

PROTECTING DUE PROCESS: HOW SB87 IMPROVES UTAH'S CIVIL ASSET FORFEITURE LAW

Core Due Process Issue	Concern With Current Statute	Current Statutory Language	How SB87 Improves the Status Quo
Notice	Whether notice is sufficient to advise property owners and other potential claimants of their ability to assert claims to seized property	➤ Requires service of civil forfeiture complaint within 30 days of filing through personal service, certified mail, or—subject to court order—publication. ➤ “Publication” includes a newspaper of public circulation and Utah’s Public Legal Notice Website. (UCA § 24-4-104(2)(a), (c)-(d).)	➤ In addition to current law, <u>SB87 also requires</u> that, when property is seized, the “person from whom the property was seized” be provided the <u>following additional information</u>: ➤ Relevant time periods for forfeiture, ➤ What happens to the property on conviction/acquittal, and ➤ How to assert a claim for property ➤ This early notice of rights may reduce the cases with service by publication and decrease the number of default judgments. (SB87 at lines 140-145, 230-244.)
Opportunity to be heard	Whether current system allows property owners to appear before a neutral tribunal to assert claims to seized property	➤ The burden of proof is on the prosecuting attorney to establish by clear and convincing evidence “the extent to which, if any, the property is subject to forfeiture.” ➤ Prosecution must show person is not an “innocent owner,” i.e., is responsible or knew about criminal conduct, or acquired it knowing it was subject to forfeiture or in an effort to conceal it or prevent its forfeiture. ➤ Claimant may demonstrate reasonable steps to prevent illegal use by alerting law enforcement of illegal activity, revoking permission to use, or “reasonable steps to discourage or prevent illegal use.” ➤ Claimant is <u>not</u> required to take steps reasonably likely to cause “physical harm or danger” to person. (UCA § 24-4-104(5)-(7); -107(2)-(4).)	➤ In addition to current law, <u>SB87 includes additional, pre-filing, opportunity</u> for claimant to request return of seized property: ➤ Within 30 days of seizure, claimant can contact prosecutor to request return of seized property <u>before</u> a forfeiture proceeding is brought. Claimant must provide proof of ownership and describe when/how the claimant relinquished possession of the property. ➤ The prosecutor has 30 days to respond, with a built-in incentive for reasonable and timely consideration of the claim, i.e., <u>attorney fees awarded to any denied claimant who is later found by the court to be an innocent owner.</u> ➤ Failure by the prosecutor to respond within 30 days acts as a denial on the merits, which triggers the full reasonable attorney fees provisions for innocent owners who later prevail at trial. ➤ <u>SB87 also requires</u> that seized cash-only assets less than \$10k be <u>returned if a</u> forfeiture case is filed and answered but <u>criminal charges are not brought within 60 days of seizure.</u> ➤ <u>SB87 also removes presumption of forfeiture</u> in certain cases. (SB87 at lines 342-348w, 255-268, 333-341.)
Representation	Whether current system allows for representation by counsel	➤ Claimant disputing forfeiture may answer the complaint without posting bond, but is <u>limited to attorney fees and costs not to exceed 20% of value of seized property.</u> (UCA § 24-4-104(7), -110(2).)	➤ In addition to current law, SB87 permits the recovery of <u>full reasonable attorney fees and costs</u> (not capped at 20%) where the claimant utilizes pre-filing claim procedures, is denied, and is later found by the court to be an innocent owner. ➤ This provides a mutual incentive for the parties to seek out-of-court resolutions to property disputes, saving everyone costs and court resources. (SB87 at lines 342-348w.)
Meaningful remedy	Whether current system provides meaningful relief (return of property and recoup costs)	➤ Claimant who successfully disputes asset forfeiture is entitled to a full return of property plus post-judgment interest and reasonable attorney fees and costs capped at 20% of the value of seized property. (UCA § 24-4-107(a), -109, -110(2).)	➤ In addition to current law, SB87 provides <u>full reasonable attorney fees and costs</u> in circumstances described above, where the claimant engages in pre-filing efforts to reclaim property. ➤ <u>SB87 also removes presumption of forfeiture</u> in certain cases. (SB87 at lines 342-348w, 333-341.)
Timeliness of remedy	Whether the current system provides for timely resolution for those asserting claims	➤ Requires the court “take all reasonable steps to expedite civil forfeiture proceedings and shall give these proceedings the same priority as is given to criminal cases.” (UCA § 24-4-104(2)(a), (5).)	➤ In addition to current law, SB87 provides for a pre-filing resolution to “innocent owner” claims within 30 days of filing, and provides for the return of cash-only assets within 60 days in certain cases if no criminal charges are filed. This is much faster than any court case. (SB87 at lines 342-348w, 255-268.)