

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

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, February 6, 2014
House Hearing Room 4 -- 9:00 a.m.

Chairman Farnsworth called the meeting to order at 9:05 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 E, Chairman
Ms. Goodale	Mr. Quezada	

Members Absent

None

Committee Action

HB2021 – DPA S/E (8-0-0-0)	HB2453 – DPA (8-0-0-0)
HB2107 – DPA (8-0-0-0)	HB2454 – DPA (8-0-0-0)
HB2327 – DP (6-2-0-0)	HB2483 – DP (6-1-0-1)
HB2382 – DP (7-0-0-1)	HB2515 – DPA (8-0-0-0)

Chairman Farnsworth recognized the Scottsdale Leadership Class in attendance. He welcomed Ms. Goodale back to the Committee.

CONSIDERATION OF BILLS

HB2454 – human trafficking; prostitution – DO PASS AMENDED

Gina Kash, Majority Research Analyst, explained that HB2454 adds crimes relating to human trafficking to the definition of racketeering and makes changes to the crime of child prostitution (Attachment 1). The Farnsworth ten-page amendment dated 2/5/14 prescribes escort and escort agency advertising requirements and civil penalties, authorizes monies in the state and county anti-racketeering revolving funds to be spent on programs that provide assistance to victims listed under the definition of racketeering, prescribes a Class 5 felony for a person guilty of knowingly placing anyone in a house of prostitution with the intent that they become a prostitute, defines advertising, adds the crime to the list of commercial sexual exploitation of a minor and establishes the Human Trafficking Victim Assistance Fund (Attachment 2).

Cindy McCain, representing self, testified in favor of HB2454. She thanked the Chairman for the work he has done on this legislation. This bill addresses the issue of keeping children safe, ensuring that traffickers stay out of the state and helps to make Arizona a leader in the nation on this issue. She asked Members to vote to implement HB2454.

Grant Woods, representing self, in support of HB2454, commended the Governor for forming a task force on human trafficking. He thanked Mrs. McCain who has been a great leader for human rights across the world and thanked the Chairman for playing an integral role in crafting legislation that gets the job done but is not over-reaching in scope. This bill puts Arizona in a leadership role on this issue. The goal of the bill is to protect Arizona's children and to penalize the individuals who exploit them. These people deserve the harsh punishment they will be handed when prosecuted. This bill sends a message across the country and across the world that the days where these people can operate with impunity are over; Arizona will not tolerate this kind of behavior and traffickers will be prosecuted. He expressed full support of the amendment relating to advertising, especially on the Internet, as a means of enticing vulnerable young people for the purpose of prostitution. This legislation is a reasonable, narrowly-tailored approach to what has become a huge problem in this country.

Mr. Quezada expressed concern about the identification of minors as victims. He wondered why immunity for the victims is not provided for in the bill. Mr. Woods concurred that minors are victims of a crime in almost every circumstance. They come from difficult situations; most do not have a stable home life and have no place to go. If released, they will most likely go back to their old ways. If they are going to change their lives, they have to want to help themselves and will need services that will be provided. Additionally, prosecutors need their assistance to prosecute the perpetrators of this crime.

In response to Mr. Orr, Mr. Grant acknowledged that services are not adequately available; he said that needs to be addressed.

Tom Horne, Arizona Attorney General, spoke in support of HB2454. He shared some facts:

- 100,000 to 300,000 children are trafficked in the U.S. annually
- Average age for a child sold into prostitution in Arizona is 14; average age for a child sold into prostitution nationally is 13
- Traffickers prey on vulnerable youth, especially youth with neglectful parents, abusive home life and foster care children
- Survival sex among homeless and runaway youth is estimated at 70 percent of street youth who engage in prostitution to meet their daily needs of food, shelter and eventually drugs
- Trafficking increases when major events come to the state, especially sporting events

Attorney General Horne said that most people are not aware that underage sex trafficking is a problem in Arizona. Part of the job of his Office is to educate the public that this is a serious problem that must be dealt with. One of the ways to deal with the problem is to increase penalties for pimps who take advantage of underage girls, and that is one of the provisions of this bill. He stated strong support of HB2454.

Carolyn Jones, representing StreetLightUSA, in favor of HB2454, related that she was coerced into the prostitution lifestyle when she was 15 years old in order to survive. She is here today as an advocate for young survivors who have been forced into this lifestyle due to circumstances that they have no control over.

