

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – Second Regular Session

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, January 12, 2012
House Hearing Room 4 -- 10:00 a.m.

Chairman Farnsworth called the meeting to order at 10:00 a.m. and attendance was noted by the secretary.

Members Present

Mr. Ash	Mr. Hale	Mr. Vogt
Mr. Chabin	Mr. Harper	Mr. Smith D, Vice-Chairman
Mrs. Goodale	Mrs. Tovar	Mr. Farnsworth, Chairman

Members Absent

None

Committee Action

HB2018 - DP (8-1-0-0)	HB2034 - DPA (7-2-0-0)
HB2027 - HELD	

INTRODUCTION OF STAFF:

Chairman Farnsworth asked staff to introduce themselves:

- Magdalena Jorquez, Majority Research Analyst
- Rhonda Barnes, Democratic General Counsel/Policy Advisor
- MJ Bildner, Majority Assistant Research Analyst
- Yijee Jeong, Majority Intern
- Nathan Wade, Democratic Legal Intern
- Joanne Bell, Committee Secretary
- Rose Estes, Page
- Jessica Sornsin, Page
- Abby Selvey (in training for Committee Secretary)

CONSIDERATION OF BILLS:

HB2027 - presidential ballot; president; vice-president; order - HELD

Chairman Farnsworth announced that HB2027 will be held.

HB2018 - missing child; reporting; offense - DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that HB2018 establishes a duty to report a child missing if the child is less than six years old and has been missing for 24 hours (Attachment 1). The bill classifies the violation as a Class 5 felony.

Mr. Ash asked whether any other statutes cover this kind of conduct. Ms. Jorquez replied that current statutes cover neglect or abuse of a child but are silent on missing children and the duty to report.

In reply to Mr. Chabin, Ms. Jorquez explained that a Class 5 felony penalty carries a 1.5 year presumptive term. Mr. Chabin asked about judicial discretion. Ms. Jorquez related that there is a .75 year to a maximum of 2 years and does not include the mitigating and aggravating circumstances; however, when it is the defendant's first offense and considered nondangerous, the person would be probation-eligible.

Mr. Hale queried the penalty for fraudulent reporting. Ms. Jorquez advised that there are statutes on the books relating to fraudulent reporting.

Representative Michelle Ugenti, sponsor, stated that current statute does not address the issue of reporting a missing child. The proposed legislation is about protecting young children and gives prosecutors another tool to target offenders. She maintained that the absolute minimum requirement for a parent or legal guardian is to give a child the best possible care and protection and to know where the child is at all times. She asserted that it is inexcusable for a parent not to report a missing child within a reasonable time period. She said she believes this legislation will be a valuable aid to law enforcement to help find a missing child.

Mr. Chabin commented that this is a good and well-crafted bill. He noted that the bill targets children up to the age of six and wondered whether parents of children who are seven to ten years of age have the same obligation. Representative Ugenti explained that she wants to focus on the very vulnerable population and had to draw a line, and she thought six and under was a reasonable age. Mr. Chabin asked whether the sponsor would be open to an amendment to consider children ten years old and younger because he believes they are vulnerable as well. Representative Ugenti replied in the negative. She said that in order for this bill to have the best chance to pass, the proposed language will be most palatable to most people.

Chairman Farnsworth concurred with Representative Ugenti's comments. He said he is grateful that the bill does not cast too broad a net. He believes the age limit is reasonable and pointed out that children under the age of seven cannot communicate like older children.

Mr. Ash asked how many cases this applies to. He wondered whether this has occurred other than in the Caylee Anthony case in Florida and the Jhessye Shockley case in Glendale. Representative Ugenti answered that this situation is not rampant but happens often enough to warrant such legislation. She related that the County Attorney believes this will be a valuable tool.

Mr. Ash asked whether the sponsor has spoken to any defense attorneys on how the bill is drafted. Representative Ugenti replied in the negative. Mr. Ash expressed concern with the

language. It appears that there is no criminal intent language implied in the bill and therefore is a liability crime if it happens. Representative Ugenti pointed out the provision in the bill that says “who knows or has reason to know.”

Chairman Farnsworth commented that he does not believe this is a strict liability case. He said the bill creates a duty to act and requires that the person had knowledge that the child is missing. Mr. Ash stated that other statutes cover this and is unnecessary. He referred to A.R.S. §13.3620.

Vice-Chairman Smith said he has concerns about the Class 5 felony charge and asked why the bill carries such a harsh sentence for a first offense. Representative Ugenti reiterated that protecting children is a fundamental responsibility of a parent. If a parent has knowledge that the child is missing and does nothing for over 24 hours, the child’s safety is compromised and she said she feels the penalty is appropriate.

Discussion ensued on the penalty of the offense.

In response to Mr. Chabin, Ms. Jorquez advised that a Class 6 felony for a nondangerous offense would be a presumptive one-year sentence, with mitigating and aggravating ranges. With mitigating circumstances, the range is .33 years and the range for aggravating circumstances is two years.

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney’s Office, expressed support of HB2018.

In response to Mr. Hale’s query, Ms. Baker advised that there is no other statute on the books that covers failure to report a missing child beyond the age of six.

Referring to Mr. Ash’s citation of A.R.S. §13.3620, Ms. Baker explained that statute relates to child abuse but does not cover missing children, so she does not believe that section of law encompasses this specific situation. Mr. Ash said he was looking at the language in that section that covers neglect, not abuse.

Chairman Farnsworth noted that the neglect would have to be intentional, so he is not sure whether it falls within the scope of that statute.

Vice-Chairman Smith again questioned the provision that provides for a Class 5 felony and asked whether that penalty is proper for this situation. Ms. Baker replied in the affirmative.

