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# IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

September 4, 2014

2014 Interim No. 6

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5	6	7	8	9	10	11
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Monday, September 8, 2014

### House Government Oversight Committee

1:00 p.m., Room 103, Supreme Court Chamber, Statehouse

Tuesday, September 9, 2014

### Administrative Rules Review Committee

9:00 a.m., Room 116, Statehouse

Thursday, September 11, 2014

### Cannabidiol Implementation Study Committee

10:00 a.m., Room 116, Statehouse

*Iowa Legislative Interim Calendar and Briefing* is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

# AGENDAS

## INFORMATION REGARDING SCHEDULED MEETINGS

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### **House Government Oversight Committee**

Chairperson: Representative Kevin Koester

Vice Chairperson: Representative Greg Heartsill

Location: Room 103, Supreme Court Chamber, Statehouse

Date & Time: Monday, September 8, 2014, 1:00 p.m.

LSA Contacts: Deb Kozel, Fiscal Services, (515) 281-6767; Rick Nelson, Legal Services, (515) 242-5822.

Tentative Agenda: Consider testimony regarding the Victim Assistance Grants Program.

Internet Page: <https://www.legis.iowa.gov/committees/committee?ga=85&groupID=589>

### **Administrative Rules Review Committee**

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Tuesday, September 9, 2014, 9:00 a.m.

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Agenda: Published in the Iowa Administrative Bulletin:

<https://www.legis.iowa.gov/iowaLaw/AdminCode/bulletinSupplementListing.aspx>

Internet Page: <https://www.legis.iowa.gov/committees/committee?endYear=2014&groupID=705>

### **Cannabidiol Implementation Study Committee**

Temporary Co-chairperson: Senator Joe Bolkcom

Temporary Co-chairperson: Representative Walt Rogers

Location: Room 116, Statehouse

Date & Time: Thursday, September 11, 2014, 10:00 a.m.

LSA Contacts: Rachele Hjelmaas, Legal Services, (515) 281-8127; Patty Funaro, Legal Services (515) 281-3040.

Tentative Agenda: Consider testimony from the Department of Public Health, Department of Transportation, and the University of Iowa College of Medicine, and a panel of consumer advocates, concerning implementation of the recent medical cannabidiol legislation (2014 Iowa Acts, ch 1125 (SF 2360)). Receive public comment.

Internet Page: <https://www.legis.iowa.gov/committees/committee?groupID=21380>

### SENATE GOVERNMENT OVERSIGHT COMMITTEE

August 26-27, 2014

**Chairperson:** Senator Janet Petersen

**Vice Chairperson:** Senator Brian Schoenjahn

**Overview.** The primary focus of the meeting concerned discussion of an Issue Review prepared by the Fiscal Services Division of the Legislative Services Agency relating to expenditures by the Department of Administrative Services (DAS) during a specified fiscal period, testimony by Iowa Workforce Development (IWD) personnel relating to judicial independence and workplace environment concerns, and the circumstances surrounding an information technology systems malfunction resulting in an overpayment of unemployment benefits.

**Issue Review Discussion.** Ms. Holly Lyons, Director, Fiscal Services Division, Legislative Services Agency (LSA), accompanied by Mr. Ron Robinson, Senior Legislative Analyst, Fiscal Services Division, LSA, summarized and provided background information in connection with the publication of an Issue Review examining DAS expenditures during the 2008-2009 through 2012-2013 fiscal years.

Ms. Lyons explained that the Issue Review was developed in response to questions the division was receiving regarding progress made by DAS in achieving a minimum expenditure reduction goal of 15 percent. The Issue Review concluded that in light of a 17.6 percent increase in DAS expenditures during the preceding two-year period, it did not appear the cost-savings goal was being realized. Ms. Lyons emphasized that the focus was on overall expenditures and trends rather than examining the direct impact of any specific cost-savings measure. Committee discussion included the extent to which cost savings resulting from a change in DAS construction project methodology was reflected in the fiscal analysis, the difficulty involved in analyzing the specific financial savings achieved due to outsourcing, the source of the financial information relied upon, and whether DAS was contacted as part of the research that was conducted.

Mr. Lon Anderson, Chief Financial Officer, DAS, appeared by unanimous consent to provide a response to the Issue Review and committee discussion. Mr. Anderson stated that DAS was not contacted prior to issuance of the document, and maintained that the expenditure increases identified are attributable to state agency motor vehicle purchases of approximately \$9 million and a one-time legislatively mandated information technology consolidation of approximately \$8 million.

