

# ARIZONA STATE SENATE

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45TH LEGISLATURE  
FIRST REGULAR SESSION

## MINUTES OF COMMITTEE ON JUDICIARY

**DATE:** March 13, 2001                      **TIME:** 1:30 p.m.                      **ROOM:** SHR 1

**CHAIRMAN:** Senator Richardson                      **VICE CHAIRMAN:** Senator Bee

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

**ASST. ANALYST:** Ethan Shaner                      **INTERN:** Lou Bacchi

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### ATTENDANCE

### BILLS

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<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Aguirre	X			HB 2053	FAILED
Senator Bundgaard	X			HB 2054	FAILED
Senator Burns	X			HB 2182	FAILED
Senator Cumiskey	X			HB 2289	HELD
Senator Rios	X			SB 1444	DP
Senator Smith	X				
Senator Bee, Vice Chairman	X				
Senator Richardson, Chairman	X				

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### GOVERNOR'S APPOINTMENTS

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<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Helene Fenlon	Member, Commission on Trial Court Appointments – Maricopa County	CONFIRMATION
Dean Miller	Member, Commission on Trial Court Appointments - Maricopa County	CONFIRMATION

## **Tape 1, Side A**

Chairman Richardson called the meeting to order at 1:35 p.m., and attendance was noted. For additional attendees, see sign-in sheet (Attachment A).

### **APPROVAL OF MINUTES**

Senator Richardson announced there were no minutes available for approval.

### **EXECUTIVE NOMINATIONS**

#### **Helene Fenlon – Member, Commission on Trial Court Appointments-Maricopa County – CONFIRMATION**

**Helene Fenlon** stated that she welcomed the opportunity to serve on this Commission.

**Senator Bee** moved the Committee on Judiciary recommend to the full Senate the confirmation of Helene Fenlon to the Commission on Trial Court Appointments - Maricopa County. The motion CARRIED by a roll call vote 7-0-1 (Attachment 1).

#### **Dean Miller – Member, Commission on Trial Court Appointments-Maricopa County – CONFIRMATION**

**Dean Miller** stated that he has served on Board Commissions in the past and is honored to be part of this process.

**Senator Bee** moved the Committee on Judiciary recommend to the full Senate the CONFIRMATION of Dean Miller to the Commission on Trial Court Appointments - Maricopa County. The motion CARRIED by a roll call vote 8-0-0 (Attachment 2).

### **CONSIDERATION OF BILLS**

#### **H.B. 2289 – harmful items to minors, internet – HELD**

Senator Richardson announced that H.B. 2289 would be held.

#### **H.B. 2053 – ~~driver licenses~~ (now: driver licenses; ignition interlock) – FAILED**

**Gabriel Aragon, Research Intern**, explained that the bill makes various changes to current statute regarding driver license application, suspension, revocation and reinstatement. It also requires a mandatory two-year driving privilege or license suspension for an 18, 19 or 20 year old who is convicted of a DUI violation. It further requires that the Ignition Interlock Device (IID) be used for 12 months by all individuals required to the IID. The sentence begins on the conclusion of the person's license suspension, or revocation or on the date of conviction, whichever occurs later. It stipulates that proof of completion of the 12-month IID sentence is required for a driver license to be reinstated.

Mr. Aragon explained the Burns amendment removes the ability of a driver license applicant who does not have a social security number to provide a sworn affidavit stating that the applicant has no social security number.

Senator Smith asked if a person without a social security number cannot get a driver license. Mr. Aragon stated that is correct.

**Representative Cooley, bill sponsor**, stated that the proposed amendment was intended to allow students from other countries without a social security number to obtain driver licenses.

Senator Smith remarked that the bill did not specify that it was only for students from foreign countries and is broad and opined that a social security number should be required to avoid fraud.

Representative Cooley stated that the federal government now requires that everyone have on file a social security number for the tracking of "deadbeat" parents, to aid in the collection of child support. The Motor Vehicle Division (MVD) keeps social security numbers on file, but the social security number does not have to be used on the license itself. This legislation applies to students from other countries.

Senator Burns stated that the MVD is supportive of the amendment.

**Lorraine Brown, Administrative Officer, MVD**, stated that **Kevin Biesty, MVD**, was not present but is in support of the bill.

Ms. Brown stated that a social security number issue, with reference to the welfare reform act, requires MVD to retain social security numbers on file. Since this implementation, people who do not have social security numbers and do not file taxes are having difficulty in obtaining driver licenses. This is the reason for the provision in the bill.

Senator Rios asked what documents are needed to get a driver license. Ms. Brown answered that there is a "laundry lists" of documents. There are two lists of documents that a person must have in combination with a social security number, in order to receive a driver license.

Ms. Brown commented that a memo sent from MVD to the Legislators outlines the problems that MVD has had with fraudulent documents, which include fraudulent social security numbers.

