

The Voice of Arizona Law Enforcement

Volume 6, Issue 1

Spring 2005

Major Legislative Campaign Winning Key Victories For Corrections and Probation

By Joe Garcia
Legislative Director

The decision by AZCOPS to launch a major campaign in the State Legislature this year is bringing long sought-after benefits for our members in corrections and probation.

Key victories include an approximate six percent across-the-board pay raise for ADOC employees, defeating an attempt to transfer some state prisoners to private prisons, winning funding for compensatory time payouts and on-call pay settlement agreements for corrections, getting a probation/surveillance officers overtime and representation bill signed into law, and introducing a bill to transfer the Capitol Police Department from the state Department of Administration to the Department of Public Safety, a priority for the Arizona Capitol Police Officers Association, newly affiliated with AZCOPS.



Jim Parks
Pres., AZCOPS

“The needs of our members dictated that we have a major presence at the Legislature this year,” said President Jim Parks.

The following is a summary of the major bills AZCOPS lobbied for and against at the State Legislature.

Senate Concurrent Resolution 1003

Defeated was SCR1003, a proposed Constitutional amendment to the Arizona Constitution that would have: 1. Capped the number of prisoners housed in all correctional facilities operated by ADOC at the population housed on the effective date of the act. 2. Required the Director of ADOC to transfer any prisoners above the capped population to any private prison that contracts with the state to serve the remainder of their terms of incarceration. 3. Required the Director of ADOC to determine which prisoners to transfer to private prisons. 4. Required the Director of ADOC to transfer prisoners from minimum or medium security facilities before any prisoners from maximum security facilities would be transferred. 5. Required the Secretary of State to submit this proposition to the voters at the next general election.

Not surprisingly, this proposal would have been a disaster for the future of the Arizona Department of Corrections and its employees. After intense and persistent lobbying by AZCOPS, SCR1003 was soundly defeated on the



SEN. KAREN JOHNSON (center), who took the lead in getting two crucial AZCOPS-backed bills passed and signed into law, welcomes into her Senate office AZCOPS President Lu Ebratt (left) and AZCOPS Legislative Director Joe Garcia.

Senate floor on March 1, with only seven Senators (out of 30) voting in favor of the resolution. SCR1003 was crafted as a gift to the private prison interests, but because of the efforts by AZCOPS, was beaten badly. AZCOPS and AZCPOA must stay vigilant on this issue, however. Legislative language like SCR1003 will undoubtedly return as a main priority of the private prison corporate lobby. And, the private prison corporate lobbyists have a large presence at the State Capitol.

ADOC Across-the-Board Pay Raise
AZCOPS has lobbied long and hard to get a substantial general pay increase
(Continued on Page 4.....)

President's Message *by Jim Parks*

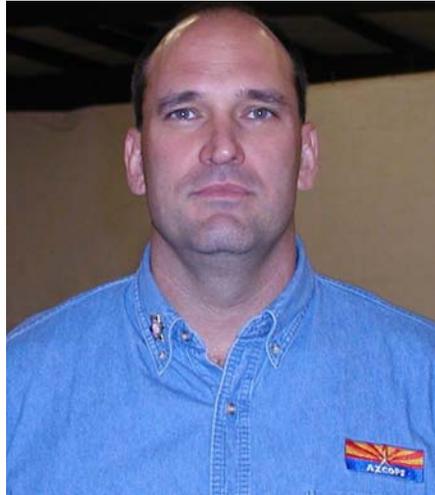
Organizing State Workers, Legislative Action Are Major Planned Campaigns for AZCOPS This Year

First I would like to thank all our members and their families for the support you have given AZCOPS over the years. I hope that this new year will bring us closer to our ultimate goal of achieving meet and confer throughout the state. While we have won some major battles in the legal and political arenas, we still have a long road ahead. Again, this would not be possible without your involvement and commitment to this endeavor.

To start the year off, AZCOPS, in conjunction with the Communications Workers of America, is in the process of a statewide campaign to organize our state workers. With the support and cooperation of the CWA and National Coalition of Public Safety Officers Director John Burpo, two veteran AZCOPS leaders have been hired to assist with this campaign. We welcome Tom Vargo and Chuck Foy to lead this drive. They are responsible for organizing our Corrections Officers and other state workers. They will also be assisting the AZCPOA in any way they can. With their hard work and dedication to this project we will be successful in this campaign.

