

ARIZONA STATE SENATE

45TH LEGISLATURE FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON HEALTH

DATE: January 30, 2001

TIME: 1:30 p.m.

ROOM: SHR 2

CHAIRMAN: Senator Gerard

VICE CHAIRMAN: Senator Nichols

ANALYST: Jason Bezozo

**COMMITTEE
SECRETARY:** Carol Dager

INTERN: Meghann Brennan

**ASSISTANT
ANALYST:** Kathy Seeglitz

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Cirillo	X			SB 1109	HELD
Senator Guenther	X			SB 1125	DPA
Senator Hartley	X			SB 1140	DPA
Senator Hellon	X			SB 1141	DPA
Senator Solomon	X			SB 1162	DISCUSSION/HELD
Senator Verkamp	X			SB 1186	DPA
Senator Nichols, Vice Chairman	X			SB 1195	DPA
Senator Gerard, Chairman	X			SB 1197	DP
				SB 1198	DPA/SE
				SB 1201	DPA
				SB 1202	DPA
				SB 1209	HELD
				SB 1210	DP

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Rufus Glasper	Arizona Health Facilities Authority Board	CONFIRMATION
Donald Ray Farris	Board of Physical Therapy	CONFIRMATION

Chairman Gerard called the meeting to order at 1:41 p.m., and attendance was taken.

Attendees Sign-In Sheet (Attachment A)

The January 16, 2001 minutes were approved without objection.

EXECUTIVE NOMINATIONS

Rufus Glasper, Arizona Health Facilities Authority Board – CONFIRMATION

Mr. Glasper noted that he is currently Vice Chancellor of Business Affairs with the Maricopa Community Colleges and has been involved in Governmental Accounting and Finance for 26 years. He recently was appointed by the County Board of Supervisors as a consultant with the Maricopa Health System.

Senator Nichols moved that the Senate Health Committee recommend to The full Senate the confirmation of Rufus Glasper to the Arizona Health Facilities Authority Board. The motion CARRIED with a role call vote of 8-0-0. (Attachment 1)

Donald Ray Farris, Board of Physical Therapy – CONFIRMATION

Mr. Farris explained that this appointment is his way of repaying the community. He has been in Arizona for 34 years.

Senator Nichols moved that the Senate Health Committee recommend to the full Senate the confirmation of Donald Ray Farris to the Board of Physical Therapy. The motion CARRIED with a role call vote of 8-0-0. (Attachment 2)

CONSIDERATION OF BILLS

SB 1198 – AHCCCS; grievance and appeal – DO PASS AMENDED/STRIKE EVERYTHING

Kathy Seeglitz, Health Committee Assistant Analyst, explained that the strike everything amendment to SB 1198 restricts, beginning January 1, 2002, drivers from transporting passengers in a motor vehicle's cargo space unless designed, retrofitted or intended for the safe conveyance of passengers with integrated lap and shoulder belts meeting specified federal standards. The bill sets a maximum civil penalty for each unrestrained or improperly restrained cargo passengers and exempts drivers who are on private property or are participating in an organized parade. It prohibits an insurer from considering violations of this act when establishing rates or in determining whether to insure a person. It also prohibits a state agency or department from using a violation of this act to suspend, cancel, revoke, or refuse a person's driver's license.

Senator Hartley questioned if the retrofitter needs to be licensed. She related a story where her husband installed a shell and seatbelts in the back of their pickup when their children were young. She asked if that would be a legal retrofit. Ms. Seeglitz explained that the bill does not

specify what qualifies for retrofit. Senator Hartley pointed out that in the backseat of her current vehicle, there are shoulder belts for the two window seats, but not for the middle seat. Ms. Seeglitz replied that she would have to research that information.

Senator Verkamp asked if this bill applies statewide, because in prior years the bill only addressed Maricopa and Pima Counties. Ms. Seeglitz answered yes. Senator Verkamp referred to the current law where a police officer can only stop and warn a driver, and questioned if there is any data to substantiate that is not working to justify this additional bill. Ms. Seeglitz replied that she is not aware of any data on that issue. She pointed out that she has information on the number of people who have died riding in the cargo space. According to the National Highway Traffic Safety Administration, in 1999, there were 10 deaths. Senator Gerard stated that the bill to allow police officers to stop and warn a driver did not pass; therefore, there is no current law. She explained that the National Highway Traffic Safety Administration only keeps records on these types of accidents if there is a death, indicating that there are no statistics on all the other severe injuries that occur when people are thrown from pickups. She noted that one of the reasons people argue against this bill is because there are families who cannot transport their families to church because they only have a pickup.

Senator Verkamp noted that there are many minority groups in his district where a pickup is their only mode of transportation. If they have three or four children, it is illegal to transport that many people in the front seat of the pickup and the only way they can drive from the reservation to Flagstaff is in the pickup.

Pam McClellan, representing herself, explained that she has been working on this important bill for a long time. She stated that the bill does not indicate that a licensed vendor is required to install the seatbelts; however, the belts do need to meet federal standards that stipulate anchoring of the belts.

Ms. McClellan explained that no law has ever been passed regarding passengers in the back of pickups. Bills have been introduced since 1985; however, none have passed. The only thing currently on the books is ARS 28-1098, which states that cargo must be restrained so it does not become a danger to other users of the roadway. No such protection is offered to passengers.

Ms. McClellan indicated that many times people think this is a personal freedom issue; however, she sees it as a personal responsibility. Most people will not be affected by this bill because they are responsible drivers and would not think of putting anyone in the bed of a truck. She noted that there is a concern about funding. One remedy to that issue is to collect a fine that could be disbursed to help economically challenged people. She pointed out that Glendale received a \$30,000 federal grant to their police department to support education and enforcement of seatbelts and child restraint laws. The grant was approved under the Federal Highway Safety Act of 1966 which requires states to establish ongoing highway safety programs. Obviously, there is grant money that the state can apply for to help fund retrofitting if that is necessary.

