

ARIZONA STATE SENATE

45TH LEGISLATURE SECOND REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: February 5, 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 1023	DPA
Senator Bundgaard	X			SB 1076	HELD
Senator Burns	X			SB 1128	DISCUSSION/HELD
Senator Cumiskey		X		SB 1140	DISCUSSION/HELD
Senator Rios	X			SB 1141	DP
Senator Smith	X			SB 1174	DISCUSSION/HELD
Senator Bee, Vice Chairman	X			SB 1195	DISCUSSION/HELD
Senator Richardson, Chairman	X			SB 1198	DPA

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Richard Arthur Schaefer	Member, Commission on Trial Court Appointments, Pima County	RECOMMEND CONFIRMATION

Tape 1, Side A

Chairman Richardson called the meeting to order at 1:39 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 29, 2002 were approved as distributed.

EXECUTIVE NOMINATIONS

Richard Arthur Schaefer – Member, Commission on Trial Court Appointments, Pima County **- CONFIRMATION RECOMMENDED**

Senator Bee moved that the Committee on Judiciary recommend to the full Senate the confirmation of Richard Arthur Schaefer to the Commission on Trial Court Appointments, Pima County. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 1).

CONSIDERATION OF BILLS

S.B. 1076 – private investigator personal information; redaction – HELD

Senator Richardson announced that S.B. 1076 would be held.

S.B. 1023 – spousal maintenance enforcement – DO PASS AMENDED

Barbara Guenther, Research Analyst, explained S.B. 1023 establishes a spousal maintenance enforcement enhancement fund (fund) and establishes a \$5 surcharge on divorce, separation and annulment filings to fund efforts by the Clerks of the Court (Clerks) to assist individuals with enforcement of spousal maintenance orders.

Ms. Guenther explained the Rios amendment strikes language that would have allowed the courts to suspend licenses and certificates of a person in arrears on a spousal maintenance order for two months.

In response to Senator Smith, Ms. Guenther stated that it is estimated by the Maricopa County Clerks Office, the \$5 surcharge would bring in approximately \$102,000 to Maricopa County with an additional \$60,000 from other counties. Ms. Guenther commented that there are approximately 400 people who are not current with paying spousal maintenance.

Senator Mary Hartley, bill sponsor, commented that currently the Department of Economic Security (DES) collects spousal maintenance for spouses with minor children, as well as child support. For spouses without minor children, there is no assistance available outside of the county clerk's office and the county clerks have not had the funds to go after the awards. She remarked that she was not excited with the amendment, and opined that the most important part of the bill is the funding for the county clerks to be able to help with this problem.

Senator Richardson announced that the following people were present in support of the bill: **Tonia Tunnell, Government Affairs Manager, Arizona Association of Counties and Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence.**

Senator Bee moved S.B. 1023 be returned with a DO PASS recommendation.

Senator Bee moved the six-line Rios amendment dated 1/31/02, 2:07 p.m. be ADOPTED. The motion CARRIED by voice vote (Attachment B).

Senator Bee moved S.B. 1023 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 2).

S.B. 1140 – sexual conduct with a minor – DISCUSSION/HELD

Lisa Hird, Research Intern, explained that under current statute, sexual conduct with a minor can be charged as either a class 2 or class 6 felony, depending on the age of the minor. If the minor is under 15 years of age, the crime is considered a class 2 felony, whereas sexual misconduct with a minor 15 years or older is a class 6 felony. S.B. 1140 redefines these age categories by changing "under 15" to "under 16" years of age, meaning that sexual conduct with a 15 year old will now be considered a class 2 felony.

Ms. Hird explained the Richardson amendment dated 2/4/02, 8:27 a.m. (Attachment C) reinserts the victim's age of 15 as a defense for prosecution in certain instances. This is how the language exists in current law.

Senator Richardson announced that the first person the Committee would be hearing testimony from is the mother of a victim. Due to circumstances of harassment, she has requested to testify anonymously, as **Mrs. Jane Doe**.

Mrs. Doe remarked that her husband and son were also present in support of the bill and opined that this is an extremely positive step in closing a large loophole, which benefits sexual predators. She stated that she is speaking from a professional experience in dealing with victims as a registered nurse and most importantly because her daughter is a victim.

