

# SUMMARY *of* PROCEEDINGS



## JOINT JUDICIARY COMMITTEE

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### COMMITTEE MEETING INFORMATION

May 12 - 13, 2014  
Rainbow Te-Ton Entrepreneurial Center  
116 4th Street, Rawlins, Wyoming

### COMMITTEE MEMBERS PRESENT

Senator John Schiffer, Co-chairman  
Representative Keith Gingery, Co-chairman  
Senator Bruce Burns  
Senator Leland Christensen  
Senator Larry Hicks  
Representative Mark Baker  
Representative Cathy Connolly  
Representative Marti Halverson  
Representative Kendell Kroeker  
Representative Tom Walters  
Representative Stephen Watt

### COMMITTEE MEMBERS NOT PRESENT

Senator Floyd Esquibel  
Representative Cathy Connolly - May 12  
Representative Samuel Krone  
Representative David Miller

### LEGISLATIVE SERVICE OFFICE STAFF

Lily Sharpe, Staff Attorney  
Jennifer Lockwood, Associate Research Analyst

### OTHERS PRESENT AT MEETING

Please refer to Appendix 1 to review the Subcommittee Sign-in Sheet  
for a list of other individuals who attended the meeting.

*The Committee Meeting Summary of Proceedings (meeting minutes) is prepared by the Legislative Service Office (LSO) and is the official record of the proceedings of a legislative committee meeting. This document does not represent a transcript of the meeting; it is a digest of the meeting and provides a record of official actions taken by the Committee. All meeting materials and handouts provided to the Committee by the Legislative Service Office, public officials, lobbyists, and the public are on file at the Legislative Service Office and are part of the official record of the meeting. An index of these materials is provided at the end of this document and these materials are on file at the Legislative Service Office. For more information or to review meeting materials, please contact the Legislative Service Office at (307) 777-7881 or by e-mail at [lso@wyoleg.gov](mailto:lso@wyoleg.gov). The Summary of Proceedings for each legislative committee meeting can be found on the Wyoming Legislature's website at [www.wyoleg.gov](http://www.wyoleg.gov).*

## **EXECUTIVE SUMMARY**

The Committee heard testimony and received information on families in need of services, firearm background information, juvenile justice data collection, drones, uniform laws, methods of execution, sentencing and detention, offenses against public administration, forfeitures and seizures, criminal trespass for data collection, restoration of voting rights, e-ticketing and sexual assault protection orders.

## **CALL TO ORDER (MAY 12, 2014)**

Co-Chairman Gingery called the meeting to order at 11:15 a.m. The delayed start was due to weather conditions. Rawlins Mayor, Ken Klouda, and Carbon County Commission Chairman, Leo Chapman, welcomed the Committee. The following sections summarize the Committee proceedings by topic. Please refer to Appendix 2 to review the Committee Meeting Agenda.

## **APPROVAL OF MINUTES**

Minutes from the November 7-8, 2013 Committee meeting were approved.

## **UNIFORM LAW COMMISSION**

Honorable Keith Kautz, 8th Judicial District Court Judge, and Vicci Colgan, Deputy State Auditor, detailed the mission and work of the Uniform Law Commission. Judge Kautz provided a handout (appendix 3) describing the purpose and work of the Commission. Judge Kautz noted that the Uniform Law Commission is studying whether uniform legislation is advisable on the topic of firearm background information. Ms. Colgan explained that the Commissioners can often provide side-by-side comparisons of uniform laws with proposed legislation.

## **FAMILIES IN NEED OF SUPERVISION**

Director Steve Corsi, Elizabeth Forslund and Debra Hibbard, Wyoming Department of Family Services, provided a review of states with "families in need of services" programs (appendix 4). Director Corsi pointed out that Wyoming's Children in Need of Supervision Act emphasizes the needs of the child, but does not provide substantial assistance to the child's family. Alternative approaches taken by other states provide assistance to the child's family and treat the cases as civil matters. The goal of the program is to allow early intervention and avoid court involvement. The Department will investigate the alternatives and provide a comparison of laws, costs and outcomes at the next meeting. It was suggested that the Department meet with district court judges in reviewing the alternatives to determine if the courts perceive a need for expanding jurisdiction.

## **JUVENILE DATA COLLECTION**

Chairmen Schiffer and Gingery expressed the need to ensure that a juvenile justice data collection system addresses the following concerns: 1) information security; 2) how information is collected and who may collect it; 3) what information may be collected; 4) who may access current data and who may access historical data; 5) protecting the identity juveniles; 6) expungement of data. Tony Young, Deputy Chief of Staff to the Governor, and Steve Corsi, Department of Family Services Director, affirmed the need to provide these protections. Mr.

Young and Director Corsi were asked to develop a plan to address these concerns for the Committee to consider at its next meeting.

