

32 24-1-3.5, Utah Code Annotated 1953

33 24-1-17, Utah Code Annotated 1953

34 24-1-18, Utah Code Annotated 1953

35 62A-15-113, Utah Code Annotated 1953

36 REPEALS:

37 24-1-8, as last amended by Chapter 185, Laws of Utah 2002

38 24-1-9, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

39 24-1-16, as last amended by Chapter 185, Laws of Utah 2002

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

41 Section 1. Section 24-1-2 is amended to read:

42 **24-1-2. Purpose.**

43 It is the intent of this chapter to:

- 44 (1) provide ~~[for]~~ a uniform set of procedures and substantive standards for the
 45 ~~[criminal and]~~ civil forfeiture of property within the state of Utah;
- 46 (2) permit law enforcement personnel to deter crime by lawfully seizing and forfeiting
 47 contraband and the instrumentalities and proceeds of criminal conduct;
- 48 (3) protect innocent owners and interest holders from the ~~[wrongful taking]~~ forfeiture
 49 of their property;
- 50 (4) ensure that seizures and forfeitures of property from private citizens are ~~[not~~
 51 disproportionate] in proportion to the violation or crime committed;
- 52 (5) ensure direct legislative control and accountability over the use and sale of forfeited
 53 property and ~~[the proceeds generated therefrom]~~ the revenue resulting from the disposal of
 54 forfeited property; and]
- 55 (6) ensure the revenue resulting from property forfeiture allows continued law
 56 enforcement, crime prevention, substance abuse treatment, and other appropriate activities
 57 related to these functions;
- 58 (7) maximize the benefit of federal asset forfeiture sharing for the citizens of the state;
 59 and
- 60 ~~[(6)]~~ (8) direct that any and all revenues resulting from the sale of forfeited property be
 61 ~~[contributed to the Uniform School Fund]~~ allocated between the agencies involved in
 62 investigating, seizing, and prosecuting forfeitures, the Uniform School Fund, and the Division

63 of Substance Abuse and Mental Health, depending on the nature of the offense upon which the
64 forfeiture is based.

65 Section 2. Section 24-1-3 is amended to read:

66 **24-1-3. Definitions.**

67 As used in this section:

68 (1) "Agency" [~~shall mean~~] means any agency of municipal, county, or state
69 government, including law enforcement agencies, law enforcement personnel, and
70 multi-jurisdictional task forces.

71 (2) "Claimant" means:

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

73 (b) any interest holder as defined in this section; and

74 (c) any other person or entity who asserts a claim to any property seized for forfeiture
75 under this section.

76 (3) "Complaint" means a verified civil complaint seeking the forfeiture of any real or
77 personal property pursuant to this chapter.

78 [~~(2)~~] (4) "Contraband" [~~shall mean~~] means any property, item, or substance which is
79 unlawful to produce or to possess under state or federal law.

80 (5) "Controlled substance law enforcement purposes" means:

81 (a) any law enforcement agency action directed toward the reduction of the illegal
82 production, distribution, or use of controlled substances; or

83 (b) any controlled substance abuse education, prevention, or treatment program funded
84 in whole or in part by the seizing agency or its legislative body.

85 (6) (a) "Innocent owner" means an owner or interest holder who held an ownership
86 interest in property at the time the conduct subjecting the property to seizure took place, and:

87 (i) did not have actual knowledge of the conduct subjecting the property to seizure; or

88 (ii) upon learning of the conduct subjecting the property to seizure, took reasonable
89 steps to prohibit the illegal use of the property.

90 (b) "Innocent owner" means an owner or interest holder who acquired an ownership
91 interest in the property after the conduct subjecting the property to seizure has occurred, and
92 had no knowledge that the illegal conduct subjecting the property to seizure had occurred or
93 that the property had been seized for forfeiture, and:

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

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

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

99 (7) (a) "Interest holder" means a secured party as defined in Subsection
70A-9a-102(72), a mortgagee, lien creditor, or the beneficiary of a security interest or
101 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 who holds property for the benefit of or as
an agent or nominee for another person, or who is not in substantial compliance with any
105 statute requiring an interest in property to be recorded or reflected in public records in order to
perfect the interest against a good faith purchaser for value.

