

ARIZONA STATE SENATE

45TH LEGISLATURE
FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: February 13, 2001 **TIME:** 1:30 pm. **ROOM:** SHR 1

CHAIRMAN: Senator Richardson **VICE CHAIRMAN:** Senator Smith

ANALYST: Sheryl Rabin **COMMITTEE SECRETARY:** Tracey Moulton

INTERNS: Lou Bacchi; Joseph Martin Belson, Jr.

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Aguirre	X			SB 1096	DPA
Senator Bee	X			SB 1105	DP
Senator Bundgaard	X			SB 1157	FAILED
Senator Burns	X			SB 1326	FAILED
Senator Cumiskey	X			SB 1348	DPA
Senator Rios	X			SB 1380	DPA/SE
Senator Smith, Vice Chairman	X			SB 1405	DPA
Senator Richardson, Chairman	X			SB 1413	DPA
				SB 1424	DP
				SB 1488	DPA
				SB 1526	HELD
				SB 1535	HELD
				SB 1549	HELD
				SB 1566	FAILED

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Jeffrey Lee Trollinger	Member, Psychiatric Security Review Board	CONFIRMATION

Tape 1, Side A

Chairman Richardson called the meeting to order at 1:32 p.m. and attendance was noted. For additional attendees, see Sign-In Sheet (Attachment A).

APPROVAL OF MINUTES

Senator Richardson announced that there were no minutes available for approval.

EXECUTIVE NOMINATIONS

Jeffrey Lee Trollinger, Member, Psychiatric Security Review Board – CONFIRMATION

Jeffrey Lee Trollinger stated that he holds a Masters degree from Northern Arizona University and has worked for the Superior Court in adult probation for approximately eight years. Currently he supervises a unit of mental ill people and is a program manager to remove mentally ill people from jail and move them into community treatment.

Senator Smith moved that the Committee on Judiciary recommend to the full Senate the confirmation of Jeffrey Lee Trollinger, Member, Psychiatric Security Review Board. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 1).

CONSIDERATION OF BILLS

S.B. 1535 – Arizona gambling control act – HELD

Senator Richardson announced that S.B. 1535 would be held.

S.B. 1380 – criminal investigations; cooperation – DO PASS AMENDED/STRIKE EVERYTHING

Sheryl Rabin, Research Analyst, explained the strike-everything amendment is related to informed consent; abortion. The amendment prohibits abortion without the voluntary and informed consent of the patient and defines the criteria that must be met to provide the patient with voluntary and informed consent. This includes that the patient must be orally informed about the abortion procedure and that she must be offered free copies of Department of Health Services (DHS) materials at least 24 hours prior to the procedure. The amendment also establishes professional and criminal penalties for noncompliance by a physician, including license suspension or revocation or a class 3 misdemeanor charge if the physician has knowledge or reason to know that informed consent was not obtained prior to the procedure. The language of the amendment is similar to language in a Pennsylvania law that withstood judicial scrutiny by the United States Supreme Court in the Planned Parenthood versus Casey decision.

Joan Maloof, Director, Post-Abortion Support Services, Crisis Pregnancy Center (CPC) of Greater Phoenix, testified in support of the bill and commented that her agency provides support services at no charge for women in crisis or unplanned pregnancies. The agency informs and educates women about all their options and provides practical help such as medical referrals, housing, provision of maternal and baby clothing and furniture assistance for women choosing adoption. Many of the women served at CPC have experienced crisis pregnancies and some of

the women have had abortions and recognize the desperate need for accurate and adequate information prior to making a decision that will affect a woman for the rest of her life. CPC is seeing an increase in the number of women who have had abortions say that local abortion doctors are not providing adequate information and counseling prior to performing abortions. These women state that they never met the doctor until the moment the procedure began because there was no pre-procedure consultation, as there would be for any other type of surgical procedure.

Ms. Maloof remarked that in the six years that she has been working at CPC the most common statement made by women who have had abortions is, "I was told nothing of the risks, the possible physical and emotional complications of the abortion, and nothing of the development of the baby. I felt so rushed to get it over with."

Ms. Maloof read statements by numerous women who had abortions and commented that they wish that more information had been made available to them with regard to the potential emotional, physical and psychological effects the procedure would have on them and on their babies.

Ms. Maloof reported that a study by Fred Hutchison, Cancer Research, 1997, showed that in women who have had abortions there was a 50% increase in the risk of breast cancer. In the American Journal of Public Health, March 2000 issue, it was reported that in a study of 2000 women, in two regions in France during 1988-1991, there was a 50% increase in ectopic or tubal pregnancy with an even greater risk among women who have had multiple abortions. In the Journal of American Medicine, October 1989, it was reported that the usual side effects of RU486 abortions were prolonged heavy bleeding, as long as 43 days, severe cramps, nausea, diarrhea, headaches, skin rashes and vomiting.

Ms. Maloof stated that women with no prior substance abuse, who aborted the first pregnancy, were up to five times more likely to report substance abuse compared to women who gave birth. 22% reported substance abuse occurred within a year of the abortion and 67% reported it within three years. This was the 16th study completed demonstrating the relationship between abortion and substance abuse, printed in the American Journal of Drug and Alcohol Abuse, March 2000.

Ms. Maloof remarked that a government funded study of Finland's records revealed women who had abortions were 252% more likely die within the following year than women who carried to term.

Ms. Maloof quoted Dr. David Riordan, a biomedical ethicist, researcher and Director of the Elliott Institute for Social Sciences and Research, speaking at a briefing on Capital Hill, January 18, 2001, "Abortion research has a place in civil rights law, in that women have a right to full disclosure of studies on abortion. In addition, abortion clinics failure to inform women of all risks must end." She stated that anyone who truly supports women's rights must take a serious look at what is happening to women regarding abortion, demand investigation and research, and at the very least support S.B. 1380.

Additionally, Ms. Maloor distributed a handout of statements from 39 physicians who support the bill (Attachment B).

Sandra Junck, Planned Parenthood of Central and North Arizona, testified in opposition to the bill and remarked that this is a difficult topic for everyone. She remarked that her organization's empathy and sympathy is with the women who have had difficulties or have made choices that they feel were not the right choices for them. S. B. 1380 is not only about informed consent. Most

physicians provide informed consent, provide information for their patients concerning the procedures and have follow up care for these patients. This bill singles a specific population for a specific procedure. Women who decide to have an abortion do so, not based upon the ability to go and get the procedure done immediately, but after having taken some time.

Ms. Junck expressed her concern with the 24-hour waiting period specified in the bill. She commented that women in rural area who need to travel into a metropolitan area to see a physician or clinic, and then have to find lodging for another 24 hours to wait to receive that kind of service is a burden on these women.

