



Serving the Iowa Legislature

IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

June 22, 2018 2018 Interim No. 2

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Monday, June 25, 2018
Service Committee of the Legislative Council
 2:00 p.m., Room 22, Statehouse

Monday, June 25, 2018
Studies Committee of the Legislative Council
 2:15 p.m., Room 22, Statehouse

Monday, June 25, 2018
Legislative Council
 2:30 p.m., Room 22, Statehouse

Tuesday, July 10, 2018
Administrative Rules Review Committee
 9:00 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

Service Committee of the Legislative Council

Chairperson: Representative Linda L. Upmeyer

Vice Chairperson: Senator Jack Whitver

Location: Room 22, Statehouse

Date & Time: Monday, June 25, 2018, 2:00 p.m.

LSA Contacts: Glen Dickinson, Legislative Services Agency, 515.281.3566, Richard Johnson, Legal Services, 515.281.3894

Agenda: To be announced.

Internet Site: www.legis.iowa.gov/committees/committee?ga=87&groupID=662

Studies Committee of the Legislative Council

Chairperson: Representative Linda L. Upmeyer

Vice Chairperson: Senator Jack Whitver

Location: Room 22, Statehouse

Date & Time: Monday, June 25, 2018, 2:15 p.m.

LSA Contacts: Richard Nelson, Legal Services, 515.242.5822, Stuart Stromberg, Legal Services, 515.281.3430

Agenda: To be announced.

Internet Site: www.legis.iowa.gov/committees/committee?ga=87&groupID=663

Legislative Council

Chairperson: Senator Jack Whitver

Vice Chairperson: Representative Linda L. Upmeyer

Location: Room 22, Statehouse

Date & Time: Monday, June 25, 2018, 2:30 p.m.

LSA Contacts: Glen Dickinson, Legislative Services Agency, 515.281.3566, Richard Johnson, Legal Services, 515.281.3894

Agenda: To be announced.

Internet Site: www.legis.iowa.gov/committees/committee?ga=87&groupID=703

Administrative Rules Review Committee

Chairperson: Senator Mark Chelgren

Vice Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Tuesday, July 10, 2018, 9:00 a.m.

LSA Contacts: Jack Ewing, Legal Counsel, 515.281.6048; Amber Shanahan-Fricke, Legal Counsel, 515.725.7354

Agenda: To be announced.

Internet Site: www.legis.iowa.gov/committees/committee?groupID=705&ga=87&session=1

ADMINISTRATIVE RULES REVIEW COMMITTEE

June 12, 2018

Chairperson: Senator Mark Chelgren

Vice Chairperson: Representative Dawn Pettengill

DEPARTMENT OF CORRECTIONS, *Review and update of policies and procedures, 5/23/18* IAB, ARC 3806C, NOTICE.

Background. This rulemaking includes a variety of substantive and nonsubstantive changes to the department's rules as part of its five-year review of its rules under Code §17A.7(2). Subjects include records requests, terminology changes, risk assessment instruments, community-based corrections, pretrial services and presentence investigations, probation services, conditions of parole, and other matters.

Commentary. Discussion centered primarily on items 41 and 51 of the rulemaking. Regarding item 41, committee members questioned why the department replaced the term "interview" for purposes of pretrial services with "assessment." Department representatives Mr. Michael Savala and Ms. Michelle Dix stated that this change is an update to the language, there has been no change in practice in this area, that assessments have always been carried out, and that the two terms are synonymous.

Mr. Jerry Evans offered public comment on item 41 on behalf of the Fifth Judicial District of Iowa. He explained that the district conducts both interviews and risk assessments as part of its pretrial process and stated that an interview does not help with risk assessment. Mr. Matt McKinney offered public comment on behalf of Lederman Bail Bonds. He asserted that the change from "interview" to "assessment" is substantive and that the term "interview" shouldn't be stricken if interviews are being conducted. He handed out an interview form and an assessment form, both of which he stated are currently used in pretrial services. He asserted that this rule language should reflect current practice and noted that the term "assessment" is not defined in the rulemaking.

Committee members asked if the department was aware that "interview" and "assessment" may not be considered synonymous. Ms. Dix said the department was not aware of this issue. Committee members stated that interviews and assessments are different concepts and urged the department to revise its proposed language to reflect that both interviews and assessments are conducted.

Committee members, Mr. Evans, and Mr. McKinney also discussed the Polk County Public Safety Assessment (PSA). Discussion included whether the language of item 41 implicates the PSA and whether the PSA is an appropriate and accurate risk assessment tool in comparison to an interview process.

