

ARIZONA STATE SENATE

45TH LEGISLATURE FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: January 16, 2001 **TIME:** 1:30 p.m. **ROOM:** SHR 1

CHAIRMAN: Senator Richardson **VICE CHAIRMAN:** Senator Smith

ANALYST: Sheryl Rabin **COMMITTEE SECRETARY:** Tracey Moulton

INTERNS: Lou Bacchi; Joseph Martin Belson, Jr.

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Aguirre	X			SB 1001	FAILED
Senator Bee	X			SB 1007	DPA
Senator Bundgaard	X			SB 1009	HELD
Senator Burns	X			SB 1011	DPA
Senator Cumiskey	X			SB 1014	HELD
Senator Rios	X			SB 1034	DP
Senator Smith, Vice Chairman	X			SB 1035	HELD
Senator Richardson, Chairman	X			SB 1041	DP
				SB 1047	DP

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
The Honorable Martin F. Gillespie	Member, Commission on Appellate Court Appointments	CONFIRMED
Carol Nichols Turoff	Member, Commission on Appellate Court Appointments	CONFIRMED
Henry William Varga	Member, Commission on Appellate Court Appointments	CONFIRMED

Tape 1, Side A

Chairman Richardson called the meeting to order at 1:30 p.m. and attendance was noted. For additional attendees, see Sign-in Sheet (Attachment A).

APPROVAL OF MINUTES

Without objection, Senator Richardson moved the minutes of the January 9, 2001 Committee on Judiciary meeting be approved as distributed.

Senator Richardson commented that with the House Judiciary Committee meeting at 1:00 p.m., during the same time frame that the Senate Judiciary Committee meeting is scheduled, many people have voiced concern with needing to be at both Committee meetings. She stated Chairman Voss and she have arranged to hear the bills in an order to accommodate this need. She noted that a computer would be utilized to help coordinate efforts to eliminate people from having to go back and forth.

PRESENTATION: OVERVIEW OF THE ARIZONA COURT SYSTEM

David Byers, Director, Administrative Office of the Courts, distributed handouts entitled "Judicial Department, prepared by The Executive Office of the Courts, Arizona Supreme Court, January 2001" (Attachment B) and "A Guide to Arizona Courts" (Attachment C). His testimony came from Attachment B.

In response to Senator Bundgaard, Mr. Byers stated that the cost born by the person filing a case would vary according to the type of case and the level of court that the case is heard in. He stated that those costs are set by statute and he said he would provide a filing fee guide for Senator Bundgaard.

EXECUTIVE NOMINATIONS

The Honorable Marlin F. Gillespie – Member, Commission on Appellate Court Appointments – RECOMMEND CONFIRMATION

The Honorable Marlin F. Gillespie, stated that he is native Arizonan and resident of Navajo County and remarked that he has put in approximately 40 years in county government service as a deputy sheriff, sheriff, and as a member of the Navajo County Board of Supervisors. He commented that he is interested in the Appellate Court Commission and has been serving since February. He stated that it is an enjoyable and challenging position.

In response to Senator Burns, Commissioner Gillespie stated that he is registered and voted in the last general election.

Senator Rios asked if the Commissioner had an opportunity to participate in the selection of the applicants to the Proposition 106 independent redistricting commission. Commissioner Gillespie stated that he attended and participated in a meeting held on January 6, 2001 when 25 individuals were chosen to be presented to the Legislature.

Senator Smith moved that the Committee on Judiciary recommend to the full Senate the confirmation of The Honorable Marlin F. Gillespie to the Commission on Appellate Court Appointments. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 1).

Carol Nichols Turoff – Member, Commission on Appellate Court Appointments – RECOMMEND CONFIRMATION

Carol Nichols Turoff stated that she was present for re-confirmation and that she has served for one four-year term up to the present. She has served as the Legislative Liaison for the County Attorney's Office, the public information officer and legislative liaison for the Sheriff's Office and legislative liaison and spokesperson for the Department of Administration. She stated that she has enjoyed working on the Commission and would like to continue.

