

## MINUTES HOUSE INTERIM COMMITTEE ON JUDICIARY

Tuesday, July 26, 2016

The House Interim Committee on Judiciary met at 1:00 p.m., on Tuesday, July 26, 2016, in the Multi-Agency Complex Building—Room B, in Little Rock, Arkansas.

**Committee members present:** Representatives Matthew Shepherd, Chair; John Baine, Rick Beck, Camille Bennett, Mary Broadaway, Michelle Gray, Douglas House, Laurie Rushing, Sue Scott, and John Vines.

**Other legislators present:** Senator Jeremy Hutchinson. Representatives Charlotte Douglas, Dan Douglas, Les Eaves, Jeremy Gillam, Justin Gonzales, Bill Gossage, Vivian Flowers, Fredrick Love, Betty Overbey, and James Sorvillo.

Representative Shepherd called the meeting to order.

### **Consideration to Approve Minutes from the April 15, 2016 Meeting [Exhibit B]**

Representative Vines made a motion to approve the April 15, 2016, meeting minutes. The motion was seconded by Representative Beck and without objection, the motion was approved.

### **Consideration to Adopt Interim Study Proposal (ISP) 2015-168 [Exhibit C]**

*“An Act To Amend The Definition Of “Marital Property” For Purposes Of Division Of Property In An Action For Divorce; And For Other Purpose.”* Representative Hammer was not available to present the ISP 2015-168. Representative Shepherd provided a brief explanation of the ISP. Without objection, ISP 2015-168 was adopted.

### **Discussion of Criteria for Determining Full-Time and Part-Time Employment Status of a Prosecuting Attorney and Deputies Pursuant to Act 1261 of 2015 [Exhibit D and Handout 1]**

Representative Shepherd gave a brief overview of Act 1261. He stated the purpose of the meeting is to fulfill the requirement of section 3 of Act 1261, noting the legislation has a sunset clause. During the previous regular legislative session, two bills were filed to convert two full-time prosecutor positions back to part-time positions. After discussion regarding how the issue should be handled, a compromise was reached and Act 1261 was adopted to allow both prosecuting attorney positions to become part-time Division B positions.

Mr. Bob McMahan, Prosecutor Coordinator, Arkansas Office of the Prosecutor Coordinator, Mr. Bryan Chesshir, Prosecuting Attorney, 9<sup>th</sup> West Judicial District, and Mr. Tom Tatum, Prosecuting Attorney, 15<sup>th</sup> Judicial District, were recognized. Mr. McMahan stated that historically, judicial district courts usually change a Division A prosecuting attorney to a Division B prosecuting attorney. Moreover, Division A prosecutors are prohibited from having an additional practice. Notably, deputy prosecutors became state employees in January 2000. There are 247 deputy prosecutors and of this number, 169 are full-time and 78 are part-time. According to Mr. McMahan, there has never been any discussion regarding the deputy prosecutor position being full time—that decision is left up to individual districts. There are 28 judicial districts with 23 Division A prosecutors and 5 Division B prosecutors. The annual salary for a Division A prosecutor is \$152,000; and Division B earns \$129,000 annually.

In response to a question by Representative Flowers regarding the current criteria for defining whether a prosecutor is under Division A or B, Mr. McMahan replied there is a statute for every judicial district that designates each specific district as Division A or B; caseloads are also a factor.

Representative Shepherd announced the next committee meeting will be held jointly with the Senate Judiciary Committee at 1:30 p.m. Tuesday, August 2, 2016, in Little Rock. In addition, a joint meeting with the Senate Judiciary Committee and the Legislative Criminal Justice Oversight Task Force will convene at 2:15 p.m., August 25, 2016, at the Hot Springs Convention Center (in conjunction with the Arkansas Association of Counties conference).

With no further business, the meeting adjourned at 1:43 p.m.

## MINUTES

### HOUSE AND SENATE INTERIM COMMITTEES ON JUDICIARY

August 2, 2016

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The House and Senate Interim Committees on Judiciary met at 1:30 p.m., on Tuesday, August 2, 2016, in the Multi-Complex Building (MAC Room A) in Little Rock, Arkansas.

**Committee members present:** Senators Jeremy Hutchinson, Chair; Linda Collins-Smith, Vice Chair; David Burnett, Linda Chesterfield, Joyce Elliott, David Johnson, Terry Rice, and Jon Woods. Representatives Matthew Shepherd, Chair; Marshall Wright, Vice Chair; John Baine, Rick Beck, Mary Broadaway, Trevor Drown, Michelle Gray, Douglas House, Laurie Rushing, Brent Talley, Dwight Tosh, and John Vines.

