

**MINUTES OF THE  
JUDICIARY INTERIM COMMITTEE**

Wednesday, June 20, 2007 – 2:00 p.m. – Room W130 House Building

**Members Present:**

Sen. Gregory S. Bell, Senate Chair  
Rep. Douglas C. Aagard, House Chair  
Sen. Peter C. Knudson  
Rep. Jim Bird  
Rep. Jackie Biskupski  
Rep. Lorie D. Fowlke  
Rep. Keith Grover  
Rep. Neil A. Hansen  
Rep. Kay L. McIff  
Rep. Scott L Wyatt  
Rep. Mark A. Wheatley  
Rep. Eric K. Hutchings

Rep. Christine A. Johnson

**Members Absent:**

Sen. Lyle W. Hillyard  
Sen. Ross I. Romero  
Rep. Sheryl L. Allen  
Rep. Kevin S. Garn

**Staff Present:**

Jerry D. Howe, Policy Analyst  
Thomas R. Vaughn, Associate General Counsel  
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 Bell called the meeting to order at 2:22 p.m.

**2. Custody in Cases of Sexual Offense**

Rep. Carl Wimmer introduced 2008 General Session draft legislation, "Child Custody Amendments," explaining that it provides that a parent who has been convicted of a sexual offense involving a minor may not be awarded custody of a minor child. He explained that he wanted to amend lines 27 and 30 of the bill by adding "there is a rebuttable assumption that" at the beginning of each line. He answered committee questions and indicated that he would bring the bill back for action by the Committee in a future meeting.

Mr. Stewart Ralphs, Legal Aid Society of Salt Lake, clarified that the family law section of the bar has not taken an official position on the bill, but some practitioners have given feedback. He spoke in favor of the amendment.

Rep. McIff spoke in favor of the amendment, saying that it was important to give judges discretion.

**3. Exoneration and Innocence Assistance**

Chair Bell relinquished the chair and introduced the topic, explaining that as people are exonerated through DNA tests and other methods they have a difficult time assimilating back into life. Sometimes legislatures will award exonerees restitution payments, but there is no uniform standard in Utah.

Mr. Creighton Horton, violent crime and special prosecutions chief, Office of the Attorney General, said this bill has been written narrowly to apply only to the factually innocent. It provides an avenue for non-DNA exoneration and provides restitution payment for the wrongly convicted. He distributed a three-page packet of materials, "Legislative Fact Sheet - Exoneration and Innocence Assistance" and explained that compensation is set at the average annual wage in Utah for each year of incarceration with a fifteen-

year maximum. He answered committee questions about how compensation is calculated, tax liability for compensation awards, attorney fees, and third party compensation.

Mr. Jeffrey Hornoff, citizen, shared his experience of being wrongfully convicted of murder. He spoke in support of the bill and of compensation, especially in cases where DNA testing is not relevant.

Mr. Howe distributed interim committee amendments, "S.B. 0000, Exoneration and Innocence Assistance," June 20, 2007.

Mr. Horton explained the amendment, saying that the bill originally calculated the formula based on the average annual wage of a single wage earner in Utah. However, the Department of Workforce Services does not use that term so it was changed to "average nonagricultural payroll wage" for one year, which equals about \$35,000. He referred the Committee to the third page of "Legislative Fact Sheet."

**MOTION:** Sen. Bell moved to amend 2008 General Session draft legislation "Exoneration and Innocence Assistance" as follows:

Page 10, Line 296:     **78-35a-405 Judgment and assistance payment.**  
                          (1) (a) If a court finds a petitioner factually innocent under Title 78, Chapter 35a, Part 3, Postconviction DNA Testing, or under this part, and if the petitioner has served a period of incarceration, the court shall order that, as provided in Subsection (2), the petitioner shall receive for each year or portion of a year the petitioner was incarcerated, up to a maximum of 15 years, the monetary equivalent of the average annual **nonagricultural payroll** wage ~~[for a single wage earner]~~ in Utah ~~[for the year the petitioner was released from prison]~~, as determined by the **data most recently published by** the Department of Workforce Services at the time of the petitioner's release from prison.

The motion passed unanimously with Rep. Biskupski absent for the vote.

**MOTION:** Rep. McIff moved to recommend 2008 General Session draft legislation, "Exoneration and Innocence Assistance," as amended, as a committee bill. The motion passed unanimously with Sen. Knudson, Rep. Biskupski, Rep. Hansen, and Rep. Hutchings absent for the vote.

#### **4. S.B. 152, Presumptive Personal Representative**

Sen. Bell said that he had presented this bill previously, but there were some concerns from the Committee about its effect on nontraditional relationships. However, he said that in other discussions it was decided that the bill was more narrow and that the debate regarding nontraditional relationships would occur separately. He explained that the bill provides that presumptive personal representatives may present and resolve claims for wrongful death, liability, and uninsured motorist claims.

Mr. Chris Purcell, State Farm Insurance, said that in these cases minimum limits are usually involved and liability is clear so an agency's goal is to get victims' families their money more quickly.

Mr. Doug Short, Keith Barton & Associates, voiced concern that there is an assumption in the bill that there is only one group of claims. Under Utah law the estate of the deceased has a claim and other individuals may have separate claims. He stated that this bill would take away the others' right to settle their own claims and gives it to someone else with no guarantee that they will be notified. There is also the possibility that a presumptive personal representative can settle for less than the policy limits even though the claim is worth more. He encouraged the Committee to work on the details of the bill.

**MOTION:** Chair Aagard moved to proceed to the next agenda item. The motion passed unanimously with Rep. Bird, Rep. Biskupski, Rep. Grover, Rep. Hansen, and Rep. Hutchings absent for the vote.

Chair Aagard yielded the chair back to Sen. Bell.

#### **5. Sunset Review - Administrative Office of the Courts**

Mr. Dan Becker, state court administrator, AOC (Administrative Office of the Courts), distributed "Administrative Office of the Courts 2007" and outlined the statutory duties of the AOC, its organization, and operations. He informed the Committee of a website, [www.utcourts.gov](http://www.utcourts.gov), where committee members could get more information on the court system. He answered committee questions and suggested that it might be appropriate to ask whether a sunset review is necessary for the AOC.

#### **6. Reports**

Mr. Rick Schwermer, AOC, distributed "Memorandum - Divorce Education for Parents Program Annual Report" and reported on the success of the program. He gave a report on small claims court, recommending that the small claims limit remain unchanged. He distributed "Utah State Courts: Alternative Dispute Resolution Program," reporting that even though the number of cases filed has remained constant, the number of cases that go to mediation has increased dramatically and that those cases produce better results. He answered questions of committee members.

#### **7. Title 78 Recodification**

Mr. Howe reported that staff would continue to work on the recodification, but that they were providing completed sections to committee members as they were finished for review.

#### **8. Adjourn / Other Business**

**MOTION:** Rep. McIff moved to adjourn. The motion passed unanimously with Rep. Bird, Rep. Biskupski, Rep. Grover, Rep. Hansen, Rep. Hutchings, and Rep. Wheatley absent for the vote.

Chair Bell adjourned the meeting at 4:20 p.m.