

Judiciary Committee

Senator Adam Driggs, Chairman



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JUDICIARY COMMITTEE

LEGISLATION ENACTED

aid; execution of process; injury (S.B. 1018) – Chapter 139

Allows a person who has been commanded by a sheriff or other public officer to assist in overcoming resistance to execution of process to refuse if such assistance would expose the person to physical injury.

jury service; eight year exemption (NOW: grand jury; excuse; jury service) (S.B. 1039) – Chapter 106

Requires a judge or jury commissioner, on application, to temporarily excuse a person from service as a prospective juror if the person is summoned within four years after the last day of grand jury service. Excludes alternate grand jurors.

county attorney; powers and duties (S.B. 1047) – Chapter 16

Allows a county attorney to provide civil legal services to another county attorney, political subdivision, or its officers, employees or agencies at the request of that county or political subdivision's general counsel without having to submit an intergovernmental agreement.

executive clemency board; salary; duties (S.B. 1132) – Chapter 143

Removes the requirement for Board of Executive Clemency (Board) members to be paid hourly, and instead requires the Arizona Department of Administration to determine a yearly salary. Renders Board members eligible for paid leave. Statutorily separates the Board Chairman and Executive Director positions, which codifies current practice, and requires hearing officers to conduct probable cause hearings on community supervision revocations.

mental health power of attorney (S.B. 1169) – Chapter 268

SEE THE HEALTH AND HUMAN SERVICES COMMITTEE.

victim compensation fund; allocations (S.B. 1211) – Chapter 307

Currently, the Arizona Criminal Justice Commission (ACJC) is prohibited from allocating more than 50 percent of monies from the Victim Compensation and Assistance Fund to agencies for which there are ACJC seats. S.B. 1211 removes that restriction.

criminal trials; location (S.B. 1214) – Chapter 25

Substitutes *in transit* as a general phrase replacing different forms of transportation when determining a criminal trial location and jurisdiction.

JUDICIARY COMMITTEE (Cont'd)

DUI; drugs; ignition interlock requirement (NOW: ignition interlock requirement; DUI; drugs) (S.B. 1228) – Chapter 57

SEE THE TRANSPORTATION COMMITTEE.

internet sex offender website; offenses (S.B. 1286) – Chapter 154

Requires level-one sexual offenders to be included on the Department of Public Safety (DPS)-maintained website if they are or were convicted of sexual assault, sexual exploitation if the offender is 21 years of age or older and the offense is sentenced as a dangerous crime against children, commercial sexual exploitation, child prostitution, or, if the child is under 12 years of age, sexual abuse, molestation, taking a child for the purpose of prostitution, sexual conduct with a minor, continuous sexual abuse or luring or aggravated luring a minor for sexual exploitation. Applies this requirement retroactively, but gives DPS until July 1, 2017, to comply regarding offenders convicted before August 6, 2016.

mediation; confidential communications; exception (S.B. 1293) – Chapter 338

Expands the list of exceptions to the confidentiality of mediation by allowing court-appointed mediators to report to law enforcement, the Department of Child Safety or Adult Protective Services if the mediator reasonably believes that a minor or vulnerable adult is or has been a victim of abuse, exploitation, child abuse, neglect, physical injury or a reportable offense. Subjects mediators to service of process or subpoena related to such disclosure.

claims; licensed professionals; expert witness (NOW: scanning devices; burglary; trespass; penalty) (S.B. 1294) – Chapter 157

Increases the penalties related to unlawful possession or use of a scanning device or reencoder from class 6 to class 4 felonies. Adds to the definition of *structure* any device that accepts electronic or physical currency and is used to conduct commercial transactions. This allows these devices to be subject to criminal trespass and burglary offenses, under certain circumstances.

DUI; watercraft; medical practitioner; authorization (S.B. 1295) – Chapter 339

Currently, a person commits driving under the influence (DUI) or operating a watercraft under the influence if he has a drug or its metabolite in his body. However, he is not guilty of that type of DUI if the drug was prescribed by certain licensed medical practitioners listed in statute. S.B. 1295 removes that list and instead generalizes the exemption to include any licensed medical practitioner who is authorized to prescribe the drug.

guardianship; proceedings; ward's relationships (S.B. 1296) – Chapter 270

Requires, effective January 1, 2017, the court to follow previous family court orders when a guardianship petition is filed within two years of the ward turning 18 years of age and establishes co-guardianships, similar to joint legal decision-making in child custody. Guardians

