

Date: 2-4-21

**House Law Enforcement and Criminal Justice Committee**

**Bill: 1st Sub. HB 59 Law Enforcement Investigation Amendments**

Sponsor: Rep. Stoddard

Floor Sponsor:

**UASD Position: Tracking**

This Bill: provides criminal penalties for certain misuse of evidence by a law enforcement official.

Discussion: Rep. Stoddard explained this began in response to the Lauren McCluskey case. The first substitute includes anyone with an investigation or in the court system and prohibits them from duplicating and sharing an intimate image. Jeff Buhman spoke on behalf of the Statewide Association of Prosecutors and Public Attorneys in support of the bill. Chief Wade Carpenter, president of the Utah Chiefs Association, said law enforcement has a vested interest in making sure that the rights of victims are protected. He said they support the bill. He also noted that the Utah League of Cities and Towns supports the bill. The first substitute was adopted.

Yeas: 9

Nays: 0

N/V: 2

**Outcome: Passed unanimously with a favorable recommendation.**

Date: 2-4-21

**House Law Enforcement and Criminal Justice Committee**

**Bill: HB 74 Municipal Oversight Amendments**

Sponsor: Rep. Wheatley

Floor Sponsor:

**UASD Position: Tracking with Concern**

This Bill: allows municipalities to create police oversight boards under certain conditions.

Discussion: Rep. Wheatley explained that the bill allows municipalities to create a board with oversight of the police. It does not mandate creation of such boards; it simply gives them the option. Board members may not be a current or former law enforcement officer, or immediate family of a law enforcement officer. Natalie Pinkney, South Salt Lake City Councilwoman, explained that the city of South Salt Lake would like to establish such a board. Their reasons for supporting this bill are the following: the mayor and city council are not able to oversee the police department on their own. The police department budget is the largest expense for South Salt Lake. The city and elected officials don't have full authority over the police department. They are required by state code to have a police department, but are barred from having independent authority over the department. Rep. Ray asked about line 57 — why can't board members be law enforcement officers or their immediate family? Rep. Wheatley said law enforcement officers are not a protected class, and there is a natural conflict of interest. An oversight board should not be subject to the will of the body they are overseeing. Rep. Ray said it may not be discriminatory in law, but it is discriminatory in practice. Rep. Gwynn noted that this means that the spouse of a law enforcement officer who was killed in the line of duty cannot serve on the board. He said that is hypocritical when there is already an established elected board that oversees the police department — the city council. He asked about whether this will create conflict between a police department and city council. Sydni Makemo said local officials in Southern Utah spoke to her about how important it is that this board be independent. This is important for local trust in the board. City officials have many responsibilities. Board members will be able to become experts in these issues. Rep. Gwynn said that did not answer his question. He said this presents two elected bodies that will be tasked with overseeing the police department. That presents a conflict of interest. Rep. Wilcox asked if this body would be appointed or elected. Rep. Wheatley said they would be elected. Rep. Gwynn asked how they would address the conflict of interest of having two such bodies. Rep. Wheatley said the idea is to have one elected body who would be over law enforcement, and the other who would be over the other responsibilities of the municipality. All the board would do would pertain to oversight of law enforcement. Rep. Gwynn said the city council is statutorily tasked with oversight of law enforcement. He asked how this body would not conflict with the role of the city council. Rep. Wheatley said that is how it is currently handled. This bill would allow a municipality to create an oversight board if they wanted to. Ms. Makemo said it may seem like a conflict to have multiple parties discussing what is best for the community, but they don't see it as a conflict of interest. Rather, this would give an independent body the ability to oversee law enforcement and represent the community. This would allow the community to choose for itself what is the best

fit for them. She spoke about reports from the Department of Justice showing that this can bridge the gap between a community and law enforcement. It's true that what works in Salt Lake may not work in St. George, but this allows them to move forward in the way that works best for them. Law enforcement were initially concerned about this bill, but those concerns have been resolved.

