

# County witnesses predict release of jail standards would harm private sheriff's contractor

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Standard-Examiner

January 8, 2021

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FARMINGTON — Witnesses called by Davis County in its effort to keep certain jail standards confidential have testified the information's release would significantly damage the private copyright holders.

In the second day of a trial via Webex video, Sevier County Sheriff Nathan Curtis said he and others in the Utah Sheriffs Association were concerned about civil libertarians using public records laws "to get access to someone's private property."

The American Civil Liberties Union of Utah and the Disability Law Center sued Davis County and the State Records Committee in 2017 for access to the standards, which provide legal guidance to sheriff's offices in jail operations.

The groups contend the public deserves to scrutinize the workings of public jails operated by government personnel, and they say that includes extensive guidelines written by private consultants.

But the county contends release of the standards would harm the contractor and may compromise jail security.

After Thursday's testimony, 2nd District Judge David Connors recessed the trial until late January. The delay is to give Gary DeLand, creator of the jail standards, time to recover from COVID-19 and be able to testify.

Blake Hamilton, an attorney representing Davis County in the litigation, asked Curtis about the history of the jail standards and their ownership.

Testimony recounted how DeLand wrote the standards and marketed them to Utah jails and to sheriff's offices around the country.

Curtis said a decade or so ago, other companies tried to obtain copies of the standards, but sheriff's offices had agreed with DeLand to keep them confidential.

"He was very adamant that he was the owner of it," said Curtis, immediate past president of the Sheriffs' Association. "That's kind of where that fell."

Pressure to give the public access to DeLand's standards reached a climax in 2017 when news media and the Utah Legislature looked into jail operations after a record 25 deaths statewide in 2016.

Sheriffs also paid to access the proprietary software where the standards were maintained. No hard copies were allowed, out of fear they would get out to competitors or imperil jails, Curtis said.

Corrections officials worried, Curtis said, information in the standards could be "manipulated."

"We have to be very careful for the care of the inmates we have," he said. "People knowing how we do things, it could be unsafe for inmates and unsafe for our officers."

Public knowledge of items such as jail schedules are "grave security concerns," Curtis said.

Asked by Hamilton about what the ACLU and the DLC might do with the standards, Curtis said, "I'm sure they would (bring litigation). I would assume that was part of their reasoning."

ACLU legal director John Mejia testified Wednesday it was impossible to say what the groups would do with DeLand's standards because they haven't seen what is in them.

After a furor over the standards, the Sheriffs' Association in 2018 published the basic text of the standards on its website.

But the confidential sections, in which DeLand referred to case law and offered guidance on how jails can handle certain situations in a legally defensible manner, remained out of view.

Sheriffs then quit using DeLand's standards.

But in 2020, a business associate, Tate McCotter of the National Institute of Jail Operations, bought them. He told the court Wednesday he is marketing them nationwide and ideally would like to sell them again to Utah customers.

He described the threat to his business if public release is ordered.

"If this is open information to be accessed without any controls or limitations, why would somebody buy it if they could just get a copy?" he said. "It makes no sense."

An attorney representing the civil liberties groups, David Reymann, said his clients only want the standards that existed at the time of the suit, 2017.

McCotter, however, said the four-year-old standards "absolutely" have value.

"That would be like saying a 2017 Ferrari has no value but a 2021 Ferrari does," he said.

After the trial concludes, Connors will rule on whether the copyrighted standards are a public record and whether the county and state have classified them correctly.

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