

**MINUTES OF THE
SENATE JUDICIARY, LAW ENFORCEMENT & CRIMINAL JUSTICE
STANDING COMMITTEE MEETING
WEDNESDAY, FEBRUARY 21, 2007, 8:00 A.M.
ROOM W130, WEST OFFICE BUILDING, STATE CAPITOL COMPLEX**

Members Present: Sen. Gregory S. Bell, Chair
 Sen. Jon J. Greiner
 Sen. Lyle W. Hillyard
 Sen. Mark B. Madsen
 Sen. Scott D. McCoy
 Sen. Ross I. Romero

Members Excused: Pres. John L. Valentine

Staff Present: Jerry Howe, Policy Analyst
 Bonnie Brinton, Committee Secretary

Public Speakers Present: Paul Boyden, Executive Director, Statewide Association of
 Prosecutors
 Jim Jardine, Attorney, Defense Bar
 Edward Havas, Attorney, Utah Trial Lawyers Association
 Rep. Kay McIff
 Doug Mortensen, Attorney, Utah Trial Lawyers Association

A list of visitors and a copy of handouts are filed with the Committee minutes.

Chair Bell called the meeting to order at 8:10 a.m.

1. 1st Sub. H.B. 189 Criminal Statute of Limitations Amendments (Rep. C. Wimmer)

Rep. Wimmer explained the bill.

MOTION: Sen. Greiner moved to pass 1st Sub. H.B. 189 out of Committee with a favorable recommendation.

The motion passed unanimously with Sen. Hillyard absent for the vote.

2. 3rd Sub. H.B. 86 Penalties for Sexual Offenses and Child Kidnapping (Rep. C. Wimmer)

MOTION: Sen. Madsen moved to adopt the following amendments to 3rd Sub. H.B. 86:

1. *Page 1, Lines 1 through 4:*

1 PENALTIES FOR SEXUAL
2 OFFENSES AND ~~{CHILD}~~ KIDNAPPING
3 2007 GENERAL SESSION
4 STATE OF UTAH

2. *Page 1, Lines 15 through 18:*

- 15 ▶ increases the base penalties for certain sexual offenses and ~~{child}~~
kidnapping offenses ;
16 ▶ provides for greater penalties for certain sexual offenses and ~~{child}~~
kidnapping offenses when
17 the defendant causes serious bodily injury to another during the course of the
18 commission of the offense;

3. *Page 2, Lines 41 through 42:*

41 76-5-301.1, as last amended by Chapter 301, Laws of Utah 2001
= 76-5-302, as last amended by Chapter 301, Laws of Utah 2001
42 76-5-402, as last amended by Chapter 267, Laws of Utah 1991

4. *Page 5, Lines 134 through 140:*

- 134 (5) "Dangerous weapon" means:
135 (a) any item capable of causing death or serious bodily injury; or
136 (b) a facsimile or representation of the item ~~{,and}~~ ,if :
137 (i) the actor's use or apparent intended use of the item leads the victim to reasonably
138 believe the item is likely to cause death or serious bodily injury; or
139 (ii) the actor represents to the victim verbally or in any other manner that he is in
140 control of such an item.

5. *Page 5, Line 147:*

147 (f) sodomy on a child ~~{,}~~ Section 76-5-403.1;

6. *Page 19, Line 563:*

563 Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a,
Commitment and Treatment of Mentally Ill Persons, except as

7. Page 20, Lines 586 through 587:

586 [~~(10)~~] (14) any attempt to commit a felony listed in
 ~~{Subsections}~~ Subsection [~~(5), (6), and (7)~~] (6),
587 (8), or (10).

8. Page 20, Line 589 through Page 21, Line 617:

589 76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior
590 felony convictions.
591 (1) As used in this section:
592 (a) " ~~{Type one}~~ Prior sexual offense" means:
593 (i) a felony offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
594 (ii) sexual exploitation of a minor, Section 76-5a-3;
595 (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;
596 (iv) a felony attempt to commit an offense described in Subsections (1)(a)(i) through
597 (iii); or
598 (v) an offense in another state, territory, or district of the United States that, if
599 committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through
 (iv).
600 (b) " ~~{Type two sexual}~~ Sexual offense" means:
601 (i) an offense that is a felony of the second or third degree, or an attempted offense,
602 which attempt is a felony of the second or third degree, described in Title 76, Chapter 5,
 Part 4,
603 Sexual Offenses;
604 (ii) sexual exploitation of a minor, Section 76-5a-3;
605 (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;
606 (iv) a felony attempt to commit an offense described in Subsection (1)(b)(ii) or (iii);
 or
607 (v) an offense in another state, territory, or district of the United States that, if
608 committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through
 (iv).
609 (2) Notwithstanding any other provision of law, the maximum penalty for a ~~{type~~
 two}
610 sexual offense is increased by five years for each ~~{prior}~~ conviction of the defendant

for a ~~{type~~
611 ~~one}~~ prior sexual offense that arose from a separate criminal episode, if the trier of
fact finds that:
612 (a) the defendant was convicted of ~~{the type one}~~ a prior sexual offense;
and
613 (b) the defendant was convicted of the ~~{type one}~~ prior sexual offense
described in Subsection
614 (2)(a) before the defendant was convicted of the ~~{type two}~~ sexual offense for which
the
615 defendant is being sentenced.
616 (3) The increased maximum term described in Subsection (2) shall be in addition to,
617 and consecutive to, any other prison term served by the ~~{person}~~ defendant .

