

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, October 15, 2008 – 9:00 a.m. – Room C450 State Capitol

Members Present:

Rep. Eric K. Hutchings, House Chair
Sen. Ross I. Romero
Rep. Jim Bird
Rep. Jackie Biskupski
Rep. Kevin S. Garn
Rep. Keith Grover
Rep. Neil A. Hansen
Rep. Christine A. Johnson
Rep. Kay L. McIff
Rep. R. Curt Webb
Rep. Mark A. Wheatley

Members Absent:

Sen. Gregory S. Bell, Senate Chair
Sen. Lyle W. Hillyard
Sen. Peter C. Knudson
Rep. Sheryl L. Allen
Rep. Lorie D. Fowlke
Rep. Gregory H. Hughes

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 Hutchings called the meeting to order at 9:18 a.m. Sen. Bell and Rep. Fowlke were excused from the meeting.

No quorum was present at this meeting.

2. Wrongful Death Amendments

Sen. Scott D. McCoy distributed and discussed 2009 General Session draft legislation, "Wrongful Death Amendments." Sen. McCoy described the draft legislation and provided a background for its inception for the Committee. He informed the Committee that the draft legislation expands the definition of "heirs" to include a wrongful death designee, which would allow the designee, a person who has had a mutually supportive and dependent relationship with the decedent, to qualify to file a suit to recover compensation for a wrongful death.

Rep. McIff asked if the draft legislation seeks to put the wrongful death designee in the same position a spouse would be in or if it impacts the rights of children or parents of the decedent to share or receive benefits or have a cause of action.

Sen. McCoy stated that the definition of "heirs" in the draft legislation is only for purposes of the wrongful death statute.

Rep. Webb inquired whether, in the case of a divorced couple where one partner later enters a same-sex relationship, the ex-spouse would still have standing to bring a wrongful death suit under the draft legislation.

Sen. McCoy informed the Committee that under the current statute an ex-spouse does not have standing to bring a wrongful death suit and still would not under the draft legislation.

Rep. McIff stated that Utah has made it clear that it is not prepared to redefine marriage but it is prepared to provide equality in some instances for same-sex partnerships. He also stated that this draft legislation does not change the definition of marriage but it suggests that a same-sex partner has a similar claim for a wrongful death action as a spouse.

Sen. McCoy agreed with Rep. McIff and stated that Utah's public policy, while not acknowledging same-sex marriage, does allow individuals to privately order their lives through mechanisms in the law such as wills, trusts, powers of attorney, and life insurance policies. He contended that the wrongful death statute is an instance where there is a gap in the law for individuals to order their lives privately through documentation. Sen. McCoy remarked that the draft legislation is an attempt to stay consistent with the stated public policy of Utah.

Rep. Johnson reminded the Committee that the Legislature stated that it would not infringe upon certain rights deemed necessary for same-sex partners.

3. Violation of Protective Order

Sen. Scott D. McCoy distributed and discussed 2009 General Session draft legislation, "Violation of Protective Order." He described the parameters of the draft legislation and provided background concerning its inception. Sen. McCoy stated that the draft legislation would place a notice in a protective order to allow the court to amend or dismiss a protective order if it finds that the petitioner has repeatedly acted in contravention of the protective order provisions by knowingly or intentionally inducing the respondent to violate the protective order.

Sen. McCoy answered questions from the Committee concerning the draft legislation.

Ms. Judy Kasten Bell, Executive Director, Utah Domestic Violence Council, stated that the draft legislation has been greatly improved from the draft legislation proposed last year; however, the Utah Domestic Violence Council cannot sanction the removal of a protective order due to the Council's mission of protecting victims of domestic violence and holding offenders accountable. She argued that protective orders should remain focused on the safety of the victim rather than creating another method of potential control over the victim.

Dr. Moises Prospero, Vice Chair, Utah Domestic Violence Council, spoke in opposition to the draft legislation because he believes the focus of a protective order should be on the perpetrator rather than the victim. He also stated that legislation already exists through which the respondent can charge the petitioner for any crimes committed.

Mr. Stuart Ralphs, Legal Aid Society of Salt Lake, spoke in opposition to the draft legislation and stated that there are two remedies for inducement of a protective order currently available: to ignore the inducements, or in cases where children are involved the parties can communicate through a third party, and to turn a petitioner who commits a crime over to law enforcement.

Rep. Hutchings stated that there is an inherent flaw in protective orders that causes petitioners to feel there are more protections than what actually exists in the law. He argued that there needs to be a clear

provision stating that communication between the petitioner and the respondent can be a danger to the petitioner.

Mr. Sim Gill, Chairman, Salt Lake Area Safe at Home Coalition, spoke in opposition to the draft legislation because he believes it could do more harm than good. He recommended that more data should be gathered to show the prevalence of the issue. Mr. Gill contended that there are prosecutorial mechanisms in place to discover if there are violations of a protective order. He requested that the draft legislation provide safe harbor provisions if it continues through the legislative process.

Ms. Gayle Ruzicka, Utah Eagle Forum, stated that there is a need to stop frivolous protective orders because they tend to be used as evidence of wrongdoing and guilt.

Rep. McIff stated that the draft legislation does not give deference to the courts to render proper justice for the respondent, and he encouraged the sponsor to include provisions that allow judges to weigh the evidence and to distribute penalties in proportion to the crime, if the draft legislation goes forward.

4. Sunset Review

Mr. Mark Brasher, Director, Office of Recovery Services, answered questions from the Committee concerning the repealing of the Base Combined Child Support Obligation Table §78B-12-301.

Mr. Brasher explained that the repealing of this statute is the selected process to transition from the old child support obligation table to the new table.

5. Other Items / Adjourn

Chair Hutchings adjourned the meeting at 10:59 p.m.