

HOW CAN SEIZED PROPERTY BE TURNED OVER FOR FEDERAL FORFEITURE

In 2007, the Utah Legislature amended the section of the Utah Uniform Forfeiture Procedures Act which governs the transfer of property to the federal government for forfeiture. As the statute now reads, a seizing agency “may not directly or indirectly transfer seized property not already named in a criminal indictment to any federal agency . . . unless the court enters an order . . . authorizing the property to be transferred.” U.C.A. § 24-1-15(3). Thus if property that has been seized by a state law enforcement agency is not listed in a federal indictment, then the seizing agency must first obtain an order from the State court in order to turn that property over to the federal government for forfeiture. An officer who knowingly transfers seized property to a federal agency or officer without first obtaining a "turnover order" is guilty of a class B misdemeanor. U.C.A. § 24-1-15(9)(c).

The amendments to the statute set forth specific requirements to obtain a turnover order and provide that a petition for a turnover order shall include:

- (a) a detailed description of the property seized;
- (b) the location where the property was seized;
- (c) the date the property was seized;
- (d) case number assigned by the seizing law enforcement agency; and
- (e) a sworn affidavit signed by the prosecutor, which states the basis for relinquishing priority jurisdiction to a federal agency and contains the names as well as the addresses of any potential owners. U.C.A. § 24-1-15(4).

Prior to granting a turnover order, the court must give the owner of the seized property the right to be heard by sending notice to each address contained in the sworn affidavit. U.C.A. § 24-1-15(6). If the owner doesn't object, the court may issue the turnover order after ten days of the mailing of the notice. *Id.* However, if the affidavit doesn't provide an address for the owner, the court cannot enter an order for 20 days in order to allow time for the potential owner to appear. *Id.* If an owner does object, the statute directs the court to “promptly set the matter for hearing.” U.C.A. § 24-1-15(7).

At the hearing the court must determine whether the state may relinquish jurisdiction “by a preponderance of the evidence by considering hardship, complexity, judicial, and law enforcement resources, and any other matter the court determines to be relevant.” U.C.A. § 24-1-15(7)(b). The court may not grant a turnover order unless it is satisfied that:

- (a) the conduct giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify the transfer;
- (b) the seized property may only be forfeited under federal law; or
- (c) pursuing forfeiture under state law would unreasonably burden prosecuting attorneys or state law enforcement agencies. U.C.A. § 24-1-15(3).

Still, the court may still refuse to grant a turn over order “if the transfer would circumvent the protections of the Utah Constitution or of this chapter that would otherwise be available to the property owner.” U.C.A. § 24-1-15(5).