

DOMESTIC RELATIONS COMMITTEE
DRAFT Meeting Minutes –January 20, 2006

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

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- Hon. Karen Adam
Lucille Antone-Morago
Theresa Barrett
Honorable Tim Bee
Honorable Andy Biggs
Honorable David Bradley
Honorable Bill Brotherton
Jodi Brown
Sidney Buckman
Daniel Cartagena
William Fabricius
Honorable Beverly Frame
Honorable Paula Aboud
Linda Leatherman
Ella Maley
Hon. Debbie McCune-Davis
George Salaz
Ellen Seaborne
Russell Smoldon
Judy Walruff
Wanda Weber
David Weinstock
Dale Wiebusch
Hon. Thomas Wing
Steve Wolfson
Brian Yee

STAFF:

Megan Hunter
Kim Martineau
Courtney Riddle

Administrative Office of the Courts
Senate
House of Representatives

GUESTS:

Janet Sell
Konnie Neal

Office of the Attorney General
Administrative Office of the Courts

CALL TO ORDER

The meeting was called to order by Senator Johnson at 10:13 a.m. with a quorum present.

ANNOUNCEMENTS

No announcements were made.

APPROVAL OF MINUTES

MOTION: Commissioner Adam made a motion to approve the December 16, 2005 minutes with amendments to the Integrated Family Court section and changing the attendee section to reflect that Jodi Brown was in attendance.

SECOND: George Salaz seconded the motion.

VOTE: Unanimous with amendments.

AMENDMENTS: The December 2005 minutes, Integrated Family Court section is amended to:

As discussed in previous meetings, the cost estimates for the two counties under consideration, are:

- Pinal County - \$350,000/year
- Coconino County - \$500,000/year

The group agreed that in order for the programs to be successfully evaluated and to provide meaningful data and conclusions, they will need adequate funding for the full two years. Also, there needed to be funding for the program to be administered and evaluated through the Administrative Office of the Courts. The group agreed that \$25,000 per year would be appropriate. The group agreed that at least \$875,000/year is necessary to accomplish that goal. The total allocation of \$1,750,000 for the two-year period will be needed for the pilot programs.

2006 LEGISLATIVE UPDATE

Megan will keep members updated on a weekly basis throughout session. Those who are unable to attend a hearing in person have the ability to submit comments via the Internet that can be read into the record.

Domestic Relations

SB 1267

Integrated Family Court (DRC)

- Requires the Supreme Court to implement a two-year Integrated Family Court pilot program in two counties each with a population of less than 500,000.
- Requires the Supreme Court to submit quarterly reports to the Domestic Relations Committee and include information from those reports in the Committee Annual Report.
- Add three years to the life of this Committee.
- Contains an emergency measure that would make it effective upon the Governor's signature.
- Requires two-thirds vote because of the appropriation provision.

Discussion: Sen. Johnson encouraged members to come to Family Services Committee. It meets at 1:30 every Monday for about the next four weeks.

Child Evaluations; Domestic Relations; Complaints (DRC)

This bill has not yet been filed but Representative Hershberger and Representative Lujan are close to finalizing language and getting the bill introduced. The bill would require litigants to bring their complaints and court-appointed evaluators to the judicial officer instead of directly to the board of psychologist examiners. Bringing these complaints before the board ultimately harms the families and children because evaluators are afraid of putting the necessary information in their reports to the court for

fear of a complaint being filed by one of the parties. This is a problem across the country but other states go to great lengths to provide fairness to the families and those who work with them.

Senator Johnson will explain to her colleagues that this is not an immunity bill, it is a gatekeeper bill. Ellen explained that it is difficult to get custody evaluators because they are pulling back on their language – the court ends up with a milk-toast evaluation because evaluators are afraid to say what has to be said because if they say that a parent is alienating against the other parent, they are wide open for a complaint. Evaluators cannot say what needs to be said. It does not help the families and especially the kids.

Members explained that the focus of this bill should not be on custody evaluators. The biggest reason to pass this is because there are children not getting treatment because of the threat of board complaints.

