

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, September 17, 2008 – 9:30 a.m. – Room C450 State Capitol

Members Present:

Sen. Gregory S. Bell, Senate Chair
Rep. Eric K. Hutchings, House Chair
Sen. Peter C. Knudson
Sen. Ross I. Romero
Rep. Sheryl L. Allen
Rep. Jim Bird
Rep. Jackie Biskupski
Rep. Lorie D. Fowlke
Rep. Keith Grover
Rep. Neil A. Hansen
Rep. Gregory H. Hughes
Rep. Christine A. Johnson
Rep. Kay L. McIff
Rep. R. Curt Webb
Rep. Mark A. Wheatley

Members Absent:

Sen. Lyle W. Hillyard
Rep. Kevin S. Garn

Staff Present:

Jerry D. Howe, Policy Analyst
Esther D. Chelsea-McCarty, Associate General Counsel
Amanda K. Majers, 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.

1. Committee Business

Chair Bell called the meeting to order at 9:34 a.m.

MOTION: Sen. Knudson moved to approve the minutes of the August 20, 2008 meeting. The motion passed unanimously with Rep. Hansen, Rep. Hughes, and Rep. Wheatley absent for the vote.

2. Material Harmful to Minors Amendments

Rep. Allen distributed and discussed 2009 General Session draft legislation, "Material Harmful to Minors Amendments." Rep. Allen informed the Committee that the Statewide Association of Prosecutors (SWAP) met to discuss the proposed recommendations made by this Committee at its last meeting.

Mr. Paul Boyden, Executive Director, SWAP, spoke in favor of the draft legislation and outlined SWAP's recommendations for the draft legislation. Mr. Boyden informed the Committee that the draft legislation before them is a different version than the version discussed at the previous committee meeting and different from the version mailed to the Committee. He stated that the draft legislation, which lowers the penalty from a felony to a misdemeanor for minors charged with using electronic technology to send explicit photographs of themselves to one another, is needed to remedy the following prosecutorial problems: 1) charging such crimes as a felony; 2) creating a legal fiction to reduce the penalty for these crimes; or 3) releasing those who commit these crimes without consequence.

Mr. Boyden answered questions from the Committee concerning the implications of the draft legislation.

Mr. Troy Rawlings, Davis County attorney, clarified the scope of the crimes that would be prosecuted if this draft of the legislation were to be adopted.

Mr. John Harmer, Chairman, The Lighted Candle Society, spoke against the draft legislation and distributed and discussed a handout entitled, "Why We Need Felony Penalties For Adults or Minors Who Distribute Child Sexual Images." He also distributed and discussed the booklet, "A Brain Gone Wrong: Hope for the Troubled Teen." Mr. Harmer stated that the felony charge is needed to deter minors from exchanging explicit photographs with one another for their own protection because, he contended, these types of photographs inevitably end up in wide circulation and often into the hands of pedophiles.

Mr. Will Carlson, American Civil Liberties Union of Utah, stated that the draft legislation as written has unintended consequences and advocated the decriminalization of this type of behavior among minors. He argued that the appropriate place to deal with this type of behavior among minors is in the home with parental education.

Rep. Allen stated that this draft of the legislation represents a middle ground in dealing with minors. She advocated for this version of the legislation because it encourages reporting of these types of crimes, so that juvenile sex offenders can receive help through the juvenile court system.

Sen. Knudsen expressed concern that if the draft legislation were adopted as a committee bill it could then avoid a hearing in the House during session.

Rep. Biskupski stated that the draft legislation requires more work before she would vote to pass it out as a committee bill.

Rep. Fowlke stated her support for the draft legislation because it would encourage the reporting of this crime.

MOTION: Rep. Allen moved that 2009 General Session draft legislation, "Material Harmful to Minors Amendments" be adopted as a committee bill. The motion passed with Sen. Knudson and Rep. Biskupski voting in opposition. Rep. Hansen and Rep. Hughes were absent for the vote.

3. Juvenile Sex Offender Treatment

Mr. Robert Yeates, Utah Commission on Criminal and Juvenile Justice (CCJJ), introduced four speakers who were asked by Rep. Hutchings to report on the efficacy of juvenile sex offender treatment.

Mr. Ray Wall, Juvenile Court Administrator, gave a presentation entitled, "Juvenile Sexual Offender Referral and Recidivism Trends." He discussed juvenile sex offender referral and recidivism rates and trends.

