

ARIZONA STATE SENATE

45TH LEGISLATURE SECOND REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: March 12, 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			HB 2065	HELD
Senator Bundgaard	X			HB 2353	HELD
Senator Burns	X			SB 1059	DPA
Senator Cumiskey	X			SB 1172	DP
Senator Rios	X			SB 1173	DPA
Senator Smith	X			SB 1200	DP
Senator Bee, Vice Chairman	X			SB 1202	DPA
Senator Richardson, Chairman	X			SB 1214	DPA
				SB 1219	DPA
				SB 1231	DPA
				SB 1275	FAILED
				SB 1277	FAILED
				SB 1361	FAILED
				SB 1362	DP
				SB 1394	DPA
				SB 1396	DPA
				SB 1397	HELD
				SB 1427	DPA
				SB 1428	DP
				SB 1440	HELD
				SB 1457	FAILED
				SB 1470	DP
				SCR 1011	DPA

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 1:40 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 February 12, 2002 were approved as distributed.

CONSIDERATION OF BILLS

Senator Richardson announced the following bills would be held: H.B. 2065, H.B. 2353 and S.B. 1397.

H.B. 2065 – state department of corrections; continuation – HELD

H.B. 2353 – venue change; fee payments; time – HELD

S.B. 1397 – first degree murder; parole eligibility – HELD

S.B. 1470 – uniform custodial trust act – DO PASS

Lace Collins, Research Assistant Analyst, explained S.B. 1470 allows the creation of custodial trusts by adopting the Uniform Custodial Trust Act or UCTA. The UCTA governs many aspects of a trust relationship including the creation and termination of custodial trusts, trustee obligations, use of custodial trust property, determination of incapacity of the beneficiary, reporting and accounting by custodial trustees as well as many other aspects of a trust.

The National Conference of Commissioners on Uniform State Laws states that a custodial trust is inexpensive due to the fact that custodial trusts are easy to create and can be used to pass on property at death without probate. They are simple because the forms for creating a custodial trust provided in statute are comprehensive and allow any person who creates a custodial trust to retain control over the trust until they are incapable or die.

James Bush, Member, Uniform Laws Commission, testified in support of the bill and remarked that this Act was promulgated by the National Conference of Commissioners in 1987 and has been enacted in 17 states and will be introduced in another half dozen this year. He noted that the Conference strongly supports the Act because of its simplicity and because it is inexpensive to put into effect. He remarked that the statute is the only trust instrument needed to establish a custodial trust. He stated that the beneficiary could terminate the trust at any time.

Senator Richardson expressed her appreciation of the work that Mr. Bush has done on this and other issues.

In response to Senator Rios, Mr. Bush opined that he did not think that the Act would make it too easy for senior citizens to get into situations where they can be taken advantage of. He explained that there are duties and obligations of the Trustee, requiring them to conform to a certain standard

of conduct that is included in the statute. He noted that the Trustee could be replaced at any time by the beneficiary.

Senator Bee moved S.B. 1470 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 1).

S.B. 1427 – security enhancement act – DO PASS AMENDED

Sheryl Rabin, Research Analyst, explained that in response to the September 11th attacks, Congress passed the USA Patriot Act. S.B. 1427 modifies Arizona laws to conform to the USA Patriot Act and creates new criminal provisions.

The bill creates a new definition of terrorism, modifies money laundering statutes, and creates the new crime of committing a terrorism hoax. Additionally, terrorism is added to the list of offenses for which there is no statute of limitations and terrorism is added to the list of offenses that trigger the felony murder rule.

Ms. Rabin explained the Richardson amendment, dated March 7, 2002, makes numerous changes, including the following: clarifies the mental state necessary to be convicted of class 2 felony terrorism; eliminates class 5 felony terrorism, which was introduced in the bill; eliminates a reference to communication service system hubs from the statute relating to misconduct involving weapons; changes from 60 to 10 days the extension of time that a court can grant in the delay of service of the receipt that is required when property is taken under a warrant and amends various definitions in the bill.

Ms. Rabin explained the Smith amendment provides to members of the Arizona National Guard, who are ordered by the Governor to perform training or duty, the protections provided under the Soldiers and Sailors Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act. These are federal acts that are intended to benefit service members whose ability to meet civil obligations is materially affected by their military service.

Janet Napolitano, Arizona Attorney General (AG), testified in support of the bill and remarked that this bill proposes a number of changes to Arizona's statutes related to terrorism. She stated that the bill does not create or impose: military tribunals, call for extended witness detentions, allow sweeping new governmental powers, nor abridge the fundamental liberties that we hold dear as Americans and as Arizonans.

Ms. Napolitano stated that the bill does update the State's statutes, patterning state law upon the most sensible and limited provisions of the USA Patriot Act. This is necessary because, as has been seen in the wake of the attacks on September 11th, there are some gaps in the system that need to be addressed for law enforcement to have the necessary tools to protect the public during an attempt or actual terrorist incident. She noted that the work done with the Governor, county attorneys, chiefs of police and with many members of the legislative body has created S.B. 1427. She noted some of the changes that will be made under this bill. The death penalty will apply to acts of terrorism that result in the deaths of one or more persons; such as when fire fighters, peace officers or service personnel are killed when responding to or rendering aid. It establishes a new definition of terrorism which is acts that are designed to influence the policy or conduct of a branch or level of government by intimidation or coercion or to cause substantial interruption of public communications, transportation, utilities, buildings or services. Such acts will be class 2 felonies,

punishable by life imprisonment under aggravated circumstances. It makes widespread disruption of business in government operations a more serious crime and creates penalties for the possession or release of weapons of mass destruction. The bill also punishes those who support terrorists or their networks by making the collection or solicitation of funds or resources that support a terrorist operation a class 2 felony and addresses the problem of terrorist threats and hoaxes. Current law does not sufficiently protect against threats that stem from false terrorist assertions. The bill brings state law into compliance with federal law and elevates or creates penalties for making a terrorist threat, making a false threat, implying a threat or committing a terrorist hoax.

Ms. Napolitano stated that those who commit acts in Arizona need to know that they will be tracked down now matter how long it takes, thus S.B. 1427 waives the statute of limitations for terrorist acts. Additionally, the bill addresses the monetary resources needed for terrorism. There are networks throughout the State, the country and throughout the world, which provide them with the resources they need. She remarked that is why this bill amends the money laundering laws so that the assets of terrorist networks that are found in Arizona can be frozen and money laundering stopped. There are also new provisions in the bill governing the regulation of money transmitters, such as Western Union and imposing more stringent reporting requirements on them. She urged the Committee to support the bill.

Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union (ACLU), testified in opposition to the bill and remarked that one of the ACLU's concerns is that the definition of terrorism is so broad it would include constitutionally protected activities. For example, she noted that it could be viewed that the action taken by Rosa Parks, by getting on the bus in Alabama, was an action that could be considered coercion or an attempt at intimidating a public body to make changes. She stated that this sort of activity could be covered by this terrorism act. She noted that the definition of bio-terrorism and biological agents could be read broadly enough to include a pharmacist filling a prescription for RU-486, or a doctor performing an abortion as an act of terrorism. The reporting requirements go further than they should, with regard to the rights of privacy of individuals with respect to their financial records and transactions. She stated that the ACLU recognizes that there is a need for additional security, but the laws that are being passed have to meet the usual standard for constitutionality. This means that they have to meet a compelling governmental need and be narrowly tailored so they impact on people's fundamental civil liberties as little as possible and do not capture those people who are engaged in protected activities.

In response to Senator Rios, Ms. Eisenberg commented that tightening up the definitions would address her concerns. She expressed her appreciation for the work done by the AG with the bill.

Senator Richardson commented that other concerned parties, such as the cotton growers, are working with the Attorney General to further amend the bill with their concerns. She noted that this is the last week to hear Senate Bills, therefore the Committee had to hear the bill today. She suggested that Ms. Eisenberg speak with representatives from the AG's Office to address her concerns for further amendments to the bill.

Ellen Poole, Executive Vice President, Arizona Bankers Association, testified in support of the bill and noted that the banking industry is working with the AG's Office and the county attorney regarding some of the provisions relating to reports, which are duplicative in the Patriot Act. The

most efficient way to get the maximum information with the minimum amount of reporting activity is the goal the industry is trying to obtain with the AG's Office and noted that she will continue to work with the AG's Office on an amendment. She expressed her hope that the Committee members would support the amendment on the floor.

