

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

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, April 8, 2010
House Hearing Room 4 -- 9:00 a.m.

Chairman Driggs called the meeting to order at 9:25 a.m. and attendance was noted by the secretary.

Members Present

Mrs. Barto
Mr. Konopnicki
Mr. Miranda B

Mr. Montenegro
Ms. Sinema
Mrs. Tovar

Mr. Ash, Vice-Chairman
Mr. Driggs, Chairman

Members Absent

None

Committee Action

SB1009 – DP (8-0-0-0)	SB1232 – DP (8-0-0-0)
SB1055 – DP (6-0-0-2)	SB1266 – DP (5-3-0-0)
SB1056 – DP (8-0-0-0)	SB1268 – DP (7-0-0-1)
SB1062 – DPA S/E (6-0-0-2)	SB1362 – DP (5-3-0-0)
SB1069 – DP (7-1-0-0)	SB1393 – DPA (8-0-0-0)
SB1081 – DP (7-0-0-1)	SB1422 – DP (7-0-0-1)
SB1086 – DPA S/E (8-0-0-0)	SCR1009 – HELD
SB1087 – WITHDRAWN	SCR1013 – DPA (7-1-0-0)
SB1094 – DPA (7-0-0-1)	SCR1043 – DP FAILED (4-4-0-0)
SB1135 – DPA (8-0-0-0)	

CONSIDERATION OF BILLS:

SB1087 – domestic violence; definition; notice – WITHDRAWN

Chairman Driggs announced that SB1087 has been withdrawn from the Committee.

SCR1009 – publicly financed elections; prohibition – HELD

Chairman Driggs announced that SCR1009 will be held.

SB1268 – jurisdiction; foreign judgments; defamation – DO PASS

Vice-Chairman Ash moved that SB1268 do pass.

Stacy Weltsch, Majority Research Analyst, stated that SB1268 prohibits an Arizona court from recognizing a judgment from a foreign country in a defamation lawsuit unless the court first determines that the defamation law applied by the foreign court provided at least as much protection for freedom of speech and the press as is provided by the United States and Arizona Constitutions (Attachment 1).

David Bodney, Attorney, Phoenix Newspapers, Inc., in support of SB1268, testified that this legislation protects the constitutional rights of Arizonans. The bill takes an important step to protect people from the enforcement of defamation judgments by plaintiffs who sue in foreign jurisdictions to circumvent constitutional rights. The bill prohibits the enforcement of judgments by a foreign jurisdiction if that foreign jurisdiction does not have free speech and press protections as broad as provided under the U.S. and Arizona Constitutions. This bill applies to publishers as well as to individuals, and said that when data is sent via the internet, there is the risk of being sued for defamation. He maintained that this is a very important protection for people who communicate about important subjects over the web and goes a long way towards protecting citizens' freedoms.

Senator Chuck Gray advised that as the appointed Senate Judiciary Chairman after Senator Jonathan Paton left, he is speaking in support of many of the bills sponsored by Senator Paton. He contended that U.S. citizens cannot be held accountable for the laws of every country outside the United States; they can only be held accountable to U.S. laws. This legislation attempts to stop judgments from foreign jurisdictions being enforced in U.S. courts.

Dr. M. Zuhdi Jasser, representing self, expressed support of SB1268. He advised that the American Islamic Forum for Democracy, a 501(c)(3) think tank and activist group was formed to address the "war of ideas" that it believes fuels global terrorism. He advised that he was served in January by a London legal firm with a threat of lawsuit for libel against a large entity which includes Arabic millionaires after an interview was posted on the internet in which he spoke out against certain practices. He related that these lawsuits are used to intimidate Muslims who have the courage to speak out. He asked Members to pass this legislation to protect individuals and organizations who take on the war of ideas, and he stated that it will have a positive impact on citizens doing global work on counterterrorism.

Chairman Driggs announced the names of those who signed up in support of SB1268 but did not speak:

John Moody, Attorney, representing Arizona Newspapers Association

Question was called on the motion that SB1268 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 2).

SB1422 – petitions; post office box addresses – DO PASS

Vice-Chairman Ash moved that SB1422 do pass.

Blake Edwards, Majority Intern, explained that SB1422 states that an Arizona post office (PO) box address may be used on nomination petition signature forms provided the individual's residence has not changed since the last update of the voter registration file (Attachment 3). The bill modifies the form to include a column designated for the notation of an Arizona post office box address, and declares that the signature of a person who signs a nomination petition form and uses only an Arizona post office box address is valid if the person is properly registered to vote and is eligible to sign the petition.

Senator Albert Hale, sponsor, advised that this bill addresses an issue he was faced with in the last election which made him the subject of a lawsuit by his opponent. Most of the voters in his district live in rural communities and do not have rural addresses but use PO boxes where an address is required. He pointed out that this bill only relates to post office box addresses on nominating petitions and said some of the County Clerks were putting the forms aside if they carried a PO box address; they were not counted, so there was a disparity in the way they were treated. This bill attempts to bring uniformity to the system without voters being disenfranchised.

