



March 8, 2017

2015-2017 Vol. 42

## GENERAL SESSION

March 1, 2017

### **Program Topics: Consent and Carry**

**Presented by:** JUDICIARY COMMITTEE  
Sophia Hawes-Tingey and Kathryn Gustafson

**Speakers:**  
Dr. Ellen Brady, MD, MPH  
Rep. Justin Fawson (R), District 7

[HB198](#) Concealed Carry Amendments, also [HB237](#), Firearms and Domestic Violence Violations.

In the absence of the bill's sponsor, Rep. Lisonbee, WSLC Judiciary Director Sophia Hawes-Tingey explained that HB198 proposes to reduce the age requirement for obtaining a provisional concealed carry permit from 20 to 18. This would allow college students will be allowed to better protect themselves from assaults by using deadly force.

Dr. Ellen Brady spoke in opposition to HB198 and HB237. Her interest in these issues is both personal and professional. She states that the Constitution's second amendment was based on the slave states' desire to quell rebellions\*. In 2008, the US Supreme Court upheld in DC vs. Heller the right of individual gun ownership, but Federal courts since then have still allowed state regulations on gun ownership.

Dr. Brady noted that there were several bills before the legislature currently, and she wanted to address gun issues more broadly than the details of HB198. She argued that the reasons usually cited as positive aspects of gun ownership are not

supported by statistics. She went over data on self-defense (usually ineffective, especially when the attacker is an intimate partner of the victim), disarming the "good guys" (gun control laws are usually correlated with lower rates of death by firearm, including the large component of suicides), and the epidemic of gun violence (surpassing automobile deaths in some states).

She also commented on HB259 (duty to retreat), as a measure that could encourage violence and confuse prosecution efforts, despite the claim that it would clarify legal issues.

A WSLC member commented that 87% of rape victims know their attackers.

Dr. Brady noted that she had personally seen the effects of gun violence in her work as a physician and also in her family. After moving to Utah she felt that she was obligated to speak out about the issues.

A representative of a Utah domestic violence organization offered the information that 42%-50% of homicides are related to domestic violence.

Dr. Brady urged support of Rep. Brian King's bill, [HB206](#) Domestic Violence -- Weapons Restrictions.

WSLC Judiciary Director Sophia Hawes-Tingey led a further discussion about the bill. She said that the bill was meant to reduce assaults on campus and to combat "stranger danger". A few people said that they had carried guns in college and they felt an enhanced sense of safety. Members then engaged in a general discussion of concealed weapons and self-protection.

One WSLC member said that as a former university lecturer, she would not want to have young, emotionally volatile students carrying guns into a classroom.

Another WSLC member talked about her experience with weapons training. She was impressed at the great amount of information necessary to carry and use a gun safely.

Another perspective was one of personal experience with a home invasion that was thwarted with a small, unloaded gun.

Yet another member commented about the danger of being overpowered and having a weapon turned against the licensed carrier.

Further discussion concerned whether or not a college could prohibit guns on campus (Utah disallows this for public universities).

Another question about whether or not other states would honor the concealed carry permits for teenagers was answered by noting that because the permits are provisional, they would not extend to other states.

Two last comments concerned Chicago's strict gun laws and high homicide rate. Although this seems to indicate that gun control is ineffective, one person offered the observation that the gun laws in

nearby states and municipalities were among the least restrictive in the nation.

\* Editor's note: The origin and meaning second amendment are topics of debate among constitutional law experts. Dr. Brady cited a website as her source, and information there is based on the Carl Bogus article, cited below. Those who are interested in further researching the topic might include the Malcolm book in their reading. The more recent Waldman book may provide yet another perspective based on recent Supreme Court decisions.

"The Hidden History of the Second Amendment", Carl T. Bogus, UC Davis Law Review, 1998, vol. 31, no. 2

"To Keep and Bear Arms: The Origins of an Anglo-American Right", by Joyce Lee Malcolm, 1994

"The Second Amendment, A Biography," By Michael Waldman, 2014

---

### HB 369 Sexual Offenses and Statutory Non-consent



*Rep. Fawson*

There is no required penalty enhancement in current Utah law for a sexual crime committed by a perpetrator who is HIV positive. The bill proposes to move one step up from the base criminal charge for the infected defendants.

