

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – First Regular Session

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, February 17, 2011
House Hearing Room 4 -- 8:00 a.m.

Chairman Farnsworth called the meeting to order at 8:07 a.m. and attendance was noted by the secretary.

Members Present

Mr. Ash
Mr. Chabin
Mrs. Goodale

Mr. Hale
Mr. Harper
Mrs. Tovar

Mr. Vogt
Mr. Smith D, Vice-Chairman
Mr. Farnsworth, Chairman

Members Absent

None

Committee Action

HB2146 - DP (6-3-0-0)
HB2231 - HELD BY CHAIRMAN
HB2313 - DPA (5-3-0-1)
HB2376 - DPA (8-0-0-1)
HB2377 - DP (8-0-0-1)
HB2396 - DPA (8-0-0-1)
HB2402 - DPA (8-0-0-1)
HB2403 - DPA (6-1-0-2)
HB2408 - DPA (8-0-0-1)

HB2424 - DPA (8-0-1-0)
HB2438 - DP (8-0-0-1)
HB2480 - DP (7-1-0-1)
HB2484 - DP (6-3-0-0)
HB2582 - DP (5-4-0-0)
HB2645 - DP (5-2-0-2)
HB2664 - DPA (9-0-0-0)
HB2704 - DP (8-0-0-1)
HB2716 - HELD BY CHAIRMAN

CONSIDERATION OF BILLS:

HB2231 - public defenders; probate court; reimbursement - HELD BY CHAIRMAN

Chairman Farnsworth announced that HB2231 will be held.

HB2716 - legislative caucus nominations; U.S. Senators - HELD BY CHAIRMAN

Chairman Farnsworth announced that HB2716 will be held.

HB2396 - game and fish; trophies; enforcement - DO PASS AMENDED

Kathryn Brown, Majority Intern, advised that HB2396 alters the measuring system used for trophies, creates a new felony offense relating to trophy violations and prevents individuals that have been assessed civil damages for violations from obtaining new licenses before paying the damages in full (Attachment 1). The Goodale ten-line amendment dated 2/16/11 eliminates the definition section of the bill and prevents a person from obtaining a license during the pendency of a civil action related to a game or fish violation, or prior to the payment of civil damages in full (Attachment 2).

Representative Russ Jones, sponsor, related there are ongoing stakeholder meetings dealing with poaching. He noted that there is consensus that if a person has been fined for poaching, that person cannot get another hunting license.

Vice-Chairman Smith announced the names of those who signed up in support of HB2396 but did not speak:

Ben Alteneder, Arizona Wildlife Federation

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

George Reiners, Yuma Valley Rod and Gun Club

Gene Elms, Law Enforcement Chief, Arizona Game and Fish Department

Vice-Chairman Smith moved that HB2396 do pass.

Vice-Chairman Smith moved that the Goodale ten-line amendment dated 2/16/11 be adopted (Attachment 2). The motion carried.

Vice-Chairman Smith moved that HB2396 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 3).

HB2313 - eminent domain on federal property.. - DO PASS AMENDED

Magdalena Jorquez, Majority Research Analyst, stated that HB2313 broadens the classification of property subject to the state's eminent domain laws by including property possessed by the U.S. Government (Attachment 4). The Goodale 12-line amendment dated 2/16/11 lists the following exclusions from the scope of the bill (Attachment 5): property held by the U.S. for the benefit, including water rights, of a federal reclamation project or managed by a political subdivision of this state, or special taxing district organized under Title 48. It also excludes property on which permanent improvements are constructed or property that is legally encumbered. In addition, the amendment clarifies that the state is not responsible for legal actions filed by other persons or entities.

Mr. Ash commented that the phrase "including water rights" in the amendment might be more appropriate if placed after "property." Ms. Jorquez said she will discuss that with the sponsor.

Representative Russ Jones, sponsor, testified that this proposal is based on American Legislative Exchange Council (ALEC) model legislation and has been adopted in the State of Utah. It has been modified to fit the way the Constitution is structured in Arizona and deals with acquiring federal lands through condemnation.

In response to Mr. Chabin's queries, Representative Jones said that improvements would preclude the Grand Canyon National Park from being eligible, tribal lands are exempt because of the way the lands are held, and national forest lands could be included under this legislation.

Mr. Chabin asked whether there is a process that allows states to condemn federal property under state law. Representative Jones said he cannot answer that question. Mr. Chabin questioned how the state will acquire federal property if there is no state law allowing the state to do that and he asked what useful purpose there is for the state to take over federal property. Representative Jones answered that the state exercises eminent domain and there is no law that says a state cannot take federal land. He advised that this legislation is supported by the State Land Department and said this process can be useful to the state. He noted that there is no mechanism now for the state to exchange state land for federal land.

Mr. Hale asked how the exchange of State Trust Land will be different under this proposal. Representative Jones said he does not believe it will be different.

Vice-Chairman Smith announced the names of those who signed up in support of HB2313 but did not speak:

Dave Kopp, representing self

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2313 but did not speak:

Sandy Bahr, Conservation Director, Sierra Club – Grand Canyon Chapter

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2313 but did not speak:

Norman Moore, representing Central Arizona Project

Jason Baran, Policy and Intergovernmental Relations Manager, Arizona Municipal Water Users Association

Vice-Chairman Smith moved that HB2313 do pass.

Vice-Chairman Smith moved that the Goodale 12-line amendment dated 2/16/11 be adopted (Attachment 5). The motion carried.

Vice-Chairman Smith moved that HB2313 as amended do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 6).

