

ARIZONA HOUSE OF REPRESENTATIVES
Forty-ninth Legislature – Second Regular Session

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, March 25, 2010
House Hearing Room 4 -- 9:00 a.m.

Chairman Driggs called the meeting to order at 9:12 a.m. and attendance was noted by the secretary.

Members Present

Mrs. Barto	Mr. Montenegro	Mr. Ash, Vice-Chairman
Mr. Konopnicki	Ms. Sinema	Mr. Driggs, Chairman
Mr. Miranda B	Mrs. Tovar	

Members Absent

None

Committee Action

SB1084 – DP (7-0-1-0)	SB1204 – DP (8-0-0-0)
SB1144 – DPA (8-0-0-0)	SCR1040 – DP (7-1-0-0)

CONSIDERATION OF BILLS:

SB1204 – state capital postconviction public defender – DO PASS

Vice-Chairman Ash moved that SB1204 do pass.

Stacy Weltsch, Majority Research Analyst, advised that SB1204 allows the State Capital Postconviction Public Defender (SCPPD) to provide outside counsel to, and to sponsor or fund training for, an attorney outside the State Capital Postconviction Public Defender Office (SCPPDO), and prohibits the SCPPD from representing a person who is not assigned by the Supreme Court (Attachment 1). The bill clarifies that the existing statutory prohibition on trial or direct appeal assistance does not apply to general training.

Rebecca Hecksel, Governor's Office, spoke on behalf of SB1204. She related that the Capital Postconviction Public Defender Office was created by legislation in 2006. The purpose of the Office is to provide representation for inmates on death row. There are currently 15 inmates on death row who do not have counsel. The agency asked the Governor's Office for permission to make itself available as a resource for private attorneys who represent those inmates on death row. She said this is a small change in law that does not require an appropriation or additional

funding. It simply allows the agency to provide guidance to private attorneys representing death row inmates.

Justice Michael Ryan, representing self, testified in support of SB1204. He advised that the State Capital Postconviction Public Defender Office was created to fill a gap because of a lack of attorneys to represent defendants. Under federal and state law, after a conviction has been affirmed, it is a mandatory obligation for the state and the court to file a Notice of Conviction for Postconviction Relief. Before the Office was created, there was a large backlog of defendants who could not get representation because attorneys were reluctant to take these kinds of cases due to low pay and the number of hours involved. There is still a backlog because the Office is so small but the number of attorneys willing to take these cases is increasing, and they would like to have a resource to turn to for advice and training. Statute currently prohibits the SCPPDO from giving advice to outside counsel. This legislation does not ask that the Office be involved in the trial or the appellate process since that would create conflicts but allows that Office to train attorneys to handle these cases as well as to advise them on what needs to be done to limit the number of issues that must be addressed in postconviction relief. He said he believes this is a valuable tool for the legal community.

Ms. Sinema asked Justice Ryan to address some of the constitutional reasons why there is a duty to provide this service to inmates on death row. Justice Ryan explained that under the Effective Death Penalty Act, passed by Congress in 1996, a defendant now has a direct appeal and can also bring up issues that would be precluded under direct appeal, such as a claim of ineffective assistance of counsel. Congress has said that one must have a valid system for due process to ensure that convictions are proper and that no constitutional errors, such as the Sixth Amendment right to counsel, have been violated.

Ms. Sinema stated that there have been concerns expressed about the number of years it takes to get a final resolution to these cases. She said she believes it is a critical part of the process to get to that finality. Justice Ryan concurred.

Vice-Chairman Ash asked the legal ramifications to the state for those inmates who cannot get legal representation and who want counsel. Justice Ryan answered that the sooner counsel is appointed, the sooner that defendant will qualify under the Effective Death Penalty Act. Delaying the court hearing is harmful to the victim's family and the defendant's family.

Vice-Chairman Ash queried whether the amount of resources spent on death penalty cases is justified, given the infrequency of someone actually being put to death. Justice Ryan said he is not comfortable answering that but did say that these cases do consume a lot of resources.

To that point, Ms. Sinema said she can provide the Committee with data that shows the cost of a death penalty compared to the cost of providing life without parole for individuals who have been convicted of these crimes, both on a national and state level.

Question was called on the motion that SB1204 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 2).

SB1084 – injunction against harassment; fees – DO PASS

Vice-Chairman Ash moved that SB1084 do pass.

Stacy Weltsch, Majority Research Analyst, stated that SB1084 eliminates the prohibition on fees for serving injunctions against harassment arising out of dating relationships (Attachment 3).

Chairman Driggs announced the names of those who signed up in support of SB1084 but did not speak:

Kendra Leiby, Arizona Coalition Against Domestic Violence

Vice-Chairman Ash questioned the reason for the prohibition on fees. Ms. Weltsch replied that the prohibition on fees was put into statute in 2002 so the state would be in conformity with the Violence Against Women Act. It is now being removed because legislation was passed last year allowing dating relationships to be in the domestic violence statutes. A person who is now in a dating relationship where there is domestic violence falls under that protection, not an injunction against harassment, so it is more of a clarifying change.

Question was called on the motion that SB1084 do pass. The motion carried by a roll call vote of 7-0-1-0 (Attachment 4).