Lex Scott said this is just like a jury. If your husband is on trial, you are not allowed to sit on the jury. She explained that civilian review boards have no power. Salt Lake Police consistently find West Valley Police innocent. It is a conflict of interest to allow your friend to investigate you, when they know you will be investigating them in two months. This allows an independent group of people to conduct independent investigations. This will hold police accountable. Rep. Brooks asked if these oversight boards were primarily intended to be an investigative or trial agency. Lex Scott said right now, any person can file a complaint against an officer. That is sent to the civilian review board, who investigates it and decides if a policy or law was broken. She said she hopes these boards would only be used for critical incidents and officer-involved shootings. Kathryn Balmforth spoke in opposition to the bill. Even without the prohibition against police officers or anyone likely to understand what they go through, this bill could place control of the police department in the hands of anti-police special interests. She noted that criminals and their families are not prohibited from serving on such a board, despite the fact that they are not a protected class either. She said this is unsupported by the data and the majority of citizens in the state. Joe Rummel spoke in opposition to this bill. He said there is enough government already. He was concerned about having two boards overseeing the police department. Rep. Stoddard said he's never seen a city council have any say in rank and file officers. Mr. Rummel said they don't need to, because they hire a chief. Rep. Stoddard said he works with city councils on a regular basis and this isn't an issue. Rep. Ray said when he was on the Clifton City Council, they approved hiring of police officers. David Newlin spoke in support of the bill. He said right now the law prevents cities from coming up with solutions to potential conflicts between a civilian review board and the city council. Shouldn't we allow cities to experiment and come up with solutions? He also said this could allow a city to create a board that has power over one aspect of a police department, and not another. This bill is about freedom for cities to decide for themselves how to oversee police. Casey Robertson, founder and president of United Citizens Alarm, said the majority of Utah citizens support police officers and trust police chiefs. There are existing civilian review boards that can advise police chiefs, and that is sufficient. These proposed oversight boards will be made up of people who are anti-police. Disgruntled citizens should not have authority over police in this climate. Ian Adams spoke on behalf of the Utah Fraternal Order of Police (FOP) in opposition to the bill. He supports oversight boards, but believes police officers and their family members should be able to serve on them. Rep. Stoddard asked if the FOP has other issues with the bill if that language was removed. Mr. Adams said they have not established a position on the underlying bill. Chad Soffe, police chief for Woods Cross, spoke on behalf of the Utah Chiefs of Police Association.

He was hired by the city council and mayor to be police chief. They oppose the creation of another elected body that can oversee a police department. He noted that the bill allows oversight of hiring, which the chief of police should have full control over. They do not oppose civilian review boards. Rebecca McIntosh said that last May she woke up to the sound of gunfire when Bernardo Palacios was killed. She lost her faith in the police department, and experienced significant negative impacts. Her son is autistic and it affected him as well. She spoke about an autistic boy who was fired upon by police. This bill doesn't take power away from the mayor or chief of police, but it does give power back to the community. Rich Willie with the law firm Nelson Jones said he has two major concerns. He is concerned that this violates the 14th Amendment, which stipulates that no person may be denied equal protection under the law. He is also concerned that this bill appears to be aimed at silencing political opponents. Gail Ruzicka spoke in opposition to the bill. Bliss Tew spoke on behalf of the Support Your Local Police in opposition. He said this is redundant given the city council. Wade Carpenter, president of the Utah Chiefs Association, said he deals often with civilian review boards. He said there are 90+ formats for civilian review boards. He is concerned that this could take on so many different forms. The mayor and city council have authority to hire and fire a police chief. He said the city council and city manager ultimately determine hiring decisions. He also noted that the Utah League of Cities and Towns opposes this bill. Sharon Anderson spoke in opposition to the bill. This bill allows a review board many powers, and requires them to do some things that have very little to do with abuse of power. For example, it says that if a city sets up a review board, it will be required to review the rules, regulations, policies, and procedures of the police department. There are already many levels of oversight, but police now need our support.

Rep. Romero said this would not mandate oversight boards, but it would allow them to create them. Rep. Ray said if an elected city council is too busy to oversee public safety, they should find a new job. Nor are they required by law to have a police officer; they can contract with the sheriff's department instead. He said police officers will quit in droves if this passes, and that this bill is anti-police. Rep. Ray moved to table the bill. Rep. Gwynn said many people don't know what this bill does. It would be an elected board. He read from the bill. He contended that the bill is discriminatory and will create a body that will act in direct opposition to the city council. Rep. Wheatley said this bill comes down to local control. Rep. Ray said in Salt Lake City, they want to divert 2-3 million dollars to this board from the police budget. It is not in the bill, but the document explaining how they want to set this up explains that. He said Black Lives Matter protestors were largely either paid to protest, or simply wanted to riot since they did not show up in support of this bill.

