

**MINUTES OF THE
SENATE JUDICIARY, LAW ENFORCEMENT & CRIMINAL JUSTICE
STANDING COMMITTEE MEETING
WEDNESDAY, JANUARY 25, 2008, 8:00 AM
ROOM W130, WEST OFFICE BUILDING, STATE CAPITOL COMPLEX**

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

Members Excused: Pres. John Valentine

Staff Present: Jerry Howe, Policy Analyst
 Karen C. Allred, Committee Secretary
 Esther McCarty, Attorney

Public Speakers Present: Stephen Trayner, Lobbyist, UDCA
 Mary Lou Emerson, Director, USAAV Council
 Creighton Horton, Assistant Attorney General
 Jordan Singer, Director of Research IAALS
 Ester Chelsea McCarty, Attorney, LRGC
 Rick Schwermer, Courts

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

Chair Bell called the meeting to order at 8:11 pm

1. **S.B. 105 Judicial Performance Evaluation Commission** (*D. C. Buttars*)

Sen. Buttars distributed a handout and presented the bill.

Jordan Singer, Director of Research IAALS explained and spoke in favor of the bill.

Rick Schwermer spoke in favor of the bill.

MOTION: Sen. Greiner moved to send S. B. 105 out of the committee with a favorable recommendation.

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

2. **H. B. 78 Title 78 Recodification and Revision** (*J. Biskupski*)

Sen. Biskupski presented and explained the bill.

Esther McCarty, Attorney, LRGC, spoke to the bill.

MOTION: Sen. McCoy moved to send H.B. 78 out of committee with a favorable recommendation.

The motion passed unanimously.

MOTION: Sen. McCoy moved to place H. B. 78 on the consent calendar.

The motion passed unanimously.

Sen. Romero assumed the chair.

3. **S.B. 152 Presumptive Personal Representative** (*G. Bell*)

Sen. Bell distributed an amendment to the bill, and then presented and explained the bill.

MOTION: Sen. Romero moved to adopt the following amendment:

1. *Page 2, Lines 48 through 53:*

- 48 (4) Any insurer **and its insured** paying a claim arising out of the wrongful death
 of a person, including
49 a minor, including but not limited to claims for uninsured or underinsured motorist
 coverage as
50 provided in Section 31A-22-305, to a presumptive personal representative upon
 presentation of
51 an affidavit as described in Subsection (2) {is} **are** discharged and released to the
 same extent as if
52 the insurer **and its insured** dealt with a personal representative of the decedent. The
 insurer **and its insured** is not required to
53 inquire into the truth of any statement in the affidavit.

The motion passed unanimously.

Steve Trayner, Lobbyist, UDCA, answered questions and spoke in favor of the bill.

MOTION: Sen. McCoy moved to send S. B. 152 as amended, out of committee with a favorable recommendation.

The motion passed unanimously.

Chair Bell resumed the Chair.

4. **S.B. 138 Utah Substance Abuse and Anti-violence Coordinating Council Amendments**
(D. C. Buttars)

Sen. Buttars presented and explained the bill.

Mary Lu Emerson, Director USAAV Council spoke in favor of the bill.

MOTION: Sen. Greiner moved to send S. B. 138 out of committee with a favorable recommendation.

The motion passed unanimously.

5. **S.B. 150 Criminal Penalties Revisions** (S. Jenkins)

Sen. Jenkins distributed an amendment to the bill, and presented and explained the bill.

MOTION: Sen. Romero moved to adopt the following amendment:

1. Page 1, Line 16:

16 convicted of, and punished for, the separate offense; ~~{and}~~

► provides that a person who is convicted of murder, based on a predicate offense that also constitutes a separate offense, may also be convicted of, and punished for, the separate offense; and

2. Page 1, Line 21:

21 ~~{None}~~ **This bill provides an immediate effective date.**

3. Page 1, Line 25:

25 76-5-202, as last amended by Laws of Utah 2007, Chapters 275, 340, and 345
76-5-203, as last amended by Laws of Utah 2007, Chapter 340
76-8-316, as last amended by Laws of Utah 2007, Chapter 326

4. Page 6, Line 181:

181 convicted of, and punished for, the separate offense.

= Section 3. Section 76-5-203 is amended to read:
76-5-203. Murder.