Ms. McClellan suggested that people have said “we cannot legislate commonsense.” However, she said that she feels it is done all the time; for example, Shannon’s Law.

Ms. McClellan commented that she can understand why someone might ignore her. However, she does not understand why people continue to ignore the experts, specifically the National Highway Traffic Safety Administration and the Insurance Institute reports.

Ms. McClellan next covered the top ten reasons the members should support SB 1198:

1. This is not a single session public policy enactment effort. To restrict or prohibit the transporting of riders in the cargo area of a truck has been in Arizona since 1985.
2. Legislation to prohibit the practice of transporting passengers in the bed of a truck was recommended to the governor's of the fifty states by the National Highway Traffic Safety Board in 1981.
3. Driving is a privilege and with it comes responsibility. SB 1198 would not effect responsible drivers.
4. Legislation provides behavior boundaries. Most people will comply with the law, simply because it is the law. Behavior boundaries provide young people an escape when faced with peer pressure.
5. Enactment of SB 1198 would extend to passengers the protection currently afforded to cargo. ARS 28-1098 requires cargo be secured to prevent becoming a danger to other users of the road. Ejected passengers are no less a hazard then a refrigerator that has fallen out of a truck.
6. Passenger restraint laws have been upheld in the courts. In a recent case, the court determined that passenger restraint laws promote the economic welfare of the state by reducing the public cost associated with serious injuries and deaths caused by accidents. Because of the drain on public and private funds caused by highway accidents, society has a legitimate interest in minimizing injuries which result in such accidents.
7. SB 1198 does not supercede more stringent federal or tribal laws.
8. Legislation coupled with enforcement and education is effective. This is an important statistic to consider. California enacted cargo/passenger restraint legislation in 1993. Since that time, fatalities have been reduced by 84%; in 1999, only 9. Arizona had 10 fatalities in 1999.
9. Legislation has been often been enacted where commonsense has not prevailed, such as ARS 28-1382, which is driving under the influence (DUI); ARS 28-855B, stop signs; ARS 28-645A3A, red lights; ARS 28-898, prohibit objects on roadway; and ARS 28-904, driving on a sidewalk.
10. Every single cargo area passenger fatality is preventable. In Arizona between 1987 and 1999, there have been 152 such fatalities, ranging in age from 2 to 85 years. One life is too many.

When people ask Ms. McClellan what will it take to pass this bill, she admitted she has a wisecrack answer: "What will have to happen is enough people at one time will have to die or someone important, and hopefully during the time the Legislature is in session."

Senator Gerard commented that those interested in this bill have tried to get this bill passed in every combination, such as restricting it to the local counties, then by urban areas, by having a warning, and by restricting it to only children. She indicated that she has always been open to suggestions; however, for those who oppose this bill it does not seem any different than what the bill is requiring.

Senator Cirillo pointed out that he drives to work on Grand Avenue every day through Surprise and El Mirage, and he sees about 50 to 100 migrant workers waiting to be picked up by trucks

to be taken to the fields. He said that he would not want to have the unintended consequence of these people losing their employment. He said that he understands sending a message; however, he does not like putting things in statute that would not be enforced. He asked if she has talked to the Department of Public Service (DPS) because he feels this bill is so watered down that he cannot see the police, who are in short supply, trying to enforce this law to collect a \$10 or \$25 fine. Once that information is around, then the law will not make a difference.

As far as the migrant workers, Ms. McClellan noted there already is a law on the books in the Occupation Safety & Health Act (OSHA) requirements that tells how to transport agricultural and construction workers. The agricultural law is much more restrictive than what is written in this bill. She said that she does not know if the agricultural law will ever be enforced in Arizona. California has beefed up their law and it actually is dealing with the migrant workers, and they say they have had a reduction in the injuries and fatalities of the migrant workers.

Ms. McClellan indicated that her son is a Phoenix police officer who would not have any trouble enforcing this law, because it is a dangerous thing to do. When an officer sees someone participating in a dangerous activity, it is their job to stop and talk with them. She pointed out that the reason the fines are not excessive is because they would never get a bill passed with large fines, since it goes back to the economically deprived and indigent. It is not to be punitive but rather it is meant for people to do the right thing.

Senator Gerard stated that the Governor's Director of Highway Safety is supportive of this bill. She surmised that if any police or DPS officers did testify that they would prefer to be able to stop drivers who have people in the bed of trucks. Ms. McClellan noted that DPS has helped in putting together legislation during the years.

Senator Verkamp mentioned that Senator Hartley stated that when she has constituents complain about the bill, she suggests that they get a camper shell and some seats. He asked Ms. McClellan what her feelings were about camper shells. Ms. McClellan replied that they did not exempt people who are in camper shells because studies have shown that camper shells are a further hazard when they become dislodged. She explained that she has been working on this bill because her son died in 1991 near Munds Parks. The person driving the truck rolled the vehicle and her son was ejected from the bed of the truck and it rolled on him. She pointed out that an anchored seat with a seatbelt might have helped him. She said that she knows her son should not have been there in the first place.

Senator Verkamp noted the National Highway Safety Administration states that "neither children nor adults should ride in the cargo area of a pickup, even if the cargo area is covered with a hard shell." Senator Verkamp pointed out that although he has often opposed this law, he did support the bill last year that the police officer could stop and warn people.