Sen. Johnson encouraged members to let their legislators know that this bill is important and they need to know the distinction

MOTION: Sidney Buckman to move this proposal as presented in the draft be forwarded for legislation.

SECOND: Commissioner Adam seconded the motion.

VOTE: Unanimous.

SB1087

Spousal Maintenance; Tax Refund; Setoff

- Authorizes the clerk of the court to intercept state income tax refunds for the collection of spousal maintenance.
- Allows state income tax refunds to be used to satisfy overdue support referred to the clerk of the court for collection.

Sen. Johnson explained that this mirrors what has been done with child support except that it is connected with state taxes only. Jodi Brown asked about sensitive data sheet in Rules and if this would be problematic. Members explained that this should not be a problem because the clerk's automated system will interface with the DOR automated system. In child support tax intercepts there is an administrative review process available to the parties. There is nothing in this bill that allows for an appeal for an injured spouse or other reasons. Sen. Brotherton may want to offer an amendment to include appeal process.

HB2026

Homestead Exemption; Family Support Liens

- Adds judgments and liens for child support arrearages, spousal maintenance arrearages or costs or attorney fees awarded in an action for those arrearages to the list of homestead exemptions from process and sale pursuant to A.R.S. § 33-1101(A).

Ellen mentioned that the Credit workgroup looked at this bill earlier today. The concern with the bill is that the sale of someone's home could be forced in order to get a small amount of child support arrearage. There should be a limit. The bill makes sense but it could force someone to sell their home for only a small amount of child support arrearages. Rep. McCune-Davis said that the bill does begin to address some of the

inequities they are seeing, but the concept for the threshold for smaller amounts came up this morning. She will take it to the sponsor and offered to let Sen. Johnson know the outcome before it goes to Family Services.

HB2561

Homestead Exemptions; Persons Entitled to Hold Homesteads

- Increases the homestead exemption for divorced couples from \$150,000 to \$225,000.

Ellen explained that a married couple is limited to \$225,000 exemption if the bill passes while two unmarried people living in a home together would have a \$450,000 exemption. That provides inequity between married and unmarried people. Rep. McCune-Davis explained that there are an increasing number of inequities that are occurring because of the increase in this exemption. Representative Anderson's intent was to reflect the increased cost of housing.

HB 2559

Juvenile Hearings; Jury Trials

- Allows for a request for change of judge in a hearing to terminate parental rights if the person did not request a jury trial and that judge was the same judge who heard the dependency case.
- Applies only in counties with populations of 500,000 or more.
- Requires the court to order mediation at the initial parental rights termination hearing.
- Requires the court to issue a decision within 30 days after a parental rights termination hearing.
- Requires the Administrative Office of the Courts to establish a permanency mediation program in the juvenile court to provide non-adversarial dispute resolution alternatives and promote permanency for dependent children. Allows the court to employ or contract these mediation services.

Staff explained that this bill is not likely to advance very far because it has been assigned to multiple committees and time to hear it is limited. Rep. McCune-Davis explained that it may get to first committee and get thinned out because of appropriation request, but the jury provision may continue. We need to watch it.

Commissioner Adam explained that the change of judge issue is very controversial. One family/one judge is the fundamental basis of the juvenile/dependency matters. The same judge monitors the case which provides for better management of the case and better services to the family and children. Additionally, it may be contrary to Court Rules about changing judges.

Ellen explained that the judges say people are not requesting jury trials. Sen. Johnson mentioned that constituents have complained about the process – having bad experiences with CPS. People in these circumstances have no place to express their frustrations. The Legislature held hearings for several months in 2005 to give parents an opportunity to be heard. A pattern was observed during those meetings that some CPS caseworkers work with a bias and their decisions are subjective. Sen. Johnson would like to see the jury trial provision retained for those who truly need it.

Commissioner Adam explained that one family/one judge helps the judge keep in tune with what is going on with the family and the judge can also monitor what CPS is doing as well – making sure they are keeping on track. If we start switching judges, continuity and accountability will fade away.

