

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, October 24, 2001 – 2:00 p.m. – Room 403 State Capitol

Members Present:

Sen. David L. Gladwell, Senate Chair
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. Scott Daniels
Rep. James A. Ferrin
Rep. Ben C. Ferry
Rep. Neal B. Hendrickson

Rep. Eric Hutchings
Rep. Mike Thompson
Rep. A. Lamont Tyler

Members Absent:

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

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 can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or contact the Office of Legislative Research and General Counsel.

1. Call to Order and Committee Business

Chair Gladwell called the meeting to order at 2:25 p.m.

MOTION: Rep. Hendrickson moved to approve the minutes of the September 12, 2001 meeting. The motion passed unanimously with Rep. Bryson, Rep. Ferry, and Rep. Thompson absent for the vote.

2. Reports

• Liens – Mr. Richard Schwermer, Administrative Office of the Courts, indicated that H.B. 305, sponsored by Rep. Hatch during the 2001 General Session was discussed at the committee's June meeting. He said that the bill had been passed with a delayed effective date because of a general concern that there was no central location where information regarding liens was available. Mr. Schwermer reported that the courts have diligently worked to create a searchable computer program that could be used by the public and title companies to find liens on property.

MOTION: Rep. Daniels moved that the committee repeal the changes made by H.B. 305 and to direct staff to put it in its proper form. After committee discussion, Rep. Daniels withdrew his motion.

MOTION: Rep. Daniels moved to place this issue on the agenda for the November meeting, to request staff to prepare a bill that repeals the changes effected by H.B. 305. The motion passed unanimously with Sen. Waddoups, and Rep. Bryson absent for the vote.

• Pornography Ombudsman – Chair Gladwell noted that this report will be heard in the November meeting.

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- Substance Abuse Treatment Program – Mr. Marvin Dodge, Administrator for the Utah Substance Abuse & Anti-Violence Coordinating Council, said that during the 2001 Legislative Session, Rep. Daniels approached the Substance Abuse Council with intent language to do three things: (1) to assess the current demand for treatment and availability of programs and resources, (2) to review programmatic and cost effectiveness of current programs, and (3) to make recommendations for best practices to maximize treatment availability.

Mr. Dodge explained that the Coordinating Council has taken the following steps to initiate a statewide review and evaluation of Utah's Substance Abuse Treatment Programs for criminal justice referrals. He distributed and reviewed a handout "Review and Evaluation," that identified the five steps the council will address in evaluating substance abuse treatment services for criminal justice referrals.

Mr. Mike Haddon, Director of Research, Commission on Criminal and Juvenile Justice, referred to the report "Salt Lake County Drug Court Outcome Evaluation," and presented an overview of the report, reviewed key findings, discussed the research design, and answered questions of the committee.

Rep. Daniels explained that the Legislature adopted the Drug Court Pilot Program in Salt Lake County to determine the program's efficacy. The Court Administrators Office commissioned a study by the University of Utah to evaluate the court program. The University report included a two-part analysis: first, case studies were conducted by discussing the program with judges, court personnel, participants, and probation officers. The initial feedback was that everyone agreed that it was a good program. This conclusion was based on subjective information, he said.

The second part of the analysis was supposed to be a quantitative measure of program effectiveness and recidivism. Rep. Daniels explained that the theory of the quantitative analysis was that the cost of the program could be compared to what would have been spent if the program was not in effect. Unfortunately, he said, the quantitative analysis was not reliable because no reliable control group could be established after the fact. Notwithstanding, he said that the researchers created a control group after the fact which contained some assumptions about the program and its participants that resulted in misleading conclusions.

Suspecting the data used to promote the program seemed exaggerated, Rep. Daniels said that he asked the Utah Substance Abuse & Anti-Violence Coordinating Council to reexamine the study and its design. The report before the committee is an attempt to clarify the accuracy of the initial report.

MOTION: Rep. Tyler moved to accept the report and commend the Utah Substance Abuse & Anti-Violence Coordinating Council for its efforts. The motion passed unanimously with Rep. Bennion, Rep. Bryson, and Rep. Ferrin absent for the vote. Those conclusions were used by the Administrative Office of the Court to make extravagant claims for drug courts.

3. Repeal Penalty for Hate Crimes

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Rep. Thompson explained that a recent decision by the Court of Appeals has rendered Utah's statute on hate crimes ineffective. He explained further that the committee had been advised by Mr. Paul Boyden that the statutory options include amending the statute to make it effective, repeal the statute so an ineffective statute is not retained in the code, or do nothing, leaving an ineffective statute to be ignored by prosecutors. Initially, he said, the committee intended to amend the statute to make it effective but the political reality is such that an amendment is difficult so at the last meeting it was decided to repeal the statute at this meeting.

Rep. Thompson suggested that the statute should be repealed. If this committee does not have the votes to amend the statute, the only honest thing to do, he said, is to repeal it. Moreover, he explained that there is sufficient law in the Utah Constitution for any court to find justification to punish those guilty of crimes. Perhaps, he said, if those who are charged with enforcing our laws fail to enforce them, perhaps there should a penalty for that.

Mr. Frank Pignanelli, Attorney, told the committee that in the 1992 General Session, he sponsored two bills. The first, a Hate Crimes Statistic Collection Act, and an Anti Defamation League Model of a Hate Crime statute which was dramatically changed before it was passed by the Legislature. Mr. Pignanelli said that the 1992 Legislature wanted to make a statement, they agreed that hate crimes are wrong, they agreed that selecting a person to perpetrate a crime against simply because that person belongs to a particular group was un-American and deserving of an enhanced penalty. The recent decision by the Court of Appeals ignored the Legislative intent. For this committee to repeal this bill, he said, would send the message to the world that the Utah Legislature is not concerned about hate crimes.