Yeas: 8

Nays: 3

N/V: 0

**Outcome: The bill was tabled.**

Date: 2-4-21

**House Law Enforcement and Criminal Justice Committee**

**Bill: SB 38 K-9 Policy Requirements**

Sponsor: Sen. Thatcher

Floor Sponsor: Rep. Pierucci

**UASD Position: Tracking**

This Bill: amends the liability provisions for dog bites relating to law enforcement activities and requires the annual certification of law enforcement canines and handlers.

Discussion: Rep. Pierucci explained that this bill requires an annual certification or recertification for K-9 dogs and their handlers. Chief Ken Wallentine spoke in support of the bill.

Yeas: 11

Nays: 0

N/V: 0

**Outcome: Passed unanimously with a favorable recommendation.**

Date: 2-4-21

**House Law Enforcement and Criminal Justice Committee**

**Bill: HB 133 Law Enforcement Recording Release Amendments**

Sponsor: Rep. Wheatley

Floor Sponsor:

**UASD Position: Oppose**

This Bill: mandates the release of law enforcement video recordings in certain situations.

Discussion: Rep. Wheatley explained that this bill specifies that a recording of a law enforcement incident must be released within 10 days of an incident. Lex Scott spoke on behalf of Black Lives Matter Utah. She said body camera footage is paid for by taxpayer dollars. Sometimes it can take up to a year to get that footage. In the Brian Valencia case, it has been months and his family still does not have this footage. In Salt Lake City, this policy has been in place for two years. All the officers she has spoken with feel body cameras protect them, rather than incriminate them. The investigation doesn't have to be complete in 10 days, but the footage should be released in 10 days. If police have nothing to hide, then they have nothing to fear. Rep. Judkins asked if there has been any issue in Salt Lake City with this policy. She asked how many times there have been officer-involved shootings. Rep. Wheatley said he doesn't know of any issues getting this footage out in 10 days. Ms. Scott said Sim Gill says he would like to complete his investigation before releasing body camera footage. She said they are willing to budge on the time period, but they don't want to wait three months to a year. Sometimes body camera footage can give family of victims of police shootings closure while they wait for the results of an investigation. Rep. Ray said there are times that premature release of body camera footage can compromise an investigation. He said he can't support this unless there's flexibility so that in certain cases they can have more time. Rep. Wheatley asked what kind of flexibility he was referring to. Rep. Ray asked if there was a way to put language into the bill that would allow some flexibility. Rep. Wheatley said Rep. Stoddard has an amendment that might allow some flexibility.

Will Carlson with the Salt Lake City District Attorney's office said they are neutral on the bill, but when Salt Lake City implemented this policy, they communicated concern about context, the need to complete a full investigation, and how body camera footage could adversely affect the defendant's right to a fair trial. Rep. Judkins asked if they've released footage within 10 days within the past two years. Will Carlson said that is Salt Lake City's policy. Rep. Judkins asked if there has been a problem in Salt Lake City with this policy in place. Will Carlson said the concerns they had before implementing the policy have continued. Rep. Stoddard asked if they would be more comfortable if this was amended to be 60 days. Will Carlson said the defendant's right to a fair trial could still be affected until a trial occurred. Robert Van Dyke, Kane County Attorney, spoke in opposition to the bill. He said when there is evidence in any criminal case, the release of that evidence to the public should be a case-by-case decision. This bill requires the footage to be released in every case. He is primarily concerned about the due process

