

**MINUTES OF THE  
JUDICIARY, LAW ENFORCEMENT, AND CRIMINAL JUSTICE INTERIM COMMITTEE**  
Wednesday, November 16, 2011 – 2:00 p.m. – Room 30 House Building

**Members Present:**

Sen. Mark B. Madsen, Senate Chair  
Rep. Kay L. McIff, House Cochair  
Rep. Curtis Oda, House Cochair  
Sen. Lyle W. Hillyard  
Sen. Luz Robles  
Sen. Ross I. Romero  
Sen. Stephen H. Urquhart  
Pres. Michael G. Waddoups  
Rep. Patrice M. Arent  
Rep. Derek E. Brown  
Rep. Fred C. Cox  
Rep. Steve Eliason  
Rep. Richard A. Greenwood  
Rep. Christopher N. Herrod  
Rep. Don L. Ipson  
Rep. Ken Ivory  
Rep. Brian S. King

Rep. Lee B. Perry  
Rep. Paul Ray  
Rep. R. Curt Webb

**Members Absent:**

Sen. Daniel R. Liljenquist  
Rep. LaVar Christensen  
Rep. Jennifer M. Seelig  
Rep. Mark A. Wheatley

**Staff Present:**

Mr. Jerry D. Howe, Policy Analyst  
Mr. Nathan W. Brady, Policy Analyst  
Ms. Susan Creager Allred, Associate General Counsel  
Ms. Esther D. Chelsea-McCarty, Associate General Counsel  
Ms. Jennifer Christopherson, 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 Oda called the meeting to order at 2:39 p.m.

Chair Oda requested an amendment to the minutes of the October 19, 2011 meeting by adding that he asked Ms. Mary Lou Emerson, Director, Utah Substance Abuse Advisory Counsel, Commission on Criminal and Juvenile Justice (CCJJ), and Ms. Anna Kay Waddoups, Chair, Utah Substance Abuse Advisory Council DUI Committee, for a breakdown between alcohol-related verses other substance or impairment injuries and fatalities.

**MOTION:** Rep. Arent moved to approve the minutes of the October 19, 2011 meeting, as amended by Rep. Oda. The motion passed unanimously with Sen. Hillyard, Sen. Madsen, Sen. Urquhart, Pres. Waddoups, Rep. Herrod, Rep. Ipson, and Rep. Ray absent for the vote.

Chair Oda relinquished the chair to Rep. McIff.

**2. Child Support Guidelines Amendments**

Rep. Oda distributed and explained 2012 General Session draft legislation, "Child Support Guidelines Advisory Committee Amendments" (2012FL-0449/007). He said that this bill changes the appointment and dissolution dates for the Child Support Guidelines Advisory Committee and makes clarifying corrections to the statute.

Mr. Stewart Ralphs, Executive Director, Legal Aid Society of Salt Lake, spoke in favor of the amendments, saying that the time frame in the current statute is too short for the committee to accomplish all that is required.

**MOTION:** Rep. Oda moved to recommend 2012 General Session draft legislation, "Child Support Guidelines

Advisory Committee Amendments" (2012FL-0449/007), as a committee bill. Committee discussion followed.

Mr. Stewart Ralphs responded to committee questions and stated that the advisory committee will not need to meet more often but that the expanded duration will enable the Committee to gather sufficient data.

The motion passed unanimously with Sen. Romero, Rep. Arent, and Rep. Brown absent for the vote.

Chair McIff relinquished the chair to Rep. Oda.

### **3. Peace Officer Standards and Training Council Amendments**

Rep. Greenwood explained 2012 General Session draft legislation, "Peace Officer Standards and Training Council Amendments" (2012FL-0285/004), which was distributed in the mailing packet. He said that this bill modifies the Peace Officer Standards and Training Act regarding training council membership. He responded to questions from the Committee, stating that he was approached by the Utah Highway Patrol to make the amendments.

