ARIZONA STATE SENATE

45TH LEGISLATURE
FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: January 30, 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

Committee Members	Pr	Ab	Ex
Senator Aguirre	X		
Senator Bee	X		
Senator Bundgaard	X		
Senator Burns	X		
Senator Cummiskey	X		
Senator Rios	X		
Senator Smith, Vice Chairman	X		
Senator Richardson, Chairman	X		

BILLS

Bill Number	Disposition
SB 1002	DPA/SE
SB 1009	DP
SB 1096	HELD
SB 1131	FAILED
SB 1157	DISCUSSION/HELD
SB 1075	DPA
SB 1224	DP
SB 1238	HELD

GOVERNOR'S APPOINTMENTS

Name	Position	Recommendation
Margaret Corgan Kenski	Member, Commission on Judicial Conduct	CONFIRMED
Stephanie Cadiff Sklar	Member, Commission on Trial Court Appointments	CONFIRMED
Richard Scott Clore	Member, Arizona State Lottery Commission	CONFIRMED
Gary David Curtis	Member, Arizona State Lottery Commission	CONFIRMED
Dennis Phillip Lambson	Member, Arizona State Lottery Commission	CONFIRMED

Tape 1, Side A

Chairman Richardson called the meeting to order at 1:32 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 16, 2001 Committee on Judiciary meeting be approved as distributed.**

EXECUTIVE NOMINATIONS

Margaret Corgan Kenski, Member, Commission on Judicial Conduct – CONFIRMED

Margaret Corgan Kenski stated that she has a doctorate from Georgetown University In Comparative Politics and taught at Pima Community College for 27 years before retiring. She noted that she runs a consulting business with her husband doing survey research and polling, and she also serves on the Pima County Board of Adjustment. She remarked that she had a term on the Commission on Trial Court Appointments, currently serves on the Commission on Judicial Performance Review and just finished part of a term on the Commission on Judicial Conduct.

> **Senator Smith moved that the Committee on Judiciary recommend to the full Senate the confirmation of Margaret Corgan Kenski as a Member, Commission on Judicial Conduct. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 1).**

Stephanie Cadiff Sklar – Member, Commission on Trial Court Appointments – CONFIRMED

Stephanie Cadiff Sklar stated that she has a history of working in environmental public relations, as Chair of the Brown University Alumni School Committee from which she has a masters degree. She noted that she has taught at the University of Phoenix and Pima Community College and has assisted her husband with a public relations consulting firm in Tucson. She noted that she has served on the Tucson Pima Women's Commission and the Trial Court Nominating Committee before this opportunity, and has had the chance to work on three appointments to Governor Hull so far on this Commission.

> **Senator Smith moved that the Committee on Judiciary recommend to the full Senate the confirmation of Stephanie Cadiff Sklar as a Member, Commission on Trial Court Appointments. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 2).**

Richard Scott Clore – Member, Arizona State Lottery Commission – CONFIRMED

Richard Clore stated that he is a Police Commander with the City of Mesa Police Department for the last 24 years and teaches criminal investigations at the Maricopa County Mesa Community College. He noted that he has extensive background in investigation, holds a Masters degree from Arizona State University in Public Administration and is a certified public manager. He noted that he has been serving on the Arizona State Lottery Commission since early 1997.

Senator Smith moved that the Committee on Judiciary recommend to the full Senate the confirmation of Richard Scott Clore as a Member, Arizona State Lottery Commission. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 3).

Gary David Curtis – Member, Arizona State Lottery Commission – CONFIRMED

Gary David Curtis stated that he is the former Mayor, City of Safford and has a Coldwell Banker Curtis Real Estate Company in Safford. He noted that this is his third appointment to the Lottery Commission and is in on the Arizona Association of Realtors Board of Directors and the past chairman of the South-eastern and Arizona Government Association.

Senator Smith moved that the Committee on Judiciary recommend to the full Senate the confirmation of Gary David Curtis as a Member, Arizona State Lottery Commission. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 4).

Dennis Phillip Lambson – Member, Arizona State Lottery Commission – CONFIRMED

Dennis Phillip Lambson stated that he has been in the practice of public accounting as a certified public accountant for the last 35 years in Arizona. Additionally, he noted that he has been involved in a variety of civic activities such as being past president, treasurer and member of the Mesa Public Schools Board of Education. He has served as the President of an international accounting association, currently serves on the World Board of that organization and has been serving on the Lottery Commission since 1999.

Senator Smith moved that the Committee on Judiciary recommend to the full Senate the confirmation of Dennis Phillip Lambson as a Member, Arizona State Lottery Commission. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 5).

