

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, May 23, 2001 – 2:00 p.m. – Room 403 State Capitol

Members Present:

Rep. Glenn L. Way, House Chair
Sen. D. Edgar Allen
Sen. Millie M. Peterson
Sen. Michael G. Waddoups
Rep. Patrice M. Arent
Rep. Chad E. Bennion
Rep. Ron Bigelow
Rep. Katherine M. Bryson
Rep. Gary F. Cox
Rep. James A. Ferrin
Rep. Ben C. Ferry
Rep. Neal B. Hendrickson
Rep. Mike Thompson
Rep. A. Lamont Tyler

Members Absent:

Sen. Terry R. Spencer
Rep. Greg J. Curtis
Rep. Scott Daniels
Rep. David Ure

Members Excused:

Sen. David L. Gladwell, Senate Chair

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 Way called the meeting to order at 2:55 p.m. Sen. Gladwell was excused from the meeting.

MOTION: Sen. Peterson moved to approve the minutes of the April 18, 2001 meeting. The motion passed unanimously, with Rep. Bennion, Rep. Bigelow, and Rep. Bryson absent for the vote.

Rep. Tyler requested that the eight study items selected by the committee at its April meeting be recorded in the May minutes. Those items include:

- Visitation Rights and Visitation Services
- Indigent Legal Defense
- Parental Rights in Juvenile Court and Sentencing Alternatives
- Drug Free Work Place
- Juvenile Record Expungement
- Bailiff Funding
- Family Court System
- Statute of Limitations on Abuse

2. Historical Overview of Parent-Time (Visitation)

Mr. Jerry Howe, Research Analyst, Legislative Research and General Counsel, presented a list of statutes and the sanctions the legislature passed since 1990 that were intended to remedy the situation of the wrongful denial of child visitation. Despite the legislature's attempts to provide a solution to this problem, he said, the problem persists. Perhaps no legislative solution will actually solve the problem. Judging from legislation passed in the last decade, Mr. Howe explained that the legislature's influence on this issue probably lies in its ability to establish sanctions the court is willing to impose. Several statutes passed by the legislature have not been widely implemented, including some that allowed for actual expenses, attorney's fees, placing parents who wrongfully deny visitation in jail, and even the changing of custody. One approach to this problem may be finding sanctions that are strong enough to motivate parents to provide the visitation required by the court but not so harsh as to discourage judges from implementing them on a regular basis. Indeed, this area of the law has been a source of difficulty, he said; and if this committee intends to solve the issue it should recognize that simply passing statutes that will not be implemented merely serves the purpose of further aggravating those parents whose visitation is continuously and wrongfully denied.

3. Current State of Utah's Parent-Time Law (Visitation)

Ms. Esther Chelsea-McCarty, Associate General Counsel, Legislative Research and General Counsel, presented an overview of the current law in Utah on visitation. Starting with an explanation of the most recent change in terminology from "visitation" to "parent time," Ms. Chelsea-McCarty walked the committee through the state's policy, discussed briefly the relationship of parent-time to child support, outlined parent rights and responsibilities, and discussed sanctions for failure to comply with court ordered visitation, including enforcement mechanisms.

Ms. Chelsea-McCarty explained that in several other states mediation is often the basis upon which enforcement programs are established. The committee then discussed possible options. Ms. Chelsea-McCarty handed out a copy of her presentation, noting that there was a section in the handout which referred to a pilot program that was initiated in the first judicial district that established graduated sanctions for the repeat offender which was later repealed on the recommendation of the First Judicial District and the Administrative Office of the Courts.

4. Department of Human Services

Ms. Robin Arnold Williams, Executive Director, briefed the committee on the role of the Department of Human Services and the Office of Recovery Services (ORS) with regards to child support collection efforts. She said the Welfare Reform Act of 1996 was to facilitate parental involvement beyond the payment of financial support. She indicated that with federal law access and visitation grants, \$10 million was provided nationwide for these projects.

Ms. Williams explained that the purpose of child support collection is to repay the federal and state governments for welfare given to families that are entitled to child support but do not receive it. She noted that about 5.3 million dollars is annually collected and deposited into the general fund from this program.

Ms. Williams suggested that if the committee desires greater enforcement of the wrongful denial of visitation, it needs to consider enhancing the judicial system. She also noted that a change to allow for administrative enforcement, rather than only allowing the court to impose sanctions could be an option.

Chair Way asked if the Department of Human Services or the Office of Recovery Services assists noncustodial parents in locating custodial parents. If the government knows the location of a custodial parent, does it make that information available upon the request of the noncustodial parent, he asked?

Ms. Emma Chacon, Office of Recovery Services, responded that there is a specific federal law that allows either parent to request the agency to safeguard their information if they have a protective order or if they have any fear of the other parent. She explained that under certain circumstances that information may be released to a court but not to the other parent or his or her counsel. Chair Way asked Ms. Chacon to provide sites to those federal provisions and any internal administrative rule or policy on the subject to staff. Ms. Chacon said she would be happy to provide that information.