Vice-Chairman Ash queried whether an individual must provide both a post office box and a physical description of the address when registering to vote. Senator Hale replied in the affirmative.

LeNora Johnson, Apache County Recorder, testified in support of SB1422. She advised that Apache County has approximately 47,000 registered voters and about 37,000 of those voters have a residential address which is descriptive. She said a PO box address is easier to verify. She explained that when a person registers to vote, a voter registration form is filled out which contains space to note the residential address and a space for a PO box address. She encouraged Members to support the PO box concept being part of the nomination petition.

Karen Osborne, Elections Director, Maricopa County, expressed support of SB1422. She claimed that this is a wonderful solution to an age-old problem and related that this will not go into effect for this election because it must be pre-cleared by the Department of Justice.

Mrs. Barto queried whether Maricopa County Elections will be overwhelmed if only a PO box is given. Ms. Osborne replied in the negative. She said that Maricopa County has about 15,000 PO boxes on file. She said the Elections Office can search first by name and then authenticate the signature.

Vice-Chairman Ash announced the names of those who signed up in support of SB1422 but did not speak:

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Rebekah Friend, Lobbyist, Arizona AFL-CIO

Helen Purcell, County Recorder, Maricopa County

Ron Lee, representing self

Michael Nelson, representing self

Jim Drake, Assistant Secretary of State, Secretary of State's Office

Question was called on the motion that SB1422 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 4).

SB1009 – juvenile prosecutions; adult court; age – DO PASS

Vice-Chairman Ash moved that SB1009 do pass.

Stacy Weltsch, Majority Research Analyst, stated that SB1009 requires a criminal charge brought against a juvenile to be based on the age of the juvenile at the time the offense was committed (Attachment 5). The bill clarifies that this section of law is not to be interpreted to confer juvenile court jurisdiction over anyone who is 18 years of age or older.

Senator Linda Gray, sponsor, related that this addresses the situation where a juvenile commits a crime at age 13 and some prosecutors wait until the juvenile turns 14 years of age to say that the juvenile has to go through the adult criminal process. SB1009 gives a judge the option to charge the 13 year old for an adult crime.

Chris Phillis, Juvenile Public Defender, Maricopa County Juvenile Public Defender's Office, stated support of SB1009. The purpose of the bill is to allow a juvenile under the age of 14 who has committed a crime to have a transfer hearing before a judge. The defense and the prosecutor then have the ability to present evidence before the judge to allow the judge to determine whether the juvenile should be tried in the adult or juvenile court.

Jerry Landau, Government Affairs Director, Arizona Supreme Court, advised that the Arizona Judicial Council supports this legislation. This legislation is about the age of a juvenile when filing and the age of a juvenile when the crime was committed. He pointed out there is still the mechanism in place to have the case filed in the adult system and this bill does not compromise that.

Vice-Chairman Ash noted that a person who signed in is opposed to the bill because it is in direct conflict with the Constitution. Mr. Landau acknowledged that issue has been raised. He said he cannot comment because of his position with the Court and should this be challenged, it will be the Supreme Court that will decide the issue. He noted that the Senate Rules Attorney found the bill to be constitutional and proper.

Beth Rosenberg, Children's Action Alliance, testified in support of SB1009. She said this proposal is designed to bring the juvenile justice law more in line with the intent of the voters and the Legislature. She disclosed that this bill is a small but important improvement in the process. This change will improve public safety and the decision-making process. With respect to the constitutionality issue, she said that when voters approved the initiative in 1996, the language change in the Arizona Constitution gave the Legislature authority over all proceedings in matters affecting juveniles. She believes that constitutional change gives the Legislature the authority to clarify what the law says.

Vice-Chairman Ash announced the names of those who signed up in support of SB1009 but did not speak:

Carrington Buze, representing self
Kirsten Rathjen, representing self
Robin Lubitz, representing self
Laura Jo Richins, representing self

Vice-Chairman Ash announced the names of those who signed up in opposition to SB1009 but did not speak:

Paul Ahler, Executive Director, Arizona Prosecuting Attorneys' Council
Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office
Dana Kennedy, Executive Director, representing self

Question was called on the motion that SB1009 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 6).

SB1086 – strangulation; suffocation; aggravated assault – DO PASS AMENDED S/E S/E: domestic violence; definition; strangulation; suffocation

Vice-Chairman Ash moved that SB1086 do pass.

Vice-Chairman Ash moved that the Driggs nine-page strike-everything amendment dated 4/6/10 to SB1086 be adopted (Attachment 7).

Stacy Weltsch, Majority Research Analyst, explained that the proposed strike-everything amendment (Attachment 7) expands the acts that constitute domestic violence, and classifies strangulation and suffocation within a relationship included in the definition of domestic violence as a Class 4 felony (Attachment 8).

Kendra Leiby, Arizona Coalition Against Domestic Violence, expressed support of the strike-everything amendment to SB1086. She noted that Arizona has a three-strike law and passage of this legislation will allow prosecutors to hold repeat offenders with a clear propensity for violence accountable. This proposal elevates strangulation and suffocation to an aggravated assault. According to studies by the National Institute of Justice, a victim of domestic violence whose partner had attempted strangulation was ten times more likely to be murdered than any other domestic violence victim. Arizona has one of the highest domestic violence-related homicide rates in the country; since 2005, there have been 25 domestic violence-related deaths reported due to strangulation and suffocation. She urged Members to support this legislation.