CONSIDERATION OF BILLS

Senator Richardson announced the following bills would be held:

S.B. 1096 – hazing; educational institutions; prohibition – HELD

S.B. 1238 – inmates; early releases; drug treatment – HELD

S.B. 1009 – juror pay – DO PASS

Joseph Belson, Research Intern, explained S.B. 1009 increases the current pay to jurors from $12.00 per day and thirty-one cents per mile to $50.00 per day and thirty-one cents per mile. He stated the Administrative Office of the Courts (AOC) suggests this increase would aid in juror participation by reducing the need to excuse prospective jurors for hardships and would aid in securing more diverse panels.

Senator Burns stated that she had not received any amendments to the bill, therefore this is the same bill that was heard before.

Senator Richardson stated that this is the same bill and noted a brief amount of testimony would be heard from the Courts.

George Diaz, Legislative Officer, AOC, distributed a handout entitled "Juror Per Diem Facts" (Attachment B) and stated that two weeks ago the Committee asked for the two opposing sides to attempt to negotiate a compromise. He explained that in that attempt, AOC has offered to implement the increase incrementally or on a sliding scale. Neither of these suggestions was accepted. He noted the current per diem in statute was implemented in 1970. He stated the $12.00 per day rate, adjusted for inflation, is now $3.65. He stated that 77% of the jurors in Maricopa County and 88% in Pima County do not receive any per diem payment. He remarked that 22% of the persons excused from jury duty are excused for financial hardship or childcare reasons. Mr. Diaz stated that in comparison, poll workers, who are also a temporary service, are paid an average of $108 per day. He stated that AOC is asking for half of that amount.

Alan Ecker, Program Associate, County Supervisors Association, testified in opposition to the bill and noted that they also tried to work in good faith with the courts. He stated that they proposed funding the increase with a tax credit or with an alternative source, which could not be agreed upon. He stated that the counties cannot pay for this. He remarked that this does not mean that the Association is saying that there should not be a raise, but coming from the revenue stream, the counties would have to offset dollars from another program. He stated that he could not identify which program would be affected, but noted in its current format, the counties will have to "rob Peter to pay Paul" to accomplish this mandate.

Senator Richardson announced the following people were present in support of the bill: **Janice Goldstein, Executive Director, Arizona Trial Lawyers Association and Ron Johnson, Governmental Relations Director, State Bar of Arizona.**

Senator Richardson announced the following people were present in opposition to the bill: **Larry Richmond, Attorney, Gila, Pinal, Santa Cruz Counties and Art Chappa, Pima County Board of Supervisors.**

> **Senator Aguirre moved S.B. 1009 with a DO PASS recommendation. The motion CARRIED with a roll call vote of 4-3-1 (Attachment 6).**

Senator Cummiskey, in explanation of his vote, stated that he had hoped that between last week and now a compromise could have been reached on this bill. He stated that without a dedicated funding source or some way of paying for this, other than then just saying the counties will have to foot the bill, he stated he could not support this legislation and voted no.

Senator Rios, in explanation of his vote, stated that he agreed with Senator Cummiskey and voted no.

S.B. 1175 – personal property exemption; automobile – DO PASS AMENDED

Mr. Belson explained S.B. 1175 increases the fair market value (FMV) exemption for a personal motor vehicle during a bankruptcy proceeding. He stated the individual exemption would increase from $1,500 to $5,000 and that spouses jointly filing for bankruptcy could exempt up to a total of $10,000.

Mr. Belson explained Aguirre amendment dated 1/29/01, 11:10 a.m., changes individuals that are referred to in statute as "maimed or crippled" to "physically disabled."

Albert H. Hartwell Jr., Attorney, representing himself, testified in support of the bill and stated that he is in private practice in Tucson and a large portion of his practice is in the consumer bankruptcy area. He stated that the amount for the exemption of vehicles has not been raised in approximately 25 years and opined that it does not serve the purpose of the legislation to keep the amount at the current level.

Mr. Hartwell stated that the philosophy behind exemptions is for someone who has gone broke in bankruptcy or has their estate is liquidated outside of bankruptcy, is to prevent them from being "naked in the street" and that they have some personal property remaining to get on with their lives. He remarked that these individuals need a vehicle to get to work and $1,500 does not buy much of a vehicle today. He opined that $5,000 is an extremely reasonable figure to insert into that legislation today.

Senator Richardson announced that **Philip S. Abromowitz, Attorney, representing himself,** was also present in support of the bill.