**MOTION:** Rep. Greenwood moved to recommend 2012 General Session draft legislation, "Peace Officer Standards and Training Council Amendments" (2012FL-0285/004), as a committee bill. The motion passed unanimously with Sen. Romero, Rep. Arent, Rep. Brown, Rep. Ipson, and Rep. Ray absent for the vote.

Chair Oda relinquished the chair to Rep. McIff.

### **4. Theft Amendments**

Rep. Ray distributed and discussed 2012 General Session draft legislation, "Theft Amendments" (2012FL-0099/006), and explained that the bill enhances the penalty for individuals who commit multiple theft offenses. He responded to questions from the Committee.

Mr. Dave Davis, President, Utah Retail Merchants Association and the Utah Food Industry Association, expressed support for the bill stating that it will give retailers another tool to address serial offenders.

**MOTION:** Rep. Ray moved to recommend 2012 General Session draft legislation, "Theft Amendments" (2012FL-0099/006), as a committee bill, and authorize staff to make technical amendments. The motion passed unanimously with Sen. Romero, Rep. Arent, Rep. Brown, Rep. Cox, Rep. Herrod, and Rep. Ivory absent for the vote.

### **5. Firearms Revisions**

By request of the sponsor, this item was not discussed.

### **6. Competency to Stand Trial Amendments**

Rep. McIff provided background and discussed 2012 General Session draft legislation, "Competency to Stand Trial Amendments" (2012FL-0455/004), which was distributed in the mailing packet. He said that the bill modifies the process for determining a defendant's competency to stand trial.

Mr. Paul Boyden, Executive Director, Statewide Association of Prosecutors, responded to questions from the

Committee, stating that the basic premise of the bill is to allow assessment if there are false or exaggerated physical or psychological symptoms that are relevant to the case.

Mr. Sean Hullinger, Utah Association of Criminal Defense Lawyers, voiced concerns regarding whether or not a court is competent to make a medical decision as to whether the defendant is asserting a mental health defense or just demonstrating questionable behavior.

Rep. McIff responded to Mr. Hullinger's concerns and said the language states that a judge cannot order an examination or hearing regarding the mental condition of the defendant unless the court finds the allegations in the petition raise a bona fide doubt.

Ms. Gayle Ruzicka, Utah Eagle Forum, asked what the difference is between this bill and the previous bill, 2012 General Session draft legislation, "Civil Commitment Amendments" (2012FL-0006/008), sponsored by Rep. Daw. Mr. Boyden responded stating that 2012 General Session draft legislation, "Competency to Stand Trial Amendments" (2012FL-0455/004), concerns competency to stand trial and Rep. Daw's bill addresses civil commitment; they are separate issues.

**MOTION:** Rep. McIff moved to recommend 2012 General Session draft legislation, "Competency to Stand Trial Amendments" (2012FL-0455/004), as a committee bill. Committee discussion followed.

The motion passed unanimously with Sen. Romero, Sen. Urquhart, Rep. Arent, Rep. Brown, Rep. Cox, Rep. Eliason, and Rep. Herrod absent for the vote.

## **7. Grand Jury Amendments**

Rep. McIff discussed 2012 General Session draft legislation, "Grand Jury Amendments" (2012FL-0145/003), which was distributed in the mailing packet. He said that it provides exceptions to the requirement of a 72-hour notice for a minor to testify before a grand jury.

Rep. Perry shared his experience with the issue and stated that, although these situations are rare, they do occur and should be included in the bill.

**MOTION:** Rep. Perry moved to recommend 2012 General Session draft legislation, "Grand Jury Amendments" (2012FL-0145/003), as a committee bill. The motion passed unanimously with Sen. Romero, Sen. Urquhart, Rep. Arent, Rep. Brown, Rep. Cox, Rep. Eliason, Rep. Herrod, and Rep. Ivory absent for the vote.

## **8. Expedited Jury Trial Act Amendments**

By request of the sponsor, this item was not discussed.