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, in support of the strike-everything amendment to SB1086, said she shares Kendra Leiby's assessment of how important this legislation is because of the insidious and cruel nature of repetitive strangulation and suffocation offenses committed against victims of domestic violence. This bill will hold batterers accountable; it changes the offense from a misdemeanor to a felony for repetitive offenses with the intent to terrorize and terrify the victim. She urged passage of this legislation.

Vice-Chairman Ash announced the names of those who signed up in support of the strike-everything amendment to SB1086 but did not speak:

Danielle Rothleutner, Case Manager, representing self
Jen Sweeney, Government Affairs Director, Arizona Association of Counties
Mary Marshall, Public Information Officer/Legislative Liaison, Arizona Criminal Justice Commission
Lyle Mann, Deputy Director, Arizona Peace Officer Standards and Training Board
Paul Ahler, Executive Director, Arizona Prosecuting Attorneys' Council

Donna Kruck, Director of Advocacy Programs, representing self
Chris Fike, representing self
Eric Ehst, National Organization for Women
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office
Katie Hobbs, Director of Government Relations, Sojourner Center
Greg Stanton, Director of Legislative Affairs, Attorney General's Office

Vice-Chairman Ash announced the names of those who signed up as neutral on the strike-everything amendment to SB1086 but did not speak:

John Wentling, Vice Chairman, Arizona Citizens Defense League, Inc.
Dave Kopp, President, Arizona Citizens Defense League, Inc.

Question was called on the motion that the Driggs nine-page strike-everything amendment dated 4/6/10 to SB1086 be adopted (Attachment 7). The motion carried.

Vice-Chairman Ash moved that SB1086 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 9)

SB1094 – marriage dissolution; disposition of property – DO PASS AMENDED

Vice-Chairman Ash moved that SB1094 do pass.

Stacy Weltsch, Majority Research Analyst, explained that SB1094 requires parties to file schedules of assets, debts and obligations in actions for dissolution of marriage, legal separation or annulment, and establishes a presumption that property, debts and obligations under specified conditions were willfully concealed (Attachment 10). The bill specifies actions the court can take against the concealing party

Vice-Chairman Ash moved that the Driggs 18-line amendment dated 4/7/10 to SB1094 be adopted (Attachment 11).

Ms. Weltsch stated that SB1094 along with the amendment requires the court to sanction a party to a divorce decree if the court finds the party has willfully concealed assets or debts (Attachment 11). The post-decree proceeding must be filed within 180 days after discovery of the property or debt and the sanction can include an uneven division of the asset, an unequal allocation of the debt and award of attorney fees and costs or other monetary damages.

Senator Linda Gray, sponsor, stated support of the amendment and offered to answer any questions.

Vice-Chairman Ash asked whether Family Court judges were involved in this bill. Senator Gray advised that Family Court judges sit on the Domestic Relations Committee. They were sent information on the bill and the amendment but have taken no position.

Vice-Chairman Ash announced the names of those who signed up in support of SB1090 but did not speak:

Steve Wolfson, Attorney/Legislative Liaison, State Bar of Arizona, Family Law Section

Question was called on the motion that the Driggs 18-line amendment dated 4/7/10 to SB1094 be adopted (Attachment 11). The motion carried.

Vice-Chairman Ash moved that SB1094 as amended do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 12).

SB1069 – aggravated DUI; sentencing – DO PASS

Vice-Chairman Ash moved that SB1069 do pass.

Stacy Weltsch, Majority Research Analyst, related that a strike-everything amendment was posted for this bill; however, the Committee will hear the underlying bill, not the strike-everything amendment. She reviewed the provisions of SB1069. The bill establishes minimum incarceration periods and changes penalties for certain aggravated driving under the influence (DUI) offenses (Attachment 13). In addition, the bill allows special driver license holders to apply for restricted driver licenses.

Senator Linda Gray, sponsor, explained that the bill combines three DUI bills that came out of the Senate: changes the provision relating to restricted driver licenses to comply with federal law, corrects a flaw in statute by addressing the increase in DUI accidents involving drugs other than alcohol and lists minimum penalties in statute.

Ms. Sinema asked whether the bill establishes a new period of incarceration that is mandatory for juveniles of at least four months if they violate the court order while they have an ignition interlock device. Senator Gray answered in the affirmative and said that provision addresses the underage person who ignores the court order. Ms. Sinema queried the current penalty for a minor who has an interlock device and refuses to submit to a test. Senator Gray said she will defer that question to Jerry Landau.

Jerry Landau, Legislative Liaison, Arizona Supreme Court, Administrative Office of the Courts, testifying as neutral, answered that the current penalty will be the same as it is for any juvenile delinquent act. He explained there are several options available to the court from probation to the Department of Juvenile Corrections, to residential treatment, to a fine, etc. He explained that when the statute was written, it was based on the adult aggravated DUI statute. There is a gap in that statute, causing a gap in the juvenile statute with no defined penalty for being DUI with an interlock device.

