



GENERAL SESSION

February 1, 2017

Program Topic: Marriage Counseling; Civil Asset Forfeiture

Program under direction of Judiciary/Law/Criminal Justice Committee
Chaired by Sophia Hawes-Tingey

Speakers:

Elaine Stehel, Licensed Minister

Dr. Paul Schvaneveldt, Weber State University

Christopher Warton, Family Law, Criminal Defense, and LGBT Advocacy

Rep. Brian M Greene (R) District 57

***Darcy M Goddard, Chief Policy Officer, Civil Division,
Salt Lake County District Attorney's Office***

Will Carlson, Deputy District Attorney, Salt Lake County

SB29 Marriage Commission Amendments

This bill requires that counties add \$20 to the cost marriage licenses and also give a \$20 rebate to couples completing approved pre-marital counseling. Money collected from couples who decline the counseling would go to the Department of Human Services.

The bill has several provisions describing what the approved counseling could be and what topics must be discussed. Religious counselors would be exempt from the required topics.

As a humanist minister, **Elaine Stehel** believes this bill will be discriminatory to individuals who are not members of a dominant religion in Utah. She notes that noticeable percentage of people in Utah do not identify with a faith community or

do not find religion to be an important factor in their lives.

She believes educated counselors should be the only specialists allowed to provide premarital counseling.

Because Utah has a very low divorce rate, she wonders what problems the amendments would actually address.

She advocates a rewriting of the bill to respect those non-religious or low income citizens wishing to marry.

Dr. Paul Schvaneveldt said that 200 million dollars in taxpayer money are spent each year as a result of increased poverty, juvenile delinquency, and other issues related to divorce.

Dr. Schvaneveldt sees marriage as profoundly private but also public. The best time to strengthen marriage is before it starts.

Nine other states have passed this kind of legislation. Research indicates and also documents that counseling strengthens marriage and reduces divorce, perhaps by 20% in the early years. Perhaps 10% of couples do not marry when they have early counseling. Only about 1/3 of Americans and 1/4 of Utahns invest in pre-marital education.

Marriage counseling can be from a secular or a religious provider. "E-prep" is one free, online, pre-marital curriculum from the University of Denver which is a model for relationship and communication education. [Ed.: examination of the proposed amendment refers to requirements for online counseling but does not define them.]

Christopher Warton declared he has bias because of his experience as a family law attorney - his income comes mainly from couples who are divorcing. He notes that a divorce does not mean that the parties will remain unmarried; remarriage is a common outcome.

In his experience, the e-prep courses don't seem to be statistically effective long-term. He believes divorce is more about systemic inequality.

He disagrees with the claim of a 200 million dollar impact on public resources by divorce. Net income going into marriage tends to be the same after divorce.

He wonders if this bill would do what it is supposed to do to keep people in marriage. He feels like there are already large incentives offered by the government to get married and stay married.

Mr. Warton reiterated there is a lack of information to conclude that the problem of divorce would be solved by the proposed bill/solution. He states that ideas exist which might be more effective.

He has never had clients who stayed married because of a 90-day waiting period before a divorce could be granted.

Based on research from the Gottman Institute, he said that the main killer of marriage is contempt. Financial and other stresses can be overcome, from his experience as a family attorney, but contempt reflects an underlying failure of conflict management.

During the question period, WSLC members discussed the clause that makes religious counseling exempt from the content requirements imposed on other counseling services. They also asked about the use of the monies raised by the fee increase. Another issue was raised about the bill's repeal of the confidentiality of statistics regarding marital counseling.



[Rep. Brian Greene](#)

[HB 19, Civil Asset Forfeiture](#)

Rep. Green does not believe this amendment should be controversial, but rather it has been challenging to find the common ground. Criminal activity should not be a for-profit enterprise, which he states everyone agrees on. Many years ago, Utah and many states created a process by which the property used in a crime or stolen by criminals could go to the state. The forfeiture proceedings can go through criminal proceedings, or they be bifurcated and handled through the civil court system. Under civil code, a defendant has fewer protections than in

criminal court. The majority of civil forfeitures are not contested.

Three quarters of the properties in question are under \$5,000, and that is far less than the expected attorney fees for contesting the action. This bill would allow a property owner to recover the costs of successfully defending against a civil forfeiture.

Another provision requires that if an individual's property is seized because he is accused of a crime, then the state must prosecute. It is not uncommon today for the state to forgo criminal prosecution and use the civil court for forfeiture.

In response to a question, Rep. Green noted that criminal prosecution is more expensive for the state than civil forfeiture, and this may explain why the civil court is used so often.

Under this bill, a defendant who was acquitted of criminal charges would be able to recover his civilly forfeited property.

Darcy M. Goddard, Chief Policy Officer, Civil Division, Salt Lake County District Attorney's Office noted that [SB87](#) is another bill addressing the same issue. It is competing with Rep. Green's bill and both are moving very quickly.

The civil asset forfeiture proceedings are not used "as often as people think." Fewer than 2% of criminal cases in Salt Lake County are bifurcated to enable civil asset forfeiture. The fact that so many cases are not contested seems to come situations in which the defendant is deported or cases in which the criminal is merely a go-between with no interest in the property.

Goddard and Carson collaborated on Senator Thatcher's bill which has language that provides information to those people whose property is seized. The information is about their rights and how they can contest the seizure.

The Thatcher bill encourages due process by providing incentives for the prosecution to do the "right thing" early. Under the provisions of that bill, a person can make an "innocent owner" claim to the District Attorney or court for return of the property. This might result in return of the property, but if it doesn't, and if the defendant contests the forfeiture in court and prevails, then the state will pay attorney costs.

Will Carlson, Deputy District Attorney, SL County in the Justice Division also spoke about what he calls an economic solution to an economic problem. He described the payment structure of drug dealing in the Rio Grande district.

Prosecutors can't get to the drug king pins without civil asset forfeiture. It is a way to get at the profits of cartel leaders. His estimate of the average asset seizure is about \$1300, which was much less than originally predicted.

The reason Goddard and Carlson feel that civil asset forfeiture is an important tool is because cartel leaders are difficult to prosecute, but they are the recipients of the profits of illegal activity. They can claim to be "innocent owners" and get their money back.

In response to questions he noted that the Salt Lake Attorney's office had been working with Sen. Thatcher but he felt that Rep. Green was "working on us". In Carlson's opinion, there are very few innocent owners, and the unfair burden of civil asset forfeiture affects only a handful of people.

Carlson had a handout comparing SB87 and HB19, and a WSLC member had a separate comparison.

In response to questions, Goddard said that current practice in Utah is to immediately return cars to innocent owners.

A WSLC member asked about the experience of other states. In response, Goddard said that HB19 would result in ending civil asset forfeiture altogether. He felt that Utah has an admirable requirement of “clear and convincing” burden of proof to justify forfeiture. It is that Salt Lake County prosecutors do not wish to lose.

Goddard and Carlson both mentioned “Policing for Profit: *The Abuse of Civil Asset Forfeiture*”, a publication of the Institute for Justice. That report assigns grades to all states based on their civil forfeiture laws. Utah's grade is D-. Goddard warned that the report was from an advocacy group and should be read with that context in mind.

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President: Shauna Scott-Bellacomo
Advisor: Donna Murplhy
Editor: Hilarie Orman
Reporter: Lorene Kamalu

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