

**LEGISLATIVE INTERIM NOTES
NOVEMBER 2008**

LAW ENFORCEMENT AND CRIMINAL JUSTICE INTERIM COMMITTEE	
Bill Title/Subject Matter:	Pawnshop and Secondhand Merchandise Advisory Board (PSMAB) Activities
Legislator(s)–Sponsor:	
Interested Parties:	Mr. Kevin Olsen, Director, Division of Consumer Protection Mr. Michael Katsanevas, Chair, PSMAB
Code Reference:	HB 192S1 2008 Legislative Session
<p>Description: HB 192S1 requires the Division of Consumer Protection in the Department of Commerce to report on the Board’s activities and services during the year.</p> <p>Rep. Lockhart will be filing legislation to clarify the roles of the board and some of the enforcement. Legislation will fix some unintended consequences resulting from the legislation.</p>	
Bill Title/Subject Matter:	Criminal Procedure – Investigation Amendments
Legislator(s)–Sponsor:	Rep. Paul Ray
Interested Parties:	
Code Reference:	Amends UCA §77-22-2
<p>Description: Adds municipal attorneys to the definition of prosecutor for investigations within the Code of Criminal Procedure.</p>	
Bill Title/Subject Matter:	Prohibited Gang Activity
Legislator(s)–Sponsor:	Sen. Jon Greiner
Interested Parties:	
Code Reference:	Enacts UCA §§ 76-9-901 through 907
<p>Description: Provides that a peace officer may order a group to disperse if the group includes persons an officer reasonable believes to be gang members and is in an area where loitering of groups that include gang members is prohibited by the local law enforcement agency. Requires that the officer warn the group that failure to disperse is subject to arrest. Requires municipal and county legislative bodies to designate areas in their jurisdictions where police officers may require groups that include gang members to disperse. Provides that failure to disperse upon the order of an officer is a class B misdemeanor, and a subsequent failure to disperse is a class B misdemeanor subject to a fine of \$100. Provides that if, after being ordered to disperse, a member of the group loiters again within specified times and at specified places, the person is guilty of a class B misdemeanor and is subject to a fine of \$100. Requires that officers receive training to ensure protection of the constitutional right of collective advocacy. Requires that officers receive training on identification of gang members and criminal street gangs.</p>	
Bill Title/Subject Matter:	Prohibited Activities of Gang Offenders
Legislator(s)–Sponsor:	Sen. Jon Greiner
Interested Parties:	
Code Reference:	Enacts UCA §76-9-804
<p>Description: Provides that a person convicted of a crime for which the sentence is enhanced due to the offense being gang-related may not possess a dangerous weapon, ammunition, or a facsimile of a</p>	

firearm for five years and that a violation is a class A misdemeanor. Provides that any greater penalty under another section of the Criminal Code that restricts the possession of a dangerous weapon to a greater degree supersedes the restrictions of this provision.

Bill Title/Subject Matter: Sex Offender Registration Amendments

Legislator(s)–Sponsor: Rep. Kenneth Sumsion

Interested Parties:

Code Reference:

Description: Draft bill would modify the sex offender registration process by requiring that offenders register changes in status with a local law enforcement agency, rather than with the Department of Corrections. Issues arise with sex offenders moving in from another state and the timing of DOC updating the sex offender registry. Allowing local law enforcement agencies to update the data will help to provide information to the community. The new web application is used for the sex offender registry with an ability to notify any local police agency when a sex offender moves in or out of an area.

Bill Title/Subject Matter: Incest Amendments

Legislator(s)–Sponsor: Sen. Dennis Stowell

Interested Parties: Mr. Elend LaBaron, Citizen
Dr. John M. Opitz, Professor, University of Utah

Code Reference: Amends UCA §76-1-302 and §76-7-102

Description: Draft bill amends the definition of incest. The bill resulted from a case of incest in Iron County when the county attorney tried to prosecute the case. During the course of the case the defense offered that the pregnancy was accomplished by artificial insemination, which is not covered in the law. This bill attempts to correct that problem by adding to the law other methods of producing a child such as artificial insemination and test tube babies. Increases the statute of limitations for prosecution from four to seven years.

