

ARIZONA STATE SENATE

48TH LEGISLATURE FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: February 5, 2007 **TIME:** 1:30 p.m. **ROOM:** SHR109

CHAIRMAN: Senator Chuck Gray **VICE CHAIRMAN:** Senator Gould

ANALYST: Christina Estes-Werther **ASSISTANT ANALYST:** Ryan DeMenna

INTERN: Heather Owens **COMMITTEE SECRETARY:** Bill Ritz

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Chevront	X			SB 1034	HELD
Senator Hale	X			SB 1188	DP
Senator Johnson	X			SB 1221	DP
Senator Miranda	X			SB 1228	DP
Senator Waring	X			SB 1231	DP
Senator Gould, Vice Chairman	X			SB 1236	DP
Senator C. Gray, Chairman	X			SB 1250	DPA
				SB 1267	DPA
				SB 1286	DPA
				SB 1301	DPA
				SB 1302	DPA
				SB 1326	DPA
				SB 1346	HELD
				SB 1364	DP
				SB 1432	DP
				SCR 1004	FAILED
				SCR 1015	FAILED

Chairman Gray called the meeting to order at 1:36 p.m., and attendance was taken.

APPROVAL OF MINUTES

Senator Gray moved the minutes of January 29, 2007 be approved. Without objection, the minutes were approved as distributed.

CONSIDERATION OF BILLS

Senator Gray announced SB 1034 and SB 1346 would be held.

SB 1286 – victims’ rights omnibus – DO PASS AMENDED

Christina Estes-Werther, Judiciary Research Analyst, explained SB 1286 and the three-page Chuck Gray amendment dated 2/2/07 at 5:23 p.m. (Attachment A).

Bill Montgomery, Attorney, representing self, testified in support of SB 1286 and answered questions posed by the Committee members.

Jerry Landau, Legislative Liaison, Arizona Supreme Court, testified in opposition to SB 1286 and answered questions posed by the Committee members.

Judge James Keppel, Administrative Office of the Courts, testified in opposition to SB 1286 and answered questions posed by the Committee members.

Christopher Dupont, representing self, testified in opposition to SB 1286 and answered questions posed by the Committee members.

Kathleen Carey, Maricopa County Public Defender and Arizona Attorneys for Criminal Justice, testified in opposition to SB 1286 and answered questions posed by the Committee members.

Timothy LaSota, Special Assistant County Attorney, Maricopa County Attorney’s Office, testified in support of SB 1286 answered questions posed by the Committee members.

Anthony Novitsky, Deputy County Attorney, Maricopa County Attorney’s Office, testified in support of SB 1286 and answered questions posed by the Committee members.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

Senator Gould moved SB 1286 be returned with a DO PASS recommendation.

Senator Gould moved the three-page Chuck Gray amendment dated 2/2/07 at 5:23 p.m.

The motion CARRIED by voice vote.

Senator Gould moved the following verbal amendment to SB 1286 (Attachment C):

Page 19, line 24, strike “3” insert “4”

The motion CARRIED by voice vote.

Senator Gould moved SB 1286 be returned with an AS AMENDED, DO PASS, recommendation. The motion CARRIED with a roll call vote of 4-3-0 (Attachment 1).

In explanation of his vote, Senator Chevront stated “This seems to be a pretty vast piece of legislation that is going to have pretty significant consequences on many court cases. There are three different groups I see that are impacted by this, the courts, the defense attorneys, and the prosecutors. Two of the three of them have come out against this and I have only seen one prosecutor come out for this. I am concerned that there has not been more input by all parties and to me, since I have been down here, good legislation gets input from everyone. You had asked me if I would help support it to get out of here but I think this needs a great deal of work and to have the work done on the floor, I think, is just too messy. I would think that for this to even get signed into law it is going have to change pretty radically and I vote ‘No’.”

In explanation of his vote, Senator Hale stated “I echo the comments made by my colleague, Senator Chevront, and also want to add that we have to go about this carefully. I think there are many rights that are being affected. We have to find a balance and that is what we should do in getting everybody involved and that would be the way to find the balance. On that basis I vote ‘Nay’.”

In explanation of her vote, Senator Johnson stated “I agree with what Mr. Chevront has had to say but I am putting a great deal of trust in you, Mr. Chairman, and your judgment here. I feel like as you pull people together that hopefully we can come to a resolution as this moves forward. I will vote ‘Aye’ at this time.

In explanation of his vote, Senator Miranda stated “I understand what victims’ families go through. I was a part of the process also and doing it right the first time is much better than having to come back after it is appealed because we put a stop watch on trying to bring a defendant to justice. I just can’t see where we put a timeline on trying to get justice. I think this is going to hurt both the prosecution and the defense side so I vote ‘No’.”

