

**MINUTES OF THE  
HOUSE JUDICIARY STANDING COMMITTEE MEETING  
Room W020 - House Building, State Capitol Complex  
February 26, 2009**

**MEMBERS PRESENT:** Rep. Lorie D. Fowlke, Chair  
Rep. Don Ipson, Vice Chair  
Rep. Sheryl L. Allen  
Rep. Jim Bird  
Rep. Jackie Biskupski  
Rep. Francis Gibson  
Rep. Christine A. Johnson  
Rep. Brian King  
Rep. Kraig Powell  
Rep. Mark A. Wheatley

**MEMBERS ABSENT:** Rep. Keith Grover  
Rep. Eric K. Hutchings  
Rep. Kay L. McIff

**STAFF PRESENT:** Jerry D. Howe, Policy Analyst  
Cherri White, Committee Secretary

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

Madam Chair Fowlke called the meeting to order at 8:38 a.m. and called for a motion to approve the minutes of February 24, 2009.

**MOTION:** Representative Ipson moved to approve the minutes of February 2, 2009. The motion passed unanimously with Representatives Grover, Hutchings, McIff, Powell, and Wheatley absent for the vote.

**HB0148      Victim Rights Amendments (*Rep. R. C. Webb*)**

The sponsor indicated that a substitute bill needed to be adopted.

**MOTION:** Representative Ipson moved to approve 2nd Substitute HB 148. The motion passed unanimously with Representatives Grover, Hutchings, and McIff, absent for the vote.

Representative Webb introduced 2nd Substitute HB 148 and explain its intent. He was assisted in his presentation by Mel Wilson, Utah Crime Victims Legal Clinic Advisory Board, Heidi Nestel, Clinical Director, Utah Crime Victims Legal Clinic, and Reed Richards, Chair, Utah Council on Victims of Crime.

**MOTION:** Representative Biskupski moved to amend:

1. *Page 6, Line 166:*

166 occurred more than ~~{one year}~~ six months before the victim filed an action  
alleging the violation of the right.

2. *Page 6, Lines 177 through 178:*

177 (2) This chapter may not be construed as creating a basis for ~~{a~~  
defendant  
178 to dismiss} any criminal charge or delinquency petition, vacating any adjudication or  
conviction,

3. *Page 7, Lines 193 through 198:*

193 or retained by victims of crimes. {-  
194 ~~—Section 5. Effective date:~~  
195 ~~—If approved by two-thirds of all the members elected to each house, this bill takes~~  
effect  
196 upon approval by the governor, or the day following the constitutional time limit of  
Utah  
197 Constitution Article VII, Section 8, without the governor's signature, or in the case of  
a veto;  
198 the date of veto override.}

The motion passed unanimously with Representatives Grover, Hutchings and McIff absent for the vote.

Paul Boyden, Statewide Association of Prosecutors and Kirk Torgensen Chief Deputy, Criminal Divisions, Utah Attorney General's Office, spoke in favor of the bill. Tawni Hanseen, President-elect, Utah Association of Criminal Defense Lawyers, and Tara Isaacson, Board Member, Utah Association of Criminal Defense Lawyers, spoke against the bill.

**MOTION:** Representative Biskupski moved to amend:

Page 6, Line 177-178: Reinstated "[~~dismissing~~]" and delete "a defendant to dismiss"

The motion passed unanimously with Representatives Gibson, Grover, Hutchings, and McIff, absent for the vote.

**MOTION:** Representative Bird moved to pass 2nd Substitute HB 148 out favorably as amended. The motion passed unanimously with Representatives Gibson, Grover, Hutchings, and McIff absent for the vote.

**HB0401 Custody and Parent-time Amendments for Service Members (Rep. T. Cosgrove)**

The sponsor indicated there was an amendment he would like the committee to consider prior to introducing the bill.

**MOTION:** Representative Johnson moved to amend:

1. *Page 2, Lines 52 through 55:*

52 (i) If willing and able, the noncustodial parent may elect to provide care for any  
53 minor  
54 children during the time the service member is away. The noncustodial parent shall notify  
55 the  
56 custodial parent of their willingness to provide care as soon as practicable, but not less  
57 than  
58 five days before the service member is required to leave.

**(A) The parents shall arrange a time and place for the delivery of the children to the noncustodial parent. Except as provided in Subsection (B), a temporary exchange of physical custody under this Section shall be considered extended parent-time under Section 78B-12-216.**

**(B) Notwithstanding Section 78B-12-216, if a noncustodial parent elects to provide care for the minor children during the time the service member is away, child support payments to the custodial parent shall be suspended from the date the custodial parent leaves until the date the custodial parent resumes custodial care of the children.**

2. *Page 2, Line 56 through Page 3, Line 61:*

56 (ii) If the noncustodial parent is unwilling or unable to provide care for any minor  
57 children during the time the service member is away, the service member may make  
58 specific  
59 arrangements for the housing and care of the minor children during the time the service  
60 member will be away. ~~{Arrangements}~~ **Notice of arrangements** made by the  
61 service member shall be provided to the

60 noncustodial parent and may not deprive the noncustodial parent of parent-time during the  
61 same time period.

The motion passed unanimously with Representatives Grover, Hutchings, McIff, Powell, and Ipson absent for the vote.

The sponsor proceeded to introduce the bill and explain its intent. Major, Patrick Osmond, Legal Representative, Utah National Guard, assisted in the introduction.

Stewart Ralphs, Legal Aid Society, spoke against the bill.

**MOTION:** Representative Allen moved to amend:

*1. Page 3, Lines 66 through 70:*

66 (3) A service member who is deployed, mobilized, or ordered to temporary duty may  
67 not be deprived of custodial or parent-time rights while unavailable pursuant to military  
orders.  
68 Any petition, motion, or action before a court attempting to deprive or alter custody or  
69 parent-time rights shall be stayed in accordance with Section 39-7-105 and Section 521 of  
the  
70 Federal Servicemembers Civil Relief Act, 50 U.S.C. 511, et seq.

**(4) This section does not apply to adoptions.**

After committee discussion the motion was withdrawn.

**MOTION:** Representative Biskupski moved to pass HB 401 out favorably as amended.

**SUBSTITUTE**

**MOTION:** Representative Bird moved to adjourn. The motion failed 4-5-4, with Representatives Allen, Bird, Gibson, and Ipson voting in favor of the motion, Representatives Biskupski, Johnson, King, Wheatly, and Fowlke voting against the motion, and Representatives Grover, Hutchings, McIff, and Powell absent for the vote.

Returning to the original motion to pass th bill out favorably, the motion passed 7-2-4, with Representatives Allen and Bird voting against the motion, and Representatives Grover, Hutchings, McIff, and Powell absent for the vote.

As it was time for the committee members to be on the floor of the house, Madam Chair Fowlke

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called for a motion to adjourn.

**MOTION:** Representative Ipson moved to adjourn the meeting. The motion passed unanimously with Representatives Grover, Hutchings, McIff and Powell absent for the vote.

Madam Chair Fowlke adjourned the meeting at 10:03 am.

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Rep. Lorie Fowlke, Chair