

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## SUMMARY OF MEETING

### COMMITTEE ON LEGAL SERVICES

**November 16, 2011**

The Committee on Legal Services met on Wednesday, November 16, 2011, at 10:04 a.m. in SCR 356. The following members were present:

Senator Morse, Chair

Senator Brophy

Senator Guzman

Senator Renfroe (President Shaffer appointed Senator Renfroe to temporarily replace Senator Roberts for the November 16, 2011, meeting)

Senator Schwartz

Representative B. Gardner, Vice-chair

Representative Levy

Representative Murray

Representative Waller

Senator Morse called the meeting to order. He said I've already spoken with the secretary of state's office, but the last several weeks have been hectic for me, so I am going to lay agenda item 1a over until our December meeting. Representative Gardner and I will see if there is a way to deal with that other than through this Committee. If there is, we may do that. If not, then we'll hear it in December.

**10:06 a.m.** -- Julie Pelegrin, Assistant Director, Office of Legislative Legal Services, addressed agenda item 1b - Rules of the State Board of Human Services, Department of Human Services, concerning lawful presence

exemptions for low-income energy assistance program (LEAP), 9 CCR 2503-1.

Ms. Pelegrin said this rule concerns emergency applicants for the low-income energy assistance program (LEAP). The General Assembly passed a law some years ago requiring recipients of state and federal public benefits to demonstrate lawful presence in the United States. One of those benefits is LEAP. LEAP itself recognizes that someone who is an applicant for LEAP does need to be a citizen or legal resident of the United States. Under section 24-76.5-103, C.R.S., there are some exceptions for verifying lawful presence. One of them is that it's not required for any purpose for which lawful presence isn't required by law. Another is a broad exception that it's not required for programs, services, or assistance that deliver in-kind services, do not condition the provision of assistance on the individual recipient's income or resources, and are necessary for protection of life or safety.

Ms. Pelegrin said Rule 3.140.12 C. lists all of the programs for which a recipient must demonstrate lawful presence. Rule 3.140.12 D. lists those programs that are exempt from that requirement. The rule we're concerned with specifically is Rule 3.140.12 D.14., and it adds emergency applicants for LEAP to those who do not have to demonstrate lawful presence. As stated previously, the list of exemptions for demonstrating lawful presence is exclusive, as specified in statute. None of the specific exemptions would apply to the emergency applicants for LEAP. The first general exception we talked about was the one for a service for which lawful presence isn't required but, as we already established, LEAP does require that the person receiving it be a citizen or lawful resident of the United States. The other broad exemption was the one that had the three criteria: That the program delivers in-kind services, the services are not conditioned on the recipient's income or resource level, and the services are necessary for the protection of life or safety. As we discussed earlier, for LEAP, whether you're an emergency applicant or any other kind of applicant, you have to demonstrate a certain level of income. The rule does not qualify as an exemption from having to prove lawful presence because it has to meet all three criteria. Therefore, it appears that the exemption for emergency applicants for LEAP is in conflict with what's in the statute, and we would recommend that Rule 3.140.12 D. 14. not be extended.

Senator Morse asked if the department is not contesting that this rule is outside the scope of the statute? Ms. Pelegrin said that is my understanding. We do have some representatives from the department that are here if there are any questions.

Representative Levy asked what an applicant for emergency services from LEAP would have to demonstrate in order to qualify? Ms. Pelegrin said it would not be different with regard to a regular applicant. My understanding is that they get quite a few emergency applications. The idea is that they don't have time to verify. If the applicant has documents with them to show lawful presence, then they'll take it. If they don't have documents with them, it's my understanding that the idea behind the rule was that you go ahead and approve them for the program and then they would come in later and verify lawful presence. Eventually it would get verified; the department was just trying to set it up so it wouldn't have to be verified up front. The way the rule was crafted, it doesn't indicate that they would come back and verify. That was part of our concern with the rule. I think they were planning to send out a letter to explain to the counties that these emergency applicants would have to come back and verify, but the rule itself doesn't say that. As to whether the statute would allow for a later verification, I don't know.

**10:13 a.m.**

Hearing no further discussion or testimony, Representative Gardner moved to extend Rule 3.140.12 D.14. of the State Board of Human Services and asked for a no vote. The motion failed on a 0-9 vote, with Representative Gardner, Representative Levy, Representative Murray, Representative Waller, Senator Brophy, Senator Guzman, Senator Morse, Senator Renfroe, and Senator Schwartz voting no.