In response to Senator Smith, Ms. Junck commented that she did not want to contradict the testimony of Ms. Maloof with reference to the statements made by women who had abortions, she noted that each person views what happens to them on a personal level and she empathized with the women who have been through those experiences. She remarked that responsible physicians provide information and ask for voluntary consent from their patients who are going to receive surgical procedures.

Senator Rios stated that although this provision is permissive, he did not see why the agency should be responsible for providing a toll-free 24-hour telephone number to provide a list and description of agencies in the locality of the caller as well as the services that they offer. He remarked that providing the information is the key intent, not setting up a 24-hour telephone system.

Senator Burns remarked that the provision is permissive, and commented that the Department has the ability to do that for people who may need information in a short time period rather than sending information out.

Senator Rios commented that he did not see the urgency of having a 24-hour telephone service. He commented that in this situation, the woman is being asked to consider other alternatives. He remarked that having materials and information available is something he supports.

Mickie O’Keefe, Deputy Assistant Director of Public Health, testified that the cost the Department estimates for the installation and operation of the 24-hour hotline and to produce materials in both English and Spanish would be approximately \$237,000. She commented that staffing the hotline would cost \$170,800 for five full time employees and the telephone expense annually would be \$6,500. Operating expenses for rental equipment and other supplies would be \$20,000. Additionally, the printed materials of 25,000 copies each, including postage, would cost \$40,000.

Senator Burns commented that there is no mandate for the 24-hour phone service, so those expenses would not be applicable. She noted that in the 1999 DHS budget, there was \$75,000 allocated that has never been withdrawn by the Legislature. The allocation was for that year and the following year. Consequently, there should be at least \$150,000 available for the funding needs of this project. Ms. O’Keefe replied that she would have to check with the Department regarding those figures.

In response to Senator Cumiskey, Ms. O’Keefe remarked that the staff that researched the printed material looked at purchasing the Nebraska Department of Health’s information booklet to address the issues. She stated that additional staff would be necessary to administer this aspect of this additional state program.

Senator Richardson announced the following people were present in support of the bill: **Jack Maloof, representing himself; Richard J. Petersen, M.D., Arizona Physician Resources; Cathi Herrod, Legal Counsel, Center for Arizona Policy; Lylah Ledner, President, Women in Touch Ministries, Inc.; Shane Wikfors, Executive Director, Arizona Right to Life; Norma Odisio, representing herself; Lisa Calzadilla, representing herself; Linda Fox, representing herself; Mary Kay Arnold, representing herself; Irene Van Hofwesen, representing herself; Robert Bradford Jones, representing himself; Martha Carey-Lee, representing herself; Nancy Barto, representing herself; Isabel C. Calindo, representing herself; Masderlena Toledo Ham, representing herself; Lynn Dyer, representing herself; Ann Thomas, President, Voices Por La Vida; Rosie Villegas-Smith, Voices Por La Vida; Claudia Romo, representing herself; Carol Archbold, Pro-Life; and Tara Plese, Arizona Catholic Conference.**

Senator Richardson announced the following people were present in opposition to the bill: **Yvonne Anderson, Defenders of Choice; Linda Blackwell, League of Women Voters of Arizona; Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union; Joy Marx-Mendoza, representing herself; and Margaret Grannis, representing herself.**

Senator Smith moved S.B. 1380 be returned with a DO PASS recommendation.

Senator Smith moved the strike-everything amendment dated 2/07/01; 10:05 a.m. be ADOPTED (Attachment C). The motion CARRIED by a voice vote.

Senator Smith moved S.B. 1380 be returned with an AS AMENDED, DO PASS recommendation.

Senator Burns commented that the Legislature is singling out a procedure that is not the only kind of health procedure that has standards in law with regard to informed consent. She remarked that there have been some comments made that this is not about informed consent and stated that she would take exception to those comments. She commented that it is not uncommon for bills like this to be heard in the Judiciary Committee. She stated that this bill is about a medical procedure where women can be harmed and need to have the information made available to them before they make a decision in a very stressful situation.

The motion CARRIED with a roll call vote of 6-2-0 (Attachment 2).

In explanation of his vote, Senator Cummiskey commented that he appreciates the sponsor's comments, but opined that this bill is not about informed consent but rather it is about abortion and restricting access and voted "no."

In explanation of his vote, Senator Rios commented that he supported the bill, but noted that he did not understand the need for the 24-hour hotline and stated that he would attempt to amend this aspect of the bill on the floor and voted "aye."

In explanation of her vote, Senator Richardson commented that she had heard many good comments from the Committee members and remarked that this is a personal issue. She remarked that this is an issue of abortion. The words that have been spoken in Committee today are not going to change the life of a thirteen-year-old child, living in a rural border town, who will not do anything with these words. This is not going to make her not have an abortion if she chooses to have one, but it will push her into having an illegal, unsafe and potential life threatening abortion

across the border. She opined that every time the government tries to impede a woman's right to choose, the government is putting a woman's life at risk. She stated that she would personally not choose to have an abortion, however, there are many women who do. She opined that the establishment of a new government program will change the actions and attitudes and therefore she voted "no."

S.B. 1096 – hazing; educational institutions; prohibition – DO PASS AMENDED

Juliette Speisman, Research Intern, explained S.B. 1096 creates the new crime of hazing as a class 6 felony that prohibits involvement in hazing by any person enrolled in any public or private educational institution.

Ms. Speisman explained the Richardson amendment 2/12/01; 12:52 a.m.

Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union, testified in opposition to the bill and commented that the Richardson amendment addresses some of her concerns, but opined that this is a serious issue that needs to be dealt with at the school level. She commented that the tendency to make behavior criminal just results in making more criminals.

Drew Haynes, President of Kappa Alpha Order at Arizona State University, testified in support of the bill and commented that the fraternity is working hard to get the support of the University community as well.

Barbara Robey, Director of Government Relations, Arizona School Boards Association, testified in opposition to the bill and commented that the Association is aware of the concerns for student safety and the fact that students have to feel that they can report incidents in a confidential manner. The policies and procedures that are in place in over 200 of the school districts K-12, as well as administrative guidelines are in place in these schools.

Barbara T. Brown, representing herself, testified in opposition to the bill and commented that she was the attorney that represented the boys that were involved in the Winslow hazing incident to try to keep them from being expelled. She stated that she is concerned with the criminalizing of these problems and opined that it is an educational problem.

Senator Smith moved S.B. 1096 be returned with a DO PASS recommendation.

Senator Smith moved the Richardson amendment dated 2/12/01; 12:52 a.m. be ADOPTED (Attachment D). The motion CARRIED by a voice vote.

Senator Smith moved S.B. 1096 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 6-2-0 (Attachment 3).