Regarding item 51, committee members questioned whether it is appropriate for the department to strike all specific conditions of parole from its rules, replacing them with general language regarding compliance with conditions of parole. Mr. Savala and Ms. Dix stated that the current language on specific conditions is old and that the Board of Parole has its own rules on the conditions of parole. They explained that the department has had to repeatedly update its rules on this topic to track with changes in the board's rules and that such updating will no longer be necessary with this change. Committee members urged the department to retain the current language on specific conditions, even if further updating will be necessary in the future, to promote ease of access to this information by the public. Committee members also requested a copy of the board's rules on this topic.

Committee members additionally discussed how incarceration fees are calculated, whether language on access to confidential records may be too broad, and how medical examinations are provided.

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

Action. No action taken.

DEPARTMENT OF HUMAN SERVICES, *Quality Assurance Assessment Levels for Nursing Facilities, 5/9/18 IAB, ARC 3785C, NOTICE.*

Background. This rulemaking amends the assessment level for nursing facilities effective July 1, 2015. The assessment level was changed at the rebase of nursing facility costs on that date. Providers were notified of the assessment level with Information Letter 1610 dated February 3, 2016.

Commentary. Ms. Nancy Freudenberg, Department of Human Services, reviewed the rulemaking. Ms. Deb Johnson also represented the department. Committee members noted that the rulemaking, which originated from 2015 Iowa Acts, was untimely and expressed displeasure with the untimeliness of the rulemaking. Ms. Freudenberg stated that the department did not have an excuse for not completing the rulemaking in a timely manner but reiterated that providers had been informed of the statutory assessment levels by letter dated February 3, 2016. Some committee members suggested that the topic not be the subject of rulemaking while others encouraged it to remain in rulemaking.

Action Taken. No action taken.

IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, *Purchasing — Iowa Communications Network Sole-source Agreements, 5/9/18 IAB, ARC 3781C, NOTICE.*

Background. This rulemaking relates to a sole-source procurement process.

Commentary. Mr. Mark Johnson, Iowa Telecommunications and Technology Commission, reviewed the rulemaking. Committee members inquired whether this rulemaking would have prevented an incident last year involving inappropriate spending in connection with the procurement of trailers. Mr. Johnson indicated that the procurement of two trailers last year by the executive director happened quickly and without his knowledge. Mr. Johnson was unsure whether the rulemaking would prevent a similar incident from occurring again but asserted that it was a step in the right direction. Committee members asked for additional detail regarding the sole-source justification form. Mr. Johnson indicated that the form sets forth the purpose of the sole-source agreement. Committee members encouraged the commission to expand its rules to prevent inappropriate spending. Additionally, committee members encouraged the commission to develop and share best practices with other agencies.

Action Taken. No action taken.

Next meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, July 10, 2018, beginning at 9:00 a.m.

LSA Staff: Jack Ewing, Legal Counsel, 515.281.6048; Amber Shanahan-Fricke, Legal Counsel, 515.725.7354

Internet Site: www.legis.iowa.gov/committees/committee?endYear=2018&groupID=705

LEGAL UPDATES

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

SPORTS GAMBLING

Filed by the United States Supreme Court

May 14, 2018

Murphy v. National Collegiate Athletic Association

No. 16-476

www.supremecourt.gov/opinions/17pdf/16-476_dbfi.pdf

Background and Procedure. In 1992, the United States Congress passed the Professional and Amateur Sports Protection Act (PASPA) prohibiting a state from sponsoring, operating, advertising, promoting, licensing, or authorizing sports gambling schemes. Included in PASPA were exceptions for state-sponsored sports wagering in certain jurisdictions as well as a provision that allowed New Jersey to enact a sports gambling scheme within one year of PASPA's enactment, which New Jersey failed to do.

In 2012, New Jersey enacted a law to authorize sports gambling at New Jersey casinos and racetracks and implemented a comprehensive regulatory scheme for licensing casinos and sporting events. The National Collegiate Athletic Association (NCAA) and several major professional sports leagues sued under PASPA to enjoin the New Jersey law, which the state defended by arguing that PASPA was unconstitutional pursuant to the Tenth Amendment of the United States Constitution under the anti-commandeering doctrine. The United States District Court for the District of New Jersey (District Court) held that PASPA was constitutional and enjoined the 2012 Act. As a result, New Jersey, in 2014, enacted a law that repealed the provisions of state law prohibiting sports gambling insofar as those provisions related to wagers by persons over 21 years of age at a gambling facility in Atlantic City and did not involve wagers on a New Jersey college team or collegiate event taking place in the state. The NCAA and several major professional sports leagues sued to enjoin the 2014 Act, and the District Court granted summary judgment in favor of the NCAA and the leagues, which decision was affirmed by the United States Court of Appeals for the Third Circuit (Court of Appeals). The Court of Appeals determined that the 2014 Act, despite purporting to be a repeal of laws prohibiting sports gambling, constituted an authorization of sports gambling and therefore was in violation of PASPA. The United States Supreme Court (Court) granted certiorari.

