

**MINUTES OF THE
HOUSE JUDICIARY STANDING COMMITTEE MEETING**
20 House Building, Utah State Capitol Complex
March 7, 2016

Members Present: Rep. LaVar Christensen, Chair
Rep. Merrill Nelson, Vice Chair
Rep. Fred C. Cox
Rep. Bruce Cutler
Rep. Brian M. Greene
Rep. Craig Hall
Rep. Brian S. King
Rep. Curtis Oda
Rep. V. Lowry Snow
Rep. Kevin J. Stratton
Rep. Mark A. Wheatley

Staff Present: Mr. Gregg Girvan, Policy Analyst
Ms. Glenda VanWagenen, Committee Secretary

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

Chair Christensen called the meeting to order at 4:25 p.m.

Vice Chair Nelson assumed the chair.

H.B. 470 Criteria for Determination of Alimony (B. Daw)

Rep. Daw explained the bill to the committee with the assistance of Dani Hartvigsen, Coalition for the Preservation of Family Values.

Spoke against the bill: Dan Deuel, National Parents Organization of Utah

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

1. Page 5, Lines 142 through 148:

142 (j) Alimony may not be ordered for a duration longer than the number of years that the
143 marriage existed unless, at any time prior to termination of alimony, the court finds
extenuating

144 circumstances that justify the payment of alimony for a longer period of time[-], except
that {

145 ~~— (i) expenses included in the alimony award for the benefit of both the child and~~

146 ~~recipient spouse may continue until the last child reaches the age of 18; and~~
147 ~~(ii)}~~ the court shall order that expenses awarded for the benefit of a specific
child shall end on the day that child
148 ~~{turns 18}~~ becomes emancipated .

2. *Page 5, Line 149 through Page 6, Line 152:*

149 (9) Unless a decree of divorce specifically provides otherwise, any order of the court
150 that a party pay alimony to a former spouse automatically terminates upon the remarriage or
151 death of that former spouse {+} . {+} ~~{, except that expenses awarded for the~~
~~benefit of a specific child~~
152 ~~may not end upon the remarriage of the former spouse.}~~ However, if the remarriage
is annulled

3. *Page 6, Lines 155 through 158:*

155 (10) Any order of the court that a party pay alimony to a former spouse terminates
156 upon establishment by the party paying alimony that the former spouse is cohabitating with
157 another person {+} . {+} ~~{, except that expenses awarded for the benefit of a~~
~~specific child may not~~
158 ~~terminate.}~~

The motion passed unanimously with Rep. Oda and Rep. Stratton absent for the vote.

MOTION: Rep. Snow moved to hold the bill. The motion passed with Rep. Stratton and Rep. Christensen absent for the vote.

1st Sub. H.B. 337 Student Right to Active Counsel (K. Coleman)

Rep. Coleman explained the bill to the committee.

Spoke against the bill: Spencer Jenkins, Utah System of Higher Education
Robert Payne, University of Utah

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

1. *Page 1, Lines 16 through 21:*

16 representation at a disciplinary proceeding;

- 17 • governing the exchange of evidence at a disciplinary proceeding; and
18 • prohibiting certain conflicts of interest in a disciplinary proceeding ; {
 and
19 • authorizing a cause of action; and
20 • amends applicable governmental immunity provisions.}
21 Money Appropriated in this Bill:

2. *Page 1, Line 25 through Page 2, Line 39:*

- 25 Utah Code Sections Affected:
26 {~~AMENDS:~~
27 ~~63G-7-301, as last amended by Laws of Utah 2015, Chapter 342~~}
28 ENACTS:
29 53B-26-101, Utah Code Annotated 1953
30 53B-26-102, Utah Code Annotated 1953
31 53B-26-201, Utah Code Annotated 1953
32 53B-26-203, Utah Code Annotated 1953
33 53B-26-204, Utah Code Annotated 1953
34 53B-26-205, Utah Code Annotated 1953
35 53B-26-206, Utah Code Annotated 1953
36 53B-26-207, Utah Code Annotated 1953
37 {~~53B-26-208, Utah Code Annotated 1953~~}
38