Michael Preston Green, Viad Corporation, testified in support of the bill and commented that one of the major subsidiaries of Viad is Travelers Express, the largest money order business in the world in addition to Money Gram, which is the second largest money transmitter. He stated that these companies do business in all 50 states and 150 foreign countries and consequently are concerned about uniformity with the federal law and state law. He noted that he is also working with the AG and making good progress in working out an amendment to address Viad's concerns and advance the cause of the bill.

Senator Richardson announced the following individuals were present in support of S.B. 1427: **Jerry Landau, Special Assistant, Maricopa County Attorney's Office (MCAO); Michael Virgin, Director Joint Programs, Arizona Department of Emergency & Military Affairs; Martin Shultz, Vice President, Pinnacle West Capital Corp-Arizona Public Service (APS), APS Operator of the Palo Verde Nuclear Station; Eric Edwards, Arizona Association of Chiefs of Police (AACOP) and Phoenix Police Department; Edwin Cook, Executive Director, Arizona Prosecuting Attorneys' Advisory Council; Charles Strouss, Attorney, Arizona Newspapers Association; Wendy Briggs, American Express; Andy Swann, Arizona Highway Patrolmen of Arizona and Margot Wuebbels, Assistant AG.**

Senator Richardson announced the following individuals were present but neutral on S.B. 1427: **Joe Sigg, Arizona Farm Bureau and Les Davis, Arizona Agricultural Aviation Association.**

Shelly Tunis, Yuma Vegetable Shippers Association, testified as neutral to the bill and stated that the Association has met with the AG's Office about a possible amendment, which has not been received. She commented that the Association will continue working to get an amendment to satisfy agriculture's concerns specifically regarding definitions. When this is accomplished, the Association will be in support of the bill.

Senator Bee moved S.B. 1427 be returned with a DO PASS recommendation.

Senator Bee moved the three-page Richardson amendment dated 3/7/02, 9:00 a.m. be ADOPTED (Attachment B). The motion CARRIED by voice vote.

Senator Bee moved the two-page Smith amendment dated 2/11/02, 12:26 p.m. be ADOPTED (Attachment C). The motion CARRIED by voice vote.

Senator Bee moved S.B. 1427 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-1-0 (Attachment 2).

S.B. 1396 – DNA; testing; identification database – DO PASS AMENDED

Ms. Rabin explained that under existing law, inmates and probationers convicted of specified felonies are required to submit to deoxyribonucleic acid (DNA) testing. The results of the DNA

tests are maintained in federal and state databases and can be used to identify or exclude crime suspects.

This legislation expands DNA testing to include all felony offenders. By January 1, 2003, all felons convicted of offenses involving drugs or sexual exploitation of children would be tested and by the beginning of calendar year 2004, all felons would be tested.

Ms. Rabin noted that the bill also contains provisions restricting the use of DNA testing to specified purposes and requires the DNA profile to be expunged from the DNA identification system if certain conditions apply.

The bill appropriates \$2 million from the Arizona DNA identification system fund in each of fiscal years (FY) 2003 and FY 2004 to the Department of Public Safety (DPS) to implement, conduct, and maintain DNA testing. The DNA identification system fund is an existing fund that would be supplemented by an additional 3% penalty assessment, bringing the total surcharge from 77% to 80%. She noted that the Joint Legislative Budget Committee states that the bill is revenue neutral with the 3% surcharge.

Ms. Rabin explained the Richardson amendment states that if DPS receives a DNA sample that is unacceptable for analysis, it must require the obtainment of another sample. The amendment increases the appropriation from \$2 million in FY 2003 and FY 2004 to \$4 million. She noted the intent was \$4 million total over two years. Additionally the amendment requires DNA testing of felons committing sexual exploitation of children upon this legislation taking effect, rather than on January 1, 2003 and makes technical and conforming changes.

Ron Reinstein, Superior Court Judge, testified in support of the bill and noted that in addition to being a superior court judge, he is also a member of the National Commission on the Future of DNA evidence and has been for the last four years. He stated that this is the third year that he has testified in front of this Committee and noted that in the last two years this Committee and the Senate passed the DNA expansion bill. The success of the DNA database and its expansion are directly related to the number of convicted DNA profile offenders who have been entered into the database.

Judge Reinstein remarked that the application of DNA technology to crime scene investigations is where the greatest unrealized potential is for using DNA in the criminal justice system. Many agencies only perform DNA analysis if the suspect has been identified, which is illogical, but it is a result of funding. That is why the surcharge has been offered as a mechanism to provide funding. He stated that this legislation will help in the expeditious apprehension of suspects, the protection of future victims and also the protection of innocent suspects. He noted that in addition to obtaining DNA blood samples, this legislation would give DPS the alternative of a buccal swab or a cheek swab because some people feel that blood sampling is more invasive.

Judge Reinstein commented that this legislation would allow the largest "bang for a buck." He noted that legislation has already been passed for residential burglars and sex offenders and S.B. 1396 adds drug offenders. Nationally, other than the category of residential burglars, the drug offender category is the most "bang for a buck" in DNA profiling. He stated that the majority of crimes being solved are sex offenses, residential burglaries and finally homicides.

Judge Reinstein remarked that in Virginia, between 1991 and 1999, when they did not have an expanded DNA database, there was a total of 31 cold hits or non-suspect cases that were solved. In 1999 there were 5 cold hits. When the database was expanded to include all felons beginning in 2000, there were 308 cold hits and for the first two months of this year there have been 90 cold hits. He noted that Great Britain collects DNA sampling from all arrestees and on average get 300 cold hits per week and are solving cases of burglaries, thefts, sex offenses and homicides. Just two months ago, the New York Division of Criminal Justice Services found that 75% of the offenders who were already in the system as convicted felons were in the system not for a DNA index offense. Therefore, if there had been an all felon database, these criminals would have already been in the system. These criminals' first DNA index offense occurred on average 4 ½ years after their first felon conviction and in the meantime, each of them averaged 10.2 felony and 5.6 misdemeanor arrests. Consequently, during that average 4½-year period of time, other people were victimized while the offenders could have been identified and other crimes could have been solved.

Judge Reinstein stated that Arizona has fallen behind in not adopting this policy in the last two legislative sessions, which is reflected in the federal funding formula as well. The greater the database, the greater the backlog of offender's samples and the more federal funds the State's laboratories will receive in addition to any surcharge the Legislature imposes. There is a direct correlation with the number of suspects identified, the number of victims that are protected and the number of falsely accused suspects who have been exonerated or released. He remarked that the federal government is not going to fund this forever and urged the Committee to provide this revenue neutral funding.

Cindi Nannetti, County Attorney, MCAO, testified in support of the bill and remarked that expanding the DNA database would help in solving many of these cases. She stated that many of the victims of unsolved crimes wait many years to have closure. She stated that it is very difficult for victims to understand that the evidence that was collected from them from a sexual assault is being stored and useless until a large enough database is developed to match the suspect of their crime to an individual that can be prosecuted. She stated that it is known that many rapists are diagnosed with anti-social personalities and they engage in many behaviors other than deviant sexual behavior and are committing other types of crimes, such as theft, burglary and drug offenses. She stated that in many of the cases the MCAO reviews, the offenders have been convicted of many of these minor crimes, but not until they have committed a sexual offense. She noted that in one year, 13 suspects were responsible for 35 rapes. Three of these individuals were responsible for 20 rapes and most of these individuals had prior felony convictions for lower level offenses before they committed sex offenses that allowed for their DNA samples to be obtained.

Ms. Nannetti remarked that in addition to giving victims a sense of closure and a feeling of safety against further assaults, expanding the database to aid in apprehending offenders quickly reduces the amount of time victims suffer because they may have been infected with a sexually transmitted disease. She commented that until the suspects are identified, testing for diseases cannot be performed. She urged the Committee to pass S.B. 1396.

Joseph McCabe, Attorney, stated that as the father of a homicide victim he was present in support for DNA testing. He stated that violent felons reek chaos on their victim's families and are largely recidivists. He stated this testing procedure would take those recidivists off the street. He stated that this issue is not necessarily crime detection, but one of crime prevention. He stated the facts given by Judge Reinstein and Ms. Nannetti illustrate the results that can be achieved with

DNA database expansion and opined that it is part of the Legislature's obligation to provide civil order to the State. He remarked that this is the most valuable testing tool that has been used since fingerprinting and urged the Committee to pass the bill.