S.B. 1157 – threatening; intimidating; criminal justice employees – FAILED

Lou Bacchi, Research Intern, stated that currently there is a threatening or intimidating statute, which applies to all people and is classified as a class 1 misdemeanor. S.B. 1157 makes threatening or intimidating criminal justice employees in the course of their duties a class 5 felony.

Mr. Bacchi explained the Richardson amendment changes the felony classification from a class 5 to a class 6. The Burns amendment strikes the word assault and inserts threat or intimidation making the language of the bill more consistent. The Rios amendment would exclude a person under the age of 18 from being prosecuted under this bill. The Aguirre amendment includes a clerk from the superior court's office also as a criminal justice employee.

James Hamm, Middle Ground Prison Reform, testified in opposition to the bill and commented that the bill's application to the ADC by including them in the definition of law enforcement agency as it applies to this particular bill, unconscionable. It means that any prisoner who has an attitude problem can quite possibly serve a life sentence, regardless of how light his original sentence is because of the penalty sentencing.

Tape 1, Side B

Jack McIntyre, Maricopa County Sheriff's Office, testified in support of the bill and noted that both the ADC and the Maricopa County Sheriff's Office are supporting the amendment to make this a class 6. He opined that making this a class 6 is advisable. He stated that this should remain as part of the bill, as well as the flexibility to make this a misdemeanor at the same time.

Senator Rios commented that his amendment makes this action applicable to adults and not to juveniles. He explained that the reason for that is because a lot of juveniles caught up in the system for a variety of reasons, some who are emotionally unstable, and others who may be coming off of substances, will act out and make threatening comments. Because of these reasons, as well as just being teenagers with anger control problems, he did not want them to get caught further into the system.

Mr. McIntyre commented that he did not have the opportunity to speak with Sheriff Arpaio regarding the Rios amendment. He opined that he would not oppose the Rios amendment, as it would be consistent with his desire to educate and rehabilitate juveniles who are unfortunately housed in the detention system.

Tonia Garret, Arizona Association of Counties, testified that she wanted to voice her support and thank Senator Aguirre for the Aguirre amendment. This amendment would include the clerks of the Superior Court with the other criminal justice employees.

Senator Smith moved S.B. 1157 be returned with a DO PASS recommendation.

Senator Smith moved the 2 line Rios amendment dated 1/29/01; 11:06 a.m. be ADOPTED (Attachment E). The motion CARRIED by a voice vote.

Senator Smith moved the Aguirre amendment dated 1/29/01; 11:06 a.m. be ADOPTED (Attachment F). The motion CARRIED by a voice vote.

Senator Smith moved the Burns amendment dated 1/25/01; 11:03 a.m. be ADOPTED (Attachment G). The motion CARRIED by a voice vote.

Senator Smith moved the Richardson amendment dated 2/12/01; 10:58 a.m. be ADOPTED (Attachment H). The motion CARRIED by a voice vote.

Senator Smith moved S.B. 1157 be returned with an AS AMENDED, DO PASS recommendation. The motion FAILED with a roll call vote of 2-6-0 (Attachment 4).

S.B. 1326 – vending machines; burglary tools – FAILED

Mr. Bacchi explained that due to substantial cash losses that occurred in theft of soda vending machines, the Arizona Soft Drink Association has proposed additions to current statutes. S.B 1326 classifies the possession of certain instruments that could be used to commit criminal damage to or theft to a vending machine as a class 6 felony.

In response to Senator Smith, Mr. Bacchi replied that the current penalty is the same as for regular theft, which is a class 1 misdemeanor.

Shannon Slattery, Legislative Relations Coordinator, Maricopa County Public Defender, testified that a vending machine cannot be burglarized because it is not a structure that people can dwell in. Therefore, the theft statutes apply. Theft statutes start as a class 1 misdemeanor for value of stolen property under \$250. Between \$250 and \$2,000 it would be a class 6 felony. \$2,000 to \$10,000 would be a class 5 felony and \$10,000 or more would be a class 4 felony. Anything below \$200 would be classified as a class 2 misdemeanor based on current statutes. The same is true of criminal damage. If damage in excess of \$250 occurs it is at the class 6-felony level. Those financial levels progress along the same line that the theft statutes do for the actual action of damaging or stealing from these machines. Currently, the use of burglary tools is a class 6 felony. It is primarily designated to prevent burglary tools from being used in residential or non-residential commercial structures, which usually house equipment that people use. A person could be convicted of burglary either of a residential structure or non-residential structure if a theft on a soda machine occurred during the course of another burglary.

Ms. Slattery stated that she questions why go after the tools when going after the actions which the tool are used to promote would get at a higher level of penalty then the tools themselves, depending on the level of damage.

Senator Bundgaard remarked that this is just one tool in the toolbox for law enforcement. People are knocking over vending machines and that is the equivalent of walking into a Circle K and emptying out their cash drawer. There are pretty harsh penalties associated with that. He commented that the vending machines have dollar bills and there usually is quite a lot of money in them. He stated that these machines are sitting ducks and if law enforcement has another tool in the toolbox to prosecute the people who are damaging them, he opined that it was a good thing.

Ms. Slattery stated that, notwithstanding the idea that this is a tool, there is a significant difference between walking into a Circle K and robbing a cash register and breaking into a vending machine. Two very distinct things come to mind. One is the fact that there is a commercial structure that people are occupying who could be put in danger by someone walking into an establishment and doing this kind of thing. This is not talking about the tool being used to do it. It is the person who is committing the act who is doing. This bill does not go to the person or the act being committed, but rather the possession of the tools with the intent of using them eventually to commit this type of offense. This could be about something as simple as a magic marker that can be used to write on a vending machine.

Ed Wren, Legal Counsel, Arizona Soft Drink Association, testified that this used to be a relatively minor crime. Somebody would take a crowbar and break into a vending machine and take the money out. It is in the past 2 or 3 years that it has become an epidemic. Now there are very sophisticated gangs who hit a lot of these machines in one night. In one of the hotels in Phoenix they had sky masks on and were armed. It is a very lucrative act. If someone walked into a Seven Eleven store with or without a weapon, the amount of money that they would get from a cash register would be very little. The vending machines now have dollar bill capacity and when filled, hold up to \$800 dollars. Over \$1 million is stolen from two major bottlers Coke and Pepsi and less from Kalil.

Mr. Wren commented that although this has not happened here in Arizona, it has happened in other states where vending machines located in hallways of hotels and motels are vandalized by offenders with sophisticated tools including high speed drills with diamond bits. He asked the Committee to hear testimony from John Mulder, a retired police officer regarding the seriousness of these crimes.

Senator Smith commented that he would like to know if there are laws on the books right now the police departments can use the vandalizing of vending machines.

Mr. Wren remarked that this bill was patterned after a Kansas law. Currently, if police stop a van that is carrying Coke and Pepsi uniforms, key rings, and tools that are obviously not for use at home they cannot arrest them. This bill is a solution to this problem. He deferred to Mr. Mulder for more information.