Names of those who signed up in support of HB2454 but did not speak:

Kathleen Mayer, Lobbyist, Pima County Attorney's Office
Tony Bradley, President and CEO, Arizona Trucking Association
Robert Halliday, Lobbyist, Arizona Department of Public Safety
Bill Montgomery, representing self
Rebecca Baker, Lobbyist, Maricopa County Attorney's Office
Lynda Hartzler, representing self
Mary Baker, representing self
Lorna Romero, representing self
Thomas James Donovan, Lobbyist, Valley Interfaith Project
Art Harding, Lobbyist, Arizona Attorney General's Office
Brenda Thomas, representing self
Lyle Mann, Lobbyist, Arizona Peace Officer Standards and Training Board
Bahney Dedolph, representing self
Diane Ziple, Lobbyist, Arizona Family Health Partnership
Jennifer Bowser-Richards, Lobbyist, Arizona Department of Juvenile Corrections
Charles Flanagan, Lobbyist, Division of Child Safety & Family Services
Will Humble, Lobbyist, Arizona Department of Health Services
Cathi Herrod, Lobbyist, Center for Arizona Policy
Will Gaona, Lobbyist, Arizona Coalition to End Sexual and Domestic Violence
Kathy Ber, Director of Legislative Services, Arizona Department of Economic Security
Kathleen Mayer, Lobbyist, Pima County Attorney's Office;

Vice-Chairman Pierce moved that HB2454 do pass.

Vice-Chairman Pierce moved that the Farnsworth ten-page amendment dated 2/5/14 be adopted (Attachment 2). The motion carried.

Vice-Chairman Pierce moved that HB2454 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 3).

HB2453 – synthetic drugs; reporting – DO PASS AMENDED

Gina Kash, Majority Research Analyst, stated that HB2453 expands the definition of *dangerous drug* and *narcotic drugs* and eliminates a reporting requirement relating to the sale of precursor or regulated chemicals (Attachment 4). The measure contains an emergency clause. The Farnsworth two-line amendment dated 1/31/14 makes a technical correction (Attachment 5). The Farnsworth five-line amendment dated 2/4/14 removes two references relating to Kratom under the definition of narcotic drugs (Attachment 6).

Chairman Farnsworth advised that this comes from the Yavapai County Attorney, and is a continuation of a bill from last year. He clarified that any product or chemical formula that has a commercially-viable use is excluded from this legislation.

Kimberly MacEachern, Lobbyist, Arizona Prosecuting Attorneys' Advisory Council, stated that the Council has not voted on this bill; however, it has been supportive of this measure in the past. She offered to answer questions.

Names of those who signed up in support of HB2453 but did not speak:

Kathleen Mayer, Lobbyist, Pima County Attorney's Office
Katy Proctor, Legislative Liaison, Arizona Department of Public Safety
Heather Wilkey, Lobbyist, Town of Gilbert
Rebecca Baker, Lobbyist, Maricopa County Attorney's Office
Andrew Lefevre, Lobbyist, Arizona Criminal Justice Commission
Trey Williams, Lobbyist, Arizona Association of Counties
Thomas Parker, Lobbyist, Arizona Fraternal Order of Police
Don Isaacson, Arizona Fraternal Order of Police

Names of those who signed up as neutral on HB2453 but did not speak:

Kelsey Lundy, Lobbyist, Botanical Legal Defense;
Kathryn Senseman, Lobbyist, Plants for People and Health

Vice-Chairman Pierce moved that HB2453 do pass.

Vice-Chairman Pierce moved that the Farnsworth five-line amendment dated 2/4/14 be adopted (Attachment 6). The motion carried.

Vice-Chairman Pierce moved that the Farnsworth two-line amendment dated 1/31/14 be adopted (Attachment 5). The motion carried.

Vice-Chairman Pierce moved that HB2453 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 7).

HB2327 – settlement of claims of minor – DO PASS

Rick Hazelton, Majority Research Assistant Analyst, related that HB2327 outlines who may settle a lawsuit or claim on behalf of a minor if the net amount of the settlement is under \$10,000 (Attachment 8). The bill clarifies that if the claim is more than \$10,000, a guardian ad litem may be appointed by the court.

Mr. Hazelton answered questions. He said the guardian ad litem is appointed at the time of the court hearing and is not able to overrule parental decisions.