**Administrative Law Judge Testimony.** Six current or former Administrative Law Judges (ALJs) with IWD provided their perspective regarding the operation and management of the Appeals Bureau within IWD and allegations of pressure to rule in favor of employers in unemployment compensation cases.

- **Current ALJs.** Judges Devon Lewis and Teresa Hillary provided testimony regarding the nature of the work performed by ALJs and their role within IWD's Appeals Bureau. Ms. Lewis summarized the process whereby an unemployment benefits claim progresses from an initial decision to an appeal, the role performed by ALJs in deciding a case, and the factors relied upon in making their determination. In response to committee questions, the judges acknowledged the existence of "tip sheets" and characterized them as publicly posted general outlines on selected issues developed by the Appeals Bureau which reflect frequently asked questions in connection with the unemployment benefits process. They maintained that the tip sheets were not developed to influence decisions on appeal, and that they have not been pressured at any time to decide a case in a particular direction. The importance of timeliness in deciding cases was addressed from the standpoint of a client in need of a source of income, a small business owner concerned about cash flow, and federal Department of Labor (DOL) requirements which condition full funding upon the achievement of designated case decision timing metrics. The judges additionally discussed their responsibilities as lead workers within the Appeals Bureau, and maintained that while they would not characterize the bureau as a hostile work environment, some tension was generated over their lead worker status, a renewed emphasis on accountability, and the decision to limit the ability of ALJs to work from home.
- **Former ALJ.** Mr. Joseph Walsh, Deputy Workers Compensation Commissioner and former Chief Administrative Law Judge for IWD, provided an opening statement describing his professional relationship with IWD Director Teresa Wahlert and contending that judicial independence within the Appeals Bureau has been compromised under her leadership. Mr. Walsh indicated that he gradually began to perceive a bias on the part of Director Wahlert in favor of employers over unemployed Iowans, describing tip sheets developed for employers at her direction as legal advice to avoid paying unemployment insurance benefits. He maintained that Director Wahlert attempted to convey through her messages and actions that the ALJs were granting benefits too often or that she was dissatisfied with judicial outcomes, resulting in a perception among some ALJs that their judicial independence was being compromised. Mr. Walsh additionally described efforts by Director Wahlert to have his position reclassified from

*(Senate Government Oversight Committee continued from Page 4)*

merit to at-will, his assertion that judges must be accorded merit protection, her ultimate reversal of the reclassification, and his being laid off shortly thereafter. Mr. Walsh stated that when Director Wahlert subsequently took over management of the Appeals Bureau, the fundamental tenets of judicial independence were compromised and a built-in appearance of impropriety and conflict created. He countered the contention that he was laid off for performance reasons, citing improvements in achieving standards for timeliness and efficiency. Mr. Walsh offered as recommendations to the committee the passage of legislation requiring judges to be free of pressure from political operatives and designated merit employees, and urging the appointment of independent counsel to fully review policies applicable to the administrative judiciary.

- **Other ALJs.** Judges Marlon Mormann, Susan Ackerman, and Bonny Hendricksmeier, testifying as a panel, related a number of concerns regarding the work environment at the Appeals Bureau following the removal of Mr. Walsh as Chief ALJ. They indicated that judicial independence has been compromised based on Director Wahlert's management of the bureau, that a necessary buffer between the director and the ALJs is now lacking, that the emphasis on expediency interferes with judicial outcomes and the ability to generate thorough case decisions, that the number of hours devoted to hearing cases has become excessive, that required workload pressures are exacerbated by a reduced workload assigned to lead workers, and that working at home restrictions, rather than enhancing accountability, actually reduce efficiency. In response to committee inquiry, the ALJs recounted correspondence from Director Wahlert regarding case decisions which they contended reflected pressure or constituted a personal affront, and cited concerns about the perception of problems at the agency raising questions regarding the fairness and propriety of judicial decisions by the ALJs.
- **Appeals Bureau Clerk.** In addition to the ALJ testimony, Ms. Joni Benson, a clerk in the Appeals Bureau, described her responsibility in assigning cases to the ALJs, emphasizing that such assignments are made on a random basis and that she has never felt pressured to assign certain cases to specific ALJs. Ms. Benson further stated that while she feels the atmosphere within the bureau has improved with the achieving of increased compliance with DOL requirements, she acknowledged the existence of deviousness within the bureau.