**Other legislators present:** Senators Alan Clark, Uvalde Lindsey, and Jason Rapert. Representatives Scott Baltz, Jana Della Rosa, Jim Dotson, Charlotte Douglas, Justin Gonzales, Michael Gray, Ken Henderson, David Hillman, Fredrick Love, Betty Overbey, and Marcus Richmond.

Representative Shepherd called the meeting to order.

#### **Consideration to Approve Minutes [Exhibits B.1 - B.4]**

Senator Chesterfield made a motion to approve the Minutes from the November 9, 2015; November 10, 2015, March 30, 2016, and May 24, 2015 committee meetings. The motion was seconded by Representative Beck and without objection, the motion was approved.

#### **Discussion of Arkansas Parent Counsel Program [Handout 1]**

The Honorable Rhonda Wood, Justice Position 7, Arkansas Supreme Court and Mr. Brian Welch, Director, Arkansas Parent Counsel Program (APCP), were recognized. Justice Wood gave a brief overview of the APCP. She stated there is a growing concern with APCP being housed in the Administrative Office of the Courts (AOC), and the perception of judges having too great of an impact in parent council. A solution is to have the AOC serve as a pass through organization, allowing monies to flow into the APCP contracts. An independent committee would need to be created to oversee the APCP; and would consist of members appointed by the Supreme Court, State Legislature, and the Governor's Office. This would remove AOC from a supervisory role over the APCP; but would continue to allow for the AOC to provide support services. Justice Wood feels this proposal will resolve the concerns without spending money. She added that the Juvenile Judges Subcommittee unanimously approved this proposal and Mr. J.D. Gingerich, Director, AOC, has agreed to move forward with this proposal. They would like to move forward with the change immediately; without waiting for legislation.

Mr. Gregg Parrish, Executive Director, Arkansas Public Defender Commission (APDC), was recognized. He spoke briefly about the appellate attorneys and explained his role with the APDC. In 2007-2008, the AOC sent two attorneys and support staff to APDC to handle dependent neglect appeals. Currently, APDC has 3 attorneys and 2 support staff members handling over 100 cases per year. Mr. Parrish feels that if the APCP is moved to another location the attorneys and support staff should be consolidated within the APCP, including transferring the funding for those positions to the AOC.

In response to a question by Senator Elliott, regarding the role of the APCP, Mr. Brian Welch explained the APCP consists of 63 contracted attorneys, who provide representation only for the dependency and neglect determination. By statute, the APCP provides representation to indigent parents and custodians, who had custody at the time of removal by the agency, and that request their services. He stated some individuals believe the juvenile judges have a direct link to the attorneys that represent parents in the field. This may appear to some as a conflict of interest; however, Justice Woods' option will remove the oversight problem.

In response to a question by Senator Hutchinson, Justice Wood replied that there are no state funds available now to run an independent commission. All funding that comes from the legislature is put into contracts, and the APCP does not want to pull funding, from representing parents, to oversee an administrative commission. For now, those that are willing to serve will serve voluntarily. Justice Wood will provide an update to the committee after the Supreme Court issues its ruling.

### **Policies and Procedures When a Loved One Dies in Prison**

Ms. Bonnie Robertson, Citizen/Attorney, was recognized and gave testimony regarding the death of her sister, an inmate, who died in prison. She also spoke on current policies and procedures taken when an inmate dies in prison, and the difficulty of obtaining inmate medical records, upon the inmates death. She requested the legislature pass a bill requiring the information be provided, without the need for a court order, to individuals designated by the inmate. Senator Chesterfield asked that the Bureau of Legislative Research investigate how other states handle notification, upon the death of an inmate. Senator Hutchinson stated a report regarding this issue should be available at the next committee meeting. Senator Hutchinson explained the Arkansas Department of Corrections (ADC) followed regulations in this case; however, the question is whether the regulations can be improved, and if not, should the legislature direct ADC to do so.

Mr. James Depriest, Chief Counsel, ADC, was recognized and extended his condolences to the Russ family for their loss. He spoke on ADC's policy for release of medical records upon an inmate's death. The death of an inmate requires immediate notification of the primary contact, which is listed by the inmate, and is typically a family member. Notifications are made 24/7. The same procedures are in place for inmates that experience a serious medical illness or injury, such as may require admittance to a hospital. In response to Representative House's question; he explained the ADC operates under a statute that instructs them to keep all inmate records confidential, except those records that can be released pursuant to ABC's policy. The ABC policy does not allow the release of records to anyone inmate might designate, other than legal counsel.