> **Senator Aguirre moved S.B. 1175 be returned with a DO PASS recommendation.**
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> **Senator Aguirre moved the Aguirre amendment dated 1/29/01, 11:10 a.m. be adopted. The motion CARRIED by voice vote (Attachment C).**
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> **Senator Aguirre moved S.B. 1175 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 7).**

S.B. 1224 – civil rights violations; enforcement – DO PASS

Sheryl Rabin, Research Analyst, explained S.B. 1224 modifies the civil rights enforcement procedures for discrimination in public accommodations and voting rights to conform with other Arizona civil rights statutes including employment, housing discrimination statutes and the Arizonans with Disabilities Act.

Ms. Rabin noted key components of the bill include extending from 60 to 180 days the amount of time in which the aggrieved party may file with the Attorney General's (AG) Office and allowing the AG's Office to file a charge on its own initiative. The AG's Office reports that these changes are necessary because, while other areas of the civil rights statutes have undergone changes, the public accommodations and voting rights enforcement statutes have remained unchanged since their original 1965 enactment.

Meg Wuebbels, Attorney, Attorney General's Office, testified in support of the bill and noted the bill expands the amount of time for individuals who feel that they have been discriminated against to come to the Office and file a complaint. She stated the bill also brings the public accommodation statute into line with other civil rights statutes.

Senator Burns asked how much the AG's Office believes their caseload will increase if this bill passes. Ms. Wuebbels stated that the Office does not believe that there would be a substantial

increase. She stated that caseload is based upon the amount of discrimination that is out there. She stated the bill would allow the Office to address the discrimination in a better way and would be able to assess greater fines if the civil rights statutes are not complied with. She noted that it is the hope of the AG's Office that this bill will help alleviate some of these problems in the future and the bill would serve as a preventative measure.

Senator Burns stated that from reading the bill, one of the significant changes is that it is on the agencies own initiative that the division may file charges to investigate. She stated that it sounds like the agency will be out looking for these cases, not just making them more significant in an investigation and in penalties, which concerns her. She remarked that she knew that the agency had some difficulty keeping up with the caseload in this area. She asked for a comment regarding the backlog.

Ms. Wuebbels stated that the Office anticipates, at most, a 20% increase of cases. She stated the backlog, in the prior administration, was two years. That figure has been reduced in half and the Office is currently catching up on these cases. She noted that the Office could file claims on its own initiative for other areas of civil rights, so this bill brings public accommodation into line with those areas. She reiterated that it is the hope that by addressing this and the problems that the Office hears from the public, that the changes will serve as an incentive for public places not to discriminate.

Senator Burns asked when the AG's Office would be asking for more investigators or a request for more staff from the Legislature. She stated that even though the backlog has been reduced, there is still a year's worth of cases backlogged and the Office is anticipating a 20% case increase if this bill passes. She expressed her concern with how the Office intends to deal with this situation.

Ms. Wuebbels remarked that there is not an appropriation in the bill and there is no intention to add one to the bill. She stated that the Office feels that with the changes that have been made by the current administration, the Office will be able to address the current backlog and any additional cases this bill may bring.

Senator Richardson announced that **Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union and Samantha Fearn, Vice President of Public Affairs, Arizona Chamber of Commerce** were present in support of the bill.

> **Senator Aguirre moved S.B. 1224 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 6-1-1 (Attachment 8).**

<u>S.B. 1002 – bail bonds – DO PASS AMENDED/STRIKE EVERYTHING</u>

Mr. Belson explained S.B. 1002 authorizes a county sheriff to accept bonds from any person if the bond is in the form of cash, a certified check, a cashier's check or an attorney trust account check. He noted that according to the Administrative Office of the Courts (AOC), the current law relating to acceptance of bail bonds by sheriffs is not being interpreted uniformly throughout the state. Although most county sheriffs will accept bail bonds from any person, the Pima County Sheriff's Office interprets current statute to limit the authority of the sheriff to accepting bail bonds only from bail bond agents licensed in Pima County. As a result, the Pima County Clerk of the Court is providing staff to the jail in order to allow other people to post bail during non-business hours.

Mr. Belson noted that the AOC states that clarifying the law to authorize county sheriffs to accept the bond of any person will make acceptance of bail bonds uniform throughout the state and save the Pima County Clerk staffing costs.

Mr. Belson explained the same subject strike everything amendment clarifies the law to authorize a county sheriff to accept bonds from any person not otherwise prohibited from posting bonds under current law.

Senator Burns stated that the fact sheet specifically refers to Pima County, and that most counties already accept these practices and therefore creates uniformity. She stated that she has had contact with people who are concerned with the bill, one was from Safford and one was from Phoenix, clearly not in Pima County. She expressed her confusion on whether the bill only effects Pima County or if it affects the entire state.

