

# 2014 Legislative Session



Criminal Law Update

# 2014 Legislative Session



## Notes:

Session Ended March 13 at Midnight (hours ago)

**General Effective Date is May 13, 2014, unless otherwise noted.**

Most bills are not yet in their “enrolled form.”

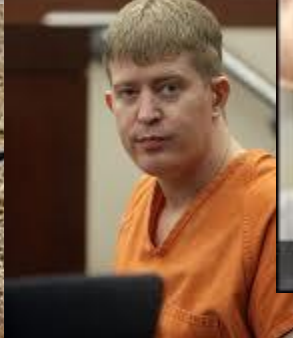
The governor could veto a bill discussed here, though very unlikely.

Not All Criminal Bills Are Discussed (Too Many)

This presentation is intended to be a-political.



**LIBERTAS**  
INSTITUTE  
INDIVIDUAL LIBERTY  
PRIVATE PROPERTY  
FREE ENTERPRISE



MEDICAL MARIJUANA FOR CHILDREN

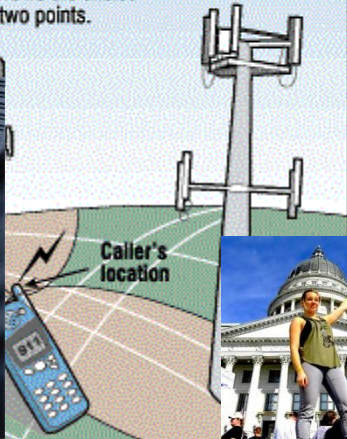
The first tower judges the distance to the caller, who could be anywhere along the circle.

Distance from the second tower narrows the choice to two points.

The third tower pinpoints the location.

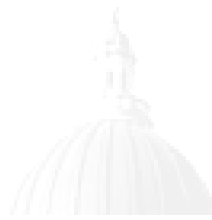
**POLICING for PROFIT**  
The Abuse of Civil Asset Forfeiture

by Marlon R. Williams, Ph.D.  
Johnathan R. Williams, Ph.D.  
Domenic A. Salvatore, Ph.D.  
Scott Burkhead



## SB 13 – Theft Amendments

**Sen. Daniel W. Thatcher**



This bill:

- ▶ provides that the penalty for a third theft conviction in 10 years becomes a third degree felony if one of the prior convictions was a class A misdemeanor;
- ▶ provides that the penalty for a third theft conviction in 10 years becomes a third degree felony if the value of the property in the current case is more than \$500 but less than \$1,500;
- ▶ provides that the penalty for a theft conviction is a third degree felony if that person has been previously convicted of felony theft; and
- ▶ changes the penalty from a felony to a class A misdemeanor for a person convicted of theft for a third time in 10 years.





## “Good Samaritan Law”

58-37-13

(15) (a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (15)(b) that the person:

(i) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;

(ii) reports in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (15);

(iii) provides in the report under Subsection (15)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;

(iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;

(v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and

(vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.

Becomes Effective Upon Signing

HB 11 – Overdose Reporting  
Rep. Carol Spackman Moss

Affirmative Defense  
Applies to Possession  
Charges ONLY.

Utah currently  
ranks 4<sup>th</sup> in  
overdose deaths\*



\*ABC 4 News, Utah – February 2014

## 58-37-8. Prohibited acts -- Penalties.

(2) Prohibited acts B -- Penalties:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance

(15) The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes precedence over any conflicting provision of this section.

Limitation Applies Only to Possession Cases

# REVENGE PORN

## **76-5b-203. Distribution of an intimate image -- Penalty.**

(1) As used in this section:

(a) "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, providing access to, or otherwise transferring or presenting an image to another individual, with or without consideration.

(b) "Intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that depicts:

(i) exposed human male or female genitals or pubic area, with less than an opaque covering;

(ii) a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

(iii) the individual engaged in any sexually explicit conduct.

# REVENGE PORN

(c) "Sexually explicit conduct" means actual or simulated:

(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(ii) masturbation;

(iii) bestiality;

(iv) sadistic or masochistic activities;

(v) exhibition of the genitals, pubic region, buttocks, or female breast of any individual;

(vi) visual depiction of nudity or partial nudity;

(vii) fondling or touching of the genitals, pubic region, buttocks, or female breast; or

(viii) explicit representation of the defecation or urination functions.

(d) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct that duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

(Thanks for the thorough definition, Rep. Poulson!)