## **METHOD OF EXECUTION**

Bob Lampert, Department of Corrections Director, and Steve Lindly, Department of Corrections Deputy Director, provided a handout (appendix 5) showing possible amendments to the method of execution statute, W.S. 7-13-904(b). Director Lampert described the difficulties that states face in procuring substances used for lethal injections. The Committee directed LSO to prepare a bill draft with the alternative (b) language set forth in the handout, allowing death by firing squad if a court finds that the administration of execution by lethal injection is unable to be performed within the time prescribed by law.

## **SENTENCING AND DETENTION**

Bob Lampert and Steve Lindly, Department of Corrections, and Abigail Walsh and Jake Horowitz, PEW Charitable Trusts, explored the exponential growth in prison population rates since the 1970's and the accompanying unprecedented growth in prison costs. Mr. Horowitz presented a power point explaining the goals of the Justice Reinvestment Initiative. Under the initiative, PEW investigates research-based sentencing and corrections reforms that a state can take to slow the growth of prison costs while also reducing recidivism rates. Mr. Horowitz and Ms. Walsh met with the Governor's Office and were scheduled to meet with the Chief Justice. The Committee encouraged Mr. Horowitz and Ms. Walsh to move forward with the initial review and investigation of factors contributing to the increased prison costs in Wyoming and possible reform measures. The PEW representatives will update the Committee on the progress of the investigation in September.

## **MEETING RECESS**

The Committee recessed at 4:10 p.m.

## **CALL TO ORDER (MAY 13, 2014)**

Co-chairman Schiffer called the meeting to order at 8:00 a.m. The following sections summarize the Committee proceedings by topic. Please refer to Appendix 2 to review the Committee Meeting Agenda.

## **OFFENSES AGAINST PUBLIC ADMINISTRATION**

Lily Sharpe, Legislative Service Office, offered historical background on Chapter 5, Title 6 of the Wyoming Statutes (Offenses Against Public Administration). Chairman Gingery suggested statutes the Committee may wish to address. He suggested: 1) creating a statute on log rolling; 2) delete W.S. 6-5-101(a)(iv)(A) – (C); 3) make "public officer" and "public servant" more consistent throughout the chapter, and eliminate overlap for legislators; 4) define "testimonial" in W.S. 6-5-102; 5) clarify the definition in W.S. 6-5-105 of "supplier"; 6) define "unauthorized act" in W.S. 6-5-107; 7) W.S. 6-5-110 - include a *de minimis* exception for wrongful appropriation of public property; 8) W.S. 6-5-113 - regarding removal from office, consider why this excludes elected officials and judges; 9) W.S. 6-5-114 - consider moving this to the notarial officer statutes and define ministerial officer; 10) W.S. 6-5-116 - reconsider if want this to apply

to duties such as coming to training; 11) W.S. 6-5-118 - reconsider this statute; 12) W.S. 6-5-305 - consider if want to delete “force” or “threat” (for example, a defendant handing out a pamphlet to prospective jurors). The Committee directed Chairman Gingery and other interested members to work with staff in preparing a bill draft with these suggestions.

## **FORFEITURES AND SEIZURES**

Chairman Gingery discussed the difference between criminal forfeiture and civil forfeiture. Representative Kroeker explained 2014 HB76 which he sponsored last year. Dave Delicath, Deputy Attorney General, and Steve Woodson, Division of Criminal Investigation Director, reviewed the forfeiture process under the Controlled Substances Act. Mr. Delicath stated that the prosecuting attorney handles the criminal forfeitures and the Attorney General's Office handles the civil forfeitures. He noted that the courts have historically used a preponderance of evidence standard, but he did not believe increasing the standard to clear and convincing evidence would have a detrimental effect. Steve Klein, Wyoming Liberty Group, provided a handout (appendix 5) with suggested changes to the forfeiture provisions in Title 35. He noted that the only reporting required now is under the federal equitable sharing program. Scott Talbott, Game and Fish Department Director, stated that all game and fish forfeiture statutes are criminal and outlined in W.S. 23-6-208. A court must order the forfeiture. The Committee directed LSO to draft two bills. The first bill draft should start with last year's HB76 and should: 1) create a reporting methodology requiring that **all** forfeitures in Wyoming be tracked and that a report of those forfeitures be provided to the Joint Interim Judiciary Committee; 2) increase the burden of proof for forfeitures; 3) provide that all assets and funds forfeited initially go to the Attorney General. Funds may then be distributed to participating agencies on a reimbursement of costs basis (based on the actual expense of the agency in participating in the investigation), and disallow pre-negotiated splits. The second bill draft should move all forfeitures to the criminal arena by creating a new criminal forfeiture act, based on last year's HB107. The draft should eliminate civil forfeitures and leave the Game and Fish statutes the same, except require the Game and Fish to report all forfeitures and seizures.

