

2003 FL 0331
Proposed Forfeiture Revisions

Section 1 - 24-1-2 Purposes

- Adds Interest Holder protection language.
- Adds law enforcement, crime prevention, substance abuse treatment as uses for forfeited property.
- Adds language regarding federal equitable sharing.
- Adds language allowing allocation of forfeitures. - *back to law enforcement*

Section 2 - 24-1-3 Definitions

- Adds definition of "Claimant".
- Adds definition of "Complaint".
- Adds definition of "Controlled Substance Law Enforcement Purposes".
- Adds definition of "Innocent Owner", and includes innocent interest holders in definition.
- Adds definition of "Interest Holder".
- Adds definition of "Law Enforcement Purposes".
- Adds definition of "Legal Costs".
- Adds definition of "Legislative Body".
- Amends definition of "Owner".
- Adds definition of "Political Subdivision".
- Amends definition of "Prosecuting Attorney".
- Adds definition of "Seize For Forfeiture".

Section 3 - 24-1-3.5 Jurisdiction and Venue

- Creates and delineates jurisdiction and venue for forfeiture cases.
- Gives Claimants right to seek changes of venue.

Section 4 - 24-1-4 Forfeiture Proceedings

- Includes interest holders with owners in Notice and Set Aside rights.
- Changes time requirement for filing forfeiture complaints from 90 days to 60 days.
- Requires service of Summons and Notice of Intent to Seek Forfeiture, as well as Complaint. Requires service on owners and interest holders.
- Requires service by mail to be by Certified Mail, as opposed to regular delivery.
- Requires service at registered addresses when they exist of record with state agencies.
- Delineates required contents of Summons and Notice of Intent to Forfeit.
- Gives interest holders the same right to file claims for property as owners.

Section 5 – 24-1-6 Innocent Owners

- Extends innocent owner protections to innocent interest holders.
- Maintains burden of proof at “clear and convincing”.
- Requires government to establish that owner or interest holder do not qualify for innocent owner protections.
- Delineates involvement required to establish when an owner or interest holder is not innocent.
- Adds common sense presumption as to the proceeds of criminal conduct.

Section 6 – 24-1-7 Property Management and Preservation

- Protects property seized and subject to forfeiture from other legal process until forfeiture case is determined.
- Allows immediate release by seizing agency or prosecutor when continued seizure or impound of the property is determined to be unnecessary.
- Allows courts to approve transfers to other jurisdictions to prevent claimants from fighting in more than one jurisdiction at the same time.
- Places all property seized for forfeiture under the jurisdiction of courts.
- Allows owners and interest holders who do not qualify for hardship release to post bond and obtain release of property pending forfeiture, and allows forfeiture of bond in lieu of actual seized property.
- Requires seizing agency to inventory seized property within 30 days of seizure.
- Requires seizing agency to deposit cash and negotiable instruments in a restricted account pending the outcome of forfeiture proceedings.
- Requires seizing agency to have in place a written policy for the identification, tracking, management, and safekeeping of seized property. This policy must include a prohibition against the transfer, sale, or auction of forfeited property to any employee of the seizing agency.
- Prohibits any awards to seizing agencies not in compliance with these requirements.
- Amends hardship release conditions to delete ability to use criminal proceeds to pay attorney’s fees.
- Requires that petitions for hardship release of seized property be served upon the prosecuting attorney prior to a hearing on the petition.
- Sets time limits for Courts in determining hardship release petitions.
- Allows courts, upon motion of either party or stipulation of property to take all measures necessary to conserve and protect seized property during forfeiture proceedings.

Section 7 – 24-1-10 Prejudgment and Postjudgment Interest

- Amends current provisions to allow any party, including owners or interest holders, to seek pre-judgment and post-judgment interest awards from courts.

Section 8 – 24-1-11 Attorney’s Fees and Costs

- Amends current provisions to allow any party, including owners or interest holders, to seek attorney’s fees and costs from court upon conclusion of forfeiture proceedings.
- Allows courts discretion in awarding attorney’s fees and costs.
- Delineates types of cases where attorney’s fees and costs awards may be appropriate.

Section 9 – 24-1-12 Compensation For Damaged Property

- Amends current provisions to make clear that owners or interest holders who win forfeiture cases and are returned damaged property have a claim against the agency that maintained custody of the property after seizure.