Bill Title/Subject Matter: Gun Dealer Penalty Amendments

Legislator(s)–Sponsor: Rep. Carl Wimmer

Interested Parties:

Code Reference: Amends UCA §76-10-526

Description: Makes it a class A misdemeanor for a violation of the criminal background check provisions in Section 76-10-526 by a licensed handgun dealer. Draft bill addresses violations of the criminal background check provisions in Utah Code Section 76-10-526 by a licensed handgun dealer and makes the penalty for a violation consistent with the federal penalty – a class A misdemeanor taking Utah’s penalty and putting it in line with federal law. Utah’s current law is more restrictive.

Bill Title/Subject Matter: Administrative Subpoenas in Certain Criminal Investigations

Legislator(s)–Sponsor: Rep. Brad Daw

Interested Parties:

Code Reference: Enacts UCA §77-22-6

Description: Draft bill involves the investigation of online sexual exploitation of a minor. Provides an administrative subpoena be issued for ISP information to link with online names. CCJJ will be the repository for collecting the reports. The goal is to give the Attorney General’s office another tool to fight child pornography and child abuse, cutting down on the amount of time between when investigators detect child abuse and child pornography is taking place online and their ability to locate the person that is receiving child pornography.

JUDICIARY INTERIM COMMITTEE

Bill Title/Subject Matter: Wrongful Death Amendments

Legislator(s) – Sponsor:	Sen. Scott McCoy
Interested Parties:	
Code Reference:	Amends UCA §78B-3-105
Description: Draft bill creates and defines a wrongful death designee who: (1) is designated as the only wrongful death heir in the decedent’s will, trust, or other notarized written directive; and (2) has been adjudicated by a court of competent jurisdiction, by clear and convincing evidence, to have had a mutual supportive and dependent relationship with the decedent; and (3) provides minor children with priority over other heirs in the event of a wrongful death settlement. Representative Allen proposed an amendment to the bill that restored some language from a prior version and the amended bill was passed out by the committee. The language would add that nothing in this act shall be interpreted to redefine marriage or grant any rights of marriage that could be interpreted to offend Utah’s definition of marriage between a man and a woman.	

Bill Title/Subject Matter:	Violation of Protective Order
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Legislator(s)–Sponsor:	Sen. Scott McCoy
Interested Parties:	
Code Reference:	Amends UCA §§ 78B-7-105 and 78B-7-115
Description: Draft legislation to allow modification or elimination of protective orders under certain circumstances. The bill would allow the respondent to petition for the removal of the order after one year in the case when the petitioner intentionally or knowingly attempts to induce the respondent to violate the protective order (criterion a). The bill also requires that the petitioner’s actions show that he or she no longer has a fear of the respondent (criterion b); that the basis for the order no longer exists (criterion c); and that the respondent has not been arrested for violation of a protective order since the order was issued (criterion d). Changes had been made since the last version of the bill to clarify how court costs would be allocated. Senator McCoy recommended that the committee take no action and that he continue to work on the bill.	

Bill Title/Subject Matter:	Presumptive Personal Representative – Report
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Legislator(s)–Sponsor:	Sen. Gregory S. Bell
Interested Parties:	
Code Reference:	
Description: Senator Bell reported on the status of the presumptive personal representative legislation passed last session. This legislation created a presumptive personal representative in wrongful death cases to avoid the need for heirs to go through probate in these cases. Since the bill only took effect for a short time, no information is available yet on the impact of the legislation.	

BUSINESS AND LABOR INTERIM COMMITTEE	
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Bill Title/Subject Matter:	Worker’s Compensation Study – Firefighters & Law Enforcement Officers
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Legislator(s)–Sponsor:	
Interested Parties:	Dr. Kurt Hegmann, Director Rocky Mountain Center for Occupational and Environmental Health
Code Reference:	UCA §34A-2-701
Description: Dr. Hegmann’s conclusions suggest “elevated risks for lymphoma, melanoma and colon and rectal cancers among police officers conducting methamphetamine-related tasks. There also are suggestions of elevated risks for all cancers combined among firefighters. These conclusions must be viewed cautiously based on the low participation rates. Conclusive evidence could be obtained through	

compulsory, but secure, release of the officer's identifying information with compilation of exact cancer rates through the Utah Cancer Registry data."

