

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

COMMITTEE ON HEALTH AND HUMAN SERVICES

Minutes of Special Meeting
Wednesday, April 7, 2010
House Hearing Room 4 -- 9:00 a.m.

Vice-Chairman Court called the meeting to order at 9:09 a.m. and attendance was noted by the secretary.

Members Present

Mr. Ableser
Mr. Bradley
Mrs. Goodale

Mr. Lopes
Mr. Murphy
Mr. Vogt

Mr. Court, Vice-Chairman
Mrs. Barto, Chairman

Members Absent

Mr. Boone

Committee Action

SB1087 – DPA S/E (8-0-0-1)
SB1116 – DPA (8-0-0-1)
SB1181 – DP (8-0-0-1)
SB1182 – DP (8-0-0-1)
SB1304 – NOT ASSIGNED

SB1314 – DP (5-3-0-1)
SB1315 – DPA (8-0-0-1)
SB1324 – NOT ASSIGNED
SB1419 – DPA S/E (8-0-0-1)

CONSIDERATION OF BILLS

SB1324 – insurance coverage; legal; identity theft(now: identity theft protection) – NOT ASSIGNED

Vice-Chairman Court announced that SB1324 was not assigned to the Committee.

SB1314 – domestic relations – DO PASS

Mrs. Goodale moved that SB1314 do pass.

Ingrid Garvey, Majority Research Analyst, explained that SB1314 was heard last week. It states that it is the public policy of this state that it is in a child's best interest to have substantial and

meaningful parenting time with both parents and to have both parents participate in decision-making regarding the child (Attachment 1).

Colleen McNally, Presiding Judge, Family Court, Maricopa County, neutral on SB1314, testified that this is a policy statement from the Legislature that after a divorce, children should continue to have frequent and meaningful contact with both parents and both parents should be involved in decision making, unless there are reasons to the contrary. She said she believes the bill provides protections for domestic violence victims.

Mr. Lopes remarked that he is wary about limiting a judge's authority. Social science research indicates that when both parents are fit, joint custody should be promoted, yet custody is often awarded to the mother. Judge McNally responded that in the past custody was often awarded to the mother, and there is a perception that it continues to be true; however, parents often agree to joint custody. This law is needed to dispel the perception of bias against fathers and may determine what people ask for in court.

Mike McCormick, Executive Director, American Coalition for Fathers and Children, Washington, D.C., spoke in favor of SB1314. He stated that there has been a movement toward joint custody over the last 30 years, and in fact, it is preferred in many states as the default position. The critical issue in this policy statement is not so much the custodial documentation as allocation of parenting time. Barring abuse, neglect and abandonment, children can expect not to lose one parent during a divorce. He noted that the terms *substantial* and *meaningful* are the trend in custody rather than *frequent* and *continuing*. This policy statement does not remove judicial discretion, but sends a message to practitioners and litigants that the courts will not be used as a vehicle without good cause to remove one or the other parent from the life of the child, and thereby, harm the child in the process.

Phil Escolar, representing self, neutral on SB1314, related that at least eleven other states already have a codified presumption of joint custody, and there is no adverse social science research showing that it is causing harm to families or children. Twenty other states are indicating a favorable preference toward joint custody through legislation or policy statements. This bill does not fetter judges with respect to discretion. He said during family consults, he is often asked about the legal landscape with respect to joint custody and sole custody, and he does not have much to report to the client, so this policy statement will be helpful. He responded to questions concerning social science studies.

Mr. Murphy related that as a child from a divorced family, he believes that having a presumption of shared custody in place will be in the best interest of many children, unless there is evidence to the contrary.

Mr. Ableser stated that his parents divorced and he was placed in full-time custody with his father because his mother was emotionally and physically unable to care for her children. Having a presumption of joint custody would not have been beneficial, so by allowing judicial discretion, hopefully, decisions will be made that are in the best interest of children.

Mr. Bradley asked Mr. Escolar's opinion about the addition of Section B relating to attorney fees. Mr. Escolar answered that the language is based on Rule 11 in Arizona Rules of Civil

Procedure, and he believes it is necessary because it creates an additional tier of potential sanctions. It will give attorneys a tool to dissuade clients from bringing less well-grounded allegations and warn parents that if less well-grounded allegations are made, attorney fees will be assessed.

