of an item that bears an identifying mark, including:

(A) a serial number, engraving, owner label, or similar identifying mark; and

(B) an additional photograph that clearly depicts the identifying mark described in Subsection (9)(b)(ii)(A).

Section 2. Section **13-32a-109** is amended to read:

### **13-32a-109. Holding period for property -- Return of property -- Penalty.**

(1) (a) A pawnbroker may sell property pawned to the pawnbroker if:

(i) 15 calendar days have passed after the day on which the pawnbroker submits the information and any required photograph to the central database;

(ii) the contract period between the pawnbroker and the pledgor expires; and

(iii) the pawnbroker has complied with Sections 13-32a-104 and 13-32a-106.

(b) If property, including scrap jewelry, is purchased by a pawn or secondhand business or catalytic converter purchaser, the pawn or secondhand business or catalytic converter purchaser may sell the property if the pawn or secondhand business or catalytic converter purchaser has held the property for 15 calendar days after the day on which the pawn or secondhand business or catalytic converter purchaser submits the information to the central

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database, and complied with Sections 13-32a-104, 13-32a-104.6, 13-32a-104.7, and 13-32a-106, except that the pawn or secondhand business is not required to hold precious metals or numismatic items under this Subsection (1)(b).

(c) (i) This Subsection (1) does not preclude a law enforcement agency from requiring a pawn or secondhand business or catalytic converter purchaser to hold property if necessary in the course of an investigation.

(ii) If the property is pawned, the law enforcement agency may require the property be held beyond the terms of the contract between the pledgor and the pawnbroker.

(iii) If the property is sold to the pawn or secondhand business or catalytic converter purchaser, the law enforcement agency may require the property be held if the pawn or secondhand business or catalytic converter purchaser has not sold the article.

(d) If the law enforcement agency requesting a hold on property under this Subsection (1) is not the local law enforcement agency, the requesting law enforcement agency shall notify the local law enforcement agency of the request and also the pawn or secondhand business or catalytic converter purchaser.

(2) If a law enforcement agency requires the pawn or secondhand business or catalytic converter purchaser to hold property as part of an investigation, the law enforcement agency shall provide to the pawn or secondhand business or catalytic converter purchaser a hold form issued by the law enforcement agency, that:

(a) states the active case number;

(b) confirms the date of the hold request and the property to be held; and

(c) facilitates the ability of the pawn or secondhand business or catalytic converter purchaser to track the property when the prosecution takes over the case.

(3) If property is not seized by a law enforcement agency that has placed a hold on the property, the property shall remain in the custody of the pawn or secondhand business or catalytic converter purchaser until further disposition by the law enforcement agency, and in accordance with this chapter.

(4) (a) The initial hold by a law enforcement agency is for a period of 90 days.

(b) If the property is not seized by the law enforcement agency, the property shall remain in the custody of the pawn or secondhand business or catalytic converter purchaser and is subject to the hold unless exigent circumstances require the property to be seized by the law

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enforcement agency.

(5) (a) A law enforcement agency may extend any hold for up to an additional 90 days if circumstances require the extension.

(b) If there is an extension of a hold under Subsection (5)(a), the requesting law enforcement agency shall notify the pawn or secondhand business or catalytic converter purchaser that is subject to the hold before the expiration of the initial 90 days.

(c) A law enforcement agency may not hold an item for more than the 180 days allowed under Subsections (5)(a) and (b) without obtaining a court order authorizing the hold.

(6) A hold on property under Subsection (2) takes precedence over any request to claim or purchase the property subject to the hold.

(7) If an original victim who has complied with Section 13-32a-115 has not been identified and the hold or seizure of the property is terminated, the law enforcement agency requiring the hold or seizure shall within 15 business days after the day on which the termination occurs:

(a) notify the pawn or secondhand business or catalytic converter purchaser in writing that the hold or seizure has been terminated;

(b) return the property subject to the seizure to the pawn or secondhand business or catalytic converter purchaser; or

(c) if the property is not returned to the pawn or secondhand business or catalytic converter purchaser, advise the pawn or secondhand business or catalytic converter purchaser either in writing or electronically of the specific alternative disposition of the property.

(8) (a) If the original victim who has complied with Section 13-32a-115 has been identified and the hold or seizure of property is terminated, the law enforcement agency requiring the hold or seizure shall:

(i) document the original victim who has positively identified the property; and

(ii) provide the documented information concerning the original victim to the prosecuting agency to determine whether continued possession of the property is necessary for purposes of prosecution [~~as provided in Section 24-3-103~~] under Title 77, Chapter 11a, Seizure and Retention of Property and Contraband.

(b) If the prosecuting agency determines that continued possession of the property is not necessary for purposes of prosecution [~~as provided in Section 24-3-103~~], the prosecuting

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agency shall provide a written or electronic notification to the law enforcement agency that authorizes the return of the property to an original victim who has complied with Section 13-32a-115.

(c) (i) A law enforcement agency shall promptly provide notice to the pawn or secondhand business or catalytic converter purchaser of the authorized return of the property under this Subsection (8).

(ii) The notice shall identify the original victim, advise the pawn or secondhand business or catalytic converter purchaser that the original victim has identified the property, and direct the pawn or secondhand business or catalytic converter purchaser to release the property to the original victim at no cost to the original victim.

(iii) If the property was seized, the notice shall advise that the property will be returned to the original victim within 15 days after the day on which the pawn or secondhand business or catalytic converter purchaser receives the notice, except as provided under Subsection (8)(d).

(d) The pawn or secondhand business or catalytic converter purchaser shall release property under Subsection (8)(c) unless within 15 days after the day on which the notice is received the pawn or secondhand business or catalytic converter purchaser complies with Section 13-32a-116.5.

(9) (a) If the law enforcement agency does not notify the pawn or secondhand business or catalytic converter purchaser that a hold on the property has expired, the pawn or secondhand business or catalytic converter purchaser shall send a letter by registered or certified mail to the law enforcement agency that ordered the hold and inform the agency that the holding period has expired.

(b) The law enforcement agency shall respond within 30 days by:

(i) confirming that the hold period has expired and that the pawn or secondhand business or catalytic converter purchaser may manage the property as if acquired in the ordinary course of business; or

(ii) providing written notice to the pawn or secondhand business or catalytic converter purchaser that a court order has continued the period of time for which the item shall be held.

(10) The written notice under Subsection (9)(b)(ii) is considered provided when:

(a) personally delivered to the pawn or secondhand business or catalytic converter purchaser with a signed receipt of delivery;

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(b) delivered to the pawn or secondhand business or catalytic converter purchaser by registered or certified mail; or

(c) delivered by any other means with the mutual assent of the law enforcement agency and the pawn or secondhand business or catalytic converter purchaser.

(11) If the law enforcement agency does not respond within 30 days under Subsection (9), the pawn or secondhand business or catalytic converter purchaser may manage the property as if acquired in the ordinary course of business.

(12) A violation of this section is a class B misdemeanor and is also subject to civil penalties under Section 13-32a-110.

Section 3. Section **13-32a-116.5** is amended to read:

### **13-32a-116.5. Contested disposition of property - Procedure.**

(1) If a pawn or secondhand business or catalytic converter purchaser receives notice from a law enforcement agency under Section 13-32a-109 that property that is the subject of a hold or seizure shall be returned to an identified original victim, the pawn or secondhand business or catalytic converter purchaser may contest the determination and seek a specific alternative disposition if within 15 business days after the day on which the pawn or secondhand business or catalytic converter purchaser receives the notice:

(a) the pawn or secondhand business or catalytic converter purchaser gives notice to the identified original victim, by certified mail, that the pawn or secondhand business or catalytic converter purchaser contests the determination to return the property to the original victim; and

(b) the pawn or secondhand business or catalytic converter purchaser files a petition in a court having jurisdiction over the matter to determine rightful ownership of the property as provided in Section [~~24-3-104~~] 77-11a-505.

(2) A pawn or secondhand business or catalytic converter purchaser is guilty of a class B misdemeanor if the pawn or secondhand business or catalytic converter purchaser:

(a) holds or sells property in violation of a notification from a law enforcement agency that the property is to be returned to an original victim; and

(b) does not comply with the requirements of this section within the time periods specified.

Section 4. Section **17-18a-405** is amended to read:

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### 17-18a-405. Civil responsibilities of public prosecutors.

A public prosecutor may act as legal counsel to the state, county, government agency, or government entity regarding the following matters of civil law:

- (1) bail bond forfeiture actions;
- (2) actions for the forfeiture of property or contraband, as provided in [~~Title 24, Forfeiture and Disposition of Property Act~~] Title 77, Chapter 11b, Forfeiture of Seized Property;
- (3) civil actions incidental to or appropriate to supplement a public prosecutor's duties, including an injunction, a habeas corpus, a declaratory action, or an extraordinary writ action, in which the interests of the state may be affected; and
- (4) any other civil duties related to criminal prosecution that are otherwise provided by statute.

### Section 5. Section 23-20-1 is amended to read:

#### **23-20-1. Enforcement authority of conservation officers -- Seizure and disposition of property.**

~~[(1) Conservation officers of the division shall enforce the provisions of this title with the same authority and following the same procedures as other law enforcement officers.]~~

~~[(2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.]~~

~~[(b) (i) Upon determination of a defendant's guilt by the court, the protected wildlife shall be confiscated by the court and sold or otherwise disposed of by the division.]~~

~~[(ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.]~~

~~[(iii) Migratory wildfowl may not be sold, but shall be given to a charitable institution or used for other charitable purposes.]~~

~~[(3) (a) Conservation officers may seize and impound a vehicle used for the unlawful taking or possessing of protected wildlife for any of the following purposes:]~~

~~[(i) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;]~~

~~[(ii) to search the vehicle as provided in Subsection (2)(a) or as provided by a search warrant; or]~~

~~[(iii) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or possessed.]~~

~~[(b) The division shall store any seized vehicle in a public or private garage, state~~

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~~impound lot, or other secured storage facility.]~~

~~[(4) A seized vehicle shall be released]~~

(1) A conservation officer shall enforce the provisions of this title in accordance with the same procedures and requirements for a law enforcement officer of this state.

(2) A conservation officer may seize property or contraband, including any protected wildlife illegally taken or held, in accordance with Title 77, Chapter 11a, Seizure and Retention of Property and Contraband, and Chapter 11b, Forfeiture of Seized of Property.

(3) (a) If a conservation officer seizes wildlife as part of an investigation or prosecution of an offense and the wildlife may reasonably be used to incriminate or exculpate a person for the offense, the division is not required to retain the wildlife under Title 77, Chapter 11a, Part 3, Retention of Property and Contraband as Evidence.

(b) If the division does not retain wildlife under Subsection (3)(a), the division is required to preserve sufficient evidence from the wildlife for use as evidence in the prosecution of a person for the offense.

(c) If a conservation officer seizes wildlife and the wildlife or parts of the wildlife are perishable, the division may donate the wildlife or parts of the wildlife to be used for charitable purposes if:

(i) the wildlife is protected wildlife; or

(ii) the division receives a court order allowing for the donation under Section 77-11b-202.

(4) (a) Except as provided in Subsection (4)(b), the court may order the division to sell or dispose of protected wildlife that is seized by a conservation officer.

(b) The division may not sell migratory wildfowl but the division shall give the migratory wildfowl to a charitable institution or use the migratory wildfowl for other charitable purposes.

(c) The division shall deposit the proceeds from the sale of protected wildlife into the Wildlife Resources Account.

(5) (a) If a conservation officer seizes a vehicle under Section 77-11a-201, the division shall store any seized vehicle in a public or private garage, state impound lot, or any other secured storage facility.

(b) The division shall release a seized vehicle to the owner no later than 30 days after

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the [date] day on which the vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of wildlife by a person ~~[who is charged with committing a felony under this title]~~ charged with a felony under this title.

~~[(5)]~~ [(a)] (c) The owner of a seized vehicle is liable for the payment of any impound fee if:

(i) the owner used the vehicle for the unlawful taking or possessing of wildlife ~~[and is found by a court to be guilty of a violation of this title.];~~ and

(ii) the owner is convicted of an offense under this title.

~~[(b)]~~ (d) The owner of a seized vehicle is not liable for the payment of any impound fee or, if the fees have been paid, is entitled to reimbursement of the fees paid, if:

(i) no charges are filed or all charges are dropped which involve the use of the vehicle for the unlawful taking or possessing of wildlife;

(ii) the person charged with using the vehicle for the unlawful taking or possessing of wildlife is found by a court to be not guilty; or

(iii) the owner did not consent to a use of the vehicle ~~[which]~~ that violates this chapter.

[(5)]

Section ~~[(5)]~~ 6. Section **41-6a-606** is amended to read:

**41-6a-606. Speed contest or exhibition on highway -- Barricade or obstruction --  
-- Spectators of a speed contest -- Seizure of non-street legal vehicles.**

(1) A person may not engage in any motor vehicle speed contest or exhibition of speed on a highway.

(2) A person may not, in any manner, obstruct or place any barricade or obstruction or assist or participate in placing any barricade or obstruction upon any highway for any purpose prohibited under Subsection (1).

(3) (a) A person who violates Subsection (1) is guilty of a class A misdemeanor.

(b) A person who violates Subsection (2) is guilty of a class B misdemeanor.

(4) (a) In addition to the penalty provided under this section or any other section, a person who violates Subsection (1) shall have the person's driver license suspended under Subsection 53-3-220(1)(a)(xv) for a period of:

(i) 60 days for a first offense; and

(ii) 90 days for a second offense within three years of a prior offense.



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(b) The court shall forward the report of the conviction to the Driver License Division in accordance with Section 53-3-218.

(5) A motor vehicle that is not street legal that is operated or used in a manner that violates this section is subject to seizure in accordance with [~~Title 24, Chapter 2, Seizure of Property~~] Title 77, Chapter 11a, Part 2, Seizure of Property and Contraband.

Section ~~63~~7. Section **53-5c-201** is amended to read:

### **53-5c-201. Voluntary commitment of a firearm by cohabitant -- Law enforcement to hold firearm.**

(1) As used in this section:

(a) "Cohabitant" means any individual 18 years old or older residing in the home who:

- (i) is living as if a spouse of the owner cohabitant;
- (ii) is related by blood or marriage to the owner cohabitant;
- (iii) has one or more children in common with the owner cohabitant; or
- (iv) has an interest in the safety and well-being of the owner cohabitant.

(b) "Owner cohabitant" means an individual:

- (i) in relation to a cohabitant as described in Subsection (1)(a); and
- (ii) who owns a firearm.

(2) (a) A cohabitant or owner cohabitant may voluntarily commit a firearm to a law enforcement agency or request that a law enforcement officer receive a firearm for safekeeping if the owner cohabitant or cohabitant believes that the owner cohabitant or another cohabitant with access to the firearm is an immediate threat to:

- (i) himself or herself;
- (ii) the owner cohabitant; or
- (iii) any other person.

(b) If the owner of a firearm requests return of the firearm in person at the law enforcement agency's office, the law enforcement agency:

- (i) may not hold the firearm under this section; and
- (ii) shall return the firearm to the owner.

(3) Unless a firearm is an illegal firearm subject to Section 53-5c-202, a law enforcement agency that receives a firearm in accordance with this chapter shall:

- (a) record:

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- (i) the owner cohabitant's name, address, and phone number;
  - (ii) the firearm serial number and the make and model of each firearm committed; and
  - (iii) the date that the firearm was voluntarily committed;
- (b) require the cohabitant to sign a document attesting that the cohabitant resides in the home;
- (c) hold the firearm in safe custody for 60 days after the day on which the firearm is voluntarily committed; and
- (d) upon proof of identification, return the firearm to:
- (i) (A) the owner cohabitant after the expiration of the 60-day period; or
  - (B) if the owner cohabitant requests return of the firearm before the expiration of the 60-day period, at the time of the request; or
  - (ii) an owner other than the owner cohabitant in accordance with Section 53-5c-202.
- (4) The law enforcement agency shall hold the firearm for an additional 60 days:
- (a) if the initial 60-day period expires; and
  - (b) the cohabitant or owner cohabitant requests that the law enforcement agency hold the firearm for an additional 60 days.
- (5) A law enforcement agency may not request or require that the owner cohabitant provide the name or other information of the cohabitant who poses an immediate threat or any other cohabitant.
- (6) Notwithstanding an ordinance or policy to the contrary adopted in accordance with Section 63G-2-701, a law enforcement agency shall destroy a record created under Subsection (3), Subsection 53-5c-202(3)(b)(iii), or any other record created in the application of this chapter immediately, if practicable, but no later than five days after immediately upon the:
- (a) return of a firearm in accordance with Subsection (3)(d); or
  - (b) disposal of the firearm in accordance with Section 53-5c-202.
- (7) Unless otherwise provided, the provisions of [~~Title 77, Chapter 24a, Lost or Mislaid Personal Property~~] Title 77, Chapter 11c, Lost or Mislaid Property, do not apply to a firearm received by a law enforcement agency in accordance with this chapter.
- (8) A law enforcement agency shall adopt a policy for the safekeeping of a firearm held in accordance with this chapter.

