

**MINUTES OF THE
SENATE JUDICIARY, LAW ENFORCEMENT & CRIMINAL JUSTICE
STANDING COMMITTEE MEETING
TUESDAY, FEBRUARY 10, 2009, 3:00 PM
ROOM 250, STATE CAPITOL**

Members Present: Sen. Chris Buttars, Chair
 Sen. Jon J. Greiner
 Sen. Lyle W. Hillyard
 Sen. Mark B. Madsen
 Sen. Michael Waddoups
 Sen. Scott D. McCoy
 Sen. Ross I. Romero

Staff Present: Jerry Howe, Policy Analyst
 Allison Volk, Committee Secretary

Public Speakers Present: Kevin Church, citizen
 Mike Dmitrich, former Utah Senator
 John Holliday, Asst. Attorney General, Utah Attorney Generals Office
 Matt Hunsaker, citizen
 Dave Johnson, citizen
 Richard Mauro, Attorney, UT Association of Criminal Defense Lawyers
 Daniel Medway, citizen
 Debra Moore, District Court Administrator, Utah Courts
 Stewart Ralphs, Director, Legal Aid Society of Salt Lake City
 Mark Shurtleff, Attorney General, Utah Attorney Generals Office
 Adam Trupp, Legal Counsel, Utah Association of Counties
 Fred Voros, Division Chief Criminal Appeals, Attorney General's Office

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

Chair Buttars called the meeting to order at 3:15 pm

1. S.B. 165 Statute of Limitation Revisions, by Sen. Madsen

Sen. Madsen presented 1st Substitute S.B. 165.

MOTION: Sen. Madsen motioned to adopt 1st Substitute S.B. 165.

The motion passed unanimously with Sens. Greiner and Waddoups absent during the time of the vote.

John Holliday, Assistant Attorney General, Utah Attorney Generals Office, spoke in favor of the bill.

Sen Hillyard spoke in favor of the bill.

MOTION: Sen. Madsen motioned to move S.B. 165 out with a favorable recommendation.

The motion passed unanimously with Sen. Waddoups absent during the time of the vote.

2. S.B. 53 Awarding of Attorney Fees, by Sen. Urquhart.

Sen. Urquhart presented 1st Substitute to S.B. 53.

MOTION: Sen. Hillyard motioned to adopt 1st Substitute S.B. 53.

MOTION: Sen. McCoy motioned to amend S.B. 53 as follows:

1. *Page 1, Line 25 through Page 2, Line 26:*

25 A court may not award attorney fees under the private attorney general doctrine {~~as~~
26 stated in Stewart v. Utah Public Service Commission, 885 P.2d 759 (1994), and its
 progeny} .

The motion passed unanimously with Sens. Madsen and Waddoups absent during the time of the vote.

Sens. Romero, McCoy, Hillyard spoke to the bill

Adam Trupp, Legal Counsel, Utah Association of Counties, spoke in favor of the bill.

MOTION: Sen. Hillyard motioned to move S.B. 53, as amended, out with a favorable recommendation.

The motion passed unanimously with Sens. Madsen and Waddoups absent during the time of the vote.

3. S.B. 170 Judiciary Amendments, by Sen. Hillyard.

MOTION: Sen. Hillyard motioned to amend S.B. 170 as follows:

1. *Page 12, Lines 356 through 357:*

356 (1) The term of a justice court judge is six years beginning the first Monday in
 January
357 {~~2010~~} [~~—~~(2) ~~Judges~~] following the date of election.

The motion passed unanimously with Sens. Madsen and Waddoups absent during the time

of the vote.

Sen. Hillyard presented S.B. 170, as amended.

MOTION: Sen. Romero motioned to amend S.B. 170 as follows:

1. *Page 15, Lines 441 through 450:*

- 441 78B-6-138. Birth parent's rights and duties dissolved.
- 442 [~~A~~] (1) Except as provided in Subsection (2), a birth parent of an adopted child is
- 443 released from all parental duties toward and all responsibilities for the adopted child, and
- 444 has
- 445 no further rights with regard to that child at the earlier of:
- 446 [~~1~~] (a) the time the parent's parental rights are terminated; or
- 447 [~~2~~] (b) the time the final decree of adoption is entered.
- 448 (2) { At the time the final decree of adoption is entered, a birth parent who is
- 449 the spouse
- 450 of the adopting parent, is not released from any parental duties or responsibilities for
- 451 the
- 452 adopted child, nor does the decree of adoption terminate any of that birth parent's
- 453 rights with
- 454 regard to the child. } Subsection (1) may not apply to a biological parent who is a
- 455 party to the adoption petition, unless the petition expressly seeks termination of that
- 456 biological parent's rights.
- 457 (3) Nothing in this section may be construed to permit any adoptions that are
- 458 prohibited by Subsection 78B-6-117(3).

