

2nd Sub. Senate Bill 175
Harmful to Innocent Property Owners

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Outline

- How State and Local Police Can Profit From Federal Confiscation Statutes
- SB 175 Provides Incentive and Additional Means For Federal Forfeiture of Utah Property
- Federal Confiscation Statutes Provide Easier Path for Police Profit
- Utah Forfeiture Procedure Due Process Protections Are Subverted By SB 175
- Are Utah's Police and Prosecutors Capable of Abusing Forfeiture Statutes?
- Conclusions

How State and Local Police Can Profit From Federal Confiscation Statutes

- Federal “equitable sharing” program authorizes state and local police to receive up to 80% of proceeds from federally forfeited property
- How do state and local police bring about and become eligible to receive proceeds from federal forfeitures?
 - “Joint investigations” where a state or local police agency involves a federal agency and the federal agency seizes the property
 - Transfer of property seized by the state or local agency to a federal agency
- Why are state and local police motivated to “go federal”?
 - Circumvent more protective state laws, making financial return more likely (more information on following chart)
 - Avoid cost and hassle of utilizing state court system

SB 175 Provides Incentive and Additional Means For Federal Forfeiture of Utah Property

- Utah police are given a financial *incentive* that was prohibited
 - Proceeds from federal forfeitures are directed to the Utah police agency involved with the seizure, instead of Uniform School Fund (24-1-15(3)(a), lines 481-484))
- Additional *means* provided for Utah police to realize financial benefit from federal forfeiture
 - Prosecuting attorney authorized to transfer a state-level forfeiture action to a federal agency (24-1-7(3), lines 319-321)

Federal Confiscation Statutes Provide Easier Path for Police Profit

- Burden of proof placed on innocent property owner
An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence. (18 U.S.C. § 983(d)(1))
- Prosecution required to show property is subject to forfeiture by only a preponderance of the evidence (18 U.S.C. § 983(c)(1))
- Informants and witnesses can be paid with proceeds from forfeited property (28 U.S.C. § 524(c)(1)(C))
- Disproportional forfeitures are authorized; property owner must prove forfeiture is *grossly* disproportional for relief (18 U.S.C. § 983(g)(3))
- Restricted circumstances for legal counsel for indigent persons (18 U.S.C. § 983(b)(2)(A))

Utah Forfeiture Procedure Due Process Protections Are Subverted By SB 175

- Prohibition against payments to prosecutors, witnesses, and informants from forfeited property is eliminated (line 57)
- Requirement for annual forfeiture audit is eliminated (line 57)
- Hardship release of property is prohibited if the property was misused prior to seizure, even though the owner was not involved in or aware of the misuse (lines 370-371)
- Property of limited value seized from the poor may be sold prior to proof in a court of law that the property is subject to forfeiture (lines 403-405)
- Prosecutors are given financial incentive to confiscate property (lines 538-539, 552-553)

Utah Forfeiture Procedure Due Process Protections Are Subverted By SB 175 (cont.)

- Forfeiture proceeds may be fed back to the seizing agency, after being funneled through the Commission on Criminal and Juvenile Justice (CCJJ) (lines 584-594)
- Conflict of interest with judiciary created by authorizing funding of drug court programs (line 610)
- Forfeiture proceeds can be used to obtain federal grants (line 624) that can pay for law enforcement salaries, contradicting a prohibition against such use (line 627)
- Forfeiture proceeds are not prohibited from being used for political purposes, such as the hiring of lobbyists (lines 625-633)

Are Utah's Police and Prosecutors Capable of Abusing Forfeiture Statutes?

Abuse Item	Summary	Source	Abuse Explanation
1	An "excellent confidential informant" of the FBI, BATF, and Uintah Basin Narcotics Strike Force was convicted of four felony charges involving sexual abuse of a child under the age of 14. The charges included rape of a child and forcible sodomy of a child.	Deseret News 1/19/97	Property can be forfeited when the police contract with criminals to generate secret "evidence". The criminal can then be paid with the proceeds from the sale of the property. SB 175 eliminates prohibitions on payments to informants (line 57).
2	District Judge David L. Mower ordered Sevier County to return \$15,900 seized from a California couple and to pay their legal fees of \$2880. The couple was never charged with any drug law violations and no evidence was presented showing the cash was linked to illegal drugs.	SL Tribune 8/1/92 11/14/92	The forfeiture lobby asserts that due process rights are always respected in forfeiture cases. In this case, Judge Mower fortunately disagreed with their conception of justice.
3	The Utah Supreme Court (5-0 ruling) ordered Juab County to return the home of Kim Beddoes because of violation of the Eighth Amendment. The home was confiscated after a drug dealer was enticed by police to sell drugs to Beddoes to avoid being charged with four felony drug offenses. This arranged transaction enabled police to seize the home.	SL Tribune 12/16/94	The profit motive can encourage police and prosecutors to threaten criminals and motivate them to engage in further illegal activity, depriving property owners of constitutional protections.

Are Utah's Police and Prosecutors Capable of Abusing Forfeiture Statutes? (cont.)