Mr. Paul Boyden, Executive Director, Statewide Association of Prosecutors, said that these issues should be carefully framed. He emphasized that the current statute is simply not workable in light of the decision by the Court of Appeals.

After committee discussion, Chair Gladwell asked for public comment.

Mr. Brent Odenwalder and Ms. Gayle Rozioka spoke in favor of repealing the statute on the grounds that enhancing a penalty for a hate crime creates a tier in the justice system that sends the message that one felonious act deserves a greater penalty if the victim belongs to a certain group.

Mr. Ken Gardner, Mr. Gary Holt, Mr. Forrest Crafford, Mr. Mike Picardi, and Ms. Ruby Hammel spoke against repealing the statute on the grounds that when criminals single out victims simply because the criminal has a deep prejudice or bias against the group to which the victim belongs is a different type of crime which is deserving of an enhanced penalty.

MOTION: Rep. Bigelow moved to continue on with the next agenda item.

SUBSTITUTE MOTION: Rep. Bennion moved to direct staff to prepare an analysis of the current sentencing discretion available to judges and provide recommendations to this committee on alternative

statutory amendments. The motion failed with Rep. Bennion voting in favor of the motion and Rep. Tyler absent for the vote.

The committee returned to Rep. Bigelow's original motion which passed with Sen. Gladwell, Rep. Bennion, and Rep. Hutchings voting in opposition to the motion with Rep. Tyler absent for the vote.

4. Divorce and Parent-time

Chair Gladwell noted that the three bills to be discussed were distributed in the Judiciary Interim Committee Supplemental Information packet.

Sen. Allen reviewed draft legislation "Release of Custodial Parents Address." He explained that this bill was a response to a concern related to noncustodial parents not being able to locate their children.

Ms. McCarty said that in looking at the information that the Office of Recovery Services (ORS) supplied to the committee, it was not clear what was allowed or was not allowed regarding the federal Parent Locator Service which is a federal data base. She indicated that the committee needs more information and what the access requirements are for state information.

Sen. Allen noted that a representative from the Office of Recovery Services was in the meeting earlier but had left and was not available to respond to questions from the committee. He suggested moving on with the next bill.

Sen. Allen reviewed draft legislation "Office of Recovery Services Amendments." He explained that this amendment stiffens the penalty for making false statements of a custodial parent against a noncustodial parent.

Rep. Arent said she did not disagree with the concept but did not think that was what this bill accomplished.

Ms. McCarty explained that most federal documents have statements requiring that the person validate the truthfulness of the information supplied. If ORS forms were uniform, this bill might not be necessary.

Ms. McCarty reviewed draft legislation "Parent Time Amendments." She said this bill does four things: (1) provides more defined standards for a court in determining custody, while still giving the court discretion to award custody as it considers best; (2) provides for a parent-time schedule when one parent relocates more than 150 miles from the other or leaves the state when a school-age child is involved; (3) creates a new crime of Denial of Parent-time, defining the denial time in 24-hour periods; and (4) provides graduated sanctions for the enforcement of parent-time orders.

After committee input and discussion, Rep. Bennion, Rep. Ferrin, Rep. Hutchings, and Rep. Way volunteered to work together on this bill and bring back to the committee a new proposed draft for the

November meeting. Committee members were asked to submit their recommendations to Rep. Way.

5. Motor Vehicle Insurance Coverage - Arbitration Requirements

Sen. Waddoups distributed draft legislation "Motor Vehicle Insurance Coverage - Arbitration Requirements." He explained that the bill modifies the Insurance Code to allow binding arbitration of motor vehicle liability claims. The act allows disclosure of the existence and amount of liability insurance to the judge or jury under limited circumstances.

Mr. Mitch Jensen, Attorney for Plaintiffs, said this bill is inspired by circumstance which arose in the past few years where one family member is injured by another family member, typically in an automobile accident, and the current statutes require the suit proceed as if one spouse were suing the other. This bill protects the sanctity of the marital covenant by allowing these suits to be arbitrated.

Mr. Steve Sullivan, Attorney, explained the process of first party claims and third party claims. He identified the insurance issues and noted that this bill would solve third party insurance issues.

Rep. Daniels referred to line 107 of the draft and suggested that the amount of insurance coverage disclosure needs clarification and also noted that the definition of blood relative is much broader than the spousal relationship discussed earlier.

Mr. David Mortensen, Attorney, expressed concern that an insurer may void coverage if collusion among family members is found. He told the committee that it might be difficult for an attorney to advise a client to enter into a binding arbitration agreement and then have the insurer deny coverage because of collusion. This puts a defense attorney in a difficult position, he said. Moreover, as this proposal is drafted, the arbitration agreement is not between the injured person and the insurance company it is between the injured and the family member which is an obvious conflict of interest. Mr. Mortensen explained that this draft seems to be an unworkable proposal.

Mr. Schwermer said that the Supreme Court's Advisory Committee on the rules of evidence should review this proposal to ensure that it does not constitute a substantive change to the rules of evidence.

6. Adjournment

MOTION: Sen. Allen moved to adjourn the meeting. The motion passed unanimously with Sen. Peterson, Rep. Arent, Rep. Bigelow, and Rep. Hendrickson absent for the vote. Chair Gladwell adjourned the meeting at 5:43 p.m.

