

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-first Legislature – First Regular Session

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, January 24, 2013
House Hearing Room 4 -- 10:00 a.m.

Chairman Farnsworth called the meeting to order at 10:03 a.m. and attendance was noted by the secretary.

Members Present

Mr. Allen	Mr. Hale	Mr. Pierce J, Vice-Chairman
Mr. Contreras	Mr. Orr	Mr. Farnsworth, Chairman
Ms. Goodale	Mr. Quezada	

Members Absent

None

Committee Action

HB2070 - DP (8-0-0-0)	HB2327 - DP (8-0-0-0)
HB2326 - DP (6-2-0-0)	HB2386 - DP (8-0-0-0)

INTRODUCTIONS

Members introduced themselves.

Chairman Farnsworth asked staff to introduce themselves:

Magdalena Jorquez, Majority Research Analyst
Aaron Wonders, Majority Assistant Research Analyst
Paige Carr, Majority Intern
Rhonda Barnes, General Counsel, Democratic Staff
Arianne Kerr, Democratic Intern
Joanne Bell, Committee Secretary
William Fry, Page
Molly Tulane, Page

ADOPT COMMITTEE RULES

Magdalena Jorquez, Majority Research Analyst, advised that pursuant to Rule 9C, each Committee is required to adopt and file Rules of Procedure consistent with the rules of the

House. The proposed rules distributed to Members are identical with the House rules with the exception of Rule 7 which requires all substantive amendments to be distributed to each Committee Member by noon on the day before the Committee meeting (Attachment 1).

Mr. Allen asked whether the deadline for distributing strike-everything amendments is two days. Ms. Jorquez replied in the affirmative.

Vice-Chairman Pierce moved that the Committee rules as printed and distributed be adopted (Attachment 1). The motion carried.

Chairman Farnsworth announced that the rules will be filed with the Chief Clerk's Office.

APPOINT COMMITTEE OF REFERENCE

Chairman Farnsworth appointed the following Members to the Committee of Reference:

Representative Pierce, Chairman
Representative Allen
Representative Goodale
Representative Hale
Representative Quezada

CONSIDERATION OF BILLS

HB2070 - community restitution work program credits - DO PASS

Paige Carr, Majority Intern, stated that HB2070 allows a person to participate in a community restitution work program to earn credit toward the payment of any fine, penalty, surcharge or assessment (Attachment 2).

Representative Doug Coleman, sponsor, advised that he was on the Apache Junction City Council for 19 years. The City of Apache Junction has such a community restitution work program that has been operating for about four years. He pointed out that this legislation is permissive. It permits a city, if approved by the City Council, to create a community restitution work program and provides that only individuals incapable of paying the fine are eligible to participate in the program.

James Hazel, Presiding Magistrate, City of Apache Junction, spoke in support of HB2070. He related that many people in the City of Apache Junction are not employed and are part of the criminal justice system. They accrue fines and other obligations through that system. This bill allows another tool to allow these individuals to work off their obligations to the court.

Vice-Chairman Pierce asked the need for the bill since the City of Apache Junction is already doing this. Judge Hazel replied that some mandatory fines are not eligible for community service. This proposal permits community service for all types of offenses.

Mr. Hale queried who is eligible for this program. Judge Hazel advised that Apache Junction has only a misdemeanor court, so the people are misdemeanor offenders.

In response to Mr. Contreras' question on the use of guidelines, Judge Hazel related that the individual is required to fill out a statement showing their financial condition or limited income.

Vice-Chairman Pierce moved that HB2070 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 3).

HB2326 - firearms; records; prohibited acts - DO PASS

Aaron Wonders, Majority Assistant Research Assistant, explained that HB2326 eliminates certain types of identifying information relating to firearms from being required or maintained by a political subdivision (Attachment 4).

Chairman Farnsworth said the purpose of this bill is not to prohibit a doctor from asking questions about the ownership of a firearm but to prohibit them from maintaining a database to be handed over to a governmental entity. He related that when he went to the doctor's office, he was asked whether he owned a firearm. He saw no relevance of gun ownership to the reason why he was at the doctor's office, except for compiling a database. He strongly opposes government infringing on the constitutional right of gun ownership.

Leonard Clark, representing self, testified in opposition to HB2326. He said he is uncomfortable with 14- or 15-year-olds having a weapon without adult supervision. Additionally, he is concerned because these teens are prone to more violence because of video games. He stated that it is not right to take away the power for municipalities to protect themselves. He stressed that cities have a right to protect their citizens as best as they can.

Chairman Farnsworth queried how this prevents cities from protecting citizens. Mr. Clark replied that there is an epidemic of violence going on now and this legislation may prevent cities from protecting their citizens. Chairman Farnsworth explained that the only intent of the bill is to prohibit the collection of the database. Mr. Clark said he has no problem with cities knowing who has a weapon. Discussion ensued on sovereignty of cities and states. Mr. Clark argued that cities have sovereignty while Chairman Farnsworth disagreed.

Vice-Chairman Pierce announced the names of those who signed up in support of HB2323 but did not speak:

John Wentling, Vice Chairman, Arizona Citizens Defense League, Inc.

Dave Kopp, Manager, Arizona Citizens Defense League, Inc.