Senator Smith moved that the Committee on Judiciary recommend to the full Senate the confirmation of Carol Nichols Turoff to the Commission on Appellate Court Appointments. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 2).

Henry William Varga – Member, Commission on Appellate Court Appointments – RECOMMEND CONFIRMATION

Henry William Varga stated that he has been involved in political and civic activities for many years. He remarked that he has had the opportunity of serving on the Commission on Appellate Court Appointments for one term and half of the current term. He stated that he is the Treasurer of the Mohave County Republican Central Committee and as such a member of its Executive Board. He commented that he is concerned with the issues of rural Arizona as well as all of Arizona.

Senator Smith moved that the Committee on Judiciary recommend to the full Senate the confirmation of Henry William Varga to the Commission on Appellate Court Appointments. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 3).

CONSIDERATION OF BILLS

S.B. 1001 – summoning jurors; judicial districts – FAILED

Lou Bacchi, Research Intern, stated that currently in most counties, jurors are summoned countywide. If one or more judicial districts were established by court rule, S.B. 1001 would allow jury commissioners to draw from a smaller portion of each county.

Senator Burns asked what problem the bill addresses and who is putting the bill forward. Mr. Bacchi stated the Administrative Office of the Courts.

Sheryl Rabin, Research Analyst, stated that a representative from the Administrative Office of the Courts was intending on being present for this bill, but apparently they are at the House testifying.

Shannon Slattery, Legislative Relations Coordinator, Maricopa County Public Defenders Office, stated that her office's position on S.B. 1001 is neutral. She noted, however, that her office has significant concerns with the potential constitutional challenges that could be raised to the bill under the current structure of judicial districts with regard for Maricopa County. She remarked that

at present the State has been divided into districts by county, under the guise of one superior court, within the state there are three judicial districts that have been outlined by court rule. Ms. Slattery stated these three districts are the southeast judicial district which encompasses Tempe, Mesa, Chandler and east to the Maricopa County border; the northeast judicial district which covers the northeast end of Maricopa County and extends out to the northeast county border; and the Verde Valley judicial district which is presently in place in Yavapai County. She stated that the concern this raises is one of the fundamental protections in the jury system, that there is as diverse a pool of jurors as possible to choose from, when picking a jury. She commented that this is particularly significant in criminal cases because the juries deal with life and death cases. Ms. Slattery noted that she understands the question of convenience and a difficulty of travel for some people across the valley. She noted that there is no other major county of this size or greater that has split into judicial districts and operates on a regionally based jury pooling system. She stated that L.A. County has 9.2 million people and has 36 regional courts split into 12 superior courts and 24 municipal courts. She stated that L.A. County pools county wide for jurors because it is designed to protect the rights of the people who are involved in the jury process and the rights of the people sitting in the defense and plaintiff chairs in the trial system.

Senator Richardson noted that Ms. Slattery did not mark on her speaker slip whether she was in support or opposition to the bill, but noted in her testimony that she said her office is taking a neutral position. Ms. Slattery stated her office would be in opposition to the bill in its current form for a variety of reasons. She stated that one reason is that the discretion lies solely in the hands of the jury commissioner and there is no criteria for determining at which point the jury commissioner would make the selection between a county-wide jury pool and a district-wide jury pool. Additionally, because there is only one judicial district presently carved out in Maricopa County, she does not have any support for the demographic figures as to what that judicial district is and whether it is representative of the County as a whole.

In response to Senator Burns, Ms. Slattery stated that at present the northeast district is not authorized to accept jury cases, nor is it handling criminal cases under the current judicial districts guidelines. She stated that only the southeast district would be effected by the jury trial situation. She noted that Yavapai County currently has the Verde Valley judicial district and is operating under a judicial district pool under an administrative court rule that makes it discretionary in criminal trials. She explained that a criminal defendant in a pretrial conference is given the option to elect a district jury pool or a countywide jury pool. She stated it is her understanding, after speaking with members of the bar, that the division was made primarily because there is a mountain range that divides the County. This created situations where people were traveling 75 miles or greater through weather conditions across those mountains trying to get to the County Seat to report for jury duty.