107 (8) "Law enforcement purposes" means:

(a) any agency action directed toward enforcing criminal laws or ordinances or
reducing crime; or

(b) any crime reduction education, prevention, or treatment program funded in whole
111 or in part by an agency or its legislative body;

(9) "Legal costs" means the costs and expenses incurred by the prosecuting agency, not
to exceed 20 per cent of the net value of the forfeited property;

(10) "Legislative body" means:

(a) the state legislature, county commission, county council, city commission, city
council, or town council that has fiscal oversight and budgetary approval authority over a
seizing agency or the seizing agency's governing political subdivision; or

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

121 (11) "Multi-jurisdictional task force" ~~shall mean~~ means a law enforcement task
122 force or other agency comprised of persons who are employed by or acting under the authority
of different governmental authorities, including federal, state, county, or municipal
governments, or any combination ~~thereof~~ of these agencies.

(12) "Owner" ~~shall mean~~ means any person or entity, other than an interest

holder as defined in this section, that possesses a bona fide legal or equitable interest in real or personal property[; including a security interest].

(13) "Political subdivision" means the state, any county, city, town, school district, public transit district, special district, redevelopment agency, public corporation, or institution of higher education of the state which forms, governs, or administers a law enforcement agency under the laws of this state.

~~(5)~~ (14) "Property" ~~[shall mean]~~ means all property, whether real or personal, tangible or intangible.

~~(6)~~ (15) "Prosecuting Attorney" ~~[shall mean the public attorney authorized by a specific provision of state law to initiate forfeiture proceedings under this chapter]~~ means the attorney general, and any assistant attorney general, district attorney, deputy district attorney, county attorney, assistant county attorney, or other attorney authorized to commence an action on behalf of the state under this chapter or other provisions of state law.

(16) "Seize for forfeiture" means seizure of property:

(a) by a law enforcement officer or law enforcement agency, including a constructive seizure; and

(b) accompanied by an assertion by the officer or agency or by a prosecuting attorney that the property is seized for forfeiture in accordance with this chapter.

~~(7) "State law" means all Utah law, including municipal, county and state law.]~~

Section 3. Section **24-1-3.5** is enacted to read:

24-1-3.5. Jurisdiction and venue.

(1) The state district court has jurisdiction over any action filed in accordance with this chapter regarding:

(a) all interests in property if the property for which forfeiture is sought is within this state at the time the action is filed; and

(b) the interests of owners or interest holders in the property if the owner or interest holder is subject to the personal jurisdiction of the district court.

(2) (a) In addition to the venue provided for under Title 78, Chapter 13, Place of Trial - Venue, or any other provisions of law, a proceeding for forfeiture under this chapter may be maintained in the judicial district in which:

(i) any part of the property is found; or

56 (ii) a civil or criminal action could be maintained against an owner or interest holder
for the conduct alleged to give cause for the forfeiture.

(b) A claimant may obtain a change of venue under Section 78-13-9.

Section 4. Section 24-1-4 is amended to read:

24-1-4. Forfeiture proceedings -- Agency notice of seizure -- Voiding of forfeiture.

161 (1) An agency which seizes property under any provision of state law subjecting [an
owner's] the property to [civil] forfeiture shall, as soon as practicable, but in no case more than
163 30 days after seizure:

(a) prepare a detailed inventory of all property seized and transfer the seized property
to a designated official within the agency, who shall be responsible for holding and maintaining
166 seized property pending a court order of release or final determination of forfeiture and
disposition of property under this chapter;

(b) notify the prosecuting attorney for the appropriate jurisdiction who is responsible
for initiating [civil] forfeiture proceedings under this chapter of the items of property seized,
the place of the seizure, and any persons arrested at the time of seizure; and

171 (c) give written notice to all owners and interest holders known, or reasonably
discoverable after due diligence, of [~~the following items~~]:

173 (i) the date of the seizure and the property seized;

174 (ii) the owner's or interest holder's rights and obligations under this chapter, including
175 the availability of [~~counsel and~~] hardship relief in appropriate circumstances; and

(iii) [~~an outline~~] a brief description of the [~~steps in the~~] statutory basis for the forfeiture
and the judicial proceedings by which property is forfeited under this chapter.

(2) (a) If the seizing agency fails to provide notice as required in [~~subparagraph (1)(c)~~]
Subsection (1), an owner or interest holder entitled to notice who does not receive notice may
void the forfeiture with respect to the owner's or interest holder's interest in the property by
bringing a motion before the appropriate district court and serving it upon the seizing agency.
[Such] The motion may be brought at any time prior to the final disposition of the property
under this chapter.

184 (b) If an owner or interest holder brings a motion to void the forfeiture for lack of the
185 notice required under [~~subparagraph (1)(c)~~] Subsection (1), the court shall void the forfeiture
186 unless the seizing agency demonstrates:

- ~~[(a)]~~ (i) good cause for the failure to give notice to that owner; or
~~[(b)]~~ (ii) that the owner otherwise had actual notice of the seizure.