HB2376 - department of juvenile corrections; continuation - DO PASS AMENDED

Kathryn Brown, Majority Intern, explained that HB2376 continues the Arizona Department of Juvenile Corrections (ADJC) until July 1, 2016 (Attachment 7). The Farnsworth three-line amendment dated 2/14/11 will continue the Department until 2012 (Attachment 8).

Michael Branham, Director, Arizona Department of Juvenile Corrections (ADJC), offered to answer questions.

Chairman Farnsworth explained that the underlying bill continues the Department until 2016. The Governor has requested that the continuation be for one year in order for options to be considered.

Vice-Chairman Smith announced the names of those who signed up in support of HB2376 but did not speak:

Beth Rosenberg, Children's Action Alliance

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

Luis Ebratt, President, Arizona Probation Officers Association, Arizona Conference of Police and Sheriffs

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

Mary Marshall, PIO/Legislative Liaison, Arizona Criminal Justice Commission

Laura Dillingham, Director of Communications/Legislative Policy, Arizona Department of Juvenile Corrections

Vice-Chairman Smith moved that HB2376 do pass.

Vice-Chairman Smith moved that the Farnsworth three-line amendment dated 2/14/11 be adopted (Attachment 8).

Mr. Hale asked whether the individuals who support the bill signed in before or after the amendment was introduced. Chairman Farnsworth said he does not know; however, if the amendment is not adopted, he intends to hold the bill.

Donna Hamm, Executive Director, Middle Ground Prison Reform, in support of HB2376, testified that she was unaware of the amendment at the time she signed in. She favors extending the Department until 2016. She related that the Department was created in 1990 out of litigation in *Johnson v. Upchurch*, which outlined the many problems in managing juveniles in an adult correctional facility. She strongly urged that ADJC maintain a separate agency for juveniles from other agencies that handle incarceration.

Chairman Farnsworth said that this proposal does that for one year while the Governor looks at options.

Question was called on the motion that the Farnsworth three-line amendment dated 2/14/11 be adopted (Attachment 8). The motion carried.

Vice-Chairman Smith moved that HB2376 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 9).

HB2377 - capital postconviction public defender; continuation - DO PASS

Kathryn Brown, Majority Intern, related that HB2377 continues the State Capital Postconviction Public Defender Office until July 1, 2016 (Attachment 10).

Michael Ryan, Justice, Arizona Supreme Court, urged Members to pass the extension of the State Capital Postconviction Public Defender Office. He stated that there is a shortage of attorneys who are able to take on capital case postconviction proceedings. He explained that

these proceedings occur after a trial and after a case has been affirmed under appeal. To comply with federal law, qualified and competent counsel is needed for capital cases. There are 11 cases now where defendants do not have counsel and he believes the number will continue to grow; the oldest case dates from 2009.

Mr. Ash asked Justice Ryan whether he supervises the Office. Justice Ryan advised that he was asked by the Chief Justice to chair the Capital Oversight Task Force. The continuation of this Office is one of the issues of the Task Force.

Vice-Chairman Smith moved that HB2377 do pass.

Vice-Chairman Smith announced the names of those who signed up in support of HB2377 but did not speak:

Jerry Landau, Government Affairs Director, Arizona Supreme Court
Ron Johnson, Executive Director, Arizona Catholic Conference
Donna Hamm, Executive Director, Middle Ground Prison Reform
Rebecca Hecksel, Governor's Office

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2377 but did not speak:

Marty Lieberman, representing self

Question was called on the motion that HB2377 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 11).

HB2408 - outpatient treatment; agency notification - DO PASS AMENDED

Magdalena Jorquez, Majority Research Analyst, stated that HB2408 requires that if criminal charges against a patient involving death or serious physical injury are dismissed, the medical director is required to notify the original prosecuting agency ten days before discharging a patient receiving court-ordered treatment (Attachment 12). She explained that the Vogt 19-line amendment dated 2/15/11 removes the stipulation that the patient be found a danger to others, expands the list of offenses to include sexual offenses, limits the duty of the medical director and decreases the number of days for notification from ten to five days (Attachment 13).

Mr. Vogt, sponsor, invited Rebecca Baker to speak about this proposal.

Rebecca Baker, Legislative Liaison, Maricopa County Attorney's Office, in support of HB2408, explained the purpose of the bill. She stated that when a defendant is found incompetent and criminal charges against that person are dismissed, the person is subsequently court-ordered into treatment. When the person is going to be released or discharged from treatment, prosecuting agencies want to know that the person is being released because there are circumstances where criminal charges may be re-filed. She asked that Members support this bill.

Chairman Farnsworth stated that this is just a notice provision. Ms. Baker concurred.

Keli Luther, Executive Director, Crime Victims' Legal Assistance Project, representing self, testified in support of HB2408. She related that many of her clients have severe mental illnesses.

She said she believes this proposal will close a loophole in the system to ensure that prosecutors and victims are notified of the release of the person.

Mr. Ash queried whether the five-day notice specified in the amendment is sufficient time. Ms. Luther replied that she was not involved in the amendment. Her concern is with victims' notification.

Mr. Vogt advised that the five-day notification is a compromise reached with mental health professionals and prosecutors. He said he believes it is sufficient.

Vice-Chairman Smith announced the names of those who signed up in support of HB2408 but did not speak:

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

Vice-Chairman Smith moved that HB2408 do pass.

Vice-Chairman Smith moved that the Vogt 19-line amendment dated 2/15/11 be adopted (Attachment 13). The motion carried.

Vice-Chairman Smith moved that HB2408 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 14).