Section ~~{7}~~8. Section **53-5c-202** is amended to read:

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### 53-5c-202. Illegal firearms confiscated -- Disposition of unclaimed firearm.

(1) If a law enforcement agency receives a firearm in accordance with Section 53-5c-201, and the firearm is an illegal firearm, the law enforcement agency shall:

(a) notify the owner cohabitant attempting to voluntarily commit the firearm that the firearm is an illegal firearm; and

(b) confiscate the firearm and dispose of the firearm in accordance with Section ~~[24-3-103.5]~~ 77-11a-603.

(2) (a) If a law enforcement agency cannot, after a reasonable attempt, locate an owner cohabitant to return a firearm in accordance with Section 53-5c-201, the law enforcement agency shall dispose of the firearm in accordance with Section ~~[24-3-103.5]~~ 77-11a-603.

(b) A law enforcement agency may not dispose of a firearm under Subsection (2)(a) before one year after the day on which the cohabitant initially voluntarily committed the firearm in accordance with Section 53-5c-201.

(3) (a) If a person other than an owner cohabitant claims ownership of the firearm, the person may:

(i) request that the law enforcement agency return the firearm in accordance with Subsection (3)(b); or

(ii) petition the court for the firearm's return in accordance with Subsection (3)(c).

(b) Except as provided in Section 53-5c-201, the law enforcement agency shall return a firearm to a person other than an owner cohabitant who claims ownership of the firearm if:

(i) the 60-day period described in Section 53-5c-201 has expired;

(ii) the person provides identification; and

(iii) the person signs a document attesting that the person has an ownership interest in the firearm.

(c) After sufficient notice is given to the prosecutor, the court may order that the firearm be:

(i) returned to the rightful owner as determined by the court; or

(ii) disposed of in accordance with Section ~~[24-3-103.5]~~ 77-11a-603.

(d) A law enforcement agency shall return a firearm ordered returned to the rightful owner as expeditiously as possible after a court determination.

Section ~~†8†~~9. Section **58-37a-6** is amended to read:

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### **58-37a-6. Seizure -- Forfeiture -- Property rights.**

Drug paraphernalia is subject to seizure and forfeiture in accordance with the procedures and substantive protections of [~~Title 24, Forfeiture and Disposition of Property Act~~] Title 77, Chapter 11a, Seizure and Retention of Property and Contraband, and Chapter 11b, Forfeiture of Seized Property.

Section ~~{9}~~10. Section **58-37c-15** is amended to read:

### **58-37c-15. Civil forfeiture.**

The following shall be subject to forfeiture in accordance with the procedures and substantive protections of [~~Title 24, Forfeiture and Disposition of Property Act~~] Title 77, Chapter 11b, Forfeiture of Seized Property:

(1) all listed controlled substance precursor chemicals regulated under the provisions of this chapter which have been distributed, possessed, or are intended to be distributed or otherwise transferred in violation of any felony provision of this chapter; and

(2) all property used by any person to facilitate, aid, or otherwise cause the unlawful distribution, transfer, possession, or intent to distribute, transfer, or possess a listed controlled substance precursor chemical in violation of any felony provision of this chapter.

Section ~~{10}~~11. Section **58-37d-7** is amended to read:

### **58-37d-7. Seizure and forfeiture.**

Chemicals, equipment, supplies, vehicles, aircraft, vessels, and personal and real property used in furtherance of a clandestine laboratory operation are subject to seizure and forfeiture under the procedures and substantive protections of [~~Title 24, Forfeiture and Disposition of Property Act~~] Title 77, Chapter 11a, Seizure and Retention of Property and Contraband, and Chapter 11b, Forfeiture of Seized Property.

Section ~~{11}~~12. Section **63A-16-1002** is amended to read:

### **63A-16-1002. Criminal Justice Database.**

(1) The commission shall oversee the creation and management of a Criminal Justice Database for information and data required to be reported to the commission, organized by county, and accessible to all criminal justice agencies in the state.

(2) The division shall assist with the development and management of the database.

(3) The division, in collaboration with the commission, shall create:

(a) master standards and formats for information submitted to the database;

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(b) a portal, bridge, website, or other method for reporting entities to provide the information;

(c) a master data management index or system to assist in the retrieval of information in the database;

(d) a protocol for accessing information in the database that complies with state privacy regulations; and

(e) a protocol for real-time audit capability of all data accessed through the portal by participating data source, data use entities, and regulators.

(4) Each criminal justice agency charged with reporting information to the commission shall provide the data or information to the database in a form prescribed by the commission.

(5) The database shall be the repository for the statutorily required data described in:

(a) Section 13-53-111, recidivism reporting requirements;

(b) Section 17-22-32, county jail reporting requirements;

(c) Section 17-55-201, Criminal Justice Coordinating Councils reporting;

(d) Section [~~24-4-118~~] 77-11b-404, forfeiture reporting requirements;

(e) Section 41-6a-511, courts to collect and maintain data;

(f) Section 63M-7-214, law enforcement agency grant reporting;

(g) Section 63M-7-216, prosecutorial data collection;

(h) Section 64-13-21, supervision of sentenced offenders placed in community;

(i) Section 64-13-25, standards for programs;

(j) Section 64-13-45, department reporting requirements;

(k) Section 64-13e-104, housing of state probationary inmates or state parole inmates;

(l) Section 77-7-8.5, use of tactical groups;

(m) Section 77-20-103, release data requirements;

(n) Section 77-22-2.5, court orders for criminal investigations;

(o) Section 78A-2-109.5, court demographics reporting; and

(p) any other statutes which require the collection of specific data and the reporting of that data to the commission.

(6) The commission shall report:

(a) progress on the database, including creation, configuration, and data entered, to the Law Enforcement and Criminal Justice Interim Committee not later than November 2022; and

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(b) all data collected as of December 31, 2022, to the Law Enforcement and Criminal Justice Interim Committee, the House Law Enforcement and Criminal Justice Standing Committee, and the Senate Judiciary, Law Enforcement and Criminal Justice Standing Committee not later than January 16, 2023.

Section ~~12~~13. Section **63I-1-263** is amended to read:

### **63I-1-263. Repeal dates: Titles 63A to 63N.**

- (1) Subsection 63A-5b-405(5), relating to prioritizing and allocating capital improvement funding, is repealed July 1, 2024.
- (2) Section 63A-5b-1003, State Facility Energy Efficiency Fund, is repealed July 1, 2023.
- (3) Sections 63A-9-301 and 63A-9-302, related to the Motor Vehicle Review Committee, are repealed July 1, 2023.
- (4) In relation to the Utah Transparency Advisory Board, on January 1, 2025:
  - (a) Section 63A-18-102 is repealed;
  - (b) Section 63A-18-201 is repealed; and
  - (c) Section 63A-18-202 is repealed.
- (5) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2028.
- (6) Title 63C, Chapter 6, Utah Seismic Safety Commission, is repealed January 1, 2025.
- (7) Title 63C, Chapter 12, Snake Valley Aquifer Advisory Council, is repealed July 1, 2024.
- (8) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2023.
- (9) Title 63C, Chapter 18, Behavioral Health Crisis Response Commission, is repealed July 1, 2023.
- (10) Title 63C, Chapter 23, Education and Mental Health Coordinating Council, is repealed July 1, 2026.
- (11) Title 63C, Chapter 27, Cybersecurity Commission, is repealed July 1, 2032.
- (12) Title 63C, Chapter 28, Ethnic Studies Commission, is repealed July 1, 2026.
- (13) Section 63G-6a-805, which creates the Purchasing from Persons with Disabilities

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Advisory Board, is repealed July 1, 2026.

(14) Title 63G, Chapter 21, Agreements to Provide State Services, is repealed July 1, 2028.

(15) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2024.

(16) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

(17) Subsection [~~63J-1-602.1(17)~~] 63J-1-602.1(16), relating to the Nurse Home Visiting Restricted Account, is repealed July 1, 2026.

(18) Subsection 63J-1-602.2(6), referring to dedicated credits to the Utah Marriage Commission, is repealed July 1, 2023.

(19) Subsection 63J-1-602.2(7), referring to the Trip Reduction Program, is repealed July 1, 2022.

(20) Subsection 63J-1-602.2(26), related to the Utah Seismic Safety Commission, is repealed January 1, 2025.

(21) Title 63L, Chapter 11, Part 4, Resource Development Coordinating Committee, is repealed July 1, 2027.

(22) In relation to the Utah Substance Use and Mental Health Advisory Council, on January 1, 2033:

(a) Sections 63M-7-301, 63M-7-302, 63M-7-303, 63M-7-304, and 63M-7-306 are repealed;

(b) Section 63M-7-305, the language that states "council" is replaced with "commission";

(c) Subsection 63M-7-305(1)(a) is repealed and replaced with:

"(1) "Commission" means the Commission on Criminal and Juvenile Justice."; and

(d) Subsection 63M-7-305(2) is repealed and replaced with:

"(2) The commission shall:

(a) provide ongoing oversight of the implementation, functions, and evaluation of the Drug-Related Offenses Reform Act; and

(b) coordinate the implementation of Section 77-18-104 and related provisions in Subsections 77-18-103(2)(c) and (d)."

(23) The Crime Victim Reparations and Assistance Board, created in Section

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63M-7-504, is repealed July 1, 2027.

(24) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2026.

(25) Title 63N, Chapter 1b, Part 4, Women in the Economy Subcommittee, is repealed January 1, 2025.

(26) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2028.

(27) Section 63N-2-512, related to the Hotel Impact Mitigation Fund, is repealed July 1, 2028.

(28) Title 63N, Chapter 3, Part 9, Strategic Innovation Grant Pilot Program, is repealed July 1, 2027.

(29) Title 63N, Chapter 3, Part 11, Manufacturing Modernization Grant Program, is repealed July 1, 2025.

(30) In relation to the Rural Employment Expansion Program, on July 1, 2023:

(a) Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program, is repealed; and

(b) Subsection 63N-4-805(5)(b), referring to the Rural Employment Expansion Program, is repealed.

(31) In relation to the Board of Tourism Development, on July 1, 2025:

(a) Subsection 63N-2-511(1)(b), which defines "tourism board," is repealed;

(b) Subsections 63N-2-511(3)(a) and (5), the language that states "tourism board" is repealed and replaced with "Utah Office of Tourism";

(c) Subsection 63N-7-101(1), which defines "board," is repealed;

(d) Subsection 63N-7-102(3)(c), which requires the Utah Office of Tourism to receive approval from the Board of Tourism Development, is repealed; and

(e) Title 63N, Chapter 7, Part 2, Board of Tourism Development, is repealed.

(32) Subsection 63N-8-103(3)(c), which allows the Governor's Office of Economic Opportunity to issue an amount of tax credit certificates only for rural productions, is repealed on July 1, 2024.

Section ~~63J-1-602.1~~14. Section **63J-1-602.1** is amended to read:

### **63J-1-602.1. List of nonlapsing appropriations from accounts and funds.**

Appropriations made from the following accounts or funds are nonlapsing:

(1) The Utah Intracurricular Student Organization Support for Agricultural Education



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and Leadership Restricted Account created in Section 4-42-102.

(2) The Native American Repatriation Restricted Account created in Section 9-9-407.

(3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102.

(4) The National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102.

(5) Funds collected for directing and administering the C-PACE district created in Section 11-42a-106.

(6) Money received by the Utah Inland Port Authority, as provided in Section 11-58-105.

(7) The "Latino Community Support Restricted Account" created in Section 13-1-16.

(8) The Clean Air Support Restricted Account created in Section 19-1-109.

(9) The Division of Air Quality Oil, Gas, and Mining Restricted Account created in Section 19-2a-106.

(10) The Division of Water Quality Oil, Gas, and Mining Restricted Account created in Section 19-5-126.

(11) The "Support for State-Owned Shooting Ranges Restricted Account" created in Section 23-14-13.5.

~~[(12) Award money under the State Asset Forfeiture Grant Program, as provided under Section 24-4-117.]~~

~~[(13)]~~ (12) Funds collected from the program fund for local health department expenses incurred in responding to a local health emergency under Section 26-1-38.

~~[(14)]~~ (13) The Children with Cancer Support Restricted Account created in Section 26-21a-304.

~~[(15)]~~ (14) State funds for matching federal funds in the Children's Health Insurance Program as provided in Section 26-40-108.

~~[(16)]~~ (15) The Children with Heart Disease Support Restricted Account created in Section 26-58-102.

~~[(17)]~~ (16) The Technology Development Restricted Account created in Section 31A-3-104.

~~[(18)]~~ (17) The Criminal Background Check Restricted Account created in Section

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31A-3-105.

~~[(19)]~~ (18) The Captive Insurance Restricted Account created in Section 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that section free revenue.

~~[(20)]~~ (19) The Title Licensee Enforcement Restricted Account created in Section 31A-23a-415.

~~[(21)]~~ (20) The Health Insurance Actuarial Review Restricted Account created in Section 31A-30-115.

~~[(22)]~~ (21) The Insurance Fraud Investigation Restricted Account created in Section 31A-31-108.

~~[(23)]~~ (22) The Underage Drinking Prevention Media and Education Campaign Restricted Account created in Section 32B-2-306.

~~[(24)]~~ (23) The Drinking While Pregnant Prevention Media and Education Campaign Restricted Account created in Section 32B-2-308.

~~[(25)]~~ (24) The School Readiness Restricted Account created in Section 35A-15-203.

~~[(26)]~~ (25) Money received by the Utah State Office of Rehabilitation for the sale of certain products or services, as provided in Section 35A-13-202.

~~[(27)]~~ (26) The Oil and Gas Administrative Penalties Account created in Section 40-6-11.

~~[(28)]~~ (27) The Oil and Gas Conservation Account created in Section 40-6-14.5.

~~[(29)]~~ (28) The Division of Oil, Gas, and Mining Restricted account created in Section 40-6-23.

~~[(30)]~~ (29) The Electronic Payment Fee Restricted Account created by Section 41-1a-121 to the Motor Vehicle Division.

~~[(31)]~~ (30) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account created by Section 41-3-110 to the State Tax Commission.

~~[(32)]~~ (31) The Utah Law Enforcement Memorial Support Restricted Account created in Section 53-1-120.

~~[(33)]~~ (32) The State Disaster Recovery Restricted Account to the Division of Emergency Management, as provided in Section 53-2a-603.

~~[(34)]~~ (33) The Post Disaster Recovery and Mitigation Restricted Account created in

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Section 53-2a-1302.

~~[(35)]~~ (34) The Department of Public Safety Restricted Account to the Department of Public Safety, as provided in Section 53-3-106.

~~[(36)]~~ (35) The Utah Highway Patrol Aero Bureau Restricted Account created in Section 53-8-303.

~~[(37)]~~ (36) The DNA Specimen Restricted Account created in Section 53-10-407.

~~[(38)]~~ (37) The Canine Body Armor Restricted Account created in Section 53-16-201.

~~[(39)]~~ (38) The Technical Colleges Capital Projects Fund created in Section 53B-2a-118.

~~[(40)]~~ (39) The Higher Education Capital Projects Fund created in Section 53B-22-202.

~~[(41)]~~ (40) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

~~[(42)]~~ (41) The Public Utility Regulatory Restricted Account created in Section 54-5-1.5, subject to Subsection 54-5-1.5(4)(d).

~~[(43)]~~ (42) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-3a-105.

~~[(44)]~~ (43) Certain fines collected by the Division of Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

~~[(45)]~~ (44) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-22-104.

~~[(46)]~~ (45) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-55-106.

~~[(47)]~~ (46) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-56-3.5.

~~[(48)]~~ (47) Certain fines collected by the Division of Professional Licensing for use in education and enforcement of the Security Personnel Licensing Act, as provided in Section 58-63-103.

~~[(49)]~~ (48) The Relative Value Study Restricted Account created in Section 59-9-105.

~~[(50)]~~ (49) The Cigarette Tax Restricted Account created in Section 59-14-204.

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~~[(51)]~~ (50) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.

~~[(52)]~~ (51) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.

~~[(53)]~~ (52) Certain funds donated to the Department of Health and Human Services, as provided in Section 26B-1-202.

~~[(54)]~~ (53) The National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account created in Section 26B-1-302.

~~[(55)]~~ (54) Certain funds donated to the Division of Child and Family Services, as provided in Section 80-2-404.

