

ARIZONA STATE SENATE

45TH LEGISLATURE SECOND REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: January 22, 2002 **TIME:** 1:30 p.m. **ROOM:** SHR 1

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

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

INTERN: Lisa Hird **ASST. ANALYST :** Lace Collins

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Aguirre	X			SB 1036	DP
Senator Bundgaard	X			SB 1045	DP
Senator Burns	X			SB 1047	DPA
Senator Cummiskey	X			SB 1049	DPA
Senator Rios	X			SB 1050	DP
Senator Smith	X				
Senator Bee, Vice Chairman	X				
Senator Richardson, Chairman	X				

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
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Tape 1, Side A

Chairman Richardson called the meeting to order at 1:34 p.m. and attendance was noted. For additional attendees, see Sign-in Sheet (Attachment A).

APPROVAL OF MINUTES

Senator Richardson announced, without objection, the minutes of January 15, 2001 were approved as distributed.

CONSIDERATION OF BILLS

S.B. 1036 – controlled substances – DO PASS

Lisa Hird, Research Intern, stated that according to the State Board of Pharmacy, all of the states surrounding Arizona have electronic systems to monitor pharmaceutical prescriptions and customers which helps law enforcement investigate people who illegally obtain controlled substances. Because Arizona does not have the same electronic system, the Board of Pharmacy believes that additional sanctions and methods must be created in order to deter in-state substance abusers and those that come here from neighboring states.

Ms. Hird stated S.B. 1036 addresses two issues. It authorizes the Board of Pharmacy to disseminate any information it has gathered on known or suspected offenders to law enforcement and other agencies and creates a class 4 felony for people who provide false prescriptions, or commit fraud or forgery to obtain a controlled substance.

Llyn Lloyd, Executive Director, Board of Pharmacy, testified in support of the bill and explained that the substance that is being introduced into the State Uniform Controlled Substances Act, dichloralphenazone, has already been placed into the Federal Uniform Controlled Substances Act by the U.S. Attorney General's (AG) Office through the Drug Enforcement Administration (DEA). He explained that the Board of Pharmacy annually tracks which drugs have been moved into schedule or from one schedule to another, and then notifies the Legislature that a change is necessary to keep the State's Uniform Controlled Substances Act in compliance with the Federal Act.

Mr. Lloyd commented that an assistant AG suggested the bill be amended to allow the Board to provide information to other agencies as well as law enforcement agencies.

In response to Senator Rios, **Trish Hart, Lobbyist, Arizona Board of Pharmacy**, explained the writing of false prescriptions is already a class 4 felony act. The bill makes further clarifications to the forgery and fraud content of the existing Controlled Substances Act.

Senator Richardson announced that **Kathy Boyle, Arizona Pharmacy Association** was present in support of the bill.

**Senator Bee moved S.B. 1036 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 8-0-0 (Attachment 1).**

S.B. 1045 – competency; restoration – DO PASS

Sheryl Rabin, Research Analyst, explained if an Arizona prisoner, sentenced to death is found incompetent, State law requires the Arizona Department of Corrections (ADC) to transfer the prisoner to a licensed treatment facility where the Department of Health Services must provide competency restoration treatment. She stated the Chief Medical Officer of the Arizona State Hospital (ASH) must then certify to the Arizona Supreme Court that the prisoner's competency has been restored, prior to execution.

Ms. Rabin commented that last year, the United States District Court of Arizona declared Arizona's restoration to competency law unconstitutional, because the law did not provide prisoners with a direct method of challenging the State Hospital's certification of competency. This bill provides a method for the inmate to challenge a finding of competency by requiring the appointment of psychological experts, hearings, in some instances, and allows a prisoner to file with the Arizona Supreme Court for a review of the lower court's decision on competency. Under existing statute, costs incurred by counties in appointing psychological experts on competency are paid from funds appropriated to ADC. She stated that a fiscal note has been requested.

Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union (ACLU), testified in support of the bill and stated that the bill provides a new layer of due process. Additionally, the bill provides the assurance that the State of Arizona will not be executing people that are not competent. She noted that she would like assurance that every person at this stage of the process has counsel. In the absence of counsel, she noted her concern with section E of the bill, wherein the prisoner may waive the appointment of experts.

Meg Wuebbels, Assistant AG, AG's Office, testified in support of the bill and noted that currently there are 122 people on death row with the possibility of five more who are pending a remand of sentencing. This particular issue only comes into play if in fact a particular prisoner alleges that he is incompetent to be executed. She stated that this is a rare occurrence, but as of now, the statute was declared unconstitutional. Because of this, it is necessary to have a workable statute the next time this situation occurs.

Ms. Wuebbels noted that at this stage of the process, every prisoner has an attorney and if they are incompetent, the court will not allow them to waive their representation.

Edward Ryle, Monsignor, Arizona Catholic Conference, testified in support of the bill and commented that while S.B. 1045 remedies the constitutional issue that is a result of the *Amaya-Ruiz v. Stewart* case, in the federal district court, it does not deal with a couple of other relevant issues. One of those issues is the forced medical treatment by physicians on prisoners to restore competence. This puts the physician in the position of violating the code of medical ethics of the Arizona Medical Association.

Monsignor Ryle noted that another issue the bill does not address is the treatment of prisoners who may not want to be treated. He noted that other legislation may be introduced this session to address these two issues.

**Senator Bee moved S.B. 1045 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 8-0-0 (Attachment 2).**

S.B. 1047 –crimes; vulnerable or incapacitated adults – DO PASS AMENDED

Lace Collins, Research Assistant Analyst, explained S.B. 1047 creates the crime "dangerous crimes against incapacitated or vulnerable adults." The bill requires a person who is convicted of a dangerous crime to complete the sentence ordered by the court in confinement unless the sentence is commuted. She noted the options of suspension of sentence, probation or release are not available to the offender.

Ms. Collins explained the Richardson amendment simply adds a definition of incapacitated to the bill.

Senator Smith commented that this bill eliminates the provisions of the "truth in sentencing" where a prisoner has to serve 85% of his sentence, therefore they have to serve the entire amount of the sentence. Ms. Collins commented that with truth in sentencing, a prisoner must serve 100% of the sentence, however, 15% of the sentence can be on probation. S.B. 1047 eliminates the option of probation for that 15%.

Senator Richardson remarked the following verbal amendment was recommended: Page 1, line 31, after "(g)" insert "FELONY" Line 33, after "(i)" insert "FELONY". She stated that this would clarify that people who are convicted of misdemeanors cannot go to prison.

Senator Bee moved S.B. 1047 be returned with a DO PASS recommendation.

Senator Bee moved the Richardson amendment dated 1/21/02, 11:24 a.m. be ADOPTED (Attachment B).

Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union (ACLU), testified in opposition to the bill and remarked that this bill is similar to other bills she has testified against because it is a bill which creates a crime against victims of a certain status. She stated that this allows the act, which is already a crime and should be punishable to the full extent of the law, to be punishable to a greater extent because of the status of the victim.

Senator Richardson opined that if a person is impaired, for example, wearing a cast on their leg, that person is more vulnerable than someone who is mobile. Ms. Eisenberg agreed that this example is correct, but opined that the act is no more heinous than an assault on an able person.

In addition, Ms. Eisenberg stated that another concern she has is that this bill removes discretion from the Judge.

Meg Wuebbels, Assistant AG, AG's Office, testified in support of the bill and remarked that Arizona has a large class of elderly persons who are more vulnerable to crime because many are incapacitated or suffer from mental and physical disabilities based on their advanced age. This bill will cover them as well as other people who are incapacitated or vulnerable as defined in the statute. She stated that this is an important piece of legislation to protect these people. She stated the verbal amendment was requested by the AG's Office, as there are times when theft and endangerment can be misdemeanors if the theft is less than \$250.00. This bill will only apply to felony offenses, where an individual is charged and convicted by a jury of "dangerous crimes against incapacitated or vulnerable adults" which would not allow probation.