HB2704 - campaign finance; reporting; contributions - DO PASS

Magdalena Jorquez, Majority Research Analyst, stated that HB2704 increases the aggregate amount that an individual can contribute to a candidate before the contributor must be identified in a campaign finance report (Attachment 15). The bill permits contributions of \$100 or less to be aggregated.

Representative Nancy McLain, sponsor, advised that this proposal was requested by the Mohave County Republican Central Committee. With inflation, the prices of dinners have increased from \$35 to \$45. Each of those payments must be accounted for, and this bill asks that the limit be raised to \$100.

Mr. Chabin asked whether the limitation is in statute or the result of the Clean Elections law. Representative McLain said she believes it is statutory. Chairman Farnsworth noted that it was instituted before Clean Elections.

Vice-Chairman Smith moved that HB2704 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 16).

HB2480 - officeholder expense accounts; late fees - DO PASS

Magdalena Jorquez, Majority Research Analyst, advised that HB2480 establishes a late penalty in the amount of \$5 per day for failure to comply with the reporting requirements related to officeholder expense accounts (Attachment 17). The bill prohibits the late penalty from accruing on days in which the Secretary of State's Office is closed.

Vice-Chairman Smith moved that HB2480 do pass.

Representative David Gowan, sponsor, said that the purpose of this proposal is to ensure that a penalty will not accrue on days when the Secretary of State's Office is closed.

Question was called on the motion that HB2480 do pass. The motion carried by a roll call vote of 7-1-0-1 (Attachment 18).

HB2484 - legislative vacancies; precinct committeemen - DO PASS

Magdalena Jorquez, Majority Research Analyst, reviewed the provisions of HB2484 which change the requirements for appointing candidates to fill legislative vacancies (Attachment 19):

- Removes the stipulation that allows only the precinct committeemen who reside in the same county as a vacated legislative seat to nominate candidates to fill that seat.
- Requires that, after nominating three qualified electors, the elected precinct committeemen vote to elect one of the three nominees to fill the vacancy.
- Removes the requirement that the state party chairman forward the names of the three nominees to the Board of Supervisors of the county and, instead, requires the chairman to forward the name of the person elected.
- Removes the requirement that the Board appoint a person from the three nominees and, instead requires the Board to certify the election of the replacement.

Representative David Gowan, sponsor, explained that when there is a legislative vacancy, the replacement will be from the county where the vacancy occurs and the precinct committeemen of that district from that county have the right to vote for the three nominees.

Mr. Chabin questioned whether the bill also removes the appointment authority from the Board of Supervisors, leaving it solely with the district's central committee. Representative Gowan replied in the affirmative; he said the decision is left with the elected precinct committeemen within the district.

Mr. Chabin said he has reservations about taking that authority from the Board of Supervisors where the vacancy occurs. He asked the sponsor if he is amenable to a Floor amendment restoring that authority to the Board of Supervisors. Representative Gowan said he prefers that this be a local process in which the precinct committeemen select the replacement. Mr. Chabin commented that his hesitation relates to the entire community and its concerns which have to be considered.

Todd Madeksza, Director of Legislative Affairs, County Supervisors Association, testified in opposition to HB2484 and said the Association's concerns mirror the concerns expressed by Mr. Chabin. He related that the Board of Supervisors offers another step in the process and should not be removed.

Andrew Kunasek, Maricopa County Board of Supervisors, representing self, spoke in support of HB2484. He said he believes that precinct committeemen are the foundation of this country's government, and that the most important deliberation takes place at the precinct committeemen level. He urged passage of this proposal.

Mr. Hale asked what will happen if no elected precinct committeemen are in place. Representative Gowan replied that the process is the same. This proposal does not change that.

Vice-Chairman Smith announced the names of those who signed up in support of HB2484 but did not speak:

Dave Kopp, representing self

Jose Borrajero, representing self

Lynne Weaver, representing self

Jennifer Patentreger, representing self

Kevin Myers, United for a Sovereign America, representing self

Buffalo Rick Galeener, representing self

Linda Bentley, representing self

Vice-Chairman Smith moved that HB2484 do pass. The motion carried by a roll call vote of 6-3-0-0 (Attachment 20).

HB2438 - sexual conduct; minor - DO PASS

Kathryn Brown, Majority Intern, explained that HB2438 expands the definition of *teacher* as it applies to sexual conduct with a minor and expands the offenders eligible for a Class 2 felony provision for sexual conduct with a minor of at least 15 years of age to include a person who is or was previously the minor's parent, stepparent, adoptive parent, legal guardian, foster parent, teacher, clergyman or priest (Attachment 21).

Mr. Ash noted that the only change to the statute he sees is the addition of the words "OR WAS." Chairman Farnsworth explained that this legislation tries to capture someone who was a former teacher or substitute teacher.

Representative Steve Montenegro, sponsor, related that this legislation was brought to him by the Maricopa County Attorney's Office to resolve an unintended consequence in statute. Currently, if a teacher engages in sexual conduct with a minor who was a former student, that teacher is not subject to the provisions of the statute which makes it a Class 2 felony. This bill ensures that anyone who uses this type of position to engage in a sexual relationship with a minor can be held accountable.

Rebecca Baker, Legislative Liaison, Maricopa County Attorney's Office, in support of HB2438, advised that this addresses the issue of a former teacher who engages in sexual activity with a minor after the teacher/student relationship has ended.

Vice-Chairman Smith announced the names of those who signed up in support of HB2438 but did not speak:

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

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

Vice-Chairman Smith moved that HB2438 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 22).