Chairman Farnsworth clarified that the court may appoint a guardian ad litem if the settlement is over \$10,000. Under \$10,000, the minor or the custodian can make the decision.

Representative David Livingston, sponsor, explained that this bill will allow families to receive more money in the settlement of a lawsuit.

J. Michael Low, Attorney, American Family Insurance, in favor of HB2327, stated that HB2327 gives the right to the parent or the legal guardian to settle a claim for under \$10,000. He said

nothing is being changed in existing statute that imposes duties on the parent or the guardian to hold or keep the money safe for the benefit of the minor.

Mr. Quezada asked why this is not based on the claim amount instead of the settlement amount, stating that he believes that provides more protection to the child. Mr. Low related that this is in the best interest of the minor. He stated that a guardian ad litem is a lawyer who is charging a fee for his time.

Chairman Farnsworth pointed out that this is permissive language. It allows the judge to appoint a guardian ad litem if the amount is over \$10,000.

Mr. Low reminded Members that the court always retains the right to approve the settlement. The intent of this legislation is to move the vast majority of cases under \$10,000 out of the court system from the standpoint of having a guardian appointed.

Rebecca Sanchez, American Family Insurance, testified in support of HB2327. She referred to the 1993 case, *Gomez v. Maricopa County*, where the court said the existing statutes did not authorize the parent or legal guardian to accept the claim of a minor child. It held that the statute governed only to whom settlements could be paid on behalf of a minor.

Names of those who signed up in support of HB2327 but did not speak:

Janice Goldstein, Arizona Trial Lawyers Association

Kerry L. Hayden, Lobbyist, Farmers Insurance Group of Companies

Vice-Chairman Pierce moved that HB2327 do pass. The motion carried by a roll call vote of 6-2-0-0 (Attachment 9).

HB2483 – firearms; private land; lawful discharge – DO PASS

Rick Hazelton, Majority Research Assistant Analyst, reviewed the provisions of HB2483 that revise the statute concerning the lawful discharge of a firearm on private land (Attachment 10). The bill prohibits a city, town or county from enacting an ordinance that prevents, restricts or otherwise regulates the lawful discharge of a firearm or air gun or use of archery equipment on a private lot or parcel of land that is not open to the public on a commercial or membership basis.

Representative John Kavanagh, sponsor, related that HB2483 is in response to a municipality in northern Arizona overextending the law and going after someone who was target shooting on his own property. This bill balances the right of a landowner who is shooting responsibly on his own land and recognizes that the Second Amendment requires statewide uniformity and consistency. It also acknowledges the right of neighbors to be able to seek legal relief in the courts if they believe that irresponsible and dangerous firing is occurring on a neighbor's property. It recognizes the right of municipalities to ban shooting within a quarter mile of an occupied structure and the existing right of municipalities to zone and regulate commercial shooting ranges.

In reply to Mr. Contreras' question, Representative Kavanagh stated that this legislation uses the legal definition of *shooting responsibly*.

Dale Wiebusch, Legislative Associate, League of Arizona Cities and Towns, neutral on HB2483, spoke about the quarter-mile issue without the consent of the owner. The League would like to see clarifying language to ensure that language pertains to the discharge of the weapon.

Names of those who signed up in support of HB2483 but did not speak:

John Wentling, Vice President, Arizona Citizens Defense League

Richard Mihalik, representing self

Susan Mihalik, representing self

Onita Davis, representing self

Ed Davis, representing self

Daniel Reid, National Rifle Association

Dave Kopp, Manager, Arizona Citizens Defense League

Todd Rathner, Arizona State Rifle and Pistol Association

Names of those who signed up in opposition to HB2483 but did not speak:

Kathleen Mayer, Lobbyist, Pima County Attorney's Office

Mary Pradelt, representing self

Vice-Chairman Pierce moved that HB2483 do pass. The motion carried by a roll call vote of 6-1-0-1 (Attachment 11).

HB2021 – vexatious litigants; designation – DO PASS AMENDMENT S/E

S/E: same title

Brianna Laysner, Majority Research Intern, explained that the Farnsworth 28-line strike-everything amendment dated 2/4/14 to HB2021 (Attachment 12) allows a presiding judge to designate a pro se litigant a vexatious litigant and defines *vexatious conduct* (Attachment 13). The Farnsworth two-line amendment dated 2/4/14 to the strike-everything amendment strikes PRO SE LITIGANT and inserts PERSON (Attachment 14).