We have also hired Joe Garcia as our new Legislative Director this year. Many of you may remember Joe as the probation officer and member of AZ-POA who led our successful legislative campaign three years ago to arm the state's probation officers. He subsequently opted to return to college to become an attorney.

Our biggest concern has been, and unfortunately will continue to be, the attempt to privatize our state prisons. I am proud to announce that with, the hard work of AZCPOA President Joe Masella, his organization and Joe Gar-



AZCOPS President Jim Parks

cia, the bid to privatize our prisons this year has been defeated. We cannot afford to rest in this fight because this issue is sure to raise its ugly head in the future. We must remain steadfast in our goal to prevent privatization from becoming a reality.

Also being pushed at the legislature is the fight for Probation to become a recognized association so that exclusive representation rights are recognized. However, we cannot stop here. We must continue to drive forward and begin to write our own legislation that will help law enforcement officers throughout the state.

I would also like to mention that it is that time of the year to start thinking about the 2005 AZCOPS Annual Convention. At the February Board of Directors meeting it was decided that, due to the great success of last year's convention, we will once again be holding the convention at the River Palms Hotel and Casino in Laughlin, Nevada.

We need input from everyone on the

types of courses you would be interested in and the number of classes to be taught. So, put your thoughts together and submit them to your Association leaders because, before you know it, the convention will be here. I look forward to hearing from all of you.

One last thing I would like to touch on — I briefly spoke of it as the beginning of this article — is the camaraderie that we all share as law enforcement officers. Whether you are in Probation, Corrections, or in a City, County or State department, we are all a family and all want the same thing. To be treated fairly and equally by our employers. As AZCOPS Associations, it is our duty as leaders to ensure that all of our members are being treated with dignity and respect. If they are not, it is our job to step up and voice our concerns.

Speaking of families, they are the forgotten ones. We sometimes forget that our primary jobs and our union duties take away from the time we spend with our families. Like you, I too come home from work tired and burned out. I then spend the next several hours on the phone or the computer working on union business, thereby neglecting my family.

It is those family members who I want to thank for supporting us and understanding the importance of the work that we do. Without your dedication to the family and your commitment to the union as well, the Associations, as well as AZCOPS, would not enjoy the successes that we have all achieved over the years. So, for that I would just like to say: Thank you!

Remember to take care of one another and stay safe. ■

Know Your Legal Rights



Importance of Knowing Your Rights Illustrated

By Martin Bihn
General Counsel

One of our Peoria members recently required elective, but necessary, surgery. He requested FMLA leave, which was approved by the Department. He then went out on leave and successfully underwent surgery. Following the surgery, our member went through a rigorous course of rehabilitation. Finally, at the end of his 12-week FMLA leave, his physician gave him a clean bill of health and pronounced him fit to return to duty.

The officer returned to work where he found a nasty surprise waiting for him. Peoria's Police Chief, David Leonardo, arbitrarily decided that the officer could not return to duty until he had completed a department-ordered fitness-for-duty evaluation, which was to include a battery of separate tests. The officer got the Peoria Police Officers' Association (PPOA) involved, which then met with the Chief. The Chief took the position that, because he was "the Chief," he could order a fitness-for-duty evaluation on any employee at any time. The Chief then ended the meeting by advising the PPOA that he was insisting on the fitness-for-duty examination.

The PPOA leadership then consulted with AZCOPS legal to determine if the member had any legal recourse. AZCOPS legal advised the PPOA that the Chief's conduct was a clear violation of the FMLA. AZCOPS further armed the PPOA with copies of relevant case law and an article from the International Association of Police Chiefs.

The PPOA leadership then went directly to the Human Resources Department, provided the requisite legal authority, and explained that if their member was not immediately returned to work — without a fitness-for-duty examination — the officer would lodge



General Counsel Martin Bihn

a complaint with the Department of Labor regarding the FMLA violation. Human Resources, of course, overruled the Chief and properly ordered the member to be reinstated without a fitness-for-duty examination.