Ms. Sinema expressed concern about increasing the penalty from a Class 6 felony to a Class 4 felony. She said this also applies to someone who refuses to take a sobriety test and pointed out that person may not be driving while intoxicated or under the influence of drugs. Mr. Landau stated that is current law and not affected by this legislation.

Chris Phillis, Juvenile Public Defender, Maricopa County Juvenile Public Defender's Office, said she has the same concerns expressed by Ms. Sinema. If juveniles are going to be sentenced the same as adults, especially as related to DUI offenses, juveniles will be able to request jury trials, whereas in the past, sentencing has been up to the judge. This appears to give juveniles an additional four months for refusing to take the test whether or not they have been drinking or using an illegal substance, and that does not seem to allow juveniles due process.

Chairman Driggs asked whether there is implied consent in submitting to a test if a person has a driver license.

Ms. Sinema concurred that if a person has a driver license, there is implied consent that the individual will submit to a test; however, a Class 4 felony for simply refusing to submit to the test is severe. She believes there should be a difference in the penalty.

Mr. Landau advised that the court does not take a position on the classification of offense and whether it should be increased or lowered. He explained the five ways of committing an aggravated DUI and again pointed out a gap in statute relating to penalties for adults and juveniles.

In response to Vice-Chairman Ash, Mr. Landau advised that there were only five juvenile cases heard statewide last year. In each of those cases, a decision was made by the judge he thought was appropriate for each case. Vice-Chairman Ash commented that if the Legislature does nothing, it will be up to the judge to take into consideration the facts and decide what is appropriate. Mr. Landau concurred.

Senator Gray said she is willing to work on a Floor amendment if there is concern for the felony penalty issue. She noted the other two important issues in the bill: using drugs while under the influence and allowing people to go back to work in 45 days on a restricted license.

Question was called on the motion that SB1069 do pass. The motion carried by a roll call vote of 7-1-0-0 (Attachment 14).

SB1055 – victims’ rights; disclosure of information – DO PASS

Vice-Chairman Ash moved that SB1055 do pass.

Blake Edwards, Majority Intern, said that SB1055 allows a crime victim advocate to disclose information to the court in furtherance of a victim’s rights upon either the written or verbal consent of the victim (Attachment 15).

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, stated support of SB1055. She advised that there are limitations on the kind of information victim advocates can relay to the courts. Current law forbids a victim to allow a victim advocate to provide information to the court without advance written permission. This legislation seeks to add judges and courts to the list of professionals to whom the victim advocate can relay information with only verbal permission.

Vice-Chairman Ash announced the names of those who signed up in support of SB1055 but did not speak:

John Thomas, representing Arizona Association of Chiefs of Police

Mary Marshall, Public Information Officer/Legislative Liaison, Arizona Criminal Justice Commission

Lyle Mann, Deputy Director, Arizona Peace Officer Standards and Training Board

Paul Ahler, Executive Director, Arizona Prosecuting Attorneys' Council

Question was called on the motion that SB1055 do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 16).

SB1056 – sentencing; guilty except insane – DO PASS

Vice-Chairman Ash moved that SB1056 do pass.

Blake Edwards, Majority Intern, explained that SB1056 applies sex offender registration, community notification and internet sex offender website requirements to persons adjudicated guilty except insane for certain sex offenses and requires that persons adjudicated guilty except insane but no longer in need of treatment to be transferred to the Department of Corrections for the remainder of their sentence (Attachment 17).

Senator Chuck Gray, sponsor, offered to answer questions on behalf of the sponsor, Senator Paton.

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, testified on behalf of SB1056. This legislation amends the sex offender registration statute with respect to criminal defendants who have been adjudicated guilty except insane for sex offenses and murders:

- The sex offender registration statute does not include individuals who have been adjudicated guilty except insane for sex offenses; this legislation requires these individuals to register so there is a way for law enforcement to track them when they are released.
- The bill corrects the statute to require that felons who have committed Class 1 felonies who no longer need specific mental health treatment, are still a danger to the community if released, but have not yet completed their sentences, to be transferred to ADC for the remainder of their sentence.

Vice-Chairman Ash announced the names of those who signed up in support of SB1056 but did not speak:

Mary Marshall, Public Information Officer/Legislative Liaison, Arizona Criminal Justice Commission

Lyle Mann, Deputy Director, Arizona Peace Officer Standards and Training Board

Paul Ahler, Executive Director, Arizona Prosecuting Attorneys' Council

John Thomas, representing Arizona Association of Chiefs of Police

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office

Question was called on the motion that SB1056 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 18).

SB1081 - technical correction; change of venue(now: trial court appointments; nonattorney member) – DO PASS

Vice-Chairman Ash moved that SB1081 do pass.

Stacy Weltsch, Majority Research Analyst, reviewed the provisions of SB1081 which establish procedures for filling vacancies left by nonattorney members on a commission on trial court appointments (Attachment 19).

