

MINUTES OF THE HOUSE
LAW ENFORCEMENT AND CRIMINAL JUSTICE STANDING COMMITTEE
Room WO25, West Office Building, State Capitol Complex
February 11, 2008

Members Present: Rep. DeMar "Bud" Bowman, Chair
Rep. Curt Oda, Vice Chair
Rep. David Litvack
Rep. Becky Lockhart
Rep. Michael Morley
Rep. Paul Ray
Rep. Jennifer Seelig
Rep. Ken Sumsion
Rep. Larry Wiley
Rep. Carl Wimmer

Members Absent: Rep. Brad Dee

Staff Present: Mr. Stewart Smith, Policy Analyst
Ms. Linda Black, Committee Secretary

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

Rep. Bowman called the meeting to order at 8:15 a.m.

MOTION: Rep. Ray moved to approve the minutes of February 6, 2008. The motion passed unanimously with Rep. Morley, Rep. Wiley, and Rep. Wimmer absent for the vote.

S.C.R. 3 Resolution Supporting Observance of Peace Officers Memorial Day (*Sen. J. Greiner*) (**Rep. R. Greenwood**)

Sen. Greiner presented the resolution.

MOTION: Rep. Ray moved to pass the resolution out favorably. The motion passed unanimously with Rep. Litvack, Rep. Morley, and Rep. Wimmer absent for the vote.

MOTION: With the approval of the sponsor, Rep. Ray moved to place the resolution on the Consent Calendar. The motion passed unanimously with Rep. Litvack, Rep. Morley, and Rep. Wimmer absent for the vote.

H.B. 171 Driving Privilege Card Amendments (*Rep. B. Daw*)

Rep. Daw presented the bill.

Spoke in favor
of the bill: Mr. Ronald Mortensen, citizen

MOTION: Rep. Ray moved to pass the bill out favorably. The motion passed unanimously with Rep. Litvack and Rep. Wimmer absent for the vote.

H.B. 161 Sex Offenders' Contact with Children (Rep. R. Greenwood)

Rep. Greenwood presented the bill.

MOTION: Rep. Sumsion moved to amend the bill as follows:

1. Page 1, Line 15:

15 provides that it is a {~~third degree felony~~} class A misdemeanor for any sex offender whose offense was

2. Page 1, Line 19:

19 child's parent or guardian authorizing the offender to accompany the child; {~~or~~}

3. Page 1, Line 22:

22 child's home; or
= = • the child is the natural child of the sex offender, and the offender is not prohibited by any court order, or probation or parole provision, from contact with the child;

4. Page 10, Line 286:

286 (2) A sex offender subject to registration under Section {~~77-27-21.7~~} =
77-27-21.5 for the commission

5. Page 10, Lines 287 through 288:

287 of an offense committed against a child younger than 14 years of age is guilty of a {
third degree
288 felony} class A misdemeanor if the sex offender requests, invites, or allows a child to accompany the sex offender.

6. Page 10, Line 294:

294 the child only at the date and location specified in the authorization; {~~or~~}

7. *Page 10, Line 297:*

297 residence, but in no other location ; or
(c) the child is the natural child of the sex offender, and the offender is not
prohibited by any court order, or probation or parole provision, from contact
with the child .

8. *Page 10, Lines 299 through 300:*

299 under Section {~~77-21-21.7~~} 77-27-21.5 for an additional five years subsequent
to the required registration
300 under Section {~~77-21-21.7~~} 77-27-21.5 .

The motion passed unanimously with Rep. Litvack and Rep. Wimmer absent for the vote.

Spoke in favor

of the bill: Mr. Alden Orme, Sheriff, Juab County
Sgt. Greg Peterson, Sanpete County
Mr. Reed Richards, Weber County Sheriffs Office

MOTION: Rep. Sumsion moved to pass the bill out favorably. The motion passed unanimously with Rep. Wimmer absent for the vote.

H.B. 344 Alcoholic Beverage Enforcement Provisions (*Rep. C. Oda*)

Rep. Oda presented the bill

Rep. Lockhart moved to amend the bill as follows:

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

41 Other Special Clauses:
42 {~~None~~} This bill coordinates with H.B. 157, Alcoholic Beverage Control
Violations Amendments, to merge substantive changes.