Senator Richardson announced the following people were present in support of the bill: **Eric Edwards, Legislative Liaison, Arizona Association of Chiefs of Police; David Sands, Legislative Officer, Administrative Office of the Courts; and Gretchen Jacobs, Attorney, National Association of Independent Insurers.**

**Steve Tyrrell, Executive Director, Mothers Against Drunk Driving**, spoke in support of the bill.

**Senator Bee moved H.B. 2053 be returned with a DO PASS recommendation.**

**Senator Bee moved the three-line Burns amendment dated 3/9/01, 11:21 a.m. be ADOPTED (Attachment B). A division was called. The amendment FAILED with a hand vote of 4-4-0.**

**The motion to return the bill with a DO PASS recommendation FAILED by a roll call vote of 4-4-0 (Attachment 3).**

**S.B. 1444 – administrative procedures; exemptions; corrections department – DO PASS**

**Gail Hicks, Research Assistant Analyst**, explained that the bill removes the exemption of the Arizona State Department of Corrections (ADC) from the Administrative Procedures Act (APA).

Ms. Hicks explained that there was a strike-everything amendment adopted in the Commerce Committee, sponsored by Senator Mitchell. The amendment establishes the Joint Legislative Committee on Corrections to review public concerns regarding rules and programs of the ADC and requires the Director of ADC to adopt policies for notice and opportunity for comment on rules and policies being proposed for adoption, as appropriate.

**Terry Stewart, Director, Arizona Department of Corrections**, spoke in opposition to the bill. He urged the Committee not to remove the exemption of the APA and to allow it to continue as it has in the past. He noted that he supports the concept of input from the public and welcomes it.

**Senator Petersen, bill sponsor**, stated that it was his intent to have a forum for families and others to be able to bring issues of concerns forward to be addressed.

Senator Burns stated that the Committee has the underlying bill only. She commented that the amendment that was passed in the Commerce Committee has not been offered in this Committee.

Ms. Hicks stated that the underlying bill removes the blanket exemption from the APA. The strike-everything amendment left the blanket exemption intact and added a provision for comment before rules are implemented and then created a legislative committee for comments on existing rules made by the ADC.

In response to Senator Burns, Senator Petersen stated that it was not his intent for ADC to come to the legislative committee prior to any rule making. He noted that if this is something that this Committee would like to have adjusted, it could be accomplished on the floor. He stated that he does not want to compromise the Director's ability to put in safety and security measures. He explained that it was his intent to create a forum for families to bring forth issues of concerns before a legislative process.

Senator Smith commented that he has been heavily involved with ADC for a number of years and commented that it has been his experience that when he received letters from prisoners or concerned family members, he has directed them back to ADC and or the Director. He noted that he has never had any difficulty with having the Department or the Director respond. Although the outcome may not have been what the prisoner or family member wanted, the issues have always been addressed. He asked if Senator Peterson had experienced any difficulty with getting a response from ADC or the director. Senator Peterson stated that he has had difficulty in getting issues addressed.

**James Hamm, Director of Legal Services, Middle Ground Prison Reform**, stated that the underlying bill removes the exemption so that the ADC would be subject to the APA which allows for emergency adoption of amendments if there is any sort of security problem. The final decision of the Committee was to not put the APA back into the ADC, and instead left them exempt from the

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rule making procedures of the APA. The Committee adopted a new clause that says the Director shall adopt policies for public input as appropriate under the circumstances, which allows the Director extreme latitude. There is no appeal from his final decision. Senator Hamilton opined that there were sufficient numbers of complaints that warranted a committee, other than the Joint Select Committee on Corrections. The Joint Select Committee on Corrections deals with appropriations, projections for the future and construction of facilities, and does deal with those complaints. He noted that no one is in favor of the underlying bill that would apply all the APA to ADC. He opined that ADC should have some input from the people whose lives these rules govern.

**Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union**, testified that all prisoners will eventually be released and noted that what happens to them in prison will help determine what kind of person they will be. She urged adopting a bill that makes the ADC accountable and provides public input and oversight.

Senator Smith stated there are concerns with regard to how the Director responds to complaints of the families and what action is taken. Mr. Stewart responded that when ADC receives a complaint from an individual or from Legislators, an investigation of the situation is done. Once the investigation is completed, corrective action is taken to address the problem. There is an appeal process through the Deputy Warden and then the Warden of the prisons. If the individual is not satisfied with the response or answer given, the next step is to address the problem with Mr. Stewart. He commented that he was not aware of any circumstance where Mr. Stewart has not been available or not responded to any inquires. He noted that although the results of an inquiry may not be what the individual would like, nonetheless, a response is given.

