

ARIZONA STATE SENATE

45TH LEGISLATURE FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: March 20, 2001 **TIME:** 1:30 pm. **ROOM:** SHR 1

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

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

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

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Aguirre	X			H.B. 2003	FAILED
Senator Bundgaard	X			H.B. 2011	DP
Senator Burns	X			H.B. 2065	DPA
Senator Cumiskey			X	H.B. 2182	DPA/SE
Senator Rios	X			H.B. 2281	DP
Senator Smith	X			H.B. 2289	DP
Senator Bee, Vice Chairman	X			H.B. 2327	DPA
Senator Richardson, Chairman	X				

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Douglas C. Cole	Commission on Trial Court Appointments – Maricopa County	CONFIRM

Tape 1, Side A

Chairman Richardson called the meeting to order at 1:45 p.m. and attendance was noted. For additional attendees, see Sign-In Sheet (Attachment A).

APPROVAL OF MINUTES

Senator Richardson announced that there were no minutes available for approval.

EXECUTIVE NOMINATIONS

Douglas C. Cole, Member, Commission on Trial Court Appointments – Maricopa County – CONFIRMATION

Senator Smith moved that the Committee on Judiciary recommend to the full Senate the confirmation of Douglas C. Cole to the Commission of Trial Court Appointments – Maricopa County. The motion CARRIED with a roll call vote of 7-0-1(Attachment 1).

CONSIDERATION OF BILLS

H.B. 2003 – developmental disabilities division; secure facilities – FAILED

Sheryl Rabin, Research Analyst, explained H.B. 2003 delays, from October 1, 2001 to October 1, 2003, the date by which the Department of Economic Security (DES) must construct a secure facility for persons with developmental disabilities who are charged with serious felonies are considered a threat to public safety and yet are incompetent to stand trial.

In response to Senator Richardson, Ms. Rabin replied that persons with developmental disabilities currently are placed in group homes throughout the state. She stated that to her knowledge there are ten individuals who meet the criteria. She stated that the Legislature has never appropriated funds for the building of a secured facility and the funds that are currently being used to house these individuals cannot be used for costs, such as construction of a facility.

In response to Senator Burns, Ms. Rabin stated it is her understanding that bills similar to this have been brought before the Legislature, and the effective dates have been delayed each time.

Ric Zaharia, Assistant Director, Division of Developmental Disabilities, DES, testified that the Department is in support of the bill and commented that the Division of Developmental Disabilities (the Division) provides services and support to over 18,000 children and adults with developmental disabilities, such as mental retardation, autism and cerebral palsy. He noted that there are a handful of people with developmental disabilities who become involved in the criminal justice system. Of those, some stand trial and if convicted, serve time in jail or prison. A few have concurrent mental health issues and are served through the mental health system. He noted the bill applies to a limited few who have been determined by the courts incompetent to stand trial and do not have an associated mental illness. They are likely to be males between the ages of 25-35 with mild mental retardation.

Mr. Zaharia explained that in 1995, the Legislature passed S.B. 1273 that directed the Division, subject to legislative appropriation, to construct a secure facility to house individuals with

developmental disabilities who commit serious felonies and are considered a threat to public safety, yet are incompetent to stand trial. That bill required the Division have a secure facility by October 1, 1996, for the qualifying individuals whose guardians requested this type of placement through the courts. However, because funding has not been granted for the facility, the Legislature has delayed the date by which the Division must have a facility.

Mr. Zaharia remarked that the Division has determined that between five and ten individuals annually fit the requirements for housing in a secured facility. Small group homes in remote areas are currently used to house these individuals. The Division states that the homes maintain a high staff-to-patient ratio in order to ensure that the individuals are secure.

Mr. Zaharia explained the Division has performed a preliminary statewide survey and identified the potential population for whom a secure facility may be necessary. The Division estimates costs for a secured facility housing six individuals to be \$1,061,000 in FY 2002 and \$1,359,700 in FY 2003. The Legislature has not appropriated funds for building a secure facility, and the Division is prohibited from spending the funds currently spent for group home settings on capital costs for construction of a secure facility. Additionally, the Arizona Health Care Cost Containment System (AHCCCS) cannot determine if individuals in a secure facility will qualify for federal matching funds for long-term services until the secured facility is built and it is determined that the facility is licensed as a type of facility that would qualify for Title 19 funds.