Mr. Dan Maldonado, Director, Juvenile Justice Services, gave a presentation entitled "JJS Custody Youth." He reported on the process that occurs when juvenile sex offenders are placed in state custody.

Mr. Delynn Lamb, The Utah Network on Juveniles Offending Sexually, gave a presentation entitled, "Significant Differences Between Juvenile and Adult Sex Offenders." He stated that there are significant differences between juvenile and adult sex offenders as far as who they are when they offend, the reasons why they offend, their amenability to treatment and rehabilitation, and their risk to offend again due to the fact that the adolescent brain is not fully developed so that it is more difficult for them to put facts

together or draw conclusions in the same way as adults. He also stated that juvenile sex offenders are motivated to engage in sexual misconduct for nonsexual reasons and are less clear about their sexual identities than adults. As a consequence of these factors, juvenile sex offenders are able, with proper therapies, to be fully rehabilitated.

Mr. Rob Butters, University of Utah College of Social Work, gave a presentation entitled, "Juvenile Sex Offenders." He compared Utah juvenile sex offender statistics to those nationally. Mr. Butters also distributed and discussed a letter to the Committee concerning a juvenile sex offender's experience.

Sen. Knudson asked the representatives from CCJJ about their opinion of 2009 General Session draft legislation, "Material Harmful to Minors."

Mr. Yeates spoke in favor of the draft legislation because it enters juveniles in the juvenile court system where they can receive rehabilitative treatment.

4. Harboring a Runaway

Rep. Fowlke discussed 2009 General Session draft legislation, "Harboring a Runaway," which was distributed to the Committee prior to the meeting. She informed the Committee that she worked with the Division of Children and Family Services (DCFS), the Office of Guardian ad Litem, the Office of the Attorney General, the Office of Legislative Research and General Counsel, and others to draft the "Harboring a Runaway" legislation. Rep. Fowlke indicated that the draft legislation does not infringe upon parental rights or interfere with the state's efforts to assist runaway youth. She explained that the draft legislation would change current statute to allow runaway children under 18 to stay overnight at juvenile shelters.

Mr. Thomas Vaughn, Associate General Counsel, Office of Legislative Research and General Counsel, explained the draft legislation to the Committee.

Mr. Duane Betournay, Director, DCFS, spoke in favor of the draft legislation and stated that it does not take away parental rights or diminish the ability to prosecute a negligent or abusive parent.

Rep. Hutchings inquired whether there is still an eight hour time limit to report the harboring of a runaway.

Mr. Vaughn stated that the eight hour time limit for harboring a runaway is still in statute, and he explained that the person harboring a runaway must still contact a guardian informing them of the situation.

Mr. Rick Smith, Office of Guardian ad Litem, spoke in favor of the draft legislation.

Ms. Kathy Bray, President and CEO, Volunteers of America for Utah, spoke in favor of the draft legislation.

Mr. Zachary Bale, Volunteers of America, spoke in favor of the draft legislation.

Ms. Lesley Brodie, Fourth Street Clinic, spoke in favor of the draft legislation.

MOTION: Rep. Johnson moved that 2009 General Session draft legislation, "Harboring a Runaway" be adopted as a committee bill. The motion passed unanimously with Rep. Hughes absent for the vote.

5. Statutorily Required Reports

Mr. Rick Schwermer, Administrative Office of the Courts, gave reports to the Committee concerning Mandatory Educational Course for Divorcing Parents § 30-3-11.3 and § 30-3-11.4, Expedited Parent-time Enforcement § 30-3-38, and Dispute Resolution Programs § 78B-6-204. He distributed and discussed "Mediation in the Utah State Courts 2007 Statistics," "Utah's Third District Pilot Co-parenting Mediation Program: Report to the Utah State Legislature," and "Memorandum" to the Judiciary Interim Committee from Polly Schnaper, Divorce Education Manager, concerning Divorce Education for Parents Program annual report.

Mr. Philip Sherman, Administrative Office of the Courts, answered questions from the Committee concerning expedited parent-time enforcement.

6. Other Items / Adjourn

MOTION: Sen. Romero moved to adjourn the meeting. The motion passed unanimously with Rep. Hughes absent for the vote.

Chair Bell adjourned the meeting at 12:01 p.m.