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GENERAL SESSION

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Program Topics: Civil Asset Forfeiture and Concealed Carry Penalties

Presented by: Judiciary Committee

Taylor Rosecrans & Catherine Stokes

Speakers:

Rep. Brian Green - (R) Utah House District 57

Chad Platt - Salt Lake County District Attorney's Office

Norm Thurston - (R) Utah House District 64

Rep. Brian King - (D) House Minority Leader, Utah House District 28

Rep. Green spoke about the purposes of a bill he is sponsoring: Civil Assets Forfeiture, Procedural Reforms HB 22. Under current Utah law, a civil court can seize assets that have been used in the commission of a crime or are the result of a crime, even if the owner of the assets has not been charged with a crime. A separate part of Utah code covers asset seizures by criminal courts. Rep. Greene said that he felt that the civil asset forfeiture created incentives for law enforcement to increase revenue through this process because it is easier for the state to argue its case in a civil court than in a criminal court. Civil courts require that the prosecution show only that a preponderance of the evidence supports its case, and in a civil proceeding the defendant does not have an absolute right to representation. He further felt that many people do not challenge the process because even if they prevail, they cannot be reimbursed for normal legal fees because the amount they can recover is limited to 20% of the asset's value. HB 22 would make several changes to the

current "Forfeiture and Disposition of Property Act", most of them smoothing the way for owners to contest forfeiture and to recover more money for legal fees. Other provisions modify how the funds resulting from forfeiture can be distributed to law enforcement and judicial agencies.

Rep. Green also noted that the Federal government has ended its program of sharing the value of civil asset forfeiture with states. The result of this is to remove an incentive for local law enforcement to work with Federal officers for the purpose of profiting from seized assets.

In response to questions, Rep. Green estimated the value of items seized in civil forfeiture at over \$2M per year in Utah. He said that the actual total is not known, but the amount given to the Utah Commission on Criminal and Juvenile Justice, which receives part of all forfeiture monies, is about \$2M per year.

In response to the argument for changes, **Chad Platt** gave the opinion that the

current system works well and is not subject to abuse. His office files 80% of the civil asset forfeiture cases in the state, which amounts to about 350 cases per year.

Mr. Platt noted that if the state fails to convince the court to approve forfeiture, then the assets can be returned to the owner more quickly than is typical in a criminal case. It is not uncommon for the owner of a car used in a drug case to be unaware of the actions of the people to whom he loaned a car. Those owners can get their vehicle returned to them more quickly than if the county files a criminal case.

Another advantage of a civil proceeding is that it removes a defendant's strategy of using the assets as a bargaining chip in negotiating a plea deal.

Mr. Platt also noted that a result of the bill might be to move many more forfeiture cases to criminal court, and this would increase the costs for counties in their efforts to prosecute drug cases.

In response to questions, Mr. Platt estimated that about one third of his cases result in seizing assets of people who are not charged with a crime.

Norman K. Thurston, sponsor of HB 55 "Weapons on Public Transportation" spoke

of the inequities of charges that can be filed against people who are not licensed to carry concealed weapons but do so anyway. If the offense occurs on a public street, it is a misdemeanor, but if it occurs on public transportation, it is a felony. He offered the opinion that this charge may be disproportionately applied to lower income people because they are more likely to use public transportation.

HB 55 would strike out language in existing legislation that creates additional penalties on trains and busses for the unlicensed carrying of concealed weapons. The felony charge for bringing a dangerous or hazardous material onto public transportation would remain unaffected.

Rep. Brian King spoke in opposition to the bill, focusing on its highlighted provision that "eliminates the prohibition of carrying a firearm on a bus with no criminal intent", to which he strongly objected. During the Q&A he said that if the bill resulted in simply moving the offense from a felony to a misdemeanor, he would be open to considering it. He said that he would talk to the bill's sponsor about a clarification as to what additional Utah code sections applied to this situation in settings other than public transportation.

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