

FORFEITURE PROCEDURES AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act modifies the Utah Uniform Forfeiture Procedures Act. This act provides additional definitions, expands innocent owner protections, and improves reporting and accountability requirements. This act repeals the provision for depositing forfeiture proceeds to the Uniform School Fund. This act creates a special revenue fund known as the Crime Reduction Assistance Fund to be managed by the Utah Commission on Criminal and Juvenile Justice. The fund shall receive all forfeiture proceeds, to be used under specified and limited qualifications and terms for crime reduction and law enforcement activity including drug courts. This act creates the State Law Enforcement Forfeiture Account, and transfers funds remaining in the repealed Drug Forfeiture Account to the new account. This act also makes technical amendments. This act has an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 24-1-2**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 24-1-3**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 24-1-4**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 24-1-6**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 24-1-7**, as last amended by Chapter 185, Laws of Utah 2002
- 24-1-10**, as last amended by Chapter 185, Laws of Utah 2002
- 24-1-11**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 24-1-12**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 24-1-14**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 24-1-15**, as last amended by Chapter 185, Laws of Utah 2002

REPEALS:

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

ENACTS:

- 24-1-3.5**, Utah Code Annotated 1953
- 24-1-17**, Utah Code Annotated 1953
- 24-1-18**, Utah Code Annotated 1953
- 24-1-19**, Utah Code Annotated 1953

24-1-20, Utah Code Annotated 1953

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

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

24-1-2. Purpose.

It is the intent of this chapter to:

- (1) provide [~~for~~] a uniform set of procedures and substantive standards for the criminal and civil forfeiture of property within the state of Utah;
- (2) permit law enforcement personnel to deter crime by lawfully seizing and forfeiting contraband and the instrumentalities and proceeds of criminal conduct;
- (3) protect innocent owners and interest holders from the [~~wrongful taking~~] forfeiture of their property;
- (4) ensure that seizures and forfeitures of property from private citizens are [~~not disproportionate~~] in proportion to the violation or crime committed;
- (5) ensure direct control and accountability over the use and sale of forfeited property and [~~the proceeds generated therefrom~~] the revenue resulting from the disposal of forfeited property; [~~and~~]
- (6) ensure the revenue resulting from property forfeiture allows continued law enforcement, crime prevention, drug courts, and other appropriate activities related to these functions;
- (7) maximize the benefits of, and accountability for, federal asset forfeiture sharing for the citizens of the state; and
- [~~(6)~~] (8) direct that any and all revenues resulting from the sale of forfeited property be [~~contributed to the Uniform School Fund~~] allocated to the Utah Commission on Criminal and Juvenile Justice for grants to state and local law enforcement agencies according to specified guidelines.

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

24-1-3. Definitions.

As used in this section:

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

(a) any owner of property as defined in this section;
(b) any interest holder as defined in this section; and
(c) any other person or entity who asserts a claim to any property seized for forfeiture under this section.

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

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

(5) "Fund" means the Crime Reduction Assistance Fund created in Section 24-1-17.

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

(i) did not have actual knowledge of the conduct subjecting the property to seizure; or
(ii) upon learning of the conduct subjecting the property to seizure, took reasonable steps to prohibit the illegal use of the property.

(b) "Innocent owner" means an owner or interest holder who acquired an ownership interest in the property after the conduct subjecting the property to seizure has occurred, and who had no knowledge that the illegal conduct subjecting the property to 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 a person, 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.

(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 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 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.

(8) "Legal costs" means the costs and expenses incurred by the prosecuting agency, not to exceed 20% of the net value of the forfeited property.

(9) "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.

~~[(3)]~~ (10) "Multi jurisdictional task force" [shall mean] means a law enforcement task 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.

~~[(4)]~~ (11) "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].

(12) "Program" means the Crime Reduction Assistance Program created in Section 24-1-19.

~~[(5)]~~ (13) "Property" [shall mean] means all property, whether real or personal, tangible or intangible.

~~[(6)]~~ (14) "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, and 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.

(15) "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

(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.

