

ARIZONA HOUSE OF REPRESENTATIVES  
Fiftieth Legislature – Second Regular Session

**COMMITTEE ON JUDICIARY**

Minutes of Meeting  
Thursday, February 23, 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**

SB1087 - HELD	SB1210 - DP (8-0-0-1)
SB1142 - DP (9-0-0-0)	SB1213 - DP (9-0-0-0)
SB1147 - DP (8-0-0-1)	

**CONSIDERATION OF BILLS:**

**SB1087 - firearms; state preemption - HELD**

Chairman Farnsworth announced that SB1087 will be held.

**SB1210 - right of intervention; initiative; referendum - DO PASS**

Magdalena Jorquez, Majority Research Analyst, reviewed the provisions of SB1210 (Attachment 1):

- Confers the following individuals an unconditional right to intervene in any proceeding in which the constitutionality, legality or application of a law which was enacted is at issue:
  - If the law was enacted through an initiative, the official initiative proponent, whether an individual, a group of individuals or an organization that wishes to defend the law.
  - If the law was enacted through a referendum, the Legislator who was the first prime sponsor and wishes to defend the law.

- Asserts that the only defense that may be raised as a motion to intervene as of right is that the proposed intervenor does not have a good faith intention to defend the law and allows any party or proposed intervenor may raise this defense.
- Specifies that a party who intervenes to defend a law is not liable for attorney fees or costs of any party who is challenging the constitutionality, legality or applicability of the law.

Mr. Harper wondered whether former Legislators are included or would the Legislator have to currently be in the Legislature to defend the law on which they are the prime sponsor. Ms. Jorquez answered that there is nothing in the bill that limits whether they are currently serving. Chairman Farnsworth noted that the bill is silent on that issue.

Mr. Hale asked whether there already is a right to intervene in these types of situations by anyone. Ms. Jorquez related that Rule 24 of the Arizona Rules of Civil Procedure confers the right to intervene. Mr. Hale queried whether this adds to the right to intervene. Chairman Farnsworth said he believes there is the right but it is limited now; this expands the right to intervene.

Senator Andy Biggs, sponsor, explained the need for SB1210. He referred to California's highly politically-charged controversial Proposition 8. Although approved by the voters, the court declared the Proposition unconstitutional. The proponents of that Proposition were not allowed to intervene in the lawsuit that ensued for almost three years, and they ultimately were too late to prevail. He said that some referrals and voter initiatives are controversial and are litigated, and the courts make the decision on intervention. He said he believes that the proponents should have the right to intervene because they have a vested interest in the outcome of the litigation. This legislation ensures that proponents have that right so the courts will not bar that right to intervene.

In response to Mr. Harper's question, Senator Biggs advised that the only condition to a Legislator's right to intervene is that the Legislator was the prime sponsor, regardless of whether he is a sitting or past Legislator.

Vice-Chairman Smith announced the names of those who signed up in support of SB1210 but did not speak:

Deborah Sheasby, Legal Counsel, Center for Arizona Policy

Vice-Chairman Smith announced the names of those who signed up in opposition to SB1210 but did not speak:

Seth Apfel, representing self

**Vice-Chairman Smith moved that SB1210 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 2).**

### **SB1213 - transition program; qualifications - DO PASS**

Yijee Jeong, Majority Intern, stated that SB1213 is an emergency measure that prohibits an inmate convicted of a domestic violence offense from eligibility in the Arizona Department of Corrections (ADC) transition program (Attachment 3).

Senator Andy Biggs, sponsor, stated that the transition program is currently functioning through the Department. It is a 90-day early release program; the goal is to deal with drug and alcohol addiction issues. In discussing the program with ADC staff and with victims, it was discovered that one of the exclusions that was erroneously left out of the qualifications for the transition program is that the inmate cannot have had a domestic violence offense, including harassment and violation of orders of protection. He advised that these types of offenses have an extreme emotional, financial and physical toll on the victim and sometimes do not translate well to the transition program which is trying to deal with alcohol and drug abuse issues. He pointed out that domestic violence victims often go into hiding and try to rebuild their lives. One of the requirements of the transition program is notification to the victim, and if the victim is trying to hide, notification will not be made.

Mr. Chabin asked how the individuals are selected to participate in the transition program. Senator Biggs said he does not know. Mr. Chabin asked whether the intent of the program is to have the inmate become a functioning citizen without likelihood of re-offending. Senator Biggs said he believes that is the intent of the program. Mr. Chabin questioned the exclusion of the domestic violence offender if the person is not likely to re-offend and becomes a good citizen. Senator Biggs asserted that domestic violence is a serious and dangerous offense, and that is why it is important to exclude those offenders. Mr. Chabin noted that the inmate will be released from prison in 90 days, whether or not he attends the program.