Senator Rapert asked what the monitoring schedule and timeframe for monitoring an inmate in solitary confinement is. He also asked why the family of Danny Bobbitt had not received a closing report, regarding the death of their son while in solitary confinement at Brickey's Correctional Unit. He asked what ADC does when the monitoring schedule policy is violated, and whether there was negligence on the part of ADC. Mr. Depriest replied he did not have details of this particular case, but will get the requested information. With respect to monitoring, disciplinary action is taken against the employee when the rules are not followed. Mr. Depriest could not speculate regarding negligence on the part of ADC. Senator Rapert asked that ADC provide closure to the Bobbitt family, and stated he will follow-up with Senator Hutchinson regarding this issue in the future.

Senator Hutchinson asked Mr. Depriest to meet with Director of ADC and the ABC about changing or amending the regulations and policies in lieu of legislative action during the next legislative session. Senator Hutchinson stated two issues need to be address: what policies and documentation need to be put in place to release inmate records, upon their death, to the designated recipient and ADC needs to clarify the emergency notification procedures. He asked that Mr. Depriest send Mrs. Rebeca Whorton-Haley, Committee Legislative Analyst, an update regarding the aforementioned requests and ADC's decisions.

### **Reforming Civil Forfeiture [Exhibits E – E.1]**

Mr. Lee McGrath, Managing Attorney, Institute for Justice, Minnesota Office was recognized and presented a PowerPoint presentation titled, "Forfeiture" (see Exhibit E.1 for full report). He gave an overview of forfeiture and discussed various issues and legislative priorities related to forfeiture that including: reviewing laws and recommending ways to protect innocent owners by facilitating the process to return their property, assuring greater transparency, and providing greater due process while ensuring assets used or obtained through unlawful practices are removed from criminals. He explained seizure involves the police and the impounding and/or transfer of property to the state; whereas, forfeiture is the work of prosecutors and litigation. Police can seize and hold instruments and proceeds based on probable cause, if linked to a suspected crime. No one acquitted of a crime in Arkansas's criminal courts should lose their property through forfeiture in civil courts. Some states are considering a one-track forfeiture process which allows the suspect and his property to enter the criminal justice system. If the suspect is prosecuted and convicted, the title to the property is litigated. The two-track process, used by Arkansas, involves the individual enters the criminal justice system and their property enters the civil system. Mr. McGrath noted the one-track process offers more protections for innocent people. Mr. McGrath reported that while in Arkansas the total amount of seizures is know, legislators need to know more about the total number seizures, and their values. He added Arkansas would benefit greatly if it augmented the reporting of seizures and forfeitures.

Representative Wright requested a representative be invited to explain to the committee the process for civil forfeiture. Senator Hutchinson announced law enforcement agencies will be invited on the civil forfeiture at a future meeting. The next committee meeting will convene on August 25, 2016, at 2:15 p.m. in Hot Springs, Arkansas, in conjunction with the Arkansas Association of Counties annual conference.

With no further business, the meeting adjourned at 4:03 p.m.

**MINUTES**  
**LEGISLATIVE CRIMINAL JUSTICE OVERSIGHT TASK FORCE**  
**SENATE AND HOUSE COMMITTEES ON JUDICIARY**  
**BEHAVIORAL HEALTH TREATMENT ACCESS LEGISLATIVE TASK FORCE**  
**MEETING JOINTLY**

August 25, 2016

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The Legislative Criminal Justice Oversight Task Force, the Senate and House Committees on Judiciary, and the Behavioral Health Treatment Access Legislative Task Force met jointly at 2:15 p.m., on Thursday, August 25, 2016, at the Hot Springs Convention Center, 134 Convention Boulevard, Hot Springs, Arkansas.

**Legislative Criminal Justice Oversight Task Force members present:** Judge Gary Arnold, Judge Cristi Beaumont, Mr. Ken Casady, Mr. John Felts, Mr. John Wesley Hall, Mr. Tim Helder, Mr. Wendy Kelley, Mr. Benny Magness, Mr. Steve Newsome, Mr. Robin Raveendran and Ms. Sheila Sharp.

**Senate and House Judiciary Committee members present:** Representative Matthew Shepherd, Co-Chair; Senators Linda Collins-Smith, Vice Chair; Joyce Elliott, and Jon Woods. Representatives Bob Ballinger, Rick Beck, Trevor Drown, Douglas House, Laurie Rushing, James Sorvillo, and John Vines.