(1) As used in this section, "predicate offense" means:

- (a) a violation of Section 58-37d-4 or 58-37d-5, Clandestine Drug Lab Act;
 - (b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18 years of age;
 - (c) kidnapping under Section 76-5-301;
 - (d) child kidnapping under Section 76-5-301.1;
 - (e) aggravated kidnapping under Section 76-5-302;
 - (f) rape of a child under Section 76-5-402.1;
 - (g) object rape of a child under Section 76-5-402.3;
 - (h) sodomy upon a child under Section 76-5-403.1;
 - (i) forcible sexual abuse under Section 76-5-404;
 - (j) sexual abuse of a child or aggravated sexual abuse of a child under Section 76-5-404.1;
 - (k) rape under Section 76-5-402;
 - (l) object rape under Section 76-5-402.2;
 - (m) forcible sodomy under Section 76-5-403;
 - (n) aggravated sexual assault under Section 76-5-405;
 - (o) arson under Section 76-6-102;
 - (p) aggravated arson under Section 76-6-103;
 - (q) burglary under Section 76-6-202;
 - (r) aggravated burglary under Section 76-6-203;
 - (s) robbery under Section 76-6-301;
 - (t) aggravated robbery under Section 76-6-302;
 - (u) escape or aggravated escape under Section 76-8-309; or
 - (v) a felony violation of Subsection 76-10-508(2) regarding discharge of a firearm or dangerous weapon.
- (2) Criminal homicide constitutes murder if:
- (a) the actor intentionally or knowingly causes the death of another;
 - (b) intending to cause serious bodily injury to another, the actor commits an act clearly dangerous to human life that causes the death of another;
 - (c) acting under circumstances evidencing a depraved indifference to human life, the actor knowingly engages in conduct which creates a grave risk of death to another and thereby causes the death of another;
 - (d) (i) the actor is engaged in the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense, or is a party to the predicate offense;
 - (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense; and

(iii) the actor acted with the intent required as an element of the predicate offense;
(e) the actor recklessly causes the death of a peace officer while in the commission or attempted commission of:

(i) an assault against a peace officer under Section 76-5-102.4; or
(ii) interference with a peace officer while making a lawful arrest under Section 76-8-305 if the actor uses force against a peace officer;

(f) commits a homicide which would be aggravated murder, but the offense is reduced pursuant to Subsection 76-5-202(4); or

(g) the actor commits aggravated murder, but special mitigation is established under Section 76-5-205.5.

(3) (a) Murder is a first degree felony.

(b) A person who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than 15 years and which may be for life.

(4) (a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another or attempted to cause the death of another:

(i) under the influence of extreme emotional distress for which there is a reasonable explanation or excuse; or

(ii) under a reasonable belief that the circumstances provided a legal justification or excuse for his conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) Under Subsection (4)(a)(i) emotional distress does not include:

(i) a condition resulting from mental illness as defined in Section 76-2-305; or

(ii) distress that is substantially caused by the defendant's own conduct.

(c) The reasonableness of an explanation or excuse under Subsection (4)(a)(i) or the reasonable belief of the actor under Subsection (4)(a)(ii) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(d) This affirmative defense reduces charges only as follows:

(i) murder to manslaughter; and

(ii) attempted murder to attempted manslaughter.

(5) (a) Any predicate offense described in Subsection (1) that constitutes a separate offense does not merge with the crime of murder.

(b) A person who is convicted of murder, based on a predicate offense described in Subsection (1) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Section 4. Section 76-8-316 is amended to read:

76-8-316. Influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole.

(1) A person is guilty of a third degree felony if the person threatens to assault,

kidnap, or murder a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties or with the intent to retaliate against the judge or member on account of the performance of those official duties.

(2) A person is guilty of a second degree felony if the person commits an assault on a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties, or with the intent to retaliate against the judge or member on account of the performance of those official duties.

(3) A person is guilty of a first degree felony if the person commits aggravated assault or attempted murder on a judge or a member of the Board of Pardons and Parole with the purpose to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties or with the purpose to retaliate against the judge or member on account of the performance of those official duties.

(4) As used in this section:

(a) "Immediate family" means parents, spouse, surviving spouse, children, and siblings of the officer.

(b) "Judge" means judges of all courts of record and courts not of record and court commissioners.

(c) "Judge or member" includes the members of the judge's or member's immediate family.

(d) "Member of the Board of Pardons and Parole" means appointed members of the board.

(5) A member of the Board of Pardons and Parole is an executive officer for purposes of Subsection 76-5-202(1) ~~{(k)}~~ (m) .

Section 5. Effective Date.

If approved by two-thirds of all members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

The vote was unanimous.

MOTION: Sen. McCoy moved to send S.B. 150 as amended, out of committee with a favorable recommendation.

The vote was unanimous.

MOTION: Sen. Romero moved to adjourn.

The vote was unanimous.

The meeting adjourned at 9:15

Sen. Gregory S. Bell, Committee Chair