Jerry Landau, Government Affairs Director, Arizona Supreme Court, spoke in favor of SB1081. He related that this legislation sets timeframes for filling vacancies left by nonattorney members on a commission on trial court appointments. He urged support of this legislation so that the system of electing members will work smoothly and the provisions of the Constitution will be carried out.

Question was called on the motion that SB1081 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 20).

SB1266 – juveniles; communication devices; sexual material – DO PASS

Vice-Chairman Ash moved that SB1266 do pass.

Stacy Weltsch, Majority Research Analyst, stated that SB1266 establishes as a Class 2 misdemeanor the offense of using an electronic communication device to transmit, display or possess visual depictions of minors that depict explicit sexual material (Attachment 21).

Vice-Chairman Ash moved that the Driggs 19-line amendment dated 4/7/10 to SB1266 be adopted (Attachment 22).

Ms. Weltsch explained that the amendment requires a first-time offender of this section to be offered a diversion program and dismissal of the petition alleging the violation upon successful completion of the program (Attachment 22).

Ms. Sinema brought up concerns not addressed by the amendment. She said she believes the Class 2 felony penalty is too high for a first offense. Additionally, juveniles transmitting images of art will be required to go through diversion. She said there is no language in the bill that clarifies what is considered a first and subsequent offense and she would like to work on language that will hold a juvenile accountable for sending an image to multiple people but not hold them accountable as if they had engaged in sending images on multiple occasions. Another concern is the cost of diversion if the juvenile cannot afford the program.

Derek Rapier, Greenlee County Attorney, and Chairman, Arizona Prosecuting Attorneys Advisory Council (APAAC), testified in support of SB1266. He advised that Greenlee County prosecuted its first “sexting” case about 18 months ago. At the time, the only statute that fit was under the child pornography laws which seemed to be inadequate and inappropriate because current law was written to address adults exploiting children. The two seventh graders ended up pleading to a form of disorderly conduct. The intent of this proposal is to have a law that is less intrusive and to make juveniles understand the danger of what they are doing and the long-term consequences of this type of behavior. He related that two elements are key to change: education and consequences. He said this type of problem needs parental involvement as well as court involvement. Juveniles need to understand there will be consequences for this type of behavior. He said that while most county attorneys will divert the majority of these cases, there may be occasions where that might not be appropriate.

Mr. Rapier spoke to Ms. Sinema's concern about transmitting art and said he has not seen that. To that point, Mr. Miranda submitted there may be situations that could occur. Mr. Rapier said he is not aware of any situation in Greenlee County where art that was transmitted was considered pornography. In such a situation, a prosecutor's discretion will come into play.

Ms. Sinema expressed the hope that discretion will be used; however, she contended that it is the job of the Legislature to narrowly craft laws that will be implemented according to the intent of the policymakers. She reiterated that there is internationally-recognized art of underage individuals and this legislation could criminalize the act of sending a piece of art depicting an underage nude image. Mr. Rapier said the definitions in the bill were taken from statutes dealing with obscenity laws; obscenity is defined as depictions without any artistic value.

Mr. Miranda asked whether a person can be charged with multiple offenses if the person sends multiple images over a certain length of time. Mr. Rapier replied in the affirmative. He said that a prosecutor could potentially charge an individual with multiple offenses under current law; however, discretion is written into this proposal. The current law is harsh and more intrusive because it was crafted to address adult offenders.

In answer to Vice-Chairman Ash about the cost of going through diversion, Mr. Rapier advised that Greenlee County is trying to develop a diversion program and he does not anticipate there will be a cost to the juvenile, but he is not aware of what will happen in other counties.

Vice-Chairman Ash asked whether a confession of guilt will be required in an agreement to enter into a diversion program because it might have an impact on future applications for certain kinds of licenses and employment, since it is a Class 2 misdemeanor. Mr. Rapier said it will not have a lingering effect on the individual's criminal record.

Vice-Chairman Ash brought up fining a parent for not monitoring a child's conduct. Mr. Rapier said he likes that concept; however, it will be very difficult to enforce. Another problem is that monitoring is not defined and juveniles can delete images before parents can check the phones. Vice-Chairman Ash stated that a parent has the option of taking the phone away from the child if it is being improperly used, so he believes parents should be held strictly liable for the misuse of the phone.

George Silva, County Attorney, Santa Cruz County Attorney's Office, spoke in favor of SB1266. He advised that the \$50 fee for diversion can be reduced if the juvenile is unable to pay. No one will be disqualified from the program if they cannot pay.

In reply to Vice-Chairman Ash's query about the diversion program, Mr. Silva said that acknowledgement of guilt is not a matter of record; however, the juvenile must admit responsibility in order to participate in the program.

Chris Phillis, Juvenile Public Defender, Parent and Maricopa County Juvenile Public Defender's Office, testified in opposition to SB1266. She clarified that the bill will not cover art, such as statues and paintings. For this legislation to apply, it will require photographs of "real life" teenagers. She said that although she opposes the bill, she prefers that it be an incorrigible offense rather than a misdemeanor offense in juvenile court because the juvenile cannot be ordered into the detention center as part of the sentence. She estimated that about 100,000 youth

in Maricopa County are involved in sexting and said she does not know how the juvenile justice system will handle that number because of the lack of funds or staff to take care of them.