# REVENGE PORN

(2) An actor commits the offense of distribution of intimate images if the actor, with the intent to cause  $\hat{H} \rightarrow$  [severe]  $\leftarrow \hat{H}$  emotional distress or harm, knowingly or intentionally distributes to

any third party any intimate image of an individual who is 18 years of age or older, if:

(a) the actor knows that the depicted individual has not given consent to the actor to distribute the intimate image;

(b) the intimate image was created by or provided to the actor under circumstances in which the individual has a reasonable expectation of privacy; and

(c) actual  $\hat{H} \rightarrow$  emotional distress or  $\leftarrow \hat{H}$  harm is caused to the person  $\hat{H} \rightarrow$  [and the harm is] as  $\leftarrow \hat{H}$  a result of the distribution under this section.

Class A Misdemeanor for First Offense.

(3) This section does not apply to:

(a) (i) lawful practices of law enforcement agencies;

(ii) prosecutorial agency functions;

(iii) the reporting of a criminal offense;

(iv) court proceedings or any other judicial proceeding; or

(v) lawful and generally accepted medical practices and procedures;

(b) an intimate image if the individual portrayed in the image voluntarily allows public exposure of the image; or

(c) an intimate image that is portrayed in a lawful commercial setting.

Third Degree for Second or Subsequent Offense.

HB 257 – Aggravated Sexual Abuse of Child Amendments

Rep. Brad R. Wilson

(Bill is intended to address State v. Watkins (Utah 2013))

**76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

**Section Applies to Conduct with Child 13 and Younger – Aggravating the Charge**

(4) (h) the offense was committed by a person who occupied a position of special trust in relation to the victim; [~~"position of special trust" means that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence over the victim, and includes, but is not limited to, a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, babysitter, adult scout leader, natural parent, stepparent, adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;~~]

**76-5-406. Sexual offenses against the victim without consent of victim --**

**Circumstances.** (Definition is also used to negate consent for those between 14 and 18)

(10) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in [~~Subsection~~] Section 76-5-404.1[~~(4)(h)~~];

## HB 257 – Aggravated Sexual Abuse of Child Amendments

Rep. Brad R. Wilson

(Bill is intended to address State v. Watkins (Utah 2013))**76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**(1) As used in this section[~~,"child" means a person under the age of 14.~~];(a) "Adult" means an individual 18 years of age or older.(b) "Child" means an individual under the age of 14.(c) "Position of special trust" means:(i) an adoptive parent;(ii) an athletic manager who is an adult;(iii) an aunt;(iv) a babysitter;(v) a coach;(vi) a cohabitant of a parent if the cohabitant is an adult;(vii) a counselor;(viii) a doctor or physician;(ix) an employer;(x) a foster parent;(xi) a grandparent;(xii) a legal guardian;(xiii) a natural parent;(xiv) a recreational leader who is an adult;(xv) a religious leader;→ (xvi) a sibling or a step-sibling who is an adult; ←→ [(xvii)] (xvii) ← a scout leader who is an adult;→ [(xviii)] (xviii) ← a stepparent;→ [(xix)] (xix) ← a teacher;→ [(xx)] (xx) ← an uncle;→ [(xxi)] (xxi) ← a youth leader who is an adult; or

Plus: (xxii) any person in a position of authority, other than those persons listed [above] which enables the person to exercise undue influence over the child.

HB 213 – Criminal Penalties for Sexual Contact with Student  
Rep. Lavar Christensen

## 76-5-401.1. Sexual abuse of a minor.

Non-Force Sexual Activity – Victim is 14 or 15 years old.



(2) A person commits sexual abuse of a minor if the person is seven years or more older than the minor ~~or~~ **or holds a relationship of special trust as an adult teacher, employee, or volunteer, as described in Subsection 76-5-404.1(c)(xix)** ~~and~~ and, under circumstances not ...

(3) (a) A violation of this section is a class A misdemeanor[;], except under Subsection (3)(b).

(b) A violation of this section is a third degree felony if the actor at the time of the commission of the offense:

- (i) is 18 years of age or older;
- (ii) held a position of special trust as a teacher or a volunteer at a school, as that position is defined in Subsection [76-5-404.1\(1\)\(c\)\(xix\)](#); and
- (iii) committed the offense against an individual who at the time of the offense was enrolled as a student at the school where the actor was employed or was acting as a volunteer.