In response to Senator Rios, Mr. Zaharia explained that from the outside the residential facilities are no different from a normal residence in a typical neighborhood in a remote area of the State. He stated that there are no fences or extraordinary locking devices. Instead, the Division relies heavily upon staff to secure these individuals.

Senator Rios stated that he did not understand why the Division rejected the training center where 150-160 persons who are developmental disabled currently reside. He commented that it is hard to imagine it would more expensive to retrofit those buildings than to contract with the private sector. Mr. Zaharia responded that the Coolidge facility option was considered, but would have required extensive renovation and capital improvements and the private sector agency was determined to be the better option.

Senator Smith commented that with a \$1 million appropriation and 10 individuals who are eligible for this type of service, the is \$100,000 to supervise and manage one individual.

**Senator Bee moved H.B. 2003 be returned with a DO PASS recommendation.
The motion FAILED by a roll call vote of 3-4-1 (Attachment 2).**

H.B. 2011 – nitrous oxide (now: nitrous oxide; containers) – DO PASS

Ethan Shaner, Research Assistant Analyst, explained H.B. 2011 makes knowingly selling, giving or delivering a nitrous oxide container to a person under age 18 a class 5 felony, unless the person under age 18 is acting in the capacity of an employee when delivering or accepting delivery of a nitrous oxide container

Police Chief Richard Yost, City of El Mirage, testified that on December 24, 1999 a boy named Abe Medina died in his mother's arms after inhaling nitrous oxide that he purchased in a "head shop" in El Mirage. This young man was told how to use the canister to get "high" and as a result, lost his life. He stated that in April 2000, he was made aware of what happened and started to try

to prosecute the man who sold the nitrous oxide to this 18 year old boy. Currently, there is no law against selling nitrous oxide in the State of Arizona. He noted that he went to the Federal Food and Drug Administration trying to get this individual indicted for serious felony charges. They sent investigators here to Arizona and they discovered that these particular nitrous oxide canisters are being sold statewide in stores that sell smoking materials. The canisters were used for making of whip cream before containers were developed that had the mechanism built into the canister.

Chief Yost distributed a nitrous oxide canister.

Chief Yost stated that this legislation is an attempt to close the loophole that exists in statute. The Arizona Chiefs of Police support the bill, as well as the Maricopa County Attorney's Office, and the City of Phoenix. He demonstrated how the canisters are used in conjunction with an item called a "cracker" to inflate balloons from which people inhale the nitrous oxide. He urged the Committee to pass the bill.

Senator Burns remarked that this information brings to light a bigger problem with trying to get these shops shut down. She asked if "head" shops are legal. Chief Yost replied these shops are legal and get around charges by claiming the paraphernalia is for smoking cigarettes. Senator Burns stated that she was in support of the bill, but wanted to point out that there is a larger part of the problem with the continued existence of these shops.

Senator Bundgaard asked if there were any other uses for the canisters. Chief Yost replied that he had searched the State looking for one of the old whipped cream making machines that the canisters were used in. The legal use of nitrous oxide is for dentist offices where it is mixed with oxygen and is referred to as laughing gas.

Veronica Medina, representing herself, testified in support of the bill and asked the Committee to pass this legislation so that another parent would not have to go through what her family experienced.

Senator Aguirre suggested that the bill sponsor should be notified so an emergency clause could be added to the bill and get the bill directly to the Governor for signature, rather than waiting until later in the session, to protect kids sooner.

Senator Richardson announced the following people were present in support of the bill: **Anthony Medina, representing himself; Eric Edwards, Arizona Association of Chiefs of Police; Edwin Cook, Arizona Prosecuting Attorney's Office; and John Mangum, Arizona Food Marketing Alliance.**

**Senator Bee moved H.B. 2001 be returned with a DO PASS recommendation.
The motion CARRIED by a roll call vote of 7-0-1(Attachment 3).**

H.B. 2065 – sex offender registration– DO PASS AMENDED

Mr. Shaner explained H.B. 2065 updates and clarifies sections of the sex offender registration and community notification statutes to conform to recent additions to the sex offense statutes. The bill further allows a court discretion in subjecting juveniles to the registration requirements and shortens timelines for sex offenders to report a change of name or address to the county sheriff.

Mr. Shaner stated that there is a Richardson amendment containing technical changes.