Senator Rios commented that he supports the expansion of the DNA database but noted his concern with the funding source. He stated that this source is another 3% on a 77% surcharge that is already added on to other fined offenses. He remarked that if one of his constituents received a fine of \$500 the 80% surcharge would change the total amount of the fine to \$900. He stated that for this reason he would be opposing the legislation and opined that increasing the surcharge has been done too much already.

Senator Richardson announced the following individuals were present in support of S.B. 1396: **Jack Lane, Lieutenant, DPS; Eric Edwards, AACOP & Phoenix Police Department; Todd Griffith, Scientific Analysis Superintendent, Arizona DPS Crime Lab; George Weisz, Deputy Chief of Staff to the Governor, Governor's Office; Edwin Cook, Executive Director, Arizona Prosecuting Attorneys' Advisory Council; Kelly Orrick, Assistant to the Chief of Police, Mesa Police Department AACOP; Joseph Easton, Lobbyist, Arizona Criminal Justice Commission; John Blackburn, Lobbyist, Arizona Sheriffs & County Attorneys; Andy Swann, Lobbyist, Associated Highway Patrolmen of Arizona and Margot Wuebbels, Assistant AG.**

Jerry Landau, Lobbyist, Special Assistant, MCAO, suggested the following verbal amendment to the Richardson amendment: Page 2, line 2, strike "strike 2,000,000 insert 4,000,000".

Senator Bee moved the following verbal amendment to the Richardson amendment dated 2/20/02, 11:15 a.m.:

Page 2, line 2, strike "strike 2,000,000 insert 4,000,000"

The motion CARRIED by voice vote.

Senator Bee moved S.B. 1396 be returned with a DO PASS recommendation.

Senator Bee moved the two-page Richardson amendment dated 2/20/02, 11:15 a.m. be ADOPTED.

Senator Bee withdrew the verbal amendment.

The motion to adopted the two-page Richardson amendment dated 2/20/02, 11:15 a.m. CARRIED by voice vote.

Senator Rios moved to reconsider the action whereby the Committee passed the Richardson amendment dated 2/20/02, 11:15 a.m. The motion CARRIED by voice vote.

Senator Bee moved the two-page Richardson amendment dated 2/20/02, 11:15 a.m. be ADOPTED (Attachment D).

Senator Bee moved the following verbal amendment to the Richardson amendment dated 2/20/02, 11:15 a.m.:

The motion CARRIED by voice vote.

Senator Bee moved the two-page Richardson amendment dated 2/20/02, 11:15 a.m. AS AMENDED be ADOPTED. The motion CARRIED by voice vote.

Senator Bee moved S.B. 1396 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 6-2-0 (Attachment 3).

S.B. 1231 – probation; controlled substances – DO PASS AMENDED

Ms. Collins explained S.B. 1231 allows a probation department or prosecutor to petition the court for revocation of probation and allows the court to revoke probation of a first-time drug offender who is unwilling to participate in a court ordered drug treatment program. She stated the fact sheet indicates that probation eligibility is eliminated for persons who refuse drug treatment or reject probation. However, eligibility for probation is only eliminated as provided under Proposition 200 probation provisions. Offenders may still be eligible for probation under other probation statutes. In 1996 the voters of Arizona passed Proposition 200, which eliminated incarceration for most persons convicted of a first-time drug offense. Proposition 200 specifies that as a condition of probation, drug offenders must attend a drug treatment program. This bill requires a $\frac{3}{4}$ vote from the legislature due to the fact that the statutory provisions amended by this legislation were enacted pursuant to a proposition measure.

Ms. Collins explained the Smith amendment dated 3/04/02, 9:25 a.m. specifies that the court may only incarcerate an offender if the offender violates probation by committing another drug related offense or violates a court order relating to drug treatment. The amendment also makes technical and clarifying changes.

Eleanor Eisenberg, Executive Director, ACLU, testified in opposition to the bill and remarked that the ACLU has received numerous phone calls regarding the lack of availability of drug treatment programs throughout Arizona, which meet the needs of people seeking non-religious programs. She commented that the 12-step programs require a belief in God or a Supreme Being and the turning over of one's life to that being. She stated that unless there is a program available for people who do not choose to use that path for their own health treatment, this bill will not work. The bill would be punishing people for their beliefs, because of the lack of secular programs available. She stated she would like to see action taken to have more secular programs available in every county.

Senator Smith commented that he has visited many secular drug and alcohol rehabilitation treatment programs. Ms. Eisenberg stated that she believes that to be true, but noted that these programs are not in every county and every state. She noted that there are also incidences where the probation department will mandate a particular program, regardless of the offender's beliefs.

Margarita Silva, Attorney, Legislative Liaison, Maricopa County Public Defender's Office, testified in opposition to the bill and noted that all of the members should have received a letter from Michael Mandell, Attorney for the Voter Protection Alliance. She stated that she echoed the

sentiments in the letter. She commented that Proposition 200 was basically passed twice by the voters who indicated that they do not want these offenders to be incarcerated.

Jerry Landau, Special Assistant, MCAO, testified in support of the bill and stated that prior to his current position he was Chief of the Controlled Substances Division, MCAO, which was responsible for the prosecution of drug offenses as well as vehicle crimes. Additionally, he was operationally in charge of the drug court, assisted in starting the drug court in Maricopa County and oversaw the drug diversion program in Maricopa County.

Mr. Landau explained that in 1989, Maricopa County Attorney Rick Romley, along with others, established the drug diversion program. The program was an attempt to divert first time offenders accused of possession of drugs into a treatment program with the idea that if the offender completed the program, charges would not be filed. He stated this was expanded to suspend prosecution and dismiss the charges for individuals that had originally rejected the treatment program option but had then completed the program successfully. He stated that this became a national model and soon after the program began, Maricopa Superior Court, in conjunction with MCAO, the Maricopa Public Defender's Office and others, established a drug court in Maricopa County based on other successful drug court programs.

Tape 1, Side B

Mr. Landau commented that this bill is in line with the drug initiative intent, which is for mandatory court-supervised drug treatment and educational programs. Currently there are no sanctions for defendants who are assigned to a drug court or placed on probation who refuse treatment or violate their probation. He stated that one of the tools the drug court is in need of is the sanction of incarceration. He remarked that this legislation is not mandating prison nor is it precluding probation. It addresses those instances where an offender does not comply with a court order for drug treatment or gets arrested again for another drug offense and gives the court further options. He stated that the bill furthers the purpose of Proposition 200.

Senator Rios commented that this is a real problem and asked if the proponents of the bill had thought of referring this issue to a vote of the people again as a consideration.

Mr. Landau remarked that referring the issue to a vote was discussed. He stated that referring matters to the public is extremely expensive and most of the time becomes a marketing campaign. He commented that this bill was drafted after obtaining information from the people working in the treatment community as well as the courts. It was felt that the bill furthers the purpose of Proposition 200. He noted that the Voter Protection Act allows the Legislature to amend an initiative with a $\frac{3}{4}$ vote, if it furthers the purpose.

Senator Rios commented that he would have felt more comfortable allowing the people who voted on the initiative to approve any changes.

Senator Cummiskey remarked that he understands and agrees with the policy aspect of the bill but noted his concern regarding the voter protection implications. He stated that he did not support the initiatives that were passed in 1996 and 1998 but noted that he would feel better if this issue were being sent back to the public to clarify what is an administrative problem. He asked if Mr. Landau would consider turning the bill into a referendum that could be sent back to the public for clarity. Mr. Landau stated that although he respects the will of the Committee and the Legislature, he

opined that the State Constitution provided the ability to change voter initiative provisions for situations exactly as this, as long as the change furthers the intent of the initiative.

