

**MINUTES OF THE  
JUDICIARY INTERIM COMMITTEE**

Wednesday, November 14, 2012 – 9:00 a.m. – Room 25 House Building

**Members Present:**

Sen. Mark B. Madsen, Senate Chair  
Rep. Kay L. McIff, House Chair  
Sen. Lyle W. Hillyard  
Sen. Ross I. Romero  
Sen. Stephen H. Urquhart  
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

**Members Absent:**

Rep. Derek E. Brown  
Rep. Mark A. Wheatley

**Staff Present:**

Ms. Chelsea Lloyd, Policy Analyst  
Ms. Esther 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 Madsen called the meeting to order at 9:18 a.m.

**MOTION:** Rep. Snow moved to approve the minutes of the October 17, 2012, meeting. The motion passed unanimously.

**2. Draft Legislation "Expungement Process Amendments"**

Rep. Eric K. Hutchings explained draft legislation "Expungement Process Amendments" (2013FL-0255/003), which was included in the mailing packet, and said that it gives drug offenders the ability to expunge certain drug-related offenses. He responded to questions from the committee by saying that, under the draft, a petitioner must be free of illegal substance abuse and managing substance addictions.

Mr. Santiago Cortez, Vice Chair, Drug-Related Offenses Expungement Committee, Utah Substance Abuse Advisory Council, distributed a letter to the committee from Mr. Scott W. Reed, Chair, USAAV Drug-Related Offenses Expungement Committee. He responded to questions from the committee by saying that only a small number of people will complete the process and therefore benefit from the legislation.

Mr. Paul Boyden, Executive Director, Statewide Association of Prosecutors, responded to questions from the committee by stating that a person is eligible for expungement if they receive a pardon.

Mr. Jesse Gallegos, Utah Board of Pardons, responded to questions from the committee by saying that the Utah Board of Pardons asks for a complete criminal record background check on every expungement applicant and that the Utah Board of Pardons feels that their process is very thorough.

**MOTION:** Rep. Ray moved to adopt draft legislation "Expungement Process Amendments" as a committee bill. The motion passed unanimously.

**3. Draft Legislation "Justice Court Amendments"**

Rep. Cox explained draft legislation "Justice Court Amendments" (2013FL-0047/002), which was included in the mailing packet, and said that the issues that need to be addressed are whether DUI cases should be adjudicated in justice courts. Rep. Cox responded to questions from the committee by saying that the intent of the draft is to find a starting place to begin improving justice courts.

Mr. Dan Deuel, Weber County 9/12 Project, spoke in favor of the legislation and said that it is the right way to go.

Mr. Steve Burton, former prosecutor, private defense attorney, spoke in support of improving justice courts and said that justice courts are very informal and are not the appropriate court to hear major crimes. He stated that there are some severe penalties for DUIs and that they should be adjudicated in district courts. He responded to questions from the committee by saying that the primary cause of the proposed change is that there are certain judges who may take their authority beyond what the Legislature intended.

Mr. Roger Tew, Utah League of Cities and Towns, spoke in opposition to the draft legislation and said that caution should be taken in dealing with this issue. He responded to questions from the committee by saying that there is a strong awareness in the cities that justice courts are a separate entity and do not exist to generate revenue.

Mr. Rob Wall, attorney, City of South Jordan, commented that justice courts serve a great purpose but that there is room for justice courts to conduct themselves in a more formal manner. He responded to questions from the committee by stating that, when there is an errant judge, the power has been taken away from the city to address the issue.

Mr. Jeremy Roberts, resident, Saratoga Springs, said that 6% of the revenue for the city of Sandy comes from its justice courts and that it is hard to believe that justice courts are not creating revenue. He stated that to suggest that there is not a problem with justice courts is naive.

Ms. Jacey Skinner, Director, Utah Sentencing Commission, discussed removing DUIs from justice courts and said that DUI sentencing is carefully dictated in justice courts. She expressed concern with the draft legislation, because it removes all discretion of sentencing judges with regards to consecutive sentencing. She responded to questions from the committee by saying that the burden of proof is the same whether it is a class B misdemeanor, domestic violence, or a first-degree felony.

Mr. Rick Schwermer, Assistant Court Administrator, Administrative Office of the Courts, stated that if DUI cases were removed from the justice courts and sent to the district courts, the state would need 12 new district court judges. He explained the costs involved with switching the case load and said that DUI cases generally do not generate revenue. He responded to questions from the committee by saying that every DUI requires an appearance before a judge and that just because someone is an attorney does not mean that they would be a better judge.

#### **4. Follow-up on 2012 General Session H.B. 161, "Rights of Parents and Children"**

Rep. LaVar Christensen distributed and discussed memorandum "Findings and Recommendations pursuant to H.B. 161, 'Rights of Parents and Children' (GS 2012)." He explained that 2012 General Session H.B. 161, "Rights of Parents and Children," requires the committee to study issues regarding the

rights of parents and children and report findings in the 2013 General Session.

Mr. Brent Platt, Director, Division of Child and Family Services, expressed concern with the jury trial language in section (h) of memorandum "Findings and Recommendations pursuant to H.B. 161, 'Rights of Parents and Children' (GS 2012)" and said that the courts should be included in that portion of the memorandum.

Rep. Christensen decided to delete the words "the right to a jury trial and" in section (h) of memorandum "Findings and Recommendations pursuant to H.B. 161, 'Rights of Parents and Children' (GS 2012)."

Mr. Platt explained that the Division of Child and Family Services will respond to the memorandum and provide the information to the House Judiciary Standing Committee, the House Health and Human Services Standing Committee, and the Social Services Appropriations Subcommittee before January 15, 2013.

**MOTION:** Rep. Christensen moved to adopt the amended memorandum, "Findings and Recommendations pursuant to H.B. 161, 'Rights of Parents and Children' (GS 2012)," as a committee memorandum. The motion passed unanimously with Sen. Romero, Sen. Urquhart, Rep. Ray, and Rep. Webb absent for the vote.

#### **5. Draft Legislation "Child Custody Proceedings"**

Sen. Luz Robles gave an overview of draft legislation "Child Custody Proceedings" (2013FL-0425/003), which was included in the mailing packet. She explained that the bill will change the age for a child to be eligible to participate in custody proceedings from 16 to 14 years of age.

**MOTION:** Rep. McIff moved to adopt draft legislation "Child Custody Proceedings" as a committee bill. The motion passed with Sen. Hillyard voting in opposition and Sen. Romero, Sen. Urquhart, Rep. Ray, and Rep. Webb absent for the vote.

#### **6. Other Business / Adjourn**

**MOTION:** Rep. Snow moved to adjourn the meeting. The motion passed unanimously with Sen. Romero, Sen. Urquhart, Rep. Ray, and Rep. Webb absent for the vote.

Chair Madsen adjourned the meeting at 11:57 p.m.