

INTERIM JOINT COMMITTEE ON JUDICIARY

Minutes of the 4th Meeting of the 2022 Interim

September 22, 2022

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Judiciary was held on Thursday, September 22, 2022, at 11:00 AM, in Room 149 of the Capitol Annex. Representative Kim Banta, acting Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative C. Ed Massey, Co-Chair; Senators Karen Berg, Danny Carroll, Alice Forgy Kerr, John Schickel, Wil Schroder, Johnnie Turner, Stephen West, and Phillip Wheeler; Representatives Kim Banta, John Blanton, Kevin D. Bratcher, McKenzie Cantrell, Daniel Elliott, Patrick Flannery, Samara Heavrin, Nima Kulkarni, Derek Lewis, Patti Minter, Kimberly Poore Moser, Jason Nemes, Jason Petrie, and Pamela Stevenson.

Guests: Steven P. Veno, Commissioner, Department for Income Support, Cabinet for Health and Family Services; Lily Patteson, Division Director, Child Support Enforcement, Cabinet for Health and Family Services; Dr. Jane Venohr, Center for Policy Research; Damon L. Preston, Public Advocate, Department of Public Advocacy; B. Scott West, Deputy Public Advocate, Department of Public Advocacy; Eric Schuller, President, Alliance for Responsible Consumer Legal Funding; Marc A. Wilson, Top Shelf Lobby; and Cary Silverman, American Tort Reform Association.

LRC Staff: Roberta Kiser, Matt Trebelhorn, Randall Roof, Michelle Spears, Lexington Souers, Stacy Byrns Taulbee, and Sasche Allen.

Acting Chair Kim Banta advised that Co-chair Massey had been delayed and requested that she begin the meeting.

A motion was made by Senator Wheeler and seconded by Senator Turner to approve the minutes of the August 18, 2022, meeting. Minutes were approved by voice vote without objection.

Consumer Legal Funding

Marc Wilson, Top Shelf Lobby, stated that his company represented the Alliance for Responsible Consumer Legal Funding and he expressed his opinion that there was need for legislation regarding consumer legal funding. Eric Shuller, President of Responsible

Consumer Legal Funding, explained that the consumer legal funding being proposed for recognition and regulation in Kentucky is a nonrecourse product. This means that if the consumer has no legal recovery or does not recover sufficient funds to cover priority liens and costs, the consumer owes nothing. Mr. Shuller stated that the company offering legal funding reviews a claim at the request of the consumer and confirms that the consumer has secured legal representation. If the claim is valid, and the attorney representing the consumer agrees, legal funding is provided. The funding provided is only to be used for household needs such as housing costs, utilities, and food. Funding cannot be used for litigation expenses and the funding company can have no influence in the case.

Mr. Shuller advised that the proposal for Kentucky would include required registration of the funding company and a rate cap restriction of 36 percent plus 7 percent. If the funding amount provided is less than \$5,000 the company may charge an additional document preparation fee of \$250, and if more than \$5,000 the company may charge an additional document preparation fee of \$500.

Senator Wheeler stated that he has used this product in his cases before and while it is not a cheap product, it is needed. Senator Wheeler expressed appreciation to Representative Flannery for addressing this need and proposing regulation of the product.

In response to a question from Senator Schickel, Mr. Shuller stated that the funding company makes its money on the profits generated and the amount earned is not tied to the amount of the verdict or settlement.

In response to a question from Representative Nemes, Mr. Shuller verified that the attorney representing the client provides no guarantees regarding the outcome of the case and signs the documents to confirm that the funding contract has been reviewed with the client and that payment will be made as provided under the contract from the proceeds of the case.

In response to a question from Senator Turner, Mr. Shuller confirmed that if there is no recovery, no repayment is required. In response to a follow-up question, Mr. Wilson stated that companies represented by Mr. Shuller receive up to 2000 calls per year but without regulatory legislation, they do not offer the product in this state.

