

**MINUTES OF THE  
JUDICIARY INTERIM COMMITTEE**

Wednesday November 18, 2015 – 1:15 p.m. – Room 25 House Building

**Members Present:**

Sen. Mark B. Madsen, Senate Chair  
Rep. LaVar Christensen, House Chair  
Sen. Luz Escamilla  
Sen. Lyle W. Hillyard  
Sen. Ralph Okerlund  
Rep. Fred C. Cox  
Rep. Bruce R. Cutler  
Rep. Brian M. Greene  
Rep. Craig Hall  
Rep. Brian S. King  
Rep. Merrill F. Nelson  
Rep. Dixon M. Pitcher

Rep. V. Lowry Snow  
Rep. Keven J. Stratton  
Rep. Norman K. Thurston  
Rep. Mark A. Wheatley

**Members Absent:**

Sen. Stephen H. Urquhart

**Staff Present:**

Mr. Gregg Girvan, Policy Analyst  
Ms. Esther Chelsea-McCarty, Associate General Counsel  
Ms. Lucy W. Daynes, Legislative Assistant

**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 1:45 p.m.

Mr. Girvan reviewed the study items assigned to the committee at the beginning of the interim session. He also outlined the four conclusions available to the committee to report to the Legislative Management Committee on interim study items.

**2. Sunset Review: Alternative Dispute Resolution Act**

Mr. Girvan explained that draft legislation "Alternative Dispute Resolution Sunset Date Amendment" (2016FL-0701/002) changes the sunset date for the Alternative Dispute Resolution Act by extending the date by 10 years, as requested by the committee in its October meeting.

The committee discussed the draft legislation and the Alternative Dispute Resolution Act.

**MOTION:** Rep. Cox moved that the committee recommend draft legislation "Alternative Dispute Resolution Sunset Date Amendment" as a committee bill. The motion passed unanimously with Sen. Hillyard, Rep. Stratton, Rep. Thurston, and Rep. Wheatley absent for the vote.

**3. Asset Forfeiture Revisions**

Rep. Greene spoke about draft legislation "Civil Asset Forfeiture – Procedural Reforms" (2016FL-0222/014) and explained the reasons for changing the asset forfeiture process. He stated that the issue of asset forfeiture is currently being considered across the country to address concerns including the following:

- Asset forfeiture creates a financial incentive for law enforcement to focus limited resources on forfeiture.
- Current asset forfeiture processes and laws create opportunity for abuse.
- Civil asset forfeiture can be used against individuals who are not high-level drug operatives.

Rep. Greene outlined provisions of the draft legislation, including changing the definitions of "innocent owner" and "proceeds," requiring that the civil forfeiture action be brought within 60 days of the property being seized, rescinding a civil forfeiture order if underlying criminal charges result in acquittal, and reallocating the funds from civil forfeiture to the Uniform School Fund.

Rep. Greene answered questions from the committee about the draft legislation and civil asset forfeiture.

Mr. Paul Boyden, Executive Director, Statewide Association of Prosecutors, addressed the draft legislation and comments of the committee. He said that the Commission on Criminal and Juvenile Justice (CCJJ) has information on the amount and uses of money from asset forfeiture, but to the best of his knowledge, most of the money goes to task forces. He explained that all funds from forfeiture first go to the CCJJ and are then distributed through grants. He stated that prosecutors are concerned with the negative effects of this draft legislation on their ability to seek civil forfeiture. He discussed problems associated with the drug trade and the need for civil actions as a tool to address the problem.

Mr. Christopher Crockett, Deputy County Attorney, Davis County Attorney's Office, said that he prosecutes civil forfeiture cases and is concerned that the draft legislation would affect his ability to prosecute cases in the following ways:

- Changing the definition of "innocent owner" limits the ability to seek forfeiture by requiring affirmative permission.
- Changing the definition of "proceeds" to only include direct proceeds will require a higher level of evidence.
- Requiring but not defining a "direct nexus" makes it unclear what evidence is required.

Mr. Crockett spoke to the concerns expressed by Rep. Greene and said that the previously made changes to civil asset forfeiture are sufficient to prevent abuse and achieve the purpose of civil forfeiture.