Tom C. Cole, Superior Court Judge, representing himself, testified in support of the bill and remarked that he has been serving as the presiding judge for Yuma County for the last 5 years as well as being a past President of the Arizona Judges Association. He stated his proudest accomplishment is being a founding judge and presiding judge over an adult drug court program in Yuma where he has seen lives changed in a positive manner and people being helped. He read a few excerpts from letters from previous offenders who have successfully completed the program expressing their appreciation for being given the opportunity to receive treatment for their addictions and given a second chance to live productive lives. He remarked that drug courts combine intensive judicial supervision, mandatory drug testing, and a continuum of rewards, sanctions and treatment to help substance abusing offenders break the cycle of their addiction and the life of crime that often accompanies it.

Senator Richardson remarked that the effectiveness of drug courts has been widely recognized and expressed her appreciation for the work that Judge Cole is doing. She stated that the effectiveness of drug courts is not the issue of the bill, however, and noted that should the bill be passed by the Legislature, there is the threat of a lawsuit. She stated that she would like to hear more information on this angle of the issue.

Judge Cole opined that it was not the intent of the people to allow offenders the ability to ignore court orders giving them the opportunity for treatment without sanction. He commented that sanctions are necessary to be able to successfully implement the program. He urged the Committee to pass the bill.

Leslie Miller, Superior Court Judge, Pima County, representing herself, testified in support of the bill and noted that she has been a Pima County Judge for the last 17 years with the last 4.5 years in the drug court.

Judge Miller remarked the unintended consequences of Proposition 200 are addressed in S.B. 1231. She explained that under Proposition 200, defendants have been sentenced to probation with the condition that they participate in treatment. When they continuously fail to follow these conditions they are brought before the court on a probation revocation. Until recently, many of the courts were using incarceration as an ultimate consequence after defendants were also charged with possession of drug paraphernalia and were given numerous opportunities to comply with the conditions of probation. She stated the 1997 report compiled by the Supreme Court was compiled with information used when judges, in courts around the State, were incarcerating people who were charged with unlawful possession of drug paraphernalia in addition to possession of drugs. She stated that this was done because the Supreme Court had not yet ruled that that was not permissible. She stated that it was not until late November of last year that the Supreme Court ruled that unlawful possession of drug paraphernalia must be treated under the Proposition 200 guidelines. As soon as this occurred and defendants were aware that they were not subject to any type of incarceration, the willingness to comply with conditions of probation declined greatly. She stated that at sentencing, defendants are regularly telling the court that they are unwilling to comply with conditions of probation and reject probation. In other felony cases, when a felon rejects probation, the defendant is subject to incarceration. Being aware that this is not a possible consequence, defendants are openly expressing their intent not to comply with anticipated court

orders. She stated that this very thing occurred in drug court this morning with four out of four defendants.

Judge Miller remarked that statute states that when a defendant fails to comply with conditions of probation they are to be brought back and the court shall impose additional conditions of probation including increased treatment, community service, home arrest and other sanctions short of incarceration. It is suggested that the judges increase the level of treatment for those who have already refused to attend. She stated that drug courts have taught judges that coerced treatment works, but it can not be coerced where there is no consequence. The true dilemma for the courts is that it is ordering conditions that are willfully ignored. When defendants return to court and are confronted with violations, they declare in open court, their unwillingness to fulfill the court order. Not only does this undermine the criminal justice system, the rule of law and the authority of the court by those involved with these cases, but also for every other defendant or observer in the court room. She stated that courts cannot and should not be asked to impose orders, which they cannot enforce without voluntary compliance. The rule of law cannot prevail where there is no enforcement available.

Judge Miller remarked that another issue that is presently being raised by defense attorneys is that under Arizona Revised Statutes, a felony is defined as an offense for which one can be incarcerated in the Arizona Department of Corrections. These offenses are called felonies, and yet are not capable of incarceration, so they do not fall within statutory definition. With this interpretation, offenses such as possession of narcotics and possession of dangerous drugs would be petty offenses or at most misdemeanors. It is an issue that will ultimately be decided by the Supreme Court. Proposition 200 places emphasis properly on treatment and creates the resources to make more treatment available to a greater number of people. That was its intent and it has occurred. It has also created a situation where anyone who chooses not to comply with court orders cannot be compelled to comply. She urged the Committee to pass the bill.

Senator Richardson announced **Michael Mandell, Attorney, Voter Protection Alliance**, had signed up in opposition to the bill, but was not present at this time.

Senator Richardson announced the following individuals were present in support of S.B. 1231: **Barbara Zugar, representing herself; Edwin Cook, Executive Director, Arizona Prosecuting Attorneys' Advisory Council and John Blackburn, Lobbyist, Arizona Sheriffs & County Attorneys.**

Senator Bee moved S.B. 1231 be returned with a DO PASS recommendation.

Senator Bee moved the one-page Smith amendment dated 3/04/02, 9:25 a.m. be ADOPTED (Attachment E). The motion CARRIED by voice vote.

Senator Bee moved S.B. 1231 be returned with an AS AMENDED DO PASS recommendation. The motion CARRIED with a roll call vote of 5-3-0 (Attachment 4).

S.B. 1457 – death penalty; minors; prohibition.. – FAILED

Lisa Hird, Research Intern, explained that under current law, a 16 or 17 year old minor who commits first degree murder is eligible to receive the death penalty. S.B. 1457 prohibits courts

from imposing a death sentence on a defendant who commits first degree murder if the defendant is less than 18 years old at the time the crime was committed. Ms. Hird remarked that the fact sheet reads, "execution of minors age 16 or younger is a violation of the 8th amendment of the U.S. Constitution," but in actuality, the U.S. Supreme Court decided that "execution of minors less than 16" is unconstitutional.

Mark Wellek, M.D., testified in support of the bill and noted that he has been a psychologist in private practice for 30 years in Phoenix and has been trained at the Mayo Clinic in brain development, internal medicine and psychiatry with a specialty in adolescent psychiatry. He was the former Chief of Staff of the Camelback Hospital Mental Health System, founded the Department of Psychiatry at Phoenix Memorial Hospital and is the past President of the American Society for Adolescent Psychiatry, which represents all of adolescent psychiatry in the United States and Canada. He stated he is currently the President of the Arizona Society for Adolescent Psychiatry.

Dr. Wellek stated that the current policy of the American Society for Adolescent Psychiatry, as well as all the child psychiatrists in the United States and various national organizations who are aware of child brain development and children's issues is that they are opposed to the death penalty for people under the age of 18.

Dr. Wellek stated the Supreme Court decision in *Thompson v. Oklahoma* [487 U.S. 815 (1988)] prohibits the executions of offenders less than 16 years of age at the time of their crimes. He stated that the execution of minors younger than 16 is a violation of the Eighth Amendment of the U.S. Constitution, which forbids cruel and unusual punishment. He noted that this was defined as people whose impulse control was limited because of brain development and could not think at the time of the act about what they were doing. The Supreme Court set an arbitrary level of 15 years and below for the ruling, but said that if further evidence were provided or if the consensus of the States was an older age, that the age limit would be reconsidered. Currently, five states, as well as Arizona, are considering this issue directly.

Dr. Wellek explained the frontal cortex of the brain is where thinking, dreaming, and planning takes place. He stated that it is the conscience or awareness part of the body. In front of the frontal cortex is the pre-frontal cortex. He stated that new research has demonstrated that in 15–17 year-olds this area, which is responsible for controlling impulsive actions, is not developed. It allows people to think when something is happening.

Senator Aguirre asked if violence seen in the environment, such as violent videos and games that children are exposed to, have been proven to affect children and their violent behavior tendencies. Dr. Wellek stated that children who have been raised in a violent background are subject to increased violence when they watch violent movies or games. He stated that children that have not been raised in a violent background are not very much affected by violent media.

Senator Smith commented that there have been many articles regarding kids who have become murderers because of numerous excuses including coming from dysfunctional households. This appears to be another excuse and opined that a person can do anything they want up to the age of 18 and some kind of excuse is available. Dr. Wellek stated that Senator Smith was right to be concerned that this information not be used or seen as an excuse. He stated the operative word is that these are still children who cannot control themselves and that does not mean that severe executive action should not be taken to take care of these children. He opined that it does mean

what the Supreme Court ruled, that it is cruel and unusual punishment to kill children. The Court stated that children whose brains are not developed do not have impulse control, and mentally retarded people are less culpable, but that does not in any way excuse their behavior. This holds these children and people accountable and also holds society accountable.