David Weinstock asked if the judge the problem or is it the CPS caseworker. Sen. Johnson explained that the bad apple CPS caseworkers are not being removed in the current environment. Sen. Johnson prefers that people have a jury of their peers to decide these cases rather than a judge.

Domestic Violence

SB1097

Domestic Violence; Orders of Protection

- Strikes reference to section 13-2810
- Requires the court to hold a hearing before issuing an Order of Protection, except for emergency Orders of Protection.
- Adds police reports that verify the factors listed in A.R.S. §13-3602 that suffice as reasonable cause to issue an Order of Protection to the reasons the court may issue such an order.
- Makes the Order of Protection applicable to the Plaintiff listed in the Order of Protection and authorizes the arrest and prosecution of the Plaintiff if that person knowingly violates any terms or conditions listed in the order.

Sen. Johnson explained that since the bill was filed, she has met with Dale Wiebush who highlighted some problems with it. Senator Johnson explained that this bill is unlikely to be heard in committee.

Dale explained the particular problems and issues with this bill, including:

- Section 13-2810. If person has three DV offenses within a set time, they get bumped up to a felony. Three violations on the part of the Defendant would not have that issue.
- The plaintiff arrest and prosecution provision is in conflict with federal regulations. This could jeopardize VAWA funds which provide almost all domestic violence funds in this state. A fiscal note has been called for and could be the demise of this bill.
- Ex parte hearing elimination. Taking this ability away is a real risk of people asking for orders of protection. Defendants do have the ability to get into court and have their case heard. This would be damaging for victims.
- Intent of the bill. Appears to be an injustice with orders of protection wherein defendants are not given many rights or educational tools. The order of protection states that they cannot have contact with the other person but it does not say anything about the plaintiff ability to contact the defendant without any complaint or retribution. How can the defendants be told that this is against them, that it does not go two ways and that they can get their own order of protection against the plaintiff.

The chair and members indicated that they are in favor of the idea of educating the defendant. Dan Cartagena explained that he agrees with parts of the bill; however, causing the defendant to fault on the order of protection to pick up the kids is problematic. He would like the committee to work on something that would enable order of protection to be easier to give out with the stipulation that they are not a lever of guilt. He further explained that current language needs to be tempered and keep with the original intent of protecting all parties. David Weinstock explained that you cannot violate the order of protection if you are the plaintiff. There is no power behind the words.

Senator Johnson indicated that she will take this back to Representative Pearce and re-assess the bill. If they cannot get it in good shape, they will not proceed with it in hearing.

Commissioner Adam explained that former Committee member, Bill Hart, previously discussed developing a sheet that would advise the defendant about their rights and a sheet that would advise the plaintiff about the issue of contact and temptation. There are some remedies available now. North Carolina has a provision where hearings are set automatically on all cases. In Arizona it is not automatic.

Konnie Neal, AOC staff for CIDVC explained that a new DV Rules Committee has been formed in the AOC with a first meeting to be held February 8th where Dale could bring these issues to light. They can and are working on issues such as this. They are looking at a guide sheet that explains how to use them. They are working on the details. They will bring this discussion back to that committee.

Rep. McCune-Davis explained that although people are aware of what they should or should not do, people are not consistent with the "parenting time" situation with the children. She asked that that be paid attention to also. Brian Yee explained that they are addressing that issue in the DV Rules Committee to ensure that the judicial officer who issues ex parte order of protection also considers the family court order.

SB 1147

Telephone Usage; Interference During Emergencies

- Adds prevention or interference with the use of a telephone by another person in an emergency situation to the list of unlawful acts listed in A.R.S. § 13-2915.
- Defines emergency situation as:
 - Property of human health, life or safety is in jeopardy and the prompt summoning of aid is essential.
 - Reasonable to believe that a crime is being, has been or is about to be committed.

Dale explained that this applies to any type of telephone, not just party lines. Kim further explained that the intent of the new language provides for the inclusion of all telephones.