Jerry Landau, Special Assistant, Maricopa County Attorneys Office, noted that although the Maricopa County Attorneys Office did not initiate the bill, it is in support. He stated that the problem of travel distances may have been a primary reason for the bill, but noted that the Maricopa County court system, county government, county prosecutor and defense bar is looking at regional planning for regional centers/districts and the placement of new court houses. He commented that this affects other counties as well. He stated that there is a new courthouse in Mesa, and discussions of placing one in the northwest section of Maricopa County and possibly placing one in the southeastern section of the County in Scottsdale. Mr. Landau stated that then a decision would need to be made as to whether to hold criminal cases, civil cases or domestic relation cases in those courthouses. He stated that if jury trials are handled in those locations, the next question becomes where are jurors pooled from. He commented that this issue was

discussed in the regional planning committee, which he is a member of, before this bill was developed. He noted that he discussed similar ideas that Ms. Slattery discussed. He stated that in his office, the opinion is that there is diversity in Maricopa County as well as Pima County and others. He stated that this is not a fiat to the county, it can only be done by court rule. Mr. Landau stated that if the presiding judge, with the Supreme Courts concurrence, does not believe that it is not appropriate, it will not be done.

In response to Senator Richardson, Mr. Landau stated that the bill effects the entire state, not just Maricopa County. He noted that, however, the presiding judge of the county, with the approval of the Supreme Court, has to go ahead and initiate or determine whether or not there is going to be a judicial district or else it will not effect that county.

Senator Bundgaard asked if a defendant requested it, would the Maricopa County Attorney's Office allow a jury commissioner to draw from within the entire county. Mr. Landau stated that his office would not be involved with this type of decision. He stated that would have to be set up in the parameters, and the protocol would have to be set up in a court rule.

Senator Burns asked if when a potential juror has a geographic problem is the situation raised in jury selection and if so, are jurors ever excused on this issue. Mr. Landau stated that he has heard this issue raised, but noted that he is not in the courtroom enough to state whether a judge would allow this as a reason for being excused.

Senator Rios commented that he does not get overly concerned with a situation of a juror from the west side of the county having to travel to the southeast facility in Mesa when in rural areas, such as Pinal County, it is typical that these people have to drive 50-80 miles. He stated that the establishment of judicial districts would probably not be able to be done in rural counties because those counties do not have the population base.

Kelly McDonald, Attorney, Arizona Trial Lawyer Association, stated that the Association has significant concerns regarding S.B. 1001. He stated that with the near completion of loop 101, the inconvenience factor that was mentioned earlier would be addressed. He remarked that the people in the northwest portion of Maricopa County seem to be one of the primary forces of the sponsor's concern for creating the bill. He commented that it is optional in Yavapai County for a defendant to request where the jury pool is drawn from. He stated that his Association would like this language excluded from the bill. Mr. McDonald opined that diversity could not be obtained in a clear-cut contiguous line fashion. He stated that although he is not on the regional planning committee, and therefore not in possession of the same knowledge that Mr. Landau has, he opined that it is difficult for him to image clear contiguous lines in Maricopa County. He stated that the creation of areas designated as one district creates constitutional concerns about equal protection under the law. Mr. McDonald noted another reason the Association is opposed to the bill is in regard to the diversification of the newly created districts. He stated that there are diverse populations countywide with certain ethnic and economic backgrounds in every part of the county, but there is no guarantee that the districts will represent the same percentage of diversification. He opined that the discussion that has been held regarding various parts of Maricopa County eventually becoming another county may be the solution to the regional planning issue.

David Byers, Director, Administrative Office of the Courts (AOC), stated that it was not his office or the Courts that asked for this bill. He opined that the sponsor of the bill is Senator Cirillo and noted that Mr. Landau did an excellent job of explaining the impetus from the bill. He noted that the bill was created to address complaints from citizens who have long distances to travel to

appear for jury duty. He remarked that the bill could affect any county, but it would only make sense for a county to do this if it had more than one superior court location. He noted the only counties that have more than one superior court location are Mohave, Maricopa and Yavapai. Mr. Byers stated that Senator Cirillo brought the bill to the judicial council and the presiding judges of the State and they all voted in general support as long as it was permissive. He stated the Courts recognize that the bill could be challenged on certain aspects constitutionally. He remarked that the Chief Justice has indicated that if the bill were passed, it would be the intent of the Supreme Court to only approve plans, if the diversity issue is dealt with.