Gary Christensen, Arizona State Rifle and Pistol Association

Mr. Hale said that perhaps the bill should maintain the database requirement involving federally-licensed firearms dealers. Chairman Farnsworth disagreed; he said he has concerns about maintaining databases on the constitutional right of gun ownership and maintained that the government has no right to dictate whether or not he has a gun.

Vice-Chairman Pierce moved that HB2326 do pass. The motion carried by a roll call vote of 6-2-0-0 (Attachment 5).

HB2327 - dangerous drugs; definition - DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that HB2327 expands the definition of *dangerous drugs* to include specific chemical configurations that typically compose synthetic cannabinoids and bath salts (Attachment 6). It also amends the list of controlled substances under Schedule I of the Arizona Uniform Controlled Substances Act to conform with the additions made in the definition of dangerous drugs.

Chairman Farnsworth related that the Legislature has made spice and bath salts illegal; however, the formula can be modified and the new drugs do not fall within the scope of the statutory prohibition. There have been different attempts to address this issue. When drafting this proposal, it was decided not to go with the federal and State of California analog statutes because of the lawsuits pending dealing with the vagueness of the language. This proposal identifies the "root" of the chemical composition which is changed to develop a mind-altering drug that is different from the formula that is outlawed. He opined that this will not stop the problem but it takes a big step in the right direction.

Vince Figarelli, Acting Superintendent, Crime Lab, Department of Public Safety (DPS), in support of HB2327, stated that the language in the bill includes the specific drugs but also includes the root or core structure. It provides that, when new drugs come onto the market, they are included within the group.

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council (APAAC), supporting HB2327, testified that prosecutors have been looking at this issue for some time. This approach will benefit the whole process because it sends a message to retailers that they are taking a big risk by selling these items. It also is directed to people who sell materials online. The Council's opinion is that this legislation will help stop this illegal activity which severely impairs or kills users.

Leonard Clark, representing self, testified that he strongly supports HB2327. He said this is a good tool; however, he believes the problem will become worse unless parents spend more time with their teenage children.

Vice-Chairman Pierce announced the names of those who signed up as neutral on HB2327 but did not speak:

Katy Proctor, Legislative Liaison, Arizona Department of Public Safety

Vice-Chairman Pierce announced the names of those who signed up in support of HB2327 but did not speak:

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

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

John Thomas, Arizona Association of Chiefs of Police

Jen Sweeney, Deputy Director, Arizona Association of Counties

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

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

Daniel Seiden, Special Assistant for Legislation and Policy, Maricopa County Attorney's Office

Jeff Gray, Legislative Liaison, Arizona Pharmacy Association

Vice-Chairman Pierce moved that HB2327 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 7).

HB2386 - utilities; tampering - DO PASS

Magdalena Jorquez, Majority Research Analyst, advised that HB2386 modifies the definition of tampering with utility property as it relates to the criminal and civil codes and raises the mental culpability standard to intentional (Attachment 8).

Vice-Chairman Pierce explained that the current statute provides that if damage is incurred in the amount of \$5,000 or more, it is criminal damage to a utility; if it is under \$5,000, it is not criminal damage. He revealed that he sponsored this bill because he believes the question of charging a person with a crime should not be based on the amount of the damage but should be based on whether the damage creates an imminent safety risk to the public.

Mr. Hale noted that the bill raises the burden from "reckless" to "intentional" behavior and he does not understand how this will provide better protection. Vice-Chairman Pierce said the change was made to keep people from unintentionally falling into this category. To that point, Chairman Farnsworth further explained that this casts a broader net by reducing the threshold of who will fall under this statute, so the burden has been increased to offset that. This proposal deals with the intentional damage that occurs to critical utility infrastructure that causes an imminent risk to the public. Mr. Hale said he understands the intent of the bill; however, he prefers a narrower rather than a broader net because this imposes a stricter standard. Chairman Farnsworth agreed. He said that by broadening the net, it captures people not intended to be captured, so this re-narrows the net by going after those intending to do the damage who cause the imminent risk.

Matt Derr, Administrator, Corporate Public Affairs, Southwest Gas Corporation, testified in favor of HB2386. He said the issue here is public safety. Current state law does not adequately take public safety into account when assigning penalties for tampering with utility property. Current statute makes it a felony if a person recklessly damages the utility property but only if the damage is \$5,000 or over. This bill closes a loophole in statute by putting public safety threats on par with monetary losses. This change will allow prosecutors to charge individuals who jeopardize public safety. Additionally, the bill clarifies the statute by defining criminal damage.

Vice-Chairman Pierce announced the names of those who signed up in support of HB2386 but did not speak:

Leonard Clark, representing self
Michael DiMaria, Director of Legislative Affairs, CenturyLink
Ann Seiden, Manager/Corporate Public Affairs, Southwest Gas Corporation
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office
Greg Ensell, Manager of Government and Public Affairs, Cox Communications
Jeff Sandquist, Tucson Electric Power Company
Marcus Dell'Artino, CenturyLink
Gretchen Kitchel, Senior Public Affairs Representative, Salt River Project
Michael Vargas, Government Affairs Representative, Arizona Public Service
Joe Salkowski, Manager of Government Relations, Tucson Electric Power

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office
Daniel Seiden, Special Assistant for Legislation and Policy, Maricopa County Attorney's Office

Vice-Chairman Pierce moved that HB2386 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 9).

Without objection, the meeting adjourned at 11:00 a.m.

Joanne Bell, Committee Secretary
January 29, 2013

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