In explanation of his vote, Senator Gould stated “As it stands now a murderer that gets convicted is more likely to die of old age in prison than he is to be executed. When we do not have a speedy execution we do not have any deterrent effect for murder. This will make for a lively floor debate when it gets there and I vote ‘Aye’.”

In explanation of his vote, Senator Gray stated “This legislation came about through the County Attorney’s Office and it addresses some concerns that I have been trying to fix for years. While I was not participating in writing the bill in the last few years I have been trying to put forth some legislation that helped the victims’ rights move along. There are cases that are also just as important to the victims that are not capital cases and I have had constituents come to me and tell me when they went to court the defendant wanted a change of lawyer so they continued the case. Then, the defendant wanted a new lawyer again so they continued the case. There seemed to be no end to a defendant dismissing a lawyer and getting a new one. Then, when they came back it was a different judge hearing the case so they had to explain everything to the judge all over again and even in the County Attorney’s Office they got different attorneys. There was a different judge, a different defense attorney, and a different prosecutor at three different times. They had three different individuals and the case was continued into perpetuity it seemed like. I think this bill addresses many of those issues and, again, I was not part of the discussion and I wasn’t at the table but I will say that this is a good

step in the right direction. There are some issues that we brought up here today that need to be fixed and we are going to address those. My name is on the bill and I am very cognitive that we want to make sure it is done right. With the hope that we can come to a reasonable conclusion, I vote 'Aye'."

SCR 1004 – justices and judges; senate confirmation – FAILED

Christina Estes-Werther, Judiciary Research Analyst, explained SCR 1004, the five–line Chuck Gray amendment dated 2/2/07 at 2:48 p.m. (Attachment D), and answered questions posed by the Committee members.

Senator Harper further explained SCR 1004 and answered questions posed by the Committee members.

Pete Dunn, Arizona Judges Association, testified in opposition to SCR 1004 and answered questions posed by the Committee members.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

Senator Gould moved SCR 1004 be returned with a DO PASS recommendation.

Senator Gould moved the five–line Chuck Gray amendment dated 2/2/07 at 2:48 p.m.

The motion CARRIED by voice vote.

Senator Gould moved the following verbal amendment to SCR 1004 (Attachment E):

Page 3, line 7, strike “two hundred fifty” insert “SIX HUNDRED”

The motion CARRIED by voice vote.

Senator Gould moved SCR 1004 be returned with an AS AMENDED, DO PASS, recommendation. The motion FAILED with a roll call vote of 3-4-0 (Attachment 2).

SB 1364 – liquor; underage persons; penalties – DO PASS

Christina Estes-Werther, Judiciary Research Analyst, explained SB 1364.

Senator Linda Gray further explained SB 1364 and answered questions posed by the Committee members.

Senator Chuck Gray announced the individuals who registered their position on the bill (Attachment B).

Senator Gould moved SB 1364 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-1 (Attachment 3).

In explanation of her vote, Senator Johnson stated "I want to thank Senator Gray. I had a constituent come to me with almost an identical problem and I think I dropped a bill very similar to this. Now we won't have to worry about that and we will just proceed and I vote 'Aye'."

SB 1302 – self-defense; home protection; applicability – DO PASS AMENDED

Christina Estes-Werther, Judiciary Research Analyst, explained SB 1302 and the six-line Chuck Gray amendment dated 2/2/07 at 2:43 p.m. (Attachment F).

Senator Linda Gray further explained SB 1302.

Ed Cook, Executive Director, Arizona Prosecuting Attorneys Advisory Council, testified in opposition to SB 1302 and answered questions posed by the Committee members.

Gary Christensen, Arizona State Rifle and Pistol Association, testified in support of SB 1302.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

Senator Gould moved SB 1302 be returned with a DO PASS recommendation.

Senator Gould moved the six-line Chuck Gray amendment dated 2/2/07 at 2:43 p.m.

The motion CARRIED by voice vote.

Senator Gould moved SB 1302 be returned with an AS AMENDED, DO PASS, recommendation. The motion CARRIED with a roll call vote of 7-0-0 (Attachment 4).

SB 1188 – clean elections; publicly funded elections – DO PASS

Heather Owens, Judiciary Research Intern, explained SB 1188.

Senator Burns further explained SB 1188.

Eric Ehst, Clean Elections Institute, testified in opposition to SB 1188 and answered questions posed by the Committee members.

Todd Lang, Executive Director, Citizens Clean Elections Commission, testified in support of SB 1188 and answered questions posed by the Committee members.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

Senator Gould moved SB 1188 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 4-3-0 (Attachment 5).