Patricia Noland, former Legislator and current Clerk of the Superior Court, Pima County, testified in support of the bill. She explained the situation started in Pima County, but was occurring in other counties as well. She stated that she could not keep a staff member at the jail 24 hours a day. She stated she started to work with the Sheriff who interpreted the statute to mean that he did not have to bond anyone out of jail that was not using a bail bondsman. She remarked that is not the way the Attorney General interpreted the law and neither did she. She stated that anyone that comes up with the proper way to post a bond should be able to bond out of jail, otherwise people would be required to use bail bondsman. She stated that this situation has been worked out with the amendment and the sheriffs and the bail bondsman are in agreement with the bill, as amended.

Larry Adams, Professional Bail Agents Association of Arizona, testified in support of the bill, as amended and agreed with the statements that Ms. Noland made. He stated that he had no other testimony to submit to the Committee outside of the list of concerns that the Association sent the members a week ago.

Don Demarest, Professional Bail Agents of Arizona, testified in opposition to the bill and stated that he has been a professional bail agent in Arizona for 15 years. He stated professional bail agents work closely with the criminal justice system because they watch over and supervise the defendants that are waiting for trial, but free up valuable jail space and bring the defendants that abscond back into the system, at no expense to the citizens of Arizona. He stated the amendment, in its current form, allows the attorneys to post the trusts checks, and takes a valuable service away from the citizens of Arizona, as it replaces the bondsman and makes the attorney the surety of the defendant. Additionally, it puts the attorneys and the defendants in position of conflict, as the attorney will have to supervise and make sure the defendant appears in court.

Mr. Demarest stated that rule 7.6 of the criminal justice code mandates that the surety maintains regular contact with the defendant. He stated that this bill would take this away from the citizens of Arizona and bondsman that provide this service.

Senator Aguirre asked if attorneys post bond at present. Mr. Demarest stated that they do not.

Senator Aguirre stated that with the amendment, the bill would allow attorneys to post bond. Mr. Demarest noted that was correct. He stated that the bond agents are opposed to this and noted that this clearly makes the attorney the surety.

Mr. Belson stated that currently under statute, an attorney cannot post a bond and then represent the individual at trial or hearings.

Senator Richardson announced the following people were present in support of the bill: **Tonia Garrett, Governmental Affairs Manager, Arizona Association of Counties; Michael Jeanes, Clerk of the Superior Court of Maricopa County, Arizona Association of Superior Court Clerks; Tom Edwards, Legislative Staff, Administrative Office of the Courts and Gordon Mulleneaux, Associate Clerk, Arizona Association of Superior Court Clerks.**

> **Senator Aguirre moved S.B. 1002 be returned with a DO PASS recommendation.**
>
> **Senator Aguirre moved the Smith strike everything amendment dated 1/25/01, 2:57 p.m. be adopted. The motion CARRIED by voice vote (Attachment D).**
>
> **Senator Aguirre moved S.B. 1002 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 9).**

S.B. 1131 – fraud; telecommunications; subscription television services – FAILED

Ms. Rabin explained S.B. 1131 increases the penalties that exist for the unauthorized reception of cable television and subscription television services. Some of the provisions within the bill include increasing the penalty to a class 3 felony if a person manufactures, distributes, lends or sells devices for the unauthorized reception of cable television services. Additionally, the penalty for fraudulently obtaining cable television services for one's own use increases from a class 2 misdemeanor to a class 1 misdemeanor.

Ms. Rabin noted that the Arizona Cable Telecommunication Association states that this legislation is necessary in order to deal more seriously with cable and satellite television service theft and to make penalties for cable and subscription television fraud consistent with penalties for telecommunication, computer and Internet fraud.

Susan Bitter Smith, Executive Director, Arizona Cable Association, testified in support of the bill and noted that the stealing of cable television services and related services of broadband services such as Internet service and data provision is a multimillion dollar problem in the State. She stated this theft in turn increases costs to consumers for the provision of services.

Ms. Bitter Smith noted that there are existing statutes that deal with this particular crime. She stated the purpose of S.B. 1131 is to update those statutes. She stated that last session, the penalties for telecommunication frauds and computer crimes were increased. The bill is an attempt to amend the statute that is specific to cable television to include and be consistent with those penalties.

Senator Richardson stated a jump from class 6 felony to a class 3 felony is significant. She asked for a typical sentence for a class 6 felony as compared to a class 3 felony. Ms. Bitter Smith deferred to Mr. Sturr to answer this question. She stated the classification penalties are increasing because of the dollar volume of the theft.

Geoffrey Sturr, Attorney, Cox Communications, testified in support of the bill and noted that he has been working with Cox Communications over the last five years pursuing civil prosecutions of criminal enterprises that sell cable descrambling devices in addition to law enforcement agencies in the prosecution of these cases.

