

**MINUTES OF THE  
JUDICIARY INTERIM COMMITTEE**

Wednesday, September 20, 2006 – 9:00 a.m. – Room W130 House Building

**Members Present:**

Sen. David L. Thomas, Senate Chair  
Rep. James A. Ferrin, House Chair  
Sen. Patrice M. Arent  
Sen. Gregory S. Bell  
Sen. Scott D. McCoy  
Sen. Wayne Niederhauser  
Rep. Douglas C. Aagard  
Rep. Stephen D. Clark  
Rep. Lorie D. Fowlke  
Rep. Ann W. Hardy  
Rep. Neal B. Hendrickson  
Rep. David L. Hogue  
Rep. Susan Lawrence

Rep. Ross I. Romero  
Rep. LaWanna Shurtliff  
Rep. Scott L. Wyatt

**Members Absent:**

Sen. Darin G. Peterson  
Rep. Ben C. Ferry  
Rep. Eric K. Hutchings

**Staff Present:**

Mr. Jerry Howe, Policy Analyst  
Ms. Esther Chelsea-McCarty, Associate General Counsel  
Ms. A. Brooke Ollerton, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Ferrin called the meeting to order at 11:09 a.m.

**MOTION:** Rep. Hardy moved to approve the minutes of the July 19, 2006 meeting. The motion passed unanimously.

**2. Recodification of Title 78**

Ms. Chelsea-McCarty discussed potential reorganization options for Title 78, Judicial Code. She pointed out differences between "Alternative A" and "Alternative B," which were previously distributed. She said that the Legislative Management Committee had reviewed the options and requested that the Committee take affirmative action to adopt one of the alternatives.

The Committee discussed the options.

**MOTION:** Rep. Hendrickson moved to direct staff to draft "Alternative B" as the recodification of Title 78 and to recommend it as a committee bill. The motion passed unanimously.

Chair Ferrin welcomed Sen. Niederhauser, who replaced Sen. Mansell, to the Committee.

**3. Material Harmful to Minors**

Rep. David L. Hogue presented 2006 General Session, H.B. 257, 1st Sub., "Material Harmful to Minors Amendments," and said that Rep. Wyatt would sponsor a similar bill during the 2007 General Session. He referred to the recent school shooting in Montreal, Canada, enumerated similar shootings in the United States over the past ten years, and stated that many of the perpetrators played violent video games.

Staff distributed interim committee amendments "1st Sub. H.B. 257, Material Harmful to Minor Amendments – Amendment 3" and "1st Sub. H.B. 257, Material Harmful to Minor Amendments – Amendment 4." The Committee discussed the amendments.

**MOTION:** Rep. Wyatt moved to amend 1st Sub. H.B. 257 as follows and to adopt it as a committee bill:

1. *Page 2, Lines 43 through 45:*

43 (5) "Inappropriate violence" means any description or representation, in an interactive

44 video or electronic game, of violence when it:

= (a) appeals to the morbid interest of minors in violence;

45 {(a)} (b) is patently offensive to prevailing standards in the adult community as a whole with

2. *Page 2, Line 47:*

47 {(b)} (c) taken as a whole, does not have serious literary, artistic, political, or scientific value

Rep. Hogue stated that "1st Sub. H.B. 257, Material Harmful to Minor Amendments – Amendment 4" was not needed at this point.

The Committee discussed the language of the bill and what kinds of games would be classified as inappropriately violent under the bill.

Responding to a question by Sen. Arent, Rep. Wyatt explained that definitions in the bill mirror supreme court definitions of pornography.

Attorney General Mark Shurtleff communicated his office's concerns that the bill might be unconstitutional. The eight courts that have reviewed similar legislation, he said, have ruled it unconstitutional. He stressed that the legislation will be litigated, the likelihood of success is slim, and the process will be costly. The courts have rejected the idea that standards for pornography apply to video games and have rejected the idea that a causal relationship exists between playing violent video games and participation in violence. He said that the courts will consider whether there are less-restrictive means to limit access to violent video games, such as rating systems, and he expressed willingness to work with the sponsor for an alternative solution and answered questions from the Committee.

Ms. Gayle Ruzicka, President, Utah Eagle Forum, gave an example of an 18-year old who played violent video games and later mimicked the objectives of the game when he shot and killed four policemen. She encouraged the Committee to pass the legislation regardless of the legal and financial ramifications because it would be worth the effort to protect children.

Mr. Matthew Anderson, Attorney, Fabian & Clendenin, representing the Entertainment Software Association, acknowledged the problem with respect to violent youth. However, he stated the Association's position that the language in the bill is likely unconstitutional and that no scientific basis has been able to establish a causal relationship between violent video games and actual violent behavior. He stated that the rating system is a sufficiently effective solution. He answered questions from the Committee about violent software that can legally be sold to children and the Entertainment Software Rating Board.

**SUBSTITUTE MOTION:** Sen. Arent moved to adjourn the meeting. The motion failed with Rep. Aagard, Rep. Clark, Rep. Hogue, Rep. Hendrickson, Rep. Lawrence, and Rep. Wyatt voting in opposition.

Rep. Hogue requested that this topic be placed on the next agenda.

Chair Ferrin announced that since the senate membership had left for a confirmation vote, there was no longer a quorum to take action on Rep. Wyatt's original motion to amend 1st Sub. H.B. 257 and to adopt it as a committee bill.

Ms. Tammy Anderson, Utah PTA, said that the loosening of confidentiality laws to review the background of violent youth would help establish motive. She suggested that past abuse may be a contributing factor to violent behavior.

#### **4. Other Items / Adjourn**

Chair Ferrin adjourned the meeting at 12:18 p.m.