HB2402 - guardians of incapacitated persons - DO PASS AMENDED

Magdalena Jorquez, Majority Research Analyst, explained that HB2402 makes several changes to the statutes governing incapacitated persons, including the establishment of court procedures for determining whether an incapacitated individual's privilege to drive should be suspended or retained (Attachment 23). Additionally, HB2402 broadens the scope of powers for guardians and broadens the options that the court may exercise in an involuntary commitment proceeding. The Vogt three-line amendment dated 2/15/11 removes the section of the bill that authorizes a guardian, who possesses additional mental health authority, the ability to request a judicial review of treatment or placement decisions made by the treatment agency (Attachment 24).

Mr. Harper asked whether the bill sets a cap on fees for guardianship. Ms. Jorquez answered that the bill does not address that issue.

Mr. Vogt, sponsor, advised that this proposal, brought to him by the State Bar, cleans up some problem areas in the law. He asked Jim McDougall to explain the bill.

Jim McDougall, Mental Health and Elder Law Section, State Bar of Arizona, testified in support of HB2402. He reviewed the provisions of the bill:

- Creates a new section of statute that provides procedures and standards for the Superior Court to use in determining whether a driver license should be suspended or revoked for a person adjudicated to be incapacitated. Currently, procedures are not in statute and this will provide consistency throughout the state.
- Allows the Superior Court to grant a mental health guardian the ability to seek in-patient treatment for the ward in non-emergency situations.
- Allows the Court to order an investigation for the need for guardianship or conservatorship if the person is found to be gravely disabled.

Vice-Chairman Smith announced the names of those who signed up in support of HB2402 but did not speak:

Joseph Abate, Arizona Psychiatric Society

Mark Bolton, State Bar of Arizona

Susan Bitter Smith, National Association of Elder Law Attorneys

Jay Polk, National Academy of Elder Law Attorneys

Vice-Chairman Smith moved that HB2402 do pass.

Vice-Chairman Smith moved that the Vogt three-line amendment dated 2/15/11 be adopted (Attachment 24). The motion carried.

Vice-Chairman Smith moved that HB2402 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 25).

HB2403 - trusts and estates - DO PASS AMENDED

Kathryn Brown, Majority Intern, stated that HB2403 makes various changes to the Arizona Trust Code (Attachment 26). She explained that the Vogt three-line amendment dated 2/16/11 makes a technical correction and changes the period in which money contributed to a college savings

plan is not exempt from bankruptcy from 120 days to 24 months prior to the filing date of a bankruptcy (Attachment 27).

Mr. Vogt, sponsor, explained that this legislation was brought to him by the State Bar to clean up some issues in statute. He asked James Ryan to address the bill.

James Ryan, Chairman, Probate and Trust Section, State Bar of Arizona, spoke in favor of HB2403. He said that this legislation proposes to make ten technical changes to the Arizona Trust Code. These changes will help with efficiency in the administration of trusts in the state.

Vice-Chairman Smith announced the names of those who signed up in support of HB2403 but did not speak:

Susan Bitter Smith, National Association of Elder Law Attorneys

Mark Bolton, Attorney, representing self

Roger Curley, Probate and Trust Section, State Bar of Arizona

Les Raatz, Attorney, State Bar of Arizona

Jay Polk, National Academy of Elder Law Attorneys

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2403 but did not speak:

Stacey Langford, Vice President, Member Services, Arizona Bankers Association

Vice-Chairman moved that HB2403 do pass.

Vice-Chairman Smith moved that the Vogt three-line amendment dated 2/16/11 be adopted (Attachment 27).

Mr. Vogt stated that the three-line amendment contains technical clean-up language.

Question was called on the motion that the Vogt three-line amendment dated 2/16/11 be adopted (Attachment 27). The motion carried.

Vice-Chairman Smith moved that HB2403 as amended do pass. The motion carried by a roll call vote of 6-1-0-2 (Attachment 28).

HB2645 - forfeited weapons; disposition - DO PASS

Kathryn Brown, Majority Intern, said that HB2645 removes the ability of local government to prohibit the sale of a forfeited weapon or explosive to a business authorized to receive and dispose of the article (Attachment 29).

Mr. Chabin asked what the process is under existing law. Ms. Brown advised that current law prohibits the sale or resale of weapons. Some cities choose to destroy the weapons instead of reselling them.

Representative Michelle Ugenti, sponsor, advised that this proposal tightens up language and closes loopholes in legislation passed last year.

Mr. Chabin asked what is wrong with the ordinances giving this authority to cities. He questioned the reason for impinging on a city's authority to dispose of weapons used in crimes. Representative Ugenti explained that this just fixes a loophole in law. Mr. Chabin commented that it might serve the public if a weapon used in a crime is destroyed.

Mr. Hale queried what the penalty is for a local authority not complying with this and for destroying the guns.

John Wentling, Vice Chairman, Arizona Citizens Defense League, Inc., speaking in support of HB2645, answered that there is no penalty. He said that there may be possible litigation to enforce the statute.

Mr. Hale noted that this is passing a law with no penalty involved. Mr. Wentling disagreed. He said he thinks there will be recourse but not a criminal or civil penalty for violating state law. Mr. Hale asked what remedy will be sought in a court action. Mr. Wentling stated that an attorney is better able to answer that question. Chairman Farnsworth explained that if an action is filed, the court will be asked to enforce the statute and order compliance.

Mr. Chabin brought up a scenario where a gun that was used to injure a person was subsequently purchased by another party and used to threaten the injured person. Mr. Wentling said that the odds of that situation would be astronomical because the court would order the weapon forfeited and sold in accordance with federal, state and local laws.