Mr. Bradley expressed concern that prior to going to court a person could be intimidated by the language not to say anything. Mr. Escolar replied that he does not believe it will have a silencing effect; it does not silence anyone in the civil litigation realm.

Judge McNally stated that many people bring actions in Superior Court and judges have the ability now to order attorney fees, which she does not believe has any dissuasive effect. The new language will be a stronger gatekeeper in telling people that claims should be made in good faith.

Ellen Katz, Litigation Director, William E Morris Institute for Justice, opposed SB1314. She said the Domestic Relations Committee (DRC) started to work on this issue and suggested tabling the bill so the DRC can continue its work and legislation can be heard again next year. She opposed the provision relating to attorney fees because she has not heard that the current statute is not working and there is a possibility that it could be used as leverage at the beginning of a case. She said she does not know why it is necessary to raise the standard of proof to *clear and convincing evidence* in relation to records; every other issue in family law cases is determined by *preponderance of evidence*, so the same standard should be used for records.

Kendra Leiby, Arizona Coalition Against Domestic Violence, neutral on SB1314, echoed Ms. Katz's comments in opposition to *clear and convincing evidence* in Subsection K, which she believes should be revised back to *preponderance of evidence*.

Mr. Ableser asked if there was unanimous support from the DRC not to include Subsection C on page 1 of the bill, which states that a court shall apply the provisions of this title in a manner that is consistent with the requirements of this section.

Mike Espinoza, representing self, in support of SB1314, stated that a gentleman who testified at the previous meeting on this bill, who is a member of the DRC, wanted to remove *THE REQUIREMENTS OF* in Subsection C.

Senator Sylvia Allen, sponsor, related that she asked Representative Cecil Ash to offer an amendment on the Floor to replace *clear and convincing evidence* with *preponderance of evidence*. She pointed out that the bill is no longer about presumption of joint custody, which was taken out and replaced by a policy statement to incorporate more time with both parents if at all possible, and discretion of the judge still remains. She said she has been asked to change ~~*frequent and continuing*~~ to THE WORDS *substantial* and *meaningful* TO *FREQUENT AND CONTINUING*, but judges already govern under the words *frequent* and *continuing*; *SUBSTANTIAL AND MEANINGFUL* ARE INTENDED TO TRY TO INCORPORATE MORE TIME WITH BOTH PARENTS. She is fine with an amendment to strike *THE REQUIREMENTS OF* in Subsection C on the Floor, but she would like to retain *substantial* and *meaningful*.

Discussion followed about changing the standard of proof in relation to records. Senator Allen stated that to ease the mind of members of the DRC, she believes it would be good to change the standard of proof. She is glad the DRC wants to discuss the presumption issue, but she would appreciate the Committee's support to allow children to have access to both parents.

Steve Wolfson, Attorney/Legislative Liaison, Family Law Section, State Bar of Arizona, testified in support of SB1314. He opined that the words *frequent* and *continuing* are important to have in the bill for consistency since A.R.S. Section 25-408 already refers to *frequent and continuing parenting time* and parents need to know what to expect. Regarding the attorney fees provision, he submitted that if the state wants to further the use of attorney fees on either side without a chilling effect on the parent that does not have the same financial resources, the word *pleading* should be used in place of *petition*.

Mr. Murphy suggested using *frequent, continuing, substantial* and *meaningful* for a more comprehensive statement of the kind of contact the state believes is beneficial to children.

After a brief discussion, Senator Allen remarked that she will add ~~*substantial and meaningful*~~ **FREQUENT AND CONTINUING** on the Floor.

Mr. Ableser stated that there is no scientific data indicating that mandating this language to the courts is beneficial. He questioned the need for the bill if the DRC has not prepared a final report and opposed some parts of it. Additionally, there are options of recourse in the judicial system that parents can take. He said he and Mr. Murphy are products of a successful system.

Mr. Murphy countered that the judicial system was very damaging in his situation, which could have been prevented by a presumption of joint custody. That is no longer the full scope of the bill, unfortunately, but he cannot see how a policy statement can cause harm.