Senator Bundgaard asked why legislation should be enacted that takes away the discretion of the courts in cases with children 16 and 17 years old that are calculated and planned murders and did not display impulsiveness. Dr. Wellek stated that those children did the planning on impulse, which has not been taken into consideration. Ordinarily, when adults think about murder, they have the brain and the wit to decide not to do it. Children do not have those functions in place when they feel like doing something, as demonstrated in the newest studies.

Senator Richardson suspended testimony on S.B. 1457 to announce that S.B. 1440 would be held.

S.B. 1440 – collective bargaining; public safety employees – HELD

Testimony on S.B. 1457 then continued.

Judge Gerber, Retired, representing himself, testified in support of S.B. 1457 and remarked that he had been a judge for 22 years and recently retired in May of 2001. He stated that he served nine years in trial court and 13 years on the Court of Appeals. He stated that he is probably one of the few people in the country who has defended people charged with capital offenses, prosecuted capital offenses for three years as a prosecutor and then presided over a number of death penalty cases as a judge, including imposing an occasional death penalty.

Judge Gerber stated that there is a high level of complexity in all capital cases and particularly those cases of people who committed their crime when they were children. He referred to the Leibman study from Columbia University regarding the high reversal rate in capital cases around the country. The study indicates that in Arizona there is an error rate of 79%, which means that 79% of cases get reversed due to mistakes. He noted that as Dr. Wellek noted, the lack of impulse control that these children have is demonstrated in the courtroom as well. They have a great deal of difficulty in making decisions on what they want in terms of representation and entering into pleas and many times fire their own counsel more than once.

Judge Gerber stated that the Attorney's General Capital Case Commission has recommended the abolition of the death penalty for juveniles. He stated he was present supporting this recommendation and the bill.

Senator Cumiskey asked for an explanation of the difference between a 17-year old that commits a heinous crime and an 18-year old, in terms of the definition. Judge Gerber remarked that it is permissible to execute either a 17-year old or an 18-year old, but assuming that hurdle is crossed, he opined that the difference between the two ages is a matter of the degree of maturity and the ability to control impulsive behavior.

Senator Richardson turned the meeting over to Vice Chairman Bee.

Jerry Landau, Special Assistant, MCAO, testified in opposition to the bill and noted that all the situations given by Dr. Wellek and Judge Gerber are covered in Arizona law under mitigating

circumstances. He opined the standard set by the Supreme Court is the standard that should be maintained in Arizona.

Senator Aguirre, bill sponsor, commented that there has been significant testimony on brain development and violence and how it effects young adults. She opined that 17-year olds should not be executed, but rather given life imprisonment. She requested the Committee members to consider the new scientific research and support the bill.

Senator Bee announced the following individuals were present in support of S.B. 1457: **Margarita Silva, Attorney/Legislative Liaison, Maricopa County Public Defender's Office; Diane Ziple, Sanctity of Life, People Against Execution; Eleanor Eisenberg, Executive Director, ACLU; Kathy Saile, Director, Office of Peace & Justice, Catholic Social Service of Central and Northern Arizona; Brackette Williams, Anthropologist, PhD., representing himself; Edward Ryle, Monsignor, Arizona Catholic Conference; Richard White, Lobbyist, St. Patrick's Catholic Community and Jack Harvey, Executive Director, Mental Health Advocates Coalition of Arizona, representing himself.**

Senator Bee announced the following individuals were present in opposition of S.B. 1457: **John Hinz, representing himself; Edwin Cook, Executive Director, Arizona Prosecuting Attorneys' Advisory Council; Eric Edwards, AACOP & Phoenix Police Department; Doug Cash, Legislative Committee Chairman, Fraternal Order of Police and Andy Swann, Lobbyist, Associated Highway Patrolmen of Arizona.**

Senator Aguirre moved S.B. 1457 be returned with a DO PASS recommendation. The motion FAILED with a roll call vote of 2-4-2 (Attachment 5).

S.B. 1059 – voluntary commitment; juveniles – DO PASS AMENDED

Ms. Collins explained S.B. 1059 allows a probation officer or an entity designated by the court to file an application for admittance of a minor under the supervision of an adult probation department to a mental health agency. Provisions exist for admitting minors under the supervision of a juvenile probation department to mental health agencies. A parent or guardian can apply for admittance of a minor to a mental health agency, however there is no method for admitting minors to mental health agencies if they are under the supervision of an adult probation department and if the parent or guardian is unavailable.

Ms. Collins explained the three-page Smith amendment dated 3/04/02, 9:20 a.m. specifies that a person designated by the court may file an application for admittance of a minor who is under adult probation department supervision to a mental health agency only after an effort has been made to locate the minor's parent, guardian or custodian. This amendment also adds minors being processed through the judicial system as adults to the definition of "persons" for the purpose of statues relating to applications for evaluation by a mental health agency.

Jerry Landau, Special Assistant, MCAO, testified in support of the bill and stated that there is a difference in opinion regarding whether there is a gap in statute regarding juveniles charged as adults in the criminal justice system receiving mental health treatment. He stated that this legislation sets a mechanism in place in Title 36, the mental health code, to provide the mechanism for treatment for individuals who are in the adult system and are under the age of 18.

He stated that this is usually deferred to the parents of the juvenile, but in the event that they are not available, this situation can be handled with this bill.

Senator Bee announced the following individuals were present in support of S.B. 1059: **Margarita Silva, Attorney/Legislative Liaison, Maricopa County Public Defender; Tiffany Bock, Assistant Director, Mental Health Association and Jack Harvey, Executive Director, Mental Health Advocates Coalition of Arizona, representing himself.**

Senator Smith moved S.B. 1059 be returned with a DO PASS recommendation.

Senator Smith moved the three-page Smith amendment dated 3/04/02, 9:20 a.m. be ADOPTED (Attachment F). The motion CARRIED by voice vote.

Senator Smith moved S.B. 1059 be returned with an AS AMENDED DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 6).

S.B. 1173 – court ordered treatment – DO PASS AMENDED

Ms. Hird stated that under current law, a mentally ill person cannot possess a firearm or be employed as a security guard. However, law does not permit disclosure of results from mental evaluations, examinations or treatments to the DPS, which is the agency responsible for conducting background checks for weapons permits and security guard licenses. S.B. 1173 requires courts to notify DPS if a person is found to be a danger to themselves or others. When notifying DPS, this bill permits certain confidential information about a mentally ill person to be released to the Department.

Ms. Hird explained that instead of requiring that the court transmit information to DPS, the Richardson Amendment requires the court to grant information access to DPS. The amendment also directs two additional pieces of information to be released to DPS, which are a mentally ill person's social security number and termination of treatment date.

Gerry Anderson, Executive Director, HALT Gun Violence, testified in support of the bill and remarked that she was present on behalf of Mary Judge Ryan, who works for the Pima County Attorney's Office.

Ms. Anderson stated that under Arizona law, mental health commitment is a cause for revocation of a concealed carry permit, a reason to deny an individual permission to purchase a weapon and a basis of denying a security guard a license. However, under current law, information disclosed in commitment hearings is confidential and may only be accessed by specified parties.

Ms. Anderson remarked that currently DPS is not one of those parties. Since DPS is responsible for maintaining information related to weapons purchases and permits, the lack of information can lead to incomplete or inaccurate records at DPS. She stated that during 2000, DPS received 126,000 fire arms clearance requests. She commented that this bill allows DPS to comply with existing federal law relating to weapons permits, background checks and security guard licensing. The amendment allows access to the information without creating an unfunded mandate to transmit the information. The courts, DPS and the mental health community all agree this is necessary legislation and have the commitment to make the process work as the records retention

and transmission are improved throughout the system. She urged the Committee to support the bill.

Senator Ruth Solomon, bill sponsor, explained that this bill has already been heard in this Committee and there was concern from the Pima County Attorney's Office. She stated that the Richardson amendment addresses that concern.

Tonia Tunnell, Government Affairs Manager, Arizona Association of Counties, was present in opposition to the bill and remarked that with the amendment, the concern regarding imposing an unfunded mandate has been resolved and the opposition has been removed.

Jack Harvey, Executive Director, Mental Health Advocates Coalition of Arizona, testified in support of the bill and stated that his understanding is that people who were under court order and are mentally ill are prohibited from buying weapons, but there is no provision for getting this information to DPS, which is the reason for the bill. He stated that a person who has a mental illness is not prohibited from having a weapon if they are under treatment and not under court order or declared incompetent. He stated that he is not in favor of depriving people with mental illness from being able to go hunting or having weapons if they are in treatment.