## **CRIMINAL TRESPASS FOR DATA COLLECTION**

Don Schramm, Rock Springs Grazing Association, expressed concern that information obtained without permission from private land is being shared with governmental entities. The data is being collected in a way which compromises the landowner's interests. Dennis Ellis, Anadarko Petroleum Corporation, agreed with Mr. Schramm, but questioned criminalizing innocuous trespassing. Criminalization should be reserved for instances where the landowner is harmed. Susan Child, Office of State Lands and Investments Deputy Director, indicated that approval must be given in order to gain access to public trust lands and provided a handout with the Office's rules and an application for authorization to enter State trust lands (appendix 7). Todd Parfitt, Department of Environmental Quality Director, advised that the the process for obtaining permission to enter private land is an extensive process. If permission cannot be obtained, DEQ would apply for a warrant if there was an immediate threat to the environment or public health. Brett Moline, Wyoming Farm Bureau, stressed the burden for establishing a trespass is on the landowner, but it should be on the trespasser. Jim Magagna, Wyoming Stock Growers Association, offered suggested statutory changes (appendix 9). Bruce Hinchey, Petroleum

Association of Wyoming, stated that problems arise in determining who has authority to enter on the land when the owners of mineral interests and their representatives need to access land. Scott Talbott, Game and Fish Department Director, pointed out that the accidental entry on private land may be an issue. Chris Boswell, Vice President for Governmental Affairs, University of Wyoming, apprised that under University policy, permission must be obtained to access to private property and the data that may be collected is negotiated with the landowner. Bobbie Frank, Wyoming Association of Conservation Districts, reported that data is currently being collected without landowner permission and that data is transferred to and remains in the public domain. She encouraged the Committee to pursue legislation to protect the landowners. Steve Adams, Baggs, voiced that numerous individuals trespass on his land to conduct studies and collect data. Daniel Beach, Wyoming Game Wardens Association, expressed the need for wardens to enter open fields to check harvested game as well as collect biological data. Joe Baron, Wyoming County and Prosecuting Attorney Association, recommended statutory changes (appendix 10). The Committee directed LSO to prepare a bill draft based on the engrossed SF85 and to work with Senator Hicks to incorporate changes addressing the concerns voiced at the meeting. The Committee also directed LSO to prepare a second draft incorporating the suggestions presented by the Stock Growers and Joe Baron. Senator Hicks will provide interested parties with copies of the drafts to get further input.

## **RESTORATION OF VOTING RIGHTS**

Daniel Fetsco, Wyoming Board of Parole Executive Director, and Doug Chamberlain, Board of Parole member, advised that the Board is not equipped nor has the time to consider voting right restorations. Peggy Nighswonger, Secretary of State Election Director, provided a comparison of restoration laws (appendix 12). In Wyoming, the Secretary of State's office notifies the county clerk of individuals with felony records. Because there is no system for sharing information regarding an individual who has committed a felony in another state, felons are able to vote if a felony was committed in another state. There is also no way for the Secretary of State's Office to determine if a felony is a violent or non-violent. Bob Lampert, Department of Corrections Director, instructed that felons who have their right to vote restored are less likely to return to prison. Dan Neal, Equality State Policy Center, opined that many felons don't know that their voting rights can be restored. Pablo Martinez, Rawlins, suggested that individuals who have been fully punished for crimes should have their rights restored after the punishment is completed. The Committee directed LSO to prepare a bill draft reversing 2003 SF65 and to prepare a second draft automatically restoring voting rights to felons. The second draft should exclude violent offenders and repeat offenders (if the offenses were committed on separate occasions). Notice should be provided to DCI, who should provide the information to the Secretary of State. A document should be created showing the restoration of voting rights. The document should be filed in the criminal case file.

## **E-TICKETING UPDATE**

Cal Rerucha, Carbon County Attorney, explained the process and advantages of the e-ticketing. Captain Josh Walther, Wyoming State Highway Patrol, highlighted that officers do not have to have connectivity at all times as they can download a ticket at a later time. Steve Dreher, Supreme Court, discussed the \$1.5 million one-time grant for funding to assist in paying the start



up costs of the program. The grant was for sheriff offices as well as local police departments. Byron Oedekoven, Association of Sheriffs and Chiefs of Police, explained that \$1 million dollars was re-appropriated to allow counties to participate in the case management system. Representative Baker's bill last year, he continued, was aimed at providing funds for municipalities. Municipal courts, however, are not under the supervision of the Supreme Court and participation would be voluntary. Shelly Simonton, Wyoming Association of Municipalities, will discuss the position of the cities with respect to e-ticketing. Scott Edbert, Game and Fish Department, advised that the Game and Fish does not currently use the e-citation system. Representative Baker will discuss court automation and e-ticketing with the Supreme Court and investigate whether municipalities may participate in the system, whether municipalities are eligible to receive funds from the Supreme Court to participate, the cost of participating and whether municipalities are interested. Representative Baker, Ms. Simonton and Mr. Oedekoven will report back at the next meeting.