2. *Page 76, Lines 2328 through 2334:*

2328 (1) A person in or having charge of [~~any~~] a premises may not refuse or fail to admit
to

- 2329 the premises or obstruct the entry of [any]:
2330 (a) a member of the commission[-];
2331 (b) an authorized representative of the commission or department[-, or any];
2332 (c) ~~{a}~~ - an agent of the State Bureau of Investigation or other law
enforcement officer who demands entry when acting under this title[-]; or
2333 (d) an authorized representative of the attorney general who demands entry when
2334 acting under this title.

3. Page 76, Lines 2335 through 2340:

- 2335 (2) A person in or having charge of [any] a premises may not interfere with any of the
2336 following who is conducting an investigation under this title at the premises:
2337 (a) a member of the commission;
2338 (b) an authorized representative of the commission or department; [or]
2339 (c) ~~{any}~~ an agent of the State Bureau of Investigation or other law
enforcement officer[-]; or
2340 (d) an authorized representative of the attorney general.

4. Page 78, Lines 2399 through 2406:

- 2399 (1) A person having sold, selling, or offering [any] an alcoholic product for sale to
the
2400 commission or department may not offer, make, tender, or in any way deliver or transfer
[any]
2401 a bribe, gift as defined in Section 67-16-5, or a share of profits to:
2402 (a) [any] a commissioner;
2403 (b) the department director;
2404 (c) [any] a department employee; [or]
2405 (d) [any] ~~{a}~~ an agent of the State Bureau of Investigation or other law
enforcement officer responsible for the enforcement of this title[-]; or
2406 (e) a representative of the attorney general responsible for the enforcement of this
title.

5. Page 79, Lines 2430 through 2444:

- 2430 (1) It is the duty of the following to diligently enforce this title in their respective
2431 capacities:
2432 (a) the governor[-, the commissioners,];

- 2433 (b) a commissioner;
2434 (c) the director [and all officials, inspectors, and employees] of the department;
2435 (d) an official, inspector, or employee of the department[, all];
2436 (e) the attorney general;
2437 (f) a prosecuting [officials] official of the state [and its political subdivisions and of
2438 counties, cities, and towns, all peace officers, sheriffs, deputy sheriffs, constables,
marshals,] or
2439 a political subdivision;
2440 (g) a county, city, or town;
2441 (h) **an agent of the State Bureau of Investigation,** a peace officer, **a** sheriff,
a deputy sheriff, **a** constable, **a** marshal, or **a** law enforcement
2442 [officials,] official;
2443 (i) a state health [officials,] official; and [all clerks]
2444 (j) a clerk of the courts [to diligently enforce this title in their respective capacities].

6. *Page 80, Lines 2451 through 2459:*

- 2451 (1) (a) For purposes of enforcing this title and commission rules, [all members of the
2452 commission, authorized representatives of the commission or department, or any law
2453 enforcement or peace officer] the following shall be accorded access, ingress, and egress
2454 to and
2455 from all premises or conveyances used in the manufacture, storage, transportation, service,
2456 or
2457 sale of [any] an alcoholic product[. They also may open any]:
2458 (i) a member of the commission;
2459 (ii) an authorized representative of the commission or department;
2459 (iii) an authorized representative of the attorney general; or
2459 (iv) **an agent of the State Bureau of Investigation,** a law enforcement
officer, or **a** peace officer.

7. *Page 87, Line 2671:*

2671 title for three years from the date the license is not renewed.

Section 26. Coordinating H.B. 344 and H.B. 157 -- Merging substantive amendments.
If this H.B. 344 and H.B. 157, Alcoholic Beverage Control Violations Amendments, both pass it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication to:

(1) modify Subsections 32A-1-119.5(2), (3) and (4) enacted in H.B. 157 to read:

"(2) A disciplinary proceeding may not be initiated or maintained by the commission or attorney general on the basis, in whole or in part, of a violation of this title unless a person listed in Subsections 32A-1-105(15)(a)(i) through (vi) against whom the violation is alleged is notified by the department of the violation in accordance with this section.

(3) (a) A nondepartment enforcement agency or nondepartment enforcement officer may not report a violation of this title to the department more than eight business days after the day on which a nondepartment enforcement officer or agency completes an investigation that finds a violation of this title.