In reply to Mr. Chabin, Ms. Baker stated that a Class 1 misdemeanor carries a penalty of a maximum of six months in jail and a maximum fine of \$2,500. Mr. Ash asked Ms. Baker if the County Attorney’s Office would object to changing the offense to carry a Class 1 misdemeanor. Ms. Baker replied that she does not believe the County Attorney’s Office would object; however, she does not believe a Class 1 misdemeanor penalty reflects the true seriousness of the situation. Mr. Chabin commented that the County Attorney has been very open to concerns about imprisoning people who suffer from mental illness, drug addition or alcoholism, and he mentioned that there are other approaches to these situations. He expressed concern about the language which casts a wide net. He said he believes the bill could be better if the language was modified somewhat because he believes this law may be applied far more to people he described

than to rational people. He asked for the County Attorney's openness to consider these concerns and said he hopes that a rigid position will not be taken.

Representative Ugenti said she has strong feelings about the bill. At this time, she does not want to make changes; however, she would be open to discussion on the penalty.

Vice-Chairman Smith moved that HB2018 do pass.

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2018 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith announced the names of those who signed up in support of HB2018 but did not speak:

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council
Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office

Question was called on the motion that HB2018 do pass. The motion carried by a roll call vote of 8-1-0-0 (Attachment 2).

HB2034 - hookah use; minors; prohibition - DO PASS AMENDED

MJ Bildner, Assistant Majority Research Analyst, advised that HB2034 expands the list of items that are prohibited from being sold to or possessed by a minor to include a hookah or water pipe (Attachment 3). The bill classifies the violation as a petty offense and subjects a minor who possesses or buys the instrument or paraphernalia to a fine of not less than \$100 or thirty hours of community supervision. Additionally, the bill contains session law that requires the Department of Health Services (DHS) to adopt rules to protect the health and safety of hookah lounge patrons and employees by December 31, 2012.

Mr. Bildner explained that the Farnsworth four-line amendment dated 1/11/12 makes technical and conforming changes (Attachment 4).

Representative Kimberly Yee, sponsor, stated that the issue of hookahs came up during her campaign. A constituent expressed concern about teenagers visiting hookah cafes after school. She said that her research shows an increased use of hookahs by teenagers. She advised that the tobacco used in hookahs contains the same carcinogens found in cigarette smoke. A number of studies indicate that a typical hour of hookah inhalation is equal to smoking 100 to 200 cigarettes and that smokers absorb a higher concentration of toxins than are found in cigarette smoke, linked to cancer and other diseases. She stated that this is a significant health concern that needs to be looked at. She asked Members for their support of HB2034.

Mr. Harper commented that it seems like hookah smoking is a cultural device.

Mr. Chabin asked whether these are the same violations for juveniles smoking tobacco. Representative Yee replied in the affirmative.

Mr. Vogt said he has no problem with preventing juveniles from smoking but he has a problem with criminalizing the pipe. He recounted that some servicemen who served in the Middle East purchased pipes. If a pipe is given to a family member, both parties would be guilty of a criminal act under this legislation. He opined that the pipe is not the problem; the tobacco is the problem. Representative Yee said she will look into that.

Mr. Chabin said that he believes pipes are often used for purposes other than tobacco, such as drugs, and the use of these devices should be prohibited for juveniles.

Mr. Hale opined that the language is too broad. He advised that Native Americans use pipes in their ceremonies, and they are usually given to minors by elders because they are part of the healing and prayer processes. He noted that both the elder giving the pipe and the minor using the pipe would be in violation of the law under this proposal. Representative Yee agreed. Mr. Hale asked the sponsor if she would be amenable to an exception for ceremonial or religious purposes. Representative Yee commented that when teens get addicted, statistics show they often continue this behavior in adulthood. She said she will look at how other states have addressed this issue.

Christian Stumpf, Regional Director of Government Relations, American Lung Association in Arizona, testified in support of HB2034. He said he is supportive of amending the language to allow use for ceremonial purposes.

Mr. Harper asked whether there are other uses than tobacco. He said it seems like this legislation targets a device that is common in other cultures. Mr. Stumpf said the Association researched only tobacco.

Vice-Chairman Smith moved that HB2034 do pass.

Vice-Chairman Smith moved that the Farnsworth four-line amendment dated 1/11/12 be adopted (Attachment 4). The motion carried.

Vice-Chairman Smith moved that HB2034 as amended do pass.

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2034 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith announced the names of those who signed up in support of HB2034 but did not speak:

Laura Hahn, Executive Vice President, Arizona Academy of Family Physicians

Susan Cannata, Attorney, Arizona Academy of Family Physicians

Amanda Weaver, Executive Director, Arizona Osteopathic Medical Association

David Landrith, Vice President of Policy & Political Affairs, Arizona Medical Association

Kevin DeMenna, American Cancer Society, Cancer Action Network

Ryan DeMenna, Associate, American Cancer Society, Cancer Action Network

Brian Hummell, Arizona Director Government Relations, American Cancer Society, Cancer Action Network

Mike Gardner, HBI International

Daniel Seiden, Special Assistant for Legislation and Policy, Maricopa County Attorney's Office
Art Harding, Legislative Affairs Director, Arizona Attorney General's Office
Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office
Nicole Olmstead, Government Relations Director, American Heart Association

Question was called on the motion that HB2034 as amended do pass. The motion carried by a roll call vote of 7-2-0-0 (Attachment 5).

Without objection, the meeting adjourned at 11:20 a.m.

Joanne Bell, Committee Secretary
January 13, 2012

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