~~[(56)]~~ (55) The Choose Life Adoption Support Restricted Account created in Section 80-2-502.

~~[(57)]~~ (56) Funds collected by the Office of Administrative Rules for publishing, as provided in Section 63G-3-402.

~~[(58)]~~ (57) The Immigration Act Restricted Account created in Section 63G-12-103.

~~[(59)]~~ (58) Money received by the military installation development authority, as provided in Section 63H-1-504.

~~[(60)]~~ (59) The Computer Aided Dispatch Restricted Account created in Section 63H-7a-303.

~~[(61)]~~ (60) The Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304.

~~[(62)]~~ (61) The Utah Statewide Radio System Restricted Account created in Section 63H-7a-403.

~~[(63)]~~ (62) The Utah Capital Investment Restricted Account created in Section 63N-6-204.

~~[(64)]~~ (63) The Motion Picture Incentive Account created in Section 63N-8-103.

~~[(65)]~~ (64) Certain money payable for expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63N-10-301.

~~[(66)]~~ (65) Funds collected by the housing of state probationary inmates or state parole inmates, as provided in Subsection 64-13e-104(2).

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~~[(67)]~~ (66) Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and State Lands, as provided in Section 65A-8-103.

~~[(68)]~~ (67) The Amusement Ride Safety Restricted Account, as provided in Section 72-16-204.

~~[(69)]~~ (68) Certain funds received by the Office of the State Engineer for well drilling fines or bonds, as provided in Section 73-3-25.

~~[(70)]~~ (69) The Water Resources Conservation and Development Fund, as provided in Section 73-23-2.

(70) Award money under the State Asset Forfeiture Grant Program, as provided under Section 77-11b-403.

(71) Funds donated or paid to a juvenile court by private sources, as provided in Subsection 78A-6-203(1)(c).

(72) Fees for certificate of admission created under Section 78A-9-102.

(73) Funds collected for adoption document access as provided in Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.

(74) Funds collected for indigent defense as provided in Title 78B, Chapter 22, Part 4, Utah Indigent Defense Commission.

(75) The Utah Geological Survey Oil, Gas, and Mining Restricted Account created in Section 79-3-403.

(76) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State Park, and Green River State Park, as provided under Section 79-4-403.

(77) Funds donated as described in Section 41-1a-422 for the State Park Fees Restricted Account created in Section 79-4-402 for support of the Division of State Parks' dark sky initiative.

(78) Certain funds received by the Division of State Parks from the sale or disposal of buffalo, as provided under Section 79-4-1001.

Section ~~{14}~~15. Section **76-5-109.3** is amended to read:

### **76-5-109.3. Child abandonment.**

(1) (a) As used in this section:

(i) "Child" means the same as that term is defined in Section 76-5-109.

(ii) "Enterprise" means the same as that term is defined in Section 76-10-1602.

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(iii) "Serious physical injury" means the same as that term is defined in Section 76-5-109.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) Except as provided in Subsection (4), an actor commits child abandonment if the actor:

(i) is a parent or legal guardian of a child, and:

(A) intentionally ceases to maintain physical custody of the child;

(B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and

(C) (I) intentionally fails to provide the child with food, shelter, or clothing;

(II) manifests an intent to permanently not resume physical custody of the child; or

(III) for a period of at least 30 days, intentionally fails to resume physical custody of the child and fails to manifest a genuine intent to resume physical custody of the child; or

(ii) encourages or causes the parent or legal guardian of a child to violate Subsection (2)(a)(i).

(b) Except as provided in Subsection (4), an enterprise commits child abandonment if the enterprise encourages, commands, or causes another to violate Subsection (2)(a).

(3) (a) (i) A violation of Subsection (2) is a third degree felony.

(ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2) is a second degree felony if, as a result of the child abandonment:

(A) the child suffers a serious physical injury; or

(B) the actor or enterprise receives, directly or indirectly, any benefit.

(b) (i) In addition to the penalty described in Subsection (3)(a)(ii), the court may order the actor or enterprise described in Subsection (3)(a)(ii)(B) to pay the costs of investigating and prosecuting the offense and the costs of securing any forfeiture provided for under Subsection (3)(b)(ii).

(ii) Any tangible or pecuniary benefit received under Subsection (3)(a)(ii)(B) is subject to criminal or civil forfeiture pursuant to ~~[Title 24, Forfeiture and Disposition of Property Act]~~ Title 77, Chapter 11b, Forfeiture of Seized Property.

(4) (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and

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practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent may not, for that reason alone, be considered to have committed an offense under this section.

(b) An actor is not guilty of an offense under this section for conduct that constitutes:

(i) the safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802;

(ii) giving legal consent to a court order for termination of parental rights:

(A) in a legal adoption proceeding; or

(B) in a case in which a petition for the termination of parental rights, or the termination of a guardianship, has been filed;

(iii) reasonable discipline or management of a child, including withholding privileges;

or

(iv) conduct described in Section 76-2-401.

Section ~~45~~16. Section **76-6-111** is amended to read:

**76-6-111. Wanton destruction of livestock -- Penalties -- Restitution criteria --**

**Seizure and disposition of property.**

(1) As used in this section:

(a) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

(b) "Livestock" means a domestic animal or fur bearer raised or kept for profit or as an asset, including:

(i) cattle;

(ii) sheep;

(iii) goats;

(iv) swine;

(v) horses;

(vi) mules;

(vii) poultry;

(viii) domesticated elk as defined in Section 4-39-102; and

(ix) livestock guardian dogs.

(c) "Livestock guardian dog" means a dog that is being used to live with and guard livestock, other than itself, from predators.

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(2) Unless authorized by Section 4-25-201, 4-25-202, 4-25-401, 4-39-401, or 18-1-3, a person is guilty of wanton destruction of livestock if that person:

(a) injures, physically alters, releases, or causes the death of livestock; and

(b) does so:

(i) intentionally or knowingly; and

(ii) without the permission of the owner of the livestock.

(3) For purposes of this section, a livestock guardian dog is presumed to belong to an owner of the livestock with which the livestock guardian dog was living at the time of an alleged violation of Subsection (2).

(4) Wanton destruction of livestock is punishable as a:

(a) class B misdemeanor if the aggregate value of the livestock is \$250 or less;

(b) class A misdemeanor if the aggregate value of the livestock is more than \$250, but does not exceed \$750;

(c) third degree felony if the aggregate value of the livestock is more than \$750, but does not exceed \$5,000; and

(d) second degree felony if the aggregate value of the livestock is more than \$5,000.

(5) When a court orders a person who is convicted of wanton destruction of livestock to pay restitution under Title 77, Chapter 38b, Crime Victims Restitution Act, the court shall consider the restitution guidelines in Subsection (6) when setting the amount of restitution under Section 77-38b-205.

(6) The minimum restitution value for cattle and sheep is the sum of the following, unless the court states on the record why it finds the sum to be inappropriate:

(a) the fair market value of the animal, using as a guide the market information obtained from the Department of Agriculture and Food created under Section 4-2-102; and

(b) 10 years times the average annual value of offspring, for which average annual value is determined using data obtained from the National Agricultural Statistics Service within the United States Department of Agriculture, for the most recent 10-year period available.

(7) A material, device, or vehicle used in violation of Subsection (2) is subject to forfeiture under the procedures and substantive protections established in [~~Title 24, Forfeiture and Disposition of Property Act~~] Title 77, Chapter 11b, Forfeiture of Seized Property.

(8) A peace officer may seize a material, device, or vehicle used in violation of



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Subsection (2):

(a) upon notice and service of process issued by a court having jurisdiction over the property; or

(b) without notice and service of process if:

(i) the seizure is incident to an arrest under:

(A) a search warrant; or

(B) an inspection under an administrative inspection warrant;

(ii) the material, device, or vehicle has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(iii) the peace officer has probable cause to believe that the property has been used in violation of Subsection (2).

(9) (a) A material, device, or vehicle seized under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of a court or official having jurisdiction.

(b) A peace officer who seizes a material, device, or vehicle under this section may:

(i) place the property under seal;

(ii) remove the property to a place designated by the warrant under which it was seized;

or

(iii) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Section ~~16~~17. Section **76-6-501** is amended to read:

**76-6-501. Forgery and producing false identification -- Elements of offense --**

### **Definitions.**

(1) As used in this part:

(a) "Authentication feature" means any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other feature that either individually or in combination with another feature is used by the issuing authority on an identification document, document-making implement, or means of identification to determine if the document is counterfeit, altered, or otherwise falsified.

(b) "Document-making implement" means any implement, impression, template, computer file, computer disc, electronic device, computer hardware or software, or scanning,

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printing, or laminating equipment that is specifically configured or primarily used for making an identification document, a false identification document, or another document-making implement.

(c) "False authentication feature" means an authentication feature that:

(i) is genuine in origin but that, without the authorization of the issuing authority, has been tampered with or altered for purposes of deceit;

(ii) is genuine, but has been distributed, or is intended for distribution, without the authorization of the issuing authority and not in connection with a lawfully made identification document, document-making implement, or means of identification to which the authentication feature is intended to be affixed or embedded by the issuing authority; or

(iii) appears to be genuine, but is not.

(d) "False identification document" means a document of a type intended or commonly accepted for the purposes of identification of individuals, and that:

(i) is not issued by or under the authority of a governmental entity or was issued under the authority of a governmental entity but was subsequently altered for purposes of deceit; and

(ii) appears to be issued by or under the authority of a governmental entity.

(e) "Governmental entity" means the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization, or a quasi-governmental organization.

(f) "Identification document" means a document made or issued by or under the authority of a governmental entity, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

(g) "Issuing authority" means:

(i) any governmental entity that is authorized to issue identification documents, means of identification, or authentication features; or

(ii) a business organization or financial institution or its agent that issues a financial transaction card as defined in Section 76-6-506.

(h) "Means of identification" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including:

(i) name, social security number, date of birth, government issued driver license or

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identification number, alien registration number, government passport number, or employer or taxpayer identification number;

(ii) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; or

(iii) unique electronic identification number, address, or routing code.

(i) "Personal identification card" means an identification document issued by a governmental entity solely for the purpose of identification of an individual.

(j) "Produce" includes altering, authenticating, or assembling.

(k) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the United States.

(l) "Traffic" means to:

(i) transport, transfer, or otherwise dispose of an item to another, as consideration for anything of value; or

(ii) make or obtain control of with intent to transport, transfer, or otherwise dispose of an item to another.

(m) "Writing" includes printing, electronic storage or transmission, or any other method of recording valuable information including forms such as:

(i) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification;

(ii) a security, revenue stamp, or any other instrument or writing issued by a government or any agency; or

(iii) a check, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.

(2) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that the person is facilitating a fraud to be perpetrated by anyone, the person:

(a) alters any writing of another without his authority or utters the altered writing; or

(b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication, or utterance:

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(i) purports to be the act of another, whether the person is existent or nonexistent;

(ii) purports to be an act on behalf of another party with the authority of that other party; or

(iii) purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when an original did not exist.

(3) It is not a defense to a charge of forgery under Subsection (2)(b)(ii) if an actor signs his own name to the writing if the actor does not have authority to make, complete, execute, authenticate, issue, transfer, publish, or utter the writing on behalf of the party for whom the actor purports to act.

(4) A person is guilty of producing or transferring any false identification document who:

(a) knowingly and without lawful authority produces, attempts, or conspires to produce an identification document, authentication feature, or a false identification document that is or appears to be issued by or under the authority of an issuing authority;

(b) transfers, or possesses with intent to transfer, an identification document, authentication feature, or a false identification document knowing that the document or feature was stolen or produced without lawful authority;

(c) produces, transfers, or possesses a document-making implement or authentication feature with the intent that the document-making implement or the authentication feature be used in the production of a false identification document or another document-making implement or authentication feature; or

(d) traffics in false or actual authentication features for use in false identification documents, document-making implements, or means of identification.

(5) A person who violates:

(a) Subsection (2) is guilty of a third degree felony; and

(b) Subsection (4) is guilty of a second degree felony.

(6) This part may not be construed to impose criminal or civil liability on any law enforcement officer acting within the scope of a criminal investigation.

(7) The forfeiture of property under this part, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be conducted in accordance with [~~Title 24, Forfeiture and Disposition of Property Act~~] Title 77, Chapter 11b,

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### Forfeiture of Seized Property.

(8) The court shall order, in addition to the penalty prescribed for any person convicted of a violation of this section, the forfeiture and destruction or other disposition of all illicit authentication features, identification documents, false transaction cards, document-making implements, or means of identification.

Section ~~{17}~~18. Section **76-6-1303** is amended to read:

### **76-6-1303. Possession, sale, or use of automated sales suppression device unlawful -- Penalties.**

(1) It is a third degree felony to willfully or knowingly sell, purchase, install, transfer, use, or possess in this state any automated sales suppression device or phantomware with the intent to defraud, except that any second or subsequent violation of this Subsection (1) is a second degree felony.

(2) Notwithstanding Section 76-3-301, any person convicted of violating Subsection (1) may be fined not more than twice the amount of the applicable taxes that would otherwise be due, but for the use of the automated sales suppression device or phantomware.

(3) Any person convicted of a violation of Subsection (1):

(a) is liable for all applicable taxes, penalties under Section 59-1-401, and interest under Section 59-1-402 that would otherwise be due, but for the use of the automated sales suppression device or phantomware to evade the payment of taxes; and

(b) shall disgorge all profits associated with the sale or use of an automated sales suppression device or phantomware.

(4) An automated sales suppression device and any device containing an automated sales suppression device is contraband and subject to forfeiture under [~~Title 24, Forfeiture and Disposition of Property Act~~] Title 77, Chapter 11b, Forfeiture of Seized Property.

Section ~~{18}~~19. Section **76-10-503** is amended to read:

### **76-10-503. Restrictions on possession, purchase, transfer, and ownership of dangerous weapons by certain persons -- Exceptions.**

(1) For purposes of this section:

(a) A Category I restricted person is a person who:

(i) has been convicted of any violent felony as defined in Section 76-3-203.5;

(ii) is on probation or parole for any felony;

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(iii) is on parole from secure care, as defined in Section 80-1-102;

(iv) within the last 10 years has been adjudicated under Section 80-6-701 for an offense which if committed by an adult would have been a violent felony as defined in Section 76-3-203.5;

(v) is an alien who is illegally or unlawfully in the United States; or

(vi) is on probation for a conviction of possessing:

(A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;

(B) a controlled substance analog; or

(C) a substance listed in Section 58-37-4.2.

(b) A Category II restricted person is a person who:

(i) has been convicted of any felony;

(ii) within the last seven years has been adjudicated delinquent for an offense which if committed by an adult would have been a felony;

(iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

(iv) is in possession of a dangerous weapon and is knowingly and intentionally in unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

(v) has been found not guilty by reason of insanity for a felony offense;

(vi) has been found mentally incompetent to stand trial for a felony offense;

(vii) has been adjudicated as mentally defective as provided in the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed to a mental institution;

(viii) has been dishonorably discharged from the armed forces;

(ix) has renounced the individual's citizenship after having been a citizen of the United States;

(x) is a respondent or defendant subject to a protective order or child protective order that is issued after a hearing for which the respondent or defendant received actual notice and at which the respondent or defendant has an opportunity to participate, that restrains the respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate partner, and that:

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(A) includes a finding that the respondent or defendant represents a credible threat to the physical safety of an individual who meets the definition of an intimate partner in 18 U.S.C. Sec. 921 or the child of the individual; or

(B) explicitly prohibits the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily harm against an intimate partner or the child of an intimate partner; or

(xi) has been convicted of the commission or attempted commission of assault under Section 76-5-102 or aggravated assault under Section 76-5-103 against a current or former spouse, parent, guardian, individual with whom the restricted person shares a child in common, individual who is cohabitating or has cohabitated with the restricted person as a spouse, parent, or guardian, or against an individual similarly situated to a spouse, parent, or guardian of the restricted person.

(c) As used in this section, a conviction of a felony or adjudication of delinquency for an offense which would be a felony if committed by an adult does not include:

(i) a conviction or an adjudication under Section 80-6-701 for an offense pertaining to antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to the regulation of business practices not involving theft or fraud; or

(ii) a conviction or an adjudication under Section 80-6-701 which, according to the law of the jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by court order, pardoned or regarding which the person's civil rights have been restored unless the pardon, reduction, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(d) It is the burden of the defendant in a criminal case to provide evidence that a conviction or an adjudication under Section 80-6-701 is subject to an exception provided in Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the conviction or the adjudication is not subject to that exception.

(2) A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a second degree felony; or

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(b) any dangerous weapon other than a firearm is guilty of a third degree felony.

(3) A Category II restricted person who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a third degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

(4) A person may be subject to the restrictions of both categories at the same time.