Mr. Sturr stated that these are criminal enterprises selling substantial numbers of descramblers that result in thousands if not millions of dollars of damages. He stated that the charging level under A.R.S 13-3709, is a class 6 felony, no matter how many devices have been sold. Some prosecutors have charged under 13-1802, which has a tiering with charges ranging from class 6 felony to a class 2 felony, which is tied to the amount of theft. For example, if the amount of damage is $250 to $1,000, it is a class 6 felony and $25,000 or more in damages is a class 2 felony.

Mr. Sturr stated that the AG's office is comfortable charging under those statutes, but police departments, county attorneys and others have not been willing to do this. He stated that those entities feel that the only charge that can be used is the cable theft statute, which is a class 6 felony. For that reason, Cox Communications has been concerned with the disparity in the technology crime statutes. Additionally, prosecutors are unwilling to devote resources to these prosecutions when all they can get is a class 6 conviction. He opined for that reason the increase in the offense level is warranted.

Mr. Sturr noted the bill proposes moving the offense level to a class 3, which would be consistent with the theft of $3,000 - $25,000 under the theft statute. He stated that they are dealing typically with cases where there are hundreds of thousands of dollars at issue, if not millions. He opined that for that reason the class 3 is consistent with the existing criminal statutes. He noted the telecommunications theft statute provides for a class 3 prosecution as well.

Tape 1, Side B

Senator Cummiskey stated that in terms of the theft provisions that Mr. Sturr referenced, it seems that the prosecutors should be able to get at the issue, based on incremental theft, with the existing statutes, with tiering that ranges from class 2 to class 6 felony charges, without going to a class 3 felony, with a presumptive term of 3.5 years imprisonment.

Mr. Sturr reiterated that other agencies are comfortable with charging only under the cable theft statute. He stated that the AG's office has not had any opposition to exploring this and noted that it was decided that instead of setting up a tier, it would be better to set the level that was comparable to other statutes. This would allow the prosecutor, in his or her discretion, to charge downward from that level.

Senator Cummiskey commented that this seems like a pretty heavy hammer for something that is in the same category as a class 3 felony as the sexual abuse of a person or an aggravated assault on a police officer. Mr. Sturr stated that he does not practice in those areas, and could not comment on those areas of the law. He stated that he has spent time in court with judges who are very concerned about the extensive nature of these criminal activities and they view these as enterprises with collateral effects in most of these cases. He explained that the criminals in these cases are not only selling the devices, but are selling drugs or are engaged in other illegal activities. He stated that if the offense is a class 6 felony, it is viewed as a sufficiently serious charge. He stated that his focus is more narrow and noted that he has been looking at computer and technology crimes to see where the comparability lies. He stated that reviewing the dollar

amounts and the impact that the theft can have on the victims and the community, the level is appropriate.

In response to Senator Cummiskey, Mr. Sturr stated that in discussions with law enforcement, the AG's Office and the Maricopa County Attorney's Office, they did not feel a tiered structure was needed. He opined that they would prefer to have the discretion to charge downward from the statutory offense.

Senator Bundgaard stated that the issue this bill deals with is theft of property and services. Mr. Sturr agreed and commented that he could only relate his experiences with judges, being in court and conversations that have occurred regarding these offenses. He stated that the judges on the Superior Court take this seriously. He stated that there have been judges who wanted to send a distributor of devices for jail time for economic crimes because the judges view these crimes as serious offenses that have an effect on the communities.

In response to Senator Bundgaard, Mr. Sturr stated that the prosecutions that he has been involved with typically involve hundreds of thousands of devices. The loss is calculated on a per device basis of $2,000 to $3,000 a piece. He stated on a case per case basis, financial losses run in excess of a half a million dollars.

In response to Senator Cummiskey, Mr. Sturr stated that in one case in which the defendant was found guilty, he fled before he was sentenced. In another, a recidivist who was charged three times under the statute, spent time in State prison for each charge and in another case the defendant was found guilty and did time in a State prison. In each of these cases, the charges were charged under the theft and scheme or artifice to defraud. He stated that in the cases where the county attorney has only been willing to charge under the cable theft charges, typically, pleas have been entered stipulating a class 6 felony, payment of a fine and a probationary period with no jail time imposed.

Senator Cummiskey remarked that the reason for his question was not to draw a comparison that these crimes are all in the same class, but to bring to light that the people committing these crimes end up in the same place. Whether convicted under this statute or convicted of assaulting an officer, they end up in the State prison system, which has to be a consideration for the Committee.

Shannon Slattery, Legislative Relations Coordinator, Maricopa County Public Defenders Office, referring to the half a million dollars or more in financial losses, stated the levels of offenses in the fraud schemes over $100,000 if convicted and sentenced to prison, cannot serve less than the presumptive sentence. Therefore, there are stiff penalties in place when that much financial fraud can be proven under the theft statute. She noted the concern is whether or not an organized entity can be charged in statutes other than the cable fraud statute. She remarked that this is different from telecommunications fraud in the level and numbers of victims.

