

**MINUTES OF THE  
SENATE JUDICIARY, LAW ENFORCEMENT AND CRIMINAL JUSTICE  
STANDING COMMITTEE  
MONDAY, FEBRUARY 16, 2004  
Room 414, STATE CAPITOL BUILDING**

Members Present: Sen. Gregory Bell, Chair  
Sen. Patrice M. Arent  
Sen. D. Chris Buttars  
Sen. Mike Dmitrich  
Sen. James M. Evans  
Sen. David L. Gladwell  
Sen. Lyle W. Hillyard

Members Excused: Sen. L. Al Mansell

Staff Present: Jami Momberger, Policy Analyst  
Katrina Yarrington, Committee Secretary

Public Speakers Present: Kirk Torgensen, Chief Deputy, Attorney General's Office  
Bob Fisher, President, Utah Property Rights Association  
Richard Daynes, Attorney, Assistant U.S. Attorney  
Dan McConkie, Commissioner, Utah Association of County Councils  
Richard Mack, former narcotics police officer  
Val Shupe, Chief of Police/President, Utah Chiefs Association  
Corrina Callahan, citizen  
Wayne Crawford, citizen  
Steve Maxfield, citizen  
Paul Boyden, State-wide Association of Prosecutors  
John Peterson, citizen  
Blaine Odenwalder, citizen  
Aaron Kennard, Salt Lake County Sheriff  
Jaynie Brown, citizen  
Von B. Williamson, Lieutenant, Cache County Sheriff's Office  
Mike Sibbett, Chairman, Board of Pardons & Parole  
Ron Gordon, Director, Sentencing Commission  
Ray Wall, Juvenile Court Administrator

A list of visitors and a copy of handouts are filed with the committee minutes.

Committee Chair Bell called the meeting to order at 4:15 p.m.

**1. Approval of minutes**

**MOTION:** Sen. Arent moved to approve the minutes from the February 13th, 2004 meeting.

The motion passed unanimously, with Sen. Dmitrich, Sen. Evans, Sen Gladwell, and Sen. Hillyard absent for the vote.

**2. S.B. 175 Protection of Private Lawfully Obtained Property (D.C. Buttars)**

Sen. Buttars introduced the bill, continuing discussion from Friday, February 13th, 2004.

**MOTION:** Sen. Buttars moved to amend S.B. 175 as follows:

1. *Page 15, Line 439:*

439 ~~such~~ if the forfeiture is ~~[[+]]~~ **substantially** ~~[[+]]~~ ~~[proportional to both]~~  
~~[[grossly]]~~ disproportional to the use

2. *Page 15, Line 451:*

451 (b) If the court finds that the forfeiture is ~~[[grossly]]~~ **substantially**  
disproportional to the conduct for

3. *Page 16, Lines 478 through 480:*

478 ~~[[(d) A court order to transfer the property is not required if a federal agency~~  
~~seeking~~  
479 ~~jurisdiction over the property obtains a seizure warrant, search warrant, arrest~~  
~~warrant in rem,~~  
480 ~~or other federal process mandating the transfer.]]~~

The motion passed unanimously, with Sen. Dmitrich, Sen. Evans, and Sen. Hillyard absent for the vote.

**MOTION:** Sen. Gladwell moved to amend S.B. 175.

The motion passed unanimously, with Sen. Evans and Sen. Hillyard absent for the vote.

**MOTION:** Sen. Buttars moved to vote on each of Sen. Gladwell's amendments separately.

The motion passed unanimously, with Sen. Evans and Sen. Hillyard absent for the vote.

**MOTION:** Sen. Gladwell moved the following amendment #1:

1. *Page 14, Lines 405 through 406:*

(ii) second, for the satisfaction of ~~[[exempt]]~~ any interests , including those of interest holders, in the order of their priority as determined by Title 70A, Uniform Commercial Code; and

The motion passed unanimously, with Sen. Evans and Sen. Hillyard absent for the vote.

**MOTION:** Sen. Gladwell moved the following amendment #2:

2. *Page 14, Lines 418 through 425:*

418           ~~[[(1)]]~~ In any ~~[civil or criminal]~~ proceeding to forfeit seized property under this  
chapter,  
419 the court ~~[[(1)]]~~ shall ~~[[(1)]]~~ ~~[[may]]~~ award a prevailing ~~[owner]~~ party reasonable  
attorneys' fees and other  
420 costs of ~~[suit]~~ litigation reasonably incurred by the owner. An owner who prevails only in  
part  
421 ~~[shall be]~~ is entitled to recover reasonable attorneys' fees and reasonable costs of suit  
related to  
422 those issues on which he prevailed.  
423           ~~[[(2) In determining whether to award attorneys' fees and costs, the court~~  
~~shall consider~~  
424 ~~the merit of each parties' allegations and pleadings, and whether a seizure,~~  
~~complaint, claim, or~~  
425 ~~answer was reasonable and based upon good faith, or was made for any improper~~  
~~purpose.]]~~

The motion pass unanimously.

