

**MINUTES OF THE
HOUSE JUDICIARY STANDING COMMITTEE MEETING
Room W020 - House Building, State Capitol Complex
March 1, 2011**

MEMBERS PRESENT: Rep. Kay McIff, Chair
Rep. Francis Gibson, Vice Chair
Rep. Jackie Biskupski
Rep. Derek Brown
Rep. LaVar Christensen
Rep. Fred Cox
Rep. Chris Herrod
Rep. Eric Hutchings
Rep. Ken Ivory
Rep. Brian King
Rep. Paul Ray
Rep. Mark A. Wheatley
Rep. Brad Wilson

STAFF PRESENT: Jerry D. Howe, Policy Analyst
Linda Black, Committee Secretary

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

Rep. McIff called the meeting to order at 4:20 p.m.

MOTION: Rep. Gibson moved to approve the minutes of February 28. The motion passed unanimously, with Rep. Christensen, Rep. Cox, Rep. Herrod, Rep. Hutchings, Rep. Ivory, and Rep. King absent for the vote.

H.B. 374 Domestic Violence Amendments (*Rep. B. Last*)

Rep. Last presented the bill to the committee.

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

1. Page 1, Lines 12 through 14:

- 12 This bill:
- 13 ▶ prevents a person arrested for domestic violence from contacting the alleged victim

14 while the person is detained in a jail ; and
▶ provides a penalty for violation .

2. *Page 5, Lines 123 through 125:*

123 (1) (a) Upon arrest for domestic violence, and before the person is released on
bail,

124 recognizance, or otherwise, the person may not personally contact the alleged victim of
125 domestic violence.

(b) A person who violates Subsection (1)(a) is guilty of a class B
misdemeanor.

3. *Page 7, Lines 199 through 207:*

199 ~~[(9)]~~ (10) At the time an arrest for domestic violence is made, the arresting officer
shall

200 provide the alleged perpetrator with written notice containing:

201 (a) notification that the alleged perpetrator may not contact the alleged victim
before being released;

(b) the release conditions described in Subsection ~~[(1)]~~ (2) and notice that those
release

202 conditions shall be ordered by a court or shall be agreed to by the alleged perpetrator prior
to

203 release;

204 ~~{(b)}~~ (c) notification of the penalties for violation of any jail release court
order or any

205 written jail release agreement executed under Subsection ~~[(1)]~~ (2); and

206 ~~{(c)}~~ (d) notification that the alleged perpetrator is to personally appear in
court on the next

207 day the court is open for business after the day of the arrest~~;~~].

The motion passed unanimously, with Rep. Christensen, Rep. Cox, Rep. Herrod, Rep. Hutchings, Rep. Ivory, and Rep. King absent for the vote.

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

1. *Page 6, Line 156*

At the beginning of line 156, delete (1) and insert (2)

The motion passed unanimously, with Rep. Christensen, Rep. Cox, Rep. Herrod, Rep. Hutchings, Rep. Ivory, and Rep. King absent for the vote.

MOTION: Rep. Wilson moved pass H.B. 374, as amended, with a favorable recommendation. The motion passed unanimously, with Rep. Christensen, Rep. Cox, Rep. Herrod, and Rep. Ivory absent for the vote.

H.B. 284 Guardianship Amendments *(Rep. K. Powell)*

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

1. *Page 1, Lines 11 through 18:*

- 11 This bill:
- 12 ▶ defines terms;
- 13 ▶ creates a method within the courts for the appointment , acceptance, and
termination of a guardian or conservator
- 14 for ~~{a minor}~~ minors or ~~{an}~~ incapacitated ~~{adult}~~ adults ;
- 15 ~~{→ eliminates a local school board's ability to designate guardians for students~~
~~within~~
- 16 ~~its district;}~~
- ▶ requires a court to enter findings identifying function limitations of a protected person and provides elements for the court to weigh;
 - ▶ allows a parent or guardian to delegate to another by power of attorney not exceeding six months specific authority over a protected person;
 - ▶ allows the court to require a guardian to furnish a bond;
 - ▶ sets parameters for compensation and reimbursement of expenses;
 - ▶ gives the guardian of a minor the same responsibilities as a parent unless limited by the court;
 - ▶ sets procedures for appointment of a guardian for an adult, provides duties, and limits the guardian's authority to what is contained in the court order;
 - ▶ delineates specific authority and actions for conservators;
 - ▶ limits what a conservator may delegate;
 - ▶ allows the Judicial Council to exempt certain classes of guardians and conservators from the filing of management plans and annual reports by court rule;