Senator Richardson announced the following people were present in support of the bill: **Thomas E. Flaaren, Governmental Affairs, Manager, Cox Communications and Janet Regner, partner, Cox Communications.**

> **Senator Bundgaard moved S.B. 1131 be returned with a DO PASS recommendation. The motion FAILED with a roll call vote of 2-5-1 (Attachment 10).**

S.B. 1157 – threatening; intimidating; criminal justice employees - HELD

Sheryl Rabin explained that under current law, a statute exists that defines threatening and intimidating. She stated that current law sets the penalty for that crime at a class 1 misdemeanor. She stated that S.B. 1157 makes threatening or intimidating a known criminal justice employee based upon that employee's work-related responsibilities a class 5 felony.

Ms. Rabin explained the Burns amendment clarifies language in the statute that currently uses the word "assault" and would change that to "threat or intimidation" to make the language consistent throughout the language of the bill.

Donna Hamm, Director, Middle Ground, testified in opposition to the bill and stated that it appears from the fact sheet that the only affected agency is the Arizona Department of Corrections (ADC) and not any other criminal justice agency that has the problem. She stated that ADC reports 111 incidents involving threatening or intimidation of their employees.

Ms. Hamm stated that her organization has concerns with the tremendous power differential between a prisoner and a prison staff member, whether that is a guard, officer or non-uniform staff member. She stated that there is incredible potential under these circumstances for labels to be placed on words that are made when the substantiation for that particular interaction will be "his word, against his word." She remarked that very often this results in the inmate's version not being believed. She stated that she hopes the Committee asked for a copy of the 111 incidents that the Department claims occurred. She noted that the existing statute already covers threatening and intimidating and makes it a class 1 misdemeanor or in some instances, a class 4 felony, which she opined is sufficient if in fact these incidents occur.

Ms. Hamm opined that there is the potential for abuse of both visitors and prisoners in this particular matter, where secret reports are written, because inmates and visitors are not told when an incident report is made. She stated the fiscal impact of this bill could be monumental. She stated that unfortunately prison is a very crass and impolite place for both prisoners and staff.

Senator Richardson noted that ADC did not ask for this legislation.

Gary Phelps, Chief of Staff, ADC, testified in support of the bill and stated that the 111 incidents that were submitted primarily involved correctional employees both inside and outside of the wire. He stated that normally incidents involving other criminal justice agencies are referred to that agency. He recalled only three cases that involved other officials. He stated that one involved a clerk of the Superior Court, another was a Justice of the Peace and the other was a prosecutor. He noted that Director Stewart of ADC is so concerned with staff safety that he has formed a protective services unit that instructs employees on safety outside and inside the wire and investigates every threat made against a Department employee, on or off duty. That represents the 111. He explained that a threatening or intimidation incident would typically be where a correctional officer is out in public and a gang member approaches and threatens him or another officer. Mr. Phelps noted that what has changed the dynamics of the situation are lines 13 and 16 in the bill. He noted that he has been in law enforcement for 35 years and it used to be considered part of the job to receive threats. He stated that now it has been seen that the threats have been acted upon. He asked for the Committee's support to pass the bill.

Referring to Mr. Phelps comment regarding a threat made to a Justice of the Peace, Senator Burns questioned whether Justices of the Peace were covered in the bill. She stated that although

she would like to give as much protection to law enforcement as can possibly be given, it is difficult to know where to draw the line. She stated that she was unsure if this bill is too broad or too narrow, but it does not appear that Justices of the Peace are covered.

Senator Rios questioned if probation officers would be covered under this bill. Mr. Phelps stated that parole officers would be covered, but he was not sure if probation officers would be. Senator Rios stated that if Superior Court is included, probation would be included. He stated that if probation officers are included, that would mean that juvenile probation officers would be included as well. He expressed his concern that the language and mannerisms used by juveniles talking with their probation officers could be considered threatening and intimidating. He noted that the more experienced probation officers deal effectively with these types of situations, recognizing that the juveniles are posturing more than actually making threats. He stated that with this bill, the possibility is that a juvenile could be looking at 2.5 years of prison time.

Mr. Phelps stated that it is a presumptive term of 1.5 years. He opined that as with any criminal case, the totality of the circumstances weighs in with the prosecutor and judges who make those decisions. He stated that every case is different and opined that the threat has to be assessed and evaluated and there has to be some indication that the threat can and will be carried out. He stated it also has to have an intimidating effect and there must be intent. He reiterated that like any other case in the criminal justice system, it would be weighed and evaluated in light of the totality of the circumstances.