**Behavioral Health Treatment Access Legislative Task Force members present:** Senator Scott Flipppo, Co-Chair; and Representative Clarke Tucker, Co-Chair; and Mr. Kevin Murphy and Dr. David Williams.

**Other legislators present:** Senators Stephanie Alan Clark and Stephanie Flowers. Representatives Bruce Cozart, Jim Dotson, Les Eaves, David Fielding, John Gonzales, and Micah Neal.

Representative Shepherd called the meeting to order.

**Restitution Study Presentation [Handouts 1-2]**

**Ms. Shelia Sharp**, Director, Arkansas Community Correction (ACC) and **Mr. Benny Magness**, Chairman, Arkansas Board of Corrections, were recognized and presented a PowerPoint presentation titled, "Arkansas Victim Restitution" [see Handout 1 for full report]. Ms. Sharp gave an overview of the James F. Austin (JFA) study. She stated some of the findings and recommendations included: other financial obligations are higher priority, the state has no idea how much victim restitution is ordered or collected, offenders are encumbered with unrealistic financial obligations, there is no systematic mechanism for ordering or tracking restitution, most victims do not receive the restitution owed, and develop an infrastructure to systematically track the order and collection of victim restitution similar to Arkansas' child support enforcement system. The ACC identified similar problems that the JFA found.

**Justice Reinvestment in Arkansas: Summary of Key Findings and Recommendations for State Leadership [Handout 3]**

**Mr. Andy Barbee**, Research Manager, The Council of State Governments (CSG) Justice Center, presented a report on *Justice Reinvestment in Arkansas* (see Handout 3 for full report). He gave a recap of findings through Justice Reinvestment, policy options for Arkansas, and estimated impacts. Since the fall of 2015, CSG Justice Center staff have made 17 visits to Arkansas. The state now spends more than half a billion dollars on corrections; a 68% increase since 2004. Arkansas's prison population is projected to increase 19% by the end of FY2023. The building capacity to accommodate this growth will cost \$579 million in additional spending. Referencing page 18, Mr. Barbee stated that on August 8, 2016, information from the analysis presented regarding probation revocation/violators was sent to the Arkansas Department of Community Corrections to verify the correct numbers. Based on the feedback that was received, CSG renamed this group to reflect new commitments to the courts, as the courts had prosecuted the charges the probationer had picked up. Notably, probation violators released from prison in FY2015 spent more than twice as long in prison compared to FY2009.

Representative Shepherd informed the committee and task force members that a vote on the recommendations will likely be taken at a later meeting.

**Discussion/Update by Co-Chairs**

Due to time constraints, Senator Hutchinson briefly reviewed the items below and stated the task force will discuss these matters at the next meeting.

- Consideration and approval of specific ideas to be included in the task force report
- Status and target dates of recommendations for improvements by workgroups/task force
- Discussion and/or adoption of policy recommendations

With no further business, the meeting adjourned at 4:47 p.m.

**MINUTES****SENATE INTERIM COMMITTEE ON JUDICIARY****Friday, August, 26, 2016**

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The Senate Interim Committee on Judiciary met during the Roundtable Discussion on Friday, August 26, 2016, at 9:00 a.m., at the Hot Springs Convention Center, Horner Hall, 700 Rogers Avenue, Hot Springs, Arkansas.

**Committee members present:** Senators Linda Collins-Smith, Vice Chair and Joyce Elliott.

**Other legislators present:** Senator Alan Clark; Representatives Charles Armstrong, Bob Ballinger, Jim Dotson, Trevor Drown, Kenneth Ferguson, Vivian Flowers, Justin Gonzales, Monte Hodges, Douglas House, and James Sorvillo.

The Honorable Judy Beth Hutcherson, President, Association of Arkansas Counties (AAC) introduced the Roundtable Discussion speakers: Mr. Ron Oliver, Former Chairman of the Arkansas Democratic Party and Mr. Bill Vickery, Founding and Managing Partner, Capitol Advisors Group. Mr. Roby Brock, Talk Business & Politics, was the moderator for the discussion.

Retirement Report – Judge David Hudson, Sebastian County, mentioned the likely increase in county APERS contribution rate from 14.50 to 14.75% beginning July 1, 2017. He also mentioned that the APERS fund was in good standing and in the top 20% of all national funds.