## **9. Gambling Amendments**

Rep. Ipson explained that 2012 General Session draft legislation, "Gambling Amendments" (2012FL-0516/004), that was distributed in the packet, modifies the definition of certain promotional activities that are exempted from statutory provisions governing fringe gambling.

Mr. Clinton Drake, Layton City Attorney's Office, stated that the amendment made in 2009 is problematic regarding gambling definitions. He responded to questions from the Committee and said that 2012 General Session draft legislation, "Gambling Amendments" (2012FL-0516/004), removes the previous exceptions that

created a safe harbor for certain gambling establishments.

**MOTION:** Rep Ipson moved to recommend 2012 General Session draft legislation, "Gambling Amendments" (2012FL-0516/004), as a committee bill. The motion passed unanimously with Sen. Romero, Sen. Urquhart, Rep. Arent, Rep. Brown, Rep. Cox, Rep. Eliason, Rep. Herrod, and Rep. Ivory absent for the vote.

#### **10. Asset Division in Divorce Proceedings**

Sen. Jones distributed and discussed the following amendment dated November 15, 2011, to 2012 General Session draft legislation, "Asset Division In Divorce Proceedings" (2012FL-0234/003), which was distributed in the mailing packet:

*Page 1 Lines 26 through 30:*

26                   (1) When a decree of divorce is rendered, the court may include in it equitable orders  
27     relating to the children, property, debts or obligations, and parties, however the division of  
28     property by the court may not create an inequity ~~{that would cause}~~ for the sole purpose  
   of causing one party to be dependent  
29     upon a program of public assistance once the divorce is final. The court shall include the  
30     following in every decree of divorce:

She stated that this bill would prohibit the court from awarding property in a divorce that would result in one of the parties being dependent on public assistance.

Ms. Drew Quinn, Administrative Law Judge, Utah Department of Health, explained that the goal of this bill is to stop artificial impoverishment through asset division in a divorce. She answered questions from the Committee and noted that these cases are not tracked.

Ms. Quinn and Sen. Jones responded to questions from the Committee saying that it is not a Medicaid fraud issue because Medicaid cannot question it once there is a divorce decree. They said that both assets and income are taken into account when determining eligibility for Medicaid.

Mr. Rick Schwermer, Administrative Office of the Courts, responded to questions from the Committee. He commented that if two people present an agreed upon property division, the judge signs it, but if the judge has reason to believe the property division is for committing Medicaid fraud, we then need something to allow a judge to deny a stipulated property division.

**MOTION:** Rep. McIff moved to adopt Sen. Jones' Interim Committee Amendments dated November 15, 2011, to 2012 General Session draft legislation, "Asset Division In Divorce Proceedings" (2012FL-0234/003). Committee discussion followed.

**SUBSTITUTE MOTION:** Sen. Madsen moved to amend the language of the amendments dated November 15, 2011, to 2012 General Session draft legislation, "Asset Division In Divorce Proceedings" (2012FL-0234/003), as follows: Line 28 delete "sole" and insert "primary". Committee discussion followed.

The substitute motion passed with Rep. King voting in opposition and Sen. Hillyard, Sen. Romero, Sen. Urquhart, Pres. Waddoups, Rep. Arent, Rep. Brown, Rep. Ipson, and Rep. Ray absent for the vote.

Mr. Dan Deuel, Weber County 9/12 Project, said that this language should be in the Medicaid statute instead of the divorce statute.

Mr. Stewart Ralphs commented that if a couple is forced to sell a house as their only asset, that asset would be depleted quickly, keeping the ill partner in a care facility and leaving the healthy partner displaced.

Ms. Jackie Stokes, Medicaid, said that frequently the house is equally owned by both partners and is often exempt.

#### **11. Other Business / Adjourn**

**MOTION:** Rep. Greenwood moved to adjourn the meeting. The motion passed unanimously with Sen. Romero, Sen. Urquhart, Rep. Arent, Rep. Brown, Rep. Cox, Rep. Eliason, Rep. Herrod, and Rep. Ivory absent for the vote.

Chair Oda adjourned the meeting at 4:45 p.m.