Senator Richardson asked if a family member of an inmate contacted him and not the Legislator, what would he do. Mr. Stewart stated the approach for a letter or phone call complaint made by anyone is conducted the same way.

Senator Petersen stated that the Director has the authority to adopt policies for the ADC. This bill is about affording families the opportunity to address these issues in a public forum.

Senator Smith stated that the Joint Select Committee on Corrections duties include other matters relating to prison construction or prison operations and may make recommendations to the Legislature.

**Senator Bee moved S.B. 1444 be returned with a DO PASS recommendation.**

Senator Burns urged the Committee to pass this bill which is similar to a bill that passed in the Commerce Committee as amended.

Senator Rios stated that he sits on the Select Committee on Corrections and they meet once a year. The Committee deals with appropriations, construction and inmate growth. He remarked that the Director has always been very responsive with problems that he has encountered over the years.

Senator Aguirre agreed that ADC has always responded and dealt with her concerns well.

Senator Cummiskey opined the bill should go to the full Senate for consideration.

Senator Richardson commended Director Stewart for his efforts over the years.

**The motion CARRIED by a roll call vote of 5-3-0 (Attachment 4).**

**H.B. 2054 – aggravated assault; transit workers – FAILED**

**Sheryl Rabin, Analyst**, explained that the existing aggravated assault statute includes assaults against specified groups of individuals, including teachers, firefighters, paramedics and corrections officers engaged in their official duties. Additionally, the aggravated assault statute includes assaults involving serious injury, use of a deadly weapon or assaults that occur while the victim's capacity to resist is substantially impaired. This bill creates a class 6 felony for all assaults against public transportation drivers or operators engaged in performing their official duties.

**Shannon Slattery, Maricopa County Public Defender**, spoke in opposition to the bill. She commented that this is already covered in the criminal code and it is not necessary to change from a class one misdemeanor to a class 6 felony assault. The only types of offenses that would fall under the misdemeanor provisions of the code are touching offenses that are intended to insult, injure or provoke. If there is a serious physical injury involved, it is a class 3 felony. If the driver is restrained in his seat or otherwise unable to respond, it is a class 6 felony.

**Representative Cooley, bill sponsor**, stated the bill is asking for a different level of treatment for transit drivers, and justifiably so. Transit drivers are responsible for all passengers in a bus. This elevated level of treatment is given to peace officers, teachers, school nurses and drivers of school busses. It is also given to correctional officers, fire fighters, fire investigators and fire inspectors.

**Jim Shipman, Executive Director, Arizona Transit Association**, spoke in support of the bill.

Senator Richardson announced the following people were present in support of the bill: **Dave Martin, Chief of Transit Public Safety, Phoenix Transit System; Susan Waetje, Data Management Coordinator, Phoenix Transit System; Phil Hanley, representing himself; Bridget Schwartz-Manock, Management Assistant, City of Phoenix; Kevin DeMenna, City of Phoenix; Mark Meier, Bus Operator; and Mike Nevarez, Phoenix Public Transit Department.**

**Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union**, spoke in opposition to the bill. The bill creates a crime against status and does not create a deterrent. She opined that the bill will accomplish nothing.

Senator Rios asked if someone hits a bus driver with an instrument, what would the person be charged with. Ms. Eisenberg answered that it is already a felony.

Ms. Rabin stated that under current statute, if a person causes serious physical injury to another, it is a class 3 felony. If the person uses a deadly weapon or dangerous instrument, it is a class 3 felony. If the victim is physically restrained, it is a class 6 felony.

**Senator Bee moved H.B. 2054 be returned with a DO PASS recommendation.  
The motion FAILED by a roll call vote of 0-7-1 (Attachment 5).**

**H.B. 2182 – DUI; ignition interlock devices – FAILED**

**Ethan Shaner, Research Assistant Analyst**, explained that the bill increases fines for first time and repeat driving under the influence (DUI) violations. For a first time DUI or extreme DUI violation, it increases from \$250 to \$500. For a second DUI violation within 60 months of an extreme DUI or aggravated DUI, it goes from \$500 to \$750. For an extreme DUI within 60 months of another DUI, extreme DUI or aggravated DUI, it goes from \$500 to \$1,000.

In response to Senator Rios, Mr. Shaner stated that there is a 77% surcharge applied.

Senator Rios explained that it actually goes from \$250 to \$885 because of the surcharge.

Senator Bee asked the intent for increasing the fines. Mr. Shaner stated there is concern that these fines should be kept in line with the increasing fines for other traffic violations.

Senator Richardson asked **Steve Tyrrell, Mothers Against Drunk Driving**, who was present in support, if he wanted to speak. He stated no.

**Senator Bee moved H.B. 2182 be returned with a DO PASS recommendation.  
The motion FAILED by a roll call vote of 1-6-1 (Attachment 6).**

There being no further business, the meeting adjourned at 3:00 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.)