Senator Smith moved S.B. 1001 be turned with a DO PASS recommendation. The motion FAILED with a roll call vote of 2-6-0 (Attachment 4).

S.B. 1007 – courts; time payment fee – DO PASS AMENDED

Mr. Bacchi stated that S.B. 1007 continues the current \$20.00 time payment fee imposed by the courts for any court ordered fine, penalty of sanction not paid in full on the date of the court disposition.

Senator Rios asked how much longer the court indicated that the increase would be needed before the goal of automating the court system is accomplished. Mr. Bacchi deferred to a representative from AOC.

Gordon Mulleneaux, Associate Clerk of the Court, Maricopa County, Arizona Association of Superior Court Clerks, stated that the Association is in support of the continuance of the fee. He stated that four years ago a request for an increase in the fee was given to the Legislature. He stated the fee helps raise money to provide automation in the court system. Mr. Mulleneaux stated in answer to Senator Rios' question, that in terms of automation dollars, he opined that the need will always exist. He noted that the fees are collected in superior court based upon criminal filings when fines are not paid at 100 percent. He noted that the fees are collected differently in the other courts.

David Sands, Legislative Officer, AOC, in response to Senator Rios' concern, stated that this is not a new fee and has been in effect since 1989 with reasonable increases granted to reach the current \$20.00 amount. He stated that AOC approached the Legislature in 1997 for the last increase and although the increase was granted, it was time limited for two years. He explained that in 1999, AOC again came to the Legislature to request the fee remain at \$20.00 and again, it was granted with a time limit for two years. He gave the following analogy that similar to highway projects, money is saved for a project, a highway is built and then it is maintained, the court automation projects now have been planned and are being put in phase. He stated that even with the completion of the projects that are planned now, there is almost insufficient money to accomplish these projects. He stated that there is not a general fund appropriation for court automation projects. He noted that the Legislature has stated that this should be financed on a user fee basis. Mr. Sands stated that AOC is eager to reach out and join the new electronic age. He stated that a network has been created with 1400 users processing millions of cases a year. Mr. Sands remarked that eventually, the use of electronic filing and digital signatures are goals that AOC has. He stated that AOC would ask the Legislature to allow the fee to remain in place for many more years to enable the Courts to move forward on these projects.

Senator Cummiskey commended the objectives of the Courts in terms of automation, but noted his concern that in 1997, the intent to increase the fee from \$12.00 to \$20.00 for the purposes of

upgrading automation. He noted that it was stated that at such time when AOC felt that there was a leveling off of the upgrade then the fee would return to \$12.00. He stated that he is concerned that this is becoming a revenue center for the future implications of automation upgrade for the courts and that it appears that this situation will continue to exist. He stated that his concern is that this situation is not being addressed through an appropriation process. Mr. Sands stated that the fee is a one time fee that is charged to people who pay their fines, penalties or sanctions late and does not relate to surcharges which are charged on court filing fees. He stated that the fee goes into a judicial collection and enhancement fund and is joined there by other sources of money. He noted that Senator Cummiskey is correct in that AOC anticipates that this money will be needed for some time. He stated that these funds are subject to appropriation, so there is that oversight that the Legislature has. He stated that perhaps in 1997 it was believed that once equipment was purchased, the need for the increase in the fee would no longer be necessary. He remarked that upgrades and servicing in today's technology creates the need for the continuance of the increase.

Senator Cummiskey expressed his appreciation of Mr. Sands' candor and noted that the intent that was presented in 1999 was that the increase of the fee was to be for a finite period of time and other sources would be pursued. He stated that it sounds like this is the source that the Courts have rested on. Mr. Sands stated that is correct and noted that it is very much a user based fee and is not just visited on the people who pay the time payment fee, but also on other types of fees that come into the Court.