(5) If a higher penalty than is prescribed in this section is provided in another section for one who purchases, transfers, possesses, uses, or has under this custody or control any dangerous weapon, the penalties of that section control.

(6) It is an affirmative defense to a charge based on the definition in Subsection (1)(b)(iv) that the person was:

(a) in possession of a controlled substance pursuant to a lawful order of a practitioner for use of a member of the person's household or for administration to an animal owned by the person or a member of the person's household; or

(b) otherwise authorized by law to possess the substance.

(7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

(i) was possessed by the person or was under the person's custody or control before the person became a restricted person;

(ii) was not used in or possessed during the commission of a crime or subject to disposition under [~~Section 24-3-103~~] Title 77, Chapter 11a, Part 6, Disposal of Seized Property and Contraband;

(iii) is not being held as evidence by a court or law enforcement agency;

(iv) was transferred to a person not legally prohibited from possessing the weapon; and

(v) unless a different time is ordered by the court, was transferred within 10 days of the person becoming a restricted person.

(b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person of a firearm or other dangerous weapon by a restricted person.

(8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or dangerous weapon to any person, knowing that the recipient is a person described in Subsection (1)(a) or (b).



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(b) A person who violates Subsection (8)(a) when the recipient is:

(i) a person described in Subsection (1)(a) and the transaction involves a firearm, is guilty of a second degree felony;

(ii) a person described in Subsection (1)(a) and the transaction involves any dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for any unlawful purpose, is guilty of a third degree felony;

(iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is guilty of a third degree felony; or

(iv) a person described in Subsection (1)(b) and the transaction involves any dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

(9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under circumstances which the person knows would be a violation of the law.

(b) A person may not provide to a dealer or other person any information that the person knows to be materially false information with intent to deceive the dealer or other person about the legality of a sale, transfer or other disposition of a firearm or dangerous weapon.

(c) "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal.

(d) A person who violates this Subsection (9) is guilty of:

(i) a third degree felony if the transaction involved a firearm; or

(ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a firearm.

Section ~~{19}~~20. Section **76-10-1108** is amended to read:

### **76-10-1108. Seizure and disposition of gambling debts or proceeds.**

Any gambling bets or gambling proceeds which are reasonably identifiable as having been used or obtained in violation of this part may be seized and are subject to forfeiture proceedings in accordance with [~~Title 24, Forfeiture and Disposition of Property Act~~] Title 77, Chapter 11b, Forfeiture of Seized Property.

Section ~~{20}~~21. Section **76-10-1112** is amended to read:

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### 76-10-1112. Local control.

(1) Nothing in this part preempts or otherwise limits the authority of a county or municipality to enact a local ordinance related to gambling or fringe gambling.

(2) In accordance with [~~Title 24, Forfeiture and Disposition of Property Act~~] Title 77, Chapter 11a, Seizure and Retention of Property and Contraband, a county or municipality may seize gambling debts, gambling proceeds, or fringe gaming devices that are reasonably identifiable as being obtained or provided in violation of this part or a local ordinance.

Section ~~{21}~~22. Section **77-11a-101**, which is renumbered from Section 24-1-102 is renumbered and amended to read:

### CHAPTER 11a. SEIZURE AND RETENTION OF PROPERTY AND CONTRABAND

#### Part 1. General Provisions

#### ~~[24-1-102]~~. 77-11a-101. Definitions.

As used in this [~~title~~] chapter:

~~[(1) "Account" means the Criminal Forfeiture Restricted Account created in Section 24-4-116.]~~

~~[(2)(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.]~~

~~[(3)]~~ (1) (a) "Agency" means an agency of this state or a political subdivision of this state.

(b) "Agency" includes a law enforcement agency or a multijurisdictional task force.

(2) (a) "Biological evidence" means an item that contains blood, semen, hair, saliva, epithelial cells, latent fingerprint evidence that may contain biological material suitable for DNA testing, or other identifiable human biological material that:

(i) is collected as part of an investigation or prosecution of an offense; and

(ii) may reasonably be used to incriminate or exculpate a person for the offense.

(b) "Biological evidence" includes:

(i) material that is catalogued separately, including:

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(A) on a slide or swab; or

(B) inside a test tube, if the evidentiary sample that previously was inside the test tube has been consumed by testing;

(ii) material that is present on other evidence, including clothing, a ligature, bedding, a drinking cup, a cigarette, or a weapon, from which a DNA profile may be obtained;

(iii) the contents of a sexual assault examination kit; and

(iv) for a violent felony offense, material described in this Subsection (2) that is in the custody of an evidence collecting or retaining entity on May 4, 2022.

~~[(4)]~~ (3) "Claimant" means:

~~(a)~~ an owner of property [as defined in this section];

~~(b)~~ an interest holder [as defined in this section]; or

~~(c)~~ an individual or entity who asserts a claim to any property [seized for forfeiture under this title] for which an agency seeks to forfeit.

~~[(5) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.]~~

~~[(6) "Complaint" means a civil or criminal complaint seeking the forfeiture of any real or personal property under this title.]~~

~~[(7)]~~ (4) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, and storage functions.

(b) "Computer" includes any device that is used for the storage of digital or electronic files, flash memory, software, or other electronic information.

(c) "Computer" does not mean a computer server of an Internet or electronic service provider, or the service provider's employee, if used to comply with the requirements under 18 U.S.C. Sec. 2258A.

~~[(8) "Constructive seizure" means a seizure of property where the property is left in the control of the owner and an agency posts the property with a notice of intent to seek forfeiture.]~~

(5) "Continuous chain of custody" means:

(a) for a law enforcement agency or a court, that legal standards regarding a continuous chain of custody are maintained; and

(b) for an entity that is not a law enforcement agency or a court, that the entity

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maintains a record in accordance with legal standards required of the entity.

~~[(9)]~~ (6) (a) "Contraband" means any property, item, or substance that is unlawful to produce or to possess under state or federal law.

(b) "Contraband" includes:

(i) a controlled substance that is possessed, transferred, distributed, or offered for distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act; ~~[or]~~

(ii) a computer that:

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

(B) contains the personal identifying information of another individual, as defined in Subsection 76-6-1102(1), whether that individual is alive or deceased, and the personal identifying information has been used to create false or fraudulent identification documents or financial transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud~~[-]; or~~

(iii) protected wildlife illegally taken or held.

(7) "Controlled substance" means the same as that term is defined in Section 58-37-2.

(8) "Court" means a municipal, county, or state court.

(9) "DNA" means deoxyribonucleic acid.

(10) "DNA profile" means a unique identifier of an individual derived from DNA.

(11) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.

(12) "Evidence" means property, contraband, or an item or substance that:

(a) is seized or collected as part of an investigation or prosecution of an offense; and

(b) may reasonably be used to incriminate or exculpate an individual for an offense.

(13) (a) "Evidence collecting or retaining entity" means an entity within the state that collects, stores, or retrieves biological evidence.

(b) "Evidence collecting or retaining entity" includes:

(i) a medical or forensic entity;

(ii) a law enforcement agency;

(iii) a court; and

(iv) an official, employee, or agent of an entity or agency described in this Subsection  
(13).

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(14) "Exhibit" means property or contraband that is admitted into evidence for a court proceeding.

~~[(10)]~~ (15) "Forfeit" means to divest a claimant of an ownership interest in property seized ~~[under this title]~~ by a peace officer or agency.

(16) "In custody" means an individual who:

(a) is incarcerated, civilly committed, on parole, or on probation; or

(b) is required to register under Title 77, Chapter 41, Sex and Kidnap Offender

Registry.

~~[(11)]~~ (17) "Innocent owner" means a claimant who:

(a) held an ownership interest in property at the time of the commission of an offense subjecting the property to ~~[forfeiture under this title]~~ seizure, and:

(i) did not have actual knowledge of the offense subjecting the property to ~~[forfeiture]~~ seizure; or

(ii) upon learning of the commission of the offense, took reasonable steps to prohibit the use of the property in the commission of the offense; or

(b) acquired an ownership interest in the property and had no knowledge that the commission of the offense subjecting the property to ~~[forfeiture under this title]~~ seizure had occurred or that the property had been seized ~~[for forfeiture]~~, and:

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

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

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

~~[(12)]~~ (18) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value.

(b) "Interest holder" does not mean a person:

(i) who holds property for the benefit of or as an agent or nominee for another person;

or

(ii) who is not in substantial compliance with any statute requiring an interest in

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property to be:

(A) recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value; or

(B) held in control by a secured party, as defined in Section 70A-9a-102, in accordance with Section 70A-9a-314 in order to perfect the interest against a good faith purchaser for value.

(19) "Law enforcement agency" means:

(a) a municipal, county, state institution of higher education, or state police force or department;

(b) a sheriff's office; or

(c) a municipal, county, or state prosecuting authority.

~~[(13) "Known address" means any address provided by a claimant to the peace officer or agency at the time the property is seized, or the claimant's most recent address on record with a governmental entity if no address was provided at the time of the seizure.]~~

~~[(14) "Legal costs" means the costs and expenses incurred by a party in a forfeiture action.]~~

~~[(15)]~~ (20) "Legislative body" means:

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

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

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

(21) "Medical or forensic entity" means a private or public hospital, medical facility, or other entity that secures biological evidence or conducts forensic examinations related to criminal investigations.

~~[(16)]~~ (22) "Multijurisdictional task force" means a law enforcement task force or other agency comprised of individuals who are employed by or acting under the authority of different governmental entities, including federal, state, county, or municipal governments, or any combination of federal, state, county, or municipal agencies.

~~[(17)]~~ (23) "Owner" means an individual or entity, other than an interest holder, that

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possesses a bona fide legal or equitable interest in ~~[real or personal]~~ property.

(24) "Pawn or secondhand business" means the same as that term is defined in Section 13-32a-102.

~~[(18)]~~ (25) "Peace officer" means an employee:

(a) of an agency;

(b) whose duties consist primarily of the prevention and detection of violations of laws of this state or a political subdivision of this state; and

(c) who is authorized by the agency to seize property ~~[under this title]~~.

(26) "Physical evidence" includes evidence that:

(a) is related to:

(i) an investigation;

(ii) an arrest; or

(iii) a prosecution that resulted in a judgment of conviction; and

(b) is in the actual or constructive possession of a law enforcement agency or a court or an agent of a law enforcement agency or a court.

~~[(19)]~~ (27) (a) "Proceeds" means:

(i) property of any kind that is obtained directly or indirectly as a result of the commission of an offense; or

(ii) any property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission regarding property under Subsection ~~[(19)(a)(i)]~~ (27)(a)(i).

(b) "Proceeds" includes any property of any kind without reduction for expenses incurred in the acquisition, maintenance, or production of that property, or any other purpose regarding property under Subsection ~~[(19)(a)(i)]~~ (27)(a)(i).

(c) "Proceeds" is not limited to the net gain or profit realized from the offense that subjects the property to ~~[forfeiture]~~ seizure.

~~[(20) "Program" means the State Asset Forfeiture Grant Program created in Section 24-4-117.]~~

~~[(21)]~~ (28) (a) "Property" means all property, whether real or personal, tangible or intangible.

(b) "Property" does not include contraband.

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~~[(22)]~~ (29) "Prosecuting attorney" means:

- (a) the attorney general and an assistant attorney general;
- (b) a district attorney or deputy district attorney;
- (c) a county attorney or assistant county attorney; and
- (d) an attorney authorized to commence an action on behalf of the state [~~under this title~~].

(30) "Protected wildlife" means the same as that term is defined in Section 23-20-2.

~~[(23)]~~ ~~(~~30~~;~~31~~)~~ "Public interest use" means a:

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

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

~~(~~31~~;~~32~~)~~ (a) "Seized property" means property seized by a peace officer or agency in accordance with Section 77-11a-201.

(b) "Seized property" includes property that the agency seeks to forfeit under Chapter 11b, Forfeiture of Seized Property.

~~[(24)]~~ ~~(~~32~~;~~33~~)~~ "Real property" means land, including any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.

~~(~~33~~;~~34~~)~~ "~~{Violent felony}~~ Wildlife" means the same as that term is defined in Section 23-13-2.

(35) "Violent felony" means the same as that term is defined in Section 76-3-203.5.

Section ~~{22}~~23. Section **77-11a-102**, which is renumbered from Section 24-1-103 is renumbered and amended to read:

~~[24-1-103].~~ **77-11a-102. Venue.**

(1) In addition to [~~the venue provided for under~~] Title 78B, Chapter 3, Part 3, Place of Trial -- Venue, or any other [~~provisions of law, a proceeding under this title may be maintained~~] provision of law, a person may bring an action or proceeding under this chapter in the judicial district in which:

- (a) the property is seized; or
- (b) any part of the property is found[~~;~~or].

~~[(c) a civil or criminal action could be maintained against a claimant for the offense~~



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~~subjecting the property to forfeiture under this title.]~~

(2) A claimant may obtain a change of venue under Section 78B-3-309.

Section ~~{23}~~24. Section **77-11a-201**, which is renumbered from Section 24-2-102 is renumbered and amended to read:

### **Part 2. Seizure of Property and Contraband**

~~[24-2-102].~~ **77-11a-201. Grounds for seizing property and contraband.**

~~[(1)]~~ A peace officer may seize property ~~[and]~~ or contraband;

(1) upon a search warrant or administrative warrant that is issued in accordance with the Utah Code and the Utah Rules of Criminal Procedure~~[-];~~

~~[(2) A peace officer may seize property and contraband under this chapter when:]~~

~~[(a)]~~ (2) when the seizure is incident to an arrest;

~~[(b)]~~ (3) when the property seized is the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under ~~[this title]~~ Chapter 11b, Forfeiture of Seized Property; or

~~[(c)]~~ (4) when the peace officer has probable cause to believe that the property or contraband:

~~[(i)]~~ (a) is directly or indirectly dangerous to health or safety;

~~[(ii)]~~ (b) is evidence of an offense;

~~[(iii)]~~ (c) has been used or was intended to be used to commit an offense; or

~~[(iv)]~~ (d) is proceeds of an offense.

Section ~~{24}~~25. Section **77-11a-202**, which is renumbered from Section 24-2-102.5 is renumbered and amended to read:

~~[24-2-102.5].~~ **77-11a-202. Ownership interest in property or contraband seized by a peace officer.**

(1) To disclaim an ownership interest in property at the time of seizure, a person's disclaimer of the property must be knowing and voluntary.

(2) ~~[If a peace officer seizes contraband, a]~~ A person may not assert an ownership interest in ~~[the contraband under this title]~~ contraband seized by a peace officer.

Section ~~{25}~~26. Section **77-11a-203**, which is renumbered from Section 24-2-103 is renumbered and amended to read:

~~[24-2-103].~~ **77-11a-203. Procedure after seizure of property or contraband.**

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~~[(1) To disclaim an ownership interest in property at the time of seizure, an individual's disclaimer of the property shall be knowing and voluntary.]~~

(1) If a peace officer seizes property or contraband under Section 77-11a-201, the property and contraband:

(a) is not recoverable by replevin; and

(b) is considered in the custody of the agency that employed the peace officer.

(2) If property is seized, the peace officer or the peace officer's employing agency shall provide a receipt to the person from which the property is seized.

(3) The receipt shall describe the:

(a) property seized;

(b) date of seizure; and

(c) name and contact information of the peace officer's employing agency.

(4) In addition to the receipt, the peace officer or agency shall provide the person with:

(a) information on:

(i) the time periods for the forfeiture of property; and

(ii) what happens to property upon a conviction or acquittal of the offense subjecting the property to seizure; and

(b) a web link or referral to the self-help webpage of the Utah Courts' website for resources that may assist the person in making a claim for the return of seized property.

(5) The agency shall maintain a copy of the receipt provided in accordance with Subsection (2).

(6) If a peace officer seizes property that at the time of seizure is held by a pawn or secondhand business in the course of the pawn or secondhand business's business, the provisions of Section 13-32a-109.5 shall apply to the seizure of the property.

~~[(6)]~~ (7) If custody of the property is transferred to another agency, the transferring agency shall provide the other agency a copy of the receipt under Subsection (2) and the name of the person from which the property was seized.

