

**MINUTES OF THE
LAW ENFORCEMENT AND CRIMINAL JUSTICE INTERIM COMMITTEE**
Wednesday, November 14, 2012 – 9:00 a.m. – Room 450 Capitol Building

Members Present:

Sen. Todd Weiler, Senate Chair
Rep. Curtis Oda, House Chair
Sen. Luz Robles
Sen. Michael G. Waddoups
Rep. Patrice M. Arent
Rep. Richard A. Greenwood
Rep. Don L. Ipson
Rep. David Litvack
Rep. Jennifer M. Seelig
Rep. Lowry V. Snow

Members Absent:

Rep. James A. Dunnigan
Rep. Gregory H. Hughes
Rep. Daniel McCay
Rep. Lee B. Perry

Staff Present:

Mr. Nathan Brady, Policy Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Lori Rammell, Legislative Secretary

1. Committee Business

Chair Weiler called the meeting to order at 9:10 a.m.

2. Vulnerable Users of Roads

Mr. Scott Lyttle, Executive Director, Bike Utah, addressed the need for legislation to protect vulnerable road users, including pedestrians, construction and utility workers, cyclists, farm equipment operators, and persons riding animals. He stated that 15 states already have similar laws.

Mr. Brad Woods, President, Bike Utah, testified regarding being struck by an automobile while riding a bicycle with his children in tow. He expressed concern with the relatively minor charge the driver received of failure to yield and the need for legislation increasing the penalties for drivers who strike bicyclists.

Colonel Daniel Fuhr, Superintendent, Utah Highway Patrol, testified regarding the gaps in the current law. He stated that there are insufficient penalties against motorists who collide with cyclists.

Chair Weiler turned the chair over to Rep. Oda.

MOTION: Sen. Robles moved to approve the minutes of the October 17, 2012, meeting. The motion passed unanimously with President Waddoups, Sen. Weiler, and Rep. Litvack absent for the vote.

3. Enticing a Minor

Rep. R. Curt Webb reviewed draft legislation "Enticing a Minor Amendments" (2013FL-0199/011), which amends the Criminal Code by clarifying that enticing a minor does not include the intent to complete the commission of a sexual offense with a minor and provides that the penalty for enticing a minor is based on the level of sexual conduct that the offender solicits. Rep. Webb discussed the changes made to the draft legislation after the previous committee meeting to reflect the committee's concerns, including a change in language to comprise additional electronic communication devices and a change in the wording regarding penalties.

MOTION: Rep. Ipson moved that draft legislation "Enticing a Minor Amendments" (2013FL-0199/011) be approved as a committee bill. The motion passed unanimously with President Waddoups, Sen. Weiler, and Rep. Litvack absent for the vote.

3. Campus Safety Amendments

Rep. Ipson distributed draft legislation "Campus Safety Amendments" (2013FL-0124/012). He stated that this bill is intended to amend provisions relating to persons interfering with or trespassing on property owned by an institution of higher education.

MOTION: Rep. Greenwood moved to approve as a committee bill "Campus Safety Amendments" (2013FL-0124/012). The motion passed unanimously with President Waddoups, Sen. Weiler, and Rep. Litvack absent for the vote.

4. Dating Protection Act

Rep. Seelig distributed draft legislation "Dating Violence Protection Act" (2013FL-0324/004) and a summary of this draft legislation entitled "Everyone in Utah Deserves to be Safe." She discussed the issuance, modification, and enforcement of protective orders between individuals who are or have been in a dating relationship.

Mr. Ned Searle, Director, Office on Domestic and Sexual Violence, Commission on Criminal and Juvenile Justice, stated that physical violence in dating relationships is quite prevalent. He reviewed the data on Rep. Seelig's summary.

Ms. Donna Kelly, Domestic and Sexual Violence Resource Prosecutor, Prosecution Council, Utah Attorney General's Office, reviewed the legal differences between state and federal statutes. One notable difference, she said, was that a violation of a protective order under this bill would not trigger a federal firearms prohibition. She stated that one of the other exceptions is that this bill includes no supervision by Adult Probation and Parole. She said this bill is designed for adults 18 years and older.

Mr. Jon Bambrough, father of a dating violence victim, testified about his daughter's victimization by her boyfriend. He stated that, since his daughter had lived with her boyfriend for a short time, she was able to obtain a protective order, but had they not lived together, there would have been no legal protection in place; this bill addresses that gap.

Mr. Rick Sorensen, father of a young woman who was date raped, related his daughter's experience and the inability to receive a protective order against the man who attacked her. He stated that this bill is necessary to give victims and their families peace of mind.

Committee discussion followed.

Mr. Stewart Ralphs, Director, Legal Aid Society of Salt Lake, responded to a question regarding civil stalking injunctions versus protective orders: a protective order can be acquired the same day, while a civil stalking injunction requires proof of a course of conduct.

Rep. Stratton asked whether establishing the penalty as a class B misdemeanor is a sufficient deterrent, and was told by Ms. Kelly that, while a violation of this order would warrant court probation, it would be exempt from supervision by Adult Probation and Parole.