Rep. Lavar Christensen

## 76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old.

(2) (a) A person commits unlawful sexual conduct with a minor if, under circumstances not amounting to an offense listed under Subsection (3), a person who is:

(i) seven or more years older but less than 10 years older than the minor at the time of the sexual conduct engages in any conduct listed in Subsection (2)(b), and the person knew or reasonably should have known the age of the minor; ~~H→ [or] ←H~~

(ii) 10 or more years older than the minor at the time of the sexual conduct and engages in any conduct listed in Subsection (2)(b) ~~H→~~ or

(iii) ~~or~~ holds a relationship of special trust as an adult teacher, employee, or volunteer, as described in Subsection 76-5-404.1(c)(xix) ←H .

## 76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old.

(more than fondling, sex etc.)

(4) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.

(5) (a) A violation of Subsection (2)(b)(iv) is a class A misdemeanor[?], except under Subsection (5)(b).

(fondling)

(b) A violation of Subsection (2)(b)(iv) is a third degree felony if the actor at the time of the commission of the offense:

(i) is 18 years of age or older;

(ii) held a position of special trust as a teacher or a volunteer at a school, as that position is defined in Subsection [76-5-404.1\(1\)\(c\)\(xix\)](#); and

(iii) committed the offense against an individual who at the time of the offense was enrolled as a student at the school where the actor was employed or was acting as a volunteer.

Age Differences Do Not Matter Under this new Subsection.  
(For Example, the volunteer T.A. is 18, victim is 17 = crime).

76-5-415. Educator's license subject to action for violation of this part.

Commission of any offense under this Title 76, Chapter 5, Part 4, Sexual Offenses, by an educator as defined in Section 53A-6-103, is grounds under Section 53A-6-501 for disciplinary action against the educator, including revocation of the educator's license.

# HB 213 – Human Trafficking Victim Amendments

## Rep. Jennifer M. Seelig

## Sexual Abuse Laws


This bill:

- provides that a child is not subject to a delinquency proceeding for engaging in prostitution unless a law enforcement officer has referred the child to the Division of Child and Family Services on at least one prior occasion for an alleged act of prostitution or sexual solicitation; ;

(b) Upon encountering a child engaged in prostitution or sexual solicitation, a law enforcement officer shall:

- (i) conduct an investigation;
- (ii) refer the child to the division;
- (iii) if an arrest is made, bring the child to a receiving center, if available; and
- (iv) contact the child's parent or guardian, if practicable.

(d) If law enforcement has not referred the child to the division under Subsection (3)(b)(ii) on at least one prior occasion, the division shall provide services to the child under Title 62A, Chapter 4a.



(e) If law enforcement has referred the child to the division under Subsection (3)(b)(ii) on at least one prior occasion the child may be subject to delinquency proceedings under Title 62A, Chapter 7 and Section [78A-6-601](#) through Section [78A-6-704](#).

NEW BRANDISHING STATUTE

**76-10-506. Threatening with or using dangerous weapon in fight or quarrel.**

(1) As used in this section ~~H~~→ [5] :

(a) "Dangerous weapon" means an item that in the manner of its use or intended use is capable of causing death or serious bodily injury. The following factors shall be used in determining whether an item, object, or thing is a dangerous weapon:

(i) the character of the instrument, object, or thing; → (restricted persons)

(ii) the character of the wound produced, if any; and → (self defense)

(iii) the manner in which the instrument, object, or thing was exhibited or used.

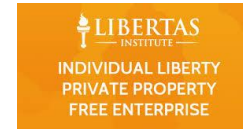
(2) Except as otherwise provided in Section 76-2-402 and for those persons described in Section 76-10-503, a person who ~~H~~→ [H] , in the presence of two or more persons, [H] and not amounting to a violation of Section 76-5-103, ~~H~~→ (Agg Assault)  
draws or exhibits a dangerous weapon ~~H~~→ [~~as defined in Section 76-1-601~~] ~~H~~ in an angry and threatening manner or unlawfully uses a dangerous weapon in a fight or quarrel is guilty of a class A misdemeanor.

Removes reference for dangerous weapon definition, thus losing mention of a knife, or "other lawful purposes" of use.