JUDICIARY COMMITTEE (Cont'd)

must encourage and allow contact between the ward and other persons who have a significant relationship with the ward, but may limit, restrict or prohibit contact if the guardian reasonably believes it will be detrimental to the ward. However, the guardian must consider the wishes of the ward if the ward has sufficient mental capacity to make an intelligent choice. Certain people may petition the court to modify a contact order if a material change in circumstances affecting the ward occurs. Establishes the ability of people with a significant relationship with the ward to petition the court for contact and outlines related guidelines. Requires the guardian to notify family members of the ward's death or hospitalization.

paternity; preliminary injunction (S.B. 1297) – Chapter 271

Requires the court to issue a preliminary injunction in legal decision-making and parenting time cases if the petitioner files a specified document establishing paternity. The preliminary injunction prohibits harassment or assault of any party, removal of the child from the court's jurisdiction and removal of the child from any existing insurance coverage. Details related requirements and penalties for violating the injunction. The statute is similar to requirements that already exist for parties to a dissolution of marriage or annulment who have children.

probation; juvenile; adult (S.B. 1298) – Chapter 158

Modifies juvenile and adult probation. Specifically, allows juvenile intensive probation activities to include pro-social skill development. Standardizes the offenses for which the court must provide the juvenile's fingerprints to the Department of Public Safety Arizona Automated Fingerprint Identification System, to coincide with the offenses required for adults.

With regard to adult probation, allows probationers who are employed or in treatment programs to be exempted from community restitution or to perform fewer hours. Requires the intensive probation team to verify employment weekly, rather than contacting the employer weekly. Establishes a process for sexual offenders to apply to be released from global position system or electronic monitoring if they meet specified requirements. Requires the court, in determining whether to lift the requirement, to consider the safety of the public and the conduct of the defendant while on probation.

child support action; affirmative defense (S.B. 1299) – Chapter 272

Establishes an affirmative defense for someone who owes back child support if the obligee voluntarily relinquished physical custody of the child to the obligor. Outlines matters for the court to consider when determining whether the relinquishment was voluntary.

community property; life sentence; spouse (S.B. 1307) – Chapter 159

Prohibits the court from awarding community property to a spouse sentenced to at least 80 years or to life in prison. Allows a spouse who pays installment payments to a spouse who is later sentenced, as prescribed, to petition the court for modification of that ongoing payment.

JUDICIARY COMMITTEE (Cont'd)

juvenile charged as adult; detention (S.B. 1308) – Chapter 314

SEE THE PUBLIC SAFETY, MILITARY AND TECHNOLOGY COMMITTEE.

vexatious litigants; workers' compensation (S.B. 1323) – Chapter 26

SEE THE COMMERCE AND WORKFORCE DEVELOPMENT COMMITTEE.

parent-child relationship; termination; petition (S.B. 1330) – Chapter 275

SEE THE HEALTH AND HUMAN SERVICES COMMITTEE.

fiduciary access to digital assets. (S.B. 1413) – Chapter 165

Adopts the Revised Uniform Fiduciary Access to Digital Assets Act (Act), as developed by the Uniform Law Commission, to extend the traditional power of a fiduciary to manage tangible property to include management of a person's digital assets. Allows fiduciaries to manage digital property but restricts access to electronic communications unless the original user consented in a will, trust, power of attorney or other record.

States that the provisions of the bill apply to all of the following after enactment: 1) a fiduciary acting under a will or power of attorney; 2) a personal representative acting for a decedent; 3) a conservatorship proceeding; 4) a trustee acting under a trust; and 5) a custodian if the user resides in this state. Allows a user to direct a custodian to disclose, or not disclose, to a designated recipient some or all digital assets using an online tool and stipulates that such directions override: 1) any contrary direction in a will, trust, power of attorney or other record, if the online tool allows for modification or deletion of a direction at any time; and 2) any contrary provision in a terms-of-service agreement, if the agreement does not require the user to act affirmatively and distinctly from the user's assent to the terms of service. Specifies that the Act does not apply to the digital assets of an employer used by an employee in the ordinary course of business.

Outlines discretionary abilities of the custodians of digital assets, including the ability to grant full or partial access, restrict access under certain circumstances, assess reasonable charges or seek a court order to disclose the assets as outlined.

electronic legal material. (S.B. 1414) – Chapter 316

Requires Legislative Council, when publishing legal material only in an electronic record, to designate the record as official. In addition, if Legislative Council publishes legal material in an electronic record in addition to another form it may designate the record as official. Any electronic legal material published after the general effective date and designated as official is subject to requirements under the bill.

