

**MINUTES OF THE
LAW ENFORCEMENT AND CRIMINAL JUSTICE INTERIM COMMITTEE**

Wednesday, May 17, 2000 - 9:00 a.m. - Room 416 State Capitol

Members Present:

Sen. Michael G. Waddoups, Chair
Rep. Blake D. Chard, Chair
Sen. Paula Julander
Rep. Duane Bourdeaux
Rep. DeMar "Bud" Bowman
Rep. Perry L. Buckner
Rep. David L. Hogue
Rep. Marlon O. Snow
Rep. Carl R. Saunders
Rep. Nora B. Stephens

Members Excused:

Rep. Trisha S. Beck

Members Absent:

Sen. L. Alma "Al" Mansell
Rep. Susan J. Koehn

Staff Present:

Ms. Chyleen A. Arbon, Research Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Alicia Gambles, Legislative Secretary

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Committee Business - Chair Waddoups called the meeting to order at 9:10 a.m.

MOTION: Rep. Hogue moved to approve the minutes of the April 19, 2000 meeting. The motion passed unanimously, with Sen. Mansell and Reps. Beck, Buckner, Koehn, and Snow absent for the vote.

2. Traffic Stop Statistics - Rep. Duane Bourdeaux indicated that H.B. 106, "Traffic Stops Statistics," which he sponsored during the 2000 General Session, passed the House but did not pass the Senate because of time constraints.

Ms. Arbon, Research Analyst, Office of Legislative Research and General Counsel, highlighted the main points of 3rd Substitute H.B. 106. She explained that the bill requires each law enforcement agency to adopt a written policy that would prohibit officers from stopping, detaining, or searching any person based on race, color, ethnicity, age, or gender. The bill also requires the Driver License Division to maintain a database that keeps track of the race of each person stopped. She explained that the bill requires law enforcement officers, when they issue a citation or a written warning, to record the race of the driver who has been stopped, only if the race information is displayed on the driver license of the individual. The bill finally requires language on both the citation form and the written warning form that indicates how to file a complaint if a person feels he or she has been treated in a biased or prejudiced manner.

Col. Richard Greenwood, Superintendent, Utah Highway Patrol, said that the Highway Patrol is voluntarily monitoring traffic stops through means similar to those outlined in 3rd Substitute H.B. 106. He explained that the Utah Highway Patrol already has a place on the traffic citation where an officer can record the race of the person cited. He said that informing people about how to file

complaints with the Highway Patrol upon receiving a ticket would unnecessarily increase the number of complaints handled.

Mr. Bart Blackstock, Bureau Chief, Driver License Division, presented the new driver license application form which includes a section to provide race information and a disclaimer that explains why the division is asking for race information. The division is currently on schedule for releasing the digitized driver license which would include the person's race as a numeric code.

Chief Chris Zimmerman, President, Utah Chiefs of Police Association, noted that the Task Force for Racial and Ethnic Fairness does not recommend that law enforcement monitor traffic stops, but rather recommends that diversity training be provided for law enforcement administrators and officers. In regard to the proposed legislation, he stated that the association is opposed to requiring language on the citation form that indicates how a person can file a complaint against the officer who has just issued a ticket to that individual.

Sheriff Mike Lacy, President, Sheriffs Association, indicated that Sheriff Kennard, Salt Lake County, would be speaking on behalf of the association. Sheriff Kennard stated that giving drivers additional information about how to make complaints against deputies is unnecessary, because there is already a policy in place to make and investigate these complaints. He explained that there is a perception of racial profiling in Utah, but there is no evidence of it. He said that racial profiling is a violation of the law, and if a complaint is made, an internal affairs investigation is conducted to remedy the problem.

Rep. Bourdeaux concluded that the perception of racial profiling exists and that collecting this information would help law enforcement know if there really is a problem. He said there is an obligation to move beyond the anecdotes to find out who is being stopped and why. He pointed out that there is not a formal process to determine which officers may be profiling. He reiterated that the committee has a responsibility to move forward with this legislation, and he urged the committee to support the legislation.

Rep. Stephens commented that this bill moves the legislature in the wrong direction. She emphasized that the issue is whether or not the law has been broken. She indicated that this legislation may be harmful to minority groups by portraying them as victims.

Rep. Saunders asked Sheriff Kennard, Chief Zimmerman, and Col. Greenwood if they think there is a racial profiling problem in the state and if they feel this legislation is needed. Each of them said they do not believe there is a problem and that the legislation is not needed.

MOTION: Rep. Bourdeaux moved that the committee adopt the language contained in 3rd Substitute H.B. 106, "Traffic Stops Statistics," as a committee bill. The motion failed, with Sen.

