

Does 2nd Sub. S.B. 175 Increase Protections for Innocent Owners?

Do you believe that a property owner should be presumed guilty? Consider the following federal forfeiture statute.

Title 18, Section 983(d), U.S. Code

(1) *An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant [i.e. property owner] shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.*

Does 2nd Sub. S.B. 175 provide Utah's police financial incentives to utilize federal law?

The bill provides authority, not now existing, for police agencies to receive forfeiture revenue directly under the federal equitable sharing rules and regulations. Current law requires all forfeiture proceeds to be deposited in the Uniform School Fund.

... property, money or other things of value received by an agency pursuant to federal law which authorizes sharing or transfer ... shall be promptly transferred to the state treasurer and sold and deposited in the Uniform School Fund as provided under Section 24-1-16: shall be used in compliance with federal rules and regulations relating to equitable sharing. (lines 478-484)

Does 2nd Sub. S.B. 175 provide additional methods to transfer property to the federal government?

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. (lines 319-321)

Are Utah's police unable to perform civil forfeiture under current state law, requiring that forfeitures be performed federally?

There currently exists a civil forfeiture procedure in Utah law (see Utah Code 24-1-4) that can be used, but isn't. Because it requires that forfeiture proceeds be deposited in the Uniform School Fund and not police agency accounts, the prosecutors and police have arranged for the forfeitures to be performed federally, where they can receive the proceeds (\$2M-\$6M) if 2nd Substitute S.B. 175 is passed.

Under 2nd Substitute S.B. 175 would Utah's police use state-level forfeiture procedures?

- Ability to transfer property to federal government is increased, not restricted
- Confiscation is much easier under federal statutes (presumption of guilt for property owner, no requirement for attorneys' fees for successful owner)
- Financial incentives are created because police agencies will be able to receive federal money directly (proposed state-level procedure funnels through CCJJ)
- Forfeiture proceeds from federal government can be used to obtain federal grants