# HB 268 – Dangerous Weapons Amendments

## Rep. Brian M. Greene



## WEAPONS LAWS

(6) (a) "Dangerous weapon" means:

(i) a firearm; or

(ii) an ~~[item]~~ object that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(b) The following factors ~~[shall be]~~ are used in determining whether ~~[a knife, or another item,]~~ any object, ~~[or thing not commonly known as a dangerous weapon]~~ other than a firearm is a dangerous weapon:

(i) the ~~[character of the instrument,]~~ location and circumstances in which the object~~[, or thing]~~ was used or possessed;



(ii) the primary purpose for which the object was made;

~~[(ii)]~~ (iii) the character of the wound, if any, produced~~[, if any]~~ by the object's unlawful use;

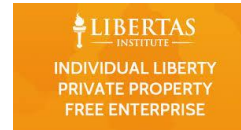
~~[(iii)]~~ (iv) the manner in which the ~~[instrument,]~~ object~~[, or thing]~~ was unlawfully used;  
[and]

(v) whether the manner in which the object is used or possessed constitutes a potential imminent threat to public safety; and

~~[(iv)]~~ (vi) the ~~[other]~~ lawful purposes for which the ~~[instrument,]~~ object~~[, or thing]~~ may be used.

# HB 268 – Dangerous Weapons Amendments

## Rep. Brian M. Greene



## WEAPONS LAWS

**Adds:** (7) (a) It is an affirmative defense to transferring a firearm ~~to~~ **[H]** or other dangerous weapon **[H]** ~~to~~ **←H** by a person restricted under Subsection (2) or (3) that the firearm ~~to~~ **[H]** or dangerous weapon **[H]** ~~to~~ **←H** :

(8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or dangerous weapon to any person, knowing that the recipient is a person described in Subsection (1)(a) or (b). **(restricted)**

(b) A person who violates Subsection (8)(a) when the recipient is:

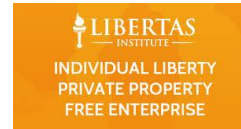
(i) a person described in Subsection (1)(a) and the transaction involves a firearm, is guilty of a second degree felony;

(ii) a person described in Subsection (1)(a) and the transaction involves any dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for any unlawful purpose, is guilty of a third degree felony;

**You may now knowingly sell non-firearm weapons to felons.**

# HB 268 – Dangerous Weapons Amendments

## Rep. Brian M. Greene



## WEAPONS LAWS

Finally:

**76-10-512. Target concessions, shooting ranges, competitions, and hunting excepted from prohibitions.**

(2) It is not a violation of Subsection 76-10-503(2) or (3) for a restricted person defined in Section 76-10-503(1) to own, possess, or have under the person's custody or control, archery equipment, including crossbows, for the purpose of lawful hunting and lawful target shooting.

(3) Notwithstanding Subsection (2), the possession of archery equipment, including crossbows, by a restricted person defined in Subsection 76-10-503(1) may be prohibited by:

(a) a court, as a condition of pre-trial release or probation; or

(b) the Board of Pardons and Parole, as a condition of parole.

A convicted violent felon (not on probation or parole) may possess archery equipment, including crossbows.

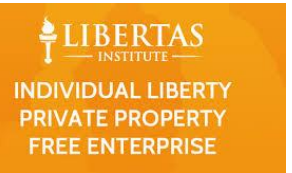
SCREENING TIP:

\*There is no cross-reference in 76-10-503 to this statute!

# HB 70

## 2<sup>nd</sup> Substitute

Rep. Marc Roberts



### Alleged cop killer Matthew Stewart hangs self in jail cell

Beatty, botched raid - Stewart allegedly killed one officer, wounded five others in 2012 drug raid.

By Jessica Miles and Bob Mery The Salt Lake Tribune  
Published 8:26 AM, 10/13/2015

This is an account of what was reported on video and in print, and information that was not included in the account. It is not a story. Only the person who was present and who was not included in the account.

Officer • Matthew David Stewart, awaiting trial for the slaying of a police officer during a botched drug raid that ended in a shootout, died late Thursday night after apparently hanging himself in his jail cell.

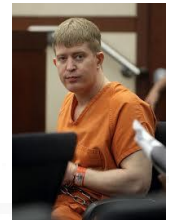
Stewart, Stewart's sister-in-law, said Stewart's parents were informed of the death by Weber County Sheriff's authorities Friday morning.

Stewart was found hanging from a bed sheet in his cell at 10 p.m. according to Weber County. Although the death, the two were not slain during a routine check the previous night.

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"I just think (Stewart) was a really hard," Stew Stewart said Friday. "I just think he really was a really hard."



The police showed up at my wife's door and she was not receptive. She was arrested and held for 18 hours. My 3 year old daughter and 1 year old son interrupted this.

The police had a tip on the warrant, wrong address, no apology, no cash release from jail because after all they did say we should make a statement and then we sat up there when they pushed past my daughter knowing her father's ground.