Mr. Vogt commented that a 2007 report from the Children's Rights Council states that divorce rates have fallen in states where laws were changed to make shared parenting easier for fathers to obtain. He opined that this is a good policy that will make families stronger and protect children.

Names of those who signed up in support of SB1314 but did not speak:

Richard Franco, representing self
Janna Day, Lobbyist, State Bar of Arizona

Names of those who signed up in opposition to SB1314 but did not speak:

Joi Serota-Davenport, representing self
Dene' Brown, representing self
Danielle Rothleutner, Case Manager, representing self

Names of those who signed up as neutral on SB1314 but did not speak:

Lori Ginsburg, Legislative Intern, Arizona Judicial Council
Katy Proctor, Legislative Liaison, Arizona Judicial Council

Question was called on the motion that SB1314 do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 2).

SB1315 – child care programs; fees – DO PASS AMENDED

Mr. Murphy moved that SB1315 do pass.

Mr. Murphy moved that the Barto two-page amendment to SB1315 dated 4/6/10 (Attachment 3) be adopted.

Ingrid Garvey, Majority Research Analyst, stated that this bill was heard a few weeks ago. It specifies that child care facilities and child care group homes may pay annual licensing and certification fees in installments and requires the Department of Health Services (DHS) to conduct a study to determine specified costs related to child care facilities and child care group homes (Attachment 4). The amendment contains the following provisions (Attachment 3):

- Provides that beginning January 1, 2010, subject to the availability of monies, DHS may establish a discount program for licensing fees paid by child care facilities and child care group homes, including a public health discount.
- Provides that if DHS lowers fees for child care facilities or group homes, DHS may refund or credit fees to the licensees.
- Specifies that fee reductions by DHS are exempt from the rule-making requirements.
- States that the study related to specific costs must identify issues, options and recommendations for a permanent transition from three-year fees to annual fees and that a report must be submitted by February 1, 2011 rather than April 1, 2011.
- Provides that DHS must adopt rules for group homes based on the minimum standards set forth in statute.
- Removes the current language in Section 4 and replaces it with language specifying that child care facilities and group homes that paid three-year fees for a license that became effective on or after January 1, 2010 are not required to pay annual fees for three years, and child care facilities and group homes that paid three-year fees for a license that became effective before January 1, 2010 must pay the annual fees when established by DHS.
- Specifies that pursuant to available funding, DHS must collect annual fees.
- Removes the term *SIGNIFICANTLY* on pages 3 and 5.
- Makes technical and conforming changes.

Senator Sylvia Allen, sponsor, deferred testimony to Bruce Liggett.

Bruce Liggett, Executive Director, Arizona Child Care Association, spoke in favor of SB1315. He related that during the Third Special Session, the General Fund appropriation for licensure was removed and ~~DES~~ DHS was given the authority to set fees, but what was not addressed was a process to ensure that the fees are based on necessary regulation, efficient operation and required costs. This bill requires a review of the current costs of child care and a report to the Legislature. It provides several tools to help DHS operate more efficiently and gives DHS some options if fees are lowered, as well as adds explicit authority for reductions DHS enacted.

Duane Huffman, Chief Legislative Liaison, Arizona Department of Health Services (DHS), neutral on SB1315, indicated that the bill states that if cash flow problems can be resolved

through reductions in costs, additional revenues, etc., a transition can be made to annual licenses, which solves the problem raised when the bill was heard before that would force DHS into a bad cash flow circumstance.

Vice-Chairman Court announced the names of those who signed up in support of SB1315 but did not speak:

Dale Wiebusch, Legislative Associate, League of Arizona Cities and Towns

Dana Naimark, President/Chief Executive Officer, Children's Action Alliance

Don Isaacson, Valley of the Sun Young Men's Christian Association

Question was called on the motion that the Barto two-page amendment to SB1315 dated 4/6/10 (Attachment 3) be adopted. The motion carried.

Mr. Murphy moved that SB1315 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 5).

SB1116 – limited income withholding orders – DO PASS AMENDED

Mr. Murphy moved that SB1116 do pass.