189 (3) (a) Within ~~[90]~~ 60 days of any seizure, the prosecuting attorney shall file a
complaint for forfeiture in the appropriate district court and serve a summons and notice of
191 intent to seek forfeiture with a copy of the complaint upon all owners and interest holders
known to the prosecuting attorney to have an interest in the property. Service shall be by one
193 of the following methods:

194 ~~[(i) personal service upon each owner whose name and address is known, or by mailing~~
195 ~~a copy to the last known address; or]~~

196 ~~[(ii) upon all other owners whose addresses are not known, by publication in a~~
newspaper of general circulation in the county where the seizure was made for a period of two
consecutive weeks.]

199 (i) if the owner's or interest holder's name and current address are known, either by
personal service by any person qualified to serve process, by a law enforcement officer, or by
201 certified mail, return receipt requested, to that address;

(ii) if the owner's or interest holder's name and address are required by law to be on
record with any state agency in order to perfect an interest in property, and the owner's or
interest holder's current address is not known, by mailing a copy of the notice by certified mail,
return receipt requested, to the most recent address listed by any of those agencies; or

206 (iii) If the owner's or interest holder's address is not known and is not on record as
provided in Subsections (3)(a)(i) or (ii), by publication for two successive weeks in a
newspaper of general circulation in the county in which the seizure occurred.

209 (b) Notice is effective upon the earlier of personal service, publication, or the mailing
of a written notice.

211 (c) The summons and notice of intent to seek forfeiture shall:

212 (i) be addressed to the seized property's known owners and interest holders, and to the
213 person from whom the property was seized;

214 (ii) contain the name, business address, and business telephone number of the
215 prosecuting attorney seeking the forfeiture; and

216 (iii) contain:

217 (A) a description of the property which is the subject matter of the forfeiture

proceeding;

(B) notice that a complaint for forfeiture has been or will be filed;

(C) the time and procedural requirements for filing an answer or claim;

(D) notice of the availability of hardship or bond release of the property; and

(E) notice that failure to file an answer or other claim to the seized property will result in a default judgment against the seized property.

~~(b)~~ (d) The complaint shall describe with reasonable particularity:

(i) the property which is the subject matter of the forfeiture proceeding;

(ii) the date and place of seizure; and

(iii) the allegations which constitute a basis for forfeiture.

(4) (a) If the prosecuting attorney does not timely file a complaint for forfeiture of the property in accordance with ~~[subparagraph]~~ Subsection (3), the agency shall promptly return the property to its owner and the prosecuting attorney ~~[shall]~~ may take no further action to effect the forfeiture of ~~[such]~~ the property.

(b) If the agency knows of more than one owner, it shall return the property to the owner who was in possession at the time of the seizure.

(5) In any case where the prosecuting attorney files a complaint for forfeiture of property, an owner or interest holder may file a claim and an answer to the complaint. The claim and answer shall be filed within 30 days after the complaint is served in person or by mail, or where applicable, within 30 days after publication under ~~[subparagraph (3)(a)(iii)]~~ Subsection (3).

(6) (a) Except as otherwise provided in this chapter, ~~[civil]~~ forfeiture proceedings are governed by the Utah Rules of Civil Procedure.

(b) The court shall take all reasonable steps to expedite forfeiture proceedings ~~[and shall give such proceedings the same priority as is given to criminal cases]~~.

(c) In all suits or actions brought for the ~~[civil]~~ forfeiture of any property under this chapter, the burden of proof is on the prosecuting attorney to establish, by clear and convincing evidence, to what extent, if any, property is subject to forfeiture.

(d) The right to trial by jury applies to ~~[civil]~~ forfeiture proceedings under this chapter.

Section 5. Section ~~24-1-6~~ is amended to read:

24-1-6. Innocent owners.

249 (1) An innocent owner's or interest holder's interest in property ~~[shall]~~ may not be
forfeited ~~[civilly]~~ under any provision of state law.

(2) The prosecuting attorney ~~[shall have]~~ has the burden of establishing by clear and
convincing evidence that an ~~[individual is not an innocent]~~ owner~~[:]~~ or interest holder:

254 (a) is criminally responsible for the conduct giving rise to the forfeiture, whether or not
there is a prosecution or conviction;

(b) knew of or could reasonably have been expected to know of the conduct giving rise
to the forfeiture, and allowed the property to be used in furtherance of the conduct;

(c) acquired the property with notice of its actual or constructive seizure for forfeiture
under this chapter;

(d) acquired the property with reason to believe the property was subject to forfeiture
under this chapter; or

261 (e) acquired the property in an effort to conceal, prevent, hinder, or delay its lawful
seizure or forfeiture under any provision of state law.