Mr. Ash stated his understanding that release is discretionary with the Director of the Department of Corrections. Senator Biggs concurred that the Director makes the final determination. Mr. Ash commented that if the inmate does not qualify for the three-month program which includes counseling, anger management, drug, alcohol treatment, etc., it seems counter to the objectives of both the victims and society. He said he prefers that everyone sentenced to prison ultimately has counseling and treatment.

To that point, Mrs. Goodale said she believes a lot of domestic violence issues are not related to anger but to power and control. Mr. Ash reiterated his belief that everyone needs that transition period. Senator Biggs pointed out that programs currently exist for inmates who are incarcerated in ADC. He noted that not everyone will be released without community supervision.

Jennifer Bowser, Arizona Department of Corrections (ADC), in favor of SB1213, stated that counseling programs are available to inmates. The programs are based on the type of crime committed and the individual's needs.

Mr. Ash queried whether some of the inmates will be released with no community supervision. Ms. Bowser replied that it is possible but is not addressed by this bill.

Leah Pettyjohn, representing self, testified in support of SB1213. She related that she is a victim of domestic violence and told Members about her 10 years of abuse. She said that a domestic violence abuser is a manipulator and, while not a threat to everyone, is a threat to the victim every day. She said that domestic violence is a violent crime and every victim should have the right to be safe.

Mr. Ash expressed concern about supervision. He said this seems like the opportunity to have more control over these inmates is being lost by not allowing them to go into these programs.

Vice-Chairman Smith announced the names of those who signed up in support of SB1213 but did not speak:

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

Lindsay Simmons, Systems Advocacy Coordinator, Arizona Coalition Against Domestic Violence

Vice-Chairman Smith announced the names of those who signed up in opposition to SB1213 but did not speak:

Seth Apfel, representing self

**Vice-Chairman Smith moved that SB1213 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 4).**

### **SB1147 - sexually violent persons; definition - DO PASS**

MJ Bildner, Majority Assistant Research Analyst, said that SB1147 expands the definition of *sexually violent offense* to include attempts to commit a sexually-violent offense in another jurisdiction (Attachment 5).

Mr. Harper asked whether the person had to be convicted in another jurisdiction or just accused. Mr. Bildner said his understanding is that there had to be intent.

Senator Andy Driggs, sponsor, stated that the intent of this legislation is to expand the definition of sexually violent offense so that a prior conviction in another state will be treated the same as a prior conviction in Arizona, so everyone will be treated fairly.

Art Harding, Legislative Affairs Director, Arizona Attorney General's Office, in support of SB1147, testified that solicitation is added to out-of-state convictions.

Vice-Chairman Smith announced the names of those who signed up in support of SB1147 but did not speak:

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council

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

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

**Vice-Chairman Smith moved that SB1147 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 6).**

### **SB1142 - jurors; Arizona lengthy trial fund - DO PASS**

Magdalena Jorquez, Majority Research Analyst, explained that SB1142 modifies the days in which a juror who serves more than five days begins to be compensated by the Arizona Lengthy Trial Fund from the fourth to the first day of jury service (Attachment 7).

Senator Andy Driggs, sponsor, related that the Arizona Lengthy Trial Fund was established in 2003 to compensate people for their time when serving on lengthy jury trials. Currently, when a

trial lasts more than six days, compensation starts at the fourth day. This proposal will compensate jurors from the first day if the trial lasts more than six days. He said this is a small change in tort reform; but, it is important to have qualified jurors to make these tough decisions.

Chairman Farnsworth questioned the daily compensation rate. Senator Driggs said it varies depending on each juror's earning capacity. The minimum is \$40 a day; the maximum is \$300 a day. The person is required to document his daily salary to the courts. He said this will not impact the General Fund. Revenue to the Arizona Lengthy Trial Fund in 2011 was \$1,191,000, of which \$600,000 was used. Chairman Farnsworth asked whether there is a provision in case the Fund has no money but there is a statutory mandate that the payments will be made. Senator Driggs said he assumes that is already in statute. Chairman Farnsworth said he was advised there is a provision that reads "subject to the availability of monies."

Gretchen Conger, Director of Government Relations, Arizona Chamber of Commerce and Industry, spoke in favor of SB1142. The Chamber believes this effort to improve Arizona's jury pool deserves broad support.

Vice-Chairman Smith announced the names of those who signed up in support of SB1142 but did not speak:

Jerry Landau, Director of Government Affairs, Arizona Judicial Council, Arizona Supreme Court

**Vice-Chairman Smith moved that SB1142 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 8).**

Without objection, the meeting adjourned at 11:13 a.m.

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Joanne Bell, Committee Secretary  
March 20, 2012

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