39 *Be it enacted by the Legislature of the state of Utah:*

3. *Page 7, Line 185 through Page 9, Line 247:*

- 185 party first to a hearing officer.
186 {~~Section 9. Section 53B-26-208 is enacted to read:~~
187 ~~53B-26-208. Cause of action:~~
188 ~~(1) An accused student, accused student organization, or alleged victim may bring~~
 an
189 action in a court of competent jurisdiction for an alleged violation of this part by an
 institution.
190 ~~(2) If the court finds that an institution committed a violation under Subsection~~
 (1), the
191 court may award, as applicable, the accused student, accused student organization, or

~~alleged~~
192 ~~victim:~~
193 ~~— (a) compensatory damages;~~
194 ~~— (b) reasonable court costs incurred;~~
195 ~~— (c) reasonable attorney fees incurred;~~
196 ~~— (d) monetary damages;~~
197 ~~— (i) in an amount equal to or more than the cost of tuition paid by or on behalf of~~
198 ~~the~~
199 ~~accused student or alleged victim to the institution for the academic period in which the~~
200 ~~violation occurred; and~~
201 ~~— (ii) in an amount equal to or more than the amount of scholarship funding an~~
202 ~~accused~~
203 ~~student has lost as a result of the outcome of a student disciplinary proceeding; and~~
204 ~~— (e) any other relief the court determines just;~~
205 ~~— (3) An action based upon a cause of action under this part shall be commenced~~
206 ~~within~~
207 ~~one year after the date that an accused student, accused student organization, or alleged~~
208 ~~victim~~
209 ~~receives final notice of the outcome of the student or student organization disciplinary~~
210 ~~proceeding;~~
211 ~~— Section 10. Section 63G-7-301 is amended to read:~~
212 ~~— 63G-7-301. Waivers of immunity.~~
213 ~~— (1) (a) Immunity from suit of each governmental entity is waived as to any~~
214 ~~contractual~~
215 ~~obligation.~~
216 ~~— (b) Actions arising out of contractual rights or obligations are not subject to the~~
217 ~~requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.~~
218 ~~— (c) The Division of Water Resources is not liable for failure to deliver water from~~
219 ~~a~~
220 ~~reservoir or associated facility authorized by Title 73, Chapter 26, Bear River~~
221 ~~Development~~
222 ~~Act, if the failure to deliver the contractual amount of water is due to drought, other~~
223 ~~natural~~
224 ~~condition, or safety condition that causes a deficiency in the amount of available water.~~
225 ~~— (2) Immunity from suit of each governmental entity is waived:~~

218 ~~—(a) as to any action brought to recover, obtain possession of, or quiet title to real~~
or
219 ~~personal property;~~
220 ~~—(b) as to any action brought to foreclose mortgages or other liens on real or~~
~~personal~~
221 ~~property, to determine any adverse claim on real or personal property, or to obtain an~~
222 ~~adjudication about any mortgage or other lien that the governmental entity may have~~
~~or claim~~
223 ~~on real or personal property;~~
224 ~~—(c) as to any action based on the negligent destruction, damage, or loss of goods,~~
225 ~~merchandise, or other property while it is in the possession of any governmental entity~~
~~or~~
226 ~~employee, if the property was seized for the purpose of forfeiture under any provision~~
~~of state~~
227 ~~law;~~
228 ~~—(d) subject to Subsection 63G-7-302(1), as to any action brought under the~~
~~authority of~~
229 ~~Utah Constitution, Article I, Section 22, for the recovery of compensation from the~~
230 ~~governmental entity when the governmental entity has taken or damaged private~~
~~property for~~
231 ~~public uses without just compensation;~~
232 ~~—(e) subject to Subsection 63G-7-302(2), as to any action brought to recover~~
~~attorney~~
233 ~~fees under Sections 63G-2-405 and 63G-2-802;~~
234 ~~—(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public~~
~~Employees~~
235 ~~Act;~~
236 ~~—(g) as to any action brought to obtain relief from a land use regulation that~~
~~imposes a~~
237 ~~substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah~~
~~Religious~~
238 ~~Land Use Act;~~
239 ~~—(h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:~~
240 ~~—(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,~~
241 ~~crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on~~

~~them; or~~
242 ~~— (ii) any defective or dangerous condition of a public building, structure, dam,~~
~~reservoir;~~
243 ~~or other public improvement; [and]~~
244 ~~— (i) subject to Subsection 63G-7-201(4), as to any injury proximately caused by a~~
245 ~~negligent act or omission of an employee committed within the scope of employment[.];~~
~~and~~
246 ~~— (j) as to any action brought to obtain relief under Title 53B, Chapter 26, Part 2,~~
~~Student~~
247 ~~Legal Representation.}~~

SUBSTITUTE

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

1. *Page 3, Lines 73 through 80:*

73 (f) demonstrative evidence.

