

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, August 15, 2012 – 9:00 a.m. – Room 25 House Building

Members Present:

Sen. Mark B. Madsen, Senate Chair
Rep. Kay L. McIff, House Cochair
Sen. Lyle W. Hillyard
Sen. Ross I. Romero
Sen. Stephen H. Urquhart
Rep. Derek E. Brown
Rep. LaVar Christensen
Rep. Fred C. Cox
Rep. Christopher N. Herrod
Rep. Brian S. King

Rep. Paul Ray
Rep. V. Lowry Snow
Rep. R. Curt Webb
Rep. Mark A. Wheatley

Staff Present:

Mr. Jerry D. Howe, Policy Analyst
Ms. Chelsea Lloyd, Policy Analyst
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.

1. Committee Business

Chair McIff called the meeting to order at 9:17 a.m.

Mr. Howe announced that he has been promoted to a new position and will no longer staff the committee. He thanked the committee for the experience and introduced Ms. Lloyd as the new policy analyst for the committee.

2. Offer of Judgment in Civil Cases

Rep. Ken Ivory distributed and discussed 2013 General Session draft legislation "Offer of Judgment in Civil Cases" (2013FL-0093/002). He spoke about the high fees required for civil cases and stated that smaller parties with meritorious claims cannot afford to bring their case forward.

Mr. Dan Griffiths, Chairman, West Jordan Chamber of Commerce, spoke in favor of the issue and stated that it would encourage both parties to take a real look at the options. He responded to questions from the committee stating that it would give the smaller businesses a tool to counter the larger businesses.

Committee discussion followed.

3. Alimony

MOTION: Rep. Cox moved to amend lines 89 and 90 of 2013 General Session draft legislation "Alimony Amendments" (2013FL-0018/003) as follows: to keep the words "alimony or" on line 89 and to delete the words "or not" on lines 89-90. The motion passed unanimously with Sen. Hillyard absent for the vote.

Rep. Cox discussed 2013 General Session draft legislation "Alimony Amendments" (2013FL-0018/003), which was distributed in the mailing packet and said that, in 2009, in the case Mark v. Mark, the court of appeals said that, until the Legislature clearly defines fault in the statute, it is inappropriate to attach any consequences to the consideration of fault when awarding alimony. He explained that the purpose of 2013 General Session draft legislation "Alimony Amendments" (2013FL-0018/003) is to define fault.

Mr. Dan Deuel, Executive Director, American Parental Action League, spoke in favor of 2013 General Session draft legislation "Alimony Amendments" (2013FL-0018/003) and stated that some of the previous attempts at defining fault have gone far beyond defining fault, and that this legislation is a good balance for protecting both parties.

Rep. Cox responded to questions from the committee and said that if one party does something that substantially compromises the marriage, it is sufficient for the courts to take into account when evaluating whether there is fault.

Mr. Todd Stone, citizen, spoke in favor of the legislation and said that fault needs to be defined and that people want accountability. He stated that this legislation gives incentive to marriage instead of divorce.

Mr. Stewart Ralphs, Executive Director, Legal Aid Society of Salt Lake, distributed copies of his emails to the committee and spoke in favor of the legislation but discussed some concerns with it. He stated that consistency and predictability are important for the courts, the attorneys involved, and the parties themselves.

Rep. Cox responded to questions from the committee and stated that the decision on alimony should include both fault and financial situation but that fault must be closely defined.

Mr. Ralphs responded to questions from the committee and said that even though fault was optional in the statute, most practitioners don't bring up the issue. He explained that it is easier to monetize when it involves material and health-related issues than when it comes to emotional issues.

Mr. Bill Duncan, Director, Sutherland Institute's Center for Family and Society, said that it is reasonable to take into consideration the most salient facts of the parties involved.

Committee discussion followed.

Rep. Cox made closing remarks stating that we need to define fault if the Legislature intends to leave it in the statute.

4. H.B. 161, "Rights of Parents and Children": Required Review of the Division of Child and Family Services Audit

Rep. Christensen discussed 2012 General Session H.B. 161, "Rights of Parents and Children," which was distributed in the mailing packet. He said that parents' rights do not cease to exist because they are not model parents.

Mr. Craig Bunnell, Deputy Director, Utah Office of Guardian ad Litem (GAL), distributed and discussed "Child Welfare Reform in Utah" and stated that Utah has a nationally recognized child welfare program. He expressed worry that if changes are made, the state will regress and be more vulnerable to federal lawsuits. He responded to questions from the committee and said that his biggest concern is funding.

Mr. Robert Alsop, citizen, spoke in support of parental rights and said that the state should not fear being sued by the federal government.

Mr. Stone said that when his children wanted a private attorney, the GAL would not allow it, and his children were placed in state care.

Committee discussion followed. Sen. Madsen, Rep. Christensen, and Rep. Snow were assigned, by the committee, to develop recommendations for action.

5. Other Business / Adjourn

MOTION: Sen. Madsen moved to adjourn the meeting. The motion passed unanimously with Sen. Hillyard, Sen. Urquhart, Rep. Brown, Rep. Webb, and Rep. Wheatley absent for the vote.

Chair McIff adjourned the meeting at 12:04 p.m.