

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature –Second Regular Session

COMMITTEE ON HEALTH AND HUMAN SERVICES

Minutes of Meeting
Wednesday, March 14, 2012
House Hearing Room 4 -- 9:00 a.m.

Chairman Ash called the meeting to order at 9:11 a.m. and roll call was taken by the secretary.

Members Present

Mrs. Brophy McGee
Mrs. Gonzales
Mr. Heinz

Ms. Hobbs
Mrs. Judd
Mr. Pierce

Mrs. Yee
Mrs. Carter, Vice-Chairman
Mr. Ash, Chairman

Members Absent

None

Committee Action

SB1010 - DP (6-0-0-3)

SB1035 - DP (7-1-0-1)

SB1127 - DPA S/E (8-0-0-1)

SB1153 - HELD AT REQUEST OF SPONSOR

SB1177 - HELD

SB1189 - HELD

SB1491 - DPA (6-0-0-3)

Chairman Ash welcomed 12 medical residents and students from the Arizona Academy of Family Physicians visiting the Capitol for Emerging Leader Day.

CONSIDERATION OF BILLS

SB1189 - health professionals; state regulation; exception - HELD

Chairman Ash announced that SB1189 will be held.

SB1153 - capital outlay stabilization fund; report(now: hearing aid dispenser; licensure) - HELD AT REQUEST OF SPONSOR

Chairman Ash announced that SB1153 will be held at the request of the sponsor.

SB1177 - child support; factors(now: DES contractors; licensees; volunteers; fingerprinting) - HELD

Chairman Ash announced that SB1177 will be held.

SB1035 - schools; athletics; heat safety - DO PASS

Vice-Chairman Carter moved that SB1035 do pass.

Joe DeMenna, Majority Assistant Research Analyst, explained that SB1035 requires school boards to implement policies and procedures related to heat safety for students participating in district-sponsored athletic activities (Attachment 1).

Senator Linda Gray, sponsor, indicated that she sponsored this bill at the request of a constituent with four sons who are very involved in athletics and go out onto the field in August wearing heavy gear. In Arizona, especially, there is a problem with the heat index; this bill attempts to help parents, teachers and students understand what can happen in situations involving heat stroke or dehydration. She said she worked with the Arizona Interscholastic Association (AIA) which was planning on including this in their curriculum. She noted that the bill also applies to charter schools due to their involvement with the AIA.

Chairman Ash announced the names of those who signed up in support of SB1035 but did not speak:

Barry Aarons, Lobbyist, Arizona Interscholastic Association

Mr. Pierce asked if incidents have occurred relating to the heat. Senator Gray responded that, fortunately, there have not been any deaths in Arizona, but students have been taken to the hospital or their parents were called because of heat stroke and dehydration. It is very easy to become dehydrated without being aware. It can cause memory loss, which she experienced in Boulder, Colorado during the summer. Heat strokes can cause serious problems and there have been related deaths in other states.

Chairman Ash said he was under the impression that there were some deaths in Arizona on the athletic field from heat stroke. Senator Gray replied that she cannot remember; the parent who could not attend probably has those statistics.

Vice-Chairman Carter asked how this will be implemented statewide. Senator Gray indicated that Deb Gullett is prepared to speak about how concussion training was implemented, which will be the process for this bill.

Deb Gullett, Arizona Cardinals Football Club, in support of SB1035, advised that her daughter registered for her junior year and the registration packet contained a form from the AIA explaining the dangers of concussion. If her daughter decides to become involved in athletics, she will have to sign the form. Anybody who competes under the auspices of the AIA will be provided background information on concussions, which will also be done on heat stroke, the heat index and the dangers of dehydration. Students must sign a form each year, as well as the coaches and parents.

Vice-Chairman Carter announced the names of those who signed up as neutral on SB1035 but did not speak:

Janice Palmer, Governmental Relations Analyst, Arizona School Boards Association
John Parsons, Arizona Athletic Trainers' Association

Vice-Chairman Carter announced the names of those who signed up in support of SB1035 but did not speak:

Barry Aarons, Lobbyist, Arizona Interscholastic Association
Elizabeth Hatch, Mesa Public Schools
Laura Hahn, Executive Vice President, Arizona Academy of Family Physicians
Pat VanMaanen, representing self
Matt Salmon, representing self

Question was called on the motion that SB1035 do pass. The motion carried by a roll call vote of 7-1-0-1 (Attachment 2).

SB1127 - child custody; factors - DO PASS AMENDED S/E
S/E: parenting time; domestic relations; decision-making

Vice-Chairman Carter moved that SB1127 do pass.