(b) If the commission or attorney general wants the right to initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of a violation of this title alleged in a report described in Subsection (3)(a), the department shall notify a person listed in Subsections 32A-1-105(15)(a)(i) through (vi) alleged by the report to have violated this title:

(i) by no later than eight business days of the day on which the department receives the report described in Subsection (3)(a); and

(ii) that the commission or attorney general may initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of the violation.

(4) If the commission or attorney general wants the right to initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of a violation of this title alleged by report of a department compliance officer, the department shall notify a person listed in Subsections 32A-1-105(15)(a)(i) through (vi) alleged by the report to have violated this title:

(a) by no later than eight business days after the day on which the department compliance officer completes an investigation that finds a violation of this title; and

(b) that the commission or attorney general may initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of the violation."; and

(2) insert a new Subsection (8) in Section 32A-1-119.5 enacted in H.B. 157 to read:

"(8)(a) A report to the department under this section of a violation of this title is considered a report to the attorney general for purposes of Section 32A-1-119.

(b) The department shall forward a report received by the department under this section to the attorney general before the time period required to provide notification under this section to a person listed in Subsections 32A-1-105(15)(a)(i) through (iv)."

The motion passed unanimously with Rep. Wimmer absent for the vote.

Spoke in opposition

of the bill: Mr. Gordon Strachan, Dept. of Alcoholic Beverage Control
Ms. Kathryn Balmforth, Dept. of Alcoholic Beverage Control
Mr. Larry Lunt, citizen
Mr. Earl Dorius, Regulatory Director, Dept. of Alcoholic Beverage Control (handout)

Spoke to the bill: Ms. Sheila Page, Assistant Attorney General

MOTION: Rep. Wiley moved to pass the bill out favorably. The motion passed with Rep. Litvack voting in opposition.

H.B. 181 Disposition of Potential Evidence (*Rep. T. Cosgrove*)

Rep Cosgrove presented the bill with the assistance of Mr. Ron Gordon, Executive Director, Crime Victims Reparation Board.

MOTION: Rep. Sumsion moved to amend the bill as follows:

1. Page 1, Lines 12 through 14:

12 This bill:

13 ▶ allows law enforcement agencies to dispose of sexual assault forensic
examinations

14 after 90 days have passed and ~~[no case has been filed]~~ the victim has not contacted the law enforcement agency ;

The motion passed unanimously.

Spoke to the bill: Ms. Diane Fuller, Utah Sexual Violence Coordinator
Mr. Rob Latham, Government Affairs Director, Utah Association of Criminal Defense Lawyers

MOTION: Rep. Litvack moved to pass the bill out favorably. The motion passed with Rep. Morley voting in opposition.

MOTION: Rep Ray moved to move **H. B. 377** to the top of the agenda. The motion passed unanimously.

H.B. 377 Code of Criminal Procedure Amendments (Rep. R. Lockhart)

Rep. Lockhart presented the bill.

MOTION: Rep. Ray moved to pass the bill out favorably. The motion passed unanimously.

MOTION: With the approval of the sponsor, Rep. Ray moved to place H.B. 377 on the Consent Calendar. The motion passed unanimously.

H.B. 156 Dna Sample - Felony and Certain Misdemeanor Arrests (Rep. K. Gibson)

Rep. Gibson presented the bill.

MOTION: Rep. Oda moved to amend the bill as follows:

1. *Page 1, Line 2:*

2 MISDEMEANOR {~~ARRESTS~~} CONVICTIONS

2. *Page 1, Line 11:*

11 include collection from persons arrested for any felony and persons convicted
of specified misdemeanors.

3. *Page 1, Lines 14 through 15:*

14 ▶ requires that any law enforcement agency that {~~arrests~~} books a a
person for any felony {~~or~~

15 class A misdemeanor or for assault, a class B misdemeanor,} shall obtain a DNA

4. *Page 1, Line 17:*

= ▶ requires that when a person is convicted of specified misdemeanors, the
arresting law enforcement agency shall obtain a DNA specimen if the
arrested person's specimen is not already on file; {~~and~~}

17 ▶ requires the person convicted of a felony or convicted of specified
misdemeanors {~~arrested person~~} to pay a fee of \$100 for the costs of
collecting the DNA

5. *Page 1, Line 19:*

19 person is not acquitted ; and
▶ provides a process for the destruction of DNA for a booked person who is not prosecuted or who is acquitted .