Senator Smith, sponsor, stated that automation of the Court system is a very big problem, especially outside of Maricopa County. He stated because of the lack of an adequate system, multiple driving under the influence offenses, for example, do not appear on an individual's record. He stated that AOC has made significant progress in automation and opined that the State cannot move farther without further automation. He stated that he would support Senator Rios' amendment for the AOC to report back in two years, but opined that this is the only way AOC can have a steady stream of funding to proceed with automation.

Senator Smith moved S.B. 1007 be returned with a DO PASS recommendation.

Senator Richardson announced that there is a Rios amendment to the bill. She commented that due to the distribution of the amendment past the 1:00 p.m. deadline, she would ask the Committee to allow the amendment. She stated that she did not have an objection and would like to accommodate Senator Rios with the Committee's agreement. After a brief discussion, the amendment was allowed.

Senator Rios moved the Rios 24-line amendment dated 1/15/01 at 4:00 p.m. be ADOPTED.

Senator Rios explained the reason he wanted to have a two-year limit on the bill is because the Legislature has been dealing with this issue for approximately four years. He stated the original intent to increase the fee was because AOC needed the additional revenue to purchase hardware and software to help automate the system. He expressed his concern that this is being put on the backs of the people who can least afford it. He opined that the Courts should be competing for general fund appropriations with the rest of the State's departments. He asked that the Committee support his amendment to address, in part, some of his concerns.

Senator Smith commented that he concurred with Senator Rios' concerns and expressed his support of the amendment.

The motion **CARRIED** by a voice vote (Attachment D).

Senator Smith moved S.B. 1007 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 5).

S.B. 1009 – juror pay – HELD

Mr. Bacchi stated that S.B. 1009 increases the stipend pay to jurors from \$12.00 to \$50.00 per day. He stated the reason for the increase is to encourage participation with diversity and to address dismissals due to financial hardship for people who ask to be excused.

Senator Smith, sponsor of the bill, stated that there has been discussion to increase jurors' pay for several years. He stated that there are opposite opinions regarding this issue. He noted that some people feel that as citizens, it should be a patriotic duty to sit on a jury. He stated that the counties would be the responsible entities to fund a pay increase. He noted that Minnesota pays their jurors \$30/day, Nebraska pays \$35/day and New York \$40/day and some States have a sliding scale depending on the number of days served.

Senator Richardson commented that the juror pay has not been increased in 20 – 30 years and should be considered.

George Diaz, Legislative Officer, Arizona Supreme Court, stated that the \$12.00 per diem was introduced in 1972, which equates to \$50.00 today. He noted that the \$12.00 amount today is equivalent to \$3.65. He opined that it is reasonable to examine this issue. He stated that this proposal seeks to do at least three things. The \$50.00 per diem adequately compensates jurors to cover expenses incurred in serving on a jury. In addition, it is hoped that the increase will improve attendance rates and reduce the number of summons and cost incurred in contacting jurors. Finally, a reasonable per diem may promote the assembling of a more representative cross section of jurors.

Alan Ecker, Program Associate, County Supervisors Association, stated that he was not present to state that juror pay should not be increased, however, the Association has taken the position that the increase is an unfunded mandate upon the counties. He commented that a dedicated funding source could be found rather than fiscally impact the counties of \$5.1 million each fiscal year after 2003.

Senator Smith asked if \$30.00 would be more tolerable. Mr. Ecker commented that the Association may not be in agreement with that amount, but stated that the Association would be willing to try to come to a compromise.

Senator Richardson announced the following people were present in opposition to the bill: **Arthur Chapa, Legislative Council, Pima County Board of Supervisors.**

Senator Richardson stated that she has been requested to hold the bill by the sponsor in order to come to a resolution.

Senator Burns agreed that holding the bill is a good idea and commented that some sort of compensation for mileage and other expenses should be discussed. She opined that the worst travesty is that jurors have to pay for expenses out of their own pockets.

S.B. 1011- public defenders; duties – DO PASS AMENDED

Joseph Martin Belson, Jr., Research Intern, stated that S.B. 1011 would allow public defenders to represent individuals who have been convicted of sexually violent offenses who are now appearing before an involuntary commitment hearing.