Vice-Chairman Smith announced the names of those who signed up in support of HB2645 but did not speak:

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

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2645 but did not speak:

Shirley Gunther, Intergovernmental Affairs Manager, City of Avondale

Vice-Chairman Smith moved that HB2645 do pass. The motion carried by a roll call vote of 5-2-0-2 (Attachment 30).

HB2664 - Arizona sentencing commission - DO PASS AMENDED

Kathryn Brown, Majority Intern, related that HB2664 establishes the Arizona Sentencing Commission to collect data and evaluate the effectiveness of the state's sentencing practices and alternative sentencing programs (Attachment 31). The Ash two-line amendment dated 2/15/11 requires the Chief Justice of the Supreme Court, rather than the Governor, to appoint a member with experience in substance abuse to the Commission (Attachment 32).

Mr. Ash, sponsor, stated that he is open to suggestions on the make-up of the Commission. He said he is looking for a resource to analyze what is being done in other states on sentencing and to look at reforms that have been adopted. He said he hopes some of the political elements will be taken away when considering sentencing reform. Many candidates campaign on a platform of being tough on crime, and that has resulted in becoming more severe on those who are being punished. The purpose of the Commission is not to have a more lenient attitude on sentencing

because it may recommend harsher sentences for some crimes and more lenient punishment for others. In addition, it will allow the Commission to apply for grant money that is going unused.

Daniel Seiden, Special Assistant for Legislation and Policy, Maricopa County Attorney's Office (MCSO), in opposition to HB2664, stated that the sentencing guidelines are working in Arizona. Crime rates are going down and the Department of Corrections population has decreased. MCSO does not believe this bill is necessary. This is also creating a new bureaucracy that is duplicative of the membership and duties of the Arizona Criminal Justice Commission (ACJC).

In response to Chairman Farnsworth's queries, Mr. Seiden said that the efforts of ACJC and this Commission are not absolutely duplicative. He again stated MCSO's opposition even if there is a shorter sunset provision and said he does not believe there is value in creating a new Commission.

Mr. Ash asked whether any recommendations on sentencing reform have come from ACJC in the last year. Mr. Seiden replied in the negative.

Donna Hamm, Executive Director, Middle Ground Prison Reform, spoke in support of HB2664. She said this bill proposes to have a different composition of membership that is not threatening to anyone. It will not cost any money, and may even bring some grant money into the state.

Patti Jones, representing self, in support of HB2664, said that this proposal will ensure that not another inmate will die in the custody of the Department of Corrections, like her nephew who had a severe psychiatric breakdown at the time of his adjudication. This bill will give discretion back to judges.

Chairman Farnsworth agreed with Mr. Harper that this bill proposes a Commission to make recommendations; it does not give more discretion to judges.

Camille Tilley, Arizona Coalition for the Wrongfully Convicted, Arizona Criminal Justice Reform Coalition, in support of HB2664, advised that her daughter is incarcerated in an Arizona prison and she has been working on this for seven years as a citizen and an activist. She perceives mandatory minimum sentencing as a weapon used by a lot of people for not doing their work. Mandatory minimum sentencing has put too many innocent and nonviolent people into prison. She sees the Commission as being different from ACJC where members fight about who gets victims' rights money.

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, testified in opposition to HB2664. She argued against having a superstructure composed of people who wish to move away from mandatory sentencing, particularly when there is no victim representation. She said she believes this will evolve into a conversation on how to hold criminals less accountable and also "bash" prosecutors whose sole responsibility is to promote public safety.

Mr. Ash asked whether adding a victims' representative to the Commission will alleviate some of the concerns. Ms. Mayer said it will address some but not all.

Mr. Ash referred to the reference of a superstructure and said that this is an advisory committee with no binding power on anyone and is composed of volunteers. Ms. Mayer commented that this creates something out of nothing to do something already being done by ACJC. She stated that ACJC is a very qualified organization that has the people and the skills to gather information. Mr. Ash pointed out that the proposed Commission will include prosecutors, defense attorneys and judges in the criminal justice system. He noted that ACJC has no defense attorneys in its membership and Ms. Mayer concurred. She pointed out that they are free to attend meetings.

Mr. Ash asked whether ACJC has made any sentencing recommendations to the Legislature this year. Ms. Mayer replied that they have not been requested to do so.

Mr. Ash queried whether judges have been asked about their stance on the Sentencing Commission. Ms. Mayer said it is clearly known that the bench would like to have more discretion to impose sentences; however, prosecutors do not believe that is good public policy. She said she assumes that the bench is in favor of this bill.

Jean Roberts, representing self, testified in support of HB2664. She said that leaving the criminal justice system in the hands of prosecutors costs taxpayers more than \$949 million every year. She advised that each instance where mandatory sentencing is imposed costs about \$23,000. She opined that the biggest part of deficit spending in the state budget is the criminal justice system. She opined that the Commission is desperately needed and she thinks it will do an excellent job.

Lynn Nau, representing self, in favor of HB2664, said that inmates have no one to speak for them. Through her ministry, she said she has heard that many of the people in prison have accepted plea bargains to avoid long sentences, many of those with mental illnesses receive no care in prison, nor do people with addictions receive care for their addictions. She asked Members to vote for this legislation and give these people a chance.

Keli Luther, Executive Director, Crime Victims Legal Assistance Project, representing self, testified against HB2664. She urged Members to look at the current statute for ACJC which shows that most of the issues that are in this legislation are covered in the ACJC's make-up and duties. Creating an entirely new Commission should be given serious consideration at this time when efficiency and streamlining government is needed. She asserted that this legislation is not needed.