Specifically, the publisher must authenticate that record by providing a method for users to access an unaltered version. An authentic record is presumed an accurate copy of legal

JUDICIARY COMMITTEE (Cont'd)

material and anyone who challenges the authentication of designated electronic legal material holds the burden of proof by a preponderance of the evidence. S.B. 1414 also requires a publisher of designated electronic legal material to provide preservation and security for that record, whether in electronic form or not. Additionally, the publisher is required to make the records reasonably available to the public on a permanent basis.

unmanned aircraft; prohibited operations (NOW: prohibited operations; unmanned aircraft) (S.B. 1449) – Chapter 170

SEE THE TRANSPORTATION COMMITTEE.

human fetus; embryo; prohibited actions (S.B. 1474) – Chapter 77

SEE THE HEALTH AND HUMAN SERVICES COMMITTEE.

campaign finance amendments (S.B. 1516) – Chapter 79

Repeals the campaign finance statutes and modifies and reorganizes them, beginning January 1, 2017. It consolidates the different types of political committees into three types: 1) candidate committees; 2) political action committees (PACs); and 3) political parties. It increases the contribution or expenditure threshold for requiring a candidate or entity to register as a candidate committee or PAC, respectively, from the current \$500 to \$1,000. It also requires the Secretary of State to increase that amount by \$100 biennially.

This legislation also provides guidance for determining whether an entity's primary purpose is to influence the result of an election, and specifies an entity that has tax-exempt status under 501(a) of the Internal Revenue Code is not organized for the primary purpose of influencing an election if it properly files certain documents and remains in good standing with the Arizona Corporation Commission.

It removes the requirement for an entity to register or file an exemption statement before conducting certain political activity, and instead requires a committee to file a statement of organization with the filing officer within 10 days after qualifying as a committee. It modifies the information contained in the statement of organization and allows a PAC or political party to perform any lawful activity on filing the statement without establishing a separate committee or specifying each activity in its statement.

This legislation requires committee funds to be segregated as outlined and extends the period of time that a committee must receive the requisite number of \$10 contributions to qualify as a mega PAC from two to four years. It modifies the exemptions from contributions and expenditures as enumerated. It allows a candidate committee to transfer contributions to another candidate's candidate committee or another candidate committee for the same candidate without regard to the office sought, with exceptions as delineated. This legislation allows a sponsor, segregated fund or trade organization to solicit contributions as outlined.

JUDICIARY COMMITTEE (Cont'd)

Specifies that an expenditure is not an independent expenditure if there is *actual* coordination. Current law specifies it is not an independent expenditure if there is any arrangement, coordination or direction with respect to the candidate and person making the expenditure. It allows the filing officer or enforcement officer to consider rebuttable evidence in evaluating whether an expenditure is an independent expenditure.

Exempts social media and text messages from including a disclosure statement. Modifies the campaign finance reporting periods by requiring quarterly reports, but requires a candidate committee to file a report only during the four calendar quarters comprising the 12-month period preceding the general election. It removes criminal penalties for campaign finance violations, consolidates all the enforcement and penalty provisions into two sections and defines more specifically how they must be handled by the filing officer and enforcement officer. Requires the initiation of an investigation to be based on a third-party complaint. Finally, S.B. 1516 contains conforming changes, some of which are subject to the affirmative vote of at least three-fourths of the members of each house of the Legislature (Proposition 105). It did not receive the requisite number of votes; therefore, these sections were deleted.

The provisions of S.B. 1516 were modified by H.B. 2296 and H.B. 2297. For complete information, please see the summary for those bills or the *As Enacted – Revised* fact sheet for S.B. 1516 at http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=1516&Session_Id=115

unlawful distribution of private images (H.B. 2001) – Chapter 6 E

An emergency measure, effective March 11, 2016, that makes it unlawful for a person to intentionally disclose a *private image* of another person, but only if the person is identifiable from the image itself or from information displayed in connection with the image. Modifies the offense of unlawful distribution of private images by adding that in order for the distribution to be unlawful the depicted person must have a reasonable expectation of privacy and the person making the disclosure must do so with the intent to harm, harass, intimidate, threaten or coerce the depicted person. Classifies the unlawful distribution of private images as a class 5 felony but makes it a class 4 felony if the private image is sent through electronic means. It also classifies, as a class 1 misdemeanor, threatening the disclosure of a private image without actually disclosing that image.