The law, in a nutshell, provides that when a person returns to work from FMLA leave, he or she may not be subjected to additional fitness-for-duty examinations. The rationale is fairly clear. If an employee leaves on FMLA leave for a serious medical condition and is subsequently released to return to work by the treating physician, no fitness-for-duty evaluation should be necessary. Of course, this does not preclude the Department from ordering a fitness-for-duty examination for conduct observed *after* the officer returns to work.

On another note, AZCOPS legal has long counseled that members not submit to "voluntary" interviews or interrogations because neither *Garrity* nor *Miranda* rights apply to voluntary statements. Our message, thankfully, is getting through.

One of our Juvenile Corrections members, a 15-year employee with no prior discipline, was driving through a re-

mote Indian reservation while on duty and in his official duty vehicle. The vehicle developed a mechanical problem, veered off the road, and collided with a bridge abutment. Our member was stunned, but essentially uninjured. The Tribal police arrived on the scene, investigated, and determined that our member was not at fault, and no ticket was issued. The Tribal police also prepared a police report, providing a copy to our member.

Our member immediately reported the incident to the Department, which outsourced its investigation to the Department of Public Safety.

A few days later our member was advised to drive from Tucson to Phoenix to meet with DPS investigators. Our member immediately asked his supervisor if he was being *ordered* to the DPS interview. When advised that it was an order, our member knew *Garrity* protections applied.

In Phoenix, DPS investigators advised our member that he was a liar because his version of events did not match the Tribal police report. Our member produced his copy of the report, which showed that DPS was missing several pages in its copy. Our member asked investigators if they were compelling him to answer their questions. The investigators looked surprised and advised that the interview was *voluntary*.

Our member then terminated the interview and returned to Tucson. Our member advised his supervisor what he had done, saying that the two departments needed to work out whether the interview was voluntary or *Garrity*-protected before he would again be interviewed.

No further interviews were needed and DPS determined there was no misconduct by our member. ■



Corrections, Probation Win

(.....continued from Page 1) for our ADOC members. Thanks to Gov. Napolitano, Rep. Russell Pierce, Chairman of the House Appropriations Committee, and the other budgetary leaders in the State Legislature, agreement was reached in the waning days of this session to earmark \$8 million for an across-the-board pay increase for ADOC employees—roughly six percent, or an average of \$1,410 per employee.



Chuck Foy
AZCOPS Staff

House Bill 2387

With the unwavering and dedicated support of AZCOPS, HB2387 was passed out of the Legislature and signed into law by the Governor on March 28. It appropriates \$7.5 million from the General Fund in Fiscal Year 2004-2005 for ADOC costs related to employee compensatory time payouts, and \$10 million from the Risk Management Fund and \$2.5 million from the state General Fund in FY 2004-2005 for the Arizona Department of Administration to pay the on-call pay settlement agreements. This was a major victory for AZCOPS and the members of AZCPOA.

Part of the victory on HB2387 involved the defeat in the Senate Appropriations Committee of language in a proposed amendment that stated: **“The Director of the Department of Corrections may establish alternate work periods, in accordance with federal law, for the purpose of determining overtime compensation provided that such alternative work periods shall not exceed 28 days or 160 hours.”**



Tom Vargo
AZCOPS Staff

This language would have allowed any Director of ADOC the ability to manipulate work hours of non-exempt corrections officers (COII, COIII, COIV, Sergeants, Lieutenants and Captains) to avoid the payment of overtime.



Tracy Hubbart
Secretary AZCOPS
AZCPOA Tucson
Chapter President

AZCOPS President Jim Parks and Legislative Director Joe Garcia personally asked Senator Karen Johnson (R-Mesa,



Lu Ebratt,
Pres., AZPOA

District 18), who is a member of the Senate Appropriations Committee, if she would make a motion in committee to strip the bad language. She made that motion on behalf of AZCOPS and it passed 8-3.

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Special thanks must go to Senator Johnson for going to bat for the working men and women of the Arizona Department of Corrections. She is a true friend of AZCOPS and its members.

This victory would not have happened but for the appearance and heavy lobbying at the Capitol by President Jim Parks, Secretary Tracy Hubbart, Staff Reps. Tim Clark and Chuck Foy, and AZCPOA President Joe Masella and Vice President Mark Balzano. The entire AZCOPS organization worked together and truly pulled out all the stops to deliver this victory to corrections officers.