Senator Gerard asked what happened to the bill last year. Ms. McClellan responded that Representative Flake decided to hold the bill. Regarding the Indian tribes, she said that they have had some concern in years past; however, she has received letters of support from the DPS on the reservation, which stated that it is a seasonal issue, because the Indians find ways to transport people during the winter months; so there must be another way.

Senator Nichols stated that he had someone working in his office in Tucson who lost a son and her opinion was that had there been a law he would never had been in the back of the truck. It would have had a preventative function, irrespective of enforcement or fines. He asked if she

agreed that this would have a preventative effect, that there are enough people who obey the law. Just having the law would provide a good reason for drivers to say "it is against the law." Ms. McClellan replied that she would certainly hope that people have not gone so far away from respect for the law that there would not be a concern. It would give people a justifiable reason to say no.

Senator Nichols suggested the bill should be called "Christopher's Law" after Ms. McClellan's son because of all the hard work she has put into this bill over the years. Ms. McClellan replied she would be happy just to get the bill passed.

Senator Gerard pointed out that even Texas, who she feels is the pick-up capitol of the world, has a law. Ms. McClellan replied that there are 25 states that have some form of legislation.

Senator Guenther questioned where the 10 recorded deaths occurred. He pointed out that in rural Arizona someone would have to wait sometimes overnight to encounter another vehicle in order to have an accident. He stated that people are not in a hurry to get anywhere, they just need to get there. It is not the safest mode of transportation. However, neither does it result in a critical problem with significant injuries and death. He indicated that he would also like to know how many people are killed in Arizona for not wearing their seatbelt. He noted that the wearing of seatbelts should be made the primary enforcement.

Senator Gerard pointed out that there is a bill this year that covers seatbelts. Senator Guenther replied that he would continue to support a warning bill; however, this type of bill in his district is outright threatening and he would work to oppose it.

Senator Hartley mentioned that if seatbelts were made the primary enforcement, a driver transporting anyone in the back of a truck would be pulled over and fined.

Senator Nichols moved SB 1198 be returned with a DO PASS recommendation.

Senator Nichols moved the two-page Gerard amendment dated 01/24/01, 2:13 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment B)

Senator Guenther moved the following verbal amendment to the amendment:

Page 1, Line 21, strike "traveling at less"

Line 22, strike "than eight miles per hour and"

The motion CARRIED by voice vote.

Senator Nichols moved the two-page Gerard amendment, AS AMENDED, be ADOPTED. The motion CARRIED by voice vote.

Senator Nichols moved SB 1198 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-1-0. (Attachment 3)

Chairman Gerard noted the following were present in support of the bill: **Chris Herstam, Phoenix Children's Hospital; Geraldine Anderson, Legislative Liaison, Deer Valley Superintendents Parent Council and PTA; Barbara Burkholder, Executive Director, Arizona Public Health Association; David Landrith, Vice President, Arizona Medical**

Association; Rich Bitner, Legislative Counsel, Arizona College of Emergency Physicians; and Sandy Junck, Children's Action Alliance.

Chairman Gerard noted **Janice Goldstein, Executive Director, Arizona Trail Lawyers Association**, was present in opposition to the bill.

SB 1210 – board of osteopathic examiners – DO PASS

Jason Bezozo, Senate Assistant Research Director, explained that SB 1210 increases the caps on various fees under the Board of Osteopathic Examiners in Medicine and Surgery and changes the deadline for renewing a biennial license.

Senator Nichols asked for some background information in respect to the deletion of public records.

Ann Marie Berger, Executive Director, Arizona Board of Osteopathic Examiners noted that when legislation was passed regarding deleting records of dismissed complaints, the interpretation was that they must delete the entire record. That was not the intent of the legislation rather it was just to delete the public record after three years. She suggested that it is important to clarify language in the statute that the public record should be deleted three years after the board makes their decision. Some medical malpractice cases are investigated and tabled until the lawsuit is finished which may be longer than three years; therefore the record might be deleted before the board voted on the case. It is important not to delete the records until after the board makes their decision. This bill pertains only to deleting the public record, that the board would maintain the hard copy record. This bill also clarifies the concern that if there is no disciplinary action, the public record is deleted five years after the board decision.

Senator Nichols moved SB 1210 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-0. (Attachment 4)

Chairman Gerard noted the following were present in support of the bill: **Amanda Weaver, Executive Director, Arizona Osteopathic Medical Association; and Scott Steingard, D.O., Arizona Osteopathic Medical Association.**

Chairman Gerard noted that **Phil MacDonnell, Attorney, Arizona Newspaper Association**, was present in opposition to the bill.

SB 1186 – appropriations; children's physical activity programs – DO PASS AMENDED

Meghann Brennan, Senate Health Committee Intern, explained that SB 1186 appropriates \$1,000,000 in FYs 2001-2002 and 2002-2003 from the state general fund to the Department of Health Services (DHS) to establish a school-based grant program that promotes children's physical activities. Under this program DHS awards grants to county health departments allowing them to distribute the monies to schools. This bill also requires DHS to submit a report based on program assessments by the county health departments that are awarded grant monies. There is a Gerard eight-line amendment dated 1/29/01 at 4:46 p.m. that explains that DHS will transfer 4% of the appropriation to the office of the Auditor General so that they would be submitting the report of the assessments rather than DHS.

Senator Gerard noted that she supports the Auditor General submitting the report, because she feels that they do a better job of evaluations than DHS. She said that it is also important to have independence of the evaluations from those who are administering the programs.

Senator Cirillo asked if physical education programs are already in schools. Ms. Brennan replied that there is no current statute requiring physical activities in schools. There is a board rule which mandates physical education in kindergarten through eighth grade.