Section ~~{26}~~27. Section **77-11a-204**, which is renumbered from Section 24-2-104 is renumbered and amended to read:

~~[24-2-104].~~ **77-11a-204. Custody of seized property and contraband.**

~~[(1) If a peace officer seizes property or contraband under Section 24-2-102, the~~

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~~property and contraband:]~~

~~[(a) is not recoverable by replevin; and]~~

~~[(b) is considered in the custody of the agency that employed the peace officer:]~~

~~[(2)] (1) An agency with custody of seized property or contraband shall:~~

~~(a) hold the property or contraband in safe custody until the property or contraband is released or disposed of in accordance with[~~;~~] this chapter; and~~

~~[(i) this title; and]~~

~~[(ii) Title 53, Chapter 20, Forensic Biological Evidence Preservation; and]~~

~~(b) maintain a record of the property or contraband, including:~~

~~(i) a detailed inventory of all property or contraband seized;~~

~~(ii) the name of the person from which the property or contraband was seized; and~~

~~(iii) the agency's case number.~~

~~[(3) In accordance with Title 53, Chapter 20, Forensic Biological Evidence Preservation, an agency may process property or contraband that is seized by a peace officer for evidentiary or investigative purposes, including sampling or other preservation procedure, before disposal or destruction:]~~

~~[(4)] (2) (a) Except as provided in Subsection [(4)(b)] (2)(b), no later than 30 days after the day on which a peace officer seizes property in the form of cash or other readily negotiable instruments [~~under Section 24-2-102~~], an agency shall deposit the property into a separate, restricted, interest-bearing account maintained by the agency solely for the purpose of managing and protecting the property from commingling, loss, or devaluation.~~

~~(b) A prosecuting attorney may authorize one or more written extensions of the 30-day period under Subsection [(4)(a)] (2)(a) if the property needs to maintain the form in which the property was seized for evidentiary purposes or other good cause.~~

~~[(c)] (3) An agency shall:~~

~~[(i)] (a) have written policies for the identification, tracking, management, and safekeeping of seized property and contraband; and~~

~~[(ii)] (b) shall have a written policy that prohibits the transfer, sale, or auction of seized property and contraband to an employee of the agency.~~

Section ~~27~~28. Section **77-11a-205**, which is renumbered from Section 24-2-105 is renumbered and amended to read:

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### ~~[24-2-105].~~ 77-11a-205. Transfer or release of seized property to another governmental entity -- Requirements.

(1) Except as provided in Subsections ~~[(3)(a), (b), and (c),]~~ (3)(a) through (c), upon the seizure of property by a peace officer ~~[under this title],~~ the property is subject to the exclusive jurisdiction of a district court of this state.

(2) Except as provided in Subsection (3), a peace officer, agency, or prosecuting attorney may not directly or indirectly transfer or release ~~[property seized under this title]~~ seized property to a federal agency or to a governmental entity not created or subject to the laws of this state.

(3) An agency or prosecuting attorney may transfer or release seized property to a federal agency or to a governmental entity not created or subject to the laws of this state if:

(a) (i) the property is cash or another readily negotiable instrument; and

(ii) the property is evidence in, or subject to, a federal criminal indictment, a federal criminal information, or a federal criminal complaint that is filed before the property is seized;

(b) (i) the property is not cash or another readily negotiable instrument; and

(ii) the property is evidence in, or subject to, a federal criminal indictment, a federal criminal information, or a federal criminal complaint that is filed before the day on which the agency with custody of the property is required to return the property if no criminal or civil action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section ~~[24-4-103.5]~~ 77-11b-203;

(c) (i) the property was used in the commission of an offense in another state; and

(ii) an agency of that state requests the transfer of the property before the day on which the agency with custody of the property is required to return the property if no criminal or civil action is filed by the prosecuting attorney or a federal prosecutor in accordance with Section ~~[24-4-103.5]~~ 77-11b-203; or

(d) a district court authorizes, in accordance with Subsection (5), the transfer or release of the property to an agency of another state or a federal agency upon a petition by a prosecuting attorney or a federal prosecutor.

(4) (a) A prosecuting attorney, or a federal prosecutor, may file a petition in the district court for the transfer or release of seized property.

(b) If a prosecuting attorney, or a federal prosecutor, files a petition under Subsection

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(4)(a), the petition shall include:

- (i) a detailed description of the property seized;
- (ii) the location where the property was seized;
- (iii) the date the property was seized;
- (iv) the case number assigned by the agency; and
- (v) a declaration that:

(A) states the basis for relinquishing jurisdiction to a federal agency or an agency of another state;

(B) contains the names and addresses of any known claimant; and

(C) is signed by the prosecuting attorney or federal prosecutor.

(5) A district court may not authorize the transfer or release of seized property under Subsection (3)(d), unless the district court finds, by a preponderance of the evidence:

(a) the property is evidence in, or subject to, a federal criminal indictment, a federal criminal information, or a federal criminal complaint after the property is seized;

(b) the property may only be forfeited under federal law;

(c) forfeiting the property under state law would unreasonably burden the prosecuting attorney or agency; or

(d) the property was subject to a federal criminal investigation before the property was seized.

(6) (a) Before a district court may order the transfer of seized property in accordance with this section, the court, the prosecuting attorney, or the federal prosecutor shall mail a notice to:

(i) each address contained in the declaration under Subsection (4)(b)(v) to give a claimant the right to be heard with regard to the transfer; and

(ii) (A) if a federal prosecutor files the petition under Subsection (4), the prosecuting attorney that is representing the agency with custody of the property; or

(B) if a prosecuting attorney files the petition under Subsection (4), the federal prosecutor who will receive the property upon the transfer or release of the property.

(b) If a claimant, or the party under Subsection (6)(a)(i), does not object to the petition to transfer the property within 10 days after the day on which the notice is mailed, the district court shall issue the district court's order in accordance with this section.

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(c) If the declaration does not include an address for a claimant, the district court shall delay the district court's order under this section for 20 days to allow time for the claimant to appear and make an objection.

(d) (i) If a claimant, or a party under Subsection (6)(a)(i), contests a petition to transfer the property to a federal agency or to another governmental entity not created or subject to the laws of this state, the district court shall promptly set the matter for hearing.

(ii) In making a determination under Subsection (5), the district court shall consider evidence regarding hardship, complexity, judicial and law enforcement resources, protections afforded under state and federal law, pending state or federal investigations, and any other relevant matter.

(7) If an agency receives property, money, or other things of value under a federal law that authorizes the sharing or transfer of all or a portion of forfeited property, or the proceeds from the sale of forfeited property, the agency:

(a) shall use the property, money, or other things of value in compliance with federal laws and regulations relating to equitable sharing;

(b) may use the property, money, or other things of value for a law enforcement purpose described in Subsection [~~24-4-117(10)~~] 77-11b-403(10); and

(c) may not use the property, money, or other thing of value for a law enforcement purpose prohibited in Subsection [~~24-4-117(11)~~] 77-11b-403(11).

(8) An agency awarded an equitable share of property forfeited by the federal government may use the award money only after approval of the use by the agency's legislative body.

(9) If a district court exercises exclusive jurisdiction over seized property, the district court's exclusive jurisdiction is terminated if the property is released by the agency with custody of the property to a claimant under:

(a) Part 5, Release of Property to Claimant; or

(b) Section 77-11b-203.[:]

[~~(a) a claimant under Subsection 24-2-107(1)(a), Section 24-3-104, or Section 24-4-103.5;~~]

[~~(b) a rightful owner under Section 24-3-103; or~~]

[~~(c) an innocent owner or an interest holder under Section 24-2-108.~~]

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Section ~~{28}~~29. Section 77-11a-301 is enacted to read:

### Part 3. Retention of Property and Contraband as Evidence

~~{~~ 77-11a-301. Applicability of this part.

~~\_\_\_\_\_~~ The requirements of this part do not apply to the retention and preservation of property or contraband that is subject to Part 4, Preservation of Biological Evidence for Violent Felony Offenses.

~~\_\_\_\_\_~~ Section 29. Section ~~77-11a-302~~ is enacted to read:

~~†~~ ~~{77-11a-302}~~77-11a-301. Retention of evidence -- Time period for retention.

(1) An agency shall retain property or contraband ~~{as evidence if the property or contraband:~~

~~\_\_\_\_\_~~ ~~(a) is seized as part of an investigation or prosecution of an offense; and~~

~~\_\_\_\_\_~~ ~~(b) may reasonably be used to incriminate or exculpate a person for the offense}~~ that is evidence of an offense in accordance with this part.

(2) If an agency determines that property or contraband is evidence ~~{under Subsection (1)}~~ of an offense, the agency shall retain the property or contraband for the longer of:

(a) the length of the statute of limitations for the offense if:

(i) no charges are filed for the offense; or

(ii) the offense remains unsolved;

(b) 60 days after the day on which any individual is convicted and sentenced for the offense if:

(i) each individual charged with the offense has been convicted and sentenced by a justice court; and

(ii) there is no appeal pending in the district court for a trial de novo for any individual convicted and sentenced for the offense;

(c) 30 days after the day on which any individual is convicted and sentenced for the offense by a district court on a trial de novo from the justice court if:

(i) each individual charged with the offense has been convicted and sentenced by a justice court or by a district court on a trial de novo from the justice court; and

(ii) there is no appeal pending in the district court for a trial de novo for any individual convicted and sentenced for the offense; ~~{or~~

~~\_\_\_\_\_~~ ~~(d) the length of time that any individual}~~

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(d) except as provided in Subsection (2)(e), 60 days after the day on which any individual is convicted and sentenced for the offense ~~remains in custody for the offense~~ if:

(i) a class A misdemeanor or felony offense is the highest level of offense for which any individual is convicted or sentenced;

(ii) each individual charged with the offense has been convicted and sentenced by a district court; and

(iii) there is no appeal pending in an appellate court for any individual convicted and sentenced for the offense; or

(e) the time period described in Subsection 77-11a-401(2) if the property or contraband is biological evidence of a violent felony offense.

(3) An agency shall ensure that property or contraband retained as evidence is subject to a continuous chain of custody.

(4) An agency is not required to retain property or contraband as evidence under Subsection (2) if:

(a) (i) the agency determines that:

(A) the size, bulk, or physical character renders retention of the property or contraband impracticable; or

(B) the property or contraband poses a security or safety problem for the agency;

(ii) the agency ~~can preserve~~ preserves sufficient evidence from the property or contraband for use as evidence in a prosecution of an individual for the offense in accordance with ~~the requirements of~~ Section ~~77-11a-303~~ 77-11a-302;

(iii) the agency sends a written request under Subsection ~~77-11a-304~~ 77-11a-303(1) to the prosecuting attorney for permission to release or dispose of ~~or release~~ the property or contraband; and

(iv) the prosecuting attorney grants the agency's written request in accordance with Section ~~77-11a-304~~ 77-11a-303; ~~or~~

(b) a court orders the agency to return the property to a claimant under Section 77-11a-505 ~~;~~

~~(5) If an agency is not required to retain property as evidence under this section or is no longer required to retain the property as evidence under Subsection (2); or~~

(c) the property or contraband is wildlife.



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(5) (a) Subsection (4) does not apply to property or contraband that is biological evidence of a violent felony offense.

(b) Subsection (4)(a) does not apply when the release or disposal of property or contraband is in compliance with a memorandum of understanding between the agency and the prosecuting attorney.

(6) Subsections (2) and (4) do not require an agency to return or dispose of property or contraband that is evidence of an offense.

(7) When property is no longer subject to retention for use as evidence in the prosecution of an individual for an offense, the agency shall:

(a) return the property to a claimant under Part 5, Release of Property to Claimant; or

(b) dispose of the property in accordance with Part 6, Disposal of Seized Property and Contraband.

~~(6) If an agency is not required to retain contraband as evidence under this section or is no longer required to retain the contraband as evidence under Subsection (2);~~ 8) When

contraband is no longer subject to retention for use as evidence in the prosecution of an individual for the offense, the agency shall dispose of the contraband in accordance with Part 6, Disposal of Seized Property and Contraband.

Section 30. Section ~~{77-11a-303}~~ 77-11a-302 is enacted to read:

~~{77-11a-303}~~ 77-11a-302. Preservation of evidence from property or contraband.

~~{~~ (1) If an agency is not required to retain property or contraband as evidence under Subsection 77-11a-302(4), the agency shall preserve evidence from the property or contraband in accordance with this section:

~~{~~ (2) 1) If contraband is a controlled substance, an agency shall preserve sufficient evidence from the controlled substance by:

(a) collecting and preserving ~~{samples from}~~ a sample of the controlled substance and ~~{any}~~ a sample of biological evidence ~~{on}~~ from the controlled substance for independent testing and use as evidence;

(b) taking a photographic or video record of the controlled substance with identifying case numbers;

(c) completing a written chemical report of the controlled substance; and

(d) if the controlled substance exceeds 10 pounds, retain at least one pound of the

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controlled substance that is randomly selected from the controlled substance.

(~~3~~2) If contraband is drug paraphernalia, an agency shall preserve sufficient evidence from the drug paraphernalia by:

(a) collecting and preserving ~~samples~~ a sample of the controlled substance from the drug paraphernalia and ~~any~~ a sample of biological evidence ~~on~~ from the drug paraphernalia for independent testing and use as evidence;

(b) completing a written chemical report of the drug paraphernalia; and

(c) taking a photographic or video record of the drug paraphernalia with identifying case numbers.

(~~4~~3) If contraband or property is a computer, the agency shall preserve sufficient evidence from the computer by:

(a) extracting all data from the computer that would be evidence in a ~~criminal proceeding~~ prosecution of an individual for the offense;

(b) collecting ~~any~~ a sample of biological evidence ~~on~~ from the computer for independent testing and use as evidence; and

(c) taking a photographic or video record of the computer with identifying case numbers.

(~~5~~4) For any other type of property or contraband, the agency shall preserve sufficient evidence from the property or contraband by:

(a) collecting and preserving ~~samples~~ a sample of ~~any~~ biological evidence ~~on~~ from the property or contraband for independent testing and use as evidence; and

(b) taking a photographic or video record of the property or contraband with identifying case numbers.

(5) Notwithstanding this section, any property or contraband that is biological evidence of a violent felony offense is preserved in accordance with Section 77-11a-401.

Section 31. Section ~~77-11a-304~~ 77-11a-303 is enacted to read:

~~77-11a-304~~ 77-11a-303. Request to prosecuting attorney by agency -- Notification to defendant.

(1) If an agency determines that the agency is not required to retain property or contraband as evidence under Subsection ~~77-11a-302~~ 77-11a-301(4)(a)(~~fi~~ or (~~iii~~)) and the agency seeks to release or dispose of the property or contraband, the agency shall send a written

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request to the prosecuting attorney that:

(a) identifies the property or contraband;

(b) explains the reason for which the agency is not required to retain the property or contraband under Subsection ~~{77-11a-304}~~; 77-11a-301(4)(a)(~~(i)~~ or (ii); and

(c) explains the steps that the agency will take, or has taken, to preserve sufficient evidence from the property or contraband for use as evidence in a prosecution of an individual for the offense.

(2) If the prosecuting attorney receives a written request under Subsection (1) and determines that the agency needs to retain the property or contraband as evidence in the prosecution of an individual for the offense, the prosecuting attorney shall send a written notification to the agency that explains the reason for which the prosecuting attorney is denying the agency's request.

(3) If the prosecuting attorney receives a written request under Subsection (1) and determines that the agency does not need to retain the property or contraband as evidence in the prosecution of an individual for the offense, the prosecuting attorney shall provide written notice of the intent to not retain the property or contraband as evidence that:

(a) is sent by certified mail, return receipt requested, or a delivery service that provides proof of delivery, to:

(i) any ~~{defendant}~~individual charged with or convicted and sentenced for the offense;  
and

(ii) the ~~{defendant's}~~individual's most recent attorney of record; and

(b) explains that the ~~{defendant}~~individual receiving the notice may submit a written objection to the prosecuting attorney.

(4) (a) ~~{A defendant}~~An individual, who is charged with or convicted and sentence for the offense, may submit a written objection to the disposal or release of the property or contraband by the agency no later than ~~{180}~~30 days after the day on which the prosecuting attorney receives proof of delivery under Subsection (3).

(b) If ~~{a defendant}~~an individual submits a written objection under Subsection (4)(a), the prosecuting attorney shall send a written notification to the agency that explains the reason for which the prosecuting attorney is denying the agency's request.

(c) If the prosecuting attorney does not receive a written objection within the time

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period described in Subsection (4)(a), the prosecuting attorney shall send a written notification to the agency that grants the agency's request to release or dispose of the property or contraband.

(5) (a) If a prosecuting attorney receives a written request from an agency seeking to release or dispose of property or contraband, the prosecuting attorney shall:

(i) provide a notice of receipt to the agency within ~~{30}~~15 days after the day on which the prosecuting attorney receives the written request; and

(ii) send a written notification to the agency of the prosecuting attorney's decision to deny or grant an agency's written request within ~~{210}~~60 days after the day on which the prosecuting attorney receives the agency's written request.

(b) If an agency does not receive a notice of receipt under Subsection (5)(a)(i) or a written notification under Subsection (5)(a)(ii), the agency may send the written request to the district attorney, county attorney, attorney general, or other prosecutor who directly oversees and supervises the prosecuting attorney.