Mrs. Doe explained that her daughter was 15 at the time of the occurrence and was a vulnerable child, as she had had numerous facial surgeries. Being 15, she was struggling with self-esteem issues and was sexually violated by a 35-year old physician assistant (PA) in her workplace. He had sexual intercourse with her twice and fondled her on a daily basis in the office. She stated that it was reported to the police, the PA was arrested in the office and evidence from his house was confiscated. During the time of the abuse, which lasted for three months, her daughter became depressed, suicidal, and began self-mutilation, by cutting her arms. Her daughter was ashamed by the trauma of the situation. The PA had been medicating her daughter with anti-depression medications during and after the abuse.

Mrs. Doe stated that this man was not prosecuted because there was not enough evidence and because it is a class 6 felony. She stated that it was stated to her and her husband, numerous times, by detectives and county attorneys, that if the case went to trial it would be reduced to a misdemeanor, even if he was found guilty. The reason it would be reduced was because he had

no prior history. If the crime had been a class 2 felony, it would have had mandatory sentencing. She commented that this man has simply walked away. To take this case to court, it would have meant putting her daughter up against a respected member of the community with the backing of the physician who supervised him.

Mrs. Doe commented that the face of the victim is not often seen by anyone outside of the family. She stated that it is a face full of pain and devastation. She stated that it has taken a lot of time and professional help to reach the point where her daughter is now. She is doing much better, but is still dealing with the feeling of shame. Mrs. Doe remarked that a child is never at fault in these situations. She urged the Committee to support the bill and protect the most vulnerable members of our society, our children.

Senator Richardson announced the following people were present in support of the bill: **Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence and Eric Edwards, Arizona Association of Chiefs of Police & Phoenix Police Department.**

Margarita Silva, Attorney, Maricopa County Public Defender, testified in opposition to the bill and remarked that the bill will cover more people and will have unintended consequences. She remarked that it is very sad to hear the story that Mrs. Doe testified to and acknowledged that there are other cases similar to hers. However, she noted her concern that a 15 year old sophomore and an 18 year old senior, as high school sweethearts, could be facing prison time, subject to sexual predator registration for the rest of their lives and civil commitment laws if this legislation is passed.

Senator Richardson remarked that this situation is addressed in the Richardson amendment. She asked Ms. Hird to re-explain the amendment.

Ms. Hird explained that the Richardson amendment reinserts the victim's age of 15 as a defense for prosecution in certain instances. The defense reads: "it is a defense to prosecution pursuant to Arizona Revised Statutes §13-1405, that victim is of the age of 15, 16 or 17 and the defendant is less than 19 years of age or attending high school and is no more than 24 months older than the victim and the conduct is consensual." She stated that this means that if 15 were to be re-inserted, it would cover a defendant less than 19 years of age who conducts sexual conduct with a 15, 16 or 17-year-old victim.

Senator Rios asked if this would apply to a 15 year-old and a 17.5 year-old, both in high school involved in a consensual relationship. Ms. Hird stated that he could not use this as a defense for his trial.

Senator Richardson commented that Senator Rios' hypothetical situation is not the target of this legislation, but rather it is toward the sexual predators that Mrs. Doe testified to. She noted that she would be happy to entertain any amendments to address Senator Rios' concern. Senator Rios asked Ms. Rabin if his concern could be addressed with a floor amendment. Ms. Rabin commented that she would be willing to work on drafting language to address the ages that Senator Rios has voiced his concern over.

Senator Rios commented that another concern he has is with the potential of this being a problem in the Latin American community, where it is culturally acceptable for older men to date and marry younger women.

Senator Aguirre expressed her hesitancy in passing the bill in Committee now and requested the bill be held and amended in another meeting.

After a brief discussion, Senator Richardson announced that the bill would be held.

S.B. 1141 – crimes; assault; drugs; gangs – DO PASS

Ms. Hird explained S.B. 1141 addresses three separate issues. First, the bill provides that a person who commits assault in Arizona in violation of an order of protection issued in another jurisdiction may be charged with aggravated assault. This would treat Orders of Protection from other states the same way as an Order of Protection from this state. Secondly, the bill creates a new section of statute relating to criminal street gangs to help differentiate from crimes related to criminal syndicates. Thirdly, the bill allows courts to conduct bond source hearings in order to investigate the legitimacy of collateral a defendant offers to secure a bond for release.

