

2019 Utah Legislature

## Utah police feel 'slapped down' as civil asset forfeiture bill advances

'We're actually becoming known as a state that's being very lenient on the cartels.'

By MARK SHENEFELT Standard-Examiner

[https://www.standard.net/news/government/utah-police-feel-slapped-down-as-civil-asset-forfeiture-bill/article\\_42a5d45f-27a2-5d08-923e-22f2c95df85f.html](https://www.standard.net/news/government/utah-police-feel-slapped-down-as-civil-asset-forfeiture-bill/article_42a5d45f-27a2-5d08-923e-22f2c95df85f.html)

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SALT LAKE CITY — A bill tightening requirements governing seizures of property by law enforcement has advanced in the Senate despite strong opposition from police officials who say it would hamstring their war against drug cartels.

Senate Bill 109 requires that all civil asset forfeiture cases be screened initially in state courts. Existing law offers a loophole for a law enforcement agency with “unrighteous motivation” to take a case to federal court, said the sponsor, Sen. Todd Weiler, R-Woods Cross.

Local agencies whose seizure cases are handled in federal court can receive 80 percent of the cash or property back, sponsors said.

Under SB 109, those funds would go back not to the seizing agency, but to a grant fund operated by the Utah Commission on Criminal and Juvenile Justice. Police departments can apply to the fund for crime-fighting grants.

The bill also deletes a requirement that says local agencies cannot qualify for annual grants from the state asset forfeiture program unless they have seized property in the past year.

“We don’t want any element of pay to play,” Weiler said in a committee hearing Monday. The panel voted 4-1 to send the bill to the Senate floor for further consideration.

Weiler said police still can take a case to federal court if it makes sense for an investigation, but the cases still must start in the state courts.

Even though “you hear stories of kingpin drug dealers,” the bill is aimed at protecting “the little guy” whose cash or car might be seized but who is never convicted of a crime, Weiler said.

But two leaders of the Utah Chiefs of Police Association and a top official in the Utah Attorney General’s Office said Weiler’s bill is a stark threat to state and local narcotics strike forces.

“We feel like we are being slapped down really for doing a very important part of the criminal justice process,” Bountiful Police Chief Tom Ross told the committee.

Ross, president of the police group, said if there is evidence of ill-gotten gains by criminals, “those individuals should not be keeping those funds.”

He said seized funds received back from the state and federal governments are vital for narcotics strike forces “even being able to operate.”

“Drug money — that’s what we’re after,” said Dave Carlson of the Attorney General’s Office.

“We need to go after the profits of the drug dealers.”

Weiler said the bill is partially a response to a Utah Supreme Court decision of August 2018. The court overturned the seizure of \$500,000 from a driver by the Utah Highway Patrol. The driver was not convicted of a crime and the state routed the cash to the federal forfeiture system.

But Carlson said the seizure went to the federal system for good reason — the driver had connections to a major drug case in another state being investigated by the Drug Enforcement Administration.

“This is critical for us in the war on drugs,” Carlson said. “The strategy is that we take the drug dealer’s own money and use that to finance (drug investigations). We can’t fight this war without our federal partners.”

He said the seizure cases go where the evidence is, adding that worries about police coveting the cash for their departments “is a fairy tale.”

“We’re actually becoming known as a state that’s being very lenient on the cartels,” Orem Police Chief Gary Giles, vice president of the chiefs’ association, said. “It’s a deterrent when we can take that money away. We’re not out there to make money for ourselves; that’s not happening.”

Attorney James Bradshaw, who represented the driver in the Supreme Court case, said SB 109 “has no effect on what can be prosecuted.”

“What this deals with is when a state law enforcement agency separates a citizen from their property,” Bradshaw said. “That’s very fundamental.”

Weiler seemed to become exasperated by criticism of the bill.

“We’re not stopping anyone from seizing anything,” he said. “This is just not for the completely objectively horrible, guilty drug-running people. Forfeiture is also for the little guy.”

“We actually don’t think this bill goes far enough,” said Marina Lowe of the American Civil Liberties Union of Utah. “Seizure happens absent a criminal conviction, and the ACLU’s position is there should be a conviction before these funds are seized.”

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