Senator Rios expressed his concern, like Senator Burns, over where the Legislature draws the line. He opined that he would like to exclude some populations, such as juveniles.

Shannon Slattery, Legislative Relations Coordinator, Maricopa County Public Defenders Office, stated that she was present to give a word of caution, rather than speak in opposition to the bill. She stated that this is a class 5 felony for saying words. These words may be hateful, ugly words, but are words nevertheless. She stated that with simple assault, where there is physical injury, the penalty is a class 1 misdemeanor. This bill addresses situations that more frequently occur in a prison environment, where tensions are running high to begin with, but it is still an issue of words. She stated that if she had to submit every client for a class 5 felony that had ever threatened or made an off hand comment about wanting to do her physical injury, she would have a lot more clients spending 2.25 additional years in prison. If this situation happens in an institutional facility, an inmate with a felony record would get mandatory additional time at the enhanced felony level, if it is charged with more than one prior. She reiterated that this is a situation of words being spoken and urged a note of caution in the consideration of the bill. She stated that with this bill a person who is for example, at class 6 felony level, might earn a class 1 if they were a first time offender while being apprehended by a police officer. Another situation could be a conversation that is overheard between an attorney and his client containing a threat. This brings up the question, does the recipient of the threat have to be the complaining party who brings it to the attention of the attorneys, or can it be some other person who hears the threat or conversation? She stated that these are questions the Committee should consider when deciding on the bill.

In response to Senator Bundgaard, Ms. Slattery stated that charges that are comparable to a class 1 misdemeanor would be the assault statutes. She noted that this bill is regarding threatening and intimidating, which is word or conduct that causes an individual to have some apprehension or fear. She remarked that misdemeanor physical assault including physical injury is a class 1 misdemeanor. She noted the only exception is when the victim is a member of a specified

category with higher protection, which would have penalties that may start at a class 6 felony and run up to a class 2 felony, depending upon the degree of injury.

Senator Bundgaard questioned if an individual followed through on a threat if there are statutes to cover those kinds of incidents. Ms. Slattery replied that was correct and noted that it would depend on the nature of the injury to determine what the level of the charge would be. She remarked that is why the assault statutes are in place.

Jerry Landau, Special Assistant, County Attorney, Maricopa County Attorney's Office, remarked in response to Senator Rios' question, juvenile probation officers would be included in the bill because any employee of the Superior Court is included. He stated that since the probation officers work for the presiding judge, they would be included in the bill.

Senator Rios questioned if a juvenile were to mouth back at his probation officer with language that could be taken as a threat if the bill would apply. Mr. Landau stated that if the remarks fall under subsection A, paragraphs 1 and 2 in the bill and the remarks are made to the probation officer, it would fall under this bill and under the classifications set forth in the bill.

Senator Rios stated that this is of great concern to him because he has witnessed many 12, 13 and 14 year old offenders make comments to their probation officers that could be taken as threats and are then looking at a class 5 felony charge. Mr. Landau stated that in theory, Senator Rios is correct. He stated that if the conduct falls under the statute and the person to whom the threat is made falls in subsection D, the penalty listed in the bill would be applicable. He noted that juveniles would go through the juvenile court unless transferred and it would be up to the prosecutor if the case would be prosecuted.

Senator Rios remarked that this could affect many juveniles. He stated that a teenager could be referred and tried as an adult in court if, for example if he was charged with grand theft auto for joyriding and this is his third felony.

Senator Cummiskey stated that Arizona has recently experienced an increase in the violent propensity of gangs within the system, acting externally. Referring to Mr. Phelps testimony, where this situation has occurred, he questioned what recourse is available to a correctional officer or anyone else within the system under current statutes. Mr. Landau stated that depending on the circumstances, the statute states a threat to a correctional officer is promoting further or assisting the interest of the criminal street gang. He noted that currently, threatening or intimidating is a class 1 misdemeanor.

Senator Cummiskey stated that while he shares some of the concerns mentioned by Senator Rios, he is also more inclined to support this legislation. He explained his support of the bill is due to the types of scenarios that have occurred recently within the State, where violent or criminal syndicates or gangs have used a variety of different tactics that are much more aggressive than what has been seen in the past. He stated that he would like to have the juvenile issue addressed, but it is not enough to preclude a yes vote.

In response to Senator Bundgaard, Mr. Landau remarked that conduct, which is classified as a misdemeanor in one section of the code, could be changed into a more serious charge, depending upon the classification of the victim. If the victim were a citizen, the charge of misdemeanor would be applicable, but if the victim were a health care worker, police officer, teacher, or firefighter, the charge is raised to a felony charge. He stated that this is because of the discipline of the

individual and that individual's role within public service. He noted that the bill would include criminal justice employees.

