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House Bill 22, Civil Asset Forfeiture - Procedural Reforms, introduces and restores some important reforms to civil asset forfeiture—the legal ability of government to seize and keep property of individuals not charged with, let alone convicted of, a crime. The bill, drafted over two years and recommended favorably during interim, passed out of the House Judiciary Committee unanimously.

Law enforcement and prosecutors object to the bill, just as they objected to the statewide "Initiative B" in 2000 that first put in place protections for citizens on civil forfeiture in Utah (which passed by 69%). Immediately after the passage of Initiative B, these groups set out to undermine the expressed will of Utah voters by ensuring that the financial proceeds of civil asset forfeiture (taken from individuals who have not been convicted of a crime) could once again flow back to law enforcement agencies. Successive modifications to the civil asset forfeiture statute, proposed by law enforcement and prosecutors, have effectively eliminated most of the reforms accomplished by Initiative B. HB22 seeks to restore some of those reforms, without touching the parallel criminal forfeiture procedure.

The Utah County Law Enforcement Executives Association recently distributed a letter of opposition to HB22—one which is replete with misleading claims and factually incorrect statements. The following is my rebuttal to their shameful act of fearmongering.

Irrelevant information

The UCLEEA letter takes half a page to share a few statistics "to put the problem in perspective," first highlighting seizures from drug trafficking organizations—seizures which HB22 still allows to occur, and which can be forfeited criminally as under current law. And, it's important to note, these drug trafficking organizations are a very small minority of overall forfeitures—the overwhelming majority of which are under $5,000 in total value.

The "perspective" information then discusses the financial aspects of drug cartels, nationwide heroin use, Utah's well known prescription drug overdose problem, and the increased rate of newborns exposed to drugs while in utero. *None of this has anything to do with HB22.*

This is an attempt to lead you to believe that HB22 would somehow "support drug dealers, criminals, and large cartels." To the contrary: HB22 supports private property rights and due process by ensuring that the government can only take property from individuals (including drug dealers, criminals, and large cartels) upon a showing that the property is actually linked to the alleged crime. Many have argued that HB22 doesn't go far enough because it still allows property to be seized in the absence of a criminal prosecution and/or conviction.

No examples of abuse?

UCLEEA claims that proponents of the bill "have NO documented examples of abuses by police or prosecutors" (emphasis in the original). This is completely false. The proposed reforms have been the subject of multiple committee hearings over the past year wherein multiple examples were presented in detail, and testimony from individuals whose property interests had been violated through the civil forfeiture process was received. As one example of many, the Garcia family was passing through Utah to a wedding in Idaho on April

15, 2014. Stopped in Weber County by police for having a tinted license plate cover, they had $14,170 taken from them—money they had pooled together to help pay for the wedding and give to the newlyweds. The money was taken by police at the roadside stop while the Garcias were sent on their way—not charged with any crime. Prosecutors held the property for eleven months before relenting and releasing it (after the Garcia family incurred substantial attorney fees). No drugs or illegal conduct was ever found.

Other examples exist, and for brevity's sake will not be included (but I'm happy to share in person, if interested). To simply claim that NO examples have been provided is *absurd*.

"Policing for profit"

Proponents of forfeiture reform sometimes use the above-listed term when describing forfeiture, due to the financial incentive that exists for law enforcement and prosecutors to obtain revenue by taking property from those not convicted of a crime.

In their letter, UCLEEA references some of the reasonable uses of forfeiture revenue: drug courts and crime victims. Mr. Platt, a Salt Lake County prosecutor, made this same point during his committee testimony as well.

What both Mr. Platt and UCLEEA *are not telling you*, however, is that most forfeiture revenue is *redirected back to* the law enforcement agencies that participate in the asset forfeiture grant program. For example, in FY2014, CCJJ disbursed **$729,747** of forfeiture proceeds to 25 state and local law enforcement agencies. Forfeitures in which state and local law enforcement participated with Federal agencies accounted for another **$848,204.44** to law enforcement agencies during the same year. This financial incentive was eliminated by Initiative B, which is why law enforcement immediately set out to undermine it after passage. HB22 simply recognizes the will and wisdom of nearly 70% of Utahns by restoring this important protection against perverse incentives.

It's important to note two things. First, *HB22 does not in any way impede criminal forfeiture*. Those convicted of crimes will—as they should—have the proceeds of their crime taken from them. Thus, the letter's references to Utah becoming a sanctuary for drug cartels and drug trafficking are misleading fearmongering; this bill is designed to protect innocent owners. In 2014, 69.2% of forfeitures were under $5,000 in total value. The overwhelming number of cases are not the drug cartels to which opponents refer.