Linda Gallie, representing self, testified in support of HB2664. She advised that Arizona spends \$22,800 per inmate per year, and only spends \$6,500 per public student per year. The Arizona Department of Corrections is costing Arizona taxpayers \$1 billion each year. As a taxpayer, she asked Members to favorably consider the proposed legislation.

Carissa Hessick, representing self, spoke in favor of HB2664. She said she believes a sentencing commission is necessary to predict the effect of any changes or laws adopted for the criminal justice system. She disagreed with the arguments given that the proposed Commission is duplicative and not needed. She maintained that there is no reason to vote against this proposal.

Mary Marshall, PIO/Legislative Liaison, Arizona Criminal Justice Commission (ACJC), neutral on HB2664, advised that the Commission has not advocated taking on this responsibility. If the ACJC were to take on this additional responsibility, it will need increased resources. She referred to claims that membership of the Commission is weighted and she pointed out that ACJC frequently works on issues with stakeholders who do not have a seat on the Commission. ACJC welcomes the opportunity to work with all stakeholders.

Michael Ryan, Justice, Arizona Supreme Court, representing self, in support of HB2664, testified that in his ten years as a trial court judge, he has sentenced hundreds of defendants, and as an Appeals Court judge and a Supreme Court Justice, he reviewed hundreds of appeals. He said there has never been a Commission like the one being proposed to study sentencing. With new programs coming out, there may be alternative ways of handling defendants who do not commit violent or serious crimes.

Mr. Ash asked Justice Ryan whether there were times when he felt his hands were tied by prosecutors. Justice Ryan replied in the affirmative.

In reply to Mr. Chabin's query about serving on the Commission, Justice Ryan said that he will agree to serve, if asked.

Sigmund Popko, representing self, spoke in support of HB2664. He advised that he is a practicing defense attorney and he related that over 90 percent of cases are resolved outside of the trial process. He mentioned domestic abuse cases and wondered whether it is best to put abusers in prison or whether something else should be done with them to break the cycle of abuse. He said these are the types of questions that a Sentencing Commission could focus on; that is why this Committee should support this proposal.

Brittany Dorough, representing self, in favor of HB2664, stated there is not enough discretion for judges now.

Vice-Chairman Smith announced the names of those who signed up in support of HB2664 but did not speak:

Beth Rosenberg, Lobbyist, Children's Action Alliance

Dana Hlavac, Deputy County Manager, representing self

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2664 but did not speak:

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

Vice-Chairman Smith moved that HB2664 do pass.

Vice-Chairman Smith moved that the Ash two-line amendment dated 2/15/11 be adopted (Attachment 32). The motion carried.

Vice-Chairman Smith moved that HB2664 as amended do pass.

Mr. Ash advised that it is not his intention to impugn prosecutors because they are a group who tend to uphold the law and they go into the profession because they want to do good in the

community. He related that prosecutors can make a huge difference in a person's life. He pointed out that ACJC membership does not include anyone from the defense perspective. Additionally, ACJC has not made any recommendations on sentencing for at least two years. He said he believes the Commission will offer another view, at no cost to the state, and there will be the opportunity to receive grant money to help with criminal justice issues. He asked for Members' support.

Question was called on the motion that HB2664 as amended do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 33).

HB2146 - concealed weapons permit; training - DO PASS

Kathryn Brown, Majority Intern, advised that HB2146 makes statutory changes relating to the training process for obtaining a concealed carry weapon (CCW) permit, including altering instructor requirements and modifying program certification (Attachment 34).

Vice-Chairman Smith, sponsor, asked Dave Kopp to speak.

Dave Kopp, Manager, Arizona Citizens Defense League, Inc., testified in support of HB2146. He pointed out that there is nothing in the bill that changes the provisions of carrying weapons on school grounds. The bill basically removes the Department of Public Safety (DPS) from the training process for obtaining a CCW permit. Currently, it is costing DPS money, resources and manpower to perform this function. DPS is still studying this bill and has not yet taken a position on it. He answered questions concerning criminal background checks, training oversight, fingerprinting and fees.

Vice-Chairman Smith announced the names of those who signed up in support of HB2146 but did not speak:

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

Vice-Chairman Smith moved that HB2146 do pass. The motion carried by a roll call vote of 6-3-0-0 (Attachment 35).

HB2424 - probate; wards; rights - DO PASS AMENDED

Magdalena Jorquez, Majority Research Analyst, explained that HB2424 creates a probate advocacy panel and requires the court to take numerous actions with regard to probate proceedings (Attachment 36). She reviewed the provisions of the Smith 15-page amendment dated 2/15/11 (Attachment 37):

- Replaces all references to the "probate advocacy panel" with "legislative advisory probate panel."
- Increases the composition of the panel by adding two additional public members.
- Removes the following provisions from the bill:
 - Requirement that the panel develop minimum training standards for probate judges.
 - Requirement that the court dismiss a case brought pursuant to this chapter if the plaintiff cannot show evidence of abuse or negligence by clear and convincing evidence.