Senator Solomon remarked that the bill with the amendment applies to a prohibited possessor.

Senator Aguirre announced the following individuals were present in support of S.B. 1173: **Tiffany Bock, Assistant Director, The Mental Health Association; Eric Edwards, AACOP and Phoenix Police Department and Kelsey Lundy, Government Relations Specialist, Americans for Gun Safety.**

Senator Richardson announced **Cari Gerchick, Communications Director, Clerk of Superior Court (Maricopa)** was present in opposition to the bill.

Senator Richardson announced **George Diaz, Lobbyist, Administrative Office of the Court** was present but neutral on the bill.

Senator Aguirre moved S.B. 1173 be returned with a DO PASS recommendation.

Senator Aguirre moved the eight-line Richardson amendment dated 3/11/02, 12:01 p.m. be ADOPTED (Attachment G). the motion CARRIED by voice vote.

Senator Aguirre moved S.B. 1173 be returned with an AS AMENDED DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 7).

S.B. 1200 – victims of trafficking; task force. – DO PASS

Michael Sandulak, Research Intern, explained S.B. 1200 establishes a Trafficking Victims' Task Force and prescribes its membership and duties. He stated that Congress passed the Trafficking Victims Protection Act in 2000, which defines human trafficking as the largest manifestation of slavery today. This bill would identify if there is a problem with trafficking victims in this State.

Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence, testified in support of the bill and would like to see that there are service providers included in the Task Force.

Senator Bee announced that **Jennie Gorrell, Business and Professional Women of Arizona**, was present in support of the bill.

Senator Aguirre moved S.B. 1200 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 8).

S.B. 1214 – guilty except insane; offender disposition – DO PASS AMENDED

Ms. Collins explained S.B. 1214 allows a person who has been charged or convicted of a crime and who escapes from the Arizona State Hospital (ASH) to be charged with a class 2 misdemeanor. Currently, a person who escapes from ASH is reported as a missing person. Classifying escape from ASH as a class 2 misdemeanor allows a warrant to be issued. Additionally, this bill gives jurisdiction of persons who have been found by the Psychiatric Security Review Board to no longer be mentally ill but still a danger to the public, back to the Superior Court.

Ms. Collins explained the Smith amendment eliminates the section of the bill that gives jurisdiction of persons who have been found by the Psychiatric Security Review Board to no longer be mentally ill but still a danger to the public, back to the Superior Court.

Senator Bee announced the following individuals were present in support of S.B. 1214: **Jerry Landau, Special Assistant, MCAO; Eric Edwards, Phoenix Police Department, AACOP and Jack Silver, Chief Executive Officer, Department of Health Services/ Arizona State Hospital.**

Senator Aguirre moved S.B. 1214 be returned with a DO PASS recommendation.

Senator Smith moved the three-line Smith amendment dated 3/01/02, 4:11 p.m. be ADOPTED (Attachment H). The motion CARRIED by voice vote.

Senator Aguirre moved S.B. 1214 be returned with an AS AMENDED DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 9).

S.B. 1219 – domestic violence prevention; procedures; protocols – DO PASS AMENDED

Ms. Hird explained many cases investigated by Child Protective Services reveal evidence of domestic violence as well as child maltreatment. In order to assist victims of domestic violence, the bill requires the Department of Economic Security (DES) establish written protocols for screening domestic violence within families, referring families for domestic violence services and training child welfare, law enforcement and other professionals and persons who are required by statute to report child abuse. S.B. 1219 sets a deadline of March 31, 2003 on or before which the DES must develop such protocols.

Ms. Hird stated that the bill requires DES to develop protocols for training certain professionals and persons who are required by statute to report child abuse. The Richardson Amendment removes from this list “persons who are required by statute to report child abuse.”

Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence, testified in support of the bill and stated that this bill came out of a committee that worked on this issue over the summer. The committee, with the Department of Children, Youth and Families drafted this legislation that would require DES to develop policies and procedures for screening and referring victims of domestic violence in addition to protocols for cross training.

Senator Solomon, bill sponsor, remarked that the bill requires that when there is a child involved in a case of domestic violence with existing Child Protective Services involvement, protocols are established to make sure that the case plan includes an appropriate treatment plan that includes the child.

Senator Aguirre announced the following individuals were present in support of the bill: **Jennie Gorrell, Business and Professional Women of Arizona; Tara Plese, Legislative Liaison, Arizona Catholic Conference; Paul Denial, Executive Director, New Life Center; Riann Balch, Executive Director, Arizona Coalition to End Homelessness; Eddie Sissons, Executive Director, William E Morris Institute for Justice and Connie Phillips, Executive Director, Sojourner Center.**

Senator Aguirre moved S.B. 1219 be returned with a DO PASS recommendation.

Senator Aguirre moved the three-line Richardson amendment dated 3/11/02, 12:35 p.m. be ADOPTED (Attachment I). The motion CARRIED by voice vote.

Senator Aguirre moved S.B. 1219 be returned with an AS AMENDED DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 10).

S.B. 1275 – peace officer training requirements – FAILED

Ms. Collins explained S.B. 1275 requires the Arizona Peace Officer Standards and Training Board (AZPOST) to include five hours of mental health awareness and sensitivity training for peace officers as a minimum training standard. She explained that the Joint Legislative Budget Committee estimates that this legislation would have a fiscal impact on the State General Fund of approximately \$9,000 for training and approximately \$400,000 for lost on-duty hours or overtime.

Jack Harvey, Executive Director, Mental Health Advocates Coalition of Arizona, testified in support of the bill and remarked that he has been working with Mack Stein and others with the Silver Haired Legislature on a number of legislative issues. He noted that part of this work was to try to get crisis intervention training to teams of law enforcement officers in the community and to require law enforcement entities be mandated to have five hours of training per year regarding mental illness and related issues.

Mr. Harvey commented that in 1988, in Memphis, Tennessee, a model plan was developed to address the crisis of law enforcement dealing with people of mental illness. He stated that prior to

the model, one out of every 400 persons with mental illness were injured when they had an encounter with police. After ten years of experience and training, injuries were reduced to one out of every 2,000 cases. He commented that this training is to teach law enforcement better ways to de-escalate situations when they are dealing with the mentally ill.

Lyle Mann, Manager, AZPOST, testified in opposition to the bill and remarked that his organization is in support of the Memphis model and are already teaching those crisis intervention training skills. He stated that this bill is an unfunded mandate of approximately \$400,000 and an approximately \$1.5 million annual recurrent mandate on cities and counties and impacts a number of officers who are not placed in situations with the mentally ill. He remarked that he is willing to work with the Coalition to develop a reasonable training program. He urged the Committee to oppose the bill.

Senator Aguirre announced the following individuals were present in support of S.B. 1275: **Donna Kruck, Arizona Bridge To Independent Living; Tiffany Bock, Assistant Director, The Mental Health Association; Kim Simmons, Administrative Assistant, DES/Division of Developmental Disabilities and David Carey, representing himself.**

Senator Aguirre announced the following individuals testified in opposition to S.B. 1275: **Eric Edwards, AACOP and Phoenix Police Department; Joseph Easton, Arizona Criminal Justice Commission; Kelly Orrick, Assistant to the Chief of Police, Mesa Police Department and John Blackburn, Arizona Sheriffs Association.**

Senator Cummiskey commented that he understood why Mr. Mann would be opposed to an unfunded mandate. He asked Mr. Mann for assurance that he would continue to work with the Coalition and continue outreach to the mental health community to interface their concerns regarding any insufficiencies that may be present in the training. Mr. Mann stated that he has been working with Mr. Dine and others in the Coalition and will continue to do so.

Senator Aguirre moved S.B. 1275 be returned with a DO PASS recommendation. The motion FAILED with a roll call vote of 2-4-2 (Attachment 11).

S.B. 1277 – civil rights; mental health; employment – FAILED

Ms. Collins explained S.B. 1277 adds “or mental” to the definition of disability for purposes of employment discrimination. This bill makes other technical changes.