Representative John Kavanagh, sponsor, related that HB2021 addresses the issue of someone who uses the law to harass another by filing ridiculous motions, actions and lawsuits. Current statute prevents attorneys from filing frivolous lawsuits but there is nothing in statute to prevent people representing themselves from doing so.

In answer to questions, Representative Kavanagh stated that some judges, especially justices of the peace and magistrates, do not know they can do this now, so this clarifies the law. The language is concise and does not take away the right of people to sue. He explained that the person who is being harassed can ask the judge to declare the other person as being vexatious if he can show that the criteria for doing so have been met. He said this applies to civil cases, not criminal cases.

Mr. Contreras asked the recourse for someone who is named a vexatious litigant. Representative Kavanagh answered that the criteria are very strict. The person can appeal as in any other ruling.

Amy Love, Legislative Liaison, Arizona Supreme Court, neutral on HB2021, clarified some issues that were raised. She advised that this is not in existing statute, it is in case law. The bill

requires the presiding judge or the judge's designee to make a determination of vexatious litigant; the judge who is hearing the case would refer this to the presiding judge along with the history of the litigant.

Names of persons who signed up as neutral on HB2021 but did not speak:

Jerry Landau, Arizona Judicial Council

Janice Goldstein, Arizona Trial Lawyers Association

Vice-Chairman Pierce moved that HB2021 do pass.

Vice-Chairman Pierce moved that the Farnsworth 28-line strike-everything amendment dated 2/4/14 be adopted (Attachment 12). The motion carried.

Chairman Farnsworth announced that the Farnsworth two-line amendment dated 2/4/14 to the 28-line strike-everything amendment dated 2/4/14 will not be offered (Attachment 14).

Vice-Chairman Pierce moved that HB2021 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 15).

HB2107 – elections; candidate, ballot measure signatures – DO PASS AMENDED

Gina Kash, Majority Research Analyst, reviewed the provisions of HB2107 which make changes to election laws relating to candidate and ballot measure signatures (Attachment 16). The bill provides for a conditional enactment and contains a Proposition 105 clause. The Farnsworth 11-line amendment dated 2/3/14 reinserts language which allows the Secretary of State to remove initiative and referendum petition sheets on which the signatures of the circulator or notary are dated earlier than the dates on which the electors signed the face of the petition sheet (Attachment 17).

Representative John Kavanagh, sponsor, listed the provisions of HB2107:

- Extends the Clean Elections \$5 donation and the petition signatures that are online in the Secretary of State's Office
- Removes language that resulted in unnecessary, unfair elimination of signatures on recall petitions
- Educates voters on whether the circulator is a paid person or a volunteer
- Provides for education of circulators and prevents abuse relating to dates

Thomas Collins, Arizona Citizens Clean Elections Commission, in support of HB2107, thanked the sponsor for the bill and advised that the Commission has a technical amendment that it hopes will be offered on the Floor.

Jim Drake, Deputy Secretary of State, stated support of HB2107. The Floor amendment is to conform the recall petition circulation to that of the initiative and referendum.

Johnathan Roes, President, Election Officials of Arizona, stated support of HB2107 with the Farnsworth amendment.

Names of those who signed up in support of HB2107 but did not speak:
Rebekah Friend, Arizona State AFL-CIO
Sam Wercinski, Lobbyist, Arizona Advocacy Network
Christina Estes-Werther, Lobbyist, Arizona Secretary of State's Office
Paul Ryan, representing self
Josselyn Berry, representing self

Names of those who signed up as neutral to HB2107 but did not speak:
Joseph Seelye, representing self

Vice-Chairman Pierce moved that HB2107 do pass.

Vice-Chairman Pierce moved that the Farnsworth 11-line amendment dated 2/3/14 be adopted (Attachment 17). The motion carried.

Vice-Chairman Pierce moved that HB2107 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 18).

HB2382 – conspiracy; homicide; statute of limitation – DO PASS

Brianna Laysner, Majority Research Intern, stated that HB2382 specifies that conspiracy to commit homicide is not subject to the statute of limitations (Attachment 19).