17 ▶ eliminates expedited guardianship proceedings for residents of the Utah State
18 Developmental Center; and

2. *Page 33, Line 1016 through Page 34, Line 1020:*

1016 75-5c-123. Liability on reported matters **-- Rules to exempt reports** .
1017 **(1)** An order, after notice, approving an intermediate report of a guardian or
 conservator
1018 adjudicates liabilities concerning matters adequately disclosed in the report. An order,
 after
1019 notice, approving a final report adjudicates all previously unsettled liabilities relating to
 the
1020 guardianship or conservatorship adequately disclosed in the report.

 (2) Exemptions from filing management plans and annual reports by specific
 classes of guardians and conservators may be provided for by the Supreme Court in
 court rule.

3. *Page 41, Lines 1250 through 1252:*

1250 (a) consent to commitment of the protected person to ~~{a mental~~
 ~~retardation}~~ **an intermediate** facility **for people with an intellectual**
 disability , but
1251 shall petition the court for an order under Title 62A, Chapter 5, Part 3, Admission to
 ~~{Mental~~
1252 ~~Retardation}~~ **an Intermediate Care** Facility **for People with an Intellectual**
 Disability ;

The motion passed unanimously, with Rep. Cox, Rep. Herrod, Rep. Ivory, and Rep. Ray absent for the vote.

Rep. Powell presented the bill to the committee.

Spoke to the bill: Rick Schwermer, Deputy Director, Administrative Office of the Courts

Spoke in opposition
of the bill: Michael Jensen, attorney
 Lisa Thornton, attorney
 Eric Barnes, attorney
 Kent Alderman, attorney

MOTION: Rep. King moved to pass H.B. 284 with a favorable recommendation, as amended. The motion failed, with Rep. King, Rep. Wilson and Rep. McIff voting in favor.

Rep. McIff relinquished the chair to Rep. Gibson.

H.B. 376 Small Claims Court Jurisdiction (*Rep. R. Edwards*)

Rep. Edwards presented the bill to the committee.

MOTION: Rep. Gibson moved amend the bill as follows:

1. *Page 1, Lines 12 through 15:*

12 This bill:
13 ▶ allows a defendant in an action in district court to remove it to a small claims
 court
14 in the same jurisdiction if it is less than \$10,000 and the plaintiff agrees ; {~~and~~}
15 ▶ requires that the defendant pay the small claims filing fee ; and
 ▶ provides that the court may not charge the plaintiff a filing fee if the plaintiff
 appeals the small claims court judgment .

2. *Page 2, Lines 38 through 42:*

38 (2) (a) A defendant in an action filed in the district court that meets the
 requirement of
39 Subsection (1)(a)(i) may remove , if agreed to by the plaintiff, the action to a small
 claims court within the same district by:
40 {~~a~~} (i) giving notice , including the small claims filing number, to
 the {~~plaintiff and~~} district court of removal during the time afforded
41 for a responsive pleading; and
42 {~~b~~} (ii) paying the applicable small claims filing fee.

(b) No filing fee may be charged to a plaintiff to appeal a judgment on an action removed under Subsection (2)(a) to the district court where the action was originally filed.

The motion passed unanimously, with Rep. Brown, Rep. Christensen, Rep. Herrod, Rep. Ivory, Rep. Ray and Rep. McIff absent for the vote.