The motion passed unanimously with Sens. Madsen and Waddoups absent during the time of the vote.

MOTION: Sen. Hillyard motioned to amend S.B. 170 as follows:

1. *Page 2, Line 40:*

- 40 78B-2-211, as renumbered and amended by Laws of Utah 2008, Chapter 3
- = 78B-3-106, as renumbered and amended by Laws of Utah 2008, Chapter 3

2. *Page 13, Line 387:*

- 387 as the part improved and cultivated.
- = Section 10. Section 78B-3-106 is amended to read:
- 78B-3-106. Death of adult -- Suit by heir or personal representative.**
- (1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, when

the death of a person who is not a minor is caused by the wrongful act or neglect of another, his heirs, or his personal representatives for the benefit of his heirs, may maintain an action for damages against the person causing the death, or, if the person is employed by another person who is responsible for his conduct, then against the other person.

(2) If the adult person has a guardian at the time of his death, only one action may be maintained for the person's injury or death.

(3) The action may be brought by either the personal representatives of the adult deceased person, for the benefit of the person's heirs, or by the guardian for the benefit of the heirs, as defined in Section 78B-3-105.

(4) In every action under this section and Section 78B-3-105 damages may be given as under all the circumstances of the case may be just.

Renumber remaining sections accordingly.

The motion passed unanimously.

MOTION: Sen. Hillyard motioned to move S.B. 170 , as amended, out with a favorable recommendation.

The motion passed unanimously.

4. S.B. 182 Criminal Restitution Amendments, by Sen Bramble

Sen Bramble presented S.B. 182.

Mr. Holliday spoke in favor of the bill.

Sen. Romero spoke in favor of the bill.

Sen. Madsen spoke to the bill

Dave Johnson, citizen, spoke to the bill.

Sen. Romero motioned to move S.B. 182 out with a favorable recommendation.

The motion passed unanimously with Sen. McCoy absent during the time of the vote.

5. S.J.R. 14 Joint Resolution - Challenging the Legality of a Conviction or Sentence, by Bramble

Sen. Bramble presented an amendment to S.J.R. 14.

Sen. Madsen moved to amend S.J.R. 14 as follows:

1. *Page 2, Lines 34 through 35:*

34 (2) (a) A person , including a person sentenced to death, may not be barred
from obtaining relief from a conviction or sentence if {→
35 —(a)} the person can prove by clear and convincing evidence that the person did
not:

2. *Page 2, Line 40:*

40 (b) {in the case of a} A person sentenced to death {→} may not be
barred from obtaining relief from a conviction or sentence if the person can prove
with newly

The motion passed unanimously with Sen. McCoy absent during the time of the vote.

The following people spoke in favor of the resolution: Mark Shurtleff, Attorney General, Utah Attorney Generals Office; Fred Voros, Division Chief Criminal Appeals, Attorney General's Office; Kevin Church, citizen; and Matt Hunsaker, citizen.

Richard Mauro, Attorney, UT Association of Criminal Defense Lawyers and Daniel Medway, citizen spoke against the resolution.

Sens. Buttars, McCoy and Hillyard spoke to the resolution.

MOTION: Sen. Greiner moved to pass S.J.R. 14 out with a favorable recommendation.

SUBSTITUTE MOTION: Sen Romero moved to table S.J.R. 14

Sen. Buttars spoke against the substitute motion.

The substitute motion failed with Sens. Romero and McCoy voting in favor of the submotion and Sen. Waddoups absent during the time of the vote.

Sens. Hillyard, Madsen, McCoy, Romero, Buttars spoke to the original motion.

The original motion passed with Sens. Buttars, Greiner, Madsen, Waddoups voting in favor of the motion and Sens. Hillyard, McCoy and Romero voting against the motion.

6. **S.J.R. 12 Joint Resolution Supporting Expansion of Correctional Facilities in San Juan County**, by Sen. Hinkins

Sen. Hinkins presented the resolution.

Former Sen. Mike Dmitrich spoke in favor of the resolution.

MOTION: Sen. Hillyard motioned to move S.J.R. 12 out with a favorable recommendation.

The motion passed unanimously with Sens. Madsen, Waddoups and Romero absent during the time of the vote.

7. S.B. 176 Civil Fees in Courts of Record Amendments, by Sen. Greiner

Sen. Greiner presented S.B. 176.

Debra Moore, District Court Administrator, Administrative Office of the Courts, spoke in favor of the bill.

Mark Olsen, Collection Attorney, spoke to the bill.

MOTION: Sen. Greiner motioned to move the S.B. 176 out with a favorable recommendation.

The motion passed unanimously with Sen. Madsen, Waddoups and Romero absent during the time of the vote

MOTION: Sen. McCoy moved to adjourn.

The meeting adjourned at 5:00 pm

Minutes were reported by Allison Volk, Secretary.

Sen. D. Chris Buttars, Committee Chair