264 ~~[(3) With respect to an ownership interest in existence at the time the conduct
subjecting the property to seizure took place, the term "innocent owner" means an owner who:]~~

265 ~~[(a) did not have actual knowledge of the conduct subjecting the property to seizure;~~
266 ~~or]~~

267 ~~[(b) upon learning of the conduct subjecting the property to seizure, took reasonable
268 steps to prohibit such use of the property.]~~

269 ~~[(4)]~~ (3) For purposes of ~~[subparagraph (3)(b)]~~ this chapter, ~~[no]~~ an owner ~~[shall]~~ or
270 interest holder may not be required to take steps that he reasonably believes would be likely to
271 ~~[subject any person (other than the person whose conduct gave rise to the forfeiture) to]~~ result
272 in physical harm or danger to any person. An owner or interest holder may demonstrate that he
273 took reasonable action to prohibit ~~[such]~~ the illegal use of the property by, for example:

274 (a) timely notifying a law enforcement agency of information that led the owner to
275 know that conduct subjecting the property to seizure would occur, was occurring, or has
276 occurred; ~~[or]~~

277 (b) timely revoking or attempting to revoke permission for those engaging in ~~[such]~~ the
278 illegal conduct to use the property; or

279 (c) taking reasonable actions to discourage or prevent the illegal use of the property.

~~[(5) With respect to an ownership interest acquired after the conduct subjecting the property to seizure has occurred, the term "innocent owner" means a person who, at the time he~~
 282 ~~acquired the interest in the property, had no knowledge that the illegal conduct subjecting the property to seizure had occurred or that the property had been seized for forfeiture, and:]~~

~~[(a) acquired the property in a bona fide transaction for value;]~~

~~[(b) was a person, including a minor child, who acquired an interest in property through probate or inheritance, or]~~

287 ~~[(c) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.]~~

~~[(6)] (4) No owner may assert, under this paragraph, an ownership interest in contraband.~~

(5) Property is presumed to be subject to forfeiture under this chapter if the prosecuting attorney establishes, by clear and convincing evidence, that:

(a) the owner or interest holder has engaged in conduct giving cause for forfeiture;

(b) the property was acquired by the owner or interest holder during that period of the conduct giving cause for forfeiture or within a reasonable time after that period; and

(c) there was no likely source for the purchase or acquisition of the property other than the conduct giving cause for forfeiture.

(6) A finding that property is the proceeds of conduct giving cause for forfeiture does not require proof that the property was the proceeds of any particular exchange or transaction.

Section 6. Section 24-1-7 is amended to read:

24-1-7. Property management and preservation -- Hardship release of seized property.

(1) Property seized for forfeiture under this chapter is not subject to:

(a) alienation, conveyance, sequestration, or attachment; or

(b) return under Section 77-24-2.

(2) The seizing agency or the prosecuting attorney may authorize the release of property seized for forfeiture to its owner if retention of actual custody is unnecessary.

309 (3) With the consent of a court of competent jurisdiction, the prosecuting attorney may
 310 discontinue forfeiture proceedings and transfer the action to another state or federal agency
which has initiated forfeiture proceedings involving the same property.

(4) Property seized for forfeiture is considered to be in the custody of the district court and subject only to:

(a) the orders and decrees of the court having jurisdiction over the property or the forfeiture proceedings; and

315 (b) the acts of the seizing agency or the prosecuting attorney pursuant to this chapter.

317 (5) (a) An owner of property seized pursuant to the this chapter may obtain release of the property by posting with the district court a surety bond or cash in an amount equal to the current fair market value of the property as determined by the court or by the parties' stipulation.

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

(i) the bond tendered is inadequate;

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

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

(c) If a surety bond or cash is posted and the property seized and then released on a bond or cash is forfeited, the court shall forfeit the surety bond or cash in lieu of the property.

327 (6) (a) As soon as practicable after seizure for forfeiture, and in no case later than 30
328 days after seizure for forfeiture, the seizing agency shall conduct a written inventory of the property seized.

330 (b) The seizing agency shall deposit property that is in the form of cash or other readily
331 negotiable instruments into a restricted account maintained by the agency solely for the purpose
332 of managing and protecting the property from commingling, loss, or devaluation during the
333 pendency of the forfeiture proceedings.

334 (c) The seizing agency shall have in place written policy for the identification, tracking,
335 management, and safekeeping of seized property, which shall include a prohibition against the
336 transfer, sale, or auction of forfeited property to any employee of the seizing agency.

