

RESPONSE TO LIBERTAS INSTITUTE POLICY ANALYSIS

I. HB 384 Provides State Court Oversight

HB 384 retained the same criteria to be met before property can be turned over for federal forfeiture. Subsection 24-4-114(1)(a) provides that seizing agencies or prosecuting attorneys may not transfer property for forfeiture to any federal agency unless:

- the conduct giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify the transfer;
- the property may only be forfeited under federal law; or
- pursuing forfeiture under state law would unreasonably burden prosecuting attorneys or state law enforcement agencies.

Under HB 384, a claimant still has an opportunity for state court oversight of this determination. Subsection 24-4-114(1)(b) provides that in making a determination about whether property should be turned over for federal forfeiture, “a court may conduct an *in camera* inspection of evidence provided by the prosecuting attorney or seizing agency.” In addition, Section 24-3-104 provides procedure whereby a property owner may petition the court for the return of the property seized as evidence.

II. HB 384 Protects Innocent Owners

HB 384 maintained all of the protections for innocent owners that were contained in the previous statute, including language which indicated that property used to facilitate criminal activity may only be forfeited if it is proportional. However, the State no longer has the responsibility of tracking down individuals who attempt to deflect or avoid criminal liability and prosecution by knowingly providing false information about their involvement in criminal activity or their residence. Under HB 384, notice of the forfeiture is sent to the address that is provided by the individual from whom property is seized. When individuals provide false information to law enforcement in the course of a criminal investigation and disclaim any knowledge of property, the State is no longer required to continue to seek out and notify the individual about the disposition of the property.

III. The Time Limits for Forfeiture Were Clarified by HB 384

HB 384 expanded the time for filing a *civil* forfeiture complaint from 60 days to 90 days in order to give law enforcement and prosecutors enough time to conduct a thorough investigation to determine if forfeiture is appropriate or if the property should be returned. Just as before, prosecutors still can file a forfeiture action in the *criminal* case at any time. Resolving the forfeiture matter in a civil, rather than in a criminal, case may be to the advantage of the property owner since many criminal cases can take months or years to resolve.

IV. Limitations on Attorney’s Fees Removes the Profit Motive

HB 384 caps the amount that an attorney may obtain if an attorney prevails in a forfeiture action. Previously, the statute allowed prosecutors who litigated forfeiture cases on behalf of the State to obtain attorney’s fees in an amount up to 20% of the amount forfeited. Now this same cap also applies to a claimant’s attorney. By setting a limit on attorney’s fees it will take away the incentive for attorneys who actively promote the legalization of drugs in the state of Utah from soliciting clients who are engaged in criminal activity. A cap on attorney’s fees will encourage litigants to resolve cases in the best interests of their clients rather than in the best interests of the attorneys.