**10:14 a.m.** -- Jennifer Gilroy, Revisor of Statutes, Office of Legislative Legal Services, addressed agenda item 2 - Update on Publications Contract for the C.R.S./Session Laws and Discussion of Developing an Application for Access to the C.R.S./Session Laws.

Ms. Gilroy said I want to give you an update on the publications contract and let you know that I have finished drafting it. It's in the hands of two of our contract experts in our Office, Bart Miller and Tom Morris. When they've completed their review of it, I intend to send the contract out to LexisNexis for its review, which I anticipate will be by the end of the month, and then also to the Attorney General's office and the state controller for their review as to form. We're right on track in terms of getting that contract finalized. I anticipate it will be in final form for signature in the next 45 to 60 days. I'll be bringing that back to you on one of your agendas that will be coming up.

Ms. Gilroy said as you'll recall, one of the aspects of that contract will include LexisNexis' development of an electronic reader for our state laws. I think it

was timely that about the same time as this meeting, NCSL came out with a legisbrief that Kae Warnock wrote. It's based upon a survey that Ms. Warnock and I developed last spring where we surveyed the various revisors across the country about different things, including electronic accessibility to their state's laws. There's really only six states, according to the results of this survey, that provide their statutes in some format that is readable either by e-readers, tablets, or a small handheld device. Delaware is one that I'm watching carefully because I like their method. I'm working with LexisNexis in the development of the e-book they're working on. Delaware allows you to download one, multiple, or all of their titles so that you can take it with you in your handheld device. There are two states that have applications and they allow the function of searching a keyword in their statutes and then it will download that statute into a smaller format for readability on a handheld smartphone. The reason I'm bringing this up is because you'll recall that you all received a proposal to the RFP from Simplikate that had offered to build an application for our state laws in any format we would like to see. There was a cost associated with that and I had discussed with the Chair, Vice-chair, and others on the Committee about reminding you about that and whether you want me to pursue a dialogue with Simplikate about having an application developed for folks that access the Colorado Revised Statutes. As I began to think about it more, it made sense for the Committee to find out exactly what it is that LexisNexis is working on, what the functionality would be, and what are the features they are going to present to you on the e-books, within the cost of the contract. I have arranged for both Nikki Daugherty and Angela Alexandrow, who is the developer of the e-books at LexisNexis, to visit with the Committee at the December meeting, so they can give you an idea of what they're doing. This is something that doesn't need to be in place until January 2013 when the contract begins, but they're ahead of the game and they want to get it to you and have you be part of the development. I'll be meeting with them along with Wade Harrell in our Office who is our expert and can help us direct them on what we'd like to see in functionality of the e-book. I want you all to be a part of that process, too. They'll be bringing tablets of some sort for you to test after the first of the year. Then it might be appropriate for the Committee to decide if there is a need to pursue development of an application apart from an e-book or if that might be duplicative at an additional cost. I wanted to let you know what's coming up and have you start thinking about what you'd like to see in terms of an e-book or questions you might have for LexisNexis at your next meeting.

Senator Schwartz asked Ms. Gilroy to remind her about the on-line version being an official version versus a full version and if that would potentially vary with respect to an app where you have searchable words. Will that option be

available for the on-line version? What will remain the official version and then versus the full version and how that might differ? Ms. Gilroy said currently, pursuant to statute, our only official version are the books. If a court is going to take judicial notice of statutes, it's going to be strictly from those books. What we have available free of charge to the public on-line through the General Assembly's web page is an unofficial version. It's using our database that we print the books from, but it's not considered official. That may change; the Committee may decide to change that at some point in the future. If we do, my feeling is that we need to address whether or not we have to assure its authenticity somehow, to make sure those statutes are not going to be changed or at least give notice to the user that he better double-check this because there's some indication that something was changed on this database that wasn't as originally posted. There's all kinds of technology to address that. That would be the next step, I believe, before you could make those on-line versions an official version that the court could take judicial notice of. In terms of the handheld devices, I think we need a disclaimer, so whatever we end up doing, whether it's tablet, app, or both, we have a disclaimer that it's not the official version. They will, in essence, be full versions, just like the on-line version, but they won't be official until such time as the General Assembly decides they want to change the statute and indicate that some other version is the official version.

Senator Schwartz said we can control what's in the books. Given the world we live in, and whether we're able to maintain full control of an on-line official version, whether in app form or full form, I'm reluctant unless we know we have adequate on-line protection to make sure they can't be changed. Ms. Gilroy said I've done a lot of work with folks across the country on this very topic. Those who are really technologically astute still say we're always going to have the books. There has to be something that is totally reliable and that can't be changed. I would note that the national conference of commissioners on uniform state laws has developed a proposed uniform act that would require states to assure that any electronic official version has some assurance to the user that it is authentic and has not been changed. That's something to be aware of as we walk into this area.