### **SEXUAL ASSAULT PROTECTION ORDERS**

Circuit Court Judges Radda, Prokos and Jones provided a handout addressing last year's sexual assault protection order bill (appendix 14). Judge Radda iterated that the judiciary is not advocating for or against the enactment of this legislation. However, circuit court judges regularly hold hearings on these matters and would help to highlight procedural issues. The judges are content with the way protection orders presently work and suggested that the current provisions are a good foundation and example for future legislation. Judge Radda pointed out two procedural concerns with last year's bill. Criminal cases start in circuit court. The court must hold a preliminary hearing to determine if there is probable cause the defendant committed a crime. If so, the case moves to district court. In sexual assault cases, the court must assure that the identity of the alleged perpetrator and victim is not disclosed to the public. Some courts close the preliminary hearing to the public. Others conduct a public hearing, but instruct the attorneys and witnesses not to identify the defendant and victim by name and redact the names from public court records. In contrast, last year's bill provided for a public hearing. Second, under last year's bill, a temporary order can only last for 14 days. As a practical matter, a hearing often cannot be held within 14 days. The current sexual protection and stalking statutes allow needed flexibility. Judge Prokos added that under W.S. 6-2-319, records involving sexual offenses are not released until an information is filed and are not released for victims who are minors. Last year's bill did not provide for sealing or expungement if an order is not issued or if the proceeding involves a minor. Senator Hastert informed the Committee he would incorporate these suggestions into last year's bill.

### **FIREARM BACKGROUND INFORMATION**

Dave Picard, National Shooting Sports Foundation, Inc., stated the organization represents firearm and ammunition retailers, manufacturers and distributors. Mr. Picard urged the Committee to sponsor a bill to require records of mental health adjudications in Wyoming to be sent to the National Instant Criminal Background Check System (NICS). He suggested sponsoring a bill similar to last year's SF111, but that also creates a mechanism to restore gun rights. Mr. Picard distributed a handout detailing laws in other states requiring submission of mental health records to NICS (appendix 14). Dakota Moore, National Rifle Association of

America, noted support for the legislation from the NRA. After discussion of the issue, the Committee tabled consideration of the topic indefinitely.

### **DRONES-MODEL LEGISLATION**

Linda Burt, American Civil Liberties Union, provided a handout on drones (appendix 15). In the near future, drones will be very small and very sophisticated. Ms. Burt expounded that to avoid infringing on privacy rights, warrants based on probable cause should be required in order to use drones to investigate private property. She also highlighted the need for the Federal Aviation Administration to establish rules for drones. The Committee directed LSO to prepare a bill draft based on suggestions offered by the ACLU.

### **MEETING ADJOURNMENT**

There being no further business, Co-Chairman Schiffer adjourned the meeting at 4:20 p.m.

Respectfully submitted,

Senator John Schiffer, Co-Chairman

Representative Keith Gingery, Co-Chairman

# Committee Meeting Materials Index

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Appendix	Agenda Item	Appendix Description	Appendix Provider
1	Committee Sign-In Sheet	Lists meeting attendees	Legislative Service Office
2	Committee Meeting Agenda	Provides an outline of the topics the Committee planned to address at meeting	Legislative Service Office
3	Uniform Law Commission	Description of Commission	Judge Kautz
4a	Families in Need of Services	Review of programs in other states	Department of Family Services
4b	Families in Need of Services	Background information	Wyoming Children's Law Center
5	Method of Execution	Possible amendments	Department of Corrections
6	Forfeitures and seizures	Written comments	Wyoming Liberty Group
7	Criminal Trespass to Collect Data	Written comments	Rock Springs Grazing Association
8	Criminal Trespass to Collect Data	Rules, authorization form, authorizations granted	Office of State Lands and Investments
9	Criminal Trespass to Collect Data	Proposed amendments	Wyoming Stock Growers Association
10	Criminal Trespass to Collect Data	Proposed amendments to statutes	Joe Baron, Wyoming County and Prosecuting Attorney



			Association
11	Criminal Trespass to Collect Data	Written comments	Professional Land Surveyors of Wyoming
12	Restoration of Voting Rights	Survey of state laws	Secretary of State's Office
13	Sexual Assault Protection Orders	Memorandum	Circuit Court judges
14	Firearm Background Information	Letters and proposed amendments	National Sports and NRA Shooting Foundation
15	Drones	Proposed legislation	American Civil Liberties Union