337 (d) A seizing agency may not be awarded any portion of forfeited property or proceeds
338 if the agency at the time of seizure had not established or maintained the restricted account and
339 written policies required by this Subsection (6).

340 (+) (7) An owner is entitled to the immediate release of seized property from the
341 seizing agency pending the final determination of [civil] forfeiture if:

(a) the owner ~~[has]~~ had a possessory interest in the property at the time of seizure;

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

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

(ii) preventing any individual from working;

(iii) preventing any minor child or student from attending school;

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

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

~~[(vi) preventing an owner from retaining counsel to provide a defense in the forfeiture proceeding, or]~~

~~[(vii) (vi) leaving any individual homeless[:]; or~~

~~(vii) any other condition that the court determines causes a substantial hardship; [and]~~

(c) the hardship from the continued possession by the agency of the seized property substantially outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the owner during the pendency of the proceeding[:]; and

(d) substantial hardship under this Subsection (7) is determined based upon the property's use prior to the seizure.

359 ~~[(2) The right to appointed counsel under Section 24-1-9 applies throughout civil forfeiture proceedings, including an owner's motion for hardship release.]~~

361 (8) An owner may file a motion for hardship release:

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

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

(9) The motion for hardship release must also be served upon the prosecuting attorney and the seizing agency within ten days after filing the motion.

~~[(3) (10) The court shall render a decision on a motion [or complaint] for hardship release filed under [Subsection (2)] this section not later than [ten] 20 days after the date of filing, or ten days after service upon the prosecuting attorney and seizing agency, whichever is earlier, unless [the ten-day] this period is extended by the [consent of the] parties or by the court for good cause shown.~~

~~[(4) (11) (a) If the owner demonstrates substantial hardship pursuant to [subparagraph~~

(+) this section, the court shall order the property immediately released to the owner pending completion of proceedings by the government to obtain forfeiture of the property.

376 (b) The court may place [~~such~~] conditions on release of the property as it finds [~~are~~] necessary and appropriate to preserve the availability of the property or its equivalent for forfeiture.

[~~(5)~~] (12) [~~Subparagraph (+) shall~~] The hardship release does not apply if the seized property is:

(a) contraband;

(b) currency or other monetary [~~instrument~~] instruments or electronic funds[~~, unless such property is used to pay for the costs of defending against the forfeiture proceeding or constitutes the assets of a legitimate business~~]; or

(c) likely to be used to commit additional illegal acts if returned to the owner.

387 (13) (a) The court may order property which has been seized for forfeiture to be sold as allowed by Subsection (14), leased, rented, or operated to satisfy a specified interest of any owner or interest holder, or to preserve the interests of any party on motion of that party.

388 (b) The court may enter orders under Subsection (13)(a) after notice to persons known
389 to have an interest in the property, and after an opportunity for a hearing.

390 (14) A sale may be ordered under Subsection (13) when the property is liable to perish,
391 waste, be foreclosed, or significantly reduced in value, or when the expenses of maintaining the
392 property are disproportionate to its value. A third party designated by the court shall dispose of
393 the property by commercially reasonable public sale and distribute the proceeds in the
394 following order of priority:

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

396 (b) second, for the satisfaction of exempt interests in the order of their priority as
397 determined by Title 70A, Uniform Commercial Code; and

398 (c) third, any balance of the proceeds shall be preserved in the actual or constructive
399 custody of the court, in an interest bearing account, subject to further proceedings under this
400 chapter.

401 Section 7. Section 24-1-10 is amended to read:

402 **24-1-10. Prejudgment and postjudgment interest.**

403 In any [~~civil or criminal~~] proceeding to forfeit currency or other negotiable instruments

under this chapter, the court shall award a prevailing [owner] prejudgment and postjudgment interest on the currency or negotiable instruments at the legal rate of interest established by Section 15-1-1.

Section 8. Section 24-1-11 is amended to read:

24-1-11. Attorneys' fees and costs.

(1) In any ~~[civil or criminal]~~ proceeding to forfeit seized property under this chapter, the court ~~[shall]~~ may award a prevailing [owner] party reasonable attorneys' fees and other costs of ~~[suit] of litigation~~ reasonably incurred ~~[by the owner. An owner who prevails only in part shall be entitled to recover reasonable attorneys' fees and reasonable costs of suit related to those issues on which he prevailed].~~

(2) In determining whether or not to award attorneys' fees and costs, the court shall consider the merit of each parties' allegations and pleadings, and whether a seizure, complaint, claim, or answer was reasonable and based upon good faith, or was made for any improper purpose.

Section 9. Section 24-1-12 is amended to read:

24-1-12. Compensation for damaged property.