6. Page 2, Line 46:

46 (c) (i) has been arrested on or after January 1, 2009, for any felony offense under Subsection (2); or
(ii) has been convicted on or after January 1, 2009, for any misdemeanor offense under Subsection (2); .

7. Page 3, Line 74:

74 (1) As used in this section, "person" refers to any person {, including a minor, as} .

8. Page 3, Lines 80 through 81:

80 (i) the person was {-arrested-} booked for a felony or convicted of a misdemeanor under Section 53-10-403 and is not required to reimburse
81 the agency because the person's DNA specimen is already on record under Section 53-10-404.5; or

9. Page 4, Line 97:

97 preferred method of collection {-shall be-} is obtaining a saliva specimen. =

10. Page 4, Lines 110 through 111:

110 (ii) on and after January 1, 2009 {-} :
(A) - {after the arrest} at the booking of a person arrested for any felony offense under
111 Subsection (2)(a) ; and
(B) upon the conviction of any person for any misdemeanor offense under Subsection 53-10-403(2) .

11. Page 5, Lines 128 through 130:

128 (d) On and after January 1, 2009, {-each} a law enforcement agency {-that arrests a person for
129 any offense under Subsection (2)(a)-} shall obtain a DNA specimen in accordance

130 with Section 53-10-403 { from the arrested person in
accordance with Section 53-10-403} ∴
(i) at the time of the law enforcement agency books a person arrested for a
felony under Subsection 53-10-403(2)(a); and
(ii) at the time of conviction of a person for a misdemeanor under Subsection 53-
10-403(2), when the law enforcement agency is the agency that arrested or cited
the person for the misdemeanor upon which the conviction is based ∴

12. Page 7, Lines 189 through 194:

189 53-10-404.5. Obtaining DNA specimen at time of { arrest} booking for a
felony and upon conviction of specified misdemeanors - Payment of fee.
190 (1) (a) (i) When any law enforcement agency within the state arrests a person for
any felony
191 offense under Subsection 53-10-40 { 4} 3 (2)(a), the law enforcement agency shall
obtain a DNA
192 specimen from the person at the time of { arrest or upon} booking at the jail. { or
upon admission to
193 a detention facility.} except under Subsection (1)(b).
(ii) When a person is convicted of a misdemeanor under Subsection 53-10-
403(2), the law enforcement agency that arrested or cited the person for that
misdemeanor shall obtain a DNA specimen from the person upon conviction,
except under Subsection (1)(b).
194 (b) (i) If at the time of { arrest,} booking { , or admission to a detention
facility} on a felony offense, or conviction of a misdemeanor offense under
Subsection 53-10-403(2) the arresting

13. Page 7, Line 198:

198 (2) { The} A person { arrested under Subsection (1)} convicted of
a felony or of a misdemeanor under Subsection 53-10-403(2) shall pay a fee of \$100
for the cost of

14. Page 7, Line 201:

201 (3) The law enforcement agency that booked a person convicted of a felony, and
the { arrested} the county sheriff of the jurisdiction where a person is
convicted of a misdemeanor under Subsection 53-10-403(2), shall collect the fee of

\$100

The motion passed unanimously.

Further action was not taken on H.B. 156

MOTION: Rep Wimmer moved to adjourn. The motion passed unanimously.

Due to time restraints, the following bills were not heard at this meeting:

- H.B. 339 Human Trafficking Amendments (*Rep. C. Herrod*)
- H.B. 187 Death Caused by Illegal Drugs (*Rep. C. Herrod*)
- H.B. 136 Illegal Drug Activity Reporting Hotline Through the Office of the Attorney General (*Rep. C. Herrod*)
- H.B. 247 Domestic Violence and Dating Violence Amendments (*Rep. D. Litvack*)
- H.B. 267 Controlled Substances Amendments - Suda Controls** (*Rep. N. Hansen*)

H.B. 267, previously tabled, was returned to the Rules Committee.

Rep. Bowman adjourned the meeting at 10:00 a.m.

Rep. DeMar "Bud" Bowman, Chair