implications for defendants, whether they are police officers or shooting victims. The release of this evidence significantly impacts the right to a fair trial. Rep. Stoddard said that under the Constitution and state code, victims are accorded certain rights. He asked if Mr. Van Dyke sees any sort of conflict when it comes to victims' rights. Mr. Van Dyke said he understands that conflict, and that also is a fact-dependant case-by-case decision that should be made. There may be a victim who should not see that evidence because it would taint their testimony. Rep. Miles asked if there could be a compromise, since Mr. Van Dyke's concern is an automatic release. Could the footage be required to be released within a certain period, unless certain standards were met? Mr. Van Dyke said every organization he is associated with would be willing to work on such a compromise. Ian Adams spoke on behalf of the Utah Fraternal Order of Police in opposition to the bill. They are concerned about the lack of flexibility and the complexity in these cases. He said Salt Lake City's policy has resulted in ill fruit, and that some body camera footage was released that led to the construction of a misleading narrative. He said they also don't like that officers are sometimes subjected to years-long investigations. It is a relatively recent phenomenon that these investigations take years. Rep. Stoddard asked if there was some sort of compromise that could be reached. Mr. Adams said yes. He shared that he was involved in the first officer-involved shooting that was captured on body camera. They are not perfect tools, but there is an appropriate compromise somewhere. It's just not this bill right now. Joe Rummel said he is the father of a police officer, and doesn't want his son to be judged while doing his job. He said maybe the victim or their family should be allowed to see the footage without recording it before the general public can see it.

Jeff Buhman spoke on behalf of the Statewide Association of Prosecutors and Public Attorneys in opposition to the bill. They agree that this footage should be released, but the when and how are more complicated. He said he has personal experience as a county attorney where releasing information to the public quickly impaired their investigation. This bill would also harm victims. They don't want more or fewer days. They want a court assessment of whether it should be released. Marina Lowe spoke on behalf of the ACLU of Utah. She said that courts take a long time. She noted that the rights of the victim and the rights of the defendant are both important. If 10 days is the wrong amount of time, let's come up with the right amount of time. But by attaching a deadline to releasing the footage, it implements consistency across the state. It is very difficult for victims' families to understand why in Salt Lake they manage to get it done in 10 days, while in another jurisdiction there is another set of rules. Rep. Gibson asked if there was merit to having local control over this. Ms. Lowe said there is merit, and that's one reason the civilian review board bill should have passed. Maybe there should be a maximum number of days a county can take before releasing the footage. Chad Soffe spoke on behalf of the Utah Chiefs of Police Association in opposition to the bill. He said he only has one records secretary. Not all counties have the same video system. He agrees with case-by-case analysis. Alyce Armstrong spoke in support of the bill. She has seen this process in Salt Lake, and the 10-day release has gone a long way to build trust in the community. Zachary Bess said he has many

family members in law enforcement. He understands the concerns around the bill, but he supports it. Jake Soubi spoke on behalf of the Utah Chiefs of Police Association and said the absolute language of the bill is damaging. Salt Lake has a system that works for them, but it may not work for a smaller agency with less funding. Many cases involve multiple body cameras, rather than just one. They oppose the bill. Collin Williams said victims' testimony should not be considered tainted after seeing the video if officers' testimony isn't considered tainted after seeing the video. Allison Schlichter spoke in support of the bill. She said if efforts to bridge trust between the public and police aren't made, that trust will further erode. Sheriff Ryan Arbon spoke on behalf of the Utah Council on Victims of Crime and the Utah Sheriffs Association in opposition to the bill. He said 10 days is too few. Rep. Gibson said it sounds like a compromise may be possible, and moved that they hold the bill. Rep. Wheatley said he supports that. A time frame is necessary, but he agrees that they can come up with something that all parties agree on.

Yeas: 11

Nays: 0

N/V: 0

**Outcome: The bill was held.**

Date: 2-4-21

**House Law Enforcement and Criminal Justice Committee**

**Bill: 1st Sub. HB 58 Riot Amendments**

Sponsor: Rep. Wilcox

Floor Sponsor:

**UASD Position: Tracking**

This Bill: adds specific sanctions for individuals arrested and convicted of rioting.

Discussion: Rep. Wilcox said there was a substitute. Sheriff Ryan Arbon spoke about his experience during last summer's protests. He met with law enforcement in Portland. He said this bill is necessary to protect law enforcement and businesses. The right way to protest is by filling out a permit. Rep. Stoddard asked if the major changes in the substitute relate to bail and pre-



release. Rep. Wilcox said the previous version of the bill used language of “if this action occurs.” That has been changed to “if this individual causes harm.” It also changes the definition of bodily injury. Rep. Stoddard asked if pretrial release changes will be made based off of a probable cause statement. Rep. Wilcox said yes.