John Mulder, testified that he was a retired detective supervisor from the City of Scottsdale and had over 30 years of law enforcement experience. He stated that he had been hired by the Soft Drink Association to help stem the tide of crimes. He commented that the losses experienced not only by the three major bottlers in this State but by the non-bottling vendors in the Soft Drink Association is closer to \$3 million a year.

Mr. Mulder noted that there are laws that deal with the issues described, when someone is caught breaking into a machine. What law enforcement is looking for is something to help them find someone preparing to break into the machines. The common suspect arrested is an individual who carries around a set of keys, a tool for which they can make keys, picks to get into the locks to duplicate the key, high-speed drills with high-speed bits to drill into the locks, and other devices to open the machines. It is common for the entire machine to be stolen, the door removed from the machine and the carcass of the machine dumped. Criminals are using that as a means to educate themselves on the locking mechanisms. It is a very sophisticated group, first thought to be kids trying to get into the machines for lunch money. However, there are gangs of people who are involved in this criminal activity.

Mr. Mulder commented that he is concerned with the increase of violence that can occur with these thefts. A case in Paradise Valley, where two individuals were arrested and possessed two 40 caliber block semi-automatics, sky masks, gloves, as well as the tools that were necessary to enter into the vending machine. That is one example and there are many others that indicate that there is an escalation in the potential for violence with these individuals.

**Senator Smith moved S.B. 1326 be returned with a DO PASS recommendation.
The motion FAILED with a roll call vote of 3-5-0 (Attachment 5).**

S.B. 1348 – taking firearms; peace officers; sentencing – DO PASS AMENDED

Sheryl Rabin, Research Analyst, explained S.B. 1348 increases imprisonment by five years for various crimes that involve taking or attempting to take a firearm from a peace officer. As drafted, the bill would also allow a presumptive sentence to be increased or decreased by five years for an individual convicted of a dangerous crime against children.

Ms. Rabin explained the Cummiskey amendment clarifies that sentences may only be increased and not decreased when firearms are taken. The amendment also clarifies that a five-year term will also be added to the minimum, maximum, or presumptive sentences if the felony involves taking or attempting to take a firearm from a peace officer. Finally, the amendment clarifies that the five-year increase to a sentence does not apply to misdemeanor charges.

Shannon Slattery, Legislative Relations Coordinator, Maricopa County Public Defender, testified that the issues in this bill are complex in terms of the constitutionality. She opined that the amendment takes large steps towards addressing the constitutional concerns and due process concerns that she had raised with regard to this bill and that it is essential to maintaining the constitutionality of the bill. She stated that her office has remaining concerns with what this bill will do on some of these offenses.

Ms. Slattery noted that the bill takes any currently non-violent, non-dangerous offense and would add on five years to the penalty for the actual taking or attempted taking of a weapon from a peace officer. It does not increase the penalty for people who happen to use their own guns in those cases where the police officer's weapon is taken from them. Statistics have been provided indicating there have been six actual shootings involving the officer's own weapon. These are serious incidents, and should not be taken lightly. At present, there is a statute that covers that, which is aggravated assault dangerous, or if murder is attempted, murder or attempted murder. Under the aggravated assault dangerous statute, when dealing with a police officer with a weapon, it would be a class 2 felony and would be subject to up to 20 years in prison with a mandatory term of no less than the minimum because the officer is the victim of the offense and that would require at least a ten year minimum. She noted that she understood the public policy behind the bill, but asked if the Committee would consider whether the intention is to add this to things like possession of marijuana where there is no injury to the officer, no victimization, and there are no other assault charges that is otherwise attached to the charge.

Mike Petchel, Executive Director, Arizona Police Association, testified in support of the bill and remarked the most recent statistics available are from 1998. FBI statistics for the State of Arizona were 1,846 assaults on Arizona police officers and of those, 125 involved assaulting officers by firearm. In addition, of the 1,846, 1,460 peace officers were assaulted by personal weapons which mean, for example, hands, fists, and feet. In law enforcement today we have the threat of guns being taken to the point that many officers have been killed in struggles with suspects with the officer's own firearm. In 1998, nationally 57 officers were slain with their own firearm. In those incidences, 113 officers had their guns actually stolen from them during the assault. Law enforcement has developed gun take away measures and tactics to keep retention of weapons when officers are involved in a fight over the weapons, during an arrest. Gun holster manufacturers have improved their technology, making it harder to remove the firearm from the holsters. He commented that not all officers have the holsters but most of the major departments supply the holsters for their officers.

He commented that police officers are still being assaulted and they differentiate between someone who assaults them with an attempted punch, as a type of a class 6 felony assault from someone who is actually trying to take away their gun. These types of criminals are a special class who need to be put away just a little bit longer than those other types of individuals. It is sad to say that when an officer is successful in retaining his weapon and is successful in bringing someone into custody and the outcome of the assault is that he is not injured then the suspect is treated the same way as someone who assaults an officer using their hands, fists, or feet. This legislation is to change the policy with individuals who assault police officers in more violent ways by taking or attempting to take away the officer's weapon.

Senator Cummisky expressed his appreciation of the law enforcement community's effort to bring this bill to other sponsors and to him. It does justify additional action from the legislature for those individuals who go the extra step to try to disarm an officer. This is a growing problem that was already articulated. He opined that it is reasonable for this to be considered in the sentencing as it relates to the defendant.

Senator Smith moved S.B. 1348 be returned with a DO PASS recommendation.

Senator Smith moved the Cummiskey amendment dated 2/09/01; 10:59 a.m. be ADOPTED. The motion CARRIED by a voice vote (Attachment I).

Senator Smith moved S.B. 1348 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 5-0-3 (Attachment 6).

S.B. 1549 – misconduct involving weapons - HELD

Ms. Rabin explained S.B. 1549 establishes as a crime of misconduct involving weapons the crime of knowingly keeping a firearm under a person's custody or control, if a child gains access to the firearm and if an injury or death results. Violations of this section are a class 3, 4 or 6 felony depending upon the resulting death or level of injury that results from the child's access to the firearm. The bill contains a number of provisions that prohibit liability, including if the person has no reasonable expectation that the child will be on the premises. S.B. 1549 also requires the person who sells or exchanges firearms in the regular course of business to post a notice disclosing the duties of this section.

Barbara LaWall, Pima County Attorney, testified the best way to illustrate why she is a supporter of this bill is to tell the Committee of what she encountered as the Pima County Attorney. Bobby Ortega, a 16 year old championship wrestler and an avid art student at Marana High School was depressed when he went to a friend's house two years ago Christmas 1999. He got a Christmas card and started to cry as he was reading his Christmas card and asked if he could go lay down because he was getting so emotional. He was directed to the master bedroom. When he got into the master bedroom he opened a bedside table drawer and found a 38-caliber handgun and ammunition in the bedside table. He loaded the Smith and Wesson, he put it to his head, he pulled the trigger, and he killed himself.