Senator Aguirre announced the following individuals testified in support of S.B. 1277: **Jack Harvey, Executive Director, Mental Health Advocates Coalition of Arizona, representing himself; Donna Kruck, Arizona Bridge to Independent Living; Leslie Cohen, Executive Director, Arizona Center for Disability Law; Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union; Margot Wuebbels, Assistant AG, AG's Office; Tiffany Bock, Assistant Director, The Mental Health Association; David Carey, representing himself and Jami Snyder, Director of Information and Outreach, Arizona Center for Disability Law.**

Senator Aguirre moved S.B. 1277 be returned with a DO PASS recommendation. The motion FAILED with a roll call vote of 2-3-3 (Attachment 12).

S.B. 1361 – concealed weapons permits; peace officers. – FAILED

Ms. Hird explained that in order for an individual to legally carry a concealed weapon, the person must apply for a permit through the DPS. S.B. 1361 waives the concealed weapons permit fee for certain active duty and retired peace officers with ten or more years of service. Also, permits issued to certain peace officers would be valid until surrendered or revoked, eliminating the need for certain officers to renew the permit every four years.

Ms. Hird remarked that a fiscal note from JLBC indicates that the general fund impact for FY 2003 will range between \$28,800 to \$955,200 and for FY 2004 it will range between \$9,600 to \$25,800.

Senator Smith stated that he agreed with this philosophy, but it is difficult to support a bill that is going to create an impact on the general fund at this particular time.

Dale Marler, Director of Legislative Affairs, Yuma Chapter People for the USA, testified in support of the bill and distributed at handout entitled "Yuma Chapter, People for the USA, Inc." (Attachment J). He stated that this legislation will provide enhanced public protection.

Senator Aguirre commented that **Doug Cash, Fraternal Order of Police**, was present in opposition to the bill due to the cost to DPS.

Senator Aguirre announced the following individuals were present in support of S.B. 1361: **Gerry Anderson, Executive Director, HALT Gun Violence and Eric Edwards, AACOP & Phoenix Police Department**.

Laurence Burns, Commander, Licensing Bureau, DPS, testified neutral on the bill and remarked that he estimated that this will cost approximately \$60,000, which could possibly spread out to the other permit holders. He noted that he is concerned that the bill may impact other permit holders by giving this exclusion to peace officers and not to other permit holders. Additionally, permits are issued for four years and requests for renewals are given to ensure continual training while a person has this kind of permit. This training is another four hours of training and opined that without this additional training, public safety would be a concern.

Senator Aguirre moved S.B. 1361 be returned with a DO PASS recommendation. The motion FAILED with a roll call vote of 1-4-3 (Attachment 13).

S.B. 1362 – court decisions; county compliance – DO PASS

Ms. Hird explained S.B. 1362 requires a county, agency or instrumentality of a county to comply with the U.S. Supreme Court case, Palazzolo vs. Rhode Island. This case deals with the issues of private property and just compensation for the taking of private property by government.

Dale Marler, Yuma Chapter People for the USA, testified in support of the bill and remarked that in addition of the Palazzolo vs. Rhode Island case to Section 11-811, this bill provides a necessary update, while allowing the cases already in statute to remain. He distributed a handout entitled "People for the USA, Yuma Chapter" (Attachment K).

Senator Aguirre announced **Joe Sigg, Arizona Farm Bureau**, was present in support of the bill.

Senator Bee moved S.B. 1362 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 4-1-3 (Attachment 14).

S.B. 1394 – service fees; protection orders – DO PASS AMENDED

Ms. Hird explained that currently, Arizona receives federal grants through the Violence Against Women Act, but the grant money is in jeopardy if State laws do not comply with federal laws that eliminate fees for serving orders of protection or injunctions against harassment arising from dating relationships. S.B. 1394 prohibits these service fees in compliance with federal statute.

Senator Hamilton, bill sponsor, testified that the bill was introduced because the original legislation passed in 1994 did not specify that the cities pay for serving orders of protection. The cost of this service is approximately \$650,000, but will allow the State to be eligible for \$6.5 million in federal grants. He stated that without making this change, the State would not be eligible for the grants. He noted that the cities have agreed with this change, as the cities will be receiving grant money.

Tape 2, Side B

Tonia Tunnell, Government Affairs Manager, Arizona Association of Counties, testified in opposition to the bill and remarked that the bill would be placing the sheriff or constable in a quasi-judicial role in determining if the injunction against harassment stems from a dating relationship. She stated that a three word verbal amendment "the court indicates" would address this concern and removes the opposition.

Senator Aguirre announced **David Sands, Legislative Officer, Administrative Office of the Courts** was present in support of the bill, if amended.

Senator Aguirre announced the following individuals were present in support of the bill: **Chatham Kitz, Executive Director, Arizona Voice for Crime Victims; Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence; Connie Phillips, Executive Director, Sojourner Center; Paul Denial, Executive Director, New Life Center; Riann Balch, Executive Director, Arizona Coalition to End Homelessness; Don Taylor, Assistant Phoenix City Prosecutor, Phoenix City Prosecutor's Office and Eddie Sissons, Executive Director, William E Morris Institute for Justice.**

Senator Aguirre moved S.B. 1394 be returned with a DO PASS recommendation.

Senator Aguirre moved the following verbal amendment to the bill:

**Page 1, line 12, after "IF", insert "THE COURT INDICATES"
Page 6, line 17, after "IF", insert "THE COURT INDICATES"**

The motion CARRIED by voice vote.

Senator Aguirre moved S.B. 1394 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 15).

S.B. 1202 – sex offenses; violent crimes; bail – DO PASS AMENDED

Ms. Rabin explained that current law allows a judicial officer to consider many conditions when releasing a person on his own recognizance or on bail. These conditions may include restrictions on travel, bail requirements, and prohibited possession of weapons, among other conditions. S.B. 1202 requires the judicial officer to impose certain conditions on defendants charged with violations of sexual offenses or sexual exploitation of children.

The legislation requires those defendants to deposit one million dollars bail with the court clerk; requires electronic monitoring; prohibits those defendants from approaching any school and prohibits defendants from having any contact with the victim or the victim's family.

Ms. Rabin explained existing statute provides that a person cannot be released on bail if the proof is evident or the presumption great that the person is guilty of a capital offense. The Bee amendment dated 2/28/02 3:35 p.m. adds 3 additional crimes; sexual assault, sexual conduct with a minor under fifteen years of age, and molestation of a child. The amendment also adds to statute three purposes of bail and conditions of release and removes the provision setting the bail minimum at \$1 million. The amendment also removes the provision that prohibits approaching any school. The amendment instead states that the person released on bail shall, as a condition of community supervision, be prohibited from residing within 440 feet of a school or its accompanying grounds.

Senator Martin, bill sponsor, testified that in the last few weeks, all the objections that were raised at the last Committee meeting were discussed and the bill amended to address those concerns. One of the biggest objections was the \$1 million bond, which has been removed.

Senator Aguirre announced the following individuals were present in support of S.B. 1202: **Jason Overmyer, representing himself; Mark Faull, MCAO; Steve Twist, Assistant General Counsel, representing himself; Chris Cottrell, representing himself; Julie Lind, representing herself; Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence; Robert Cottrell, Father of Chris Cottrell, representing himself and Chatham Kitz, Executive Director, representing herself.**

Senator Richardson announced the following individuals were present in opposition of S.B. 1202: **Margarita Silva, Attorney/Legislative Liaison, Maricopa County Public Defender and Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union.**

Senator Aguirre moved S.B. 1202 be returned with a DO PASS recommendation.

Senator Aguirre moved the two-page Bee amendment dated 2/28/02, 3:35 p.m. be ADOPTED. The motion CARRIED with a voice vote.

Senator Cummiskey moved that the Committee reconsider its action whereby it passed the two-page Bee amendment dated 2/28/02, 3:35 p.m. be ADOPTED. The motion CARRIED with a voice vote.

Senator Aguirre moved the four-page Bee amendment dated 2/28/02, 3:35 p.m. be ADOPTED (Attachment L). The motion CARRIED with a voice vote.

Senator Aguirre moved S.B. 1202 be returned with an AS AMENDED DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 16).