Senator Cirillo said that he is concerned that the state continues to put additional mandates on the kindergarten through 12th grades and degrades the ability to do the teaching job. He agreed that part of developing young children is physical activity but feels there are sports programs that would provide that activity.

Senator Gerard noted that the reason she feels this is important is the health care providers are in support of the bill, as well as the School Boards Association. There is money to do the programs and the reason they want to do a study is to see the difference physical education may make. One of the top public health issues is obesity. The numbers are alarming for young children. Diabetes has reached epidemic proportions as well because there is not enough physical activity. Most of the schools have cut back with very few of them having physical education teachers.

Senator Nichols mentioned that he recently read that the most sedentary people live in Arizona. He asked if there was any fiscal impact statement. Ms. Brennan replied that a fiscal note has not been requested from the Joint Legislative Budget Committee (JLBC); the appropriation would take care of all the expenses associated with the bill.

Senator Hartley commented that many of the schools have done away with the physical education programs because it is a luxury item. Students First did not take care of override elections and there is a differentiation between districts that can pass overrides and have physical education programs, as opposed to the districts that have problems passing overrides and do not have the physical education programs. School districts that have had to do away with physical education because of the constraints and lack of dollars will be able to apply for the grant under this bill.

Senator Aguirre, sponsor of the bill, explained that this is a million dollar appropriation and she has requested a fiscal note from JLBC. Providing a brief history, she noted that over the last three or four months, she has been working with different members of the community regarding physical education in the schools. They found out that the Arizona Department of Education (ADE) does not have a department for physical education. At one point there was the President's Physical Education Committee with an emphasis on physical education. Today, children have become sedentary and are lacking in a physical education curriculum in the schools. She said that they have found a way to bring it back. Many people have helped format this legislation and hope to have a pilot program to show the need. She pointed out that if children feel good and are in good physical shape, the academics will follow. She explained that this bill will provide equity in the districts so that the poorer areas will be able to have physical education in their schools.

Scott Steingard, D.O., Arizona Osteopathic Medical Association, indicated that he was the one who started the work on this legislation. He mentioned a program named Project Spark

based in Maryland, where they looked at the students going through program. Students were split into two groups. One in a standard five-day-a-week program without physical education. The other group emphasized physical education. The student's academic scores were tracked and found that the children who participated in a physical education program did better in school and behavior was improved. Overall it was a much more effective program. He suggested that they did not want to mandate the program and that is why there is a grant program.

Senator Cirillo questioned if there are so many statistics supporting the good of the physical education programs, why have the schools not participated. Senator Gerard replied it takes money. Senator Cirillo asked where are their priorities. Dr. Steingard replied that is a good question but cannot provide an answer why the schools do not support a physical education program. He stated that the data is overwhelming. He noted several articles that indicate that there is a dramatic decrease in violence with the increase of physical education. It is a very timely topic. As a family physician, Dr. Steingard said that he has a strong interest in the medical as well as the social health of children. He explained that he has seen too many children that are grossly obese or completely physically unfit. He feels it is best to target the children in kindergarten through eighth grade because that is the best time to get them involved in physical education to provide a lifetime idea.

Andy Dzorinko, Executive Director, Government Council on Health Physical Fitness Sports, explained that he has been quite fortunate because he has been active in sports throughout the years. He pointed out that in the past, everyone had a chance to participate in sports. Today sports is a big business. Even in the schools if a child is not considered a blue chip athlete, many times they are discouraged. When people are obese, they get discouraged because all they see on television and magazines is a perfect figure. Many people feel they will never attain that figure. That is not what this bill is directed towards, rather it is necessary for people be active. Thirty minutes of activity, two or three times a day, has been proven to be healthful. The first place to start is with the children, where a habit can be developed that would carry through a lifetime. He explained that there is a Play Program that has been in 160 schools and has been very effective. One of our goals in Arizona is to have 320 schools participating. He said they do not want to do away with physical education teachers. He said that several school districts want to replace physical education with a substitute such as band and feels that will not work. He is concerned that the schools are missing the point if programs are not supported for encouraging physical activity. If people are not active as they get older, they will have many more health problems.

Senator Solomon stated that in the last six months she attended two conferences on children's and adolescent health. At both of these conferences, it was noted that the absence of physical activity has dramatically impacted the health of our children. She indicated that in the Tucson Unified School District where she spent 28 years of her life, there was no physical education specialist in the elementary schools. The school where she did have an outreach program, they did raise money from bake sales and other projects to fund a part-time college student a couple of days after school so that they could provide some meaningful physical education. She said that she attended a meeting in Scottsdale where there was a presentation on the epidemic proportion of obesity in children and adults and the public health concerns. Not everyone who is overweight is in bad health but there can be complications when they are obese. She said that she does not know how far this bill will be able to go since there is a limited amount of money involved.

Senator Cirillo pointed out that Students First does provide gymnasiums for the new schools that are being built. He also commented that the schools are being forced to be the parents and he feels that is going in the wrong direction. He said that he feels parents have the ultimate responsibility for the health of their children. If these types of programs continue to be dumped on the schools, improvements on the academics will not occur.

Senator Hartley explained that Students First does not include gymnasiums in elementary schools. She also pointed out that there is no societal problem that does not visit the school house. It is not always the parents' problem. There is a number of social problems that end up at the school and ultimately they have to deal with it.

Senator Hellon stated that one of the schools in her district is well funded and will not make use of this grant; however, she feels this is an important thing to make available to districts that do not have funding. She indicated that the children cannot participate in physical education and then be forced to eat pizza in the cafeteria. It just does not make sense.