Issue on Appeal. Whether the PASPA provisions prohibiting state authorization or licensing of sports gambling schemes violate the anti-commandeering doctrine of the Tenth Amendment to the United States Constitution.

Holding. The Court held that provisions of PASPA that prohibit state authorization and licensing of sports gambling schemes violate the Constitution's anti-commandeering doctrine. PASPA provisions prohibiting state operation of sports gambling schemes, prohibiting the operation of sports gambling schemes by any person pursuant to law, and prohibiting sports gambling advertising are not severable from the unconstitutional provisions of PASPA and are invalid.

LEGAL UPDATES

Analysis. The anti-commandeering doctrine under the Tenth Amendment provides that Congress does not have the power to compel, i.e. commandeer, states to enact and enforce a federal regulatory program. The Court noted that the anti-commandeering doctrine is important because it serves as one of the Constitution's structural safeguards of liberty, advances political accountability, and prevents Congress from shifting regulatory costs to the states. Despite the fact that PASPA does not require any affirmative action by states to enforce the prohibition on states authorizing or licensing sports gambling schemes, the Court found that the PASPA provision prohibiting state authorization or licensing of sports gambling schemes violates the anti-commandeering doctrine. The Court explained that there was no meaningful difference between directing a state legislature to enact a new law or prohibiting a state legislature from doing so, and PASPA's provision prohibiting state authorization of sports gambling violated the anti-commandeering doctrine because it specifically mandated what a state could and could not do. The Court also rejected the argument that the PASPA provision prohibiting state authorization of sports gambling preempted the ability of a state to enact legislation in contravention of PASPA since the PASPA provision in question regulates states, and not private actors.

After determining that the PASPA provisions prohibiting state authorization and licensing of sports gambling schemes violated the Constitution's anti-commandeering doctrine, the Court considered whether other provisions of PASPA are also invalid or whether they can be severed from those provisions determined unconstitutional and remain legally effective. In determining this question, the Court examined whether the law remained fully operative without the invalid provisions and whether enforcement of those provisions not determined unconstitutional can still implement a coherent federal policy. At issue were PASPA provisions prohibiting state operation of sports gambling schemes, prohibiting the operation of sports gambling schemes by persons pursuant to law, and prohibiting sports gambling advertising. The Court concluded that none of the provisions could be severed from those provisions of PASPA determined to be unconstitutional. The Court noted that it made no rational sense to strike down provisions prohibiting state authorization or licensing of sports gambling while maintaining the prohibition on the state operation of sports gambling. Similarly, the Court concluded that since Congress lacks the authority to prohibit a state from legalizing sports gambling, maintaining the prohibition on private conduct in operating sports gambling under state law ceases to implement any coherent federal policy. Finally, the Court concluded that if state-authorized sports gambling is no longer illegal under federal law, Congress would not want the PASPA provision restricting sports gambling advertising to remain.

Concurrence and Dissent. In two separate opinions, three Justices argued that regardless of whether the PASPA provisions prohibiting state authorization or licensing of sports gambling is unconstitutional, the provision of PASPA prohibiting persons from sponsoring, operating, advertising, or promoting sports gambling schemes pursuant to law is severable and can remain valid and be enforced. Both opinions noted that Congress has the power to prohibit sports gambling schemes and that the entirety of PASPA seeking that end does not need to be declared invalid even if the provisions prohibiting state authorization or licensing of sports gambling are deemed invalid under the anti-commandeering doctrine. The provisions of PASPA prohibiting individuals from sponsoring, operating, advertising, or promoting sports gambling schemes can remain and operate to fulfill the intent of the federal legislation.

Impact on Iowa. The Court's decision determining the provisions of PASPA invalid removes any federal restriction on the ability of Iowa to authorize and regulate sports gambling within Iowa.

LSA Monitor: Ed Cook, Legal Services, 515.281.3994