**MOTION:** Sen. Gladwell moved the following amendment #3:

3. *Page 16, Lines 477 through 480:*

477 the court must give any owner the right to be heard with regard to the transfer.  
478           ~~[[(d) A court order to transfer the property is not required if a federal agency~~  
~~seeking~~  
479 ~~jurisdiction over the property obtains a seizure warrant, search warrant, arrest~~  
~~warrant in rem,~~  
480 ~~or other federal process mandating the transfer.]]~~

The motion passed unanimously, with Sen. Evans and Sen. Hillyard absent for the vote.

**MOTION:** Sen. Gladwell moved the following amendment #4:

4. *Page 16, Lines 485 through 487:*

485 ~~24-1-16.];~~

486 ~~[[**(i) shall be used in compliance with federal rules and regulations relating to**~~  
~~**equitable**~~

487 ~~**sharing.]]**~~

*Renumber following subsections.*

The motion failed, with Sen. Bell, Sen. Arent, Sen. Buttars, and Sen. Dmitrich voting in opposition, and Sen. Hillyard absent for the vote.

**MOTION:** Sen. Gladwell moved the following amendment #5:

5. *Page 17, Lines 495 through 498:*

495 ~~(c) Law enforcement agencies awarded any equitable share of property forfeited by~~  
~~the~~

496 ~~federal government may only use~~ ~~[[**that equitable share subject to the laws, rules,**~~  
~~**regulations,**~~

497 ~~**and orders of the state or local jurisdiction or political subdivision governing the use**~~  
~~**of public**~~

498 ~~**funds available for law enforcement purposes. The use of the property shall be**~~  
~~**nonlapsing.]]**~~ - ~~**the award monies after approval or appropriation by the agency's**~~  
~~**legislative body. The award monies are**~~  
~~**nonlapsing.**~~

The motion passed unanimously, with Sen. Hillyard absent for the vote.

**MOTION:** Sen. Gladwell moved the following amendment #6:

6. *Page 21, Line 619:*

619 (d) law enforcement training ~~that includes:~~

~~**(i) implementation of the Fourth Amendment of the federal constitution and**~~  
~~**Article 1, Section 7, of the Utah Constitutions, and addresses the protection of**~~  
~~**the individual's rights of due process;**~~

~~**(ii) protection of the rights of innocent property holders; and**~~

**(iii) the Tenth Amendment of the federal constitution regarding states' sovereignty and the states' reserved rights** :

The motion passed unanimously, with Sen. Hillyard absent for the vote.

**MOTION:** Sen. Gladwell moved the following amendment #7:

7. *Page 22, Lines 652 through 653:*

652            (11) The Utah Commission on Criminal and Juvenile Justice shall report in writing  
to  
653    the ~~[[Legislature]]~~ **legislative Law Enforcement and Criminal Justice Interim**  
**Committee** annually regarding the forfeited property transferred to the fund, awards  
made

The motion passed unanimously, with Sen. Hillyard absent for the vote.

The following people spoke in support of the bill:

Dan McConkie, Commissioner, Utah Association of County Councils

Val Shupe, Chief of Police/President, Utah Chiefs Association

Paul Boyden, State-wide Association of Prosecutors

Richard Daynes, Attorney, Assistant U.S. Attorney

The following people spoke in opposition to the bill:

Bob Fisher, Utah Property Rights Association

Richard Mack, former narcotics police officer

Corrina Callahan, citizen

Wayne Crawford, citizen

Steve Maxfield, citizen

John Peterson, citizen

Blaine Odenwalder, citizen

**MOTION:** Sen. Hillyard moved to pass S.B. 175 out with a favorable recommendation.

The motion passed unanimously, with Sen. Evans absent for the vote.

**3. S.B. 130 Restrictions on Use of Unmarked Police Vehicles** (J. Hickman)

Sen. Hickman introduced the bill.

The following people spoke in opposition to the bill:

Val Shupe, Chief of Police/President, Utah Chiefs Association

Aaron Kennard, Salt Lake County Sheriff  
Jaynie Brown, citizen  
Von B. Williamson, Lieutenant, Cache County Sheriff's Office

**MOTION:** Sen. Dmitrich moved to pass S.B. 130 out with a favorable recommendation.

The motion failed, with Sen. Bell, Sen. Arent, Sen. Evans, and Sen. Gladwell voting in opposition, and Sen. Buttars and Sen. Hillyard absent for the vote.

**4. S.B. 158 Criminal Offense Amendments (G. Bell)**

Sen. Bell introduced the bill assisted by Ron Gordon, Director, Sentencing Commission, and Mike Sibbett, Chairman, Board of Pardons and Parole.

**MOTION:** Sen. Buttars moved to pass S.B. 158 out with a favorable recommendation.

The motion passed unanimously, with Sen. Dmitrich and Sen. Hillyard absent for the vote.

**5. S.B. 174 Adoption of Uniform Juvenile Compact (D. Gladwell)**

Sen. Gladwell introduced the bill assisted by Ray Wall, Juvenile Court Administrator.

**MOTION:** Sen. Buttars moved to pass S.B. 174 out with a favorable recommendation.

The motion passed unanimously, with Sen. Hillyard absent for the vote.

**MOTION:** Sen. Buttars moved to adjourn.

Committee Chair Bell adjourned the meeting at 6:00 p.m.

Minutes recorded by Katrina Yarrington, Secretary

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Sen. Gregory S. Bell, Committee Chair