Senator Bundgaard commented that he, like many of the Legislators, has received threats while in office. He asked who determines when an incident is truly threatening or intimidating. Mr. Landau replied that the individual victim would make that determination and then if the victim makes a police report the law enforcement agency would determine whether or not to forward the case to the county attorney's office. At that point the deputy assigned would have to make a determination whether or not, after reviewing the statute, there is a reasonable likelihood of conviction on the charge. If the probation department submits the case directly to the county attorney's office it bypasses the law enforcement agency, however, the county attorney's office still has to make the determination.

Senator Bundgaard questioned whether the State prison system has the resources to absorb the extra time these people may be spending in prison. Mr. Landau deferred to a representative of the Department of Corrections. He noted the decision would depend on the sentencing judge and the person's prior record, whether the person would go to prison, be given jail time, or have probation.

Senator Burns asked if the Maricopa County Attorney's Office supports the bill. Mr. Landau remarked that the Office supports the concept of the enhanced penalty for crimes against members of the criminal justice system who are there to serve the public.

John MacIntyre, Director, Inter-Governmental Relations, Maricopa County Sheriffs Office, testified in support of the bill and remarked that Sheriff Arpaio and he had wanted to bring similar legislation to Senator Richardson to sponsor and were told that Senator Smith had already approached her with this legislation. He stated that he was under the impression that ADC had make the original request.

Mr. MacIntyre stated that in the past few years there have been a number of threats with the Maricopa County Sheriff and ADC. He remarked that the information Mr. Landau presented is accurate and encompassed his testimony as well.

Senator Rios questioned if the Sheriff's Office had been having difficulty with juveniles with this issue and if the Office would have a problem if they were excluded from the bill. Mr. MacIntyre stated that although the Office has a significant number of juveniles in their custody, he did not know of any specific threats made by juveniles in the Sheriff's Office system. He stated that the more appropriate authority to address that question would be juvenile corrections.

Patricia Noland, Clerk of the Superior Court, Pima County, testified in support of the bill and commented that like Senator Bundgaard, she received many threats during her legislative stint in office. She stated that there were some that she took more seriously than others. She remarked that two months ago when she returned from vacation, she was greeted with a death threat. It was a very specific, graphic written death threat from an inmate. She explained that as Clerk of the Court, her name is on every document that leaves the building. She noted that this inmate was due to get out of Florence prison within a month and was in a special management unit, which is where members of a gang, or individuals with psychological or acting out problems are incarcerated. She noted that this threat was very frightening, as it not only was directed at her, but at her children as well. The threat stated that this individual had her home address, knew where her office was located and had pictures of her. ADC investigated the situation and checked the inmate's cell. She stated that because she is not a law enforcement officer, but as a public official,

her name cannot be removed from her voter registration, her motor vehicle license, or the assessor's records that are contained on the Internet that includes her home address. She stated that it was the opinion of ADC that this individual had either deep psychological problems, wanted to be transferred to the State Hospital or remain in prison. Because she had no way to press charges against him, he could have been released. She stated that ADC found a way to have the inmate evaluated and transferred to the State Hospital. She stated that it is individuals like the one who threatened her that unfortunately go out and kill public figures.

Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union (ACLU), testified in opposition to the bill and stated that the ACLU oppose what it calls "status offenses." She stated that it is because of who is involved that determines whether a crime has been committed. She stated that there is a new trend where an action is a crime or an enhanced crime because of the status of the person against whom it is directed. She remarked that several people have mentioned that this is a crime that involves words. She stated that the Courts have said that even in cases where police officers, law enforcement agencies or criminal agencies are involved, one still has the protection of the first amendment, even if it is offensive. She opined that this bill is too broad, too vague with no standards and is unnecessary. She opined that the bill would not act as a deterrent and if as a society, we continue to make more and more crimes with enhanced penalties, we will never stop building prisons.

Senator Burns asked if the ACLU supported the "hate crimes" legislation. Ms. Eisenberg stated that the ACLU did not support that legislation.

Senator Richardson announced the following people were present in support of the bill: **Mike Branham, Executive Director, Arizona Criminal Justice Commission; Joseph Easton, Program Manager Legislation & Policy, Arizona Criminal Justice Commission; Eric Edwards, Lieutenant, Arizona Association of Chiefs of Police; Tonia Garrett, Governmental Affairs Manager, Arizona Association of Counties and Gordon Mulleneaux, Associate Clerk, Arizona Association of Superior Court Clerks.**

Senator Richardson announced that **Jack Harvey, Mental Health Advocate, Mental Health Advocates Coalition of Arizona** was present in opposition to the bill.

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.)