Mr. Crockett answered questions from the committee about his experiences with civil asset forfeiture.

Mr. Connor Boyack, President, Libertas Institute, said that structural limitations on civil asset forfeiture are necessary to minimize the potential for abuse. He described distribution, both by the federal government and the CCJJ, of money from forfeitures. He expressed support for the draft legislation and said that it would curtail abuse of forfeiture.

**MOTION:** Rep. Thurston moved that the committee recommend draft legislation "Civil Asset Forfeiture – Procedural Reforms" as a committee bill. The committee discussed the motion. The motion passed with Sen. Hillyard, Sen. Okerlund, Rep. Cutler, Rep. Nelson, and Rep. Pitcher voting in opposition. Rep. Stratton was absent for the vote.

Chair Madsen noted that the agenda item entitled, "Law Enforcement Exclusionary Evidence Rule" would not be considered.

#### **4. Summons and Arrests**

Rep. Christensen described the difference between issuing summons and warrants at different points in the judicial process and outlined the ways the judicial process can harm an individual prior to a court appearance. Referencing Utah Rules of Criminal Procedure, Rule 6, he stated that summons are preferable to arrest warrants in most situations.

Mr. Blake Nakamura, Chief Deputy, and Mr. Mike Postma, Division Administrator, both of the Salt Lake County District Attorney's Office, addressed the issues raised by Rep. Christensen. Mr. Nakamura clarified that the electronic process for issuing summons has been resolved by his office and the Administrative Office of the Courts. He explained that the decision between summons and warrants is made by prosecutors balancing the facts of the case, history of the individuals involved, and public safety.

Mr. Nakamura answered questions from the committee regarding the choice between issuing a warrant or a summons.

**MOTION:** Rep. Cutler moved to adjourn. The motion was voted upon, however, a quorum of committee members was not present. Chair Madsen stated that the committee would continue to hear testimony.

Mr. Rick Schwermer, Assistant Court Administrator, Administrative Office of the Courts, addressed the comments made by previous presenters. He stated that summons are being used more commonly than warrants in regions other than Salt Lake County.

Mr. Schwermer answered questions from the committee regarding the use of summons.

Rep. Cox commented on specific situations he has witnessed involving the use of arrest warrants rather than summons.

## **5. Alimony Amendments**

Rep. Stratton addressed draft legislation "Alimony Amendments" (2016FL-0306/004) and explained that it would require the court to consider whether a parent has lost workplace experience opportunities while caring for a child in calculating alimony.

Mr. Stan Rasmussen, Director of Public Affairs, Sutherland Institute, spoke to the importance of laws that reflect the significance of families and care for children. He stated his support for the draft legislation.

Mr. Stuart Ralphs, executive committee member, Utah Bar Family Law Section, said that the executive committee is supportive of the draft legislation.

Ms. Dani Hartvigsen, Coalition for the Preservation of Family Values, explained that courts currently do not consider the loss of workplace experience when calculating imputed income, which creates inequitable outcomes.

Rep. Cox thanked the sponsor for addressing the issue.

## **6. Guardianship of Disabled Adults**

Rep. Cox explained that the new version of draft legislation "Disabled Adult Guardianship Amendments" (2016FL-0016/006) contains a few small changes since it was last considered by the committee. He explained that in order for counsel to be waived in guardianship proceedings for a disabled adult, the following conditions must be met: the disabled adult may have no more than a minimal level of assets, have an intellectual disability, appear in court, and have the court determine that counsel is not required. He explained the current process that applies to situations where individuals cannot be present in court, a process which would remain unchanged by the draft legislation.

## **7. DUI Statutory Report**

Ms. Mary Lou Emerson, Director, Utah Substance Abuse Advisory Council, presented the data from "Thirteenth Annual DUI Report to the Utah Legislature." She explained that from 2013 to 2014, alcohol related DUI fatalities increased while drug related DUI fatalities have decreased.

Ms. Emerson answered questions from the committee regarding the data presented, revocation of driver licenses, and methods to address DUI's.

## **8. Religious Liberty**

Rep. Christensen expressed the importance of laws protecting religious liberty.

## **9. Other Items/Adjourn**

Chair Madsen adjourned the meeting at 5:04 p.m.