

**MINUTES OF THE
HOUSE JUDICIARY STANDING COMMITTEE MEETING
Room W020 - House Building, State Capitol Complex
February 23, 2010**

MEMBERS PRESENT: Rep. Lorie D. Fowlke, Chair
Rep. Jim Bird, Vice Chair
Rep. Sheryl L. Allen
Rep. Jackie Biskupski
Rep. Francis Gibson
Rep. Keith Grover
Rep. Eric K. Hutchings
Rep. Brian King
Rep. Kay L. McIff
Rep. Kraig Powell
Rep. Mark A. Wheatley

MEMBERS ABSENT: Rep. Christine A. Johnson

STAFF PRESENT: Jerry D. Howe, Policy Analyst
Kathy Sorg, Committee Secretary

NOTE: A list of visitors and a copy of handouts are filed with the committee minutes.

Rep. Bird called the meeting to order at 8:12 a.m.

MOTION: Rep. Powell moved to approve the minutes of the February 19, 2010 meeting. The motion passed unanimously with Rep. Allen, Rep. Gibson, Rep. Grover and Rep. Wheatley absent for the vote.

H.B. 162 Unlawful Sexual Conduct with a Minor (*Rep. R. Edwards*)

Rep. Edwards explained the bill to the committee with the assistance of Jason Barnes, Utah Adoption Council.

Spoke for the bill: James Wadman, Utah Adoption Council.

Spoke against the bill: Jacey Skinner, Utah Sentencing Commission.

MOTION: Representative Biskupski moved to pass H.B. 162 with a favorable recommendation.

SUBSTITUTE

MOTION: Rep. Fowlke moved to proceed to the next item on the agenda. The motion passed with Rep. Biskupski and Rep. McIff voting against the motion, and with Rep. Gibson and Rep. Wheatley absent for the vote.

H.B. 289 Judicial Nominating Commission Amendments (Rep. C. Oda)

Rep. Oda explained the bill to the committee.

Spoke to the bill: Rick Schwermer, Assistant State Court Administrator.

MOTION: Rep. McIff moved to adopt 1st Sub. H.B. 289 The motion passed unanimously with Rep. Allen and Rep. Gibson absent for the vote.

MOTION: Rep. McIff moved to amend 1st Sub. H.B. 289 as follows:

1. *Page 8, Lines 217 through 228:*

217 78A-10-203. Procedure.

218 (1) {~~Except for the chief justice of the Supreme Court, each commissioner is a voting~~

219 ~~member of the Appellate Court Nominating Commission.~~

220 ~~—(2)—~~ Four commissioners are a quorum.

221 {~~(3)~~} (2) The ~~[state court administrator shall]~~ governor shall appoint a member of the

222 governor's staff to serve as [secretary] staff to the Appellate Court Nominating Commission.

223 {~~(4)~~} (3) The ~~[chief justice of the Supreme Court]~~ governor shall:

224 (a) ensure that the commission follows the rules promulgated by the ~~[Judicial Council]~~

225 governor; and

226 (b) resolve any questions regarding those rules.

227 {~~(5)~~} (4) A member of the commission who is also a member of the Utah State Bar may

228 recuse himself if there is a conflict of interest that makes the member unable to serve.

2. *Page 9, Lines 260 through 272:*

260 78A-10-303. Procedure.

261 (1) {~~Except for the chief justice of the Supreme Court, each trial court~~
nominating
262 commissioner is a voting member of the commission.
263 ~~—(2)}~~ Four commissioners are a quorum.
264 {~~(3)}~~ (2) The ~~[state court administrator shall]~~ governor shall appoint a
member of the
265 governor's staff to serve as [secretary] staff to each Trial Court Nominating Commission.
266 {~~(4)}~~ (3) The ~~[chief justice of the Supreme Court]~~ governor shall:
267 (a) ensure that each Trial Court Nominating Commission follows the rules
268 promulgated by the ~~[Judicial Council]~~ governor; and
269 (b) resolve any questions regarding those rules.
270 {~~(5)}~~ (4) A member of a Trial Court Nominating Commission who is also a
member of the
271 Utah State Bar may recuse himself if there is a conflict of interest that makes the member
272 unable to serve.

The motion to amend 1st Sub. H.B. 289 passed unanimously with Rep. Allen and Rep. Gibson absent for the vote.