Legislative Report – The Honorable Debbie Wise, Circuit Clerk and AAC Vice-President, reported that AAC's legislative packages were nearing completion and would be presented for approval at AAC's biennial meeting, on September 14-15, and then to the AAC Board of Directors on October 12. Following this approval the AAC will be presenting the package in its entirety to the Senate and House City, County, and Local Affairs Committees, during a meeting sometime in November or December. Each Association has worked to complete individual legislative goals for the 2017 regular session.

Director's Report –Chris Villines, Executive Director, AAC, reviewed the status of AAC programs including Workers Compensation and Risk Management. Growth in each fund had occurred each year since 2015, and the status of the AAC was stable as well. Overall these groups continue to increase services to the counties. The AAC Communications Department has recently been awarded national awards during the National Association of Counties meeting in Los Angeles County, California.

With no further business, the meeting adjourned at 10:00 a.m.

**MINUTES**  
**SENATE AND HOUSE COMMITTEES ON JUDICIARY**  
**LEGISLATIVE CRIMINAL JUSTICE OVERSIGHT TASK FORCE**  
**BEHAVIORAL HEALTH TREATMENT ACCESS LEGISLATIVE TASK FORCE**

October 4, 2016

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The Senate and House Committees on Judiciary met jointly with the Legislative Criminal Justice Oversight Task Force and the Behavioral Health Treatment Access Legislative Task Force on Tuesday, October 4, 2016, at 9:30 a.m. in Room A, MAC building, Little Rock, Arkansas.

**Senate and House Judiciary members present:** Senators Jeremy Hutchinson, Chair, Linda Chesterfield, Linda Collins-Smith, Joyce Elliott, Terry Rice, Jon Woods, and Representatives Matthew J. Shepherd, Chair, Clarke Tucker, Co-Chair, Bob Ballinger, Rick Beck, Trevor Drown, Michelle Gray, Douglas House, Laurie Rushing, Sue Scott, Brent Talley, Dwight Tosh, John Vines, and David Whitaker.

**Legislative Criminal Justice Oversight Task Force members present:** Judge Gary Arnold, Chief Kenton Buckner, Ken Casady, John Felts, Sheriff Tim Helder, John Wesley Hall, Wendy Kelley, Mark Colbert (for Benny Magness), Steve Newsome, Charlotte Carlson (for Robin Raveendran), and Sheila Sharp.

**Behavioral Health Treatment Access Legislative Task Force members present:** Senator Scott Flippo, Co-Chair, Representative Clarke Tucker, Co-Chair, Carole Baxter, Ann Brown, Dan Honey, Kevin Murphy, Mark Thurman, and David Williams.

**Other legislators present:** Senators Cecile Bledsoe, Alan Clark, John Cooper, and Jonathan Dismang, Representatives Charles Armstrong, Nancy Bentley, Jana Della Rosa, Charlotte Douglas, Jon Eubanks, Kenneth Ferguson, Lanny Fite, Vivian Flowers, Mickey Gates, Kim Hammer, Mark McElroy, George McGill, Ron McNair, Micah Neal, Betty Overbey, Mathew Pitsch, and Jeff Wardlaw.

Senator Jeremy Hutchinson called the meeting to order.

**Consideration to Adopt the Policy Recommendations from the Council of State Governments Justice Center (CSG) [Exhibits B1, B2, and Handout]**

Mr. Andy Barbee, Research Manager, Council of State Governments Justice Center, gave a brief overview of CSG's policy recommendations and cost saving strategies to reduce Arkansas' prison populations. Arkansas' prison population is projected to increase 19% by the end of FY2023. Maintaining the status quo will cost Arkansas more than \$650 million in additional spending from FY2018 through FY2023. CSG's reinvestment policy options reduce demand for ADC beds by more than 1,200. Mr. Barbee said CSG supports measures that look at implementation with fidelity and



outcomes. Committee members addressed several issues with CSG's policy options such as limiting revocation for absconders, the limited number of prison beds for offenders, coverage under Medicaid expansion for offenders with co-occurring mental illness and substance abuse diagnoses, and mandated workforce training for offenders.

Senator Hutchinson noted that additional recommendation can be included in the final report from the task force.

**Legislative Criminal Justice Oversight Task Force**

Senator Joyce Elliott made a motion to adopt the policy options recommended by the CSG. Mr. John Wesley Hall seconded the motion, and without objection, the motion carried.

**Behavioral Health Treatment Access Legislative Task Force**

Mr. Kevin Murphy made a motion to adopt policy options two and eight, as recommended by the CSG. Dr. David Williams seconded the motion, and without objection, the motion carried.

The meeting adjourned at 9:35 a.m.