(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 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 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

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

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

(ii) the owner's or interest holder's rights and obligations under this chapter, including 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.

(b) If an owner or interest holder brings a motion to void the forfeiture for lack of the notice required under ~~[subparagraph (1)(c)]~~ Subsection (1), the court shall void the forfeiture 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.

(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 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 of the following methods:

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

~~[(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.]~~

(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 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

(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.

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

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

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

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

(iii) contain:

(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)(ii)]~~ 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.

(1) An innocent owner's or interest holder's interest in property [~~shall~~] may not be forfeited [~~civily~~] 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:

(a) is criminally responsible for the conduct giving rise to the forfeiture;

(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

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

~~[(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:]~~

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

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

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

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

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

(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 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]~~

~~[(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] section, 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) After property is seized for forfeiture, a person or entity may not alienate, convey, sequester, or attach that property until the court issues a final order of dismissal or an order of forfeiture regarding the property.

(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.

(3) With the consent of a court of competent jurisdiction, the prosecuting attorney may 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

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

(5) (a) An owner of property seized pursuant to 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.

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

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

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

(d) An agency may not be awarded any funds from forfeiture through the Crime Reduction Assistance Program under Section 24-1-18 if the agency has not established or maintained the inventory policy, restricted account, and written policies required by this Subsection (6).

[(+)] (7) An owner is entitled to the immediate release of seized property from the 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:

(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;

- (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;
 - (vii) leaving any individual homeless; or
 - (viii) 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 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.

~~(2)~~ (8) The right to appointed counsel under Section 24-1-9 applies throughout civil forfeiture proceedings, including an owner's motion for hardship release.

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

- (a) in the court in which forfeiture proceedings have commenced; or
- (b) in any district court having jurisdiction over the property, if forfeiture proceedings have not yet commenced.

(10) 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)~~ (11) 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)~~ (12) (a) If the owner demonstrates substantial hardship pursuant to ~~[subparagraph (1)]~~ 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.

(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)~~ (13) ~~[Subparagraph (1) shall]~~ The hardship release does not apply if the seized property is:

- (a) contraband;
- (b) currency or other monetary instrument or electronic funds, unless

such property is used to pay for the reasonable 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.

(14) (a) The court may order property which has been seized for forfeiture to be sold as allowed by Subsection (15), 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.

(b) The court may enter orders under Subsection (14)(a) after notice to persons known to have an interest in the property, and after an opportunity for a hearing.

(15) A sale may be ordered under Subsection (14) when the property is liable to perish, waste, be foreclosed, or significantly reduced in value, or when the expenses of maintaining the property are disproportionate to its value. A third party designated by the court shall dispose of the property by commercially reasonable public sale and 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 exempt interests in the order of their 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 7. Section **24-1-10** is amended to read:

24-1-10. Prejudgment and postjudgment interest.

In any [~~civil or criminal~~] proceeding to forfeit currency or other negotiable instruments under this chapter, the court shall award a prevailing [~~owner~~] party 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~~] 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 **24-1-14** is amended to read:

24-1-14. Proportionality.

(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.

(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].~~

(2) (a) In determining proportionality, the court shall consider:

(i) the conduct giving cause for the forfeiture;

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

(3) 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.

Section 11. Section **24-1-15** is amended to read:

24-1-15. Transfer and sharing procedures.

(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.

(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:

- (i) the activity giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify such transfer;
- (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.

(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.

(d) A court order is not required if a federal agency seeking jurisdiction over the property obtains a seizure warrant, search warrant, arrest warrant in rem, or other federal process mandating 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.~~ be used in compliance with federal rules and regulations relating to equitable sharing, and shall only be used for those law enforcement purposes specified in Section 24-1-18(8), and shall not be used for those law enforcement purposes prohibited in Section 24-1-18(9).

(b) Subject to Subparagraph (3)(a), 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.

(c) Law enforcement agencies awarded any equitable share of property forfeited by the federal government may only use that equitable share subject to the laws, rules, regulations, and orders of the state or local jurisdiction or political subdivision governing the use of public funds available for law enforcement purposes, and the use of such property shall be non-lapsing.