Vice-Chairman Ash wondered whether a public defender will be appointed if a minor is charged with a misdemeanor. Ms. Phillis replied that if a juvenile is charged with a misdemeanor, the juvenile will be assigned a defense attorney. If the juvenile goes through diversion, before the petitioner citation is filed in juvenile court, representation will not be required. She revealed that diversion in Maricopa County is over 90 percent successful; most who go through diversion never have further contact with the criminal justice system.

Vice-Chairman Ash announced the names of those who signed up in support of SB1266 but did not speak:

Paul Ahler, Executive Director, Arizona Prosecuting Attorneys' Council

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Mary Marshall, Public Information Officer/Legislative Liaison, Arizona Criminal Justice Commission

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office

Vice-Chairman Ash announced the names of those who signed up in opposition to SB1266 but did not speak:

Alessandra Meetze, Executive Director, ACLU of Arizona

Vice-Chairman Ash announced the names of those who signed up as neutral on SB1266 but did not speak:

Beth Rosenberg, Lobbyist, Children's Action Alliance

Chairman Driggs announced that he will withdraw his amendment in order for stakeholders to continue to work on drafting a Floor amendment.

Vice-Chairman Ash withdrew the motion that the Driggs 19-line amendment dated 4/7/10 to SB1266 be adopted (Attachment 22).

Question was called on the motion that SB1266 do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 23)

SB1362 – eminent domain; attorney fees; interest – DO PASS

Vice-Chairman Ash moved that SB1362 do pass.

Blake Edwards, Majority Intern, stated that SB1362 allows a court to award reasonable costs and attorney fees to the condemnee in an eminent domain case if the court finds the condemning party has not acted in good faith (Attachment 24). According to Black's Law Dictionary, a condemnee is a person whose property is expropriated for public use or taken by a public-works project. A condemnor is a public or semi-public entity that expropriates property for public use.

Yvonne Hunter, Pinnacle West Capital Corp/APS, opposed to SB1362, asked Members to vote against this bill because it negatively impacts APS and other public service corporations

identified under the Arizona Constitution. APS has condemnation authority under Arizona law and will be captured under the definition of condemnor. Public service corporations have authority to condemn property but have no right of immediate possession and must resolve all issues with the property owners before beginning work, thereby putting them at a disadvantage.

Question was called on the motion that SB1362 do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 25).

Vice-Chairman Ash announced the names of those who signed up in support of SB1362 but did not speak:

Scot Mussi, Deputy Director of Legislative Affairs, Home Builders Association of Central Arizona

Rachel Aja, representing Orange Coalition

Vice-Chairman Ash announced the names of those who signed up in opposition to SB1362 but did not speak:

Penny Allee Taylor, Specialist/Government Affairs, Southwest Gas Corporation

Ryan Harper, representing City of Sierra Vista

John Moody, Attorney, representing Maricopa County

Todd Madeksza, Director of Legislative Affairs, The County Supervisors Association

Larry Lucero, Manager Governmental Affairs, Tucson Electric Power Company

SB1393 – secretary of state; elections; lobbyists – DO PASS AMENDED

Vice-Chairman Ash moved that SB1393 do pass.

Stacy Weltsch, Majority Research Analyst, stated that SB1393 makes various changes to election law statutes and modifies registration deadlines for lobbyists (Attachment 26).

Vice-Chairman Ash moved that the Driggs five-page amendment dated 4/5/10 to SB1393 be adopted (Attachment 27).

Ms. Weltsch explained that the amendment makes individual contributions to independent expenditure committees exempt from the prohibition on contributions totaling more than \$5,610 in a calendar year and also permits an individual to contribute more than \$5,610 to a political committee advocating the election or defeat of a state or local candidate (Attachment 27).

Amy Bjelland, State Election Director, Arizona Secretary of State's Office, in support of SB1393, explained that the amendment is a clarification to state law. Current law limits the amount an individual can contribute to independent expenditure committees, raising questions whether that is constitutional under the First Amendment. The proposed amendment clarifies that there are no limits on the amount of money an individual can give to an independent expenditure committee.

Vice-Chairman Ash commented that there still is a limitation on the amount an individual can give a candidate. Ms. Bjelland said that is correct.

Vice-Chairman Ash announced the names of those who signed up in support of SB1393 but did not speak:

John Wentling, Vice President, representing self

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Jim Drake, Assistant Secretary of State, Secretary of State's Office

Karen Osborne, Elections Director, Maricopa County

Question was called on the motion that the Driggs five-page amendment dated 4/5/10 to SB1393 be adopted (Attachment 27). The motion carried.

Vice-Chairman Ash moved that SB1393 as amended do pass.

Mrs. Barto noted that the bill stipulates that circulators can no longer print the petition signature of the first and last name or any other information on the petition. She asked whether this applies to any petition. Ms. Sinema clarified that it does not refer to candidate petitions but to initiative or recall petitions.

Question was called on the motion that SB1393 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 28).