Casey Robertson spoke on behalf of United Citizens Alarm said their main goal is deterrence of riots. Jail time and holding rioters is a great deterrent. Collin Williams noted that determination of intention and coordination can be subject to bias. He spoke in opposition to the bill. Marina Lowe spoke on behalf of the ACLU of Utah in opposition to the bill. She is concerned about the vagueness of the definition of riot. She said the discussion on bail is better reserved for the larger conversation about bail reform. Individual issues of bail should not be addressed in a piecemeal fashion. Rep. Gibson asked how she would define riot. Ms. Lowe said she wouldn’t be able to do it on the spot, but it’s at the heart of the problem and merits longer discussion. Rep. Gibson said he has no problem with any number of people cussing and holding signs. When someone causes property damage or bodily harm, could that be defined as a riot? Ms. Lowe said maybe; that is closer to the heart of it. She said it’s important to get the words right, but when there is so much question of what constitutes a riot, we should focus on the words first and consider consequences second. Rep. Gibson said the minute you start harming people or property, it can be construed as a riot. Ms. Lowe said she doesn’t endorse violence, but it feels similar to the way the Supreme Court spoke about pornography — “I know it when I see it.” She advised that that language about rioting is prioritized, and the bail discussion saved for other bills. Ben Aldana, a public defender, said he is concerned about the bail provisions. There are cases when someone should be held without bail, but he doesn’t feel this meets the requirements of the Utah Constitution. Molly Davis spoke on behalf of the Libertas Institute. She said they are concerned about removing bail as a right for rioters. The bail portion is their only problem with the bill. Lex Scott spoke on behalf of Black Lives Matter Utah. She said she protested in Ferguson, Portland, and Salt Lake. Police would call something a riot when it wasn’t. She believes the definition of a riot is too far-reaching. Defining it as two or three people is dangerous. Jake Siolo spoke in opposition to the bill. Rep. Ray asked if burning a police car was rioting. Mr. Siolo said he never said it wasn’t, but asked why they’re basing this bill off events that happened in Portland, rather than Utah. Rep. Ray said burning a police car is rioting. Joe Rummel spoke in support of the bill. Robert Van Dyke, Kane County Attorney, said this is not a bail reform bill. It doesn’t expand the ability to deny bail. He spoke in support.

Rep. Stoddard moved to substitute. He said this is good policy and the substitute is a good balance. Rep. Wilcox referred to the definition of riot in the bill. He said it is not vague. They are talking about intentional violence. Rep. Schultz spoke in support of the bill. He doesn’t see this as dealing with bail reform as a whole; rather, this is one specific issue. However, it is important to have the larger bail conversation. Rep. Wilcox said it’s important to radically support free speech, and to oppose violence.

Yeas: 9

Nays: 2

N/V: 0

**Outcome: Passed with a favorable recommendation.**

Date: 2-4-21

**House Law Enforcement and Criminal Justice Committee**

**Bill: 1st Sub. HB 228 Jail Photo Distribution Prohibition**

Sponsor: Rep. Stratton

Floor Sponsor:

**UASD Position: Tracking**

This Bill: amends provisions relating to the disclosure of an image taken during the process of booking an individual into jail.

Discussion: Rep. Stratton noted that he has a substitute. This bill seeks to address the inequality that results from a mugshot being released upon arrest or accusation. That release assigns a virtual scarlet letter to the person accused or arrested, who has a constitutional right to be presumed innocent until proven guilty. David Leavitt, Utah County Attorney, said he is concerned that someone who is presumed innocent could have their mugshot released, which in our society indicates guilt. They have worked with law enforcement because they understand that there are times when releasing a mugshot can increase public safety, because they are an immediate danger. Rep. Schultz said he understands that there is currently a process in the media to determine whether they should share a mugshot. Rep. Stratton said there are good-faith efforts being made by those in the media to be responsible. In reality, however, it is not done with enough discretion. Mr. Leavitt said the Utah Constitution prohibits accused persons from being exposed to unnecessary rigors. He contends that releasing a mugshot of someone presumed innocent would constitute unnecessary rigors. Rep. Stoddard asked if the substitute properly addresses the balance between the 1st Amendment and the individual's property rights. Rep. Stratton said they have always been seeking that balance and he believes the substitute has gotten