Senate Bill 1303

After months of hard work and intense lobbying by probation associations throughout the state, SB1303, the probation/surveillance officers overtime and representation bill made it through the Legislature, passing the House 56-0, and the Senate by 26-2, and was signed into law by Governor Napolitano on April 25.



Jack Berry
Pres., YCPA

Again, Senator Johnson came through for AZCOPS as the primary sponsor of this bill. She worked tirelessly for its passage. It is difficult to overstate the importance of the roll Senator Johnson played in the passage of this long overdue legislation.

Key features of the new law are:

- Mandates that probation and surveillance officers employed by political subdivisions receive overtime compensation for hours worked in excess of 80 hours in a two-



Richard Hornbeck
Pres., PCPA

Big From Legislative Efforts



Joe Masella
Pres., AZCPOA

week period.

- Allows probation and surveillance officers who are employed by the state or a political subdivision the **right** to join employee associations.

- Allows probation and surveillance officers employed by the state or political subdivision of the state the **right** to have representation and due process during an interview with the employer, if the interview could result in formal discipline.

AZCOPS association leaders playing major roles in the lobbying effort to get SB1303 passed were Lou Ebratt, President, Arizona Probation Officers Association; Jack Berry, President, Yavapai County Probation Association; and Richard Hornbeck, President, Pima County Probation Association. Hundreds of probation and surveillance officers throughout the state also lobbied tirelessly for this bill by making phone calls and sending e-mails to **every** Senator and Representative.



Mark Balzano
Vice President,
AZCPOA

In addition to Senator Johnson, several other legislators co-sponsored SB1303

and/or contributed greatly to its passage. They include Sen. Ken Chevront (D-Phoenix, District 15); Sen. Linda Gray (R-Phoenix, District 10); Sen. Marilyn Jarrett (R-Mesa, District 19); Sen. Thayer Verschoor (R-Gilbert, District 22); Rep. Pete Hershberger (R-Oro Valley, District 26); Rep. David Burnell Smith (R-Carefree, District 7); Rep. Russell Pearce (R-Mesa, District 18); Rep. Linda Lopez (D-Tucson, District 29); Rep. Cheryl Chase (D-

Kearny, District 23); Rep. Mark Anderson (R-Mesa, District 18); Rep. Judy Burges (R-Skull Valley, District 4); and Rep. Colette Rosati (R-Scottsdale, District 8). Because of the bill's near-unanimous passage, it is really necessary to thank almost all of the Senators and Representatives in the Legislature for their "yes" vote on SB1303.

House Bill 2404

HB2404 has the complete support of the Arizona Capitol Police Officers Association. ACPOA President Brian Marquez, as well as members Lance Spivey and Neal Peden and others, worked very hard to get this bill passed.

HB2404 would transfer the Capitol Police Department from the Arizona Department of Administration to the Department of Public Safety. While the transfer is supported by ACPOA, both ADOA and DPS are fiercely opposed to the bill, which passed the house easily by 59-0, and got assigned to the Appropriations Committee and the Rules Committee in the Senate. HB2404 passed the Senate Appropriations Committee 8-1, and, as this newsletter goes to print, is awaiting a hearing and vote in the Senate Rules Committee.

House Bill 2709

HB2709, would have required the Arizona Department of Administration to contract with a private prison facility contractor to build a private prison in Mexico to house Mexican National prisoners subject to specified conditions. It passed the Legislature, but was vetoed on May 5 by Gov. Napolitano, citing cost problems for ADOC and jurisdictional problems for the two countries. The governor was right to veto this bill, which would have been



Brian Marquez
Pres., ACPOA

terrible for ADOC employees and which clearly was unconstitutional.

Conclusion

There are several other bills that were on the legislative agenda for AZCOPS, but the aforementioned were the main ones this year. AZCOPS has had a very productive legislative session and is very hopeful that much more will be accomplished in next year's session. Among the items being discussed as possibly part of the next session's agenda is a police officer's pension bill which would allow an officer's off-duty earnings to be calculated as part of his or her income for pension purposes.

In the next several months, I urge the various associations within AZCOPS to formulate an agenda that is a legislative



priority for the union with a realistic goal in mind — an agenda that realistically has a chance of passing the Legislature next year.