SB1135 – child custody; technical correction(now: aggravated assault; classification; definition) – DO PASS AMENDED

Vice-Chairman Ash moved that SB1135 do pass.

Blake Edwards, Majority Intern, said that SB1135 classifies an assault by an individual on a code enforcement officer as a Class 6 felony for aggravated assault (Attachment 29). A code enforcement officer is defined under statute as a person who is employed by a state or local government and whose duties include performing field inspections of buildings, structures or property to ensure compliance with national, state and local laws, ordinances and codes.

Vice-Chairman Ash moved that the Montenegro three-line amendment dated 4/5/10 to SB1135 be adopted (Attachment 30).

Mr. Edwards explained that the Montenegro amendment adds Park Rangers under this proposal (Attachment 30).

Question was called on the motion that the Montenegro three-line amendment dated 4/5/10 to SB1135 be adopted (Attachment 30). The motion carried.

Vice-Chairman Ash moved that SB1135 as amended do pass.

Shirley Gunther, Intergovernmental Affairs Manager, City of Avondale, stated support of SB1135 and offered to answer questions. A position statement was distributed to Members (Attachment 31).

Vice-Chairman Ash announced the names of those who signed up in support of SB1135 but did not speak:

Rob Dalager, City of Phoenix Police Department

Susan Charlton, Attorney, City of Phoenix

Heather Bernacki, Government Relations Associate, American Planning Association, Arizona Chapter

Question was called on the motion that SB1135 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 32).

SB1232 - outsourcing; state service positions; prohibition.(now: civil rights; discrimination; employment) – DO PASS

Vice-Chairman Ash moved that SB1232 do pass.

Stacy Weltsch, Majority Research Analyst, advised that SB1232 conforms Arizona civil rights statutes to the federal Americans with Disabilities Act Amendments Act which was put into effect in 2009 (Attachment 33).

Senator Meg Burton Cahill, sponsor, expressed appreciation for the bipartisan work on this bill. She offered to answer questions.

Vice-Chairman Ash announced the names of those who signed up in support of SB1232 but did not speak:

Greg Stanton, Director of Legislative Affairs, Attorney General's Office

Peri Jude Radecic, Director of Public Advocacy, Arizona Center for Disability Law

David Carey, Arizona Bridge to Independent Living

Melanie Pate, Chief Counsel, Arizona Civil Rights Division, Arizona Attorney General's Office

Jay Dashefsky, disabled individual, representing self

Donna Kruck, Director of Advocacy Programs, Arizona Bridge to Independent Living

Sherri Collins, Executive Director, Arizona Commission for the Deaf and Hard of Hearing

Eva Hamant, representing self

Daniella Yaloz, Community Organizer, Just Vote Arizona Disability Coalition

Erika Jahneke, representing self

Kimberly Phillips, representing self

Donna Powers, representing self

Siobhan McCurdy, National Multiple Sclerosis Society, Arizona Chapter

Bonnie Danowski, Valley Interfaith Project

Question was called on the motion that SB1232 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 34).

SB1062 – sentencing; prior convictions; methamphetamine.. – DO PASS AMENDED S/E S/E: permissible raffles

Vice-Chairman Ash moved that SB1062 do pass.

Vice-Chairman Ash moved that the Driggs three-page strike-everything amendment dated 4/5/10 to SB1062 be adopted (Attachment 35).

Stacy Weltsch, Majority Research Analyst, explained that the strike-everything amendment (Attachment 35) consists of the same language that passed out of this Committee earlier this year in HB2494, permissible raffles; clubs (Attachment 36). The bill allows booster clubs, political clubs and political organizations to conduct raffles as long as specified conditions are met.

Question was called on the motion that the Driggs three-page strike-everything amendment dated 4/5/10 to SB1062 be adopted (Attachment 35). The motion carried.

Vice-Chairman Ash moved that SB1062 as amended do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 37).

SCR1013 – lieutenant governor; secretary of state – DO PASS AMENDED

Vice-Chairman Ash moved that SCR1013 do pass.

Blake Edwards, Majority Intern, stated that SCR1013 renames the Secretary of State as the Lieutenant Governor and directs the Lieutenant Governor to assume the title and duties of the Secretary of State beginning in 2015 (Attachment 38).

Vice-Chairman Ash moved that the Driggs 14-line amendment dated 4/6/10 to SCR1013 be adopted (Attachment 39).

Mr. Edwards advised that the amendment states that candidates for Governor and Lieutenant Governor shall run separately from one another in the primary election but will run together in the general election (Attachment 39). Further, the amendment states that a vote for the Governor in the general election constitutes a vote for the Governor/Lieutenant Governor team.

Question was called on the motion that the Driggs 14-line amendment dated 4/6/10 to SCR1013 be adopted (Attachment 39). The motion carried.

Vice-Chairman Ash moved that SCR1013 as amended do pass.

Michael Haener, Director of Legislative Affairs, Government for Arizona's Second Century, in support of SCR1013, revealed that this bill came out of the O'Connor House Project. He explained that Justice O'Connor brought about 100 community activists together to discuss issues impacting Arizona state government. One of the issues raised relates to the election of a Governor and a Secretary of State from different political parties. This bill allows the Secretary of State to be renamed Lieutenant Governor and after running in separate primaries, allows that the two will run as a ticket for the general election, allowing for better transparency and better transition if and when a Governor decides to leave office for any reason.