Senator Verkamp agreed with everything the speakers have said, however, if this is such an important issue, the schools should be addressing it in the school budget. Parents also have some roll in this issue.

Senator Cirillo moved SB 1186 be returned with a DO PASS recommendation.

Senator Cirillo moved the eight-line Gerard amendment dated 01/29/01, 4:46 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment C)

Senator Cirillo moved SB 1186 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 6-1-1. (Attachment 5)

Senator Nichols noted the following were present in support of the bill: **Barbara Burkholder, Executive Director, Arizona Public Health Association; Judy Bernas, Association Director, Public Affairs, University of Arizona Health Sciences Center, College of Public Health; Susie Stevens Matthews, Attorney; Jerry Landau, Citizen; Phil Lopes, Executive Director, Arizona School-Based Health Centers; Ann Marie Berger, Executive Director, Arizona Board of Osteopathic Examiners; Thomas E. McWilliams, D.O., Associate Dean, Midwestern University; Kathy Boyle, Executive Director, Arizona Pharmacy Association; Barbara Robey, Director of Government Relation, Arizona School Boards Association; and Amanda Weaver, Executive Director, Arizona Osteopathic Medical Association.**

SB 1201 – appropriation; rural ambulances – DO PASS AMENDED

Ms. Brennan explained that SB 1201 appropriates \$1.5 million in FY 2001-2002 from the emergency medical services operating fund to DHS for ambulances in rural areas. This bill also specifies that the director of DHS must consult with the Emergency Medical Services Council before distributing the funds. There is a Gerard three-line amendment dated 1/29/01 at 9:28 a.m. that strikes the language to provide ambulances to improve emergency medical services which broadens the range of things that can be done with the bill.

Senator Nichols asked if this does come out of the Emergency Medical Services (EMS) fund rather than the general fund. Ms. Brennan replied that is correct.

Senator Cirillo moved SB 1201 be returned with a DO PASS recommendation.

Senator Cirillo moved the three-line Gerard amendment dated 01/29/01, 9:48 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment D)

Senator Cirillo moved SB 1201 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3. (Attachment 6)

Senator Nichols noted the following were present in support of the bill: **Bill Lanford, Chief, Buckeye Valley Fire District; Jan Hauk, President, Arizona Fire District Association; Elaine Arena, Rural Metro Southwest Ambulance; and Jim Skelly, Lobbyist, Arizona Ambulance Association.**

SB 1125 – suicide prevention program – DO PASS AMENDED

Ms. Brennan explained that SB 1125 appropriates \$491,000 in FY 2001-2002 and \$872,363 in FY 2002-2003 from the state general fund to DHS to establish a suicide prevention program. This bill outlines basic requirements for the program such as cooperation with existing programs and agencies, applications for federal funds, and submission of an annual report by November 15, of each year. There is a four-line Solomon amendment dated 01/26/01 at 8:11 a.m., which changes the appropriation from \$491,000 to \$140,000 and the second appropriation of \$872,363 to \$120,000.

Donald Vance, Lobbyist, American Association of Retired Persons (AARP), explained that Curtis Cook, Associate Director of AARP, has operated with the Arizona Suicide Prevention Coalition for several years and has worked hard to bring this bill to fruition along with many other people. This bill affects senior citizens, but also goes through all ages.

Senator Nichols stated that in Pinal County a few years ago they were trying to identify what the prime health problem was in the view of the residents of that community. Suicide was one of the top issues that was identified.

Senator Solomon indicated that it is a serious problem with the Native American population as well. It has recently been discovered that it is elderly men who commit suicide more often than elderly women. It also is one of the highest causes of death among the teen population.

Senator Nichols related a story regarding several of his former high school classmates who committed suicide.

Ilene L. Dode, Ph.D., President/CEO, EMPACT Suicide Prevention Center, noted that one of the services that her association offers is support groups to the survivors of suicide. She said that they often lose sight of those who are left behind and absolutely devastated by these suicides. Senator Nichols indicated that when there is a teacher who loses a student to suicide, there is particular sense of guilt that goes with that.

Senator Cirillo moved SB 1125 be returned with a DO PASS recommendation.

Senator Cirillo moved the four-line Solomon amendment dated 01/26/01, 8:11 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment E)

Senator Cirillo moved SB 1125 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3. (Attachment 7)

Senator Nichols noted the following were present in support of the bill: **Barbara Burkholder, Executive Director, Arizona Public Health Association; Jack Harvey, Mental Health Advocacies Coalition of Arizona; Joe Abate, Attorney, Arizona Council of Human Services Providers; David Miller, CEO, Arizona Council of Human Service Providers; and Trevi Grant Harris, Area Agency on Aging.**

SB 1140 – AHCCCS; adoption; third party payors – DO PASS AMENDED

Ms. Seeglitz explained that SB 1140 repeals statutes relating to the reimbursement of prenatal and delivery services covered by the Arizona Health Care Cost Containment System (AHCCCS) in adoption cases. Additionally, it eliminates the requirement for an adoption agency or attorney to notify AHCCCS when an AHCCCS member's child is placed for adoption. There is a six-line Gerard amendment date 01/29/01 at 9:23 a.m. that reinserts language requiring an adoption agency or adoption attorney to notify AHCCCS when an AHCCCS member's child is placed for adoption. AHCCCS needs this information in order to remove the adoptive child from their membership rosters.

Senator Cirillo moved SB 1140 be returned with a DO PASS recommendation.

Senator Cirillo moved the six-line Gerard amendment dated 01/29/01, 9:23 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment F)

Senator Cirillo moved SB 1140 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2. (Attachment 8)

Senator Nichols noted that **Lynn Dunton, Assistant Director, AHCCCS** was present in support of the bill.