### **Unemployment Compensation Overpayments and Fraud Investigations**

- **IWD Administrators.** Mr. David Eklund, Bureau Chief, Unemployment Insurance, IWD, and Mr. Michael Wilkinson, Division Administrator, Unemployment Insurance, IWD, discussed the circumstances surrounding an overpayment of unemployment benefits and communications undertaken in relation thereto. Mr. Wilkinson attributed the overpayments to a computer error which resulted in benefit claim reports not being credited, generating concern that payments would not be disbursed on schedule. It was explained that the decision was made to distribute payments based on previously entered reports, which prompted phone calls from 85 individuals indicating they received overpayments they were not entitled to.

Committee inquiry focused on a strongly worded email regarding the computer error sent to IWD fraud investigators by Mr. Eklund which stated that if information about the computer error was disseminated, there would be "repercussions." Mr. Eklund justified the email as necessary to prevent further disclosure of misinformation about the overpayments by one of the investigators. Committee inquiry included the probability that additional overpayments were received, the likelihood of similar errors in the future, the age of the computer system utilized for unemployment benefit tracking, whether disciplinary action was taken against the fraud investigator spreading misinformation, the ramifications of a reduction in the number of fraud investigators, and efforts being undertaken to verify benefit claims submitted by noncitizens.

- **IWD Fraud Investigators.** Ms. Jane Connor and Ms. Karen VonBehren, Fraud Investigators, Unemployment Insurance, IWD, provided background regarding their work in uncovering potential unemployment benefit overpayments, the average number of cases and associated overpayment amounts in their investigation regions, and the reduction in the number of fraud investigators and resulting backlog in certain regions.

In response to committee inquiry regarding their reaction to receiving the email from Mr. Eklund, they indicated they were upset, surprised by the need for secrecy, concerned that the decision to make the overpayments compromised the ability to prosecute for fraud that week and resulted in employer payments that need not have been made, and also concerned about public perception regarding the integrity of the system. When asked how they might have handled the situation differently, Ms. VonBehren responded that it would have been preferable to notify the media immediately and inform claimants that benefit payments would be delayed pending repairing the system and entering accurate data for the week.

*(Senate Government Oversight Committee continued from Page 5)*

- **IWD Factfinders.** Mr. Philip Peacock and Ms. Kim Rieger, Factfinders, IWD, provided testimony regarding their work as unemployment compensation factfinders gathering information prior to an initial determination on a claim. They indicated that assignments are made randomly, that they have not experienced influence or pressure regarding initial determinations, and that the atmosphere at IWD is tense.

**IWD Director Perspective.** Ms. Wahlert provided her perspective regarding the previous testimony by current and former IWD staff regarding the work atmosphere at the department and issues in connection with the ALJs. Director Wahlert summarized her management approach and philosophy as emphasizing accountability and the achievement of metrics, encouraging innovation and customer service, and being direct in dealing with employees.

In response to committee inquiry, the director indicated she was not surprised by the complaints raised by the ALJs, and attributed them to discomfort in the face of change and an increased emphasis on accountability. She responded to judicial independence concerns by stating that she did not consider them valid, that the DOL informed her that ALJ management approaches vary among the states, and that her objective in stepping into the management role was to find out what was causing noncompliance with DOL metrics and inefficiency, with the ultimate goal of achieving compliance and acquiring additional funding that would otherwise be awarded to states with a high compliance rate. Further, Director Wahlert justified the reduced number of case hours assigned to lead workers by noting they are assigned a number of additional responsibilities, supported the email from Mr. Eklund as an effort to prevent the spread of misinformation, maintained that there is no evidence to support that additional overpayments beyond the 85 documented cases were made, and disagreed with contentions that she applied pressure to make decisions favoring employers and tracked ALJ decisions. Comments from committee members included a characterization of IWD as a dysfunctional workplace which needs to be remedied, and the observation that the push for efficiency is sacrificing justice.

**Recommendations.** Chairperson Petersen encouraged committee members to develop a list of potential recommendations based upon the testimony received during the meetings conducted this year to date for consideration at a future meeting.

**Next Meeting.** The date, time, and agenda for the next committee meeting has not been determined at this time.

*LSA Contacts:* Deb Kozel, Fiscal Services, (515) 281-6767; Rick Nelson, Legal Services, (515) 242-5822.