Vice-Chairman Ash announced the names of those who signed up in support of SCR1013 but did not speak:

Deb Gullett, Government for Arizona's Second Century

John Wentling, Vice President, representing self
Jason Bagley, Government Affairs Manager, Intel Corporation
Rob Dalager, Government for Arizona's Second Century
Tom Dorn, Lobbyist, East Valley Chambers of Commerce Alliance
Allison Bell, Arizona Chamber of Commerce & Industry
Catherine Mayorga, Vice President, Public Affairs, Tempe Chamber of Commerce
Susan Charlton, Attorney, Government for Arizona's Second Century
Michael Bidwill, President, Arizona Cardinals, Government for Arizona's Second Century
Courtney Gilstrap Levinus, Arizona Multihousing Association
Lisa A. Atkins, Vice President for Public Policy, Greater Phoenix Leadership

Question was called on the motion that SCR1013 as amended do pass. The motion carried by a roll call vote of 7-1-0-0 (Attachment 40).

SCR1043 – clean elections act; repeal(now: clean elections; funds; transfer – ~~DO PASS~~ FAILED

Vice-Chairman Ash moved that SCR1043 do pass.

Blake Edwards, Majority Intern, explained that SCR1043 directs the State Treasurer to transfer all money paid into the Citizens Clean Elections Fund to the Classroom Site Fund (Attachment 41).

Marcus Osborn, Manager of Government and Public Affairs, Arizona Chamber of Commerce & Industry, testified in support of SCR1043. The Chamber believes that it is time for the voters to have the opportunity to vote on whether the Clean Elections program should continue. He said he believes that given the option, voters will choose to have the money given to education rather than to publicly-funded elections.

Todd Lang, Executive Director, Citizens Clean Elections Commission, in opposition to SCR1043, responded to concerns raised by Mr. Osborne. He enumerated reasons for voting against this legislation. He maintained that voters like Clean Elections. Two-thirds of the candidates used Clean Elections money in the last election and half of the candidates are using it this time despite all of the litigation. In addition, voters get a choice. He pointed out that Clean Elections is revenue positive to the state and maintained that Arizona is not harmed by Clean Elections. He opined that Clean Elections promotes democracy; more candidates, more contact with voters, more choices, more speech, and it ultimately lets the voters decide which candidate they want. He urged Members to vote against this legislation.

Chairman Driggs announced the names of those who signed up in support of SCR1043 but did not speak:

Deb Gullett, Government for Arizona's Second Century
Susan Charlton, attorney, Government for Arizona's Second Century
Jason Bagley, Government Affairs Manager, Intel Corporation
Rob Dalager, Government for Arizona's Second Century
Allison Bell, Arizona Chamber of Commerce & Industry
Beth Straley, 40 Days For Life campaign administrator, representing self
James Hallgren, Assistant Prayer Coordinator, 40 Days for Life, representing self

Michael Bidwill, President, Arizona Cardinals, Government for Arizona's Second Century
Lisa A. Atkins, Vice President for Public Policy, Greater Phoenix Leadership
Courtney Gilstrap Levinus, Arizona Multihousing Association
Michael Haener, Director of Legislative Affairs, Government for Arizona's Second Century
Ron Brown, representing self
Doug Pruitt, representing self
Larry Lazarus, representing self
Rich Boals, representing self

Chairman Driggs announced the names of those who signed up in opposition to SCR1043 but did not speak:

Bart Turner, President, Clean Elections Institute
Renz Jennings, representing self
Eric Ehst, National Organization for Women
Linda Brown, Arizona Advocacy Network
Theresa Ulmer, Consultant, Arizona Clean Elections Commission
Mike Williams, Arizona Clean Elections Commission
Gini McGirr, Legislative Chair, League of Women Voters of Arizona
Greg Stanton, Director of Legislative Affairs, Attorney General's Office
Lydia Guzman, Chairman, representing self
Rebekah Friend, Lobbyist, Arizona AFL-CIO
Molly McGovern, SEIU Arizona
Barbara Klein, League of Women Voters of Arizona
Dr. Bonnie Saunders, President, League of Women Voters of Arizona
Jayne Polizzi, representing self
Jane Pauk, RN, representing self
Marge Mead, citizen, representing self
Judy Whitehouse, representing self
Timothy Schmaltz, Coordinator, representing self
Dana Kennedy, Executive Director, representing self
Robert Mings, representing self
George Pauk, MD, representing self
Randy Parraz, Consultant, representing self
Donna Kruck, Director of Advocacy Programs, representing self

Chairman Driggs announced the names of those who signed up as neutral on SCR1043 but did not speak:

John Wentling, Vice President, representing self

Question was called on the motion that SCR1043 as amended to pass. The motion failed by a roll call vote of 4-4-0-0 (Attachment 42).

Without objection, the meeting adjourned at 1:19 p.m.

Joanne Bell, 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>)