

**Before amending the forfeiture law, the Legislature should require a study and a detailed report of whether and how the new forfeiture law has been implemented:**

*Utah Code* § 24-1-16(4) requires the State Treasurer to maintain an accounting of all forfeitures, sales, and proceeds, and the State Auditor to perform an annual audit of such proceeds and communicate the results of the audit to the State Treasurer and the Legislature and to make them public. Despite the law's oversight requirements:

According to state court records<sup>1</sup>, 154 forfeiture cases were decided in FY 2002 after the new law took effect, yet --

No annual audit of forfeiture proceeds has been performed, and it is not clear that one is being performed;

No accounting has been rendered to the legislature by the State Treasurer;

No forfeiture funds have been deposited in the Uniform School Fund as required.

**Where has the money gone?** Surely some of these 154 forfeitures generated funds, but legislators and the public have no access to an audit or accounting of the forfeitures or where the proceeds have gone, or how much money should have been deposited in the Uniform School Fund.

The State Treasurer's Office received appropriations of \$100,000 in FY2001 and \$200,000 in FY 2002 to implement the new law (although the law itself provided that such additional funds, if necessary, were to come from forfeiture proceeds). If no forfeitures have occurred as claimed, it is not clear what the Treasurer has done with this money.

Claims that "Utah law enforcement has given up \$2.5 million in federal money" since the new law took effect are untrue. *Before* the new law took effect, payments to Utah's state and local police from the federal government's "equitable sharing" rules were only \$ 199,037 (FY 2001); \$226,524 (FY 2000); and \$133,586 (FY 1999).<sup>2</sup>

Claims that state would receive "80% of any property seized or forfeited federally" are also untrue. To receive 80% of federal forfeitures, local law enforcement has to do ALL of the work to investigate the case and seize the property before handing it over to the feds for forfeiture under federal law. Local law enforcement would be entitled to NONE of the money if the DEA made a seizure without their help.



See [http://courmlink.utcourts.gov/stats/FY02/dist/fy2002\\_9.htm](http://courmlink.utcourts.gov/stats/FY02/dist/fy2002_9.htm).

<sup>2</sup>

Click on "Utah" at [www.usdoj.gov/jmd/afp/02fundreport/2001CAFRARReports/Report2b.htm](http://www.usdoj.gov/jmd/afp/02fundreport/2001CAFRARReports/Report2b.htm)

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- **It is not true** that a 1999 legislative audit (performed prior to the new forfeiture law) “found no evidence” of forfeiture abuses as reported by the *Deseret News*. In fact, the 1999 legislative audit<sup>3</sup> -- admittedly only reviewing a small sample of 65 cases -- found, for example:
  - Agencies were spending seized money before the courts awarded it to them (*Audit, p. 30*);
  - Seized cash had been “lost” (*Audit, p. 35*);
  - Police officers had purchased seized property at “questionable” prices (*Audit, p. 40*);
  - Forfeiture proceeds were being used for general operating expenses -- not drug enforcement -- which violated the law (*Audit, p. 52*);
  - Forfeiture expenditures could not be tracked because no separate accounts were kept (*Audit, p. 51*);
  - *There was no legislative oversight of forfeiture expenditures (Audit, p. 49)*;
  - One agency took property without going through the forfeiture process at all (*Audit, p. 30*).
  - Agencies were charging impound fees on vehicles even *after the courts denied forfeiture (Audit, p. 1)*.

In light of the foregoing and the public’s phenomenal support for the new law, **we respectfully suggest that, before amending it, the Committee require an investigation of how the new law was implemented, how exactly it is operating, and its impact.** After all, the forfeiture law was approved by nearly 70% of Utah voters and passed by a 2-1 margin -- a significant grass roots support from voters who understood 2 key things: (1) private property should not be taken from individuals unless they are convicted of a crime; and (2) police should not “profiteer” by taking property, selling it and keeping the money -- **at least not without Legislative oversight.**

The new law’s provisions are written to track FEDERAL and OTHER STATES’s laws dealing with the conflicts inherent in having law enforcement retain proceeds from forfeitures they are involved in. Neither the federal government, nor any of the other states with nearly identical laws are experiencing the types of problems alleged to be occurring under our new law.

**For more information, please contact Andrew Stavros or Janet Jenson at (801) 363-4011.**

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<sup>3</sup> See *A Performance Audit of Asset Forfeiture Procedures, Office of Legislative Auditor General, Nov. 1999.*