Jerry Landau, Maricopa County Attorney's Office, testified in support of the bill and remarked that the bill allows the court to terminate the registration of an individual who has been tried as an adult, but was below the age of 18 when the crime was committed. Knowing the opportunity to have their registration terminated is a benefit, and most juveniles choose to receive treatment. He noted the 72-hour provision is because of the difficulty in tracking transients for registration purposes. The authorization by the courts to order a juvenile sex offender to be subjected to community notification is at the discretion of the court and only if the court also orders that juvenile to register as a sex offender.

In response to Senator Richardson, Mr. Landau remarked that there is not much that can be done for people who do not have a post office box. He commented that this legislation not a 100% fix to this issue.

Senator Richardson announced the following people were present in support of the bill: **Cindi Nannetti, Bureau Chief; Doug Cash, Fraternal Order of Police, State Lodge; Edwin Cook, Arizona Prosecuting Attorney's Office; and Eric Edwards, Arizona Association of Chiefs of Police.**

Senator Bee moved H.B. 2065 be returned with a DO PASS recommendation.

Senator Bee moved the Richardson amendment dated 3/16/01; 12:28 p.m. be ADOPTED (Attachment B). The motion CARRIED by a voice vote .

Senator Bee moved H.B. 2065 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 4).

H.B. 2182 – DUI; ignition interlock devices (now: DUI; fines; sentencing) – DO PASS AMENDED/STRIKE EVERYTHING

Ms. Rabin explained the strike-everything amendment to H.B. 2182 relates to ignition interlock devices (IID) for those convicted of driving under the influence (DUI) offenses. Under current statute, a person is required to use an IID on a vehicle for one year following license suspension or revocation for specified DUI offenses. Because the IID use is tied to the date upon which the person's driving privileges are reinstated rather than the date of a court's action on an underlying DUI offense, some offenders use the IID for less than 12 months, and some offenders may not be required to use the IID at all. H.B. 2182, with the strike-everything amendment, would make IID sentencing more consistent by allowing the courts to order that the 12 months of IID use begin from the conclusion of license suspension or revocation or from the date of conviction for the DUI offense, whichever is later. The amendment also authorizes the Motor Vehicle Division (MVD) to order an IID based upon their own records. This provision is intended to address the problem of courts having to identify how many DUI convictions an individual has and then informing MVD of that number.

Ms. Rabin noted there is a correction to the fact sheet that MVD will address.

Kevin Biesty, Legislative Liaison, Arizona Department of Transportation/MVD, testified in support of the bill and commented that there are currently 38 people that at required to use IID at this time.

Lorraine Brown, Administrative Service Officer, MVD, testified that the cost of installation is between \$75-\$100, however there is a \$65 monthly maintenance fee. The devices need 30, 60 and 90-day calibration based upon federal highway safety guidelines.

Representative Gray, bill sponsor, testified that the bill is the result of a conversation with Judge Elizabeth Finn, City of Phoenix, who told her that if some modifications were made, the courts could be saved from the electronic transfer of data to MVD. The other provision is for when an IID is assigned to an individual after an individual has served their suspension.

Senator Rios asked if an individual who is married with teenage children would have to have devices installed in all of his vehicles. Representative Gray explained that the device is assigned to the individual and the individual needs to be driving a vehicle that has the interlock, not to the registered vehicle.

Steve Tyrell, Mothers Against Drunk Driving, testified in support of the bill and commented that wherever this activity is taking place, it impacts repeat offenders, extreme DUI offenders and other offenders which make the roadways safer for everyone.

Senator Richardson announced the following people were present in support of the bill: **Kevin DeMenna, City of Phoenix; Lee Miller, AAA of Arizona; David Sands, Administrative Office of the Courts; Kevin Kane, Phoenix Municipal Court; Phil MacDonnell, Arizona Wholesale Beer and Liquor Association; and Ed Wren, Arizona Highway Patrol Association; Phoenix Law Enforcement Association.**

Senator Bee moved H.B. 2182 be returned with a DO PASS recommendation.

Senator Bee moved the strike-everything amendment dated 3/15/01; 4:19 p.m. be ADOPTED (Attachment C). The motion CARRIED by a voice vote.

Senator Bee moved H.B. 2182 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1(Attachment 5).

H.B. 2281 – juvenile corrections; medical services; rates – DO PASS

Lou Bacchi, Research Intern, explained H.B. 2281 allows the Arizona Department of Juvenile Corrections (ADJC) to utilize the Arizona Health Care Cost Containment System's (AHCCCS) rate structure for medical services performed outside an ADJC secure facility.