Vice-Chairman Carter moved that the Ash 28-page strike-everything amendment to SB1127 dated 3/12/12 (Attachment 3) be adopted.

Vice-Chairman Carter moved that the Hobbs six-line amendment to the strike-everything amendment to SB1127 dated 3/13/12 (Attachment 4) be adopted.

Bethan Jones, Majority Intern, explained that the strike-everything amendment to SB1127 (Attachment 3) modifies and rewrites the statutory language relating to child custody and visitation (Attachment 5). The amendment to the strike-everything amendment to SB1127 removes as a factor the court must consider when determining the child's best interest whether a false allegation of domestic violence or child abuse has been made by one parent against the other in order to cause an unnecessary delay, increase the cost of litigation or to persuade the court to give custody preference to one parent, and instead, specifies that the court must consider whether one parent intentionally misled the court to cause an unnecessary delay, increase the cost of litigation or to persuade the court to give custody preference to that parent (Attachment 4).

Senator Linda Gray, sponsor, stated that she worked with Senator Sylvia Allen and members of the Domestic Relations Committee (DRC) on this legislation. A divorce is one of the most difficult situations anyone can go through, especially if children are involved and their time has to be divided between parents and grandparents. The DRC determined that what is most important is what is in the best interest of the child; it is important for children to have parenting time with both parents, except in certain situations that include domestic violence or child abuse.

She indicated that she supports the Hobbs amendment to the strike-everything amendment to SB1127.

Mrs. Judd asked if this new language will immediately take effect in every child custody case. Senator Gray speculated that a delayed effective date may be appropriate to give the courts time to adjust and train personnel.

William Fabricius, Associate Professor of Psychology, Arizona State University, representing self, in favor of the strike-everything amendment to SB1127, conveyed that he conducts research in the area of divorce, which is published widely, and he comments on research and legislative processes nationally and internationally. This bill is from subcommittees of the DRC in which the members worked with every stakeholder in the state for an immense number of hours during the last two years on reform of the child custody law. A.R.S. §§ 25-403, 25-403.01 and 25-403.02 deal with reform to the idea of the child's best interest and procedures that the courts follow in achieving that, which was universally supported by the stakeholders. He cited research findings that support the language in those three sections.

Mr. Pierce referred to A.R.S. § 25-403.02, subsection D, which states that a parent not granted sole or joint legal decision-making is entitled to reasonable parenting time unless the court finds, after a hearing, that it would seriously endanger the child's physical, mental, moral or emotional health. He questioned why it is necessary to include the word *seriously* because a judge could determine that parenting time would endanger the child's physical, mental, moral or emotional health, but not *seriously*. He suggested that it be removed, opining that *endanger* should be adequate.

Mr. Fabricius replied that is a good point. The court needs to consider that it is serious to reduce parenting time, which needs to be balanced by another serious consideration that the child may be exposed to other types of issues. Discussion followed.

Amy Love, Legislative Liaison, Administrative Office of the Courts, Arizona Supreme Court, neutral on the strike-everything amendment to SB1127, agreed that the bill was developed by the DRC and simplifies and reorders much of A.R.S. title 25. She pointed out that A.R.S. § 25-415.03 references a court of competent jurisdiction entering or approving an order concerning a child's custody unless there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health, so that is an existing legal standard that is applied. It also appears in A.R.S. § 25-411, modification of custody decree; affidavit; contents; military families.

Mr. Pierce stated he can see why a higher standard may be warranted in that circumstance. He does not oppose the bill, but he fears there may be unintended consequences by including *seriously*.

Senator Gray stated she would be glad to take that out.

Chairman Ash recommended that all other parts of the statute containing the word *seriously* be brought into conformity. He stated that divorce is harmful to the child, generally speaking, so there may be a balancing of the relative harm, which Mr. Pierce and Senator Gray can work out.

Referring to A.R.S. § 25-403, subsection B, Chairman Ash noted that it says the court shall not prefer a parent's proposed plan because of the parent or child's sex. A.R.S. § 25-403.01, subsection A, says the court shall consider all factors relevant to the child's physical and emotional well-being, including the items outlined. He asked, in relation to the amount of time a child spends with the father, if there are times when the child's gender should be considered in conjunction with the parent's gender, and if the two sections are mutually exclusive. Professor Fabricius stated that research does not show that parenting time with the father is more important for sons or daughters. The language about not preferring on the basis of the child or parent's sex is close to existing language in statute.

Chairman Ash asked, if the court is to consider all factors, are there times in the development of the child when it is more important for the child to have time with one specific gender. He noted that he prefers the term *gender* as opposed to *sex*. Mr. Fabricius said gender effects are not seen in terms of parenting time with fathers. He assumes the court will use its own opinions in that case. He said he believes all other sections of current statute use *sex* rather than *gender*.

