

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, November 20, 2002 – 9:00 a.m. – Room 403 State Capitol

Members Present:

Sen. David L. Gladwell, Senate 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. Greg J. Curtis
Rep. James A. Ferrin
Rep. Neal B. Hendrickson
Rep. Eric Hutchings
Rep. Mike Morley
Rep. Mike Thompson

Rep. A. Lamont Tyler
Rep. David Ure

Members Absent:

Sen. Terry R. Spencer
Rep. Ben C. Ferry, House Chair
Rep. Katherine M. Bryson
Rep. Scott Daniels

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 by contacting the committee secretary, Glenda Whitney, at 538-1032.

1. Call to Order and Committee Business

Chair Gladwell called the meeting to order at 9:27 a.m. Rep. Ferry and Rep. Bryson were excused from the meeting.

MOTION: Sen. Peterson moved to approve the minutes of the October 23, 2002 meeting. The motion passed unanimously, with Rep. Curtis and Rep. Ure absent for the vote.

2. Divorce

Rep. Hutchings referred to H.B. 332, "Child Support Modifications," 2002 General Session. He said they have decided to make some modifications to the bill. He indicated that they will not present the bill to the Committee at this time but will take it to a Judiciary Standing Committee with amendments to the bill.

Sen. Allen referred to draft legislation "Parent-Time Assistance Office," indicating they had no intention to run this bill as it is written. He said there are a number of serious problems with the bill that need to be revised and worked through. He believes the concept to be positive and something that needs to be pursued. He noted meeting with individuals from the Office of Recovery Services, the Attorney General's Office, and Health and Human Services to get their input and would also like to invite the Children and Family Section of the Bar Association to consider this issue.

Ms. Lori Nelson, Family Law Section, Executive Committee of the Utah State Bar, said it would be appropriate to have this bill go to the Judicial Council Standing Committee on Children and Family Law. She said that the committee is made up of a broad range of representatives from all different groups from the community. That committee has the opportunity and ability to look at broad range issues such as this

and come back with information from different view points to create legislation that works across the board. That committee will also have the ability to look at funding sources such as grant money, she said.

Ms. Emma Chacon, Office of Recovery Services, said they had an opportunity to meet with Sen. Allen regarding this bill and indicated that they are supportive of the concept behind this bill. She expressed concern with the mechanics of the bill. She spoke in support of referring the concept of the bill to the Children and Family Law Committee for further review.

Mr. Brent Holdaway and Mr. Conrad Lloyd, Focus, spoke in support of the bill.

Sen. Allen said this bill was called by the Deseret News as potential landmark legislation. He concluded that this bill is an important issue that needs to be dealt with.

Mr. Brian Lamano and Mr. John Kriesel, Focus, made a power point presentation "Children's Fundamental Right Equal Access." A copy of the presentation was distributed to the Committee and is on file in the Office of Legislative Research and General Counsel.

Ms. Lori Nelson said she is a representative of the Executive Committee of the Family Law Section of the Utah State Bar. She explained that the Executive Committee reviewed the draft legislation "Shared Parenting by Divorced Parents," and their concern was that every case will be a custody case if there is this presumption. They feel it puts a particular population at risk, and it is doing legislation piece meal. Unless child support is dealt with at the same time, the expenses such as shoes, clothes, and other items will be duplicated in each household. She said the committee questioned whether it sets a standard that is unpractical in application. She suggested that the draft legislation go to the Standing Committee on Children and Family Law to look at the data and determine whether or not joint physical custody as a presumption is beneficial for children. She said a good bill is better than a fast bill.

Rep. Thompson reviewed draft legislation "Shared Parenting by Divorced Parents." He explained that the bill modifies provisions pertaining to husband and wife by providing a rebuttable presumption of equal access to minor children during the pendency of an action for divorce.

After Committee discussion on the bill, Chair Gladwell asked for public comment.

Mr. Rick Curtis, Ms. Louise Lindorf, and Mr. Jack Ellertson, Focus, spoke in support of the bill.

MOTION: Rep. Bennion moved to pass legislation "Shared Parenting by Divorced Parents," as a committee bill. The motion passed with Rep. Tyler voting in opposition. Sen. Peterson and Rep. Ure were absent for the vote.