- Requirement that the court sanction the petitioner and attorney if it finds that there is no clear and convincing evidence.
 - Requirement that the Supreme Court establish a schedule of permitted fees
 - Provision that subjects a judge who has failed to protect a ward's constitutional rights to civil liability and sanction by the Supreme Court.
 - Provisions that permit a ward to remove a court-appointed fiduciary one time each year.
 - Requirement that a court-appointed fiduciary provide, on a monthly basis, a written account of all expenditures paid from the ward's fund.
 - Requirement that a court-appointed fiduciary resign from the position, if the fiduciary is unable to maintain a proper working relationship with the ward, the ward's family or the ward's guardian ad litem.
 - Stipulation that if the services of a guardian ad litem are paid from the assets of a ward's estate, the payments must be calculated on an hourly basis and capped at \$5,000 per year.
- Adds the following provisions:
 - Requires the court to sanction the petitioner and attorney if an action to establish incompetency is based on hearsay evidence.
 - Requires the court to enforce a proposed ward's directives unless the court finds that the person appointed by the proposed ward has committed a crime against the ward or otherwise puts the ward in danger.
 - Entitles the ward to all medical records, reports and evaluations ordered by the court.
 - Makes the following revisions to the sections of law governing guardians, conservatorships and trustees:
 - Permits a ward, protected person or beneficiary to petition the court to have the guardian, conservator or trustee removed for any or no cause and to appoint a successor appointment. The court is required to grant the request if no similar request had been granted in the previous 12 months.
 - Requires that if the ward objects to the person or entity who is temporarily appointed to serve as a temporary guardian or conservator, the court must appoint an alternative, if one is available.
 - Establishes that the court must use a clear and convincing standard when deciding whether an appointment of a conservator or any other protective order is in order.
 - Requires that, upon request of the ward or that person's attorney, the conservator must provide a monthly report of revenues and expenses related to the administration of the conservatorship.
 - Stipulates that if an attorney performs legal services for a fiduciary and is compensated from the estate of the protected person, then the attorney is bound by the same duties to the ward as if that person were their client.

Mr. Harper brought up the establishment of a fee schedule. Ms. Jorquez explained that the original bill requires the court to establish a schedule of fees; the amendment removes that provision. Mr. Harper said that, with the adoption of the amendment, there are no fee caps in the bill. Ms. Jorquez said that is correct.

Vice-Chairman Smith advised that this legislation addresses the many reports by the media of abuses in the probate system. Interested parties met to address those concerns and to deal with changes that are needed in the system. The amendment attempts to improve the provisions of the

bill and tackles criticisms raised about the bill. He said his plan is to continue to work on this legislation to resolve other issues.

Mr. Harper commented that he opposes a fee schedule because he believes in a free market. He will not support legislation that sets a fee cap and requires the court to set a fee schedule.

Amy Love, Legislative Liaison, Arizona Supreme Court, testified in opposition to HB2424 and the amendment. She related that the Supreme Court recognizes that the proponents of the bill seek to protect incapacitated and vulnerable individuals; however, opposition is due to unintended consequences that may put this population more at risk. The Supreme Court's Committee on Improving Probate has been meeting for ten months and is making recommendations for probate reform legislation. She briefly described the Supreme Court's objections to the bill provided to the sponsor.

Laura Knaperek, representing the Lund family, spoke in support of HB2424. She distributed a folder on elderly exploitation cases (Attachment 38) and a U.S. Government Accountability Office (GAO) report on Cases of Financial Exploitation, Neglect, and Abuse of Seniors (Attachment 39).

Sherry Lund, representing self, in support of HB2424, related that her family and other families have been deeply affected by the endless violations that have occurred at the hands of judges in the Probate Court. She said there were blatant violations of civil rights and due process rights committed in the Probate Court. She said it is obvious by the courts' objections to transparency and accountability that they have something to hide. The courts oversee and monitor themselves; however, she opined that the courts protect their own. Directives that should be followed by the courts are not being followed. She related that the courts appoint an investigator to investigate whether a person needs a guardian and a conservator. She said her family has been in court 16 months and to date, no investigative report has been filed. She asked Members to consider putting accountability and transparency back into the bill. She asserted that the public needs and wants reform.

Susan Bitter Smith, National Association of Elder Law Attorneys, in opposition to HB2424, said that the Association shares the interest in reforming the process of accountability and transparency; however, neither the language of the bill nor the amendment accomplishes that purpose. She maintained that there is uniform interest in making this process better, and stated that the Association prefers the language being proposed in the Senate bill.

Jay Polk, National Academy of Elder Law Attorneys (NAELA), spoke against HB2424. He advised that NAELA is a professional association of lawyers dedicated to improving the quality of legal representation. NAELA supports the idea of reforms. The proposed legislation does not accomplish that purpose; it creates more problems than it solves. The current probate code is designed to protect vulnerable adults before abuse occurs. The proposed legislation does not allow intervention until after abuse occurs. With respect to the removal of a guardian, a person is appointed a guardian only if that person is determined to be unable to make responsible decisions for himself.

Dennis Ball, Trustee for Dennis Andrew Ball, testified in support of HB2424 which attempts to protect vulnerable adults. There is a problem in Maricopa County's Probate Court with a lack of

accountability. He opined that there are judges, mafia lawyers and rogue fiduciaries using the system to make money off of elderly vulnerable individuals.

Edward Ravenscroft, representing self, spoke in favor of HB2424. He advised that he was born to a wealthy family and is the heir to a pharmaceutical trust. For most of his adult life, he has had a drinking problem. When he “slipped off the wagon,” the judge ruled that he was incapacitated and he lost his rights and about \$800,000. He said it cost him a couple million dollars to straighten matters out.

Roger Curley, Probate and Trust Section, Arizona State Bar, representing self, spoke against HB2424. He said he views this legislation as an attack against the judicial system and that reform is needed because judges are not doing their jobs. He maintained that there are good judges and good commissioners, and he does not believe the system should be changed.

William Lund, representing self, testified in support of HB2424. He advised that his family has been through a living nightmare for the last 16 months within the judicial system. He said he believes reform and accountability is needed. This proposal is the first step in restoring that accountability. He urged Members to give serious consideration to this legislation.