**Robberty** - What if you get heavily arrested. The parents will be in court. Like Stewart.

**Robberty** - With guns a weapon.

**Kevin Legg** - What if when you go out at the bathroom you find a small team training it be good to see the new clock work.

**Chairman Messer** - Should the police engage in an armed raid when they could have just as easily have arrested him on the way out in the morning? That's the problem with using violence as a means of problem solving. It tends to target more violence, sustained or not.

**Runge** - On the way out where? He involved an overnight shift at that time.

**Chairman Messer** - Almost from the way to work? On the way back while they are arrested the search warrant while they were at work?

**Runge** - You have to BEHAVE, behave with the warrant.



# HB 70 - 2<sup>nd</sup> Substitute

77-23-210. Force used in executing a search warrant -- When notice of authority is required as a prerequisite.

(1) When a search warrant has been issued authorizing entry into any building, room, conveyance, compartment, or other enclosure, the officer executing the warrant may ~~[use such force as is reasonably necessary to]~~ enter:

~~[(+)]~~ (a) if, after notice of the officer's authority and purpose, there is no response or the officer is not admitted with reasonable promptness; or

~~[(2+)]~~ (b) without notice of the officer's authority and purpose~~[, if the magistrate issuing the warrant directs in the warrant that the officer need not give notice:]~~ as provided in Subsection (3).

(2) The officer executing the warrant under Subsection (1) may use only that force which is reasonable and necessary to execute the warrant.

(3) (a) The officer shall identify himself or herself and state the purpose of entering the premises as soon as practicable.

(b) The officer may enter without notice only if:

(i) there is reason to believe the notice will endanger the life or safety of the officer or another person;

(ii) there is probable cause to believe that evidence may be easily or quickly secreted or destroyed; or

→ (iii) the magistrate, having found probable cause based upon proof provided under oath, that the object of the search may be easily or quickly secreted or destroyed, or having  
→ found reason to believe that physical harm may result to any person if notice were given, has directed that the officer need not give notice of authority and purpose before entering the premises to be searched under Rule 40, Rules of Criminal Procedure.

(4) (a) The officer shall take reasonable precautions in execution of any search warrant to minimize the risks of unnecessarily confrontational or invasive methods which may result in harm to any person.

(b) The officer shall minimize the risk of searching the wrong premises by verifying that the premises being searched is consistent with a particularized description in the search warrant, including such factors as the type of structure, the color, the address, and orientation of the target property in relation to nearby structures as is reasonably necessary.

Section 3. Effective date.

This bill takes effect on July 1, 2014.