Rep. Stratton also inquired as to how the protective order process works and whether this bill would make it an easy tool to seek revenge. Mr. Ralphs described the legal process and cited an independent study that found less than 3% of protective order cases involved frivolous claims.

Ms. Gayle Ruzicka, Utah Eagle Forum, expressed concern with the age of 18 stipulated in the bill and asked how this bill would be implemented in high schools.

Chair Oda relinquished the chair to Sen. Weiler.

Ms. Jackie de Gaston, domestic attorney, expressed concern about protective orders being obtained as a means of revenge.

MOTION: Rep. Arent moved to approve "Dating Violence Protection Act" (2013FL-0324/004) as a committee bill. The motion passed unanimously with President Waddoups absent for the vote.

5. Material Harmful to Minors

Ms. Jennifer Brown, DDS, distributed "The Physiological Effects of Innocent Exposure to Soft-core Pornography on the Developing Brain" and then presented "What is Soft-core or Gateway Pornography?" She discussed the vulnerability of minors to pornographic images and the effect on their developing brains. She stated that certain hormone levels in juveniles are affected by viewing soft-core pornography, judgment and inhibitions are reduced, and that the brains of juveniles can be permanently affected by exposure to these images.

Dr. Gerald Allred, pediatrician, agreed with the statements in Ms. Brown's handout and added that he sees enormous problems in his practice with children who have been affected by viewing pornography. He stated that it is possible to control the environment, including billboards and magazine covers, that our children are exposed to.

Mr. Troy Rawlings, Davis County Attorney's Office, stated that currently the science regarding this topic is more concrete than the law. He said the issue is going to be the ability to apply the science and to establish a constitutional solution. He said the Statewide Association of Prosecutors is considering language that will address this issue without violating first amendment rights.

7. Capital Punishment

Rep. Stephen G. Handy introduced the study item of capital punishment: the costs, the prosecution process, and the possible alternative of life without parole.

Mr. Gary Syphus, Legislative Fiscal Analyst, distributed "Incremental Annual Impact of Death Penalty--State and Local" and "Incremental Impact for One Death Penalty Offender to Execution--State and Local" and discussed the best estimate of the costs of capital punishment versus life in prison without the

possibility of parole.

Mr. Tom Brunner, appellate attorney, representing the Utah Attorney General's Office, spoke about the policy reasons behind the death penalty. He said there are two reasons for it: deterrence and retribution. He said studies of the death penalty show that states that aggressively use the death penalty have seen a decrease in murder rates. He related the circumstances of Ronnie Lee Gardner and Troy Kell, death row inmates. Mr. Brunner reviewed several other murder cases, as well.

Lieutenant Craig Watson, Sandy City Police Department and cousin of Mel Otterstrom, a homicide victim of Ronnie Lee Gardner, addressed the issue of whether the death penalty brings closure to a victim's family. He testified that, as a witness to the execution of Ronnie Lee Gardner, he believed Mr. Gardner was treated better at his death than Mr. Otterstrom was. He also testified that he felt some degree of peace at Mr. Gardner's execution. He expressed displeasure with the amount of press coverage Ronnie Lee Gardner received during his incarceration and its effect on Mr. Otterstrom's family. He stated that the costs of capital punishment versus life without parole are not a concern; what is important is that these offenders not be allowed to reoffend.

Ms. Barbara Noriega displayed pictures of her mother and sister, murder victims of Von Lester Taylor. She related some details of the lives of her murdered family members and the circumstances of their deaths. She stated that the men who murdered her family are still on Utah's death row, but changes should be made at the legislative level to ensure that a sentence of life without the possibility of parole guarantees that parole would never be offered to those perpetrators. She said she felt little assurance of that. For that reason, she said, she believes those who take the lives of others should have to forfeit their own lives. Ms. Noriega discussed the difficult effect the murderers' multiple appeals have had on her family.

Ms. Peggy Ostler, sister of Michael Archuletta, currently on death row for the murder of Gordon Church, testified about her family's experience in the last 23 years since her brother's homicide conviction. She related his childhood history of abuse and abandonment, then his adoption by her parents. She said the final blow to her family would be having to experience the execution of their brother and son. She related the emotional roller coaster her own family suffers while her brother languishes on death row. She stated that she believes life in prison without parole would be a more appropriate sentence for him. She asked that the committee consider the impact of capital punishment on perpetrators' families, as well.

Mr. Ralph Delapiana, Founder and Director, Utahns for Alternatives to the Death Penalty, addressed the issue of the costs of capital punishment, including capital cases where the defendant is not convicted. He said he believes much of the suffering the victims' families endure is due to the fact that appeals go on for many years in death penalty cases. This, he said, would be reduced with life without parole. He stated, however, that too often death penalty cases are overturned, so these cases and the appellate process must not be rushed.

8. Other Business / Adjourn

MOTION: President Waddoups moved to adjourn the meeting. The motion passed unanimously with Sen. Robles and Rep. Ipson absent for the vote.

Chair Weiler adjourned the meeting at 11:59 a.m.