(1) ~~[In any civil or criminal proceeding,]~~ If property seized for forfeiture is returned by operation of this chapter, an owner ~~[shall have]~~ has a ~~[private]~~ civil right of action against a seizing agency for any claim based upon the negligent destruction, loss, damage, or other injury to seized property while in the possession or custody of ~~[a state]~~ the agency~~[, if the property was seized for the purpose of initiating forfeiture proceedings under this chapter].~~

(2) ~~[For the purposes of]~~ As used in this section, "damage or other injury" does not include normal depreciation, deterioration, or ordinary wear and tear.

Section 10. Section 24-1-13 is amended to read:

24-1-13. Limitation on fees for holding seized property.

In any ~~[civil or criminal]~~ proceeding under this chapter in which a judgment is entered in favor of an owner, ~~[or where a forfeiture proceeding against an owner is voluntarily dismissed by the prosecuting attorney,]~~ the seizing agency ~~[shall be prohibited from charging]~~ may not charge that owner any fee for holding the seized property.

Section 11. Section 24-1-14 is amended to read:

24-1-14. Proportionality.

435 (1)(a) An owner's interest in property, excluding contraband, ~~shall~~ is not ~~be civilly or criminally forfeited~~ subject to forfeiture under ~~[a] any~~ provision of state law ~~[unless such] if~~ the forfeiture is ~~[substantially proportional]~~ grossly disproportional to ~~[both]~~ the use of the property in committing or facilitating a violation of state law and the value of the property.

441 (b) Forfeiture of property used solely in a manner that is merely incidental and not instrumental to the commission or facilitation of a violation of law is not proportional~~[, as a matter of law].~~

444 (2)(a) In determining proportionality, the court shall first consider the conduct giving cause for the forfeiture, and what portion of the forfeiture, if any, is remedial in nature. The court shall then compare the remaining forfeiture property to the gravity of the conduct for which the claimant is responsible in light of the offense.

(b) If the court finds that the forfeiture is grossly disproportional to the conduct for which the claimant is responsible, it shall reduce or eliminate the forfeiture, as it finds appropriate.

450 (3)(a) The prosecuting attorney has the burden to demonstrate that any forfeiture is proportional to an alleged violation of state law. ~~[It is the province of the court, not the jury, to decide questions of proportionality.]~~

452 (b) All proceedings in determining whether a forfeiture is grossly disproportional shall be at a hearing conducted by the court without a jury.

454 Section 12. Section 24-1-15 is amended to read:

455 **24-1-15. Transfer and sharing procedures.**

456 ~~[(1) For purposes of this section, property is deemed to be "seized" whenever any agency takes possession of the property or exercises any degree of control over the property.]~~

458 ~~[(2)(a) Seizing agencies or prosecuting attorneys authorized to bring civil or criminal forfeiture proceedings under this chapter shall not directly or indirectly transfer seized property to any federal agency or any governmental entity not created under and subject to state law unless the court enters an order, upon petition of the prosecuting attorney, authorizing the property to be transferred. The court may not enter an order authorizing a transfer unless:]~~

463 ~~[(i) the activity giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify such transfer;]~~

465 ~~[(ii) the seized property may only be forfeited under federal law; or]~~

~~[(iii) pursuing forfeiture under state law would unduly burden prosecuting attorneys or state law enforcement agencies.]~~

468 ~~[(b) Notwithstanding Subparagraph (2)(a), the court may refuse to enter an order authorizing a transfer to the federal government if such transfer would circumvent the protections of the Utah Constitution or this chapter that would otherwise be available to the property owner.]~~

~~[(c) Prior to granting any order to transfer pursuant to Subparagraph (2)(a), the court must give any owner the right to be heard with regard to the transfer.]~~

~~[(3) (a) All property, money or other things of value received by an agency pursuant to federal law which authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to an agency shall be promptly transferred to the state treasurer and sold and deposited in the Uniform School Fund as provided under Section 24-1-16.]~~

~~[(b) Subject to Subparagraph (3)(a), state]~~

~~(1) State agencies are encouraged to seek an equitable share of property forfeited by the federal government and to cooperate with federal law enforcement agencies in all cases in which [such] cooperation is in the interest of this state.~~

483 ~~(2) In order for any property seized for forfeiture to be transferred to an agency of the federal government for federal forfeiture proceedings:~~

~~(a) the district court with jurisdiction over the seized property must authorize the transfer; or~~

~~(b) the federal agency seeking jurisdiction over the property must obtain a seizure warrant, search warrant, arrest warrant in rem, or other federal process mandating the transfer.~~

~~(3) Each agency awarded any equitable share of property forfeited by the federal government shall file a report with the state auditor at least annually, in a form specified by the auditor, which provides details of all awards received from the federal government during the preceding reporting period, including for each award:~~

~~(a) the agency's case number or other identification;~~

~~(b) the amount of the award;~~

~~(c) the date of the award;~~

~~(d) the identity of the federal agency involved in the forfeiture; and~~

(e) how the awarded property has been used.