ACLU

AMERICAN CIVIL LIBERTIES UNION  
of UTAH

LIBERTAS  
INSTITUTE

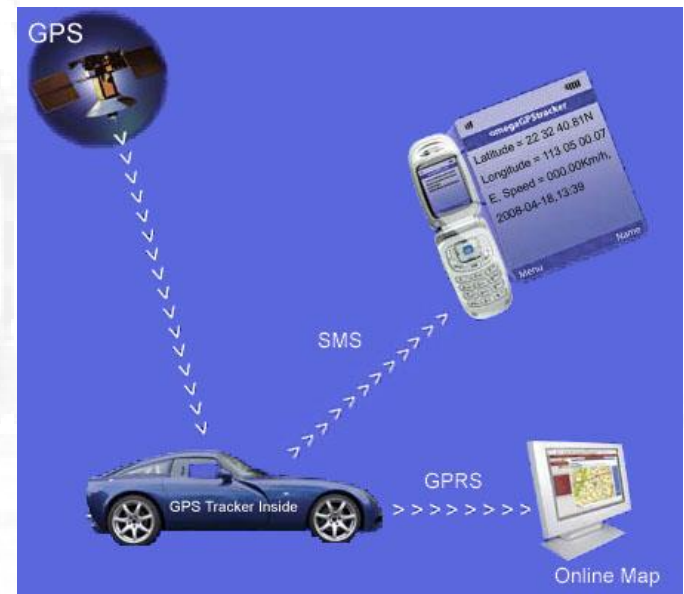
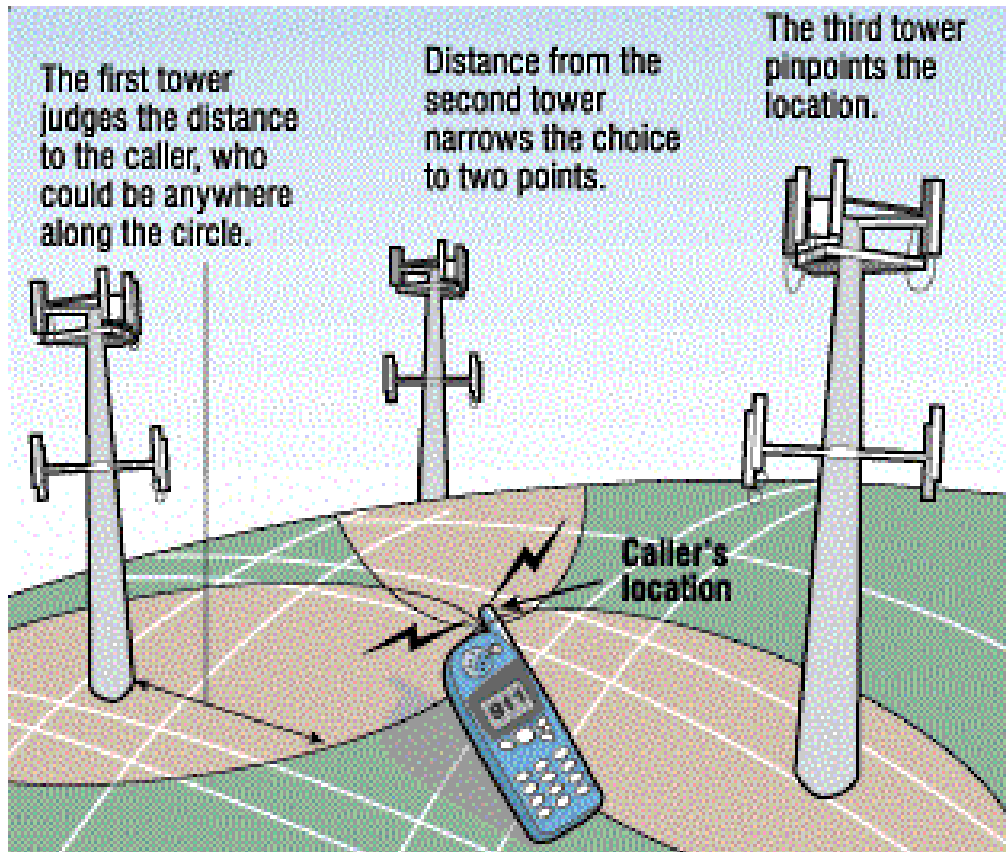
INDIVIDUAL LIBERTY  
PRIVATE PROPERTY  
FREE ENTERPRISE

For a Residence,  
There Are Now  
Two Different  
Standards For  
Non-Announce  
Warrants, with  
Those Standards  
in Statute, NOT  
in Rule 40.

← This part is more of a “best practices” section – what if the agency violates this section?

HB 128 - 1<sup>st</sup> Substitute  
Rep. Ryan Wilcox

Places in Statute Standards to Obtain a  
Warrant for “Electronic Location” or  
“Electronic Data” – But the Warrant  
Itself is Obtained Under Rule 40.



**CHAPTER 23c. LOCATION PRIVACY FOR ELECTRONIC DEVICES**

**77-23c-101. Definitions.**

As used in this chapter:

(1) "Electronic communication service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.

(2) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.

(3) "Government entity" means the state, a county, a municipality, a higher education institution, a local district, a special service district, or any other political subdivision of the state or an administrative subunit of any political subdivision, including a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency.

(4) "Location information" means information concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device.

(5) "Location information service" means the provision of a global positioning service or other mapping, location, or directional information service.

(6) "Remote computing service" means the provision of computer storage or processing services by means of an electronic communications system.

**77-23c-102. Location information privacy -- Warrant required for disclosure.**

(1) (a) Except as provided in Subsection (2), a government entity may not obtain the location information, stored data, or transmitted data of an electronic device without a search warrant issued by a court upon probable cause.

(b) Except as provided in Subsection (1)(c), a government entity may not use, copy, or disclose, for any purpose, the location information, stored data, or transmitted data of an electronic device that is not the subject of the warrant that is collected as part of an effort to obtain the location information, stored data, or transmitted data of the electronic device that is the subject of the warrant in Subsection (1)(a).

(c) A government entity may use, copy, or disclose the transmitted data of an electronic device used to communicate with the electronic device that is the subject of the warrant if the government entity reasonably believes that the transmitted data is necessary to achieve the objective of the warrant.