Joe Garcia
Legislative Director

On a personal level, I want to thank AZCOPS for the opportunity to represent the union and its members before the Legislature during this session. As it was in 2001, when I worked to win the right of probation and surveillance officers to be armed, this year's legislative goals were challenging and the results personally rewarding.

AZCOPS is blessed with a legion of savvy officers and members whose determination and hard work continues to win acceptance and praise in both the state Senate and House of Representatives. Your involvement and support made my job as Legislative Director easier and was a major factor in our success in this legislative session. ■



Our Associations At Work For You

Oro Valley Officer Cleared of Criminal Charges

At a preliminary hearing in February, an Oro Valley Justice of the Peace cleared a member of charges that he inappropriately touched two high school girls during a traffic stop. The girls made their charges days after the officer stopped their vehicle after observing erratic driving. The officer investigated, determined that the teenage girls were not under the influence, and allowed them to proceed.

After the girls made charges, the alleged incident was fully investigated and the girls were interviewed separately. The girls and their families pushed the matter and ultimately forced the county attorney to present the case in a preliminary hearing.

At the preliminary hearing, AZCOPS attorney Mike Storie proved, unequivocally,

that the girls were liars.

Attorney Storie showed that the girls' initial statements to police were not only inconsistent, but were also inconsistent with their later court testimony. Even the Judge hearing the matter concluded that the girls' testimony was riddled with inconsistencies and falsehoods.

The testimony most damaging to the accusers came when one of the girls denied under oath that she had ever called police officers "pigs." Testimony by the girls' School Resource Officer and another witness established that the girls routinely called officers "pigs," despised police officers, and had a clear motive for their false allegations.

The Justice of the Peace hearing this

matter based his decision on the facts, his experience working with thousands of teenagers, and his own experience as a father of two daughters and eight granddaughters. The judge, in dismissing the charges completely, concluded that the girls lied and that the events did not unfold as the girls had alleged.

Our member has been completely exonerated of all wrongdoing. We believe it is now the girls who should be charged with false reporting and, possibly, perjury. And, although we are pleased with the outcome of the hearing, we find it unfortunate that the county attorney felt it necessary to even pursue such a merit-less case. ■

Chuck Foy, Tom Vargo Appointed as Fulltime AZCOPS Organizers

Chuck Foy, founding president of AZCOPS, and Tom Vargo, a retired corrections officer, have been appointed as fulltime organizers for the union. Initially, they will concentrate on organizing drives involving corrections officers and other state employees.

Foy retired last year as a 22-year veteran officer of the Peoria Police Department. He helped found the Peoria Police Officers Association in 1988, then helped form AZCOPS and became its first president in 1996.

Vargo is retired from the Arizona Department of Corrections. He has extensive experience as an organizer within the state's corrections system.

"We are happy to welcome both union veterans to our fulltime staff as organizers," said AZCOPS President Jim Parks. "This marks another milestone for AZCOPS, which is now beginning to focus on bringing other state officers into our union," he added. ■

Response to Critical Incident in Quartzite Draws Thanks From Officer, LPCDA

On February 16, 2005, a member of the La Paz County Deputies Association was attempting to serve a writ of execution in Quartzite when he became involved in a critical incident (officer-involved shooting).

Upon arriving at the residence, the deputy encountered a female who said the subject was not there. The deputy followed the woman into the residence to find the subject there with a shotgun.

The deputy ordered the subject to drop the shotgun, and he complied, but picked up a walking stick. As the subject was swinging the stick at the deputy, a Sheriff's Department Sergeant arrived at the scene and fired his taser at the subject, striking him in the chest.

The subject, estimated to weigh some 400 pounds, pulled the taser prongs from his chest, picked up the shotgun

and, again, pointed it at the deputy, who then had no choice but to defend himself. He fired, fatally wounding the subject.

Notified of the critical incident by LPCDA President Joe Escorza, AZCOPS Attorney Michael Frame, whose office is in Parker, responded immediately to the scene. He advised the deputy of his rights and did a walk-through of the scene to determine what had transpired.