In March of 2000, a 2-year-old by the name of Jonathan found a handgun underneath the seat of his father's truck. His dad had left the gun there. It was loaded and the 2-year-old shot himself in the leg. In April, 15 year old Anthony Adam Ortese accidentally and unintentionally killed his 17-year-old sister with a firearm that was brought into the home by an adult and left unsecured. That

same month, Ernie Valenzuela, another 16 year old, shot himself in the head with an unsecured handgun that he found in the home. In July, 15 year old Sedrick Jones accidentally killed his 16 year old friend while the two of them were in a drive-through at a local fast food restaurant. That gun had been found at the house and had been left there unsecured by an adult. In November 2000, 6 year old Jesus Torango accidentally shot himself in the head with an unsecured handgun that he found on the top of his mother's dresser. He lived for a few short days and then died of the fatal gunshot wound that was self-inflicted and accidental. Just yesterday in Tucson, a 14 year old boy was arrested at Flowing Wells High School with a loaded handgun in his possession. He found it in the closet hanging in a holster. Each gun was hidden in a dresser drawer, somewhere out of the way, on a closet shelf, and each gun was unsecured and each gun started out in the hands of an adult.

Ms. LaWall informed the Committee that S.B. 1549 increased responsibility and accountability on adults and it makes them keep guns out of the hands of children. Her mission as the Pima County Attorney, is three-fold. The first is to prosecute criminals and those people who harm the public safety. Equally important, is preventing crime and protecting the children of our State. She stated that any adult who permits children access to improperly stored and improperly secured handguns in the home and where children use those guns to inflict injury or death, should be held accountable and should face criminal penalties. ABC News did a poll about this particular gun safety measure that showed there is very broad support with 82% of the people polled by ABC News believing that parents should be held responsible if a child uses a gun to injure or kill someone. 70% of the men and 80% of the women polled thought that adults should be held accountable if a child gets a gun and harms or injures or kills somebody. In Arizona, teenagers die from gun related deaths at a much higher rate than any other state in the nation. She strongly urged the Committee to support the bill.

Senator Burns commented that she was concerned about any unintentional consequences of this bill.

Ms. LaWall remarked that a 17 year-old is only allowed to be in possession of a gun for target shooting when they are in the presence of an adult, guardian, or at target shooting practice.

Senator Burns stated that a location a person thinks is reasonably secured is a judgment call as is having a reasonable expectation that a child would be on the premise. She questioned how the Legislature would decide certain definitions.

Ms. Lawall noted that those are issues that she has to deal with on a regular basis as a prosecutor. This is the reasonable man standard. These standards are throughout the law in various other crimes and prosecutors have to make sure that the facts fit and make arguments to the jury. Often times, if the prosecutor determines that its burden cannot be met, cases are not tried because the standard would not be met by the facts in a case. Those are the kinds of charging decisions that prosecutors make. Those issues vary frequently at trial level.

Senator Bee expressed his concern with family situations where one spouse has a firearm in the home and the other spouse is perhaps not approving or aware of the gun being in the home. Would the unaware person be held liable in this situation?

Ms. LaWall stated that this type of situation is a difficult one. It will be incumbent upon law enforcement to interview the people and to make those decisions as to whether or not this particular gun belonged to the person who refused to secure it or whether it was the gun of the

person whose simply claimed, "Well, I told them that I wanted it to be put away." An investigation would determine whether a prosecutor will make a charging decision about whom is accountable.

Senator Gerard, bill sponsor, stated that she was requested to put in this bill by Monsignor Ryle. She remarked that it was not the intent of this legislation to violate Second Amendment rights. But on the other hand, there is a real problem with youth violence and teen suicide. She opined that there are educational benefits when laws like Shannon's Law was passed and people are now aware that it is a felony to shoot a gun in the air.

Darren LaSorte, Legislative Liaison, National Rifle Association (NRA), testified in opposition to the bill and remarked that on behalf of 100,000 members in the State, he would ask that the Committee oppose S.B.1549. He stated that in the 10 years that he has been around the Legislature, this is certainly the boldest attack that he has experienced against the right to self-defense in this State.

Mr. LaSorte commented that firearms would no longer be something available for self-defense in the home under this legislation even though there are some exceptions. He opined that safety is a matter of education not intrusive government mandates and that Americans are safer with their firearms than any other weapon available.

Mr. LaSorte remarked that guns would be locked away in the home under this legislation, locked away from people who need them for self-defense whether they are a kid who is 15, 14 years old or a parent. Home invaders would go unfettered while the intended victim was fumbling in a panic with a trigger lock.

Tape 2, Side A

Mr. LaSorte stated that Americans are safer with their 265 million firearms than any other potentially dangerous item. Statistics from the National Center for Health, which he stated is certainly not a "pro gun" organization, stated that in 1998 there was a total of 100,000 fatal accidents in the country. Firearms accounted for 9% of those 100,000 accidents, while vehicles were 45%, falls were 13%, poisons were 11%, drownings were 5%, chokings were 4%, and fires were 3%. All of those accounted for more deaths individually than firearms. Additionally, firearm death is at an all time low. At the same time, there has been a double in the population and a quintupling of the number of firearms in our society. Child accidents involving firearms have decreased nationally by 75% since 1975 and Arizona is no exception. In 1996, the State passed the one million point barrier when there were one million children between the ages of 0-14 in the State. In 1996, there was one child who died in a fatal firearm accident and in 1997, there were three deaths. In 1998, there were also three fatal accidents. Mr. LaSorte emphasized that those are horrible tragedies, individually, but to keep in mind there are approximately 2 million gun owners and over 8 million guns in the State, and it is amazing that the State is so safe with firearms.

Mr. LaSorte noted that the N.R.A., even in light of these statistics, certainly believes that safety can be improved. The N.R.A. spent \$100 million last year on safety with 40,000 instructors teaching 750,000 people annually. He noted that the N.R.A.'s "Eagle" gun safety program reached 12 million children. He stated the question to consider, "Is this about gun safety or child safety or is it about gun bigotry?"

Mr. LaSorte remarked that the tragic stories told today by the prosecutor Barbara LaWall are hard to hear and each one of those incidents are truly tragic. But the fact of the matter is that these are isolated incidents. It sounds callous to say that any tragedy is an isolated incident, but when looking at the number of kids involved, these are isolated incidents. He hypothesized a scenario regarding domestic violence where a victim who has been stalked by her ex-husband. She has an order of protection and has done everything she can to protect herself. He charges into her home with her three kids present and because she has state government mandated trigger locks on her gun, she has to fumble with the trigger lock while her ex-husband, who has threatened to kill her, successfully carries out his threat and kills her. He stated that he wanted the Committee to consider that scenario as well as the emotional pleas to pass this legislation to protect children.