(d) The data described in Subsection (1)(b) shall be destroyed in an unrecoverable manner by the government entity ~~as soon as reasonably possible~~ ~~no later than 24 hours~~ as soon as reasonably possible after the data is collected.



# HB 128 - 1<sup>st</sup> Substitute

## Rep. Ryan Wilcox

### 77-23c-103. Notification required -- Delayed notification.

(1) Except as provided in Subsection (2), a government entity that executes a warrant pursuant to Subsection 77-23c-102(1)(a) shall, within 14 days after the day on which the operation ~~§→ [commences]~~ concludes ←§ , issue a notification to the owner of the electronic device specified in the  
warrant that states:

- (a) that a warrant was applied for and granted;
- (b) the kind of warrant issued;
- (c) the period of time during which the collection of data from the electronic device was authorized;
- (d) the offense specified in the application for the warrant;
- (e) the identity of the government entity that filed the application; and
- (f) the identity of the judge who issued the warrant.

(2) A government entity seeking a warrant pursuant to Subsection 77-23c-102(1)(a) may submit a request, and the court may grant permission, to delay the notification required by Subsection (1) for a period not to exceed 30 days, if the court determines that there is probable cause to believe that the notification may:

- (a) endanger the life or physical safety of an individual;
- (b) cause a person to flee from prosecution;
- (c) lead to the destruction of or tampering with evidence;
- (d) intimidate a potential witness; or
- (e) otherwise seriously jeopardize an investigation or unduly delay a trial.





(4) (a) "Unmanned aerial vehicle" means an aircraft that:

(i) is capable of sustaining flight; and

(ii) operates with no possible direct human intervention from on or within the aircraft.

(b) "Unmanned aerial vehicle" does not include an unmanned aircraft that is flown:

(i) within visual line of sight of the individual operating the aircraft; and

(ii) strictly for hobby or recreational purposes.

**63G-18-103. Warrant required -- Exceptions.**

§→ (1) ←§ A law enforcement agency may not obtain, receive, or use data acquired through an unmanned aerial vehicle unless the data is obtained:

§→ [(1)] (a) ←§ pursuant to a search warrant;

§→ [(2)] (b) ←§ in accordance with judicially recognized exceptions to warrant requirements; or

§→ [(3)] (c) subject to Subsection (2), ←§ from a person who is a non §→ [-] ←§ government actor.

§→ (2) A nongovernment actor may only disclose data acquired through an unmanned aerial vehicle to a law enforcement agency if:

(a) the data appears to pertain to the commission of a crime; or

(b) the nongovernment actor believes, in good faith, that:

(i) the data pertains to an imminent or ongoing emergency involving danger of death or serious bodily injury to an individual; and

(ii) disclosing the data would assist in remedying the emergency. ←§

•Also has extensive reporting requirements for law enforcement.

• Requires destruction of evidence not related to the investigation 'as soon as practicable'

•Does NOT prevent private actors from using drones to spy on neighbors, etc.

# SB 46 – Administrative Subpoena Modifications

## Sen. Mark Madsen



(2) When a law enforcement agency is investigating a sexual offense against a minor, an offense of stalking under Section [76-5-106.5](#), or an offense of child kidnapping under Section [76-5-301.1](#), and has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense, ~~[the prosecutor may issue an administrative subpoena,]~~ a law enforcement agent shall:

(a) articulate specific facts showing reasonable grounds to believe that the records or other information sought, as designated in Subsection (c)(i) through (v), are relevant and material to an ongoing investigation;

(b) present the request to a prosecutor for review and authorization to proceed; and

(c) submit the request to a district court judge for a court order, consistent with 18 U.S.C. 2703 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing service provider that owns or controls the Internet protocol address, websites, email address, or service to a specific telephone number, requiring the production of the following information, if available, upon providing in the ~~[subpoena]~~ court order the Internet protocol address, email address, telephone number, or other identifier, and the dates and times the address, telephone number, or other identifier was suspected of being used in the commission of the offense:

~~[(a)]~~ (i) names of subscribers, service customers, and users;

~~[(b)]~~ (ii) addresses of subscribers, service customers, and users;

Officer Must Now Obtain a Court Order for Internet User Subscriber Information

Even Though The Information Obtained is Non-Content, Less Informative Than Running A Check of a Car Registration

And is Similarly Placed Into the Public, Albeit Electronically.