74 (6) (a) "Full participation" means the opportunity in a student or student
organization

75 disciplinary proceeding to {:

76 ~~— (a) make opening and closing statements;~~

77 ~~— (b) examine and cross-examine a witness; and~~

78 ~~— (c) provide an accused student, an accused student organization, or an alleged
victim~~

79 ~~support, guidance, or advice.}~~ participate to the full extent that the student or
student organization would otherwise be allowed to participate under an institution's
policy or rule and provide an accused student, accused student organization, or an
alleged victim support, guidance, or advice.

(b) "Full participation" includes the ability to make opening and closing
statements or, in accordance with Section 53B-26-207, present and question a witness.

(c) "Full participation" does not include a procedural right other than a right
described in Subsection (6)(a) or (b).

80 (7) "Legal representation" means an attorney or, at a person's sole discretion, a

2. *Page 6, Lines 167 through 175:*

167 (b) an investigator;

- 168 (c) an ~~{institutional prosecutor}~~ administrator presenting arguments and
169 evidence on behalf of the institution ; or
170 (d) an advisor to a person described in Subsection (1)(a), (b), or (c).
171 (2) If an individual employed by the institution or otherwise representing an institution
172 serves as an investigator and an ~~{institutional prosecutor}~~ administrator
173 presenting arguments and evidence on behalf of the institution for the alleged violation
174 of a policy or
175 rule, the institution shall advise an accused student, accused student organization, or an
alleged
victim prior to the investigation proceeding.
(3) An individual may not serve as an investigator or ~~{institutional~~
~~prosecutor}~~ administrator presenting arguments and evidence on behalf of the
institution and an
advocate for an accused student, accused student organization, or an alleged victim.

Rep. Greene withdrew the original motion.

The substitute motion passed unanimously.

MOTION: Rep. Christensen moved to amend the bill the same as the original motion. The motion passed with Rep. Cox, Rep. Greene, Rep. King, Rep. Snow, and Rep. Wheatley voting in opposition.

MOTION: Rep. Christensen moved to pass the bill out favorably as amended. The motion passed with Rep. Cutler voting in opposition.

S.B. 96 Uniform Deployed Parents Custody and Parent-time Act (L. Hillyard)

Sen. Hillyard explained the bill to the committee with the assistance of Brian Garrett, Director of Military Relations, Zions Bank.

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

1. *Page 1, Lines 21 through 22:*

21 Other Special Clauses:

22 ~~{None}~~ This bill has a special effective date.

2. *Page 15, Line 456:*

456 Section 30-3-40, Custody and parent-time when one parent is a servicemember.

Section 32. Effective date.

This bill takes effect July 1, 2017.

The motion passed unanimously.

MOTION: Rep. Oda moved to pass the bill out favorably as amended. The motion passed with Rep. Cutler, Rep. King, and Rep. Nelson voting in opposition.

1st Sub. S.B. 113 Subjecting a Minor to Sexual Material (T. Weiler)

Sen. Weiler explained the bill to the committee.

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

1. *Page 2, Lines 28 through 31*

Senate 3rd Reading Amendments

3-1-2016:

28 (1) The sentencing judge or the Board of Pardons and Parole ~~{shall}~~ may
29 consider as an
30 aggravating factor in their deliberations regarding the sentence or the terms of probation or
31 parole that in the course of the commission of an offense under Subsection (2), the defendant
exposed a victim ~~§~~→ who is younger than 18 years of age ←~~§~~ to pornography.

The motion passed unanimously.

MOTION: Rep. Hall moved to pass the bill out favorably as amended. The motion passed unanimously.

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