

EXHIBIT B.1

MINUTES

HOUSE AND SENATE INTERIM COMMITTEES ON JUDICIARY

October 10, 2016

The House and Senate Interim Committees on Judiciary met at 1:30 p.m., on Monday, October 10, 2016, in Room B-MAC, Little Rock, Arkansas.

Committee members present: Representatives Matthew Shepherd, Chair; John Baine, Bob Ballinger, Mary Broadaway, R. Trevor Drown, Douglas House, Rebecca Petty, Laurie Rushing, Sue Scott, and Dwight Tosh; Senators Linda Collins-Smith, Vice Chair; Linda Chesterfield, Terry Rice, and Jon Woods.

Other legislators present: Senators Gary Stubblefield, Larry Teague, and Eddie Joe Williams; Representative Micah Neal.

Representative Shepherd called the meeting to order.

Consideration to Approve Minutes (Exhibits B.1 - B.5)

Without objection, the Minutes from the July 26, 2016; August 2, 2016, August 25, 2016, August 26, 2016, and October 4, 2016, meetings were approved.

Consideration to Adopt Interim Study Proposal 2015-178 “Requesting the House Committee of Judiciary Study the use of Hypoxia as a Method of Execution for Capital Punishment.” (Exhibit C)

Representative Mary Broadaway, sponsor, provided an explanation of ISP 2015-178, and said the study proposal is not a referendum on the death penalty, however, there has been a trend throughout the United States on the difficulty of implementing the death penalty due to the unavailability of the required drugs. She said various jurisdictions are looking at other options and the most humane way to implement them -- most states have a backup when implementing the death penalty. Further research is needed to determine an alternative means of execution in the event that Arkansas cannot obtain the necessary drugs or the Supreme Court indicates it is not an appropriate means of execution. Representative Broadaway made a motion to adopt ISP 2015-178.

Upon questioning by several members, Cory Cox, Legislative Director, Office of the Attorney General, stated the Attorney General has reviewed the interim study proposal and has no recommendation. He noted the issue has been litigated extensively and ruled constitutional by the Arkansas Supreme Court and cautioned that anything that might look as throwing doubt on what has been declared constitutional by the Court could be problematic.

After discussion by committee members, Representative Shepherd stated that without objection, no formal action will be taken on ISP 2015-178, and that Dr. Andrew Fulkerson may present testimony. Representative Broadaway withdrew the motion to adopt.

Dr. Andrew Fulkerson, J.D., Ph.D., Professor, Department of Criminal Justice, Southeast Missouri State University, provided a brief history of execution by lethal injection and said that most states use a 3-drug combination: a fast acting sedative (to sleep), pancuronium bromide (a paralytic agent), and potassium chloride (induces heart attack/causes death). Arkansas law allows either a one-drug method or a three-drug combination for lethal injection. If using the three-drug combination, studies have indicated the first drug could wear off and because the person to wake up before the third drug was administered, possibly causing excruciating pain, which in turn, would violate the Eighth Amendment. After the death penalty was reinstated in 1977, states began to look at more humane methods to carry out executions. Death by hypoxia (replacing oxygen in a person's lungs with an inert gas such as nitrogen) was introduced as an alternative method of execution and has been used in animal euthanasia, self-delivery suicide cases, etc. There is some evidence that hypoxia, if carried out in a deliberate and controlled manner, may lead to a painless and humane death. Dr. Fulkerson encourages the state to study this issue.

Update on Interim Study Proposal 2015-168 “An Act to Amend the Definition of “Marital Property” for Purposes of Division of Property in an Action for Divorce; and for Other Purposes.” (Exhibit D)

Representative Kim Hammer, sponsor, provided a brief explanation of the interim study proposal and stated the issue has been discussed with the legal community with and there has been no opposition. The Honorable Robert Herzfeld, Division 4, Twenty-Second Judicial Circuit, said the ruling by the Arkansas Supreme Court on Moore v. Moore last spring set aside 30 years of precedent with regard to calculating marital property. The Court found the state’s statutes were not followed as written since they specifically exclude the increase in value of non-marital assets from property division. He recommended that current statutes be amended to ensure continuity and predictability of divorce proceedings and noted there is no known opposition to this study from the state’s judges.

Discussion of Interim Study Proposal 2015-135 “Requesting that the Arkansas Legislative Council Refer to the House Committee on Judiciary a Request to Study the Circumstances Concerning and Procedures for Fingerprinting and Photographing a Juvenile for Law Enforcement Purposes, as well as the Requirements and Process for Sealing or Expunging those Records.” (Exhibit E)

Representative Justin Boyd, sponsor, provided a brief history of ISP 2015-135 and stated he wants to make sure that any changes to existing law cause no harm. The study addresses the circumstances and procedures for fingerprinting and photographing a juvenile, requiring that before the fingerprints are taken by a law enforcement agency, the juvenile is either arrested for an offense that if committed by an adult would constitute a Class Y, Class A, or Class B felony. It would also provide an option of sealing or expunging a juvenile’s fingerprints and photograph under certain circumstances. The following witnesses provided testimony: Lieutenant Cora Gentry, Arkansas State Police; Mr. Brad Cazort, Repository Administrator, Arkansas Crime Information Center; Mr. Bob McMahan, Prosecutor Coordinator, Office of the Prosecuting Attorney; Mr. Gregg Parrish, Director, Arkansas Public Defender Commission; Ms. Connie Tanner Hickman, Juvenile Court Programs Director, Administrative Office of the Courts.

With no further business, the meeting adjourned at 2:30 p.m.