This provision was requested by the family of the victim of a kidnapping and rape during which HIV was transmitted.

Another part of the bill requires an HIV positive individual to disclose the infection to a consenting sexual partner. Equality Utah and the ACLU oppose the bill as being discriminatory and archaic. Rep. Fawson disagrees and said the intent is not to target a specific demographic but to target a specific infection. The

consequences of not disclosing HIV infection would be a class A misdemeanor. Thirty other states have run or enacted this type of legislation. [Ed: the CDC website lists only 3 states, including Utah, that do not have HIV informed consent laws.]

In the Q&A period, one WSLC asked why other STIs were not included in the bill. Rep. Fawson suggested the legislative committee might discuss those extensions during the interim session, should this bill pass. WSLC member Brandi Farmer, who works for the state health department, commented that she thought that state law already required disclosure. Her department encourages HIV positive individuals to make such disclosures. In some cases, the health department has been required to disclose HIV positive status of an individual to the DAs office. Ms. Farmer noted the difficulty to proving non-disclosure and asked how Rep. Fawson expected prosecutors to deal with it.

In response, Rep. Fawson said that the HIV status could be determined by talking to previous partners, for example. He also noted that in Utah state code, HIV disclosure is only addressed in the section on prostitution. In response to a question about proactive HIV prevention measures, Rep. Fawson said that no medication would reduce the risk of HIV transmission to zero.

The issue of proof of non-disclosure was raised a second time, and the answer was that it would be prosecuted in a similar manner to a rape charge.

Yet another questioner asked if judges already have the leeway to enhance penalties in criminal cases. In response, Rep. Fawson said that although they might, the issue to him and his constituents was whether or not they actually do so. This bill would make it mandatory.



*Rep. King*

Opposition to the bill was presented by Rep. King, a practicing attorney. Although he may agree with the criminal charge enhancement, he definitely disagrees with the second part. He feels that Rep.

Fawson is well-intentioned and trying to improve public health, but the bill would have an enormous and possibly unnecessary effect on people's personal lives.

He believes that introducing the possibility of criminalization into the sexual activity between consensual partners is the wrong way to go. From a legal perspective, if there is no intent to harm (in legal terms, no "malinum in se"), and if no harm occurs, then there should be no criminal penalty ("malinum prohibitum"). A person who is HIV positive does not necessarily infect all partners, and there is no reason for the state to impose requirements on all the individual's sexual encounters. Further, people who are using anti-viral medications may reduce their viral count to the point where medical professionals determine that they cannot transmit the disease.

The committee that discussed this bill had some sentiment to include all STIs. Rep. King felt that would make the bill untenable.

He said that he felt that in most people's minds, HIV is associated almost exclusively with the LGBT community.

Another question concerned statutory rape, and Rep. King said that it would indeed require an enhancement, but he was unsure about how the state code classifies the offense. He spoke at some length about the difficulty of determining criminal penalties for various forms of consenting sexual behavior, noting that there are considerations of the ages and age differences of the parties.

WSLC member Josie Valdez commented that the legislative discussions of the bill were so explicitly detailed that they would have exposed visiting schoolchildren to concepts that are forbidden in public schools.

Rep. King noted that Utah has a historic discomfort with sexual matters. He quoted a former legislator who stated on the House floor that “we can't be teaching kids how to have sex and get away with it.” King humorously noted that the original form of the bill reminded him strongly of that comment because of its detailed list of sexual offenses (including sexual intercourse). These were removed by amendment.

---

**NOTE:** WSLC members present at the March 1 meeting voted to adopt two resolutions, one opposing HB198 (Provisional Concealed Carry Permits) and another supporting HB200 (Rape Kit Testing).

This Bulletin is a publication of  
The Women’s State Legislative Council of Utah, Inc.  
<http://www.wslcofutah.org>

“Celebrating 97 years of service”  
1920 - 2017

**President: Shauna Scott-Bellacomo**  
**Advisor: Donna Murphy**  
**Editor: Hilarie Orman**  
**Reporter: Lorene Kamalu**

*Printed by AlphaGraphics  
117 West 900 South  
Salt Lake City, UT 84101*