Shannon Slattery, Legislative Relations Coordinator, Maricopa County Public Defenders Office, stated that the Office does not have a particular position on the bill. She noted that this is an enabling statute created by the Legislature. She remarked that if the Legislature sees fit to give the Office these cases, they could take them. She stated that the Office supports the amendment to allow each county to examine whether or not putting these cases in the public defenders office is the most fiscally sound resource choice available. Ms. Slattery stated that in Maricopa County, there are three indigent defense offices plus a contract office. These cases are presently in the contract office, but the county board would have the option, if they elected to opt into this bill with the amendment, to put cases in any one of the three indigent offices. She stated that one of the Office's concerns is that they are not currently staffed for these types of cases, nor do they feel they have anyone immediately qualified to take them on. Ms. Slattery noted that although there is a delayed effective date, it falls within the middle of a budget year with money that has already been allocated to another source and there may be a problem with fund shifting. With the amendment attached to the bill, she noted that the county board would be required to give notice to the presiding judge of the county that they would now be authorized to accept these cases with the intent that they would have the funding and the personnel in place to adequately staff these cases. She noted that these are civil cases and civil trials with an underlying criminal matter, but the cases are not criminal in nature.

Senator Richardson commented that it was her understanding that this bill will save money. Ms. Slattery stated that over the long term, it is believed that because it is placed in an institution, long-term savings can be obtained. She noted that initial start up costs have not been assessed by her Office to determine what it would cost to start up a program. She stated the reason there is concern is because of the potential volume of cases, especially in Maricopa County. She remarked that this an exponential growth type of case-process because each year there is an initial commitment group of cases, which have been averaging approximately 60. In each subsequent year, she noted a new group of cases, plus a returning group of cases that are eligible for a review hearing under current law and maybe subject to a full trial. She stated that in essence, the caseload could be doubled inside of a year if the conditions existed.

Alan Ecker, Program Associate, County Supervisors Association, stated that this issue was brought to the Association from some of the smaller counties within the State. He remarked that the problem these counties are experiencing is that in the enabling legislation, for the type of cases that public defenders can accept, these sexually violent persons hearings are not included in that language. He noted that there are some public defenders in rural areas that are willing to take these cases and are not too overburdened to do so. He stated that currently the counties in rural areas pay contract attorneys very high rates and often times cannot find qualified or willing attorneys to accept these cases. He stated that this bill would allow each county to decide whether they want to participate. He opined that the Association does not wish to delegate anything upon the Public Defenders Office that they do not have the resources to accept. He stated that this is a permissive bill and is designed to save some of the rural counties money and allows county boards of supervisors to accurately budget for these types of cost. He stated that the amendment is to exclude the larger counties that would have resource problems.

Senator Smith moved S.B. 1011 be returned with a DO PASS recommendation.

Senator Smith moved the 10 line Smith amendment dated 1/15/01, 9:43 a.m. be ADOPTED. The motion CARRIED by voice vote (Attachment E).

Senator Smith moved S.B. 1011 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 6).

S.B. 1014 – sexual offenses; archaic laws; repeal – HELD

Senator Richardson announced that S.B. 1014 would be held.

S.B. 1034 – superior court clerk; removing receivables – DO PASS

Mr. Belson stated that S.B. 1034 would allow the clerk of the superior court to remove specified uncollectable debts from the court's accounting system.

Gordon Mulleneaux, Associate Clerk of the Court, Maricopa County, Arizona Association of Superior Court Clerks, stated that he has been in his current position for the last nine years and noted that there are monies still in the system from the beginning of his employment. He explained that the reason that these still exist is because of waiver deferrals that have not been paid. He noted that his office pursues these people with billing notices and has hired collection agencies to continue the process. He noted that these are debts that average \$125 to \$160 for court filing fees. He opined that after a point of time, it becomes more expensive to continue to pursue debts of people who are not likely to pay. Mr. Mulleneaux stated that they may not be able to pay for a number of reasons, bankruptcy, moved out of state or are deceased. He stated that last year the Legislature set up a similar mechanism for different kinds of debts owed to the State. He stated that AOC brought the bill in front of the Arizona Judicial Council and they also support the bill. He remarked that with the passing of the bill, the cost of the conversion to automation would be reduced once the debts are removed.