Jerry Landau, Special Assistant, Maricopa County Attorney's Office, testified in support of the bill and remarked that he was also appearing for Meg Wuebbels, Attorney General's Office. He stated that all the prosecutors clearly believe that orders of protection and the protection of those who are victims of battery and domestic violence should be enforced regardless of where the order occurred within or outside of Arizona. He opined the penalties associated with committing another assault on the victim should be the same as well. He remarked that the second section of the bill does nothing to change current law. It separates one statute into two because the statute is intertwined and it is difficult for prosecutors, judges and juries to understand the statute. He commented that the third section of the bill regarding bail hearings codifies federal case law, which allows the courts to consider the source of the bond and ask for other collateral.

Senator Richardson announced the following people were present in support of the bill: **Eric Edwards, Arizona Association of Chiefs of Police & Phoenix Police Department; Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence; Kelly Orrick, Assistant to the Chief of Police, Mesa Police Department and the Arizona Chiefs of Police and Michael Haener, Director of Legislative Affairs, Attorney General's Office.**

**Senator Bee moved S.B. 1141 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 5-0-3 (Attachment 3).**

S.B. 1128 – instant background checks; gun shows – DISCUSSION/HELD

Sheryl Rabin, Research Analyst, explained that current law requires firearm dealers possessing Federal Firearms Licenses to run background checks on prospective buyers. This is true whether firearm sales occur at gun shows or at other locations. S.B. 1128 requires gun show vendors, as defined in the bill, to obtain instant background checks from the Department of Public Safety Firearms Clearance Center on any prospective firearms transferees. The Joint Legislative Budget Committee (JLBC) has determined that this legislation would have a fiscal impact. Firearm sellers and purchasers are not charged for background checks. Therefore, costs will increase for the Firearms Clearance Center, and there may not be enough balance forward in the Criminal Justice Enhancement Fund (CJEF) to absorb this increased cost.

Darren LaSorte, Legislative Liaison for the National Rifle Association (NRA), testified that on behalf of over 100,000 members, he was present to ask the Committee to oppose the bill. He stated that Ms. Rabin explained the true law both inside and outside of gun shows and nothing has changed since last year and there is still no gun show loophole. The term gun show loophole implies that there is something unique or different about gun shows, but he stated that the laws that apply outside of gun shows apply equally inside.

Mr. LaSorte remarked that even the sponsor of the bill might have a misconception of what the law does and requires. In an email to an NRA member this past fall, Senator Mitchell wrote, in explanation of his sponsorship of the bill, that the majority of people have voiced their support for instituting the background checks, as they are required at other venues and it is only logical to extend them to gun shows. He stated that there is not a single gun sale that requires a background check outside of gun shows that does not also require a background check inside of a gun show. He noted that this is a demonstration of how widespread this misinformation is.

Mr. LaSorte noted that if a person is a federal firearm licensee (FFL), or gun dealer he is required to perform background checks regardless of where the sale is done. He stated that under federal statute a non-FFL can sell guns out of a private collection without performing a background check. He stated that standard for who has to be licensed is whether the person is engaged in the business of selling firearms.

Mr. LaSorte commented that according to a report of the Bureau of Justice Statistics, a division of the U.S. Department of Justice, criminals are not getting guns from gun shows. This statement is in response to a survey of interviews taken from inmates. In one of the questions on the survey, the inmates were asked that if their crime involved a gun, where was the gun obtained. He stated that 0.6% of inmates or 1 out of 150 inmates stated they obtained their guns from gun shows.

Mr. LaSorte remarked that last year one of the justifications of this bill was in response to a Tucson Pizza Hut murder where the defendant obtained the gun used in the triple murder from a Tucson gun show. He noted that it has since been discovered that the gun was not obtained from the gun show and the civil suits against the gun show promoter and others have been dismissed.

Mr. LaSorte stated that this is the first step to ban all private transfers of guns. He stated the basis of the right to have private transfers of firearms is related to respecting private property rights. He stated that the supporters of this bill want to ban all private transfers of firearms.