Section 10 – 24-1-13 Limitation on Fees For Holding Property

- Maintains prohibition on charging holding fees on property ultimately awarded by courts to claimants.
- Deletes prohibition on charging holding fees for property returned prior to court order.

Section 11 – 24-1-14 Proportionality

- Technical amendments.
- Adopts definitions and terms from current Utah and United States Supreme Court case precedents regarding proportionality requirement of forfeitures.
- Maintains burden on prosecutors to establish proportionality.
- Maintains proportionality determination as question of law for court to decide.

Section 12 – 24-1-15 Transfer and Sharing Procedures

- Repeals prohibitions on federal equitable sharing.¹
- Repeals prohibitions on transferring seized property to federal authorities for federal forfeiture when the United States asserts jurisdiction over the property.²
- Repeals provisions that violate USDOJ policies and render Utah ineligible for federal equitable sharing and grants.
- Maintains current language encouraging seeking equitable sharing forfeitures.
- Adds reporting requirements for agencies receiving federal equitable sharing funds.

¹ United States Department of Justice correspondence estimates that this will result in the immediate transfer of 3.393 million dollars to Utah law enforcement agencies.

² United States Department of Justice correspondence estimates that this will result in approximately 1-2 million dollars of federal equitable sharing with Utah law enforcement agencies annually, as well result in Utah law enforcement agencies being eligible for up to 16 million dollars in federal grants. Absent this change, USDOJ estimates that Utah will lose approximately 17 million dollars annually in federal equitable sharing and grants.

Section 13 – 21-1-17 Disposition and allocation of forfeited property.

- Allows property forfeited under state law to be awarded to political subdivisions.
- Requires court to make finding that seizing agency complies with all requirements of chapter before property can be awarded to the agency's political subdivision.
- Requires awarded forfeited property to be segregated from all other political subdivision funds.
- Requires all non-awarded forfeited property to be immediately transferred to the State, with 50% transferred to Uniform School Fund and 50% transferred to the Substance Abuse Forfeiture Fund.
- Requires political subdivisions to designate an official who will maintain custody of forfeited property and be responsible for sale, transfers and allocations required by state law.
- Requires accounting of forfeited property to legislative bodies and State Auditor.
- Allows all property forfeited pursuant to the Wildlife Code to be deposited in the Wildlife Resources Account.³
- Requires all awarded property forfeited pursuant to any provision of law other than wildlife and controlled substance forfeitures to be split, after payment of legal costs, between the Uniform School Fund (50%) and the seizing agency's political subdivision for limited law enforcement purposes (50%).
- Requires all awarded property forfeited pursuant to violations of controlled substance laws to be split, after payment of legal costs, between the Substance Abuse Forfeiture Account (50%) and the seizing agency's political subdivision for limited controlled substance law enforcement purposes.
- Establishes reporting and accounting requirements and maintains these records and reports as open to the public.

Section 14 – 24-1-18 Criminal Property Forfeiture Account

- Creates a general fund restricted account called the Criminal Property Forfeiture Account.
- Specifies prior Drug Forfeiture Account, DPS and Corrections equitable sharing and awarded forfeitures as source of funds for this account.⁴
- Requires legislative appropriations before funds are spent from this account.
- Limits uses of account to law enforcement and controlled substance law enforcement purposes approved and appropriated by the legislature.

³ This account had been providing approximately \$ 80,000.00 annually to the Uniform School Fund. Initiative B id away with this funding source, resulting in a net loss to the Uniform School Fund of \$ 80,000.00 annually.

⁴ This restores approximately \$ 180,000.00 to the general fund, rendered unusable by effects of Initiative B.

Section 15 – 62A-15-113 Substance Abuse Forfeiture Account

- Creates a general fund restricted account called the Substance Abuse Forfeiture Account.
- Specifies non-awarded and awarded forfeiture sharing as source of funds for this account.
- Requires legislative appropriations before monies can be expended from this account.
- Limits uses of account to drug courts and drug boards as appropriated by legislature.

Section 16 – Repealer

- Repeals UCA §24-1-8 – Criminal Procedures
- Repeals UCA §24-1-9 – Appointment of Counsel
- Repeals UCA §24-1-16 –Disposition of Proceeds