**10:23 a.m.** -- Julie Pelegrin addressed agenda item 3 - Demonstration of Service Enhancements Added to OLLS Internet Page.

Ms. Pelegrin said the first thing I wanted to make everybody aware of is, as we discussed last year, we have started sending out the notice of judicial opinions. We sent the first e-mail to all the legislators on October 31. We expect to be sending the next one January 3, right after the end of the quarter. We had two

cases of note in the e-mail we sent out and since then, on November 3 and 10 we tweeted a couple cases, which you can see on our web page. If you want to find the annotations on our web page and you're not going off the e-mail, go to "Legal Topics" and then the link "Recent Decisions Construing State Law". We decided to set it up with an introductory paragraph explaining what the criteria are that we use to identify the cases of note. We will be archiving. We're planning on keeping four quarters of annotations available at a time on the page, and then as we start moving into multiple years, we will archive them. We have also included a link to the independent ethics commission for their opinions. We decided that with the cases of note, we will post them immediately to the web site and we'll tweet about them, but the other annotations we'll add to the web site quarterly. If you want to read the opinion, you can click on the link to the case. If you have any questions, at the end of the summary of the opinion is a link to our staff directory and you can e-mail or call the person who wrote it. The annotations are organized by committee. Within each committee, we've organized them by subject matter. You can go straight to the committee you care about and click on the links to go to the opinion or read the annotation. With the annotations, the first line is the storage line. The line after that is what is being annotated, such as the Colorado rules of evidence or the statutory cite, then comes the annotation, and then it shows where it will appear. Most of this is extraneous information and not that helpful for members, except for the annotation itself, but we tried to set this up so we could automate as much as possible, so what we're doing is pulling in from off our annotation document to put it here.

Representative Levy said going back to the cases you e-mailed us and the ones you are tweeting, how are you distinguishing between the two? I'm not on twitter, so I'm wondering which ones I'm going to get in my inbox. Ms. Pelegrin said you will eventually get the same ones we tweet in your inbox, but we'll only send the e-mail at the beginning of each quarter. At any point you can open up our web page and immediately see if there are any new cases of note.

Representative Gardner said for you, the Office, and everyone who has worked on the cases of note, I've been really pleased. The cases were well-chosen and there were things I looked at and had immediate reactions about what I thought the General Assembly ought to do or people I ought to consult about whether we need to do something. It was helpful and I think it's going to be a great tool for us. Kudos to the Office for the initiative.

Ms. Pelegrin said I'm glad you find it helpful. At any time you pull one of the cases up and you have questions about it, you can contact any of us. The

person whose name is there is the person familiar with the case so they would be the most helpful, but contact any of us with any questions. If you see something else that might be helpful or if there is something about the way we have it organized, please let us know. This is our first quarter to get it up, so we will review how it's working and whether we need to change anything.

Ms. Pelegrin said back to the "Legal Topics" homepage, the other thing we worked on this summer is updating the ethics tutorial. We created the ethics tutorial two years ago and we decided to review it and make sure everything was updated. I thought I would bring it up so everyone remembers that it's here and how easy it is to use. The way it's set up is you can either click on the button to begin the tutorial and walk through the entire thing, or we have now given you a table of contents so that if you have a question about a particular area or you would like to refresh your memory about a certain topic, you can go straight there. All of the questions are set up to start with giving some background as to what is the source in the law or rules about what the ethics issue is. Then we give you a hypothetical, and then you have four answers to choose from. If you choose the wrong one, we try to explain why it's the wrong answer. You get another shot at the question and when you get to the right answer you get a green checkmark and an explanation of why it's the right answer. Then you can go on to the next question from there or back out. If you go all the way through, at the end you have the opportunity to print out for yourself a certificate of participation and completion.

Ms. Pelegrin said also under the "Legal Topics" page, we updated all of our memos of interest and the frequently asked questions memos. The memos of interest can come out of a very well-publicized bill that a lot of people were interested in so we do a memo about the bill, or if we get a lot of questions in the front office about a particular topic, then we'll draft a memo of interest on that. That said, if there's something you're interested in that you would like to have a memo for, please let us know.

