

SENATE INTERIM COMMITTEE ON JUDICIARY

November 16, 2018

The Senate Interim Committee on Judiciary met at 1:30 p.m., on Friday, November 16, 2018, in Room B, MAC Building, Little Rock, Arkansas.

Committee members present: Senators Linda Collins-Smith, Chair; Terry Rice, Vice-Chair; Will Bond and Trent Garner

Other legislators present: Senators Alan Clark and Jonathan Dismang

Senator Collins-Smith called the meeting to order. She recognized Arkansas Supreme Court Justice John Dan Kemp for remarks.

Consideration to Approve Minutes [EXHIBIT B]

Senator Rice made a motion to approve the October 22, 2018, meeting minutes. The motion was seconded by Senator Stubblefield, and without objection, the motion carried.

Discussion on Custody and Visitation Placement

Ms. Robin Emis, Juvenile and Family Law Attorney, Law Offices of Miller Emis, P.A., and Kerry Ingram, Mental Health Therapist, were recognized and sworn-in by Senator Collins-Smith. Ms. Emis discussed draft legislation and SB 901 [see **Handouts 1-3** for full review] and issues regarding juvenile and family law. Ms. Ingram has discussed changes with committee members that are needed in Arkansas Code § 9-13-101, that include the omission and inclusion of the word “not”, which can have a fundamental impact on children in Arkansas. She added committee members were crucial to getting legislative changes to the Department of Human Services Placement.

Referencing **Handout 1**, Ms. Emis reported a new change is being requested for the Arkansas Code § 9-13-101, noting in 2013, the code was modified at the request and advocacy of former Senator Jon Woods. The original statute reads “in an action for divorce and award of joint custody is not favored in Arkansas”. During that time, Mr. Woods pushed for the word “not” to be removed. Some judges are not looking at joint custody as mandatory, however, when the changes were implemented, judges began to order joint custody in divorce cases. Ms. Emis noted, this action removes structure and stability for the children. Therefore, Ms. Emis respectfully requested that Arkansas Code § 9-13-101 be put back prior to the amendments that were made by Mr. Jon Woods. According to research studies and psychological reports, children do poorly in joint custody scenarios unless there is a level of cooperation that is needed to make it successful. According to Ms. Emis, children that are being forced into the joint parental custody when the parents do not agree is a recipe for disaster.

Mr. Ingram expressed he has worked in the field of mental health counseling over 13 years and has been certified as an expert in many counties. According to Mr. Ingram, the individual approach for the family needs to be the most important factor of what is going to be best for the children. Otherwise, it will be an ongoing process of counseling and remediation. The more complicated and difficult type of counseling he has done in his entire career is the co-parenting relationship. In response to a question by Senator

Stubblefield, regarding whether the ad litem's are fulfilling their roles in the process, Ms. Emis replied, "absolutely not". You could poll every attorney in Arkansas and would be alarmed and dismayed by the dissatisfaction of ad litem's.

Discussion on Judicial Recusal

According to legal scholars who have written law journals and articles on this issue, Ms. Emis stated the consensus for recusal is to be resolved by the conscience of the court. Therefore, judges are asked to determine for themselves if they are biased. Regarding judicial bias, there are statistics to support that many individuals do not recognize bias within themselves. Within our judicial branch, judges have no checks and balances to safeguard against their own judicial bias. Notably, some states are addressing this issue to allow due process and constitutional issues to be addressed by a jury trial and this is what is being proposed in Arkansas, as the recusal issue is extremely problematic.

Discussion on DHS Foster Child Placement Issues

Ms. Nelda Wilson, Citizen, was recognized and sworn in by Senator Linda Collins-Smith. Ms. Wilson discussed a 2014 DHS case involving the removal of her grandchildren for environmental reasons. According to Ms. Wilson, on December 7, 2015, the grandchildren reported to the grandparents that they were informed by a DHS caseworker, they were too old to take care of them and that they would never return to their parents' home. In January of 2016, the parents were informed their parental rights would be terminated. On January 26, 2016, the parents visited their children for the last time, as a no contact order was put in place. In May of 2016, the children were brought to their grandparent's home. On June 27, 2016, the grandparents adopted their grandchildren.

Public Testimony on Issues with Judicial System

Ms. Kimberly Stibich, Citizen, and Mr. Mike Tankersley, Citizen and Mrs. Tamara Barrett Tankersley, Attorney and wife of Mr. Tankersley were recognized and sworn in by Senator Collins-Smith. Ms. Stibich and Mr. Tankersley gave testimonies and brief summaries on issues they have encountered with judges and the judicial system. Ms. Stibich reported she is a domestic violence survivor and discussed in detail issues she encountered with a judge and ad litem regarding her joint custody/visitation case and recusal issues. Mr. Tankersley discussed judicial issues involving a civil case in which an attorney was found guilty of violating 8 rules that included illegal and unethical behavior in Judge Russell Rogers's court. Moreover, Ms. Barnett-Tankersley added the judge ignored the Supreme Court's affirmation of the 11 year case.

Discussion from Mr. Bob McMahan, Prosecutor Coordinator, Office of Prosecutor Coordinator

Mr. McMahan was recognized and sworn in by Senator Collins-Smith. Mr. McMahan gave a brief update on illegal immigrants. He provided answers to the following questions that were submitted to him previously:

1. What is the process when an illegal immigrant is stopped by police and does not have a driver's license or no form of identification? Mr. McMahan replied, this is a law enforcement question, therefore he could not provide an answer today. Prosecutors do not handle the immigration aspect of this issue, however, when the prosecutors receive the case and wins a conviction, it will affect the immigrant's deportation status.

2. How many immigrants are incarcerated or in the city and county jails? Mr. McMahan stated he does not have this information for city and county jails, however, according to the information he received from the Arkansas Department of Corrections, currently there are 268 foreign nationals of this amount, 137 are undocumented immigrants and 9 have an undetermined status.

3. What are the procedures for informing prosecutors when they are dealing with an illegal immigrant? Mr. McMahan stated prosecutors are notified by the law enforcement agency.

Updated Discussion on “Arkansas Red Flag” Draft Legislation

Senator Collins-Smith stated no one was present to discuss the “Red Flag Law” legislation.

Discussion Regarding Issues within the State State’s Correctional System

Mr. Benny Magness, Chairman, Board of Corrections (BOC), was recognized and sworn in by Senator Collins-Smith. Mr. Magness discussed information that was requested at the previous committee meeting that included, ADC’s administrative directive, the number of beds, 2016 incident summary, confiscated cell phones and reported incidents [see **Handouts 4-8** for full report]. Ms. Magness reported, all incidents are reported to the BOC. He noted the main contraband items are cell phones. After attending the last committee meeting, Mr. Magness contacted every warden to inquire about their restrictive housing policy and was told it was working for them.

Updated Discussion on Procedures and Process for Serious Crimes Committee

Senator Collins-Smith stated no one was present to provide and update on the procedures and process for serious crimes.

Other Business

The next Committee meeting will be held on Monday, November 26, 2018, at 10:00 a.m., in Room 149, State Capitol, Little Rock, Arkansas.

There being no further business, the meeting adjourned at 4:00 p.m.