9. *Page 21, Line 645 through Page 22, Line 646:*

645 (6) Imprisonment under this section is mandatory in accordance with Section
76-3-406.

= **Section 11. Section 76-5-302 is amended to read:**

76-5-302. Aggravated kidnapping.

(1) An actor commits aggravated kidnapping if the actor, in the course of committing unlawful detention or kidnapping:

(a) possesses, uses, or threatens to use a dangerous weapon as defined in Section 76-1-601; or

(b) acts with intent:

(i) to hold the victim for ransom or reward, or as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct;

(ii) to facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony;

(iii) to hinder or delay the discovery of or reporting of a felony;

(iv) to inflict bodily injury on or to terrorize the victim or another;

(v) to interfere with the performance of any governmental or political function; or

(vi) to commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual Offenses.

(2) As used in this section, "in the course of committing unlawful detention or

kidnapping" means in the course of committing, attempting to commit, or in the immediate flight after the attempt or commission of a violation of:

(a) Section 76-5-301, kidnapping; or

(b) Section 76-5-304, unlawful detention.

(3) Aggravated kidnapping is a first degree felony punishable by ~~{imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life.}~~ a term of imprisonment of:

(a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and which may be for life;

(b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact finds that during the course of the commission of the aggravated kidnapping the defendant caused serious bodily injury to another; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated kidnapping, the defendant was previously convicted of a grievous sexual offense.

(4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) for purposes of Subsection (3)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (3)(a) or (b):

(i) ten years and which may be for life; or

(ii) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(c).

(6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

10. Page 24, Lines 713 through 714:

713 ~~{(i)}~~ (a) ten years and which may be for life; or

714 ~~{(ii)}~~ (b) six years and which may be for life.

11. Page 26, Lines 785 through 787:

785 (b) except as provided in Subsection (2)(c) or (3), life without parole, if the trier of

fact
786 finds that during the course of the commission of the sodomy upon ~~{of}~~ a child the
defendant
787 caused serious bodily injury to another; or

12. Page 27, Line 812:

812 punishable by a term of imprisonment of not less than ~~{1}~~ one year nor more
than 15 years; or

13. Page 30, Line 916:

916 (b) for purposes of Subsection (2)(a) or ~~{(2)}~~ (b):

The motion passed unanimously with Sen. Hillyard absent for the vote.

Rep. Wimmer explained the bill.

Paul Boyden, Executive Director, Statewide Association of Prosecutors, assisted in the explanation of the bill.

MOTION: Sen. McCoy moved to adopt the following amendments to 3rd Sub. H.B. 86:

1. Page 25, Lines 749 through 752:

749 76-5-403. Sodomy -- Forcible sodomy.
750 (1) A person commits sodomy when the actor engages in any sexual act with a person
751 who is at least 14 years of age ~~{or older}~~ , but younger than 18 years of
age, involving the genitals of one person and mouth or anus of
752 another person, regardless of the sex of either participant.

Paul Mero, Sutherland Institute; and Wade Faraway, Utah Attorney General's Office; spoke in favor of the bill.

The motion passed unanimously with Sen. Hillyard absent for the vote.

MOTION: Sen. Madsen moved to pass 3rd Sub. H.B. 86, as amended, out of Committee with a favorable recommendation.

The motion passed unanimously with Sen. Hillyard absent for the vote.

3. **H.B. 157 Victim Restitution** (Rep. S. Clark)

Rep. S. Clark explained the bill.

MOTION: Sen. Greiner moved to pass H.B. 157 out of Committee with a favorable recommendation.

The motion passed unanimously with Sen. Hillyard absent for the vote.

MOTION: Sen. Greiner moved to place H.B. 157 on the Consent Calendar.

The motion passed unanimously with Sen. Hillyard absent for the vote.

4. **H.B. 131 Document Fraud** (Rep. K. Morgan)

Rep. Morgan explained the bill and distributed a handout.

MOTION: Sen. Romero moved to adopt the following amendment to H.B. 131:

1. *Page 1, Lines 13 through 16*
House Committee Amendments
1-31-2007:

13 This bill:
14 ▶ prohibits a person or entity from forging, counterfeiting, altering, or falsely
 making
15 or providing a document to unlawfully establish legal status and subjects a violator
16 to a civil penalty {~~of not less than \$50,000~~} up to \$75,000 ;

2. *Page 2, Lines 41 through 44*
House Committee Amendments
1-31-2007:

41 (3) (a) A person or entity that violates Subsection (2) is subject to a civil penalty {
of not
42 less than \$50,000} up to \$75,000 recoverable, with attorney fees and costs, in a
civil action that may be
43 brought by the Office of the Attorney General ~~H~~→ [on behalf of the Department of
Workforce
44 Services] ←~~H~~ for each document subject to the violation.

The motion passed unanimously with Sen. Hillyard absent for the vote.

MOTION: Sen. Romero moved to pass H.B. 131, as amended, out of Committee with a favorable recommendation.

The motion passed unanimously.

5. H.B. 45 Comparative Negligence Amendments (*Rep. S. Wyatt*)

Rep. Wyatt explained the bill.

Jim Jardine, Attorney, Defense Bar, assisted in the explanation of the bill and spoke in favor of the bill.

Edward Havas, Attorney, Utah Trial Lawyers Association, spoke against the bill.

Rep. McIff spoke to the bill.

Doug Mortensen, Attorney, Utah Trial Lawyers Association, spoke against the bill.

MOTION: Sen. Greiner moved to adjourn.

Chair Bell adjourned the meeting at 9:10 a.m.

Sen. Gregory S. Bell, Committee Chair