CHILD SUPPORT

SB1194

Support Clearinghouse; Fees

- Amends the Support Payment Clearinghouse Fee from the current monthly fee of \$2.25 to:
 - \$2.25 per month from payors who make at least one support payment each month
 - \$2.25 per payment from payors who make payment in advance covering more than one month.
 - Fiscal impact is unknown at this time.
 - Would require programming changes in ATLAS and the eCalc program. Sen. Johnson may talk to Sen. Allen about and ask her to not proceed with this bill.

HB2279

Child Support Clearinghouse; Misdirected Payments

- Requires obliges in child support cases to notify the Support Payment Clearinghouse of legal custody changes.
- Clarifies that the obligor is not responsible for misdirected payments, e.g. payment sent to mom even though grandma now has custody.
- Applies retroactive to January 1, 2005.

Discussion: Will this be incorporated into some kind of form to notify the obligee?
Courtney explained that the bill does not require notification. Commissioner Adam explained that the bill has many problems; specifically, child support cannot be retroactively modified. Megan will report the discussion to Representative Hershberger.

HB2292

Child Support; Court Orders

- This bill came out of the Child Support Committee to help with the child support arrearage calculator currently under construction.
- Stipulates that if a court order does not specify the date when child support begins, the support obligation begins to accrue on the first day of the month following the entry of the order.
- Codifies that an annual rate of ten percent interest to accrue to child support arrearages, beginning at the end of the month following the month in which the support payment is due, or if the past support is reduced to a final written money judgment, the interest will accrue beginning on entry of the judgment by the court. *This is current practice under civil judgment statutes.*
- Stipulates that any direct payments or other credits allowed by law and the court shall be applied to support arrearages as directed in the court order.
- Requires the court to make specific findings in support of any payments or credits allowed.
- Stipulates that if the court does not specify when to apply the payments or credits, they shall be applied on the date of the entry of the order.
- Prohibits the court from reducing any sum owed to the state in a Title IV-D case, unless the state was represented at the hearing, had notice of the hearing, or provided written approval.
- States that any written agreement for credit against support arrearages that is not by order of the court shall require an affidavit of direct payment signed by both the person making the payment and the person receiving it.
- Requires that the affidavit of direct payment be turned over to the clearinghouse.
- Stipulates that if no date is stipulated in the affidavit, the credit against arrearages shall be implemented on a date agreed to by the parties, or the date of the affidavit.
- Stipulates that any sum owed to the state in a Title IV-D case may not be reduced by the aforementioned agreement or affidavit without written approval of the state.
- Allows a government agency to create an arrearage calculator in order to use automated data from the clearinghouse and child support registry.
- This will add equity between IV-D cases and the courts.
- This bill does not change the interest rate. It merely reflects the interest rate in the civil judgment statute.

Discussion: It may be advisable to reference the civil judgment statute.

HB2342

Child Support; Self-employed Parent

- Requires the court to determine which parent will pay for the cost of the federally authorized tax practitioner or each parent's share of the cost in cases where the court orders parents to meet with a federally authorized tax practitioner because at least one of the parents is self-employed.

Discussion: Members spoke in favor of the bill.

HB2488**Child Support Enforcement; Performance Audit**

- Requires the Auditor General to conduct a special audit of the Division of Child Support Enforcement in relation to:
 - Degree to which they are performing their duties
 - Number of errors (misdirected payments, erroneous demand letters/information)
 - Accuracy of automation system
 - Adequacy of equipment used to communicate between agencies
 - How methodologies used go collect payments are determined
 - Ease with which information is accessible to the public.

HB2566**Technical Correction; Child Support**

This is a vehicle bill and contains no substantive changes.

CALL TO THE PUBLIC

No requests were made for the Call to the Public.

BREAK /LUNCH / WORKGROUPS MEET

After breaking for lunch, the workgroups met.

WORKGROUP REPORTS

The workgroups will report in the February meeting.

NEXT MEETING

The next meeting will be held on February 17, 2006, Arizona Courts Building, Conference Room 119A/B.

ADJOURNMENT

The meeting was adjourned at 1:23 p.m.