Mr. LaSorte commented that he would argue that in the end, more harm than good could come from this legislation. He asked the Committee to oppose S.B. 1549 and confirm for the citizens of this State that their constitutional right to self-defense still exists and demonstrate that there are boundaries to which government has to abide, those being the walls of their homes.

Senator Richardson expressed her appreciation of Mr. LaSorte being present and remarked that S.B. 1549 would be held.

S.B. 1566 – gun shows; instant background checks - FAILED

Ms. Rabin stated that under current law only firearm dealers possessing Federal Firearm Licenses are required to run background checks on prospective buyers. This is true whether the purchase occurs at a gun show or at another location. This bill requires gun show vendors, as defined in the bill to obtain an instant background check from the Department of Public Safety on any prospective firearm transferee. Under the bill, an event is an organized gun show if the event is sponsored to foster the purchase, sale, or collection of firearms and if 25 or more firearms are exhibited or offered for sale or exchange or if at least three vendors exhibit firearms for sale or exchange.

Senator Mitchell, bill sponsor, testified that this is very straightforward and he did not want to get into a discussion on an interpretation of the Constitution. He stated that there are deeply held beliefs on all sides of most firearm issues. He opined that this bill should strike the members common sense toward what is in the public's interest. There are a total of 20 states that have laws requiring background checks for all gun sales including those at gun shows. Arizona has in statute the instant background checks for events that are held by dealers and any sale by a dealer. The State does not have is a requirement for a background check for those guns that are sold at a show.

Senator Mitchell stated that there is a report entitled "Commerce and Firearms in the United States" done by the Treasury Department and reported to Congress. It said that gunshows are a major trafficking channel responsible for more than 26,000 illegal firearm sales during an 18-month study. The report noted that felons are associated with purchasing weapons in nearly half the gun show investigations. The Bureau of Alcohol, Tobacco, and Firearms seized 1,508 guns in Arizona. They also purchased 181 more guns during a probe that began in October of 1999.

Senator Mitchell stated that he was not anti-gun, but opined that a law is needed that requires gun show dealers to conduct background checks. He stated that the Department of Public Safety (DPS) is a point of contact for gun show clearances. It takes less than 5 minutes, for an instant background check. During this last year, DPS had the federal firearms clearance center check 126,880 backgrounds. Of that, there were 3,194 that were denied immediately, and an additional

1,148 that needed more information. A total of 4,300 purchases were denied as a result of this instant background check.

Senator Mitchell commented the problem this bill addresses is trafficking of illegal guns. In January of 1999, three employees of a Tucson Pizza Hut were brutally killed during a robbery. One of the guns used, after it was traced back, was sold at a local gun show. No background check had been done. In addition, the tragedy of Columbine in Littleton, Colorado, where two 17-year-old boys purchased three out of the four guns from an unlicensed seller at a gun show. He remarked that Federal agents shut down a robbery ring in a blazing shoot out in Chicago's Union Station. The guns that were used by the suspects were purchased and traced to a gun show in Phoenix. This bill is to make sure that these illegal firearms are not sold. Twenty states now require background checks for all gun sales including gun shows. He added that the National Research Opinion Center at the University of Chicago said that 80% of the general public and 66% of gun owners want private gun sales to be subject to the same background checks as those required by licensed dealers.

Kenneth Rineer, representing himself, testified in opposition to the bill and commented that this bill is addressing a gun show loophole that does not exist. This "loophole" was specifically written in the law in order to protect private property rights.

Hildy Saizow, HALT Gun Violence, testified in support of the bill and commented that statistics indicate that gunshows are used as vehicles to move illegal guns and urged the Committee to pass the bill.

Darren LaSorte, Legislative Liaison, National Rifle Association, testified in opposition to the bill and commented that there is no "loophole" in statute. He stated that this legislation is a result of the Columbine incident, because those guns were obtained at a gun show. He stated that this legislation would have no impact on the guns that were used in Columbine. Those guns were purchased through "straw" purchasers, illegally and those people were prosecuted appropriately.

Mary Judge Ryan, Pima County Attorney's Office, testified in support of the bill and commented that this bill allows law enforcement to enforce existing law. Under Arizona law, felons, minors and mentally ill are prohibited from buying or possessing weapons. In order to enforce that law, prior to the sale of weapons, a background check must be conducted to determine if the buyer is a prohibited possessor. Federally licensed dealers are required to do this check, which they do efficiently. This bill will also ensure that the private vendors will conduct the same check.

Senator Richardson announced the following people were present in support of the bill: **Gerry Anderson, HALT Gun Violence; Lucy Ranus, HALT Gun Violence; Monsignor Edward Ryle, Arizona Catholic Conference; Linda Blackwell, League of Women Voters of Arizona; Eric Edwards, Arizona Association of Chiefs of Police; Sandra Junck, Children's Action Alliance; Marjorie Mead, National Organization of Women; Michael Haener, Attorney General's Office; Otis Smith, HALT Gun Violence; Margaret Grannis, representing herself; Rabbi Robert Kravitz, representing himself; Carolyn McBurney, representing herself; and Barry Dill, City of Tucson.**

**Senator Bee moved S.B. 1566 be returned with a DO PASS recommendation.
The motion FAILED with a roll call vote of 3-4-1 (Attachment 7).**

S.B. 1405 – motor vehicle; security interest; notice - DO PASS AMENDED

Joseph Belson, Research Intern, explained S.B. 1405 amends the automobile loan default notification process currently used by lienholders to notify debtors of their defaults.

Mr. Belson explained the Cummiskey amendment reinserts the requirement that notice be sent via certified mail, return receipt requested.

Senator Guenther, bill sponsor stated that the amendment addresses most of the concerns that were raised with the bill. He stated that he showed the amendment to the Attorney General's Office and other concerned individuals and to his knowledge there should not be any further concerns with the bill, as amended.

Shannon Slattery, Legislative Relations Coordinator, Maricopa County Public Defender's Office, testified in opposition to the bill and commented that upon further examination of the bill, her office believes there may be some constitutional problems with the structure of the bill because it creates a felony crime for failure to repay debt. Article II, section 18 of the Arizona Constitution, makes it unlawful for people to be imprisoned for failure to pay a debt.

Senator Richardson recessed the meeting at 4:30 p.m.

Senator Richardson reconvened the meeting at 4:33 p.m.

Senator Guenther stated that during the recess, he had a discussion with Ms. Slattery with regard to the underlying statute. The statute in existence at this time may be unconstitutional, but the bill and the amendment are not unconstitutional.

Senator Smith moved S.B. 1405 be returned with a DO PASS recommendation.