S.C.R. 1011 – bailable offenses; prohibition – DO PASS AMENDED

Ms. Rabin explained S.C.R. 1011 requests voter approval of a constitutional amendment. Current language in the Arizona Constitution states that bail is not an option for certain defendants. This legislation adds to the list of defendants. The legislation makes violent offenses and felony offenses involving sexual assault, sexual conduct with a minor under fifteen years of age, or molestation of a child under fifteen years of age non-bailable when certain conditions apply. The offenses would be non-bailable when, according to the Constitution, the proof is evident or the presumption is great regarding the charge.

Ms. Rabin explained the Bee amendment adds to statute three purposes of bail and conditions of release and makes other technical changes.

Steve Twist, representing himself, testified in strong support of the Bee amendment, but noted his opposition to the elimination of violent offenses from the amendment. He stated the single subject of this proposed amendment is to reform the bill to protect the community and yet domestic violence offenses are not included. He stated that the limitation on felony offenses in the amendment eliminates the vast majority of violent offenses that are committed in the home. Most of these offenses are classified as misdemeanors and opined that the people should have a chance to vote on whether or not victims ought to be able to present evidence in misdemeanor domestic violence cases concerning the danger to the victims and the community with the release of an abuser.

Senator Martin, bill sponsor, remarked that the Bee amendment is the result of working to compromise with all the groups involved. He stated that to obtain the support of the MCAO, the portion of the amendment including violent offenses prescribed by law was removed. He stated that he has committed to Mr. Twist to continue to work on this issue.

Mark Faull, MCAO, testified in support of the bill and the amendment and remarked that MCAO is supportive of Mr. Twist's concept in the support of victims of domestic violence. The problem was that the language as it was originally written in the bill is so expansive that it would also capture other types of situations where violent misdemeanors might be committed. He opined that this would be fatal to the survival of the bill and also feels it would be bad policy to have misdemeanor offenses not bailable while other offenses such as manslaughter are. He stated that he would continue working on language with Senator Martin and other interested parties to address Mr. Twist's concerns.

Eleanor Eisenberg, ACLU, testified in opposition to the bill and remarked that this is a profound change in the law and one that the ACLU feels is ill advised. She stated that bail is a constitutional right under the 8th amendment with the exception of capital offenses pursuant to a 9th circuit decision and is used to assure the defendant's appearance at trial. She stated that in this country, people are still entitled to a presumption of innocence and unless and until a trial is held, there should not be a presumption of guilt. Additionally, the bill takes another step away from judicial discretion, which is essential in our system of justice.

Julie Lind, representing herself, testified in support of the bill and remarked that she is a victim of child abuse and opined that the bill addresses the seriousness of this issue and urged the Committee to support the bill.

Chris Cottrell, representing himself, remarked that he was the author of the bill and as a member of a family that has been traumatized with a sexual assault, he knows what living through this situation is like. He stated the mental abuse that victims and their family members have to deal with when offenders are released on bail is completely unjust and asked the Committee to support the bill and the Bee amendment.

Senator Aguirre announced the following individuals were present in support of S.C.R. 1011: **Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence and Joseph Easton, Arizona Criminal Justice Commission.**

Senator Aguirre moved S.C.R. 1011 be returned with a DO PASS recommendation.

Senator Aguirre moved the twelve-line Bee amendment dated 3/04/02, 8:12 a.m. be ADOPTED (Attachment M). The motion CARRIED by voice vote.

Senator Aguirre moved S.C.R. 1011 be returned with an AS AMENDED DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 17).

S.B. 1172 – domestic violence shelter; confidential communications – DO PASS

Ms. Hird explained that the law does not specify rules of confidentiality between domestic violence advocates and victims of domestic violence. S.B. 1172 establishes that communication between advocates and victims is considered privileged and cannot be disclosed without a signed waiver by the domestic violence victim.

Jerry Landau, Special Assistant, MCAO, testified in opposition to the bill and stated the MCAO has concerns regarding a number of issues. He noted that in a discussion yesterday with Senator Solomon and Glenn Davis, many of these concerns were agreed upon. He outlined MCAO's concerns: page 1, line 5 "except as required pursuant to §13 –3620", which is the duty to report section. He stated that this is for when a health care professional observes possible child abuse. He stated that domestic violence advocates were not included in that provision. He stated that there is an agreement that it should. Additionally, the bill extends the privilege after the death of the victim, and there has been agreement to remove this section. The privilege is not waived by testifying in court. He stated that is contrary to most other privileges. It has been agreed that this section would be removed as well. The way the bill is written right now, a person could admit to

committing a crime to a shelter worker and this would be inadmissible in court as being confidential. He opined that this is contrary to public safety and public policy. He opined that an agreement had been met to deal with this issue. He remarked that there is one remaining issue that causes MCAO some concern. He stated that MCAO suggests that the bill exclude criminal proceedings and he noted that there is a commitment to continue discussion on this issue. He stated that this would be new policy that is being discussed in a number of states and MCAO believes that it would be detrimental to prosecution and testimony that could help convict individuals who abuse and batter women. He stated that there is not enough of a track record to pass comprehensive legislation that bars statements from being introduced into evidence and therefore cuts into the truth seeking process. He remarked that MCAO is recommending including the enactment of the privilege but excluding criminal cases and reviewing the situation in a year to make an evaluation on more comparable data.

Senator Smith asked what remains in the bill after these issues of concern are removed. Mr. Landau stated that the privilege, the training requirements and the definitions. He stated that bill would still have substance to it and under the MCAO proposal the bill would not apply to criminal cases.

Senator Solomon, bill sponsor, expressed her appreciation of the work that Mr. Landau has given regarding the bill and commented that the bottom line for everyone involved is exactly the same. She stated she appreciates his flexibility and the three-page amendment that he has brought forward, which if the bill is passed out of Committee will move on the floor of the House. She stated that out of the three-page amendment there is only one line regarding the privilege as it relates to criminal cases where there is disagreement.

Senator Solomon stated that there are ten states that have already passed similar legislation and there has been a federal government report that when a woman enters into a shelter and has the belief and understanding that she can relate the problems that she has been having and that the information will be kept confidential, she is much more likely to do that and more likely to be encouraged to request prosecution.

Eleanor Eisenberg, Arizona Civil Liberties Union, testified in opposition to the bill and remarked that due process accorded to persons accused of domestic violence in Arizona is already minimal; in fact, almost non-existent. This bill would, when an accused person does have a hearing, make it more difficult to discover exculpatory evidence and prevent a defendant from obtaining a fair trial.

Allie Bones, Systems Advocate, Arizona Coalition Against Domestic Violence, testified in support of the bill and remarked that this bill would create a privilege for victims of domestic violence, similar as exists for behavioral health counselors, doctors, psychologists and lawyers. These professions cannot always be accessed by victims of domestic violence due to the expense. She urged the Committee to support the bill.

Senator Aguirre announced the following individuals were present in support of the bill: **Connie Phillips, Executive Director, Sojourner Center; Jennie Gorrell, Business and Professional Women of Arizona; Tara Plese, Legislative Liaison, Arizona Catholic Conference; Kelly Carmody, Legal Services Director, Arizona Bar Foundation; Riann Balch, Executive Director, Arizona Coalition to End Homelessness; Paul Denial, Executive Director, New Life Center; Richard White, Protecting Arizona's Family Coalition and Eddie Sissons, Executive Director, William E Morris Institute.**

Senator Aguirre announced the following individuals were present in opposition to the bill: **Eric Edwards, AACOP; Margarita Silva, Attorney/Legislative Liaison, Maricopa County Public Defender's Office and John Blackburn, Arizona Sheriffs & County Attorneys.**

Senator Aguirre announced **Edwin Cook, Executive Director, Arizona Prosecuting Attorneys' Advisory Council** was present and neutral toward S.B. 1172.

Senator Aguirre moved S.B. 1172 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 18).

S.B. 1428 – prevention resource center; duties; report – DO PASS

Ms. Collins explained S.B. 1428 requires the Arizona Drug and Gang Prevention Resource Center to Collect additional information from state agencies regarding the use of drug prevention monies and expands the reporting duties of the Center.

Senator Bee announced the following individuals were present but neutral to the bill: **Xavier Morales, Assistant Director, Arizona Drug and Gang Prevention Resource Center and Jack Harvey, Executive Director, Arizona Drug and Gang Prevention Resource Center.**

Senator Bee moved S.B. 1428 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3(Attachment 19).

Without objection, the meeting was adjourned at 5:35 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.)