Senator Harry Mitchell, bill sponsor, stated that he is not an anti-gun person and his intent was never to outlaw all guns for sale. He stated that the bill is regarding background checks. He noted that in an article last February in the Arizona Republic, it was reported that 1,500 guns were seized in a fifteen month undercover sting that targeted illegal firearm dealers, dealing in Arizona gun shows and swap meets. He stated that this bill would not effect private sales. He stated that this would be for shows with over 25 firearms and more than three dealers.

Senator Mitchell commented that Joe Gordon, Assistant Special Assistant in charge of the Bureau of Alcohol, Tobacco and Firearms was quoted as saying "Illegal traffic was rampant at gun shows and swap meets, which attract criminal weapon buyers because of the legal loophole that allows unlicensed sales without background checks." He stated that this bill is an effort to be consistent with background checks.

Senator Mitchell remarked that there was a report put out by the Treasury Department, entitled "Commerce and Firearms in the United States" that was done for Congress. He quoted from the report "A major trafficking channel responsible for more than 26,000 illegal firearms during an eighteen-month study." He stated that the report noted that felons were associated with selling or purchasing weapons in nearly half of the gun show investigations. He commented that he is aware that illegal firearm purchases cannot be stopped completely, but he opined that it is worth the effort to stop at least as many as possible.

Senator Richardson announced that Committee would hear testimony from Ms. Ryan and then the bill would be held.

Mary Judge Ryan, Chief Deputy Pima County Attorney, commented that Mr. LaSorte was correct in his statement that there is nothing going on in gun shows now which violates any law as far as background checks are concerned, because the "loop hole" is that private sales do not require any background checks. The background check issue arises because of the number of guns that are being sold at gun shows by private sales. She stated that nothing in the bill will prohibit the private transfer of guns without a background check. The bill would make it a requirement that the background checks take place with the private dealers at gun shows, just as with federally licensed dealers at gun shows. Additionally, these checks will also ensure that guns are not being sold to minors, felons or to individuals that are mentally ill.

Senator Richardson announced the following people were present in support of the bill: **Eric Edwards, Arizona Association of Chiefs Of Police & Phoenix Police Department; Linda A. Blackwell, Lobbyist, League of Women Voters; Kelly Orrick, Assistant to the Chief of Police, Mesa Police Department, Arizona Chiefs of Police and Tara Plese, Arizona Catholic Conference.**

Senator Richardson announced that **Ken Rineer, representing himself and Laurence Burns, Commander Licensing Bureau, Arizona Department of Public Safety** were present in opposition to the bill.

S.B. 1174 – misconduct involving weapons; children. – DISCUSSION/HELD

Ms. Rabin explained S.B. 1174 establishes as a crime of misconduct involving weapons the crime of knowingly keeping a firearm under the person's custody or control if a child gains access to the firearm and if an injury or death results. Violations of this act are a class 3, class 4 or class 6 felony depending upon the resulting death or level of injury that results from the child's access to the firearm. The bill also contains a number of provisions that prohibit liability, including if the person has no reasonable expectation that a child will be on the premises. In addition, the bill requires a person who sells or exchanges firearms in the regular course of business to post a notice disclosing the duties of this section.

Senator Ruth Solomon, bill sponsor, stated that this bill is similar to a bill that was heard last year. She stated the controversy that was raised last year has been taken care of in this bill.

Darren LaSorte, Legislative Liaison for the NRA, testified in opposition to the bill and noted that this bill goes against a principle of the Arizona State Constitution, the specific right to keep and bear arms for self-defense.

Mr. LaSorte commented that federal studies, victimization surveys that the Department of Justice does, estimates that 1.5 to 2.5 million times a year guns are used for self-defense. Another study done by the Justice Department surveyed felons who reported that 34% of the inmates had citizens who had held firearms against them.

Mr. LaSorte stated that the solution to any perceived problem is education, not an intrusive and dangerous government mandate making guns inaccessible in homes for the use of self-defense. He stated that the NRA does this with training over 700,000 people a year in gun safety classes.

Mr. LaSorte stated that the number of firearms related accidents this year reached an all time low. There are more guns than ever in private hands and more gun owners than ever. There were 132 fatal accidents that involved children under the age of 15. In Arizona, 68 children died in auto accidents, 33 in drowning, 16 in suffocation incidents, 6 by fire, 8 in other situations and 3 in firearm accidents. He opined that the reason this is so low is because of public education and awareness.