MOTION: Rep. Wilson moved to pass H.B. 376 with a favorable recommendation. The motion passed unanimously, with Rep. Brown, Rep. Christensen, Rep. Herrod, Rep. Ivory, Rep. Ray and Rep. McIff absent for the vote.

H.B. 281 Sex Offender and Kidnapping Amendments (*Rep. F. Cox*)

MOTION: Rep. Wilson moved to amend H.B. 281 as follows:

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

14 specified registrable kidnap offense is not to be placed on the registry website { ~~if the~~
15 ~~conviction occurred between May 5, 2008 and May 11, 2010.~~ } unless the victim
was younger than 18 years of age at the time of the offense.

2. *Page 2, Line 49:*

49 (A) Section 76-5-301, Subsection (1) { ~~(c) or~~ } (d), kidnapping of a minor 14
years of age or older ;

3. *Page 13, Line 399:*

399 (28) (a) The information required under Subsection (27) may not be included in
the Sex

4. *Page 14, Lines 401 through 402:*

401 convicted of kidnapping under { ~~Subsection~~ } Section 76-5-301 { ~~(a), (b),~~
~~or (c)~~ } { ~~if~~ } ∴
(b) The exemption under Subsection (1)(a) does not apply if the { ~~conviction~~
~~occurred on or after May~~
402 ~~5, 2008, and prior to May 12, 2010.~~ } victim was younger than 18 years of age at

the time the offense was committed.

The motion passed unanimously, with Rep. Brown, Rep. Christensen, Rep. Herrod, Rep. Ivory, Rep. Ray and Rep. McIff absent for the vote.

Spoke in favor of the bill: Richard W. Jensen, citizen
 Ron Bigelow, citizen

MOTION: Rep. Hutchings moved to pass H.B. 281 with a favorable recommendation, as amended. The motion passed with Rep. Wilson voting in opposition. Rep. Herrod and Rep. McIff were absent for the vote.

H.B. 205 Domestic Violence and Dating Violence Amendments *(Rep. P. Ray)*

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

1. *Page 21, Lines 644 through 645:*

644 (v) ordering any other relief that the court considers necessary to protect and provide
645 for the safety of the victim and any designated family or household member **. except**
that, if the defendant is charged with violating a protective order relating to dating
partners, as defined in Section 78B-7-102, the court may not prohibit the defendant
from purchasing, using, or possessing a firearm, unless the court finds that the
defendant's use or possession of a firearm is likely to pose a serious threat of harm to
the victim .

2. *Page 23, Lines 688 through 689:*

688 (e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or
other
689 specified weapon **. except that, if the defendant is convicted of violating a protective**
order relating to dating partners, as defined in Section 78B-7-102, the court may not
prohibit the defendant from purchasing, using, or possessing a firearm, unless the
court finds that the defendant's use or possession of a firearm is likely to pose a
serious threat of harm to the victim ;

3. *Page 33, Lines 1006 through 1008:*

- 1006 [~~(d)~~] (e) upon finding that the respondent's use or possession of a weapon may pose a
1007 serious threat of harm to the petitioner, or, if the order relates to dating partners, that
the respondent's use or possession of a weapon is likely to pose a threat of harm to the
petitioner, prohibit the respondent from purchasing, using, or
1008 possessing a firearm or other weapon specified by the court;

The motion passed unanimously, with Rep. Brown and Rep. Herrod absent for the vote.

Spoke in favor of the bill: Patsy Chandler, Utah PTA
 Stewart Ralphs, Utah Legal Aid Society

Spoke in opposition of
the bill: Gayle Ruzicka, Utah Eagle Forum
 Dan Duell, Weber County 9/12 Project

Spoke to the bill: Ned Searle, Commission on Criminal and Juvenile Justice

MOTION: Rep. Biskupski moved to pass HB. 205 with a favorable recommendation.

SUBSTITUTE

MOTION: Rep. Hutchings moved to hold the bill with a recommendation that it be
sent to interim study. The motion passed with Rep. Biskupski, Rep. King,
Rep. Ray and Rep. Wilson voting in opposition.

The committee recessed for ten minutes.