Mr. Murphy moved that the Barto three-line amendment to SB1116 dated 3/30/10 (Attachment 6) be adopted.

Ingrid Garvey, Majority Research Analyst, explained that SB1116 adds additional “lump sum payments” that may be subject to a limited income withholding order for arrearages owed by an obligor for child support (Attachment 7). The amendment removes inheritances from the “lump sum payments” that may be withheld for arrearages owed by an obligor for child support (Attachment 6).

In response to a question, Chairman Barto advised that removal of inheritances was done at the request of the sponsor.

Mr. Bradley noted that Jay Kaprosy, Arizona Banker's Association, requested the amendment because inheritances and wills are part of a very complex process that could take three to five years and is very costly. Including inheritances may cause confusion. The Association supports the intent of the bill and has agreed to meet to generate more substantive language.

Names of those who signed up in support of SB1116 but did not speak:

Don Isaacson, Southwest Ambulance

Names of those who signed up as neutral on SB1116 but did not speak:

Jay Kaprosy, Senior Government Relations Advisor, Arizona Bankers Association

Question was called on the motion that the Barto three-line amendment to SB1116 dated 3/30/10 (Attachment 6) be adopted. The motion carried.

Mr. Murphy moved that SB1116 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 8).

SB1419 – dental hygienists; community oral health – DO PASS AMENDED S/E
S/E: dentists; contracts; dental hygienists

Mr. Murphy moved that SB1419 do pass.

Mr. Murphy moved that the Barto seven-page strike-everything amendment to SB1419 dated 4/5/10 (Attachment 9) be adopted.

Mr. Murphy moved that the Barto 21-line amendment to the strike-everything amendment to SB1419 dated 4/6/10 (Attachment 10) be adopted.

Gina Kash, Majority Assistant Research Analyst, explained that the strike-everything amendment to SB1419 (Attachment 9) provides that a contract between a dental service corporation, a health care services organization, a disability insurer, a group disability insurer and a blanket disability insurer and a dentist must not require the dentist to provide services for a set fee unless the services are covered under the individual's policy, and changes statute relating to dental hygienists (Attachment 11). The 21-line amendment to the strike-everything amendment strikes Subsection C in Sections 1 through 4 of the strike-everything amendment and adds a new Subsection C stipulating that nothing in this section shall restrict the ability of dental service corporations and prepaid dental plans to establish dental benefits for services offered by plans that are administered but not insured by the corporations and prepaid dental plans (Attachment 10).

Senator Thayer Verschoor, sponsor, noted that numerous stakeholder meetings were held and agreement was reached on the language contained in the strike-everything amendment.

Vice-Chairman Court announced the names of those who signed up in support of the strike-everything amendment to SB1419 but did not speak:

Terry Ramsey, Pediatric Dentist, Arizona Dental Association
Sara Sparman, Government Relations Specialist, Arizona State Dental Hygienists Association
John MacDonald, representing Arizona Dental Association
Kevin Earle, Executive Director, Arizona Dental Association
Mike Williams, representing Arizona Dental Hygienists Association

Vice-Chairman Court announced the names of those who signed up as neutral on the strike-everything amendment to SB1419 but did not speak:

Gregory Harris, Lobbyist, Delta Dental of Arizona
Karlene Wenz, Legislative Liaison, Department of Insurance

Question was called on the motion that the Barto 21-line amendment to the strike-everything amendment to SB1419 dated 4/6/10 (Attachment 10) be adopted. The motion carried.

Mr. Murphy moved that the Barto seven-page strike-everything amendment to SB1419 dated 4/5/10 (Attachment 9) as amended be adopted. The motion carried.

Mr. Murphy moved that SB1419 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 12).

SB1087 – domestic violence; definition; notice – DO PASS AMENDED S/E
S/E: behavioral analyst; exemption from licensure

Mr. Murphy moved that SB1087 do pass.

Mr. Murphy moved that the Barto four-page strike-everything amendment to SB1087 dated 4/5/10 (Attachment 13) be adopted.