"The officer thanked me for the support of our association and said that Michael Frame did an excellent job in seeing that his rights were protected," said Escorza. "We are all thankful for the AZCOPS Legal Plan and the protection it provides to us." he added

The officer was subsequently absolved of any wrongdoing. ■



AZCOPS Legal Attorneys Busy Throughout State

LAKE HAVASU CITY: An illegal move by Lake Havasu City to force employees injured on the job to be treated at a medical facility designated by the city's insurance carrier, was quickly stopped when LHPOA President Joe Harrold called AZCOPS legal.

In December, the city's Risk Management specialist sent a notice to all employees dictating the policy effective Jan. 1, 2005. LHPOA members objected, noting that they had responded to many calls at the medical facility.

AZCOPS legal contacted the carrier's lawyer, who quickly agreed the move was illegal and took steps to rescind the policy. Arizona law allows persons injured on the job to seek treatment from a physician or facility of their own choice.

FLORENCE: In early December, Florence police officers were dispatched to a domestic violence call. Upon arriving at the scene, family members advised that their grandfather had been drinking, had loaded an AK-47 and a shotgun, and threatened to kill family and all police officers he saw.

Pinal SWAT, an interagency team, was called to the scene and took up positions around a full-sized commercial bus, parked in the yard, where the subject had barricaded himself. Several attempts to negotiate with the subject failed, during which he fired more than 100 rounds at the officers. When he fired on an armored vehicle and nearby officers, SWAT returned fire in an intense gun battle. The subject was subsequently removed from the bus with the aid of a canine unit and he was taken into custody.

The Pinal County Sheriff's Department began a criminal investigation into the matter by ordering 20 members of the

SWAT team to a training room to await an interview process. AZCOPS Legal intervened, pointing out that many officers had been up for over 30 hours. Three officers wanted immediate interviews due to travel and vacation plans, while 17 others immediately went home to sleep. AZCOPS legal attended the critical interviews and all officers were subsequently cleared.

COTTONWOOD: The city's Personnel Board has reversed a suspension imposed on a member for allegedly failing to take a police report.

The officer had been dispatched to a call involving an allegation that an eight-year-old boy had exposed himself to a five-year-old girl on a local school bus. When the officer made contact with the girl's mother, she advised that she did not know the name of the boy involved, and that she did not want the matter prosecuted. Instead, she wanted the matter to be handled through the school district. The officer advised her to contact the School Resource Officer, who was ready, able and willing to assist with the matter if the mother desired prosecution.

Taking the position that officers are allowed no discretion to deviate from policies, the department determined that the officer violated the policy requiring police reports whenever the officer felt it "necessary."

The officer was given a one-day suspension, removed from the SWAT team for six months, denied all training, and placed under special supervisory status for six months.

AZCOPS legal, representing the officer at the hearing, argued that the discipline was excessive, and that the department policies were inconsistent. In fact, at the hearing, AZCOPS legal showed that the I.A. investigator acted

without a written complaint and had, himself, violated department policy.

In addition to the ruling for the officer, the Board directed the Police Department to review its policies and procedures to ensure they are updated and that all policies are consistent, universally followed, and carefully maintained by the department.

DEPT. OF CORRECTIONS: The State Personnel Board has reinstated Lt. William Butler, who works in the ADOC's Special Management Unit, where the department places "behaviorally-challenged" inmates.

On May 5, 2004, an inmate fell to the floor of his cell and acted as if he were choking. Staff and medical personnel rushed to the inmate's cell.

Lt. Butler took charge of the incident and extracted the inmate from his cell for a medical evaluation. Medical staff found the inmate to be faking as he had on 30 occasions in the past few months.

Once the inmate was returned to his cell he became non-compliant and refused to allow his handcuffs to be removed. The inmate then began screaming at the officers. Butler entered the cell to retrieve the handcuffs. The inmate began to physically resist and then he kicked Butler. Butler took the inmate to the ground, was immediately relieved, and then reported the use of force. ADOC investigated for nearly a year before dismissing Butler for an "improper use of force."

AZCOPS legal appealed the dismissal to the state Personnel Board. After a hearing the Board ruled in Butler's favor, finding his actions to be fully within policy. Butler has been reinstated as of May 16, 2005. The video of the incident will be on the AZCOPS website shortly. ■

Arizona Conference of Police and Sheriffs, Local 7077

**Affiliated with Communications Workers of America/
National Coalition of Public Safety Officers, AFL-CIO**

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