Senator Smith moved the Cummiskey amendment dated 2/12/01; 8:25 a.m. be ADOPTED. The motion CARRIED by voice vote (Attachment J).

Senator Smith moved S.B. 1405 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-1-0 (Attachment 8).

S.B. 1413 – drug transport; minors in vehicle – DO PASS AMENDED

Mr. Bacchi explained S.B. 1413 expands the definition of endangered and abuse to include permitting a child or vulnerable adult to enter or remain in a vehicle used to transport illegal drugs.

Mr. Bacchi explained the Richardson amendment.

Mr. Bacchi explained the Cummiskey amendment.

Senator Guenther, bill sponsor, stated that the Cummiskey amendment addresses the concerns that were raised last week with regard to a person being charged with this crime who did not know the drugs were in the vehicle.

Tape 2, Side B

Senator Smith moved S.B. 1413 be returned with a DO PASS recommendation.

Senator Smith moved the Richardson amendment dated 2/09/01; 2:50 p.m. be ADOPTED. The motion CARRIED by voice vote (Attachment K).

Senator Smith moved the Cummiskey amendment dated 2/12/01; 8:16 a.m. be ADOPTED. The motion CARRIED by voice vote (Attachment L).

Senator Smith moved S.B. 1413 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 9).

S.B. 1424 – operating motorized watercraft while intoxicated – DO PASS

Mr. Bacchi explained S.B. 1424 decreases from .10 to .08 the blood alcohol concentration (BAC) level required to convict a defendant of operating or being in actual physical control of a motorized watercraft while under the influence (OUI). The bill also creates the new crime of operating a motorized watercraft while under the extreme influence of intoxicating liquor (extreme OUI) and sets the minimum BAC level for this crime at .18.

Senator Guenther, bill sponsor, testified in response to Senator Bee, that the extreme level was set a .18 rather than .15 because it was desired to have both vehicles and watercraft be the same for the level of BAC allowed and that the bill would be amended on the floor.

Senator Richardson announced the following people were present in support of the bill: **Steve Tyrrell, Mothers Against Drunk Driving; Judith Connell, Arizona Trial Lawyers Association; and Alan Nelson, La Paz County Sheriff's Office.**

Senator Smith moved S.B. 1424 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 6-1-1 (Attachment 10).

S.B. 1526 – sexually oriented businesses – HELD

Jed White, Research Intern, explained S.B. 1526 prohibits persons from appearing nude or depicting specific sexual activity in a sexually oriented business and prohibits any exchange or acceptance of pay or gratuities between patrons and employees of the business.

Senator Hamilton, bill sponsor, commented that this bill has attracted a lot of attention within the last week or two, mostly around a statement he made that you cannot legislate intelligence, but you can legislate morality. He stated that it is outrageous to think that Legislators do not legislate morality, because our laws define the moral code of society.

Senator Hamilton remarked that over the summer, the United States Supreme Court ruled "if governmental purpose in regulating expression is unrelated to suppression of expression, then regulation need only satisfy the less stringent standard for evaluating restrictions on symbolic speech. But if government interest is related to control of expression, regulation must be justified under a more demanding standard." He commented that this means that as long as someone does not deny freedom of expression, regulation is proper and in some instances, appropriate. He stated it is the Legislature's responsibility to decide which times are appropriate and which times are not.

Senator Hamilton stated that with the Supreme Court decision, it no longer requires that a city show an individual location is a problem for that community and that the problems created by an adult oriented business are so pervasive and widespread that it is no longer necessary to show that regulation is necessary. The city can assume that a problem exists around an adult orientation business and can therefore regulate that business.

Senator Hamilton commented that the Supreme Court also stated that being in the state of nudity is not inherently an expressive condition, that nude dancing is expressive conduct and that falls within the outer ambit of the first amendment's protection. Nudity itself is not protected, but the dancing is protected under the first amendment of free speech.

Senator Hamilton stated that because Legislators have more leeway to address this situation, because of the Supreme Court ruling, this piece of legislation was developed. Since there has not been a lot of time to discuss the decision with the cities and counties, the people who would be the most affected by these rules and regulations, he asked to have the bill held.

Senator Richardson stated that she appreciates the sponsor's request to hold the bill. She noted that she wished she had been informed of the sponsor's wish to hold the bill, as there are over 60 citizens present to speak to the bill.

Senator Richardson announced the following people were present in support of the bill: **Ken Karouzos, The Center of Arizona Policy; Terri Proud, Together Achieving Positive Solutions (TAPS); Wanda Bundy, Americans for Decency; Joy Marx-Mendoza, representing herself; Margaret Grannis, representing herself; and Lylah Ledner, Women in Touch Ministries.**

Senator Richardson announced the following people were present in opposition to the bill: **David Alexander, Tourism and Convention Entertainment Group; Chris Ryan, Tourism and Convention Entertainment Group; Warren Colazzo, Christies Cabaret; Don Isaacson, Arizona License Beverage Association; Patricia Kenny, Band aids; Bill Weigele, representing himself; Robin Shiu, representing herself; Steven Thompson, Citizens R Government; Donald Evenson, representing himself; James Shaffer, representing himself; Catherine Sharp, representing herself; Eric Skatvold, representing himself; Bill Pistocco, representing himself; Victor B.H., representing himself; Steven Angasta, representing himself; Wilson Pollard, representing himself; Kerry Boylans, representing himself; Brett Siegel, Band aids; Jeff Johnson, representing himself; Scott Tyler, representing himself; Kassi Jo Whetstone, representing herself; C. Scott Keyworth, representing himself; John Schneider, representing himself; David Benally, representing himself; Michael Pavcil, representing himself; Rick Jenkins, representing himself; Dasseem Pinson, representing himself; Adam Bigelow, representing himself; Rashod Swinger, representing himself; Rick Smith, representing himself; Brian Butler, representing himself; Edward Perea, representing himself; Brian Lee, Band aids; Shawn Monasmith, The Adult Entertainment Industry; John Smith, representing himself; Charles Demerey, representing himself; Jim Beam, representing himself; Sojdhhol Hean, representing himself; Sean Hoffer, representing himself; Larry Zaffina, representing himself; Ed Trachy, representing himself; Mario Pete, representing himself; Eric Christensen, representing himself; Wally Maddox, representing himself; Richard Hofaling, representing himself; Randy Dillman, representing himself; Serena DaCastello, representing herself; Megan Alley, representing herself; Angela Chipp, representing herself; Stephanie Davis, representing herself; Angie Pompson, representing herself; Thandi Singleton, representing herself; Sharon Seltzer, representing**

herself; Tunisha Zanora, representing herself; Kari Kruminger, representing herself; and Audrey Gartin, representing herself.