EFFECTIVE UPON SIGNING



# HB 185 Juvenile Detention Facility Amendments

## Rep. Erik K. Hutchings

### **78A-6-701. Jurisdiction of district court.** (Direct File Cases)

(4) A minor arrested under this section shall be held in a juvenile detention facility until the district court determines where the minor shall be held until the time of trial, except for defendants who are otherwise subject to the authority of the Board of Pardons and Parole.

(5) The district court shall consider the following when determining where the minor will be held until the time of trial:

(a) the age of the minor;

(b) the nature, seriousness, and circumstances of the alleged offense;

(c) the minor's history of prior criminal acts;

(d) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;

(e) whether the minor's placement in a juvenile detention facility will negatively impact the functioning of the facility by compromising the goals of the facility to maintain a safe, positive, and secure environment for all minors within the facility;

(f) the relative ability of the facility to meet the needs of the minor and protect the public;

(g) whether the minor presents an imminent risk of harm to the minor or others within the facility;

(h) the physical maturity of the minor;

(i) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and

(j) any other factors the court considers relevant.





## **78A-6-701. Jurisdiction of district court.**

(Direct File Cases)

(6) A minor ordered to a juvenile detention facility under Subsection (5) shall remain in the facility until released by a district court judge, or if convicted, until sentencing.

(7) A minor held in a juvenile detention facility under this section shall have the same right to bail as any other criminal defendant.

(8) If the minor ordered to a juvenile detention facility under Subsection (5) attains the age of 18 years, the minor ~~shall~~ **will** ~~shall~~ be transferred within 30 days to an adult jail until released by the district court judge, or if convicted, until sentencing.

(9) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the juvenile detention facility may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including jail or other place of pretrial confinement for adults.

HB 185 Juvenile Detention Facility Amendments  
Rep. Erik K. Hutchings



**78A-6-702. Serious youth offender -- Procedure.**  
(Bindover Cases)

(6) At the time the minor is bound over to the district court, the juvenile court shall make the initial determination on where the minor shall be held.

(7) The juvenile court shall consider the following when determining where the minor shall be held until the time of trial: (Same Factors)

(12) ~~H→~~ [A] ~~The~~ ~~←H~~ district court may ~~H→~~ [review] reconsider ~~←H~~ the decision ~~H→~~ [made by the juvenile court] ~~←H~~ on where the  
minor will be held pursuant to Subsection (6).

78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing --  
Factors considered by juvenile court for waiver of jurisdiction to district court.

(Same Process)

# SB 256 – Asset Forfeiture Amendments

## Sen. Howard Stephenson



LIBERTAS  
INSTITUTE  
INDIVIDUAL LIBERTY  
PRIVATE PROPERTY  
FREE ENTERPRISE

(4) ~~[(a)]~~ "Claimant" means any:

~~[(i)]~~ (a) owner of property as defined in this section;

~~[(ii)]~~ (b) interest holder as defined in this section; or

~~[(iii)] person from whom property is seized for forfeiture.]~~

~~[(b) A claimant does not include a person or entity who disclaims in writing ownership~~

~~of or interest in property.]~~

(c) person or entity who asserts a claim to any property seized for forfeiture under this

title.

### 24-4-104. Civil forfeiture procedure.

(1) (a) ~~Ŝ → [Within [90] 60 days from the date the property is seized, the prosecuting attorney [may elect to] shall file a complaint for civil forfeiture in the appropriate district court.]~~

The law enforcement agency shall promptly return seized property, and the prosecuting attorney may take no further action to effect the forfeiture of the property, unless within 75 days after the property is seized the prosecuting attorney:

(i) files a criminal forfeiture indictment or information under Subsection 24-4-105(2);

(ii) obtains a restraining order under Subsection 24-4-105(3);

(iii) files a petition under Subsection 24-4-114(1); or

(iv) files a civil forfeiture complaint. ←Ŝ



# SB 256 – Asset Forfeiture Amendments

## Sen. Howard Stephenson



(b) The prosecuting attorney is not required to serve a copy of the complaint or the summons upon any claimant who has disclaimed, in writing, an ownership interest in the seized property.

(d) Service by publication shall be by publication of two notices, in two successive weeks, of the forfeiture proceeding:

(i) in a newspaper of general circulation in the county in which the seizure occurred;  
and

(ii) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).

## **24-4-114. Transfer and sharing procedures.**

All of the provisions, relating to the need for a Petition for Turnover of Property, Notice, Hearing, have been put back into the statute.

The End



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