(6) If a prosecuting attorney denies an agency's written request to release or dispose of property or contraband under this section, the agency shall retain the property or contraband in accordance with ~~{Subsections 77-11a-302(2) and (3)}:~~

~~{Section 77-11a-301}.~~

(7) The requirements of this section do not apply:

(a) when the release or disposal of property or contraband is in compliance with a memorandum of understanding between the agency and the prosecuting attorney; or

(b) to any property or contraband that is biological evidence of a violent felony offense.

Section 32. Section ~~{77-11a-305}~~77-11a-304 is enacted to read:

~~{77-11a-305}~~77-11a-304. **Retention of property or contraband as an exhibit.**

(1) If seized property or contraband is admitted as an exhibit for a court proceeding, the clerk of the court shall:

(a) retain the property or contraband; or

(b) return the property or contraband to the custody of the agency.

(2) Rule 4-206 of the Utah Code of Judicial Administration applies to property or contraband that is admitted as an exhibit in a court proceeding.

Section 33. Section **77-11a-401**, which is ~~{enacted}~~renumbered from Section

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53-20-102 is renumbered and amended to read:

### Part 4. Preservation of Biological Evidence for Violent Felony Offenses

~~{ 77-11a-401. Applicability of this part to violent felony offenses:~~

~~The requirements of this part only apply to the retention and preservation of biological evidence that:~~

~~(1) is collected as part of an investigation or prosecution of a violent felony offense; and~~

~~(2) may reasonably be used to incriminate or exculpate a person for the violent felony offense.~~

~~Section 34. Section 77-11a-402, which is renumbered from Section 53-20-102 is renumbered and amended to read:~~

~~{~~ **[53-20-102].** ~~{77-11a-402}~~ **77-11a-401. Preservation of biological evidence -- Procedures -- Inventory request.**

(1) Except as provided in Section ~~[53-20-103]~~ ~~{77-11a-403}~~ **77-11a-402**, an evidence collecting or retaining entity shall preserve biological evidence **[:] of a violent felony offense in accordance with this part.**

**(2) An evidence collecting or retaining entity shall preserve biological evidence of a violent felony offense:**

(a) for the longer of:

(i) the length of the statute of limitations for the violent felony offense if:

(A) no charges are filed for the violent felony offense; or

(B) the violent felony offense remains unsolved;

(ii) the length of time that the individual convicted of the violent felony offense or any lesser included violent offense remains in custody; or

(iii) the length of time that a co-defendant remains in custody;

(b) in an amount and manner sufficient to:

(i) develop a DNA profile; and

(ii) if practicable, allow for independent testing of the biological evidence by a defendant; and

(c) subject to a continuous chain of custody.

~~[(2)]~~ **(3)** (a) Upon request by a defendant under Title 63G, Chapter 2, Government

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Records Access and Management Act, the evidence collecting or retaining entity shall prepare an inventory of the biological evidence preserved in connection with the defendant's criminal case.

(b) If the evidence collecting or retaining entity cannot locate biological evidence requested under Subsection ~~[(2)(a)]~~ [(3)(a)], the custodian for the entity shall provide a sworn affidavit to the defendant that:

- (i) describes the efforts taken to locate the biological evidence; and
- (ii) affirms that the biological evidence could not be located.

~~[(3)]~~ [(4)] The evidence collecting or retaining entity may dispose of biological evidence before the day on which the period described in Subsection ~~[(1)(a)]~~ [(2)(a)] expires if:

(a) no other provision of federal or state law requires the evidence collecting or retaining entity to preserve the biological evidence;

(b) the evidence collecting or retaining entity sends notice in accordance with Subsection ~~[(4)]~~ [(5)]; and

(c) an individual notified under Subsection ~~[(4)(a)]~~ [(5)(a)] does not within 180 days after the day on which the evidence collecting or retaining entity receives proof of delivery under Subsection ~~[(4)]~~ [(5)]:

- (i) file a motion for testing of the biological evidence under Section 78B-9-301; or
- (ii) submit a written request under Subsection ~~[(4)(b)(ii)]~~ [(5)(b)(ii)].

~~[(4)]~~ [(5)] If the evidence collecting or retaining entity intends to dispose of the biological evidence before the day on which the period described in Subsection ~~[(1)(a)]~~ [(2)(a)] expires, the evidence collecting or retaining entity shall send a notice of intent to dispose of the biological evidence that:

(a) is sent by certified mail, return receipt requested, or a delivery service that provides proof of delivery, to:

(i) an individual who remains in custody based on a criminal conviction related to the biological evidence;

(ii) the private attorney or public defender of record for each individual described in Subsection ~~[(4)(a)(i)]~~ [(5)(a)(i)];

(iii) if applicable, the prosecuting agency responsible for the prosecution of each individual described in Subsection ~~[(4)(a)(i)]~~ [(5)(a)(i)]; and

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(iv) the Utah attorney general; and

(b) explains that the party receiving the notice may:

(i) file a motion for testing of biological evidence under Section 78B-9-301; or

(ii) submit a written request that the evidence collecting or retaining entity retain the biological evidence.

~~[(5)]~~ [(6)] (a) Subject to Subsections ~~[(5)(b) and (c)]~~ [(6)(b) and (c)], if the evidence collecting or retaining entity receives a written request to retain the biological evidence under Subsection ~~[(4)(b)(ii)]~~ [(5)(b)(ii)], the evidence collecting or retaining entity shall retain the biological evidence while the defendant remains in custody.

(b) Subject to Subsection ~~[(5)(c)]~~ [(6)(c)], the evidence collecting or retaining entity is not required to preserve physical evidence that may contain biological evidence if the physical evidence's size, bulk, or physical character renders retention impracticable.

(c) If the evidence collecting or retaining entity determines that retention is impracticable, before returning or disposing of the physical evidence, the evidence collecting or retaining entity shall:

(i) remove the portions of the physical evidence likely to contain biological evidence related to the violent felony offense; and

(ii) preserve the removed biological evidence in a quantity sufficient to permit future DNA testing.

~~[(6)]~~ [(7)] To comply with the preservation requirements described in this section, a law enforcement agency or a court may:

(a) retain the biological evidence; or

(b) if a continuous chain of custody can be maintained, return the biological evidence to the custody of the other law enforcement agency that originally provided the biological evidence to the law enforcement agency.

Section ~~{35}~~ 34. Section ~~{77-11a-403}~~ 77-11a-402, which is renumbered from Section 53-20-103 is renumbered and amended to read:

~~[53-20-103]~~. ~~{77-11a-403}~~ 77-11a-402. **Exceptions to preservation of biological evidence.**

(1) As used in this section, "offense concerning driving under the influence" means:

(a) Section 41-6a-502;

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- (b) Section 41-6a-502.5;
- (c) Section 41-6a-517;
- (d) Section 41-6a-530;
- (e) Section 76-5-102.1;
- (f) Section 76-5-207; and
- (g) a local ordinance similar to the offenses described in this Subsection (1).

(2) Section [~~53-20-102~~] ~~{77-11a-402}~~ 77-11a-401 does not apply to biological evidence obtained during an investigation or prosecution for an offense concerning driving under the influence solely for toxicology purposes.

Section ~~{36}~~ 35. Section ~~{77-11a-404}~~ 77-11a-403, which is renumbered from Section 53-20-104 is renumbered and amended to read:

~~[53-20-104]~~. ~~{77-11a-404}~~ 77-11a-403. **Remedies for failure to preserve biological evidence.**

(1) (a) Except as provided in Subsections (1)(b) and (2), if a court finds that biological evidence that reasonably could have been found to be exculpatory in a defendant's criminal case was not preserved in accordance with this chapter, the court may impose sanctions and remedies at the court's discretion, including:

- (i) the grant of a new trial;
- (ii) an instruction to the jury that evidence was not preserved as required by law;
- (iii) the reduction of the sentence;
- (iv) the dismissal of the criminal charge;
- (v) the vacation of the conviction; or
- (vi) the entry of a finding that because the evidence was not preserved in accordance

with this chapter, a presumption exists that the evidence would have been exculpatory to the defendant.

(b) The provisions in Subsection (1)(a) apply only if:

- (i) a defendant's appeal has not concluded;
- (ii) a defendant's time for appeal has not expired; or
- (iii) a defendant has received a new trial in accordance with Subsection (2)(b).

(2) (a) A defendant shall seek relief under Title 78B, Chapter 9, Postconviction Remedies Act, if:



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(i) the defendant alleges that the biological evidence that is the basis for the defendant's claim was not preserved in accordance with this chapter; and

(ii) (A) the defendant's appeal has concluded; or

(B) the time for the defendant's appeal has expired.

(b) If a defendant obtains relief under Title 78B, Chapter 9, Postconviction Remedies Act, the provisions in Subsection (1) apply to the defendant's new trial.

Section ~~{37}~~36. Section 77-11a-501, which is renumbered from Section 24-2-107 is renumbered and amended to read:

### Part 5. Release of Property to Claimant

~~[24-2-107].~~ 77-11a-501. Release of seized property to claimant -- Generally.

~~[(1)(a) Subject to Title 53, Chapter 20, Forensic Biological Evidence Preservation, an]~~

(1) (a) An agency with custody of seized property, or the prosecuting attorney, may release the property to a claimant if the agency or the prosecuting attorney:

(i) determines that ~~[retention of the property is unnecessary]~~ the agency does not need to retain or preserve the property as evidence; or

(ii) seeks to return the property to the claimant because the agency or prosecuting attorney determines that the claimant is an innocent owner or an interest holder.

(b) An agency with custody of seized property, or the prosecuting attorney, may not release property under this Subsection (1) if the property is subject to ~~the~~ retention ~~{requirements}~~ or preservation under:

(i) Part 3, Retention of Property and Contraband as Evidence; or

(ii) Part 4, Preservation of Biological Evidence for Violent Felony Offenses.

(c) If an agency is not required, ~~or is no longer required,~~ to retain or preserve property ~~{as evidence under Section 77-11a-302}~~ under this chapter and the agency seeks to release or dispose of the property, the agency shall exercise due diligence in attempting to notify the claimant of the property to advise the claimant that the property is to be returned.

~~{~~ ~~(d) If an agency is not required to retain property as evidence under Section 77-11a-302 and the victim is the owner of the property, the agency shall notify the victim that:~~

~~\_\_\_\_\_ (i) the agency may release the property to the victim in accordance with Subsection (4) if the victim seeks the return of the property; or~~

~~\_\_\_\_\_ (ii) the agency may dispose of the property if the victim does not seek the return of the~~

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property:

~~†~~ [(b)] (2) An agency with custody of the seized property, or the prosecuting attorney, shall release the property to a claimant if:

[(i)] (a) the claimant posts a surety bond or cash with the court in accordance with ~~[Subsection (2)]~~ Section 77-11a-502;

[(ii)] (b) the court orders the release of property to the claimant for hardship purposes under ~~[Subsection (3)]~~ Section 77-11a-503;

[(iii)] (c) a claimant establishes that the claimant is an innocent owner or an interest holder under ~~[Section 24-2-108]~~ Section 77-11a-504; or

~~[(iv)]~~ (d) the court orders property retained as evidence to be released to ~~[a rightful owner]~~ the claimant under ~~[Section 24-3-104]~~ Section 77-11a-505.

(3) If a peace officer for the Division of Wildlife Resources seizes a vehicle, the Division of Wildlife Resources shall release the vehicle to a claimant in accordance with Section 23-20-1.

~~(3)~~4 (a) For a computer determined to be contraband, a court may order the reasonable extraction and return of specifically described personal digital data to the owner of the computer.

(b) The agency shall determine a reasonable cost to extract the data.

(c) At the time of the request to extract the data, the owner of the computer shall pay the agency the cost to extract the data.

~~(4)~~5 (a) Before an agency may release seized property to a person claiming ownership of the property, the person shall establish that the person:

(i) is the owner of the property; and

(ii) may lawfully possess the property.

(b) The person shall establish ownership under Subsection ~~(4)~~5(a) by providing to the agency:

(i) identifying proof or documentation of ownership of the property; or

(ii) a notarized statement if proof or documentation is not available.

(c) When seized property is returned to the owner, the owner shall sign a receipt listing in detail the property that is returned.

(d) The agency shall:

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(i) retain a copy of the receipt; and

(ii) provide a copy of the receipt to the owner.

~~[(2)(a) Except as provided in Subsection (2)(b), a claimant may obtain release of seized property by posting a surety bond or cash with the court that is in an amount equal to the current fair market value of the property as determined by the court or a stipulation by the parties.]~~

~~[(b) A court may refuse to order the release under Subsection (2)(a) of:]~~

~~[(i) the property if:]~~

~~[(A) the bond tendered is inadequate;]~~

~~[(B) the property is retained as evidence or is subject to retention under Title 53, Chapter 20, Forensic Biological Evidence Preservation; or]~~

~~[(C) the property is particularly altered or designed for use in the commission of the offense subjecting the property to forfeiture; or]~~

~~[(ii) contraband.]~~

~~[(c) If a surety bond or cash is posted and the court later determines that the property is forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of the property.]~~

~~[(3) A claimant is entitled to the immediate release of seized property for which the agency has filed a notice of intent to forfeit under Section 24-4-103 if:]~~

~~[(a) the claimant had a possessory interest in the property at the time of seizure;]~~

~~[(b) continued possession by the agency pending a forfeiture proceeding will cause substantial hardship to the claimant, including:]~~

~~[(i) preventing the functioning of a legitimate business;]~~

~~[(ii) preventing any individual from working;]~~

~~[(iii) preventing any child from attending elementary or secondary school;]~~

~~[(iv) preventing or hindering an individual from receiving necessary medical care;]~~

~~[(v) preventing the care of a dependent child or adult who is elderly or disabled;]~~

~~[(vi) leaving an individual homeless; or]~~

~~[(vii) any other condition that the court determines causes a substantial hardship;]~~

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

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~~[(d) the determination of substantial hardship under this Subsection (3) is based upon the property's use before the seizure.]~~

~~[(4) A claimant may file a motion or petition for hardship release under Subsection (3):]~~

~~[(a) in the court in which forfeiture proceedings have commenced; or]~~

~~[(b) in a district court where there is venue if a forfeiture proceeding has not yet commenced.]~~

~~[(5) The motion or petition for hardship release shall be served upon the agency with custody of the property within five days after the day on which the motion or petition is filed.]~~

~~[(6) The court shall:]~~

~~[(a) schedule a hearing on the motion or petition within 14 days after the day on which the motion or petition is filed; and]~~

~~[(b) render a decision on a motion or petition for hardship filed under this section no later than 20 days after the day of the hearing, unless this period is extended by the agreement of both parties or by the court for good cause shown.]~~

~~[(7) (a) If the claimant demonstrates substantial hardship under Subsection (3), the court shall order the property immediately released to the claimant pending completion of any forfeiture proceeding.]~~

~~[(b) The court may place conditions on release of the property as the court finds necessary and appropriate to preserve the availability of the property or the property's equivalent for forfeiture.]~~

~~[(8) The hardship release under this section does not apply to:]~~

~~[(a) contraband; or]~~

~~[(b) property that is:]~~

~~[(i) subject to retention under Title 53, Chapter 20, Forensic Biological Evidence Preservation; or]~~

~~[(ii) likely to be used to commit additional offenses if returned to the claimant.]~~

Section ~~{38}~~37. Section **77-11a-502** is enacted to read:

**77-11a-502. Release of seized property to claimant by surety bond or cash.**

(1) Except as provided in Subsection (2), a claimant may obtain release of seized property by posting a surety bond or cash with the court that is in an amount equal to the

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current fair market value of the property as determined by the court or a stipulation by the parties.

(2) A court may refuse to order the release of property under Subsection (1) if:

(a) the bond tendered for the property is inadequate;

(b) the property is subject to retention or preservation under:

(i) Part 3, Retention of Property and Contraband as Evidence; or

(ii) Part 4, Preservation of Biological Evidence for Violent Felony Offenses;

(c) the property is particularly altered or designed for use in the commission of the offense subjecting the property to forfeiture under Section 77-11b-102; or

(d) the property is contraband.

(3) If a surety bond or cash is posted and the court later determines that the property is forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of the property.

Section ~~39~~38. Section **77-11a-503** is enacted to read:

**77-11a-503. Release of seized property subject to forfeiture to claimant for hardship.**

(1) A claimant is entitled to the immediate release of seized property for which the agency has filed a notice of intent to forfeit under Section 77-11b-201 if:

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

(b) continued possession by the agency pending a forfeiture proceeding will cause substantial hardship to the claimant, including:

(i) preventing the functioning of a legitimate business;

(ii) preventing any individual from working;

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

(iv) preventing or hindering an individual from receiving necessary medical care;

(v) preventing the care of a dependent child or adult who is elderly or disabled;

(vi) leaving an individual homeless; or

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

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

(d) the determination of substantial hardship under this Subsection (1) is based upon

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the property's use before the seizure.