Thomas Alongi, Senior Staff Attorney, Community Legal Services; Adjunct Professor of Law, Phoenix Law School, indicated that he is opposed to the strike-everything amendment to SB1127 in its current form without the Hobbs six-line amendment, but only because of the language that appears in the best interest factors in A.R.S. § 25-403.01, which will be removed if the Hobbs amendment is adopted. He has no problem with maximizing parenting time between parents or changing the phrase *child custody and visitation* to *legal decision-making and parenting time* since the word *visitation* has not been used for many years, except for grandparents or non-parents.

Ms. Hobbs stated that false allegations of domestic violence should not be singled out as the only factor that may delay custody hearings or harm each side in the decision-making; in fact, research shows that false allegations are not widespread in these circumstances. Specifically singling out false allegations of domestic violence in the statute will have a chilling effect on people involved in domestic violence reporting that information to family court judges who need the information in order to make the best decision for the child. The purpose of the Hobbs amendment is to remove false allegations as a consideration in determining what is in the best interest of the child.

Brent Miller, representing self, in support of the strike-everything amendment to SB1127, stated that he opposes the Hobbs amendment. The intent of the proposed language in the strike-everything amendment to SB1127 is to ensure that if anyone makes devastating false allegations in regard to child abuse, domestic violence, etc., it is specifically dealt with because it adversely and dramatically affects the outcome of a child's well-being. The Hobbs amendment does not cover that, but broadens specific language for a specific goal and dilutes the purpose of the strike-everything amendment.

Ms. Hobbs asked how the courts should address such allegations because it becomes a "he said she said"-type situation. Mr. Miller replied that rules of evidence and rules of procedure in the practice will determine if an allegation is substantiated or false, so it is not for specific innuendos. When someone makes a false allegation for the sole purpose of obtaining custody or

persuading parenting time, parameters are needed, and the Hobbs amendment dilutes those specific areas.

Ms. Hobbs remarked that research does not back up the claims of widespread occurrence of false allegations in these cases. Mr. Miller disagreed, citing the Centers for Disease Control and a study from England showing that false allegations can occur in up to 30 to 40 percent of cases. As a paralegal for 11 years, he said he sees false allegations and misleading information in 20 to 60 percent of family cases.

Terry Decker, representing self, in support of the strike-everything amendment to SB1127, said he is a child advocate who has had a lot of experience with various organizations in family law cases. In regard to the frequency of false allegations, he noted that a Keller report analyzed data in many ways, but two percent of the populace was involved in domestic violence. The analyzed populace was Pima County, and up to 95 percent professed there was domestic violence. In his case, a false allegation of domestic violence caused his son's medical evaluation to be changed and affected in such a way that his son was denied medical care. It took five years to get the court to order what should have been done in the first place. A search of the Internet for false allegations will show a host of law firms whose centerpiece is false allegations. He has also seen case after case where false allegations were involved. He asked the Committee not to pass the Hobbs amendment.

Mike Espinoza, representing self, in support of the strike-everything amendment to SB1127, stated that he worked with the DRC and the original intent was to be narrowly tailored to things that do happen. False allegations happen on a consistent basis in orders of protection and similar matters. Any false allegations concerning child custody should be considered in custody hearings.

Ms. Hobbs noted that the amendment broadens the language to any parent misleading the court.

Mr. Espinoza said with that language, it can affect financial matters, which have nothing to do with custody. The goal of the strike-everything amendment is to be narrowly tailored to deter false allegations of domestic violence, mental illness and alcohol and drug abuse when determining custody.

Mr. Alongi returned to the podium and stated that the strike-everything amendment to SB1127 already has a litigation misconduct section on page 24 in A.R.S. § 25-415; the language was drafted in the DRC Substantive Law/Court Procedures Workgroup in response to concerns about any manner of false allegations, false denials or any other claim about a parent's fitness, and not only domestic violence. He urged the Members to adopt the Hobbs amendment which is bilateral, fair and accommodates all manner of allegations and not just domestic violence.

Lindsay Simmons, Systems Advocacy Coordinator, Arizona Coalition Against Domestic Violence, stated that if the Hobbs amendment passes, the Coalition is neutral on the legislation; if it does not pass, the Coalition is opposed. She indicated that research shows false allegations of abuse are not more common in divorce or custody cases and that claims of domestic violence are highly reliable. The Coalition supports custody with both parents if it is healthy, safe and appropriate for the child, but the original language in the strike-everything amendment to

SB1127 discourages victims of domestic violence from bringing forth their experience for a judge to evaluate. The Hobbs amendment is fair, balanced and specifically directs the court to consider the intent behind the claim.