SB 1141 – AHCCCS; claims – DO PASS AMENDED

Mr. Bezozo explained that SB 1141 makes several changes to the time frames for claims payments under AHCCCS and changes the reporting date for the annual AHCCCS report on immunization rates. This legislation also allows AHCCCS and the health plans to specify a shorter time frame for claims payment in their contracts. There are two amendments to this bill. The first is a four-line Gerard amendment dated 01/29/01 at 9:42 p.m., which eliminates the authority of AHCCCS on the health plans to specify a shorter time period for claims payments in their contracts. The second is a Gerard amendment dated 01/30/01 at 11:26 a.m. and is a late amendment. It replaces the authority of AHCCCS and the health plans to specify a shorter time

period for claims payments with the authority of AHCCCS and the health plans to contract for shorter time period for claims payments.

Lynn Dunton, Assistant Director, AHCCCS, indicated that they introduced this legislation to clean up the claims processing periods of time and to make it more fair for providers. As part of that clean up, they noticed language that was almost impossible to understand. In trying to figure out what they meant nine years ago, it was clear that what they were trying to say was if a provider wants a shortened time frame to submit a claim, that would be okay. By contract, they are allowed to do that. Since the language was so incomprehensible, it was stricken and clearer language was put in, which appears on page four of the bill on lines eight through ten. The Hospital Association is going to oppose this bill. She explained that this is only a clarification of an existing law. She said that the Hospital Association is concerned that there may be some interpretation of this being a one-sided mandate.

Laurie Lange, Arizona Hospital and Healthcare Association (AZHHA), explained that they support the four-line amendment. She said that they would recommend that the statute be silent on AHCCCS and the health plans ability to contract with the hospital for a shorter billing time frame. They are free to do so now, many of them do. She said that they do not see any reason in the statute to authorize a shorter billing time frame.

Senator Cirillo moved SB 1141 be returned with a DO PASS recommendation.

Senator Cirillo moved the four-line Gerard amendment dated 01/29/01, 9:42 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment G)

Senator Nichols moved SB 1141 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1. (Attachment 9)

Senator Nichols noted **Phyllis Bledess, Director, AHCCCS**, was present in support of the bill.

SB 1197 – disease control research commission – DO PASS

Ms. Brennan explained that SB 1197 transfers, from DHS to the Arizona Disease Control Research Commission (ADCRC), the authority to administer the health research account in the tobacco tax and health care fund. Currently, according to statute, DHS administers the health research account but the monies are transferred to the health research fund, which is administered by the ADCRC. This bill eliminates the administrative burden of dividing the authority.

Senator Cirillo moved SB 1197 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3. (Attachment 10)

Chairman Gerard noted that **Dawn Schweder, Executive Director, ADCRC**, was present in support of the bill.

SB 1195 – supplemental appropriation; AHCCCS; budget shortfalls – DO PASS AMENDED

Ms. Seeglitz explained that SB 1195 appropriates \$45,132,700 from the state general fund in FY 2000-2001 to AHCCCS for budget shortfalls. There are two amendments. The first is an 18-line Solomon amendment dated 01/25/01 at 11:38 a.m. that changes the funding source from the state general fund to the medical services stabilization fund and reduces the appropriation from just over \$45 million to \$41.7 million. This is the amount and funding source recommended in the JLBC budget. Additionally, this amendment requires the AHCCCS director to transfer \$4,455,700 of the current fiscal year's state general fund appropriation to the acute care program for budget shortfalls in the current fiscal year. The second is a two-line Gerard amendment dated 01/29/01 at 9:31 a.m. clarifying that the specified programs with budget shortfalls are in the acute care program in AHCCCS.

Senator Cirillo moved SB 1195 be returned with a DO PASS recommendation.

Senator Cirillo moved the 18-line Solomon amendment dated 01/25/01, 11:38 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment H)

Senator Cirillo moved the two-line Gerard amendment dated 01/29/01, 9:31 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment I)

Senator Cirillo moved SB 1195 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2. (Attachment 11)

Chairman Gerard noted the following were present in support of the bill: **Donald Vance, Chair, AARP; and Laurie Lange, Vice President, Public Affairs, AZHHA.**

SB 1202 – AHCCCS; grievance and hearings – DO PASS AMENDED

Mr. Bezozo explained that SB 1202 eliminates conflicts between time frames for claims payments and grievances regarding claims under AHCCCS. It ensures time frames and procedures for grievances and appeals under the Arizona long-term care system (ALTCS) are consistent with the rules under the AHCCCS acute care program. There is a ten-line Gerard amendment dated 01/29/01 at 9:54 a.m. which requires AHCCCS to adopt rules establishing prospective tiered per diem payments and also allows a grievance relating to denied claims to contest the validity of an actual or rule that resulted in the denial.

Senator Cirillo moved SB 1202 be returned with a DO PASS recommendation.

Senator Cirillo moved the ten-line Gerard amendment dated 01/29/01, 9:54 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment J)

Senator Cirillo moved SB 1202 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2. (Attachment 12)

Chairman Gerard noted the following were present in support of the bill: **Lynn Dunton, Assistant Director, AHCCCS; Don Isaacson, Legislative Counsel, St. Joseph's Hospital and Medical Center; and Laurie Lange, Assistant Vice President, Public Affairs, AZHHA.**

SB 1162 – sexually violent persons; petitions; admissions – DISCUSSION/HELD

Mr. Bezozo explained that SB 1162 changes the standard the state is required to approve in a petition hearing of a resident who is requesting to be released to a community or to a lesser restrictive alternative. Currently, the state is required to prove beyond a reasonable doubt that the resident's mental disorder has not changed and the resident is a danger to others and is likely to engage in acts of sexual violence. The standard under this bill requires the state to prove beyond a reasonable doubt that the resident has not successfully completed transition through all levels of treatment necessary to be safely discharged or released to a less restrictive alternative.