In explanation of his vote, Senator Chevront stated "I am torn on this one. I have run both under clean elections and not under clean elections and it is a nightmare. I feel like it is a Gestapo under the scenario of what has been going on. My constituent, Todd Lang, has run it much better than the previous individual who ran the Commission who I think just made life very difficult for all of us. There

is no way the Governor is going to sign this but I am going to vote 'Yes' because I am going to let them know that they have not done a good job. I think that all of those people who are against it have never had to run under this campaign and I agree completely with what they are trying to do and that is trying to make it so that you are not influenced by outside sources. But that is not what has happened. They under fund us and allow us incumbents to have protection and I don't think that was ever really the intention of the act. It has made it so difficult to run that I have spent over \$10,000 fighting them in court personally. I lost the case but I spent that money and it was a good chunk of change. This is my way of saying you have not done a good job, I vote 'Yes'."

SB 1326 – statute of limitations; DNA evidence – DO PASS AMENDED

Christina Estes-Werther, Judiciary Research Analyst, explained SB 1326 and the nine-line Chuck Gray amendment dated 2/2/07 at 4:48 p.m. (Attachment G).

Senator Leff further explained SB 1326.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

Ken Bond, representing self, testified in opposition to SB 1326.

Senator Gould moved SB 1326 be returned with a DO PASS recommendation.

Senator Gould moved the nine-line Chuck Gray amendment dated 2/2/07 at 4:48 p.m.

The motion CARRIED by voice vote.

Senator Gould moved SB 1326 be returned with an AS AMENDED, DO PASS, recommendation. The motion CARRIED with a roll call vote of 6-0-1 (Attachment 6).

SB 1267 – DNA testing; arrest – DO PASS AMENDED

Christina Estes-Werther, Judiciary Research Analyst, explained SB 1267, the twelve-line Chuck Gray amendment dated 2/2/07 at 4:30 p.m. (Attachment H), and answered questions posed by the Committee members.

Brian Wilcox, Lieutenant, Legislative Liaison, Arizona Department of Public Safety, testified as neutral to SB 1267 and answered questions posed by the Committee members.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

John Wentling, Vice President, Arizona Citizens Defense League, testified in opposition to SB 1267 and answered questions posed by the Committee members.

Senator Gould moved SB 1267 be returned with a DO PASS recommendation.

Senator Gould moved the twelve-line Chuck Gray amendment dated 2/2/07 at 4:30 p.m.

Senator Gray further explained the twelve-line Chuck Gray amendment dated 2/2/07 at 4:30 p.m.

The motion CARRIED by voice vote.

Senator Gould moved SB 1267 be returned with an AS AMENDED, DO PASS, recommendation. The motion CARRIED with a roll call vote of 5-1-1 (Attachment 7).

In explanation of his vote, Senator Cheuvront stated "This issue was brought up today in the New York Times. The federal government is doing the exact same thing and anybody who is arrested by the federal government has a DNA sample taken. I think it is important that we do arrest the proper people and I think this gives law enforcement another tool. Having DNA samples help to make sure they have the right person and I vote 'Aye'."

In explanation of her vote, Senator Johnson stated "I am struggling a little bit with this. I am going to go ahead and vote 'Yes' but kind of watch this. I can see DNA is sometimes very helpful in helping a person that has been charged with something to not be convicted when they can find out that the DNA does not match. It kind of goes both ways so I am going to vote 'Aye' for now but I am not positive I will vote 'Aye' when it comes to the floor."

In explanation of his vote, Senator Gray stated "In all frankness, I, too, have some of the similar concerns that Senator Johnson and, probably, Senator Gould have with privacy issues, especially when you start storing information like that. These issues have come up many times with regard to photo radar and the retaining of the information and the big brother state and I share those concerns. I also recognize that we have, in the case for the Baseline Rapist, for example, situations where if we had a database of DNA of those people who commit the crimes, and since we know eighty percent of the crimes are committed by twenty percent of the people, you would have their DNA and you can compare a particular rape case against that person or that database then you can go out and find that person and stake him out rather than stake out all the possible hotels or motels where this guy might attack again. I think that it is a great crime tool when used properly. Police powers are something that are very important, very serious, and having been a police officer I can tell you there are those that would like to expand the police powers beyond what they should be and those that don't understand that issue at all. I am on the other side and would like to make sure that everything is in check but with that I vote 'Aye'."

SB 1228 – sex offenders; monitoring; probation – DO PASS

Heather Owens, Judiciary Research Intern, explained SB 1228.

Senator Waring further explained SB 1228 and answered questions posed by the Committee members.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

Senator Gould moved SB 1228 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-1 (Attachment 8).

In explanation of her vote, Senator Johnson stated "I am going to go ahead and vote 'Yes' but I am hoping that we will be able to work on this and fix this because I really am concerned that we are

going to get too many people involved in this that do not need to be a part of this so I will vote 'Aye' for now."