Sen. Gladwell turned the Chair over to Rep. Tyler.

3. Eminent Domain

Mr. Craig Call, State Ombudsman, Department of Natural Resources, referred to draft legislation "Eminent Domain Reform," and indicated that this draft has been around for three years. He distributed two handouts "The Salt Lake Tribune Opinion, Let People Know," and "Eminent Domain Revision Questions." Mr. Call proposed goals and reviewed the eminent domain revision questions from the handout.

Mr. Carlos Braceras, Deputy Director, Utah Department of Transportation (UDOT), said the power of eminent domain can be a difficult issue. The Legislature has given the department the responsibility for building and maintaining an extensive state road system. Unfortunately, as part of that responsibility, they use eminent domain for the greater good. He said using eminent domain is never a pleasant task. They recognize that property owners often have deep emotional and financial ties to their property. They try to be sensitive to those issues and ensure that property owners in the state are treated fairly. He said UDOT follows a detailed eminent domain process and adheres to federal regulations for relocation assistance for all property acquisition's both federal and state-funded projects. He reviewed provisions in the draft legislation that are areas of concern.

Mr. Gary Crane, Layton City Attorney, distributed a memorandum that addressed concerns with the proposed legislation on eminent domain reform. He said the Real Property Ombudsman for the State of Utah, has proposed sweeping new legislation that proposes to turn fifty years of eminent domain law, upside down. The result of this legislation, whether intended or otherwise, would seriously cripple, if not to entirely eliminate, the possibility of using eminent domain in many critical situations. Mr. Crane reviewed eleven areas of concern from the handout. He concluded that the changes proposed in the Ombudsman go far beyond what is reasonably required by the constitution and statutory provisions of the state in assuring that private property rights are properly protected. Mr. Crane asked to be part of the review process with Mr. Call to address concerns with the bill.

Mr. Steve Newton, Attorney, explained how the system is working with the Ombudsman statute versus how it is theoretically suppose to work by relaying some case studies in Utah.

Mr. Ruland Gill, Questar, addressed concerns with the bill. He said there are some things in the bill that they do support but other areas that they believe will not work.

Mr. Call asked the Committee if it would like the draft to be ready before the 2003 General Session or wait a year.

Rep. Morley suggested that good legislation was preferred rather than hurrying to get something in place.

Chair Tyler suggested continuing on to the next agenda item because of lack of a quorum and no vote can be taken.

4. Report

Ms. Maria Stahla, Auditor with the Office of the Legislative Auditor General, Mr. Tim Osterstack, Manager on the job, and Mr. Wayne Welch, Auditor General, distributed the report "A Review of the

Judicial Conduct Commission," to the Committee. Ms. Stahla reviewed the report with a power point presentation and explained the audit scope, objectives, and recommendations found in the report.

5. Other Items / Adjourn

Chair Tyler said the next item for discussion is the issue of the sunset of the Administrative Office of the Courts. He noted that the Legislative Management Committee requested that the Judiciary Interim Committee discuss and make recommendation regarding the sunset date. Chair Tyler asked Mr. Richard Schwermer, Administrative Office of the Courts, to respond to Committee questions regarding the proposed sunset date.

Chair Tyler explained that according to H.B. 47 (GS 2002), the sunset date was extended for one year to July 1, 2003 to give the Legislature a chance to study this issue. The Judiciary heard a report on this issue in its first meeting on April 24, 2002. At that time, the committee delayed action in order to request an update of the audit of the AOC prepared in 1991.

Chair Tyler said although the audit is not complete, the issue was brought back today for further action. Since the committee lacks a quorum, he asked for comments from committee members and took a poll of the committee. Below are the results of the informal poll:

Should the Administrative Office of the Courts be extended? Yes - 8 No - 1

Should the extension be for 10 years? Yes - 6 No - 3

Should the extension be for 1 year? Yes - 3 No - 6

Chair Tyler asked staff to draft a letter to management requesting that Section 63-55-278 be added to the omnibus sunset legislation, extending the repeal date on the Office of the Court Administrator to July 1, 2013.

Chair Tyler adjourned the meeting at 12:05 p.m.