Gina Kash, Majority Assistant Research Analyst, explained that the strike-everything amendment to SB1087 (Attachment 13) extends the date that the Board of Psychologist Examiners may grant an exemption request for an unlicensed clinical supervisor to conduct supervised work from July 1, 2010 to July 1, 2011 and specifies that until December 31, 2013 a behavioral analyst who provides supervision is not required to be licensed by the Board (Attachment 14).

Stuart Goodman, Intermountain Centers for Human Development, spoke in favor of the strike-everything amendment to SB1087. He related that in 2008, the Legislature adopted a requirement for behavioral analysts to become regulated, and some omissions were addressed in legislation last year. A glitch in the process was noticed, which is the reason for this measure. A licensed behavioral analyst must be available to provide supervision for applicants, but until everyone is licensed, there is no one to supervise, so the bill provides a short-term exemption to allow unlicensed, but otherwise nationally certified behavioral analysts, to serve as supervisors for applicants. The idea is to provide a three-year period to build up the number of licensees so licensed behavioral analysts will eventually provide supervision.

Vice-Chairman Court announced the names of those who signed up in support of the strike-everything amendment to SB1087 but did not speak:

Emily Jenkins, President/Chief Executive Officer, Arizona Council of Human Service Providers
Danielle Rothleutner, Case Manager, representing self
Dr. Danny Openden, Clinical Services Director, representing self

Vice-Chairman Court announced the names of those who signed up as neutral on the strike-everything amendment to SB1087 but did not speak:

Char Ugol, representing self/parent of a child with autism

Question was called on the motion that the Barto four-page strike-everything amendment to SB1087 dated 4/5/10 (Attachment 13) be adopted. The motion carried.

Mr. Murphy moved that SB1087 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 15).

SB1181 – autism spectrum disorder task force – DO PASS

Mr. Murphy moved that SB1181 do pass.

Gina Kash, Majority Assistant Research Analyst, explained that SB1181 establishes the Autism Disorder Task Force, its membership and duties (Attachment 16).

Senator Amanda Aguirre, sponsor, stated that legislation was passed a few years ago relating to children diagnosed with autism. This Task Force is intended to review gaps in services to, hopefully, provide more comprehensive services for children with autism.

Vice-Chairman Court announced the names of those who signed up in support of SB1181 but did not speak:

Gretchen Jacobs, Attorney, Arizona Autism Coalition

Char Ugol, representing self/parent of child with autism

Jessica Lewis, Coordinator, Arizona Autism Coalition

Dr. Danny Openden, Clinical Services Director, representing self

Aaron Blocher-Rubin, representing self

Melissa Van Hook, Co-Facilitator, East Valley Autism Network; Autism Society of Greater Phoenix

Katie Wride, mother of child with autism; Autism Society of Greater Phoenix; Act Today

Holly Reycraft, Special Education Advocate/Parent, East Valley Autism Network; Autism Society of Greater Phoenix

Question was called on the motion that SB1181 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 17).

SB1182 – psychiatric mental health nurse practitioners – DO PASS

Mr. Murphy moved that SB1182 do pass.

Gina Kash, Majority Assistant Research Analyst, explained that SB1182 authorizes the practice of certified psychiatric and mental health nurse practitioners and incorporates references to psychiatric and mental health nurse practitioners in court-ordered mental health evaluation and treatment procedures (Attachment 18).

Senator Amanda Aguirre, sponsor, stated that the bill establishes the practice of nurse practitioners into court-ordered mental health evaluation and treatment procedures.

Joyce Benjamin, Executive Director, Arizona Nurses Association, spoke in favor of SB1182. She related that psychiatric mental health nurse practitioners are already playing an important role in providing these services. The out-patient care of court-ordered patients is within their scope of practice and should be acknowledged in statute.

Chairman Court announced the names of those who signed up in support of SB1182 but did not speak:

Raymond Kronenbitter, Registered Nurse, Arizona Nurses Association

Pete Wertheim, Chief Legislative Liaison, IASIS Healthcare

Barbara Fanning, Legislative Liaison, Arizona Hospital and Healthcare Association

Question was called on the motion that SB1182 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 19).

Without objection, the meeting adjourned at 11:21 a.m.

Linda Taylor, Committee Secretary

April 21, 2010

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