Mr. LaSorte remarked that there are other statutes on the books to address the situations that the bill is trying to address. He commented that Maricopa County Prosecutor Romley has used a couple of these recently with cases involving child drownings. He stated that the bill is clearly prejudice and bigotry against gun owners.

Tape 1, Side B

Mary Judge Ryan, Chief Deputy Pima County Attorney, testified in support of the bill and remarked the Pima County Attorney's Office is not an anti-gun organization, but rather it is tasked with the job of prosecuting crimes. She stated the purpose of the bill is to protect children. She noted that the County Attorney's Office has an educational program that teaches gun safety and as part of the program distributes gunlocks to individuals. She stated that within the bill is a laundry list of actions which if an individual takes, then there is no culpability.

Senator Richardson announced that the bill would be held.

Ken Rineer, representing himself, testified in opposition to the bill and opined that it is an infringement upon an individual's right to self-defense. He commented that his firearm is of no use to him with a trigger lock on it or if it is stored in a safe. He remarked that by the time he would be able to remove the firearm, an intruder would have enough time to injure or kill him or his family. He opined that there are current statutes in place to address negligent behavior of people who do not practice good firearm safety.

Senator Richardson announced that the bill would be held.

Senator Richardson announced the following people were present in support of the bill: **Linda A. Blackwell, Lobbyist, League of Women Voters; Eric Edwards, Arizona Association of Chiefs of Police & Phoenix Police Department and Tara Plese, Legislative Liaison, Arizona Catholic Conference.**

S.B. 1195 – family importance; state policy – DISCUSSION/HELD

Elizabeth Baskett, Research Intern, explained that S.B. 1195 declares the State's policy on the importance of family involvement in serving children who come into contact with the juvenile justice system, child welfare system or other state systems. She stated the bill comes out of the Juvenile Justice Coordinating Committee (JJCC) and is an effort to refocus delinquency prevention programs to actively involve families.

Senator Smith, bill sponsor, testified that the JJCC is charged with supervising and assisting in the implementation of the Deloitte and Touche audit recommendations. One of the audit recommendations was to refocus delinquency prevention programs to actively involve families. Both the Family Involvement and Education working group of the JJCC and the full JJCC recommended that the Arizona Legislature adopt the "Policy Addressing the Importance of Families."

Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence, testified in opposition to the portion of the bill where it asks for cooperation among the family and parents. She stated that the bill does not take into consideration issues such as domestic violence.

Senator Richardson suggested that Ms. Bones work with Senator Smith on an amendment to address this.

Senator Richardson announced that the bill would be held for the amendment.

S.B. 1198 – criminal nuisance; unlawful substances. – DO PASS AMENDED

Lace Collins, Research Assistant Analyst, explained S.B. 1198 creates two new categories of criminal nuisance as class 5 felonies. She stated that state and federal law enforcement agencies have suspected that some rave promoters are also encouraging the sale and use of "club drugs" such as ecstasy, LSD and methamphetamine at raves and are becoming more prominent primarily among adolescents. The bill also creates a class 5 felony of criminal nuisance for knowingly maintaining or using a property where persons under age 21 gather for the purpose of selling, making, using or distributing illicit drugs. Additionally, the bill stipulates that the owner of or person responsible for a property has been properly informed of the nuisance if they have received 3 notices from a government agency of illegal drug use.

Ms. Collins explained the original bill specifies that if the responsible person has been noticed three times of controlled substance violations, the person can be charged with felony criminal nuisance. The Richardson amendment adds that a responsible person must fail to take reasonable action to stop illegal activity and adds language stating that a responsible party that evades notice of controlled substance violations is considered noticed.

Senator Richardson announced that the following people were present in support of the bill: **Eric Edwards, Arizona Association of Chiefs of Police & Phoenix Police Department; Jerry Landau, Maricopa County Attorney's Office; Kelly Orrick, Assistant to the Chief of Police, Mesa Police Department, Arizona Chiefs of Police and John Blackburn Jr., Legislative Liaison, Arizona Criminal Justice Commission.**

Senator Bee moved S.B. 1198 be returned with a DO PASS recommendation.

Senator Bee moved the Richardson amendment dated 2/4/02, 12:28 p.m. be ADOPTED. The motion CARRIED by voice vote (Attachment E).

Senator Bee moved S.B. 1198 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 4).

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.)