Patti Gomes, representing self, spoke in favor of HB2424. She related that she reported a family member’s exploitation to the court and an investigation was ordered. She stated that the report was inaccurate and the investigator became the court-ordered conservator and guardian. She submitted that was a clear conflict of interest, with the investigator benefitting financially from that decision. She said she could not undo the investigator’s report without an appeal which is a very expensive process, both financially and emotionally. It becomes incumbent upon citizens to spend their personal finances to force the court to do what the law says it should do. She revealed that this has all been documented in the newspapers and on television.

Varadee Dunaskis, representing self, neutral on HB2424, stated that this bill must pass; it is too important to not be adopted. She advised that she is a probate victim. She related that her parents left her financially comfortable when they died. Through the probate system, she has become bankrupt and nearly homeless. She questioned the competency of the judge/commissioner. She said she has a Minute Entry against her if she files any more actions against the judge, and she will face sanctions and contempt of court if she asks for his credentials. She asserted that judges need to be competent and need to be knowledgeable in order to run a probate court.

Jon Kitchel, Attorney, representing self, in favor of HB2424, related that he has represented hundreds of incapacitated individuals over the last 20 years. He stated that once a guardian or conservator assumes a fiduciary relationship with the ward, they are in a monopolistic position imposed by the court. If the ward wants to remove that relationship, the person must use his own money to end the relationship, while the guardian uses the ward’s money to keep himself in that position. He said that the process needs to be changed to be able to remove a fiduciary if the ward wants that change.

Clair Dipardo, representing self, in support of HB2424, stated that her mother is a victim of the Probate Court. Her mother had a living trust which stated that Clair would become her successor trustee; instead the court appointed a guardian. She said that judges are not following the rules.

She urged Members to support this legislation to hold judges and fiduciaries accountable. She asked that fee caps be put on fiduciaries.

Jayme Mason, representing self, testified in favor of HB2424. She said her grandmother is a ward of the Probate Court. Unless an accountability mechanism is put in place and more emphasis is placed on enforcement, this proposal will be nothing more than feel-good legislation. She asked for a yes vote on this bill and requested that judicial sanctions and liabilities be re-inserted..

Bradford Lund, representing self, spoke in support of HB2424. He advised that he has been a victim of the probate court for 16 months. He likened the process to a nightmare which he feels will never end. He asked that this bill be passed.

In reply to Chairman Farnsworth's questions, Mr. Lund advised that he has never been adjudicated as incompetent and it has cost him over \$1 million to defend himself so far.

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2424 but did not speak:

Stacey Langford, Vice President, Member Services, Arizona Bankers Association

John Thomas, Arizona Fiduciary Association

Jim McDougall, Attorney, representing self

John MacDonald, Lobbyist, representing self

Michelle Lund, representing self

Kristen Lund Olson, representing self

Vice-Chairman Smith moved that HB2424 do pass.

Vice-Chairman Smith moved that the Smith 15-page amendment dated 2/15/11 be adopted (Attachment 37). The motion carried.

Vice-Chairman Smith moved that HB2424 as amended do pass. The motion carried by a roll call vote of 8-0-1-0 (Attachment 40).

HB2582 - basis for judicial determinations; applicability - DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that HB2582 prohibits a court from using, implementing, referring to or incorporating into any decision, finding or opinion as controlling or influential authority a tenet of any body of religious sectarian law or any case law or statute from another county or a foreign body or jurisdiction that is outside of the United States and its territories as precedent or the foundation for any legal theory (Attachment 41). The bill defines *religious sectarian law* as any statute, tenet or body of law evolving within and binding a specific religious sect or tribe, including Sharia Law, Canon Law, Halacha and Karma. The bill specifies that this act may be cited as the "Arizona Foreign Decisions Act." In addition, the bill contains a severability clause that stipulates that the invalidity of any part of this act does not affect other provisions or applications of the act.

Representative Judy Burges, sponsor, stated that this legislation comes from constituents in her district because of concerns about religious sectarian law undermining state sovereignty.

Arno Naeckel, representing self, in support of HB2582, testified that this legislation is designed to prevent a problem that is developing in other states and other countries around the world; it is designed primarily to enhance legislative authority and to keep the people of Arizona from having their vote and their government undermined by judges referring to and utilizing sectarian law.

Mr. Ash said that oftentimes judges refer to what other countries have done. He wondered about the chilling effect this will have on their opinions. He said he agrees with the objectives of the bill but has concerns about limiting a judge's free speech within their decisions. Mr. Naeckel countered that judges should not be considering foreign law in their dicta.

Mr. Ash queried whether referring to the Bible violates this bill. Mr. Naeckel again stated that judges should not be referring to the Bible or quoting scripture in a court of law.

Mrs. Tovar asked how many other states have passed similar legislation. Mr. Naeckel answered that he is not sure.

In response to Mr. Hale's query about court decisions, Mr. Naeckel referred to a 2009 family case in New Jersey involving a Moroccan couple, where the wife sued for a restraining order against the husband. The court ruled that the defendant could not be held responsible for the beatings of his wife because it was consistent with their religious practices. Mr. Hale asked about cases in Arizona. Mr. Naeckel said that a lot of these cases do not show up in the records, so he has not done research. He reiterated that this is proactive legislation.

Vice-Chairman Smith announced the names of those who signed up in support of HB2582 but did not speak:

Linda Brickman, Act for America, representing self

Dave Kopp, representing self

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2582 but did not speak:

Dianne Post, Lawyer, representing self

Vice-Chairman Smith moved that HB2424 do pass. The motion carried by a vote of 5-4-0-0 (Attachment 42).

Without objection, the meeting adjourned at 12:32 p.m.

Joanne Bell, Committee Secretary
March 4, 2011

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