SB1144 – drug offenses; definitions – DO PASS AMENDED

Vice-Chairman Ash moved that SB1144 do pass.

Blake Edwards, Majority Intern, said that SB1144 adds certain drugs and toxic chemicals to the general definition of *dangerous drugs* in the drug offenses statute and expands the definition of *vapor-releasing substance containing a toxic substance* (Attachment 5).

Vice-Chairman Ash moved that the Driggs two-page amendment dated 3/22/10 to SB1144 be adopted (Attachment 6).

Mr. Edwards explained that the amendment removes certain drugs and toxic chemicals from the definition of dangerous drugs in the general definition section in the drug offenses statute (Attachment 6). More specifically, it removes certain materials, compounds and mixtures which contain chemicals associated with a depressant effect on the central nervous system.

Vice-Chairman Ash questioned who decides which drugs should be on the list. Chairman Driggs advised that Jessica Breedlove will address that issue.

Question was called on the motion that the Driggs two-page amendment dated 3/22/10 to SB1144 be adopted (Attachment 6). The motion carried.

Vice-Chairman Ash moved that SB1144 as amended do pass.

Jessica Breedlove, Assistant City Prosecutor, City of Phoenix Prosecutor's Office, testified in support of SB1144. She related that the three drugs being added are on the federal illicit drug list; two of the drugs are involved in synthetic methamphetamine and the other is a drug that is

being brought to this country by immigrants from Somalia which is also an amphetamine. The drugs being removed from the bill are prescription drugs. She explained that the reason for the bill is to expand the definition of dangerous drugs to include vapor-releasing toxic substances. As currently written, the statute does not allow for prosecution of driving while intoxicated (DUI) cases relating to the use of vapor-releasing toxic substances. The three illicit drugs are added to conform to the Food and Drug Administration's (FDA) illicit drug list.

In reply to Vice-Chairman Ash, Ms. Breedlove advised that if a person is impaired by using any of these substances to get high and is involved in an accident, that person will be held accountable.

Vice-Chairman Ash queried whether this applies only to driving offenses. Ms. Breedlove said that vapor-releasing drugs will apply only to prosecution of a DUI. The three added drugs are illegal drugs.

Chairman Driggs pointed out that some of these products, if properly used, are for everyday use. The mere possession would not be a problem the way the bill is crafted. Ms. Breedlove agreed and said the bill was specifically crafted so that proper use will not be an issue.

Vice-Chairman Ash announced the names of those who signed up in support of SB1144 but did not speak:

- Bryan Soller, State Vice President, Arizona State Fraternal Order of Police
- Bill Everson, Chairman, Arizona Labor Council, Arizona State Fraternal Order of Police
- Thomas Parker, Arizona Fraternal Order of Police
- John Ortolano, Arizona Fraternal Order of Police
- Don Isaacson, representing Fraternal Order of Police
- James Mann, Arizona Fraternal Order of Police
- Norman Moore, Attorney, Fraternal Order of Police
- Greg Stanton, Director of Legislative Affairs, Attorney General's Office
- Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office
- Paul Ahler, Executive Director, Arizona Prosecuting Attorneys' Council
- Susan Charlton, Attorney, City of Phoenix
- Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office

Question was called on the motion that SB1144 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 7).

SCR1040 – justices and judges; retirement age – DO PASS

Vice-Chairman Ash moved that SCR1040 do pass.

Blake Edwards, Majority Intern, stated that SCR1040 increases the age of retirement for justices and judges from 70 to 75 years of age (Attachment 8).

Chris Whitten, Judge, Maricopa Superior Court, representing self, testified in support of SCR1040. He advised that he has benefited from advice and mentoring by more experienced judges and said that kind of advice is invaluable. Many judges have been forced to retire

because of their age even though their ability to serve on the bench has not diminished. He asked Members to support this bill.

Pete Dunn, representing Arizona Judges Association, in favor of SCR1040, maintained that there is no reason for have an age limit that forces judges to retire at the age of 70. He urged Members to support this Constitutional Amendment.

In reply to Vice-Chairman Ash, Mr. Dunn stated that there is an argument that there should be no age limit.

Vice-Chairman Ash asked about judges who have a problem with memory and become incapable of doing their job. Mr. Dunn explained that there is a rigorous review process by an independent group who evaluates those judges. In addition, the Commission on Judicial Conduct investigates complaints made against the judiciary. He noted that there are a lot of safeguards in place.

To that point, Mrs. Barto queried whether judges are always removed through the public ballot system of retention. Mr. Dunn advised that they can be removed by the Commission on Judicial Conduct or they can choose to retire rather than going through the retention process.

Names of those who signed up in support of SCR1040 but did not speak:
Jerry Landau, Legislative Liaison, Arizona Supreme Court, Arizona Judicial Council

Question was called on the motion that SCR1040 do pass. The motion carried by a roll call vote of 7-1-0-0 (Attachment 9).

Without objection, the meeting adjourned at 9:54 a.m.

Joanne Bell, Committee Secretary
March 26, 2010

(Original minutes, attachments and audio on file in the Chief Clerk's Office; video archives available at <http://www.azleg.gov>)