Senator Smith moved S.B. 1034 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 7).

S.B. 1041- children; mental health services - DO PASS

Sheryl Rabin, Research Analyst, stated that legislation was passed last year that streamlined the processes and responsibilities of agencies and juvenile courts for providing mental health services to dependent and delinquent children. She stated that S.B. 1041 makes numerous changes to those procedures including the elimination of unnecessary language. Additionally, the bill establishes new procedures for residential treatment services for children adjudicated delinquent or incorrigible. She noted that the bill came out of a working group of the Supreme Court Committee on Juvenile Courts and was brought forward by the AOC.

David Sands, Legislative Officer, AOC, stated that Ms. Rabin did a remarkable job of summarizing the bill, that he was available to answer any questions by the Committee. He noted the bill that was enacted last year was a way to put a procedure around the process by which children who come into the juvenile court system with mental health problems are evaluated and then placed for treatment. He stated that he did not want that bill to be confused with some of the

other mental health bills before the Legislature this session. He noted that this bill does not deal with the programs themselves or the funding process, just the process that is used in the courts. He stated the bill passed last year was broadly supported and has been in application over the summer. Those people that work most closely with it, prosecutors, defense counsel and members of the court community all have recognized that the law needs slight modification, which is why S.B. 1041 to address these problems.

Senator Rios asked how does the Courts interface with the Regional Behavioral Health Authorities (RBHA). He stated that he has heard that a lot of the RBHA have the resources for mental health evaluations for children but that the Courts are not utilizing them. He asked if this legislation address this concern. Mr. Sands stated that the parties that Senator Rios is referring to were involved with the discussions that were held along with the Department of Juvenile Corrections, the Department of Economic Security and others when this bill was developed. He deferred to **Donna Noriega, Program Manager, Juvenile Justice Service Division, AOC**, to answer the question completely.

Ms. Noriega stated that this is basically a process for payment of services. She stated that when the Courts order an evaluation, the children are typically in detention and go to the mental health system or a hospital for that evaluation. She stated that at that point in time, the RBHA evaluates the child to determine whether the child meets medical necessity. This means that the RBHA will pick up payment for the child's service at some point. She stated that there is a coordinated effort going on after the original referral is made.

In response to Senator Rios, Ms. Noriega stated that S.B. 1041 does not directly indicate the RBHAs. She stated that the RBHAs involvement is more of a "behind the scenes" activity and it is not addressed in this legislation.

Senator Richardson announced the following people were present in support of the bill: **Shannon Slattery, Legislative Relations Coordinator, Maricopa County Public Defenders Office and Louis Goodman, Legal Division Director, Arizona Department of Juvenile Corrections.**

Senator Smith moved S.B. 1041 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 8).

S.B. 1047- juvenile court; jurisdiction - DO PASS

Sheryl Rabin, Research Analyst, explained that S.B. 1047 would prohibit the juvenile court from consolidating juvenile delinquency proceedings with other proceedings that do not involve delinquency. She stated that matters that are prohibited from consolidation with these proceedings would include child custody and child welfare cases. Ms. Rabin stated that the Maricopa County Attorney's Office has asked that this legislation be brought forward because of differing burdens of proof and the differing rules of evidence in the different types of proceedings.

Jerry Landau, Maricopa County Attorney's Office, stated this bill is to clean up last year's comprehensive child welfare bill that Senator Solomon sponsored.

Senator Smith moved S.B. 1047 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 9).

S.B. 1035 – public accommodations; equal access guarantee – HELD

Gabriel Aragon, Research Intern, explained that S.B. 1035 prohibits discrimination in places of public accommodation to people who own or ride motorcycles, are affiliated with motorcycle organizations or wear clothing that displays membership in a motorcycle organization. He stated that punitive damages may be awarded, but may not exceed \$5,000.00. He stated that this legislation is in response to reported instances of discrimination toward motorcyclists around the State of Arizona based upon ownership, membership or affiliation of motorcycles or clubs.