(d) Law enforcement agencies are entitled to their equitable share of property forfeited by the federal government since March 29, 2001.

(e) Each agency awarded any equitable share of property forfeited by the federal government shall file copies of all federal equitable sharing certifications, applications, and reports with the state auditor and the Utah Commission on Criminal and Juvenile Justice at least annually. This information shall provide details of all awards received from the federal government during the preceding reporting period, including for each award:

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

(ii) the amount of the award;

(iii) the date of the award;

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

(v) how the awarded property has been 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 awarded property for crime reduction or law enforcement purposes authorized under Section 24-1-18, and only upon approval or appropriation by the agency's legislative body.

(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~~] Crime Reduction Fund created in Section 24-1-17. 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 trade 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 12. Section **24-1-16** is enacted to read:

24-1-16. Disposition and allocation of forfeiture property.

(1) Upon finding that property is subject to forfeiture under this chapter, the court shall order the property forfeited to the state, and the seizing agency shall then:

(a) make the payments as required under this chapter; and

(b) transfer possession, custody, and control of the net forfeiture property or proceeds immediately to the state treasurer's office.

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

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

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

(3) (a) Prior to transferring forfeited property, the seizing agency shall authorize a public or otherwise commercially reasonable sale of that property which is not required by law to be destroyed and that is not harmful to the public.

(b) The proceeds of the forfeited property shall remain segregated from other property, equipment, or assets of the seizing agency until transferred to the state in accordance with this chapter.

(4) From the forfeited property, both currency and the proceeds or revenue from the property, the seizing agency shall:

(a) deduct the seizing agency's direct costs and expenses, as approved by the court, of obtaining and maintaining the property pending forfeiture; and

(b) pay the legal costs to the prosecuting agency for the prosecution of the forfeiture proceeding.

(5) The remaining forfeited property shall then be transferred by the seizing agency to the state treasurer, to be deposited in the Crime Reduction Assistance Fund created in Section 24-1-17 for award and distribution pursuant to the Crime Reduction Assistance Program created in Section 24-1-18.

(6) (a) All property and proceeds awarded to the state through forfeiture proceedings under this chapter shall be held by the state treasurer until the Utah Commission on Criminal and Juvenile Justice approves awards and disbursements under the program.

(b) The property and proceeds held by the state treasurer shall be segregated from other property, equipment, or assets of the state and from any department, office, or agency of the state until awarded through the program.

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

24-1-17. Crime Reduction Assistance Fund.

(1) (a) There is created a special revenue fund known as the Crime Reduction Assistance Fund for the purpose of providing funding for the Crime Reduction Assistance Program, as created by Section 24-1-18.

(b) Consistent with its duties and responsibilities under Section 63-25a-104, the Utah Commission on Criminal and Juvenile Justice shall expend monies from the fund for the purposes under Section 24-1-18.

(c) The Utah Commission on Criminal and Juvenile Justice may pay program administrative costs from the fund.

(2) The fund consists of all monies deposited to the fund under Section 24-1-16.

(3) (a) The fund shall earn interest.

(b) All interest earned on fund monies shall be deposited into the fund.

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

24-1-18. Crime Reduction Assistance Program.

(1) There is created the Crime Reduction Assistance Program.

(2) The program shall fund crime prevention 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;

(d) encouraging cooperation between local, state, and multi jurisdictional law enforcement agencies;

(e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited proceeds of crime; and

(f) increasing the equitability and accountability of the use of forfeited property used to assist law enforcement in reducing and preventing crime.

(3) (a) When property is forfeited under this chapter and transferred to the fund, the Utah Commission on Criminal and Juvenile Justice shall make awards of monies from the fund to state, local, or multi jurisdictional law enforcement agencies or political subdivisions of the state in compliance with this section and to further the program purposes under Subsection (2).