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~~[(4) Any agency that violates Subparagraph (2) or (3) is civilly liable to the state for three times the amount of the forfeiture diverted and for costs of suit and reasonable attorneys' fees. Any damages awarded to the state shall be paid to the Uniform School Fund. Any agent, including state law enforcement officers who are detached to, deputized or commissioned by, or working in conjunction with a federal agency, who knowingly transfers or otherwise trades seized property in violation of Subparagraph (2)(a) or who receives property, money or other things of value under Subparagraph (3)(a) and knowingly fails to transfer such property to the state treasurer is guilty of a class B misdemeanor.]~~

Section 13. Section 24-1-17 is enacted to read:

24-1-17. Disposition and allocation of forfeiture property.

(1) (a) The prosecuting attorney may include in the complaint seeking forfeiture, or in a motion filed prior to judgment being entered, a request that the political subdivision for the seizing agency be awarded the property.

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(b) The request shall include a statement demonstrating to the court that the agency has established the restricted accounts, policies, and protocol for managing seized property as required under Section 24-1-7, and has filed all reports required by this chapter.

(2) The court shall order the property forfeited to the state, and the seizing agency shall then transfer possession, custody, and control of the property immediately to the state treasurer's office, if:

(a) no award request is made by the prosecuting attorney on behalf of the seizing agency;

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(b) the court finds that the request does not meet the requirements of this chapter; or

(c) the court finds the seizing agency is not in compliance with the requirements of this chapter.

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(3) (a) When forfeited property is transferred to the state under Subsection (2), the state treasurer shall authorize a public or otherwise commercially reasonable sale of that property which is not required by law to be destroyed and is not harmful to the public.

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(b) The proceeds of the forfeited property shall remain segregated from other property, equipment, or assets of the state.

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(4) (a) From the forfeited property, and the proceeds or revenue from the property, the

528 state treasurer shall first reimburse the seizing agency's costs in maintaining the property pending forfeiture and pay the legal costs to the prosecuting agency for the prosecution of the forfeiture proceeding.

(b) One half of the remaining forfeited property shall then be deposited in the Uniform School Fund, and the remaining one half shall be deposited in the Substance Abuse Forfeiture Account created in Section 62A-15-113 for appropriation by the legislature.

(5) (a) If an award request is made by the prosecuting attorney on behalf of the seizing agency, and the court grants the request, the court shall order the property forfeited to the seizing agency's political subdivision.

538 (b) The seizing agency's political subdivision shall authorize a public or otherwise commercially reasonable sale of that property which is not required by law to be destroyed and is not harmful to the public. The proceeds of the awarded forfeited property shall remain segregated from other property, equipment, or assets of the seizing agency, its political subdivision, and its legislative body.

543 (c) The seizing agency or its political subdivision shall pay the legal costs of the forfeiture proceeding to the prosecuting agency responsible for the forfeiture.

(6) (a) The political subdivision awarded the property shall place the forfeited property within the custody or control of a designated official within the seizing agency or within the political subdivision, who shall be responsible for holding and maintaining forfeited and awarded property pending final disposition of the property.

(b) The designated official shall account for all forfeited property to the political subdivision's legislative body and to the state auditor in the format as required under Section 24-1-15.

551 (7) (a) If the forfeiture arises from any violation of Section 23-20-1 relating to wildlife resources, the court shall:

553 (i) direct that the legal costs of the forfeiture proceeding be paid to the prosecuting
554 agency; and

555 (ii) direct that the net forfeited property after the legal costs shall be deposited in the
556 Wildlife Resources Account created in Section 23-14-13.

557 (b) If the forfeiture arises from any violation of Sections 32A-13-103; 41-6-13.7;
558 76-3-501; 76-10-1107; 76-10-1108, 76-10-1603.5 or 76-10-1908, the court shall direct that:

(i) the legal costs of the forfeiture proceeding be paid to the prosecuting agency;

(ii) one-half of the net forfeited property after the legal costs shall be awarded to the seizing agency's political subdivision and that the legislative body of the political subdivision shall appropriate the proceeds to the seizing agency for law enforcement purposes; and

(iii) the remaining one-half shall be immediately deposited in the Uniform School Fund.