Second, despite the importance of funding drug courts and the Crime Victims Fund, these programs *should not be funded by proceeds taken from innocent individuals*. This point was emphasized in committee testimony. It's perfectly legitimate to divert criminal forfeiture revenue to these worthy programs, but prosecutors should not be allowed to take property from people not charged or convicted with a crime, even if it is used for beneficial government programs.

False Claims about House Bill 22

UCLEEA falsely claims in their letter that HB 22 "works to protect drug cartels, not innocent owners." This wildly inaccurate statement is then supported by three assertions, each of which is not at all correct.

"Lines 102-105 create a loophole. Under this language, a pimp exploiting a young woman engaged in sex for money would claim the money, and be entitled to get it back."

This argument is absurd and reflects an intentional deception or complete lack of understanding of the law. Lines 102-105 specifically exclude as an "innocent owner" anyone who has "participated in" or "given permission" for the illegal conduct, or who "solicits," "commands," "encourages," or "aids" another person to engage in illegal conduct. Only complete incompetence would prevent a prosecutor from establishing the culpability of a pimp under these standards.

"That loophole is repeated at lines 150-156. Under this language, a person found with $90,000 in cash and 30 pounds of heroin during execution of a search warrant would be entitled to a return of all the cash, unless surveillance had observed the actual transaction producing the $90,000 cash (which, of course, is almost

impossible to achieve)."

What law enforcement executives call a "loophole", the law calls *due process* and *burden of proof*. The "direct nexus" requirement between the property seized and the illegal conduct serves two important purposes: First, it is a reflection of the high level of protection of private property afforded by the constitution—even a "criminal" is entitled to such protection of legitimately acquired property; and second, it seeks to prevent the common "blitzkrieg" practice of seizing everything and anything, and then engaging in a "settlement exercise" with the owner where the owner must "agree" to forfeit some assets to recover others.

The assertion that a forfeiture action can't succeed unless law enforcement actually surveil the transaction is as nonsensical as suggesting that a murder, or any other crime for that matter, cannot be solved without a video recording of the event. The direct nexus provision requires nothing more than that law enforcement and prosecutors do the job that the public expects them to do—investigate, collect evidence, build a case and prosecute.

Due process and *burden of proof* are hardly new concepts created by this bill. They are, however, protections guaranteed by a much older bill—the Bill of Rights.

"Alternatively, the $90,000 would be used to pay for an attorney (line 401) rather than be forfeited to CCJJ to remedy the harmful effects of heroin on our communities."

The complaint about seized property being subject to release for purposes of "paying for an attorney" reflects a misunderstanding of, or an attempt to mislead about, existing law. The forfeiture statute already allows for the judicial release of seized property for hardship purposes, and, in practice, this provision is commonly relied upon by defendants to obtain the resources necessary to secure legal representation. The inclusion of a specific reference to this purpose within the list of other specific and general purposes doesn't change the practical application of the statute —it merely acknowledges it.

What should be alarming, however, is that within the letter's criticism of this provision is the implied opposition to a defendant's access to legal representation. Perhaps, this is reflective of a fear that legal representation of defendants will disrupt the "fast-track" practice of resolving most civil forfeiture cases by default or stipulated judgment. The law should impose a high bar for taking property from individuals not convicted of a crime—and those who have taken an oath to protect and defend the rights of citizens should understand and accept that difficult standard.

Conclusion

UCLEEA claims that HB22 is a "solution in search of a problem," when the truth is quite opposite. There's a reason that many states are moving away from civil asset forfeiture: New Mexico and North Carolina have abolished it completely, while Montana, Minnesota and others require a criminal conviction as a prerequisite for civil forfeiture. The reforms proposed by HB22 are modest in comparison, and still allow the use of civil forfeiture, contrary to the claims of UCLEEA.

If, as UCLEEA asserts, HB22 would result in a complete discontinuation of asset forfeiture as tool, that result would be entirely by their choice. That statement looks very much like an admission that profit motive is the driving force behind the current use of asset forfeiture. Fortunately, I don't believe Utah would experience the drastic result alleged by the UCLEEA, as that has not been the result in states that have imposed much stronger reforms that HBB22 proposes. Sadly, the baseless claims that comprise the UCLEEA letter are not indicative of the high standards of integrity and honesty we expect from those we entrust with the duty to enforce our laws, nor is it reflective of the examples of integrity we routinely see by the dedicated men and women who don a badge every day with a willingness to place themselves in harm's way to protect the public and uphold the law.