Senator Richardson announced the following people were present in support of the bill: **Kelly McDonald, representing himself**.

Senator Richardson announced the following people were present in opposition to the bill: **Mike Petchel, Executive Director, Arizona Police Association (APA)**.

Senator Bennett, sponsor, stated that the bill prohibits discrimination against motorcyclists and protects private property rights of business or establishment owners. He stated many respectful professionals, such as schoolteachers, lawyers, doctors and police officers ride motorcycles and have experienced discrimination solely because of their clothing or their mode of transportation.

Senator Smith stated that a few days ago, he was speaking with an individual that witnessed an incident where a man wearing a leather jacket and riding clothing entered a restaurant. There were three elderly people sitting in a booth, two women and a man, and the man began to choke. When the shout was made, "Is there a doctor in the house", the man with the leather jacket came forward, as he was a physician. When he approached the booth, the two women were visibly frightened. The physician was able to remove the obstruction and there were no further complications. The two women told the physician that they were more frightened by his appearance than they were of their companion choking. Senator Smith concurred with Senator Bennett that there are many responsible and respectful people who enjoy riding motorcycles and belong to motorcycle clubs.

Eric Edwards, Legislative Liaison, Arizona Association of Chiefs of Police and Phoenix Police Department, explained that he only recently reviewed the bill so he has not had the opportunity to study the bill in the depth that he would like to. He commented that he has some concerns that are shared with Mike Petchel on behalf of police officers around the State. He stated that a couple sections of the bill deal with civil lawsuits and injunctions that are authorized. He stated that the way the bill is written, he is concerned that it will allow outlaw motorcycle associations to bring lawsuits against officers. He stated that the situation he envisions is a restaurant or bar owner has a situation and call police officers to the scene to have someone removed and a debate ensues of what had transpired. This would put the police officer in an extremely difficult situation and may create a liability situation on the officer if he takes any action. Obviously there is liability on the officer if he does not take action and someone is injured or another incident occurs. He stated that should the bill move forward in the process, he would like to see language added to address people wearing patches that are clearly associated with outlaw motorcycle gangs.

Don Isaacson, Legislative Counsel, Arizona Licensed Beverage Association, stated that his association is a retail trade association which includes bars, restaurants, hotels and other retail eating and drinking establishments and is in opposition to certain portions of the bill. He stated that the bill creates new liability for an establishment owner who should make a mistake and removes a client before any damage is made and can therefore can be cited for a new cause of

action including punitive damages. He commented that it is unfair to burden a waitress, waiter or bartender who have to make quick decisions regarding the safety of their clients and will be held accountable for an error of judgment. Mr. Isaacson stated that there appears to be an inconsistency in the bill. Referring to A 3, he noted that an establishment cannot discriminate against an individual that wears clothing that displays the name of a motorcycle organization or association, however, under 2 C a dress code can be used that is not designed to exclude a particular individual or a group of individuals associated with a motorcycle organization. He stated that the Association would like to work with the sponsor of the bill and try to eliminate the inconsistencies and would like to have a little latitude, discretion and protection for someone who makes a good faith decision.

Roger Hurm, Modified Motorcycle Association of Arizona, stated that this bill is similar to other bills that have been brought to the Legislature in recent years. He stated that aside from the extraneous media chafe and the extreme positions from law enforcement, his Association opined that there is no basis for the State to knowingly allow discrimination based upon a legal form of transportation.

Bobbie Hartman, American Brotherhood Aimed Toward Education (ABATE), stated that Legislators have concerns of hurting business owners and suggested that the groups wanting this legislation work with the business owners to eliminate this kind of discrimination. She stated efforts to work with business owners have been occurring for a number of years and noted that a petition has been signed by a number of business' that are against this form of discrimination and are willing to support this legislation.

Without objection, Senator Richardson announced that the bill would be held to address some of the concerns related in the meeting.

Without objection, the meeting was adjourned at 3:25 p.m.

Respectfully submitted,

Tracey Moulton
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)