Abuse Item	Summary	Source	Abuse Explanation
4	<p>41 months after the Weber-Morgan Narcotics Strike Force seized \$85,000 in CDs and savings accounts, \$9244 in cash, and the home of Vera and Robert Garcia Sr., the civil forfeiture action by the Weber County Attorney still had not commenced. Ostensibly the delay was attributed to the outcome of a 12-count federal indictment against the Garcias. This indictment was later completely dismissed by U.S. District Judge David Sam.</p>	<p>SL Tribune 7/25/94</p>	<p>The forfeiture lobby asserts that if a property owner is innocent, his property will be quickly returned. In this case all charges were dropped 41 months after seizure, yet forfeiture proceedings still had not commenced.</p>
5	<p>Emery County Attorney Patricia Geary instructed deputies to defy a court order requiring \$100,900 to be returned to Hurdley Evans. The Utah Supreme Court found the seizure of the money to be illegal because no attempt was made to prove the money came from or was intended to be used in a drug transaction. For their defiance, Ms. Geary and Emery County Sheriff Guymon were found in contempt of court by state district judge Bryce Bryner. Eventually a check was presented to Mr. Evans' attorney, but it was immediately taken by an FBI agent who presented a civil seizure warrant.</p>	<p>SL Tribune 5/4/92 6/12/92</p>	<p>This is a preeminent example of how unjust federal confiscation statutes can be utilized to subvert Utah's laws. To facilitate subversions of this kind, Utah's prosecutors are authorized by SB 175 (lines 319-321) to transfer forfeiture actions to federal agencies.</p>

Are Utah's Police and Prosecutors Capable of Abusing Forfeiture Statutes? (cont.)

Abuse Item	Summary	Source	Abuse Explanation
6	<p>Michael J. Ward was able to negotiate a plea bargain involving a single reduced charge after he agreed not to contest the forfeiture of \$87,000 and motor home by the Weber-Morgan Narcotics Strike Force. Ward was found in possession of 740 pounds of marijuana.</p>	<p>SL Tribune 4/8/93</p>	<p>Drug dealers can benefit from property forfeiture because it allows them to trade property in exchange for lesser charges and reduced sentences and prison time. Prosecutors are reimbursed for any successful forfeiture case.</p>
7	<p>Davis Metro Narcotics Strike Force agents served a week-old search warrant on the wrong people, who had just moved into an apartment. Six agents with guns drawn and wearing black threw Tina Peterson to the floor and handcuffed her and pointed a gun at her friend's head. According to Tina's sister Margie, they were treated like "human garbage" even after the forfeiture agents realized a mistake had been made. Upon leaving, the agents blamed Tina and Margie for being "in the wrong place at the wrong time".</p>	<p>Standard Examiner 4/7/99</p>	<p>The conduct of the forfeiture agents implies no sense of accountability for their actions, and no concern for harm done to innocent people.</p>

Are Utah's Police and Prosecutors Capable of Abusing Forfeiture Statutes? (cont.)

Abuse Item	Summary	Source	Abuse Explanation
8	Dennis Barney had \$4000 seized at the Salt Lake International Airport. He sued for return of the money, and finally got it back in 1994. In addition, he received \$17,400 for attorneys fees and interest. Barney was a motorcycle club member wearing a beard and long hair, but had proof that the money was withdrawn from a bank account and was intended to be used to purchase a motorcycle.	SL Tribune 2/4/94	Misapplication of forfeiture statutes harms innocent people, squanders scarce criminal justice resources, and wastes the hard-earned dollars of Utah's taxpayers.

Are Utah's Police and Prosecutors Capable of Abusing Forfeiture Statutes? (cont.)

Abuse Item	Summary	Source	Abuse Explanation
9	West Valley Police Captain Jim Stroud, Commander of the Salt Lake Metropolitan Drug Task Force, was charged with second degree felony theft and class A misdemeanor theft from drug task force coffers. An audit conducted after the investigation of Stroud began concluded that there needed to be more accountability for task force funds.	Deseret News 11/7/97	Police are imperfect like all other people. They are not perfected by the granting of absolute power and by providing financial incentives. Therefore, the basic principles of separation and limitation of powers must be applied to prevent abuse.
10	The former head of the Davis Metro Narcotics Strike Force, Kent M. Lewis, had an arrest warrant issued after he failed to appear in court for charges of possession of cocaine and of a handgun in connection with narcotics, both third degree felonies, and misdemeanor charges of possession of drug paraphernalia and driving under the influence of alcohol or drugs. Lewis was later arrested by Salt Lake police in the parking lot of a convenience store after they responded to a call there involving an armed man wearing a ski mask.	Deseret News 5/17/97 6/24/97	
11	Kane County Sheriff Max Jackson used a towing trailer that had been seized, but not forfeited. This was despite a previous warning from County Attorney Todd Macfarlane to not use the trailer before clearing it through his office.	SL Tribune 7/15/94	

Are Utah's Police and Prosecutors Capable of Abusing Forfeiture Statutes? (cont.)

Abuse Item	Summary	Source	Abuse Explanation
12	<p>Rory D. Pence sued the city of Salina after being arrested by Salina police officer James P. McDonald for drunk driving and having his vehicle seized. According to Pence's attorney, no drugs were found in the vehicle until the third or fourth search, implicating Officer McDonald for planting them. The vehicle was returned to Pence after the forfeiture case was dismissed. McDonald lost his officer certification and was facing a charge resulting from a relative's removal of the vehicle from an impound lot while the forfeiture case was pending.</p>	<p>SL Tribune 6/3/97</p>	<p>Police are imperfect like all other people. They are not perfected by the granting of absolute power and by providing financial incentives. Therefore, the basic principles of separation and limitation of powers must be applied to prevent abuse.</p>
13	<p>Captain Michael D. Blackhurst of the Pleasant Grove Police Department was indicted by a federal grand jury for fraudulently obtaining a controlled substance. Investigators say that Blackhurst bought more than 31,000 dosage units of narcotics at a pharmacy, using police department letterhead. He subsequently pleaded guilty. Blackhurst was previously project director of the Utah County Narcotic Enforcement Team.</p>	<p>Deseret News 4/23/99 SL Tribune 11/16/99</p>	

Conclusions

- Utah's police and prosecutors have abused forfeiture statutes
- SB 175 creates more incentives and opportunities for abuse
- SB 175 reduces protection for innocent property owners