The motion to ADOPT the Richardson amendment dated 1/21/02, 11:24 a.m. CARRIED by a voice vote.

Senator Bee moved the following verbal amendment:

Page 1, line 31, after "(g)" insert "FELONY"
Line 33, after "(i)" insert "FELONY"
The motion CARRIED by voice vote.

Senator Bee moved S.B. 1047 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 3).

S.B. 1049 – justice and police courts; records – DO PASS AMENDED

Ms. Hird stated that court rule requires that the Director of the Arizona State Library, Archives and Public Records (ASLAPR) be notified to review all court records before they are destroyed. However, ASLAPR does not consider certain types of justice and municipal court records, such as original versions of parking tickets, to be historically significant. S.B. 1049 would allow the Director of ASLAPR to apply a blanket waiver to historically insignificant documents, permitting the court to destroy designated records after a scheduled time period, but without prior notification.

David Sands, Legislative Officer, Administrative Office of the Courts (AOC), testified in support of the bill and remarked that it has been requested by ASLAPR that the "blanket waiver" referred to in the bill be stricken with a verbal amendment, as that process is not used by ASLAPR.

Martin Richelsoff, Division Director, ASLAPR, testified in support of the bill and remarked that the ASLAPR prefers the simplified language to address this issue.

Senator Bee moved S.B. 1049 be returned with a DO PASS recommendation.

Senator Bee moved the following verbal amendment to S.B. 1049:

Page 1, line 20, after "RECORDS" strike remainder of line
Strike line 21
Line 39, after "RECORDS" strike remainder of line
Strike line 40

Senator Bee withdrew the verbal amendment.

Senator Bee moved the following verbal amendment to S.B. 1049:

Page 1, line 20, after "RECORDS" strike remainder of line
Line 21, strike "RECORDS ARE NOT OF ANY HISTORICAL SIGNIFICANCE"
Line 39, after "RECORDS" strike remainder of line

Line 40, strike "RECORDS ARE NOT OF ANY HISTORICAL SIGNIFICANCE"

The motion CARRIED by a voice vote.

Senator Bee moved S.B. 1049 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 4).

S.B. 1050 – domestic violence; protection orders – DO PASS

Ms. Collins explained S.B. 1050 clarifies that injunctions against harassment and orders of protection are effective upon service to the defendant. Additionally, the bill makes clarifying changes to sentencing options available to the court and information that must be provided to the court by the petitioner when requesting an order of protection.

David Sands, Legislative Officer, Administrative Office of the Courts (AOC), testified in support of the bill and remarked that the purpose of the bill is to clarify inconsistencies in statute. He noted that there is no substantive change to the provision of current law.

Senator Richardson announced that **Sharon R., Internal Security, Arizona Department of Economic Security** was present in opposition to the bill.

Senator Richardson announced that **Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence** was present in support of the bill.

Senator Aguirre remarked that in Ms. R's written comments, she noted her concern that every order should have a hearing, due to the limited time frame that some victims are under. She asked Mr. Sands if he could comment on this concern. Mr. Sands stated that an order could be sought in any court in the State now. Most of these orders are issued with the plaintiff appearing with an appropriate case and an order issued. Once the order is served, the defendant has a year to request a hearing. He noted that there are statutory required time frames on the hearings. He remarked that perhaps Ms. R's concerns may revolve around an individual case where there was not adequate opportunity the day it was scheduled for a hearing. He opined that the statute seems to be appropriately phrased to allow those opportunities.

Senator Bee moved S.B. 1050 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 5).

Without objection, the meeting was adjourned at 2:25 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.)