H.B. 491 Alimony Modifications (*Rep. S. Sandstrom*)

Rep. Sandstrom presented the bill to the committee.

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

1. *Page 1, Lines 11 through 12:*

11 This bill:

▶ defines fault;

12 ▶ requires the court to consider certain types of fault when determining alimony;

and

2. Page 4, Line 95 through Page 5, Line 120:

95 (b) ~~{The}~~ In marriages where one spouse refrained from full-time
employment in order to provide full-time care of minor children and the parties'
household during the marriage, the court ~~{+}~~ may ~~{+}~~ ~~{shall}~~ consider
the fault of the parties in determining alimony ~~{+}~~ . ~~{+}~~ ~~{_}~~

96 including whether either party:

97 ~~—(i) engaged in behavior during the marriage that unilaterally compromised the~~
~~marital~~

98 ~~contract;~~

99 ~~—(ii) jeopardized the financial stability of the family;~~

100 ~~—(iii) committed an act of substantiated physical abuse on the spouse or children;~~

101 ~~—(iv) has had a substantiated long-term addiction to alcohol, drugs, gambling, or~~
102 ~~pornography; or~~

103 ~~—(v) engaged in criminal behavior.}~~

(c) "Fault" means whether either party engaged in substantiated behavior
during the marriage which unilaterally compromised the marriage or unilaterally
jeopardized the health, safety, or financial stability of the other party or their
children, including:

(i) sexual relations outside of the marriage;

(ii) physical abuse of the spouse or children;

(iii) long-term addictions to alcohol, drugs, gambling, or pornography; or

(iv) felonious criminal behavior.

104 ~~{(c)}~~ (d) As a general rule, the court should look to the standard of living,
existing at the

105 time of separation, in determining alimony in accordance with Subsection (8)(a).

However, the

106 court shall consider all relevant facts and equitable principles and may, in its discretion,
base

107 alimony on the standard of living that existed at the time of trial. In marriages of short

108 duration, when no children have been conceived or born during the marriage, the court
may

109 consider the standard of living that existed at the time of the marriage.

110 ~~{(d)}~~ (e) The court may, under appropriate circumstances, attempt to
equalize the parties'

- 111 respective standards of living.
- 112 ~~{(e)}~~ (f) When a marriage of long duration dissolves on the threshold of a
113 major change in
114 the income of one of the spouses due to the collective efforts of both, that change shall be
115 considered in dividing the marital property and in determining the amount of alimony. If
116 one
117 spouse's earning capacity has been greatly enhanced through the efforts of both spouses
118 during
119 the marriage, the court may make a compensating adjustment in dividing the marital
120 property
121 and awarding alimony.
- 122 ~~{(f)}~~ (g) In determining alimony when a marriage of short duration
123 dissolves, and no
124 children have been conceived or born during the marriage, the court may consider
125 restoring
126 each party to the condition which existed at the time of the marriage.

The motion passed unanimously, with Rep. Christensen, Rep. Herrod, Rep. Hutchings and Rep. Ray absent for the vote.

Spoke in favor of the bill: Dani Hartvigsen, self
 Kim Grant, For Children's Sake
 Stan Rasmussen, Sutherland Institute
 Maryann Christensen, Utah Eagle Forum

Spoke in opposition of
the bill: Dan Duell, American Parental Action League
 Stewart Ralphs, Legal Aid Society

MOTION: Rep. Cox moved that the committee reconsider its' action in amending
 H.B. 491.

SUBSTITUTE
MOTION: Rep. Biskupski moved to pass H.B. 491, as originally amended, with a

House Judiciary Standing Committee

March 1, 2011

Page 11

favorable recommendation. The motion passed, with Rep. Ray, Rep. Wheatley and Rep. McIff voting in opposition. Rep. Hutchings was absent for the vote.

H.B. 425 Offender DNA Fees (*Rep. B. Wilson*)

At the request of the sponsor, the bill was not considered.

Rep. McIff adjourned the meeting at 7:45 p.m.

Rep. Kay McIff, Chair