Julander and Reps. Bourdeaux, Buckner, Chard, and Hogue voting in favor of the motion and Sen. Mansell and Reps. Beck and Koehn absent for the vote.

3. Serious Habitual Offender Comprehensive Action Program (SHOCAP) - Ms. Susan Burke, Juvenile Justice Specialist, Commission on Criminal and Juvenile Justice, explained that the SHOCAP Program provides for a collaborative effort among local representatives of law enforcement, probation, youth corrections, schools, prosecutors, policy makers, the Division of Child and Family Services, and mental health workers to provide support for and require accountability of youth who are serious habitual offenders. Ms. Burke explained that the 1997 legislation that created the pilot program in Davis County provided \$70,000, and the Utah Board of Juvenile Justice funds four of the six programs. She also indicated that the Commission on Criminal and Juvenile Justice is using funds from a federal grant to provide equipment and training for SHOCAP coordinators.

Detective Brett Magelby, Salt Lake County Sheriff's Office, presented an update on the statewide implementation of the SHOCAP Program. Salt Lake County has been divided into 3 separate areas based on school district boundaries. The program started in the Jordan School District area, and the Granite School District area just recently selected a detective to be the SHOCAP coordinator, anticipating that this area will be adding 35-40 youth to actively monitor.

The Salt Lake City School District area is currently working on educating the different agencies as to what their individual roles are and how to coordinate in the program. Utah County has received a grant to initiate SHOCAP and is currently in the process of developing a secure website to house SHOCAP information. Weber and Morgan Counties are working together and currently have about 40 youth in the program. Sevier, Piute, and Wayne Counties have just recently begun the SHOCAP Program and have selected 15 youth to establish the program. San Juan County has been working on sovereignty issues and is currently in the process of coordinating with the Navajo and Ute nations to implement SHOCAP.

Chair Chard stated that the SHOCAP Program functions because of the collaborative effort between agencies. He also stated that it is important that the parents are involved and are notified of their child's status in the program, which is what draft legislation "Serious Habitual Offender Comprehensive Action Program Amendment" is intended to accomplish.

MOTION: Rep. Hogue moved to adopt draft legislation titled "Serious Habitual Offender Comprehensive Action Program Amendment." The motion passed unanimously, with Sen. Mansell and Reps. Beck, Bowman, and Koehn absent for the vote.

4. Intimacy With a Person in Custody - Sen. Paula Julander explained that S.B. 207, "Intimacy With a Person in Custody," was introduced during the 2000 General Session by short title only, because of time constraints. She then provided the committee with draft legislation titled "Prohibition of Intimacy With Person in Custody."

Ms. Allred, Associate General Counsel, Office of Legislative Research and General Counsel, explained that the bill defines the following people as actors: correctional officers, law enforcement officers, and employees of, or private contractors or providers within, the Division of Youth Corrections, the Division of Child and Family Services, the Division of Mental Health, the Department of Corrections, or a county jail. She explained that the bill creates two specific offenses: custodial sexual assault and custodial sexual misconduct. The concept of the bill is to identify the behavior within these agencies and create a criminal penalty for the actors who commit either offense.

Sen. Julander expressed the need for this legislation. She explained that this law would eliminate consent as a defense to such conduct, enhance the professionalism of the Utah prison system, and align Utah's legal standards with most other states.

Mr. Pete Haun, Director, Department of Corrections, noted that the primary concern of the department is the safety and protection of both staff and inmates, which is placed at risk when this type of behavior takes place. Even though relationships may appear to be consensual on the surface, the department knows from experience that inmates can be put under extreme pressure to cooperate. The only disciplining action that can be taken at this time is to terminate the employee for this behavior. These kinds of relationships not only create an environment of blackmail, but also often create an environment of collaboration between the employee and the inmate, which compromises the safety of others. This legislation would also reduce the chance of the state being sued for this type of behavior.

Nancy Haanstad, Weber State University, Amnesty International, spoke about the vulnerability of female inmates to sexual abuse by custodial personnel. She explained that even those incarcerated within the criminal justice system retain basic human rights to decent and humane conditions, including protection from sexual abuse. She stated that the underlying source of this abuse is that correctional facilities employ members of the opposite sex to staff these facilities.

MOTION: Rep. Buckner moved to adopt draft legislation "Prohibition of Intimacy With Person in Custody" as a committee bill. The motion passed unanimously, with Sen. Mansell and Reps. Beck and Koehn absent for the vote.

5. Other Items / Adjourn

MOTION: Rep. Saunders moved to adjourn the meeting. The motion passed unanimously, with Sen. Mansell and Reps. Beck and Koehn absent for the vote.

Chair Waddoups adjourned the meeting at 11:00 a.m.