much closer to it. The challenge is how to remove something that has been released on the internet. Mr. Leavitt said they aren't saying this photo will never be released; it simply has to be held until after conviction. Rep. Gwynn asked about law enforcement releasing footage seeking to identify an individual. What happens when they access the booking photo of an individual of interest, and put that out seeking to confirm their identity? Rep. Stratton said if the person has been convicted of a prior crime that would be available, as well as any other photo. Mr. Leavitt said the substitute allows law enforcement to use a mugshot under exigent circumstances. It also gives law enforcement the ability to go to a judge and seek judicial approval to use it prior to conviction. He said the Sheriffs Association supports this language. Rep. Gibson asked if there is a reason why mugshots are currently posted online. Mr. Leavitt said the booking process isn't defined anywhere in Utah law. Every jail and every county has a different process. He believes the taking of a mugshot is a custom that has been passed down over time. Rep. Stratton said he understands why they would take the photo, but he sees no reason why anyone outside law enforcement needs to see it.

Lex Scott spoke on behalf of Black Lives Matter Utah in support of the bill. Robert Van Dyke, Kane County Attorney, spoke in support of the bill. Nate Carlisle with FOX 13 Utah said journalists are capable of regulating themselves on this issue. They don't publish every mugshot or report on every crime. They are open to reevaluating their practices on this issue. However, mugshots should still be available for them to use. He said he doesn't see anywhere in the bill where it allows victims to use mugshots. Collin Williams if there is any concern that a video of a shooting could taint the right to a fair trial, then certainly a mugshot could do so. Data retraction on the internet is simply nonviable. There is a significant media bias when it comes to when mugshots are used. Rep. Judkins said she sees this as a prohibition on law enforcement, rather than regulating journalism. Mr. Carlisle said they use mugshots to illustrate stories. In some markets, they've used mugshots to demonstrate that an individual was mistreated by police. It can help them identify gang affiliation. Rep. Judkins said she feels like this bill isn't telling them they can't use mugshots, it's saying that they can't be released by law enforcement. Mr. Carlisle said they're sealing off records that could benefit the public. Rep. Gibson said he didn't hear an example of a time when the media would need to use a mugshot that someone is still presumed innocent. If someone escapes, that might be an appropriate time to use someone's mugshot. That is the only scenario he can think of when they might need a mugshot. Mr. Carlisle said there are people with common names, and the mugshot allows them to identify which person it is. Rep. Gibson said he just took a picture of Mr. Carlisle. If he wanted to, he could send it to all his contacts right now. Is there a possibility that they might pass it on? Mr. Carlisle said he's not speaking about members of the public; he's speaking about journalists, who have received ethics training. Rep. Gibson said he believes that journalists are ethical. But once a mugshot is published online, it is not retractable. It can ruin someone's life. Rep. Ray asked if Mr. Carlisle is aware of any abuses of these mugshots by the media. Mr. Carlisle said yes, he's sure there are mistakes they've made, but they've learned lessons. He noted that they are working on not using

mugshots of people of color more often than they use mugshots of white people. Rep. Ray said the Ogden Standard-Examiner owned a subsidiary company that published mugshots and required people to pay a fee to get them to take it down. This is just one example of the abuses that have gone on. Zachary Bess spoke in support of the bill. Steven Burton spoke in support of the bill. He said many of these websites are located outside of the US, so they don't have to abide by the laws of any particular state. Mike O'Brien, media law attorney, said this issue has been litigated and resolved in the federal courts. It has been ruled many times that mugshots should not be private. He said this bill is futile, because there are far worse images of someone that can be used. Rep. Gwynn asked if they would have access to photos requested via the Freedom of Information Act. Alyce Armstrong spoke in support of the bill. Marc Sternfield of FOX 13 spoke in opposition to the bill. He said it's not a question of how the media uses mugshots, it's a question of whether the public should be able to see them. The criminal justice process should not be shrouded in transparency. Mugshots can be used to protect minorities. The first substitute was adopted.

Yeas: 11

Nays: 0

N/V: 0

**Outcome: Passed unanimously with a favorable recommendation.**