(2) A claimant may file a motion or petition for hardship release under this section:

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

(b) in a district court where there is venue under Section 77-11a-102 if a forfeiture proceeding has not yet commenced.

(3) The motion or petition for hardship release shall be served upon the agency with custody of the property within five days after the day on which the motion or petition is filed.

(4) The court shall:

(a) schedule a hearing on the motion or petition within 14 days after the day on which the motion or petition is filed; and

(b) render a decision on a motion or petition for hardship filed under this section no later than 20 days after the day of the hearing, unless this period is extended by the agreement of both parties or by the court for good cause shown.

(5) If the claimant demonstrates substantial hardship under Subsection (1), the court shall order the property immediately released to the claimant pending completion of any forfeiture proceeding.

(6) The court may place conditions on release of the property as the court finds necessary and appropriate to preserve the availability of the property or the property's equivalent for forfeiture.

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

(a) contraband;

(b) property that is subject to the retention or preservation requirements under:

(i) Part 3, Retention of Property and Contraband as Evidence; or

(ii) Part 4, Preservation of Biological Evidence for Violent Felony Offenses; or

(c) property that is likely to be used to commit additional offenses if returned to the claimant.

Section ~~{40}~~39. Section **77-11a-504**, which is renumbered from Section 24-2-108 is renumbered and amended to read:

~~[24-2-108]~~. **77-11a-504. Release of seized property to innocent owner or interest holder.**

(1) (a) [~~Subject to Title 53, Chapter 20, Forensic Biological Evidence Preservation, a]~~

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Except for property required to be retained or preserved under this chapter, a claimant alleged to be an innocent owner or an interest holder may recover possession of seized property by:

(i) submitting a written request with the seizing agency before the later of:

(A) the commencement of a civil asset forfeiture proceeding under Section

77-11b-301; or

(B) 30 days after the day on which the property was seized; and

(ii) providing the seizing agency with:

(A) evidence that establishes proof of ownership; and

(B) a brief description of the date, time, and place that the claimant mislaid or relinquished possession of the seized property, or any evidence that the claimant is an innocent owner or an interest holder.

(b) If a seizing agency receives a claim under Subsection (1)(a), the seizing agency shall issue a written response to the claimant within 30 days after the day on which the seizing agency receives the claim.

(c) A response under Subsection (1)(b) from the seizing agency shall indicate whether the claim has been granted, denied on the merits, or denied for failure to provide the information required by Subsection (1)(a)(ii).

(d) (i) If a seizing agency denies a claim for failure to provide the information required by Subsection (1)(a)(ii), the claimant has 15 days after the day on which the claim is denied to submit additional information.

(ii) If a prosecuting attorney has not filed a civil action seeking to forfeit the property under Section 77-11b-301, and a seizing agency has denied a claim for failure to provide the information required by Subsection (1)(a)(ii), the prosecuting attorney may not commence a civil action until:

(A) the claimant has submitted information under Subsection (1)(d)(i); or

(B) the deadline for the claimant to submit information under Subsection (1)(d)(i) has passed.

(e) If a seizing agency fails to issue a written response within 30 days after the day on which the seizing agency receives the response, the seizing agency shall return the property.

(2) If a claim under Subsection (1)(a) is granted, or the property is returned because the seizing agency fails to respond within 30 days, a claimant may not receive any expenses, costs,

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or attorney fees for the returned property.

(3) A claimant may collect reasonable attorney fees and court costs if:

(a) a claimant filed a claim under Subsection (1)(a);

(b) the seizing agency denies the claim on the merits; and

(c) a court determines that the claimant is an innocent owner or an interest holder in a civil asset forfeiture proceeding.

(4) If a court grants reasonable attorney fees and court costs, the amount of the attorney fees begins to accrue from the day on which the seizing agency denied the claim.

(5) If the court grants reasonable attorney fees and court costs under Subsection (3), the attorney fees and court costs are not subject to the 50% cap under Subsection ~~[24-4-110(2)]~~ 77-11b-305(2).

(6) A communication between parties regarding a claim submitted under Subsection (3) and any evidence provided to the parties in connection with a claim is subject to the Utah Rules of Evidence, Rules 408 and 410.

~~[(7) An agency and the prosecuting attorney may not forfeit the seized property of an innocent owner or an interest holder.]~~

Section ~~{41}~~40. Section **77-11a-505**, which is renumbered from Section 24-3-104 is renumbered and amended to read:

~~[24-3-104].~~ **77-11a-505. Release of seized property to claimant when seized property is retained as evidence.**

(1) (a) A claimant may file a petition with the court for the return of the property that is being retained as evidence in accordance with Part 3, Retention of Property and Contraband as Evidence.

(b) The claimant may file the petition in:

(i) the court in which criminal proceedings have commenced regarding the offense for which the property is being retained as evidence; or

(ii) the district court with venue under Section ~~[24-1-103]~~ 77-11a-102 if there are no pending criminal proceedings.

(c) A claimant shall serve a copy of the petition on the prosecuting attorney and the agency with custody of the property.

(2) (a) The court shall provide an opportunity for an expedited hearing.



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(b) After the opportunity for an expedited hearing, the court may order that the property is:

(i) returned to the ~~[rightful owner]~~ claimant if the claimant is the owner as determined by the court;

(ii) if the offense subjecting the property to seizure results in a conviction, applied directly or by proceeds of the sale of the property toward restitution, fines, or fees owed by the ~~[rightful owner]~~ claimant in an amount set by the court;

(iii) converted to a public interest use;

(iv) held for further legal action;

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

or

(vi) destroyed.

(3) Before the court can order property be returned to a claimant, the claimant shall establish, by clear and convincing evidence, that the claimant:

(a) is the ~~[rightful]~~ owner; and

(b) may lawfully possess the property.

(4) If the court orders the property to be returned to the claimant, the agency with custody of the property shall return the property to the claimant as expeditiously as possible.

Section ~~{42}~~41. Section **77-11a-601**, which is renumbered from Section 24-3-101.5 is renumbered and amended to read:

### **Part 6. Disposal of Seized Property and Contraband**

~~[24-3-101.5]~~. **77-11a-601. Applicability of this part.**

The provisions of this ~~[chapter]~~ part do not apply to property or contraband:

(1) ~~[that is subject to the retention requirements under Title 53, Chapter 20, Forensic Biological Evidence Preservation]~~ until the property or contraband is no longer subject to:

(a) the retention requirements of Part 3, Retention of Property and Contraband as Evidence; or

(b) the preservation requirements of Part 4, Preservation of Biological Evidence for Violent Felony Offenses; or

(2) for which an agency has filed a notice of intent to seek forfeiture under ~~[Section 24-4-103]~~ Chapter 11b, Forfeiture of Seized Property.

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Section ~~{43}~~42. Section 77-11a-602, which is renumbered from Section 24-3-103 is renumbered and amended to read:

~~[24-3-103].~~ **77-11a-602. Disposition of seized property and contraband -- Return of seized property.**

(1) If a prosecuting attorney determines that seized property no longer needs to be retained ~~[for court proceedings]~~ as evidence under Section ~~{77-11a-302}~~77-11a-301, the prosecuting attorney may:

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

(b) petition the court for an order transferring ownership of any weapons to the agency with custody for the agency's use and disposal in accordance with Section ~~[24-3-103.5]~~ 77-11a-603, if the owner:

(i) is the individual who committed the offense for which the weapon was seized; or

(ii) may not lawfully possess the weapon; or

(c) notify the agency with custody of the property or contraband that:

(i) the property may be returned to the ~~[rightful]~~ owner in accordance with Section 77-11a-501 if the ~~[rightful]~~ owner may lawfully possess the property; or

(ii) the contraband may be disposed of or destroyed.

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

~~[(3) (a) For a computer determined to be contraband, a court may order the reasonable extraction and return of specifically described personal digital data to the rightful owner.]~~

~~[(b) The law enforcement agency shall determine a reasonable cost to extract the data.]~~

~~[(c) At the time of the request to extract the data, the owner of the computer shall pay the agency the cost to extract the data.]~~

~~[(4) (a) Before an agency may release seized property to a person claiming ownership of the property, the person shall establish in accordance with Subsection (4)(b) that the person:]~~

~~[(i) is the rightful owner; and]~~

~~[(ii) may lawfully possess the property.]~~

~~[(b) The person shall establish ownership under Subsection (4)(a) by providing to the~~

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agency:]

~~[(i) identifying proof or documentation of ownership of the property; or]~~

~~[(ii) a notarized statement if proof or documentation is not available.]~~

~~[(5) (a) When seized property is returned to the owner, the owner shall sign a receipt listing in detail the property that is returned.]~~

~~[(b) The agency shall:]~~

~~[(i) retain a copy of the receipt; and]~~

~~[(ii) provide a copy of the receipt to the owner.]~~

~~[(6)] (2) (a) Except as provided in Subsection ~~[(6)(b)] (2)(b)~~, if the agency is unable to locate the ~~[rightful]~~ owner of the property or the ~~[rightful]~~ owner is not entitled to lawfully possess the property, the agency may:~~

(i) apply the property to a public interest use;

(ii) sell the property at public auction and apply the proceeds of the sale to a public interest use; ~~[or]~~

(iii) destroy the property if the property is unfit for a public interest use or for sale.

(b) If the property described in Subsection ~~[(6)(a)] (2)(a)~~ is a firearm, the agency shall dispose of the firearm in accordance with Section ~~[24-3-103.5]~~ 77-11a-603.

~~[(7)] (3) Before applying the property or the proceeds from the sale of the property to a public interest use, the agency shall obtain from the legislative body of the agency's jurisdiction:~~

(a) permission to apply the property or the proceeds to public interest use; and

(b) the designation and approval of the public interest use of the property or the proceeds.

~~[(8)] (4) If a peace officer seizes property that at the time of seizure is held by a pawn or secondhand business in the course of the pawn or secondhand business's business, the provisions of Section 13-32a-116 shall apply to the disposition of the property.~~

Section ~~{44}~~43. Section **77-11a-603**, which is renumbered from Section 24-3-103.5 is renumbered and amended to read:

~~[24-3-103.5]~~. **77-11a-603**. **Disposition of firearms no longer needed as evidence.**

(1) As used in this section:

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(a) "Confiscated or unclaimed firearm" means a firearm that is subject to disposal by an agency under Section ~~[24-3-103]~~ 77-11a-602 or 53-5c-202.

(b) "Department" means the Department of Public Safety created in Section 53-1-103.

(c) "Federally licensed firearms dealer" means a person:

(i) licensed as a dealer under 18 U.S.C. Sec. 923; and

(ii) engaged in the business of selling firearms.

(d) "State-approved dealer" means the federally licensed firearms dealer that contracts with the department under Subsection (4).

(2) An agency shall dispose of a confiscated or unclaimed firearm by:

(a) selling or destroying the confiscated or unclaimed firearm in accordance with Subsection (3);

(b) giving the confiscated or unclaimed firearm to the state-approved dealer to sell or destroy in accordance with Subsection (4) and the agreement between the state-approved dealer and the department; or

(c) after the agency obtains approval from the legislative body of the agency's jurisdiction, transferring the confiscated or unclaimed firearm to the Bureau of Forensic Services, created in Section 53-10-401, or another public forensic laboratory for testing.

(3) (a) An agency that elects to dispose of a confiscated or unclaimed firearm under Subsection (2)(a) shall:

(i) sell the confiscated or unclaimed firearm to a federally licensed firearms dealer and apply the proceeds from the sale to a public interest use; or

(ii) destroy the firearm, if the agency determines that:

(A) the condition of a confiscated or unclaimed firearm makes the firearm unfit for sale; or

(B) the confiscated or unclaimed firearm is associated with a notorious crime.

(b) Before an agency applies the proceeds of a sale of a confiscated or unclaimed firearm to a public interest use, the agency shall obtain from the legislative body of the agency's jurisdiction:

(i) permission to apply the proceeds of the sale to a public interest use; and

(ii) the designation and approval of the public interest use to which the agency applies the proceeds.

## **SB0120S01 compared with SB0120**

(4) (a) (i) The department shall, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, contract with a federally licensed firearms dealer to sell or destroy all confiscated or unclaimed firearms in the state.

(ii) The term of an agreement executed in accordance with this Subsection (4) may not exceed five years.

(iii) Nothing in this Subsection (4) prevents the department from contracting with the same federally licensed firearms dealer more than once.

(b) An agreement executed in accordance with Subsection (4)(a) shall:

(i) address the amount of money that the federally licensed firearms dealer is entitled to retain from the sale of each confiscated or unclaimed firearm as compensation for the federally licensed firearms dealer's performance under the agreement;

(ii) require the federally licensed firearms dealer to donate, on behalf of the state, all proceeds from the sale of a confiscated or unclaimed firearm, except the amount described in Subsection (4)(b)(i), to an organization that:

(A) is exempt from taxation under Section 501(c)(3), Internal Revenue Code;

(B) complies with any applicable licensing or registration requirements in the state;

(C) primarily helps the families of law enforcement officers in the state who die in the line of duty;

(D) gives financial assistance to the families of law enforcement officers in the state who die in the line of duty; and

(E) provides other assistance to children of active law enforcement officers, including scholarships;

(iii) state that if the federally licensed firearms dealer determines that the condition of a confiscated or unclaimed firearm makes the firearm unfit for sale, the federally licensed firearms dealer shall destroy the firearm; and

(iv) provide a procedure by which the department can ensure that the federally licensed firearms dealer complies with the provisions of the agreement and applicable law.

Section ~~{45}~~44. Section **77-11b-101** is enacted to read:

### **CHAPTER 11b. FORFEITURE OF SEIZED PROPERTY**

#### **Part 1. General Provisions**

##### **77-11b-101. Definitions.**

## **SB0120S01 compared with SB0120**

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 this title.

(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

## SB0120S01 compared with SB0120

### 77-11a-101.

(17) "Seized property" means the same as that term is defined in Section 77-11a-101.

Section ~~(46)~~45. Section **77-11b-102**, which is renumbered from Section 24-4-102 is renumbered and amended to read:

~~[24-4-102].~~ **77-11b-102. Property subject to forfeiture.**

(1) (a) Except as provided in Subsection (2), (3), or (4), an agency may seek to forfeit:

~~[(a)]~~ (i) seized property that was used to facilitate the commission of an offense that is a violation of federal or state law; ~~[and]~~ or

~~[(b)]~~ (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

## SB0120S01 compared with SB0120

(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;

(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 [~~Subsections (3)(b)(i)(A) through (H)~~] 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 [~~Subsections (3)(b)(i)(A) through (H)~~] 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.

Section ~~{47}~~46. Section **77-11b-103**, which is renumbered from Section 24-4-106 is renumbered and amended to read:

~~[24-4-106]~~. **77-11b-103**. **Trial by jury.**

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

Section ~~{48}~~47. Section **77-11b-104** is enacted to read:

**77-11b-104**. **Venue.**



## SB0120S01 compared with SB0120

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.

Section ~~{49}~~48. Section **77-11b-105**, which is renumbered from Section 24-4-119 is renumbered and amended to read:

**~~[24-4-119].~~ 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 ~~[24-4-115(3)(b)]~~ 77-11b-401(3)(b), a prosecuting agency shall have at least one employee who is certified by the council as an asset

## SB0120S01 compared with SB0120

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.

Section ~~{50}~~49. Section **77-11b-201**, which is renumbered from Section 24-4-103 is renumbered and amended to read:

### **Part 2. Initiating Forfeiture of Seized Property**

~~[24-4-103]~~. **77-11b-201**. **Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

(1) (a) If an agency seeks to forfeit [~~property seized under this title~~] 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 and Retention 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

## SB0120S01 compared with SB0120

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 ~~[title]~~ 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.

Section ~~51~~50. Section **77-11b-202**, which is renumbered from Section 24-4-103.3 is renumbered and amended to read:

~~[24-4-103.3]~~. **77-11b-202**. **Sale of seized property subject to forfeiture.**

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(1) (a) [~~Subject to Subsection (2) and Title 53, Chapter 20, Forensic Biological Evidence Preservation~~] Except for property that is required to be retained or preserved under Chapter 11a, Seizure and Retention of Property and Contraband, 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.