Internet Page: <https://www.legis.iowa.gov/committees/committee?ga=85&groupID=588>

### LEGAL UPDATES

**Purpose.** A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs of recent court decisions, Attorney General opinions, regulatory actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. As with other written work of the nonpartisan Legislative Services Agency, although this briefing may identify issues for consideration by the General Assembly, nothing contained in it should be interpreted as advocating a particular course of action.

### LEGAL UPDATE—JUVENILE MANDATORY MINIMUM SENTENCES

Filed by the Iowa Supreme Court

July 18, 2014

**State v. Lyle**

No. 11-1339

[http://www.iowacourts.gov/About\\_the\\_Courts/Supreme\\_Court/Supreme\\_Court\\_Opinions/Recent\\_Opinions/20140718/11-1339.pdf](http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20140718/11-1339.pdf)

**Factual Background.** A juvenile was involved in a brief altercation with a student outside of a high school. The juvenile allegedly had purchased \$5 of marijuana from the student and the student refused to deliver the marijuana to the juvenile. Subsequently, the juvenile and another companion punched the student for failing to deliver the marijuana and took a small bag of marijuana from the student. At the time of the commission of the crime, the juvenile was 17 years of age and was enrolled in high school.

**Procedural Background.** The juvenile was prosecuted as an adult and convicted of robbery in the second degree and sentenced to a mandatory minimum term of 7 years in prison with a maximum term of confinement of 10 years.

*(Legal Update—Juvenile Mandatory Minimum Sentences continued from Page 5)*

During the sentencing hearing, the juvenile objected to the mandatory minimum sentence and argued the mandatory minimum sentence was unconstitutional as applied. The court overruled the objection and sentenced the juvenile to the mandatory sentence. The juvenile appealed and the Iowa Supreme Court transferred the appeal to the Court of Appeals. The Court of Appeals affirmed the mandatory minimum sentence as applied to the juvenile and the juvenile sought further review with the Iowa Supreme Court (Court).

**Issue.** Whether the prohibition of cruel and unusual punishment in the Iowa Constitution permits a statutory scheme that mandates a person sentenced for a crime committed as a juvenile to serve a mandatory minimum period of confinement prior to becoming eligible for parole or work release?

**Majority Opinion.** There were multiple opinions issued in the case but the four-justice majority concluded that a mandatory minimum sentence of imprisonment for a juvenile is too punitive based upon what society knows about juvenile behavior. Additionally, the Court emphasized that this conclusion is consistent with a consensus of a majority of Iowans. The majority of the Court outlined a two-step inquiry in this case.

**Societal Standards.** The Court's inquiry first considered societal standards as expressed in legislative enactments and state practices to determine whether there is a national consensus against mandatory minimum sentences for juveniles. The majority acknowledged that no other court in the country has held that a statutory scheme that prescribes a mandatory minimum sentence for juveniles is unconstitutional. However, the Court concluded that constitutional protections for the rights of juveniles in sentencing is rapidly evolving. The Court further stated the Iowa Legislature signaled its independent concern with mandatory prison sentences for juveniles during the 2013 Legislative Session by allowing a judge to suspend a mandatory minimum sentence for a juvenile except for a juvenile classified as a youthful offender or a class "A" felon. Numerous Iowa statutes prohibit juveniles from engaging in risky behavior because of the reduced capacity juveniles have for good decision-making. These statutes include prohibitions on underage drinking and tobacco consumption, and restrictions on operating a motor vehicle. Furthermore, the Court stated that numerous Iowa Code provisions require the Court to take into account the "best interests of the child" when making a decision about a juvenile. Based upon this legislative history, the Court concluded that there is a societal consensus that a juvenile lacks the risk-calculation skills adults are presumed to possess and the "best interests of the child" generally includes using discretion when dealing with juveniles. A mandatory minimum sentencing scheme does not account for the consensus that a juvenile lacks the risk-calculating skills adults are presumed to possess and does not permit the Court to use discretion to determine what is in the best interest of the juvenile.

**Cruel and Unusual Punishment Clause.** The Court's second inquiry was guided by the standards elaborated in controlling precedents and applied the Court's own understanding and interpretation of the Iowa Constitution's text, history, meaning, and purpose to determine if a mandatory minimum sentence violates the Cruel and Unusual Punishment Clause of the Iowa Constitution. The Court emphasized that, as juvenile sentencing has become more punitive, more rights have been given to juveniles. In federal court rulings, juveniles under 16 years of age and then juveniles under 18 years of age were declared not to be subject to the death penalty. Nonhomicidal juvenile life-without-parole sentences were barred by the United States Supreme Court even when 37 states had statutory schemes permitting such types of sentences. Recently, the United States Supreme Court struck down all juvenile life-without-parole sentences including sentences involving a homicide. Also recently, the Iowa Supreme Court has struck down juvenile sentences that have a parole component, but in practice are the equivalent of a life sentence without parole.