Representative Justin Olson, sponsor, related that the Arizona Prosecuting Attorneys' Advisory Council brought this bill to him, which addresses an important oversight that needs to be included in the statutes. The statute of limitations does not apply for someone who has committed a homicide; however, the crime of conspiracy to commit homicide has not been addressed in the past. The intent of this legislation is to seek justice for the victims of a crime.

Kimberly MacEachern, Arizona Prosecuting Attorneys' Advisory Council, in favor of HB2382, said this proposal is useful in a cold case. She said it does not make sense that conspiracy to commit murder is not subject to the statute of limitations.

Chandra Mansfield, representing self, introduced herself. She said she is a second-year law student at Arizona State University and will be working at the Arizona Prosecuting Attorneys' Advisory Council's office this spring.

Names of persons who signed up in support of HB2382 but did not speak:
Lyle Mann, Lobbyist, Arizona Peace Officer Standards and Training Board
Kathleen Mayer, Lobbyist, Pima County Attorney's Office
Trey Williams, Lobbyist, Arizona Association of Counties
Andrew LeFevre, Lobbyist, Arizona Criminal Justice Commission

Vice-Chairman Pierce moved that HB2382 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 20).

HB2515 – unlawful distribution of private images – DO PASS AMENDED

Rick Hazelton, Majority Research Assistant Analyst, explained that HB2515 prohibits a person from knowingly disclosing, displaying, distributing, publishing, advertising or offering a photograph, videotape, film or digital recording or other reproduction of a person engaged in a sexual act or in a state of nudity without that person's written consent (Attachment 21). The bill classifies a violation of this section as a Class 5 felony, or a Class 4 felony if the depicted person is recognizable. The Farnsworth four-line amendment dated 1/31/14 adds clarifying language to the listed exemptions concerning what kind of activity is being reported (Attachment 22).

Representative J.D. Mesnard, sponsor, stated that as technology changes, people find new ways to hurt others. This bill addresses the situation where embarrassing photos are posted online and are viewed by millions of people. He said it is time for the Legislature to put a stop to this behavior and say that it is not permissible to post these photos online without the permission of the person being photographed. This proposal criminalizes the perpetrators. He said concerns have been raised and he is happy to work on clarifying language. He answered questions about First Amendment rights, minors vs. adults, sexting, education, etc.

Barbara Meaney, representing Verizon Wireless; Microsoft Corporation, neutral on HB2515, said her clients support the intent of the legislation. She said it is important to her clients that their technologies are used responsibly; however, there is some concern about liability to these companies if their devices are used inappropriately. She volunteered to work with the sponsor on clarifying language on the issue of liability.

Will Gaona, Lobbyist, Arizona Coalition to End Sexual and Domestic Violence, testified in support of HB2515. He said that these images can cause severe damage to a victim's personal life as well as employment and education opportunities in the future. Currently, there are few repercussions people face for sharing these photos. The Coalition believes criminalization is the most appropriate response and the most effective deterrent to this behavior. Additionally, the Coalition would like this to be added as a domestic violence crime.

Beth Weisser, representing self, spoke in favor of HB2515. She related that she is a retired teacher who taught technology in middle school, with cyber bullying as a part of the curriculum. She expressed concern about the criminal penalty without having additional education for students. She said they need to understand that this will result in a felony on their record. She added that current Arizona curriculum does not contain the tools for students or for teachers to address this issue.

Rebecca Baker, Lobbyist, Maricopa County Attorney's Office, in support of HB2515, reminded Members that legislation relating to sexting by juveniles was passed a few years ago. A possible solution would be to exempt juveniles from this legislation since the statute already provides that it is a petty offense for juveniles to engage in this behavior.

Names of those who signed up in support of HB2515 but did not speak:
Kathleen Mayer, Lobbyist, Pima County Attorney's Office

Names of those who signed up in opposition to HB2515 but did not speak:
Victoria Lopez, Lobbyist, American Civil Liberties Union of Arizona

Names of those who signed up as neutral on HB2515 but did not speak:
Toni Morales, representing self

Vice-Chairman Pierce moved that HB2515 do pass.

Vice-Chairman Pierce moved that the Farnsworth four-line amendment dated 1/31/14 be adopted (Attachment 22). The motion carried.

Vice-Chairman Pierce moved that HB2515 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 23).

Without objection, the meeting adjourned at 11:21 a.m.

Joanne Bell, Committee Secretary
February 17, 2014

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