Representative Gardner said there was a case concerning confidentiality and child welfare cases. I don't know if you know of this case that was published on October 24 that made the Wall Street Journal and the New York Times. It should be a case of note. It's a Colorado supreme court case and is of national import. It may just be so recent that it's not yet written as a case of note. Ms. Pelegrin said I would guess that's the case. We've probably gotten it and it's been assigned to somebody, but they haven't had a chance to read and annotate it. I can light a fire.

Representative Gardner said let's say that when a Colorado supreme court case

makes the Wall Street Journal or the New York Times, there probably ought to be a fire lit to put in the cases of note.

Senator Morse said there's probably a cycle in the Office where you're not going to do many of these annotations because of the drafting requirements. Is that an accurate assessment, that some of these are going to stack up and then in May and June we may get a boatload of them? Ms. Pelegrin said yes and no. We're trying to not let that happen. We're trying to stay as current as possible, partly for publications reason, so we can have as many cases that came out prior to the publications deadlines annotated and included in the books when we republish next year. We have to get done as much as we can by February with the publications deadline for the annotations. We're trying to go on more of a quarterly schedule and encourage people, even though they're busy with other things, to make time for the annotations so we can stay as current as possible.

Ms. Pelegrin said with regard to memos of interest, what I'm thinking about for next interim is to start working on some other memos or tools that may end up here that could be helpful for legislators. I thought about doing a primer on Colorado education law or general subjects of criminal law. The goal ultimately is to build a library that would be available to legislators that they could look at and have a lot of resources at their fingertips to educate themselves.

Ms. Pelegrin said last but not least, we launched our blog. We went live on September 1. Since that time, we've posted at least one article per week plus one question under "Ask OLLS". We keep about five posts up and then you can click on the "Older posts" link to see the archived ones. We try to make it a wide variety of issues. We have one on the Douglas county voucher opinion. We talked about a review of what the U.S. supreme court and Colorado supreme court decided over the last year. A couple times we've had "verifiable oddities". We look at things that happened in the capitol, whether it's the governor's office or the legislature, and give interesting pieces out of Colorado history. There's an entry on home rule cities and one on interim committees. We have an "Ask OLLS". What we'd like to eventually do is answer questions we get from people. Since we haven't gotten any questions yet, we've just been thinking about what we think they might want to know, so we've been making up questions.

Representative Levy asked on your regular blog postings, have you been getting many hits? Ms. Pelegrin said in total, we've had 1,948 views so far. Over 1,000 in September, about 500 in October, and we're up to over 300 in

November. We have 45 subscribers. We have a blog board in the Office that oversees the blog, and we're talking about what we can do to market it. I will be sending another e-mail to all the legislators inviting them to subscribe again and reminding everyone that it's out there. We actually are on NCSL's blog, "The Thicket". When you go there, they have a blog bar where they have links to all of the blogs they know about from other states. Most of them are legislators' blogs. There's only one other I'm aware of that is legislative staff.

Representative Levy asked what do you see as being the purpose of this blog? Ms. Pelegrin said when I first started thinking about it, I was actually thinking of doing a newsletter for legislators, and to make it a vehicle by which we could communicate and help to educate legislators, provide information about the law and the institution, and also reminders about things such as getting in bill requests and deadlines. Our goal really is to use it as a communications vehicle for the members of the General Assembly as our primary audience and as another way to provide more information that will be accessible in a form that's convenient for legislators. We can't always have a program for something. One of the things we're going to start putting on next year is that when the Office does internal CLE programs, we record those, and we'll put up a blog article that's a summary of what the program was and then a link to the recording. Again, if there is something you'd like to see on the blog, let us know. I would close with asking the Committee to think about whether there are any products that the Office could develop and provide for you that would be helpful to you in your roles as legislators. The other thing I was going to mention is that we've been looking at the way we draft and we've communicated with you some of it, but we're making a push this year to draft more in the active voice and present tense and we're also looking at the proper use of "shall" and using it only when it's truly imposing a burden. We're still talking with the bench and the bar association. It seems like the bench doesn't really want to weigh in one way or another, which makes total sense, but we are working with the bar. If we do start switching to "must" instead of "shall" in places where "must" is the appropriate word, we want to make sure everybody is on board with that and that it won't cause any upheaval with interpretation.

Senator Morse said one thought I have is that we have new legislator orientation and it would be cool if you could develop new member orientation to the point that you have it on the blog so that new members can access it and have some clue about what goes on around here. I do think it's frustrating for people that come in after that training to catch up and catch on to what goes on. Ms. Pelegrin said that's a great idea.