The Court, while acknowledging the progression of recent case law, as required under the constitutional test, concluded that the sentencing of juveniles with statutorily required mandatory minimums does not adequately serve the legitimate penological objectives in light of a juvenile's categorically diminished culpability and thus violates the Cruel and Unusual Punishment Clause of the Iowa Constitution. The Court specified that mandatory minimum sentencing results in cruel and unusual punishment because of the differences between juveniles and adults, but also acknowledged that the harm to a victim is not diluted by the age of the offender. The Court stated that serious crimes can at times be committed by conduct that appears less serious when the result of juvenile behavior, as illustrated by the facts in this case. If a juvenile has a greater capacity for growth and reform, it is likely that a juvenile can be rehabilitated faster if given the opportunity, and care should be taken to avoid an irrevocable judgment about the juvenile's value and place in society.

**Holding.** The Court held that a mandatory minimum sentence of imprisonment for a juvenile is unconstitutional under the Cruel and Unusual Punishment Clause in Article I, section 17 of the Iowa Constitution.

**Impact of Ruling.** The majority specified that the juvenile in this case must be resentenced so the district judge is able to at least consider a sentencing option other than imprisonment. Furthermore, the Court stated this case does

*(Legal Update—Juvenile Mandatory Minimum Sentences continued from Page 6)*

not prohibit a judge from sentencing a juvenile to prison for the length of time identified by the legislature for the crime committed, nor does the case prohibit the Court from imposing a mandatory minimum period of confinement for a person classified as a youthful offender. The Court recognized that this case will apply to all juveniles serving a mandatory sentence of imprisonment, thus this case will require all juveniles who are in prison under a mandatory sentence to be returned to court for resentencing. The Court stated that even if the resentencing does not alter the sentence for most juveniles, or any juvenile, the action taken by a district judge in each resentencing case will honor the decency and humanity embedded in the Cruel and Unusual Punishment Clause of the Iowa Constitution. The Court also noted that this case has no application to sentencing laws affecting adult offenders.

**Dissent by Three Justices.** The dissent strenuously disagreed with the majority conclusion that sentencing juveniles according to statutorily required mandatory minimums, regardless of the length of the sentence, does not adequately serve legitimate penological objectives in light of the juvenile's categorically diminished culpability. The dissent stated there is simply no authority for this blanket proposition, and that this conclusion by the majority appears to squarely contravene the role of the legislature in devising appropriate sentencing schemes. Apart from the legislature limiting the use of mandatory minimum sentences under certain circumstances, the dissent stated that the majority opinion gives little weight to any strong national consensus opposing juvenile mandatory minimum sentences. Furthermore, the dissent noted that the majority gave deference to recent legislative judgments concerning juvenile sentencing but did not give deference to legislative judgments that were in effect when the juvenile was sentenced. It is true, the dissent acknowledged, the legislature's grant of discretion in some contexts may well reflect our society's judgment that juveniles are different, but it does not follow that juveniles must be treated differently in all contexts. Under recent cases the dissent noted that the convergence of the offender's age, harsh sentence, and mandatory sentencing scheme made the sentence cruel and unusual and thus unconstitutional. However, in this case the dissent stated that the juvenile's sentence was not harsh, cruel, or unusual because the juvenile's imprisonment will most likely end when the juvenile reaches 25 years of age.

**Dissent by Justice Waterman.** Justice Waterman joined the dissent but wrote a separate opinion and stated that our standards for cruel and unusual punishment under the Iowa Constitution should remain identical to the standards under the U.S. Constitution. The Justice noted that by holding a mandatory minimum sentence for a violent felony is cruel and unusual punishment and unconstitutional under the Iowa Constitution rather than under the U.S. Constitution allows the majority to evade review by the United States Supreme Court. The Justice also argued that judges do not have a monopoly on wisdom, legislators raise teenagers too, and courts traditionally give broad deference to legislative sentencing policy judgments. The dissent emphasized that if a court misinterprets a statute, the legislature can amend the statute the next session, but if the Court misinterprets our state constitution, the people are stuck with the decision unless the decision is overruled or the constitution is amended.

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