SB 1231 – global position system monitoring; committee – DO PASS

Heather Owens, Judiciary Research Intern, explained SB 1231.

Senator Waring further explained SB 1231.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

**Senator Gould moved SB 1231 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 6-0-1 (Attachment 9).**

In explanation of his vote, Senator Gray stated "I support this. I think this is a great idea. Usually I vote 'No' on study committees but I recognize that Senator Waring is involved with this and he is going to be studying how best to track these offenders. I think given the gravity of who these folks are, they need to be tracked and if we don't have anybody following up on where we are spending the money, maybe it is a good idea. Once in a while I guess I will vote 'Yes' on a study committee so I vote 'Aye'."

SB 1221 – residential mortgage fraud – DO PASS

Ryan DeMenna, Assistant Research Analyst, explained SB 1221 and answered questions posed by the Committee members.

Senator Tibshraeny further explained SB 1221.

Felecia Rotellini, Superintendent, Department of Financial Institutions, testified in support of SB 1221 and answered questions posed by the Committee members.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

**Senator Gould moved SB 1221 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 6-0-1 (Attachment 10).**

SB 1432 – initiative measures; three judge panel – DO PASS

Ryan DeMenna, Assistant Research Analyst, explained SB 1432 and answered questions posed by the Committee members.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

**Senator Gould moved SB 1432 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 6-0-1 (Attachment 11).**

In explanation of his vote, Senator Miranda stated "I am going to vote 'Aye' in Committee but I will look at this a little bit more."

SB 1250 – concealed weapons permit; renewal – DO PASS AMENDED

Ryan DeMenna, Assistant Research Analyst, explained SB 1250 and the five-line Chuck Gray amendment dated 2/2/07 at 2:53 p.m. (Attachment I).

Gary Christensen, Arizona State Rifle and Pistol Association, testified in support of SB 1250 and answered questions posed by the Committee members.

Charles Heller, representing self, testified in support of SB 1250.

Terry Allison, President, Arizona State Rifle and Pistol Association, testified in support of SB 1250.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

Senator Gould moved SB 1250 be returned with a DO PASS recommendation.

Senator Gould moved the five-line Chuck Gray amendment dated 2/2/07 at 2:53 p.m.

The motion CARRIED by voice vote.

Senator Gould moved SB 1250 be returned with an AS AMENDED, DO PASS, recommendation. The motion CARRIED with a roll call vote of 6-0-1 (Attachment 12).

SB 1301 – misconduct involving weapons; exception – DO PASS AMENDED

Heather Owens, Judiciary Research Intern, explained SB 1301 and announced the fourteen-line Chuck Gray amendment dated 2/2/07 at 4:35 p.m. (Attachment J) would not be offered and a verbal amendment will be offered to correct a technical error (Attachment K).

Senator Johnson further explained SB 1301.

Charles Heller, representing self and the Liberty Watch Radio Program, testified in support of SB 1301.

Gary Christensen, Arizona State Rifle and Pistol Association, testified in support of SB 1301 and answered questions posed by the Committee members.

John Wentling, Vice President, Arizona Citizens Defense League, testified in support of SB 1301.

Terry Allison, President, Arizona State Rifle and Pistol Association, testified in support of SB 1301 and answered questions posed by the Committee members.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

Senator Gould moved SB 1301 be returned with a DO PASS recommendation.

Senator Gould moved the following verbal amendment to SB 1301:

Page 2, line 43, strike “, or” insert “or”

The motion CARRIED by voice vote.

Senator Gould moved SB 1301 be returned with an AS AMENDED, DO PASS, recommendation. The motion CARRIED with a roll call vote of 4-1-2 (Attachment 13).

SCR 1015 – referenda and initiatives; legislative restrictions – FAILED

Heather Owens, Judiciary Research Intern, explained SCR 1015.

Senator Gray further explained SCR 1015.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

Senator Gould moved SCR 1015 be returned with a DO PASS recommendation. The motion FAILED with a roll call vote of 2-3-2 (Attachment 14).

SB 1236 – criminal appeal rights – DO PASS

Christina Estes-Werther, Judiciary Research Analyst, explained SB 1236 and answered questions posed by the Committee members.

Sheryl Rabin, Attorney General’s Office, testified in support of SB 1236.

Randall Howe, Assistant to Attorney General, testified in support of SB 1236.

Senator Gray announced the individuals who registered their position on the bill (Attachment B).

Senator Gould moved SB 1236 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-2 (Attachment 15).

There being no further business, the meeting was adjourned at 5:33 p.m.

Respectfully submitted,

Bill Ritz
Committee Secretary

(Audio recordings and attachments on file in the Secretary of Senate’s Office/Resource Center, Room 115. Audio archives are available at <http://www.azsenate.gov>).