TRANSPORTATION INTERIM COMMITTEE

Bill Title/Subject Matter:	Driving Under the Influence
Legislator(s)–Sponsor:	Sen. Carlene Walker
Interested Parties:	Mary Lou Emerson, Director, USAAV
Code Reference:	
<p>Description: CCJJ is required to prepare and provide an annual report of DUI-related data being collected and maintained by the courts to allow sentencing and penalty enhancement decisions for repeat DUI offenders. The report included measures for which data is available to evaluate recidivism and DUI-related processes. The committee will review draft legislation based on recommendations made in the report.</p>	

IMMIGRATION INTERIM SUBCOMMITTEE

**Dixie State College, Gardner Student Center Ballroom, St. George
November 12, 2008**

Bill Title/Subject Matter:	E-Verify Presentation
Interested Parties:	Gloria Aitkin, Management Program Analysis, US Citizenship and Immigration Services
<p>Description: E-verify is an employment eligibility verification system that works in conjunction with the form I-9 is keyed into the E-verify system for further verification and authentication of the documents presented by an employee to an employer during a form I-9 process. Status information is provided to both private businesses as well as government. In 1996 Congress mandated the federal government develop an electronic eligibility system. At this time the E-verify system should not be used on current employees, only new employees being hired. The system is used only on new employees to ensure the integrity of the system is not used for discriminatory hiring.</p> <p>Program goals: reduce unauthorized employment in the US; minimize verification related discrimination; easy to use and user friendly. There is a 94 percent accuracy rate with an error rate of less than one percent. An employer must voluntarily join in the program to participate. To the extent an employer is hiring undocumented workers they probably are not going to be part of the program.</p> <p>Employers choosing to not join the E-verify program leaves the company open for ICE raids, criminal sanctions, and liability. Nationally, there are over 93,000 participating employers in the program. By participating in the program an employer is exhibiting good faith in its hiring practices. All federal government agencies must use E-verify. Award of federal government contracts require an employer's participate in the program.</p> <p>The E-verify system is integrated with Social Security Administration (SSA) and queries cover both SSA and Department of Homeland Security (DHS) databases. Ms. Atkins provided a step-by-step demonstration on using the E-verify system. If an employee chooses not to contest a non-confirmation, the employer must terminate the employee, but is not mandated to contact ICE regarding the potential identity theft.</p>	

Bill Title/Subject Matter:	Immigration Perspective: Arizona
Interested Parties:	Rep. Russell Pearce, Arizona Legislature
<p>Description: The immigration issue is simple. We need immigration enforcement. States have authority</p>	

to enforce laws. Failing to do the job of a sheriff, chief, legislator, etc., is malfeasance. Eighty percent of Americans want the immigration laws enforced. Rep. Pearce provided his extensive history in law enforcement and his passion to enforce immigration laws. While Mr. Pearce was in Washington DC speaking on immigration issues he received word that his son (a law enforcement officer) was shot by an illegal alien. He believes it is time to go after illegal employers and to take the handcuffs off of law enforcement and let them enforce the laws. Mr. Pearce will provide copies of case law that allows states to enforce illegal presence in the US. It is a myth that states cannot enforce this law. We have a right to mandate E-verify to every employer in Arizona. There are groups that would like you to believe states have limitations. The courts have been clear on the issue that states can enforce illegal immigration.

In November 2006, Rep. Pearce had four propositions put on the Arizona ballot: (1) A constitutional amendment that if you are an illegal alien and you commit a serious crime in Arizona, you are not bondable; (2) if you sue an American citizen and you are in the country illegally, there are no punitive damages; (3) English is the official language; and (4) no waiver tuition, no adult classes, and no child care. These passed by an average of 75 percent. We need to stand up and enforce the rule of law. It is illegal to have a policy that restricts law enforcement from enforcing the laws under 8 USC 1723 and 8 USC 1644. States need to pass a law to remove all sanctuary policies. They are illegal and they must be removed. There is no other law where there are conditions on the arrest like there is with immigration issues. The purpose of the 287G certified officers training is all post-arrest, not pre-arrest. Officers can ask individuals where they are from and if they are in the US legally prior to arrest.

