

## DRAFT MINUTES

### HOUSE INTERIM COMMITTEES ON JUDICIARY

November 26, 2018

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The House Interim Committee on Judiciary met at 10:00 a.m., on Monday, November 26, 2018, in Room 149, State Capitol, Little Rock, Arkansas.

**Committee members present:** Representatives Dwight Tosh, Vice-Chair; Charles Blake, Sarah Capp, Jim Dotson, Trevor Drown, Charlene Fite, Vivian Flowers, Jimmy Gazaway, Ken Henderson, Douglas House, John Maddox, Laurie Rushing, Johnny Rye, Matthew Shepherd, Brandt Smith, and Clark Tucker.

**Members-Elect:** Marsh Davis and Don Glover.

**Other members present:** Senator Collins-Smith.

Representative Tosh called the meeting to order.

#### **Consideration to Approve Minutes [EXHIBIT B]**

**Representative House made a motion to approve the October 22, 2018, meeting minutes. Without objection, the motion carried.**

#### **Consideration to Adopt Interim Study Proposals (ISPs)**

**Representative Tosh made a motion to approve the following Interim Study Proposals. Without objection, the motion carried.**

**Interim Study Proposal 2017-074:** *“Concerning the Imposition of the Death Penalty on a Defendant with a Serious Mental Illness.”* Representative Vivian Flowers, Sponsor, provided an explanation of the interim study proposal (ISP). Representative Flowers stated the aforementioned measure has been passed in Connecticut and is being explored in Idaho, Indiana, North Carolina, Ohio, South Dakota, Tennessee, and Virginia. She introduced the following presenters to give their testimonies [Exhibit C.1].

**Dr. Hugo Morais, Forensic Psychologist, and Ms. Nancy Kahanuk, Coordinator, Judicial Equality for Mental Illness,** were recognized to give testimony regarding ISP 2017-074. Dr. Morais discussed the uniqueness of severe and persistent mental illnesses and how these disorders may affect an individual’s behavior and their ability to cope with the trial process in a self-protected manner. Severe mental illnesses are extremely debilitating; and include schizophrenia and bipolar disorder. They affect a small percentage of our population.

Ms. Kahanuk stated there is a serious problem with being able to support treatment for mental issues, noting crisis centers are essential, but without a good backup for treating serious mental illnesses there may be more individuals in situations that Representative Flowers mentioned. Ms. Kahanuk discussed some key issues of support for treating serious mental illnesses. She reported Arkansas has 13 community mental health centers, noting there needs to be a 911 mental health center. Notably, mental health centers are for serious emergencies or when someone needs hospitalization. The Arkansas Constitution, Article 19

requires the state to take care of individuals that have a mental illness. Arkansas needs an emergency plan to continue to serve those with a mental illness in an overall comprehensive way. Ms. Kahanuk hopes that the committee will explore funding mechanisms for mental health in Arkansas.

Representative Flowers closed by stating “we need to pay attention to the treatment of mental illness as a capital crime prevention issue.”

**Interim Study Proposal 2017-057:** *“An Act to Reduce The Fee for a Concealed Carry License; to Carry a Lifetime Concealed Carry License; Concerning the Fees for a License to Carry Concealed Handgun; and for Other Purposes.”* Representative Jim Dotson, Sponsor, provided a brief explanation of the interim study proposal. [Exhibit C.2]. The primary intent of ISP 2017-05 is to reduce the concealed carry license fee from \$100 to \$50 to make it more affordable. Representative Dotson discussed the Arkansas State Police concealed handgun carry license revenue history and the expenditures to administer the program [see Handout 1 for full report].

**Interim Study Proposal 2017-110:** *“Requesting that the Legislative Council Refer to the House Committee on the Judiciary a Study on the Possibility of an Expanded Role for Retired Circuit Court Judges by the Supreme Court in Certain Judiciary Courts.”* Representative Johnny Rye, Sponsor, provided a brief explanation of the ISP. The purpose of the ISP is to create special judges that would be appointed by the Arkansas Supreme Court to make up for the loss of circuit judges that will retire in 2020. [Exhibit C.3]

**Interim Study Proposal 2017-147:** *“Requesting the House Committee on the Judiciary Study the Responsibility For and Allocation of Funding for Travel Expenses for Public Defenders in Rural Counties or Public Defenders Who are Assigned to Multicounty Judiciary Districts.”* [Exhibit C.4]

Representative Sarah Capp, Sponsor, provided a brief explanation of the ISP. The purpose of the ISP is to explore the issue of underfunding in counties for public defenders as general funds are tight across the State. Historically, counties pay for maintenance and operations for public defenders who service the counties and the Public Defenders Commission pays their salaries. There is an issue of who will reimburse an attorney if he or she has to travel across the State. Representative Capp noted there may be an opportunity to explore different funding measures. Representative House asked when the last time the judicial circuits/districts were re-balanced. Representative Rye replied, the Judicial Council thinks this is necessary and that another study should be done. Representative House asked if the ISP could be amended to identify the following questions:

1. When was the last time the circuit courts were re-balanced?
2. Who has the authority to re-balance the circuit courts?

Without objection, Representative Rye agreed to include the aforementioned questions to ISP 2017-147.

#### **Discussion on Senate Bill 600 of 2017 [Exhibit D]**

Representative Jimmy Gazaway was recognized and gave a brief explanation of Senate Bill 600 [see Exhibit D for full report]. Senate Bill 600 was filed late in the 2017 legislative session and did not go very far in the Senate Judiciary Committee. Senate Bill 600 dealt with evictions and landlord tenant situations for residential rental property. The primary purpose of the bill was to provide a more efficient means for residential landlords to evict a tenant who was not paying rent, but provide a balanced approach for tenants to be provided due process in the event of an eviction. Arkansas needs an efficient approach for landlords to execute an eviction when it is necessary and tenants need adequate due process rights.

**Professor Lynn Foster, Arkansas Foundation Professor of Law, William H. Bowen School of Law, University of Arkansas Law School,** was recognized and explained Arkansas’s landlord/tenant rights and issues. Professor Foster discussed several types of eviction procedures being used across the State that include unlawful detainer, which is one of the oldest eviction process that is slow, more expensive, and has to be filed in circuit court. Moreover, this eviction process cannot be filed pro se, where the landlord can

represent himself. The civil eviction procedure is being used by a couple of district courts. The problem with this procedure is that district courts have never been given jurisdiction to use this procedure by the Supreme Court.

Notably, the failure to vacate is a criminal procedure. Arkansas is the only state that criminalizes what is essentially the failure to pay your rent on time. The Arkansas legislature rolled back this statute to its 2001 form in 2017, and it is still constitutionally questionable. Moreover, not all courts in Arkansas allow failure to vacate actions to be heard and there is this patchwork of eviction laws all over the State. Senate Bill 600 is proposed as a solution to that problem. It is restrictive in nature, as it is limited to actions involving residential tenants only and it does not apply in commercial situations. If the bill was enacted, it could immediately take place in the circuit courts, but circuit courts are not the ideal place for this procedure to occur. Professor Foster stated our hope would be for the Supreme Court to extend jurisdiction to district courts over this kind of action, noting that she does not think the Supreme Court will extend jurisdiction in this matter without a law from the legislature. Professor Foster noted she believes the legislature can change the jurisdiction by a super majority vote.

Representative Gazaway stated in the interest of full disclosure he is a landlord and has had to use the unlawful detainer statutes in the past. He explained, he feels that Senate Bill 600 would be a remedy and better than the current unlawful detainer framework that is in place, as it would be faster and cheaper.

With no further business, the meeting adjourned at 11:15 a.m.