(b) In granting the awards, the Utah Commission on Criminal and Juvenile Justice shall ensure that the amount of each award takes into consideration:

(i) the demonstrated needs of the agency;

(ii) the demonstrated ability of the agency to appropriately use the award;
(iii) the degree to which the agency's need is offset through the agency's participation in federal equitable sharing or through other federal and state grant programs; and
(iv) the agency's cooperation with other state and local agencies and task forces.

(4) Agencies or political subdivisions shall apply for program awards by completing and submitting forms specified by the Utah Commission on Criminal and Juvenile Justice.

(5) Applying agencies or political subdivisions shall demonstrate compliance with all reporting and policy requirements applicable under this chapter, and Chapter 25a of Title 63, in order to qualify as a potential award recipient.

(6) Recipient law enforcement agencies may only use program award monies after approval or appropriation by the agency's legislative body, but the award monies shall be non-lapsing.

(7) A recipient law enforcement agencies or political subdivisions shall use program awards only for law enforcement or controlled substance law enforcement purposes as described in Subsection (8), and only as these purposes are specified by the agency or political subdivision in its application for the award.

(8) Permissible law enforcement purposes for which award monies may be used include:

(a) controlled substance interdiction and enforcement activities;

(b) drug court programs;

(c) activities calculated to enhance future investigations;

(d) law enforcement training;

(e) law enforcement or detention facilities;

(f) law enforcement operations or equipment which are not routine costs or operational expenses;

(g) drug, gang, or crime prevention education programs which are sponsored in whole or in part by the law enforcement agency or its legislative body; and

(h) matching funds for other state or federal law enforcement grants.

(9) Law enforcement purposes for which award monies may not be granted or used include:

(a) payment of salaries or bonuses to any person;

(b) payment of enforcement expenses not related to law enforcement;

(c) uses not specified in the agency's award application;

(d) uses not approved or appropriated by the agency's legislative body;

(e) payments, transfers, or pass-through funding to entities other than law enforcement agencies or;

(f) uses, payments, or expenses that are not within the scope of the agency's functions.

(10) For each fiscal year, any state, local, or multi jurisdictional agency or political subdivision that received a program award shall execute, and file with the Utah Commission on Criminal and Juvenile Justice and the state auditor, a report in a form specified by the Utah Commission on Criminal and Juvenile Justice. The report shall include the following regarding each award:

(a) the agency's name;

(b) the amount of the award;

(c) the date of the award;

(d) how the award has been used; and

(e) a statement signed by both the agency's or political subdivision's executive officer or designee and by the agency's legal counsel, that the agency or political subdivision has complied with all inventory, policy, and reporting requirements of this chapter, and that all program awards were used for crime reduction or law enforcement purposes, as specified in the application, and only upon approval or appropriation by the agency's or political subdivision's legislative body.

(11) The Utah Commission on Criminal and Juvenile Justice shall report in writing to the Legislature annually regarding the forfeited property transferred to the fund, awards made by the program, uses of program awards, and any equitable share of property forfeited by the federal government as reported by agencies pursuant to Section 24-1-15(3).

Section 15. Section **24-1-19** is enacted to read:

24-1-19. State Law Enforcement 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."

(b) All monies awarded to the Department of Public Safety or the Department of Corrections, or any division or agency within either department, through the Crime Reduction Assistance Program created in Section 24-1-18 shall be deposited into the State Law Enforcement Forfeiture Account.

(c) All monies previously deposited, or currently held in the Drug Forfeiture Account created in Section 58-37-20, and that were in that account when it was repealed by Initiative B, 2000, which became effective March 29, 2001, shall be transferred to and deposited in the State Law Enforcement Forfeiture Account created in this Subsection (1).

(2) The Department of Public Safety and the Department of Corrections may expend amounts as appropriated by the Legislature from the State Law Enforcement Forfeiture Account for law enforcement purposes or controlled substance law enforcement purposes as specified in Subsection 24-1-18.

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

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

(5) The Department of Public Safety and the Department of Corrections, as part of the annual legislative budget hearings, shall provide to the Executive Offices and Criminal Justice Appropriations Subcommittee a complete accounting of expenditures and revenues from the funds received under this section.

(6) 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 24-1-16. **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 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.