Representative Flannery stated that this product is offered by others in the state, and while it is not a transaction that occurs frequently, he believes that what is being proposed is good as it sets up guardrails and protections for the consumer and for the businesses that occupy this space.

In response to a question from Senator Berg regarding predatory lending, Mr. Shuller discussed traditional financial product lending and noted that with consumer legal

funding, there is no credit check and no requirement to make payments along the way. This is why this product is not considered a loan in most states.

In response to a question from Senator Wheeler, Mr. Shuller discussed what income tax consequences might apply if no recovery is made.

Cary Silverman, American Tort Reform Association (ATRA), expressed concern regarding what he referred to as lawsuit loans and lawsuit lending. He stated that these lending practices can encourage litigation and current Kentucky law prohibits these types of arrangements. ATRA does not support this legislation. He stated that lawsuit loans should be subject to the state's usury laws and should be disclosed to all parties to the litigation, including the court.

In response to a question from Senator Schroder, Mr. Silverman stated that this industry is operating in a legal gray area and is seeking this legislation to have a way to collect the money it provides to consumers. Mr. Shuller stated that the companies do not engage in outbound marketing. They respond only to inquiries received from consumers.

Representative Flannery offered comments regarding how long it can take to resolve litigation and this is one of the reasons these types of products are needed.

In response to a question from Senator Wheeler, Mr. Silverman stated that he thinks adequate consumer protection laws are already in place and what is being requested here weakens those protections. Senator Wheeler responded that in some situations these products are necessary and should be regulated.

Child Support Update

Co-chair Massey discussed the recent updates to the child support tables and discussed some of the information that has been reviewed over the past several years to address adjustments to child support, to provide for the statutory parenting credit. Work continues on this with input from Family Court judges, practitioners, and other experts.

Lily Patteson, Child Support Enforcement Authority Director, advised the committee that when this process started the goal was to have a formula that was easy to use, fair, sensible, appropriate, provided for a gradual change with more overnights, and also reduced litigation. Kentucky's proposal takes into account the actual child-rearing costs along with the standard shared parenting schedule that many judges utilize. This proposal is unique to Kentucky and designed specifically for Kentucky.

Co-chair Massey discussed shared parenting and future adjustments to the legislation that should be addressed early in the 2023 Regular Session.

Dr. Jane Venohr, an economist with the Center for Policy Research, stated that the Center provides technical assistance to approximately 30 states on their child support guidelines. She stated that many options were considered for Kentucky with input from many different sectors.

In response to a question from Co-chair Massey, Dr. Venohr stated that Kentucky has a very simple table that contains income intervals that match what Kentucky uses for time-share ranges making this very Kentucky specific. The ranges are designed to prevent or limit any gaming of the system just to affect a child support order.

Department of Public Advocacy (DPA) Update

Co-Chair Massey discussed the funding provided to DPA under the most recent budget and stated that discussions continue on what future needs have been identified and how to meet those needs.

Damon Preston, Public Advocate, expressed appreciation to the committee for the funding that has been provided. Mr. Preston explained a new pay schedule that he hopes will help ease staffing concerns but stated there was still work to do. He discussed turnover, the costs associated with training new staff, and hiring obstacles. He stressed the need for DPA to maintain independence.

In response to a question from Senator Turner, Mr. Preston stated that statistics he has provided include the total workload of all misdemeanors, felonies, and juvenile matters.

Senator Berg expressed concern about the low starting salaries for attorneys with DPA.

In response to a question from Co-chair Massey, Mr. Preston stated for years the emphasis has been on caseload for attorneys. This has resulted in a reduction in support staff. Each office, with very few exceptions in larger areas, has only one investigator and one alternative sentencing worker, often dealing with as many as 4000 cases. In most offices, three attorneys share one secretary who also serves as the receptionist and the person who goes to the clerk's office to obtain the files that are needed.

In response to a question from Representative Flannery, Mr. Preston agreed to provide a numerical breakdown of the types of cases handled by DPA.

There being no further business the meeting adjourned at 12:31 P.M.