Names of persons who signed up in support of the strike-everything amendment to SB1127 but did not speak:

Yvonne Taylor, representing self

Danny Lans, representing self

Rhonda Mello, representing self

Names of persons who signed up in opposition to the strike-everything amendment to SB1127 but did not speak:

Jami Cornish, representing self

Seth Apfel, representing self

Ellen Katz, Litigation Director, William E. Morris Institute for Justice

Erin Celeste Plumlee, representing self

Joi Serota-Davenport, representing self

Stacey Champion, representing self

Question was called on the motion that the Hobbs six-line amendment to the strike-everything amendment to SB1127 dated 3/13/12 (Attachment 4) be adopted. The motion carried.

Vice-Chairman Carter moved that the Ash 28-page strike-everything amendment to SB1127 dated 3/12/12 (Attachment 3) as amended be adopted. The motion carried.

Vice-Chairman Carter moved that SB1127 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 6).

SB1010 - technical correction; AHCCCS; capitation rates(now: nursing board; executive director; authority - DO PASS

Vice-Chairman Carter moved that SB1010 do pass.

Joe DeMenna, Majority Assistant Research Analyst, explained that SB1010 allows the Arizona State Board of Nursing to delegate authority to the Executive Director to require a licensee, certificate holder or applicant to undergo any combination of mental, physical or psychological examinations, assessments or skills evaluations to determine the person's competence or ability to practice safely (Attachment 7).

Gregory Harris, State Board of Nursing, in favor of SB1010, said this is the third bill from the Auditor General's report involving the Arizona State Board of Nursing. The auditors identified a key issue with the time frames in which the Board processes complaints and other matters. Board statistics show that slightly more than half of the 200 cases per month before the Board involve some degree of drug or other substance abuse. Historically, the Legislature determined that health boards, in particular, need a tool to deal with substance abuse, and one of those is the

ability to issue interim orders. The auditors decided that the Executive Director should have the authority, like the Medical Board, to enter those orders during the eight-week interim of Board meetings, in order to move cases through more quickly. He added that he worked closely with stakeholders on the language.

Chairman Ash announced the names of those who signed up in support of SB1010 but did not speak:

Rory Hays, Lobbyist, Arizona Nurses Association

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

In response to a question, Mr. Harris discussed the difference in due process hearings between the Arizona Medical Board and the Nursing Board.

Senator Nancy Barto, sponsor, remarked that during the sunset hearing for the Board, the Auditor General's Office expressed concern about the wait time for investigating complaints; this bill contains one of the recommendations to address the issue. The Board and Association worked out a thoughtful compromise and she would appreciate the Members' support.

Question was called on the motion that SB1010 do pass. The motion carried by a roll call vote of 6-0-0-3 (Attachment 8).

SB1491 - parental rights; termination; determinations - DO PASS AMENDED

Vice-Chairman Carter moved that SB1491 do pass.

Vice-Chairman Carter moved that the Ash five-line amendment to SB1491 dated 3/12/12 (Attachment 9) be adopted.

Bethan Jones, Majority Intern, explained that SB1491 modifies the age a child must be at the time a dependency petition is filed as it relates to the termination of parental rights and court determinations (Attachment 10). The amendment to SB1491 allows the court to apply the provisions of the bill to a child who is five years of age or older, is removed from the home and is a sibling of a child, if the court finds it is in the best interest of the sibling (Attachment 9).

Angelica Wagner, Legislative Intern, Arizona Judicial Council, Arizona Supreme Court, in support of SB1491, related that in seeking legislation to clarify whether the expedited process for children under age three begins at the time of removal or when the petition was filed, Senator Rick Murphy expressed an interest in increasing the age requirement to five years to widen the net of children placed on an expedited track for permanency. Judges were enthusiastic about the change. The amendment clarifies the authority of the courts to maintain sibling groups as long as doing so is in the best interest of the child.

Chairman Ash announced the names of those who signed up in support of SB1491 but did not speak:

Amy Love, Legislative Intern, Arizona Judicial Council

Question was called on the motion that the Ash five-line amendment to SB1491 dated 3/12/12 (Attachment 9) be adopted. The motion carried.

Vice-Chairman Carter moved that SB1491 as amended do pass. The motion carried by a roll call vote of 6-0-0-3 (Attachment 11).

Chairman Ash thanked people in the audience for attending, the Members for exercising good judgment and, in some cases, restraint in communications, studying the bills and doing a good job, and the staff for their work.

Without objection, the meeting adjourned at 11:04 a.m.

Linda Taylor, Committee Secretary
April 19, 2012

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