Bill Title/Subject Matter:	E-Verify
Interested Parties:	Barbara Szweda, Public Policy Advocate, ACLU of Utah
<p>Description: Ms. Szweda is an immigration attorney and taught immigration law at Notre Dame for twenty years. The ACLU has concerns with the E-verify system because implementation could easily violate American citizens' Constitutional rights, specifically the right to privacy and the right to work. Only 93,000 businesses have signed up out of potentially 7 million employers. Because of technological problems and database errors, E-verify can cause financial losses. Chambers of Commerce often times are against E-verify. The ACLU cautions against a quick fix like E-verify and requests the legislature to take a longer look at the system and the effect on American citizens. First, every new employee's information has to be submitted to the federal government. Gone will be the days when a US citizen can move freely from one job to another. The Inspector General estimates a 4.1 percent error rate on E-verify which means 11,000 non confirmations every day. The SSA says approximately 17.8 million of the files contain incorrect data. The SSA admits that 12.7 million of the files are US citizens that have data problems in the database.</p> <p>The next problem is that a person only has eight days to prove you are entitled to work if you receive a non-confirmation on E-verify. Another problem is the AARP have serious concerns if E-verify is to be used across the US, it puts a burden on SSA with additional phone calls in trying to get errors fixed. The state of Illinois has an act that bars employers from enrolling in E-verify or other such programs until SSA and DHS can make a final determination on the tentative non-confirmations within three days. Some organizations worry that we will need a national identification card that contains all of one's information. Do we want the federal government to have all this information about us? The Internet is also vulnerable to hackers and makes the information an easy target. In Arizona and Oklahoma the ACLU has been a party to lawsuits with the Chambers of Commerce because of privacy issues and the right to work issue. We need enforcement to come in and look at the I-9s that is already in place.</p> <p>Financial losses from E-verify are folks who are US citizens who give information to the employer and the employer says we have a tentative no-match. These people are not allowed to work until the issue is</p>	

resolved.

Bill Title/Subject Matter: Immigration: Business Community Perspectives

Interested Parties: Josh Bevans, Chair, St. George Area Chamber of Commerce
Russ Bearman, President of the Chamber

Description: The St. George Area Chamber of Commerce supports E-verify. There are a lot of positive things about the system. One thing is E-verify only covers new hires after the date you sign up. We had about an hour with legal counsel from the Justice Department who trained us. Anyone signing up for E-verify should seek competent legal counsel to get some guidelines on using the system. It could be used to discriminate against an individual. We feel good about using the system. For most employers they questioned if it would be effective for them to sign up if they are only hiring one person a year. We saw the numbers and accuracy of the system steadily rise and we are looking forward to using the system.

About a year ago the Chamber started taking a stand on immigration. With the economic downturn we have joined the National Chamber of Commerce. The chamber rarely takes stands in St. George, but we believe in illegal immigration reform. We have done three trainings this year; one on the new state laws; one on the federal laws; and one on E-verify for members of our Chamber. The training covers how to hire legal immigrants and guest worker programs, as long as they are legal.

We have published four articles on how to hire legal immigrants. We favor ICE training of jail personnel and training of field officers to avoid any appearance of racial profiling based on ethnic appearance. We state, as we have before, there are no excuses for lack of leadership and lack of action by the federal government as it pertains to illegal immigrants. The security and economic prosperity of this nation are being undermined by political squabbles. We need to get to get our heads together on this and we need to get some strong legislation put into place. The businesses need a level playing field.

Bill Title/Subject Matter: Immigration: Impact on the Community

Interested Parties: Larry Meyers, Attorney

Description: I would like to discuss how our community has responded to the problem of illegal immigration. For me it started in 2002 when I was in court, I saw there were a lot of Spanish speaking people in court. They were in Justice Court for a variety of crimes. There was a lot of victim impact from these crimes. As a deputy county attorney I was seeing a lot of document fraud as well. I wanted to learn more about this issue and began to do some research. I have some friends who started to educate me on this issue from their time living in Southern California and Arizona. In 2004 I was concerned about the issue and filed to run for county attorney with a platform of illegal immigration. Unfortunately, my ideas were not too popular with the voters at that time. Everyone believed it was a federal issue, however, now people understand we need to deal with the issue. I have formed a group, The Citizens Council on Illegal Immigration in 2004. Our agenda was to educate our leaders on the illegal immigration issue under the rule of law. The organization has had a real impact on our community with monthly meetings. Issues are researched and presented to local officials.

Our county commissioners have started addressing the illegal immigration issue. They require contractors doing business with the city and county to comply with federal law. The cities need the legislature to support their efforts through SB81 and to provide funding for programs that deal with illegal immigration. Local agencies are afraid about lawsuits and cannot resolve the issues on their own.