Section ~~{52}~~51. Section **77-11b-203**, which is renumbered from Section 24-4-103.5 is renumbered and amended to read:

~~[24-4-103.5]~~. **77-11b-203**. **Mandatory return of seized property subject to forfeiture.**

(1) [~~Subject to Title 53, Chapter 20, Forensic Biological Evidence Preservation~~] Except for property that is required to be retained or preserved under Chapter 11a, Seizure and

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Retention of Property and Contraband, an agency shall promptly return [~~property seized under this title,~~] 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 [~~24-4-105(3)~~]

77-11b-301(3);

(ii) files a petition to transfer the property to another agency in accordance with Section [~~24-2-105~~] 77-11a-205; or

(iii) files a civil forfeiture complaint under Section [~~24-4-104~~] 77-11b-302; or

(b) the prosecuting attorney or a federal prosecutor obtains a restraining order under Subsection [~~24-4-105(4)~~] 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)[~~5~~] 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 [~~24-2-108~~] 77-11a-504 and the claimant has an extension to provide additional information on the claim under Subsection [~~24-2-108(1)(d)~~] 77-11a-504(1)(d), the deadline under Subsection (1) may be extended by 15 days.

Section ~~{53}~~52. Section **77-11b-204**, which is renumbered from Section 24-4-111 is renumbered and amended to read:

~~[24-4-111]~~. **77-11b-204**. **Compensation for damaged property subject to forfeiture.**

(1) As used in this section, "damage or other injury" does not mean normal depreciation, deterioration, or ordinary wear and tear of the property.

(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

## SB0120S01 compared with SB0120

other injury to seized property while in the possession or custody of the agency.

Section ~~{54}~~53. Section **77-11b-301**, which is renumbered from Section 24-4-105 is renumbered and amended to read:

### Part 3. Forfeiture Proceedings

#### ~~[24-4-105]~~. **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 ~~[24-4-102(1)]~~ 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

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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 ~~[24-4-102(1)]~~ 77-11b-102(1);

(ii) knew of the offense subjecting the property to forfeiture under Subsection ~~[24-4-102(1)]~~ 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 ~~[24-4-102(1)]~~ 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 ~~[24-4-102(1)]~~ 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

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(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 [~~24-4-115~~] 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 [~~24-4-103.3~~] 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



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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

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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 ~~[24-4-102(1)]~~ 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

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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 [~~24-2-105~~] 77-11a-205.

Section ~~{55}~~54. Section **77-11b-302**, which is renumbered from Section 24-4-104 is renumbered and amended to read:

~~[24-4-104]~~. **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;

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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 [~~under Section 24-4-103 and the 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

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~~[24-2-108]~~ 77-11a-504.

(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 ~~[24-2-108]~~ 77-11a-504 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 ~~[24-4-102(1)]~~ 77-11b-102(1);

(ii) knew of the offense subjecting the property to forfeiture under Subsection 24-4-102(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 ~~[24-4-102(1)]~~ 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 ~~[24-4-102(1)]~~ 77-11a-102(1).

(8) If a court finds that the property is the proceeds of an offense that subjects the proceeds to forfeiture under Subsection ~~[24-4-102(1)]~~ 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

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(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 ~~[24-4-103.3]~~ 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 ~~[24-2-105]~~ 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 ~~[24-4-102(1)]~~ 77-11b-102(1).

Section ~~{56}~~55. Section **77-11b-303**, which is renumbered from Section 24-4-113 is renumbered and amended to read:

~~[24-4-113]~~. **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 ~~[24-4-102(1)]~~ 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

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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 [~~24-4-102(1)~~] 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.

Section ~~{57}~~56. Section **77-11b-304**, which is renumbered from Section 24-4-109 is renumbered and amended to read:

~~[24-4-109].~~ **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.

Section ~~{58}~~57. Section **77-11b-305**, which is renumbered from Section 24-4-110 is renumbered and amended to read:

~~[24-4-110].~~ **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.

Section ~~{59}~~58. Section **77-11b-306**, which is renumbered from Section 24-4-112 is renumbered and amended to read:

~~[24-4-112].~~ **77-11b-306. Limitation on fees for holding seized property subject to forfeiture.**

In any civil or criminal proceeding under this [~~chapter~~] 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.

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Section ~~{60}~~59. Section **77-11b-401**, which is renumbered from Section 24-4-115 is renumbered and amended to read:

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

#### **~~[24-4-115]~~. 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 ~~[24-4-118]~~ 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 ~~[24-4-119(3)]~~ 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



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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 23-14-13.

(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 [account] Criminal Forfeiture Restricted Account created in Section 77-11b-402.

Section ~~{61}~~60. Section **77-11b-402**, which is renumbered from Section 24-4-116 is renumbered and amended to read:

**~~[24-4-116].~~ 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 ~~[24-4-115]~~ 77-11b-401, the commission shall deposit any proceeds from ~~[forfeited property and forfeited money]~~ property forfeited through a forfeiture proceeding under this chapter into the [account] Criminal Forfeiture Restricted Account.

(3) ~~[Money in the account shall be appropriated]~~ The Legislature shall appropriate money in the Criminal Forfeiture Restricted Account to the commission for the purpose of implementing the ~~[program under Section 24-4-117]~~ State Asset Forfeiture Grant Program described in Section 77-11b-403.

Section ~~{62}~~61. Section **77-11b-403**, which is renumbered from Section 24-4-117 is renumbered and amended to read:

**~~[24-4-117].~~ 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;

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(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 [~~account~~] 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 [~~24-4-119(2)~~] 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 [~~account~~] 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

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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

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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.

Section ~~63~~62. Section **77-11b-404**, which is renumbered from Section 24-4-118 is renumbered and amended to read:

**~~[24-4-118]~~. 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 ~~[24-4-115(5)]~~ 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;

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- (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 [~~24-4-115(3)(a)~~] 77-11b-401(3)(a);
- (n) the legal costs and attorney fees paid to the prosecuting attorney, as described in Subsection [~~24-4-115(3)(b)~~] 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 [~~24-2-106(3)~~] 77-11a-205(3) justified the transfer;
  - (iv) the court or agency where the forfeiture case was heard;

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(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 [~~24-4-117~~] 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 [~~24-4-117~~] 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 [~~24-2-105(7)~~] 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 [~~24-4-117~~] 77-11b-403, and that the award was used only upon approval by the agency's legislative body.

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(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](http://open.utah.gov) on or before July 15 of each year.

Section ~~(64)~~63. Section **77-11c-101**, which is renumbered from Section 77-24a-1 is renumbered and amended to read:

### CHAPTER 11c. LOST OR MISLAID PROPERTY

~~[77-24a-1]~~. **77-11c-101. Definitions.**

As used in this chapter:

(1) "Lost or mislaid property":

(a) means any property that comes into the possession of a peace officer or law enforcement agency:

(i) that is not claimed by anyone who is identified as the owner of the property; or

(ii) for which no owner or interest holder can be found after a reasonable and diligent search;

(b) includes any property received by a peace officer or law enforcement agency from a person claiming to have found the property; and

(c) does not include property seized by a peace officer [~~pursuant to Title 24, Forfeiture and Disposition of Property Act~~] in accordance with Chapter 11a, Seizure and Retention of Property and Contraband.

(2) "Public interest use" means:

(a) use by a governmental agency as determined by the agency's legislative body; or

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

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Section ~~{65}~~64. Section 77-11c-102, which is renumbered from Section 77-24a-2 is renumbered and amended to read:

~~[77-24a-2]~~. 77-11c-102. **Disposition by police agency.**

All lost or mislaid property coming into the possession of a peace officer or law enforcement agency shall be turned over to, held, and disposed of only by the local law enforcement agency whose authority extends to the area where the item was found.

Section ~~{66}~~65. Section 77-11c-103, which is renumbered from Section 77-24a-3 is renumbered and amended to read:

~~[77-24a-3]~~. 77-11c-103. **Statement of finder of property.**

(1) A person who finds lost or mislaid property and delivers it to a local law enforcement agency shall sign a statement included in a form provided by the agency, stating:

(a) the manner in which the property came into the person's possession, including the time, date, and place;

(b) that the person does not know who owns the property;

(c) that, to the person's knowledge, the property was not stolen;

(d) that the person's possession of the property is not unlawful; and

(e) any information the person is aware of which could lead to a determination of the owner.

(2) Additional information may be requested by the agency receiving the property, as necessary.

Section ~~{67}~~66. Section 77-11c-104, which is renumbered from Section 77-24a-4 is renumbered and amended to read:

~~[77-24a-4]~~. 77-11c-104. **Locating owner of property.**

(1) The local law enforcement agency shall take reasonable steps to determine the identity and location of the owner, and notify the owner that the property is in custody.

(2) The owner may obtain the property only by providing personal identification, identifying the property, and paying any costs incurred by the agency, including costs for advertising or storage.

Section ~~{68}~~67. Section 77-11c-105, which is renumbered from Section 77-24a-5 is renumbered and amended to read:

~~[77-24a-5]~~. 77-11c-105. **Disposition of unclaimed property.**



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(1) (a) If the owner of any lost or mislaid property cannot be determined or notified, or if the owner of the property is determined and notified, and fails to appear and claim the property after three months of [its] the property's receipt by the local law enforcement agency, the agency shall:

(i) publish notice of the intent to dispose of the unclaimed property on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b);

(ii) post a similar notice on the public website of the political subdivision within which the law enforcement agency is located; and

(iii) post a similar notice in a public place designated for notice within the law enforcement agency.

(b) The notice shall:

(i) give a general description of the item; and

(ii) the date of intended disposition.

(c) The agency may not dispose of the lost or mislaid property until at least eight days after the date of publication and posting.

(2) (a) If no claim is made for the lost or mislaid property within nine days of publication and posting, the agency shall notify the person who turned the property over to the local law enforcement agency, if it was turned over by a person under Section [~~77-24a-3~~] 77-11c-103.

(b) Except as provided in Subsection (4), if that person has complied with the provisions of this chapter, the person may take the lost or mislaid property if the person:

(i) pays the costs incurred for advertising and storage; and

(ii) signs a receipt for the item.

(3) If the person who found the lost or mislaid property fails to take the property under the provisions of this chapter, the agency shall:

(a) apply the property to a public interest use as provided in Subsection (4);

(b) sell the property at public auction and apply the proceeds of the sale to a public interest use; or

(c) destroy the property if it is unfit for a public interest use or sale.

(4) Before applying the lost or mislaid property to a public interest use, the agency having possession of the property shall obtain from the agency's legislative body:

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- (a) permission to apply the property to a public interest use; and
- (b) the designation and approval of the public interest use of the property.
- (5) Any person employed by a law enforcement agency who finds property may not

claim or receive property under this section.

Section ~~69~~68. Section 77-37-3 is amended to read:

### **77-37-3. Bill of rights.**

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, Title 77, Chapter 38b, Crime Victims Restitution Act, and Section 80-6-710. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in [~~Sections 77-24a-1 through 77-24a-5~~] Chapter 11a, Seizure and Retention of Property and Contraband, and Chapter 11c, Lost or Mislaid Property. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or

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prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have the following rights:

(i) the right to request voluntary testing for themselves for HIV infection as provided in Section 53-10-803 and to request mandatory testing of the alleged sexual offender for HIV infection as provided in Section 53-10-802;

(ii) the right to be informed whether a DNA profile was obtained from the testing of the rape kit evidence or from other crime scene evidence;

(iii) the right to be informed whether a DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Utah Combined DNA Index System;

(iv) the right to be informed whether there is a match between a DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation; and

(v) the right to designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection (1)(j) and under Subsections (2) and (3).

(k) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing,

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absent a specific request received from the victim or the victim's designee.

(2) The law enforcement agency investigating a sexual offense may:

(a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the request of a victim or the victim's designee and is the designated agency to provide that information to the victim or the victim's designee;

(b) require that the victim's request be in writing; and

(c) respond to the victim's request with verbal communication, written communication, or by email, if an email address is available.

(3) The law enforcement agency investigating a sexual offense has the following authority and responsibilities:

(a) If the law enforcement agency determines that DNA evidence will not be analyzed in a case where the identity of the perpetrator has not been confirmed, the law enforcement agency shall notify the victim or the victim's designee.

(b) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, the law enforcement agency shall provide written notification of that intention and information on how to appeal the decision to the victim or the victim's designee of that intention.

(ii) Written notification under this Subsection (3) shall be made not fewer than 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

(c) A law enforcement agency responsible for providing information under Subsections (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the victim or the victim's designee, shall advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware.

(d) The law enforcement agency investigating the sexual offense is responsible for informing the victim or the victim's designee of the rights established under Subsections (1)(j)(ii) through (iv) and (2), and this Subsection (3).

(4) Informational rights of the victim under this chapter are based upon the victim providing the current name, address, telephone number, and email address, if an email address is available, of the person to whom the information should be provided to the criminal justice agencies involved in the case.

Section ~~{70}~~69. Section **78B-9-104** is amended to read:

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### **78B-9-104. Grounds for relief -- Retroactivity of rule.**

(1) Unless precluded by Section 78B-9-106 or 78B-9-107, an individual who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for postconviction relief to vacate or modify the conviction or sentence upon the following grounds:

(a) the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution;

(b) the conviction was obtained or the sentence was imposed under a statute that is in violation of the United States Constitution or Utah Constitution, or the conduct for which the petitioner was prosecuted is constitutionally protected;

(c) the sentence was imposed or probation was revoked in violation of the controlling statutory provisions;

(d) the petitioner had ineffective assistance of counsel in violation of the United States Constitution or Utah Constitution;

(e) newly discovered material evidence exists that requires the court to vacate the conviction or sentence, because:

(i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or postconviction proceeding, and the evidence could not have been discovered through the exercise of reasonable diligence;

(ii) the material evidence is not merely cumulative of evidence that was known;

(iii) the material evidence is not merely impeachment evidence; and

(iv) viewed with all the other evidence, the newly discovered material evidence demonstrates that no reasonable trier of fact could have found the petitioner guilty of the offense or subject to the sentence received;

(f) the petitioner can prove that:

(i) biological evidence, as that term is defined in Section ~~[53-20-101]~~ 77-11a-101, relevant to the petitioner's conviction was not preserved in accordance with ~~[Title 53, Chapter 20, Forensic Biological Evidence Preservation]~~ Title 77, Chapter 11a, Part 4, Preservation of Biological Evidence for Violent Felony Offenses;

(ii) (A) the biological evidence described in Subsection (1)(f)(i) was not tested

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previously; or

(B) if the biological evidence described in Subsection (1)(f)(i) was tested previously, there is a material change in circumstance, including a scientific or technological advance, that would make it plausible that a test of the biological evidence described in Subsection (1)(f)(i) would produce a favorable test result for the petitioner; and

(iii) a favorable result described in Subsection (1)(f)(ii), which is presumed for purposes of the petitioner's action under this section, when viewed with all the other evidence, demonstrates a reasonable probability of a more favorable outcome at trial for the petitioner;

(g) the petitioner can prove entitlement to relief under a rule announced by the United States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after conviction and sentence became final on direct appeal, and that:

(i) the rule was dictated by precedent existing at the time the petitioner's conviction or sentence became final; or

(ii) the rule decriminalizes the conduct that comprises the elements of the crime for which the petitioner was convicted; or

(h) the petitioner committed any of the following offenses while subject to force, fraud, or coercion, as defined in Section 76-5-308:

(i) Section 58-37-8, possession of a controlled substance;

(ii) Section 76-10-1304, aiding prostitution;

(iii) Section 76-6-206, criminal trespass;

(iv) Section 76-6-413, theft;

(v) Section 76-6-502, possession of forged writing or device for writing;

(vi) Sections 76-6-602 through 76-6-608, retail theft;

(vii) Subsection 76-6-1105(2)(a)(i)(A), unlawful possession of another's identification document;

(viii) Section 76-9-702, lewdness;

(ix) Section 76-10-1302, prostitution; or

(x) Section 76-10-1313, sexual solicitation.

(2) The court may not grant relief from a conviction or sentence unless in light of the facts proved in the postconviction proceeding, viewed with the evidence and facts introduced at trial or during sentencing:

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(a) the petitioner establishes that there would be a reasonable likelihood of a more favorable outcome; or

(b) if the petitioner challenges the conviction or the sentence on grounds that the prosecutor knowingly failed to correct false testimony at trial or at sentencing, the petitioner establishes that the false testimony, in any reasonable likelihood, could have affected the judgment of the fact finder.

(3) (a) The court may not grant relief from a conviction based on a claim that the petitioner is innocent of the crime for which convicted except as provided in Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

(b) Claims under Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence, of this chapter may not be filed as part of a petition under this part, but shall be filed separately and in conformity with the provisions of Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

Section ~~{71}~~70. **Repealer.**

This bill repeals:

Section **24-1-101, Title.**

Section **24-2-101, Title.**

Section **24-2-106, Retention of property.**

Section **24-3-101, Title.**

Section **24-4-101, Title.**

Section **53-20-101, Definitions.**