S.B. 1488 – time limitations; sexual offenses – DO PASS AMENDED

Mr. Belson explained S.B. 1488 eliminates the statute of limitations for commencing prosecution of certain sexual offenses.

Mr. Belson explained the Burns amendment removes the seven crimes in the bill and refers to the A.R.S sections where these same seven crimes can be found. He explained the Rios amendment states that the bill shall only apply to cases with DNA evidence.

Shannon Slattery, Legislative Relations Coordinator, Maricopa County Public Defender, testified in opposition to the bill. She stated that sex crimes are a serious offense and should not be treated lightly. She opined that changing the statute of limitation may not be needed. The offenses listed in this bill may already have certain situations where the statute of limitations may not be triggered in some circumstances. Those circumstances include that until the offense is brought forward to a political subdivision or police agency, the statute of limitations does not run until notification is made. If the accused person does not live in the state or cannot be found, the statute of limitations does not begin until such time as that person is available under the jurisdiction of Arizona courts.

Cindi Nannetti, Maricopa County Attorney's Office, testified in support of the bill and commented that she agreed with many of the comments made by Ms. Slattery regarding issues surrounding statute of limitations. She noted that if the State of Arizona wants to set a strong public policy, in order to illuminate any of the statute of limitations in these cases, then this bill needs to be passed. She commented that with the advances of technology, from a crime scene, when an offender cannot be located, can be used when that offender repeats an offense and the statute of limitations would still be in existence. She commented that this bill would allow law enforcement to solve many cases that they are unable to solve at this time.

Senator Rios commented that he was proposing his amendment because he thought the bill was based on DNA and the amendment would strike the section of the bill that pertained to other types of sexual exploitation. He asked if repressed memory cases would be affected by the bill. Ms. Nannetti commented the statute of limitations statute, as it currently reads, allows for the pursuit of cases there has been a delay in the reporting of these types of crimes. She stated that currently there is a limited abolishment of the statute of limitations in those cases. This bill would expand that to include many more sex offenses that could be pursued.

Joy Marx-Mendoza, representing herself, testified in support of the bill and commented that she has volunteered with the Arizona Coalition Against Domestic Violence for the last 20 years and is a formerly a battered wife.

She commented this bill indicates to her that what happened to her when her ex -husband raped her while she was eight months pregnant, and consequently killed her baby, matters to the State of Arizona. She commented that although she would probably not have enough evidence to go after her ex-husband, this bill at least gives her hope that other women will not feel as she felt that the State did not care. She stated that this is benchmark legislation and urged the Committee to support the bill.

Senator Richardson announced the following people were present in support of the bill: **John Blackburn, Arizona Criminal Justice Commission; Jerry Landau, Maricopa County Attorney's Office; Marjorie Mead, National Organization of Women; Cathi Herrod, Center for Arizona Policy; Eric Edwards, Arizona Association of Chiefs of Police; Margaret Grannis, representing herself; and Jim Maricey, Phoenix Police Department.**

Senator Smith moved S.B. 1488 be returned with a DO PASS recommendation.

Senator Smith moved the Burns amendment dated 2/12/01; 11:16 a.m. be ADOPTED. The motion CARRIED by voice vote (Attachment M).

Senator Rios withdrew the Rios amendment.

Senator Smith moved S.B. 1488 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 11).

S.B. 1105 – sudden infant death syndrome; protocols – DO PASS

Kathy Seeglitz, Research Assistant Analyst, explained S.B. 1105 requires the Department of Health Services (DHS) to establish death scene investigation protocols for suspected sudden infant deaths.

Ms. Seeglitz explained the Senate Health Committee passed the bill with an amendment and explained the amendment.

Heather Boettcher, representing herself, testified in support of the bill and stated that she is a sudden infant death syndrome (SIDS) mother. She stated that she lost her 3 month-old son to SIDS while he was at his sitter's home.

In response to Senator Smith, Ms. Boettcher stated that if there is an unexplained death of an infant, there is an investigation and an autopsy is performed.

Ms. Boettcher stated that it was her experience that the investigations that are performed are inconsistent and are not thorough. At the time of her son's death, there were between five and seven police officers who reported to the scene and only two officers filled out the checklists.

Ms. Boettcher explained that this bill is to ensure a more thorough investigation with a one-page checklist, which will help eliminate the confusion and misdiagnosis between SIDS and abuse. This is not a measure to protect parents who have harmed their child avoid child abuse charges, but rather it is an attempt to standardize the procedures that are used by the police in these cases.

Senator Smith commented that he and his wife lost a two month old child to what was termed as "crib death." He noted that the last thing a grieving parent needs is to have five police officers being insensitive to the family in a terrible time of stress.

Ms. Boettcher stated that during the investigation of her son's death, parents of the other children the sitter's care were called and told to pick up their children from a potential crime scene which sent the wrong message to the parents. Additionally, the death was ruled accidental, but with the baby's arrival at Phoenix Children's Hospital, bilateral retinal hemorrhaging was discovered, which

the authorities considered the result of child abuse. She was told that she and her husband were suspected as well as the sitter. Her sitter was removed from her home within an hour of the child's death and brought in for questioning and had a polygraph exam which she passed. The sitter was told that she could have no contact with the family.

Ms. Boettcher commented that because of her experience, she went to her mother, Senator Hartley to sponsor legislation to address some of these problems. She urged the Committee to support the bill.

Tape 3, Side A

Senator Hartley, bill sponsor, commented that 96% of all infant deaths under the age of one year are categorized as sudden infant death syndrome. In the remaining 4% of these cases, generally the death was preceded with some form of lesser abuse. She noted that in the attempt by law enforcement to investigate the 4% of child abuse cases, 96% of the parents are treated as suspected criminals during the most traumatic of all life experiences.

Senator Hartley remarked that folders had been distributed to each of the members with the bill, the amendment that passed out of the Health Committee and an explanation of the amendment and the recommended laminated investigation check list that is to be used by the emergency crews arriving on these scenes.

Senator Hartley stated that this is a necessary piece of legislation and urged the Committee to support the bill.

Senator Richardson announced the following people were present in support of the bill: **Eric Edwards, Arizona Association of Chiefs of Police; Jerry Landau, Maricopa County Attorney's Office; John Blackburn, Arizona Criminal Justice Commission.**

Senator Smith moved S.B. 1105 be returned with a DO PASS recommendation.

Senator Smith moved the Burns amendment dated 1/22/01; 10:36 am. be ADOPTED.

Ms. Rabin stated that the Burns amendment would not be necessary, as it was encompassed in the amendment that passed out of the Heath Committee.

**Without objection, Senator Smith withdrew the Burns amendment.
The motion CARRIED with a roll call vote of 7-0-1 (Attachment 12).**

Without objection, the meeting was adjourned at 5:45 p.m.

Respectfully submitted,

Tracey Moulton
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)