Ms. Amanda Singer, Program Coordinator, discussed the visitation enforcement program and how it was started in 1995. Ms. Singer explained that working with Sen. Millie Peterson, a survey was conducted by the Department of Human Services that concluded that 11 percent of the respondents reported that court ordered visitation did not take place at all, 48 percent of the respondents reported that visitation did not take place as often as ordered, and 62 percent of the respondents reported persistent problems regarding court ordered visitation. Ms. Singer testified that noncustodial parents experience problems with visitation despite what the court orders.

Children become innocent victims, she said. Although children who maintain a close relationship with both parents generally adjust best, she acknowledged that sanctions alone are ineffective in resolving visitation disputes. She said successful components to solving visitation issues are to mandate low-cost court ordered resolution intervention aimed at enforcing the court order, and a one to one intervention rather than group education.

The committee acknowledged the difficulty of enforcing court ordered parent-time. The committee also expressed concern with that a reported 60 percent of all court orders regarding visitation are not being followed.

5. Expedited Visitation Enforcement - Pilot Program Third Judicial District

Mr. Richard Schwermer, and Mr. Guy Galli, Administrative Office of the Courts, distributed a report "Utah's Third District Pilot Visitation Mediation Program." Mr. Schwermer reviewed the report and discussed funding, challenges and the goals of the program. The current pilot program is cost-effective and is administered through a collaborative effort between the Department of Human Services, the Administrative Office of the Courts, and the Third District Court. He spoke in support of the pilot visitation mediation program and suggested expanding the mediation process to other parts of the state.

The committee questioned the process of mediation, court orders, imposing sanctions and the time involved in determining visitation rights. Mr. Schwermer responded to the committee's concerns and noted that the wrongful denial of court ordered visitation is a complex issue. He also noted that the pilot sanctions program was not effective in the First Judicial District.

6. Practical Perspectives

Ms. Lori Nelson, Chair, Family Law Section, Utah State Bar, was unable to attend the meeting but written comments were distributed.

Mr. Stewart Ralphs, Executive Director, Legal Aids Society of Salt Lake, spoke against the notion of establishing an administrative enforcement agency. He suggested that the court continue to hear issues regarding visitation disputes to ensure that due process can be guarded. The Department of Human Services or the Office of Recovery Services is well equipped to handle these issues, he said.

Mr. Ralphs then respectfully submitted the following recommendations: 1) require paternity cases to attend the mandatory visitation class. The issues, he explained, are equally applicable to parents of children of who are getting divorced as they are for parents who have never been married; and 2) require each court order that contains a visitation provision to include language such as: "failure to comply with this court-ordered visitation may result in the following sanctions," and then list the sanctions. This way parties are given notice that noncompliance may lead to losing custody, being put in jail, or the imposition of fines.

Of primary importance for parents and visitation is that both custodial and noncustodial parents have predictability and reliability. As often as practical, it should be understood that visitation will take place at certain times without negatively impacting the children.

7. Public Input

Chair Way referred to written public comments that were distributed to the committee and asked for other public comment on this issue.

Mr. Brent Holdaway, Focus, said current state statutes provide for several sanctions. The issue, he said, is how to get judges to enforce the laws that are currently on the books. Imagine the frustration, he said, of being denied court ordered visitation, then obtaining a lawyer at considerable expense, to enforce the court order, and then have a judge simply ignore the law and impose no penalties.

Mr. Gary Holt, Focus, explained that mothers often get divorced thinking they can find a better father for the children. It seems natural then, that the mother wants the new and improved husband to be the primary male role model for her children, even, and perhaps, especially at the expense of the father of the children. Regular and consistent sanctions would improve the consistent denial of visitation rights, he said.

Mr. Alan Millard, Focus, suggested that the court does not permit over 60 percent of its orders to be ignored in other areas of the law and questioned why it doesn't improve the enforcement of its visitation orders. If parents understood that there is little way to enforce a visitation order, then custody would become the primary issue in every divorce case where the father wanted to have an ongoing relationship with his children. Moreover, children are entitled to equal parenting time. It is simply unfair for children to be unilaterally denied time with one of their parents.

Ms. Miranda Falco, Focus, suggested that a state office be created to enforce visitation rights because children need both parents and the current system is not providing the children with this right.

Mr. Brett Jarman, Focus, expressed concern with being denied visitation. The current system, even if it worked, he said, is too time consuming and costly. If the state's goal was to prevent all noncustodial parents from spending time with their children and to encourage all custodial parents to control the other parent's access to the children, it would be hard to imagine a better system of doing that than the one we have.

8. Committee Discussion

Chair Way said this agenda item will be brought back to the committee for further discussion.

9. Adjourn -

MOTION: Rep. Bryson moved to adjourn the meeting at 5:25 p.m. The motion passed unanimously, with Sen. Peterson, Sen. Waddoups, Rep. Arent, and Rep. Bennion absent for the vote.

