

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, August 16, 2000 - 9:00 a.m. - Room 403 State Capitol

Members Present:

Sen. Terry Spencer, Senate Chair
Rep. A. Lamont Tyler, House Chair
Sen. David H. Steele
Sen. Pete Suazo
Rep. Patrice M. Arent
Rep. Chad E. Bennion
Rep. Afton B. Bradshaw
Rep. Katherine M. Bryson
Rep. Gary F. Cox
Rep. David L. Gladwell
Rep. LaWanna "Lou" Shurtliff
Rep. John E. Swallow
Rep. Glenn L. Way

Members Absent:

Sen. Lyle W. Hillyard
Rep. Greg J. Curtis
Rep. Neal B. Hendrickson
Rep. J. W. "Bill" Hickman
Rep. Martin R. Stephens
Rep. David Ure

Members Excused:

Staff Present:

Mr. Jerry D. Howe,
Research Analyst
Ms. Esther D. Chelsea-McCarty,
Associate General Counsel
Ms. Glenda S. Whitney,
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. Call to Order and Committee Business - Chair Tyler called the meeting to order at 9:20 a.m.

MOTION: Rep. Bradshaw moved to approve the minutes of the July 12, 2000 meeting. The motion passed unanimously, with Rep. Bennion, Rep. Bryson, Rep. Swallow, and Rep. Way absent for the vote.

2. Reports - Mr. Richard Schwermer, Administrative Office of the Courts, presented the reports on "Mandatory Education Course for Divorcing Parents," along with "Disputed Resolution Programs." He distributed the annual report, "Divorce Education for Parents Program," for the committee to review.

3. Cohabitant Abuse, Protective Orders, and Stalking - Sen. Spencer distributed copies of the 14th Amendment to United States Constitution, and Article I, Section 7 of the Utah Constitution. He provided background to the committee on the 14th Amendment and explained "due process of law." Referring to, "Scope of Protective Orders," 2001FL-0144/002, he explained that the bill provides for due process. Additionally, the bill combines two important issues that have previously been drafted as two separate bills.

To illustrate the importance of the issues contained in the bill, Sen. Spencer distributed and discussed a Deseret News article published August 15, 2000, titled "Eviction was unlawful, wife's lawsuit contends." He said Salt Lake County and Davis County do not permit evidentiary hearings to determine whether a protective order should be issued or denied after the ex parte period has expired. This practice is problematic, he said. To settle the issues, he explained that the bill provides that after the ex parte period is over, both parties should be on equal footing, which is what this bill attempts to provide. Concerning the stalking portion of the bill, a procedure is established by which the court may issue and enforce a civil stalking injunction. Contrary to what has been argued, Sen. Spencer said that this bill does not impact the ability of a person who has been the subject of threat or domestic violence from obtaining emergency relief.

Sen. Suazo questioned the wisdom of combining the stalking issue with the protective order issue as has been done by Sen. Spencer's bill. The practical impact of joining these two bills is that the stalking issue will be burdened by the fiscal note of the protective order issue which is nearly \$800,000. Sen. Spencer responded that these issues are not mutually exclusive, that people in both these situations are seeking the same relief. The only difference is that under the stalking provision, the person seeking relief is a cohabitant. This distinction, he explained, is not enough to justify a separate procedure. Similarly situated people must be treated equally under the law which is why the bills have been combined.

Rep. Shurtliff noted that this bill contains the original language from her stalking bill from the last general session. She indicated that notwithstanding Sen. Spencer's explanation, the courts have informed her that these two groups are not in similar situations. Sen. Suazo spoke of separating the two issues into two different bills.

Chair Tyler asked for public comment on the draft legislation.

Chief Gerald W. Maughn, Chief of Police, Midvale, expressed concern with the proposed legislation. Requiring mandatory notice to the respondent or the respondent's attorney would defeat the purpose of the order by allowing the respondent to avoid service. The current statutes, procedures, and current police investigative procedures are more than adequate to protect against such abuses, he said. He asked the committee to give the proposed legislation a proper burial.