(c) If the forfeiture arises from any violation of Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Imitation Controlled Substances Act, or 37d, Utah Controlled Substance Precursor Act, the court shall direct that:

(i) the legal costs of the forfeiture proceeding be paid to the prosecuting agency;

(ii) one-half of the net forfeited property after the legal costs shall be awarded to the seizing agency's political subdivision and that the legislative body of the political subdivision shall appropriate the proceeds to the seizing agency for controlled substance law enforcement purposes; and

(iii) the remaining one-half shall be immediately deposited in the Substance Abuse Forfeiture Account created in Section 62A-15-113 for appropriation by the legislature.

(8) (a) The forfeited property and proceeds or revenues resulting from forfeited property shall be maintained in a separate and restricted account by seizing agencies receiving any appropriation of these proceeds or revenues.

(b) An agency's appropriations and expenditures of forfeited property, or the proceeds or revenue from the property shall all be approved by the seizing agency's legislative body.

(9) The state treasurer shall maintain an accounting of all properties which are forfeited and subsequently sold and all proceeds resulting from the sale. The state auditor shall perform an annual audit of the proceeds and communicate the results of the audit to the state treasurer and to the legislature. All accounting and audit records generated under this Subsection (9) shall be available and open to the public.

Section 14. Section **24-1-18** is enacted to read:

24-1-18. Criminal Property Forfeiture Account created -- Revenue sources -- Use of account designated.

(1) (a) There is created in the General Fund a restricted account called the "State Law

Enforcement Forfeiture Account."

594 (b) All monies awarded to the state, the Department of Public Safety, or the
595 Department of Corrections, or any division or agency within either department, through federal
asset forfeiture equitable sharing or through forfeitures arising under Section 24-1-16 shall be
deposited into the State Law Enforcement Forfeiture Account.

598 (c) All monies previously deposited, or currently held in the Drug Forfeiture Account
599 created in Section 58-37-20, and that were in that account when it was repealed by Statewide
600 Initiative B on November 7, 2000, shall be transferred to and deposited in the State Law
601 Enforcement Forfeiture Account created in Subsection (1).

602 (2) The Department of Public Safety and the Department of Corrections may expend
603 amounts as appropriated by the Legislature from the State Law Enforcement Forfeiture
604 Account for law enforcement purposes or controlled substance law enforcement purposes as
605 specified in this chapter.

606 (3) That portion of funds forfeited or that are required to be disbursed to other
607 governmental entities under existing contractual agreements or statutory requirements are
608 exempt from this section.

609 (4) Funds forfeited as a result of the Salt Lake Airport Drug Program, not to exceed the
610 Department of Public Safety's expenditure to that program, are exempt from this section.

611 (5) The Department of Public Safety and the Department of Corrections, as part of the
612 annual legislative budget hearings, shall provide the Executive Offices and Criminal Justice
613 Appropriations Subcommittee and the Health and Human Services Appropriations
614 Subcommittee with a complete accounting of expenditures and revenues from the funds under
615 this section.

616 (6) The legislature may annually provide, in the appropriations act, legislative direction
617 for anticipated expenditures of the monies received under this section.

618 Section 15. Section 62A-15-113 is enacted to read:

619 **62A-15-113. Substance Abuse Forfeiture Account created -- Revenue sources --**
620 **Use of account designated.**

621 (1) (a) There is created in the General Fund a restricted account called the "Substance
622 Abuse Forfeiture Account."

623 (b) All monies awarded to or paid to the State of Utah, Division of Substance Abuse

621 and Mental Health, through forfeitures arising under Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act, shall be deposited into the Substance Abuse Forfeiture Account.

(2) The Division of Substance Abuse and Mental Health shall expend amounts as appropriated by the legislature from the Substance Abuse Forfeiture Account to aid in the creation, administration, or operation of drug courts and drug boards throughout the state through grants, awards, and contracts with drug courts and drug boards.

(3) The Division of Substance Abuse and Mental Health, as part of the annual budget hearings, shall provide the Executive Offices and Criminal Justice Appropriations Subcommittee and the Health and Human Services Appropriations Subcommittee with a complete accounting of expenditures and revenues from the funds under this section.

631 (4) The legislature may annually provide, in the appropriations act, legislative direction for anticipated expenditures of the monies received under this section.

Section 16. Repealer.

This act repeals:

Section 24-1-8, Criminal procedures.

Section 24-1-9, Appointment of counsel for indigent claimants in civil and criminal forfeiture proceedings.

Section 24-1-16, Disposition of proceeds from criminal or civil forfeiture.

Section 17. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah
642 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.