Representative Levy said on the "must" issue or any other changes in drafting, I would be concerned. One of the courts' principles of statutory interpretation is if you used to use this word and now you're using this word, what did the legislature intend by that. There could be a lot of unintended consequences. As you move forward, we as a Committee might think about codifying another principle of statutory interpretation that would acknowledge that this is a change in drafting and it's not intended to be a change in meaning or intent, if that's appropriate. Ms. Pelegrin said that's exactly what our thoughts were as well, that we could put something in that explains it's a grammatical change and for purposes of interpretation it doesn't change the meaning. We were thinking, too, that the Committee might want to run a bill on that.

Senator Schwartz said also with respect to our bills, you were updating the description of the bill. Ms. Pelegrin said that is correct. We will continue updating the bill summary when the bill crosses houses. Once it passes on third reading, before it gets heard in the first committee in the second house, we update the bill summary and that gets posted to our web site. We've talked about whether there is a way to make that a CLICS document so it's more accessible and more obvious when the public opens up the versions of the bill that there is a link there to the updated bill summary. I'm not sure we were able to get that done. It's something we're still trying to work the technological bugs out of.

Senator Schwartz asked after final passage is it updated once again? Ms. Pelegrin said we essentially update it once we do the digest. Once the bill has been signed by the governor, it goes into the digest of bills. We get what we have done out to you before you leave at the end of session, but it doesn't get finalized and officially published until June. And it is available on the OLLS web site. Along the digest topic, one of the things people sometimes don't realize is that we have the digests going back to 1930. If you heard of a bill that passed some years ago and you'd like to find the summary of it, we have this resource that's pretty quick to search through.

Senator Morse said next we'll hear from Ms. Haskins and Ms. Ritter for a discussion on Senate Bill 10-191.

**10:39 a.m.** -- Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed the Committee. She said I want to first remind you that we have a meeting scheduled for December 14 at 10:00 a.m. We don't have the agenda finalized, but I think the meeting might go into the afternoon, so plan to have a longer meeting. The reason we are asking Ms. Ritter to come up and talk is to give the Committee a heads up about something that you're going to

need to deal with, and that's the review of rules adopted by the state board of education to implement Senate Bill 10-191, which was the bill on teacher accountability. Ms. Ritter was the drafter. What we wanted to let you know is that the rules were adopted by the board last week. We do not have them in the Office yet, but we expect they will be submitted in early December. We do not feel that we will have them in time to bring them to you at the December meeting. We feel you're going to need to schedule another meeting in early January to deal with the review of those rules. Senate Bill 191 directs that the rules need to be reviewed by the General Assembly pursuant to the APA in an accelerated time frame. We did send you a couple e-mails about this and a frequently asked questions segment that Ms. Ritter put together about what would be involved in the review process. Our interpretation of the statute is that this Committee would introduce a separate rule review bill dealing with Senate Bill 191, containing your recommendations about what to do with those rules. That bill needs to be passed by February 15, 2012. We are recommending that the Committee meet in early January. We are thinking perhaps January 9 or 10, right before session starts.

Senator Morse said before we decide that, could Ms. Ritter tell us what our responsibility is? This is a different situation than a normal rule review bill. Even though we will introduce the bill, we can pick sponsors from outside the Committee if we choose. We'll decide which chamber it starts in and the president and the speaker will actually assign the bill to committee; it's not automatically assigned to this Committee. What flexibility do we have to make changes?

**10:44 a.m.** -- Jane Ritter, Senior Staff Attorney, Office of Legislative Legal Services, addressed the Committee. She said I think what Senator Morse and Ms. Haskins said is a pretty good summary. As far as I understand it, this bill will be just like your regular rule review bill, except its own little bill. The same process will apply in terms of it coming through our Office and then coming to you: You review it as you would any other rules and then you assign the sponsors and chamber for it to start in. It goes to leadership and they can assign what committee or committees to assign it to. It might go back to you, it might go to education, or it might go to a joint committee. It follows the process. When it gets into committees and onto the floor, then individual rules can be voted up or down, but the actual language can't be amended. There's no authority in statute to amend rules; in fact, it says otherwise, that amending the specific language is not what was contemplated when it was passed.

Senator Morse said that's true for us in the normal rule review process. We vote them up or down. When we introduce the bill, we will decide whether to

extend the rules in total or, like we do here, extend the rules in total except for whatever we decide in this committee we don't want extended. The bill gets introduced that way, but a committee of reference and/or member during floor debate can change that if they choose to, just like they can change the rules bill. Ms. Ritter said that's my understanding.

The Committee scheduled a meeting for Monday, January 9, 2011, at 2:00 p.m.

**10:59 a.m.**

The Committee adjourned.