Senator Gerard asked where this bill was originated. Mr. Bezozo replied that the Attorney General's Office (AGO) requested the legislation changing the standard. Senator Gerard questioned why the standard was changing. Mr. Bezozo responded that the current standard requires the state to show that the person still has a mental disorder and is likely to engage in acts of sexual violence. That is the standard the state is required to show when a person has petitioned to be released from the Arizona State Hospital (ASH) or be released to a less restrictive alternative. It also is the same standard that the state is required to show when a person is being committed to ASH. The AGO is asking that standard to be changed to the new standard that shows the person has moved through all levels of treatment. Once they have successfully completed those treatments, they can be released or discharged.

Senator Cirillo questioned if this bill had something to do with a certain time frame that people in the system would not be covered. Senator Hartley asked if he is referring to the people who were sentenced before many of the laws were enacted, where their sentences are completed, and are in society with no follow-up treatments.

Mr. Bezozo replied that people who are currently discharged, the statute does not specify that the courts can establish conditions when they are released. There is a provision in this legislation that allows the courts conditionally release a person.

Mr. Bezozo noted that there are two amendments that conflict. The first is a seven-line Gerard amendment dated 01/29/01 at 4:47 p.m. (Attachment K), which allows the court to have discretion over the amount a resident is going to repay ASH. The second is a Gerard two-page amendment dated 01/30/01 at 9:36 a.m. (Attachment L) that removes the section dealing with the hospital being able to recoup some of the cost. In addition, it clarifies the authority of DHS to transport residents and detainees by specifying that DHS may transport a person from the community protection treatment center to a medical facility as designated by the superintendent of ASH for medical purposes only.

Senator Gerard stated that she does not feel anyone has a problem with deleting the part about making them pay for their own care. Mr. Bezozo responded that DHS has requested to eliminate that section because they have done an analysis of what it would take to recoup those costs and anything that they would recoup would cancel out the cost of going after the monies.

Senator Nichols explained that there are possibly some civil liberty issues. He noted that the courts have apparently upheld that for sexually violent persons (SVP), community protection is constitutional to the degree that the person is detained after they have completed their sentence. Special facilities have been created to handle this situation with 133 residents in a community protection treatment center as of December 31. He questioned if this bill as amended will make it more or less difficult for a person to get out the other end of the never-ending spiral of confinement by the state if a person is convicted of a sexually violent crime.

Meg Wuebbels, Assistant Attorney General, Arizona Attorney General's Office, pointed out that they do not have a position on the transportation issue or objection to the portion of the inmates paying for their own care to be removed. She stated that the AGO requested that Senator Valdez sponsor this bill because they felt that the standard currently in statute was difficult to interpret and were trying to clarify what is required for a person to be released either to a less restrictive alternative or into the community. She said their intention was to place in there a measurement where someone would have transgressed through some levels of treatment as determined by their medical professionals until they could be safely released. The standard that was in there was the same standard that was used to commit them and it seem incorrect to use the same standard to commit and measure their progress.

Ms. Wuebbels noted that there is a section in the bill that does allow the court to add some conditions to someone who would be released into the community. They can be totally discharged with no conditions or have some form of supervision as determined necessary by the court on each individual case.

Senator Nichols explained that when this bill was introduced, someone indicated that four people had been released to the community and this needs to be stopped from happening again. He questioned if there is anything an SVP can do to work through the system or is it a lifetime sentence. He suggested that everyone is concerned about community protection but are also concerned about the civil liberties of the people involved. There is another bill that talks about whether an SVP will have a public defender or have access or right to a private attorney. This is like a lifetime sentence and that is why he is concerned about the quality of defense that these people are receiving.

Ms. Wuebbels explained that there were three people who were released; the AGO stipulated to the release of two of them. For one of them, it was brought to the attention of the court that the standard was unworkable. That standard was difficult to interpret because it was the same one used to commit someone. If they have been in treatment for a period of time, there would be no way to show if the treatment was working. She said that they wanted to put a measurement in the bill to allow the court to have something for them to measure. She said that it came to their attention that the standard that they were using was not working. She commented on the adequate defense situation, noting that she was a public defender for a number of years and feels that a person can get as good a representative from the public defender's office as anywhere. There is nothing that they would do to impair their ability to have good counsel.

Senator Gerard asked what happens if this bill does not pass. Ms. Wuebbels replied that the program continues as it is. She said that they feel it is a better idea to clarify the statute rather than appeal a particular case and ask the court to clarify it. Senator Gerard explained that this program would grow for a time and then level off because new sentencing laws have been established that would keep SVP in jail forever. This bill covers SVP who were sentenced years ago and are ready to be released from prison.

Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union, indicated that they oppose the bill. She pointed out that SVP do not receive treatment while in prison. It is being proposed that after an SVP is released, they will enter a mental hospital and will be required to have treatment and successfully complete it. The existing standard is one that is objective and has been used for many years and does not have any consistency. She said that she represents people who are going through this system. One of the difficulties is that when someone is in treatment, there is no confidentiality. People are being forced to basically criminalize themselves even though this is a civil procedure. The fact is that it can result in loss of liberty for a lifetime. If an SVP says they are still getting urges but feel they can control them, that may be enough to say that person is still a danger to others. That is a fairly objective standard. She questioned the term "successfully completed" stating that the term is so vague it invites an abusive discretion. The current standard is one that every state uses when someone is involuntarily committed to a mental health facility. To change it to something so vague seems to be a violation of due process. The lack of confidentiality is a large issue. There are some people who are being charged with contempt on top of all the other issues they have to deal with because of their refusal to submit to the treatment because there is no doctor-patient confidentiality. For that reason, it is compelling speech through which someone may criminalize themselves. For that reason alone this is ill advised.