MOTION: Rep. McIff moved to amend 1st Sub. H.B. 289 as follows:

1. *Page 7, Lines 210 through 211:*

210 {+} (6) (a) The chief justice of the Supreme Court {~~is~~} shall appoint
another member of the judicial council to serve as an ex officio, nonvoting member
of
211 the Appellate Court Nominating Commission. {+}

2. *Page a9, Lines 253 through 254:*

253 {+} (8) (a) The chief justice of the Supreme Court {~~is~~} shall appoint
another member of the judicial council to serve as an ex officio, nonvoting member
of
254 each Trial Court Nominating Commission. {+}

The motion to amend 1st Sub. H.B. 289 passed unanimously with Rep. Allen and Rep. Gibson absent for the vote.

MOTION: Rep. Fowlke moved to amend 1st Sub. H.B. 289 as follows:

1. Page 9, Lines 252 through 256:

252 Utah State Bar to a Trial Court Nominating Commission.

253 {+} (8) (a) The presiding judge of the district served by the trial court
254 nominating commission is an ex officio, nonvoting member of

each Trial Court Nominating Commission.]

255 [(b) If the {~~chief justice~~} presiding judge cannot serve on the
256 commission, the {~~chief justice~~} presiding judge shall appoint

another {~~justice of the Supreme Court~~} judge of the district to serve. {+}

Rep. Fowlke withdrew the motion.

MOTION: Rep. McIff moved to pass 1st Sub. H.B. 289 as amended with a favorable recommendation. The motion failed with Rep. Grover, Rep. Hutchings, Rep. McIff, Rep. Powell and Rep. Bird voting in favor of the motion.

H.B. 364 Right of Identity Theft Victim to Civil Cause of Action (Rep. Julie Fisher)

Rep. Fisher explained the bill to the committee with the assistance of Richard Hamp, Assistant Attorney General. A handout entitled Right of Identity Theft Victim to Civil Cause of Action was distributed to the committee.

Spoke in favor of the bill: Ronald Mortensen.

MOTION: Rep. Hutchings moved to pass H.B. 364 with a favorable recommendation. The motion passed unanimously with Rep. Powell absent for the vote.

MOTION: Rep. Gibson moved to place H.B. 364 on the Consent Calendar. The motion passed unanimously with Rep. Powell absent for the vote.

H.B. 355 Legal Guardianship Amendments (Rep. S. Sandstrom)

The bill was not considered.

H.B. 150 Administrative Subpoena Amendments (Rep. B. Daw)

Rep. Daw explained the bill to the committee.

MOTION: Rep. Fowlke moved to amend as follows:

1. *Page 1, Lines 23 through 24:*

- 23 the commission of a criminal offense, to ~~{include}~~ specify when the agency
reasonably
24 believes ~~{the criminal}~~ a felony offense or stalking or electronic
communication harassment may have been committed.

2. *Page 3, Lines 67 through 68:*

- 67 communications system or service or remote computing service has been ~~{or may have~~
been}
68 used in the commission of [the] ~~{a criminal}~~ any felony offense , or the
offense of stalking under Section 76-5-106.5 or electronic communication harassment
under Section 76-9-201, , the prosecutor may issue an administrative

3. *Page 3, Lines 87 through 88:*

- 87 produce any records under ~~{Subsection}~~ Subsections (2) (a) through (g)
that are reasonably relevant to the investigation of
88 the suspected [~~sexual offense against a minor~~] ~~{criminal activity or}~~ felony
offense , or the offense of stalking under Section 76-5-106.5 or electronic
communication harassment under Section 76-9-201, as described in the

The motion to amend H.B. 150 passed unanimously with Rep. McIff and Rep. Powell absent for the vote.

Spoke in favor of the bill: Wade Faraway, Assistant Attorney General.

Spoke against the bill: Kent Hart, Utah Association of Criminal Defense Lawyers.

MOTION: Rep. Fowlke moved to pass H.B. 150 as amended with a favorable recommendation. The motion passed with Rep. King voting in opposition to the motion.

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MOTION: Representative Biskupski moved to adjourn the meeting. The motion passed unanimously with Rep. McIff absent for the vote.

Rep. Bird adjourned the meeting at 9:59 a.m.

Rep. Lorie Fowlke, Chair