Mr. Stewart Ralphs, Executive Director, Legal Aid Society of Salt Lake, representing the Utah Domestic Violence Advisory Council, distributed a packet, "Executive Summary of Responses to Proposed Legislation Regarding Protective Order Process." He said the packet includes several letters from law enforcement along with the legal community that details the concerns regarding the proposed legislation. Mr. Ralphs responded to statements on the legislation and said the necessity of putting these two bills together because they include "similarly situated" groups of people, is not correct. As a consequence, the argument that our current law violates due process is wrong. Mr. Ralphs suggested that the committee wait to consider the

conclusions and recommendations that will be reached by the Judicial Council's Committee on Children and Family Law before it takes an official position on this bill.

Ms. Mary E. Boudreau, Utah Children, said that based on the premise that domestic violence victimizes children, her organization opposes the following provisions of the bill: 1) a victim should not be restricted to seeking a protective order in the district in which a divorce was filed and is pending; 2) notice of the initial filing for an ex parte protective order should not be required, as it may increase the potential for avoidance of service by the respondent and increase violence to the victim; and 3) a judicial district should not be required to hold an evidentiary hearing on every petition in the first instance.

Ms. Shelley White, YWCA Women's Battered Shelter, said the majority of domestic violence victimization does not take place in public places but takes place in the privacy of one's home, where it often takes place in the presence of children. Testimony of these child witnesses is traumatic and detrimental to the family. More people will die in the State of Utah at the hands of their abusers, she said, if women are not allowed immediate ex parte orders during critical times.

Ms. Kristin Brewer, Office of Guardian Ad Litem, said there will be more violence if the other side is required to give notice prior to the protective order being issued.

Ms. Lori Nelson, Chair, Family Law Section of the Bar, also representing the Standing Committee on Children and Family Law, said the standing committee of the judiciary is exploring this issue. It may prove helpful to the Legislature to wait for this committee's cohesive solution to these problems.

Ms. Nelda Bishop, Volunteer Attorney, Davis County Coordinator on Protective Orders, noted that it was her understanding that evidentiary hearings are available in Davis County.

MOTION: Sen. Spencer moved to go on with the next agenda item and come back with the working group when there is more information.

Sen. Steele asked that the minutes reflect that the committee heard only testimony in opposition of the current legislation and when committee members were asked for support, there was none.

SUBSTITUTE MOTION: Rep. Shurtliff moved to separate the stalking issues from the protective order issues and that the committee consider at some future meeting the stalking issue. The motion passed unanimously, with Rep. Bennion absent for the vote.

MOTION: Sen. Spencer moved to go on with the next agenda item. The motion passed unanimously, with Rep. Bennion absent for the vote.

4. Shelter Hearings - Sen. Spencer reminded the committee of the shelter hearing information he distributed at the previous meeting. He said that some juvenile courts in the state are removing children from their homes without suitable justification. The issue concerns the type of hearing the state should provide to balance the interests of children and parents.

Ms. Kristin Brewer, Office of Guardian Ad Litem, noted that it is the state's interest in protecting children balanced against the parents fundamental right to parenting. She explained in terms of the burden of proof, a shelter hearing is an emergency hearing and that no state in the country is using a clear and convincing evidence standard at that early hearing. She concluded that parents need adequate representation in these hearings and that might be an appropriate focus for the legislature.

Mr. David Carlson, Chief, Child Protection Division, Attorney General's Office, said that Utah's law provides a greater amount of protection for parents than any other state in the country. He said money would be best spent providing adequate counsel for parents. The system already works, he said, and that some of these suggestions just discussed are not the best way to go.

Rep. Swallow expressed concern with the three-day waiting period between the placement and the shelter hearing indicating that is a long time for a child to be separated from the parent. He asked if there is a way to shorten the time. Mr. Carlson explained that the first provision required that the shelter hearing be held within 48 hours. The courts found this period to be too difficult to meet and so about a year after the Child Welfare Reform Act went into effect the time period was expanded to 72 hours, he said.

5. Coparenting in Divorce - Ms. Lori Nelson, Utah State Bar, Family Law Section, indicated that no draft legislation has been prepared but the family law section would like to work with the legislature in drafting and presenting a bill that deals with coparenting in divorce.

6. Adjourn -

MOTION: Rep. Cox moved to adjourn the meeting at 11:55 a.m. The motion passed unanimously, with Sen. Spencer, Rep. Arent, Rep. Bryson, and Rep. Way absent for the vote.