Senator Gerard asked if in some of these cases, the attorneys are telling the inmates not to participate in any treatment because that is admitting that they are an SVP. Ms. Eisenberg replied that is not necessarily the case. She said that it is her understanding that the lack of confidentiality is the main problem. Senator Gerard indicated that there is a problem treating the inmates because of how they are treated within a prison population. Ms. Eisenberg replied that there are very few programs offered to the inmates. She suggested that it is inconsistent to not provide treatment while in prison and then when the inmate has paid their debt to society, they are civilly committed possibly for a lifetime.

Kristi Riggins, Contract Public Defender, Maricopa, Gila, and Yuma Counties, stated that she has represented a number of SVP in this process. She said that she opposes this bill for a number of reasons. First, the new proposed standard basically establishes an arbitrary group of levels, the definition of which has changed at least three times over the last two years. There really is no standard to move from level to level. Whether a person moves from level one to level two is totally in control of the state hospital staff. There is no independent review or supervision over this process. There is not a clear standard by which a court could judge whether someone has successfully completed the standard. Another problem with the bill is that the court does not recognize that there are a number of inmates at ASH that have been committed that have already completed successful treatment in the Department of Corrections (DOC). They have already completed many of these groups that are required under the various levels. They are being required to retread their previous treatment in a total lockdown maximum security facility. Many of these inmates were minimum security inmates at DOC and now are finding themselves in what is akin to a maximum security prison and required to repeat their prior programming which they have already completed.

Ms. Riggins pointed out that this particular standard presupposes that there are no alternative treatments other than ASH, which in effect creates a monopoly. The current law provides that a court could commit a person to a licensed behavioral health facility other than the state hospital. A private facility that could be paid for not by taxpayer's funds but by the families of the people currently incarcerated at ASH. This takes the private provider completely out of the picture and

does not allow for commitment to a program that does not have these levels. The most serious problem is that there is no independent oversight of this process. These men are committed and assigned to level one no matter what their prior treatment was. The current minimum time to move from one level to the next is 90 days. There is a mandatory minimum time in a level whether they need it or not, there is no supervision over the decision to move from one level to the next, and it is a complete blackout of all the potential private providers. She said that is one of the reasons she opposes this bill.

Senator Nichols asked if there is any other offense for which after the time is served, a person is kept in prison. Ms. Riggins replied that she is not aware of any others. Senator Nichols indicated that this change in protocol, if implemented, could have the effect of denying people the opportunity from ever exiting the system, and would make them wards of the state hospital with little or no appeal.

Daphne Budge, Court Appointed Counsel, stated that she has defended men in these types of cases. She related a story regarding a case on which she has worked. She commented that juries often question what the person's risk to reoffend is. The burden is - is the person more likely or not to reoffend and does he have a mental disorder. They often use stale information to arrive at a mental disorder. A client she worked with molested a child 14 years ago, was convicted, and spent 12 years in prison. When he was released, he was diagnosed by experts as having pedophilia which is a chronic condition and the jury found that he was sexually violent. There was a 90-day evaluation at the state hospital and then they gave him many tests that are given during the treatment context. These different tests used for the less restrictive alternative (LRA) report were all very good for her client. They did not give him a polygraph as to what his present sexual interest in children might be. The judge that tried this case after looking at all the tests said that he only has an interest in adult males. She said that she had the inmate take a polygraph and the question was asked during the last ten years have you had deliberate sexual thoughts about children under the age of 18. He said no and passed by a large margin. Nonetheless, the state hospital report said that he should not have an LRA. The judge said he will have an LRA and will be an outpatient. She said that she presented the testimony of an expert witness who said that if a person does not have deliberate thoughts about children under the age of 18, that is the first step to reoffending. There was nothing in the record from the in-depth evaluation that supported the ASH recommendation that he not have an LRA of any kind. Yet the Superior Court judge based upon the evidence has ordered that he be allowed to be an outpatient.

Senator Gerard reiterated that if they went from the standards that the State is operating today, a judge would not have the discretion to make the decision he made because there are going to be these arbitrary steps that the SVP must make before he can be released.

Jim Sawyer, Executive Director, Arizona Association of Counties/County Sheriffs, explained that last year the department had supported the concept that anytime an SVP needed to be transported to court that it should be the responsibility of the county sheriff to do that. He stated that they argued against that point. These patients have not been in the custody of the county sheriff for a number of years. At one time they were but then transferred to ASH. The sheriffs are in the business of transporting alleged or convicted criminals, not those people who are civilly committed. DHS is to transport for only medical purposes, which creates a backdoor requirement that the sheriffs will not be transporting to court. He said that they had deliberately written the language last year and not identify anyone to do the transporting but let that to the courts to decide.

Chairman Gerard noted that **Michael Haener, Attorney General's Office** was present in support of the bill.

Chairman Gerard noted the following were present in opposition of the bill: **Jack MacIntyre, Director, Intergovernment Relations, Maricopa County Sheriff's Office; Shannon E. Slattery, Legislative Relations Coordinator, Maricopa County Public Defender.**

SB 1109 – medical student loans – HELD

SB 1209 – primary care providers; loan repayment – HELD

There being no further business, the meeting was adjourned at 4:28 p.m.

Respectfully submitted,

Carol Dager
Committee Secretary

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