Jim Hillyard, Assistant Director, Administration, ADJC, testified in support of the bill and commented that ADJC is responsible for the care of approximately 1,000 youth in the agency's secure facilities at any given time. The agency operates on-site health clinics for their routine health and dental needs, however, when a youth requires emergency services or major medical treatment, such as surgery, the youth is transported off-site to the nearest hospital. The agency pays full retail for these services, even though the most frequently used facilities were approached about obtaining better rates and the agency was told that rates are negotiated based on volume. The State of Arizona has plenty of volume, as AHCCCS spends approximately \$2 billion a year on health care services. The bill would allow the agency to use AHCCCS' contract, which the agency believes would be a more efficient use of the resources that have been provided to the agency.

He noted that it is also important to the agency because juvenile sentencing guidelines are intended to preclude youth with major medical problems and, therefore, the agency is not appropriated funds to handle those types of services. Unfortunately, each year the agency seems to have at least one youth with a major medical problem. Last year they had a young man who subsequently was diagnosed with leukemia and his medical bills came to over \$279,000. Because this is a relatively small agency, this was a large shock to their budget. Had the rates of this legislation been in effect, the costs for that youth would have been approximately \$160,000, which is a much more manageable amount.

**Senator Smith moved H.B. 2281 be returned with a DO PASS recommendation.
The motion CARRIED by a roll call vote of 6-0-2 (Attachment 6).**

Tape 1, Side B

H.B. 2289 – harmful items to minors; internet – DO PASS

Mr. Shaner explained H.B. 2289 restores the language of A.R.S. 13-3506 to its status prior to the 2000 legislation and creates a new section of law dealing specifically with transmitting and sending materials over the Internet.

Meg Wuebbels, Attorney General’s Office, testified in support of the bill and noted that the purpose of this bill is to narrow the computer crime statute, which was amended last year. She noted that last year the harmful to minor statute was amended to include the word “transmit” to include transactions that occurred on the Internet. The Arizona Civil Liberties Union filed a lawsuit and this bill is an attempt to settle that lawsuit. She stated the function of this legislation is if it is illegal to hand a person these materials because the material they are considered obscene, then it should also be illegal for a person to e-mail these materials because of same reason.

Senator Richardson announced that **Eric Edwards, Arizona Association of Chiefs of Police**, was present in support of the bill.

**Senator Smith moved H.B. 2289 be returned with a DO PASS recommendation.
The motion CARRIED by a roll call vote of 6-0-2 (Attachment 7).**

H.B. 2327 – identify theft (now: identity theft; revisions) – DO PASS AMENDED

Ms. Rabin explained H.B. 2327 updates and expands statutes relating to identity theft. The bill updates the definition of “falsely alters a written instrument” by adding the actions of counterfeiting, washing and connecting together different parts of the whole of more than one genuine instrument. The definition of “personal identifying information” is updated by adding the following: savings and checking account numbers; credit card, charge card and debit card numbers; mother’s maiden name; fingerprints; retinal images or the image of an iris. The bill also expands the crime of taking the identity of another person to include selling or transferring any personal identifying information of another person.

Phil MacDonnell, Attorney, Arizona Newspaper Association, testified in support of the bill and commented that the bill clarifies and tightens the laws on identity theft, which is an issue that needs to be addressed.

Donald Vance, American Association of Retired Persons, testified in support of the bill and commented that consumers should be provided an avenue for redress if they are harmed by

inappropriate disclosure or use of their personal information, including the right to correct inaccurate and false information.

Senator Richardson announced **Jerry Landau, Maricopa County Attorney's Office**, was present in support of the bill.

Doug Cash, Fraternal Order of Police, State Lodge, testified in support of the bill and commented that this bill addresses a problem that was brought to his attention in 1993 when a gentleman named Bob Hardle had his life turned upside down because someone had stolen his identity. There were no laws dealing with this issue. Arizona was one of the first states in the country to have identity theft laws. He noted that this is one of the fastest growing crimes in the United States and this legislation will give law enforcement another tool to keep offenders off the streets and put them in prison.

Senator Bee moved H.B. 2327 be returned with a DO PASS recommendation.

Senator Bee moved the Richardson amendment dated 3/15/01; 9:06 a.m. be ADOPTED (Attachment D). The motion CARRIED by a voice vote.

Senator Bee moved H.B. 2327 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 8).

Without objection, the meeting was adjourned at 2:55 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.)