~~technical correction; bulk food; applicability~~ (NOW: corporation commission; conflict of interest) (H.B. 2123) – Chapter 289

Under current law, a public officer or employee who has or whose relative has a substantial interest in any contract, sale, purchase, service to or decision of a public agency must make known the interest in the official records and refrain from voting on or otherwise participating in any related decision. H.B. 2123 subjects the members and employees of the Arizona Corporation Commission (ACC) to these conflict of interest standards.

Modifies the definition of *remote interest*, a defense to a charge of conflict of interest, to include: 1) that of a relative who is an employee of a business as specified who does not assert control or decision-making authority over management or budget decisions for that entity; and 2) ownership of publicly traded investments that meet certain guidelines.

JUDICIARY COMMITTEE (Cont'd)

Allows, beginning January 1, 2017, the ACC to charge a user fee for the document database it must establish and maintain. For complete information relating to this provision, please see the summary for H.B. 2447 or the *As Enacted – Revised* fact sheet for H.B. 2447 at http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2447&Session_Id=115.

charitable organizations; campaign finance disclosure (H.B. 2296) – Chapter 346

SEE THE GOVERNMENT COMMITTEE.

political advertisements; contributors; disclosure (H.B. 2297) – Chapter 347

SEE THE GOVERNMENT COMMITTEE.

child prostitution; offense (H.B. 2374) – Chapter 7

Expands the offense of child prostitution to include knowingly providing the means by which a minor engages in prostitution.

crime victims' rights; facility dog (H.B. 2375) – Chapter 135

Requires the court to allow a minor victim to have a facility dog accompany the victim while testifying in court, if a dog is available. The court may allow a witness or an adult victim to also use a facility dog. Outlines a related notice and court instructions to the jury.

victim restitution; stipulated amount; hearings (H.B. 2376) – Chapter 8

Grants a crime victim or the victim's counsel the right to present evidence or information and to make an argument to the court at any proceeding to determine the amount of restitution. Clarifies that the rights in the Victim's Bill of Rights belong to the victim.

criminal sentencing; restoration of rights (H.B. 2377) – Chapter 43

Standardizes language to align with current statute involving repetitive offender sentencing.

supreme court; reports; website posting (NOW: public records; law enforcement) (H.B. 2383) – Chapter 194

Places the burden on a petitioner who brings a special action for release of criminal investigation or prosecution records that visually depict the image of a minor witness or a victim to establish that the public's interest outweighs the person's right to privacy. A victim whose image is depicted has the right to be present at and be heard in the action. Additionally, prohibits specified personal identifying information of a witness to a crime contained in a record created or received by a law enforcement or prosecution agency from being disclosed as a public record except under specified circumstances.

JUDICIARY COMMITTEE (Cont'd)

patent troll prevention act (H.B. 2386) – Chapter 69

SEE THE COMMERCE AND WORKFORCE DEVELOPMENT COMMITTEE.

stalking; offense; definitions (H.B. 2419) – Chapter 44

Expands the definition of stalking to include a person who intentionally or knowingly engages in a course of conduct that causes the victim to suffer emotional distress or reasonably fear: 1) property damage or destruction; or 2) the physical injury or death of the victim's family member, domestic animal, livestock or a person with whom the victim has or had a romantic or sexual relationship. Includes the use of electronic communication as specified.

fiduciary access to digital assets (H.B. 2467) – Chapter 199

SEE THE FINANCIAL INSTITUTIONS COMMITTEE.

internet crimes against children; appropriation (H.B. 2468/S.B. 1143) – Chapter 1 E

SEE THE APPROPRIATIONS COMMITTEE.

sexual assault; parental rights; prohibition (H.B. 2488) – Chapter 104

Denies a person legal decision-making or parenting time rights to a child if the person has been convicted of a sexual assault that led to the birth of the child.

~~restricted vehicle use; DUI; repeal~~ (NOW: restricted vehicle use; DUI; exemption (H.B. 2514)) – Chapter 73

SEE THE PUBLIC SAFETY, MILITARY AND TECHNOLOGY COMMITTEE.

supreme court justices; number (H.B. 2537) – Chapter 333

Increases the number of Justices on the Arizona Supreme Court from five to seven.

sex offender registration; petition; termination (H.B. 2539) – Chapter 105

Allows a defendant convicted of sexual conduct with a minor, who is required to register as a sex offender and who has successfully completed a term of probation, to petition the court for an order to terminate the duty to register. This petition must declare that during the time of the offense the defendant was under 22 years of age, that the victim was 15, 16 or 17 years of age, the sexual conduct was consensual and the offense did not involve more than one victim. The petition must also declare that the defendant has not subsequently committed another sexually-related felony offense and the defendant was not sentenced to a term of imprisonment for the offense. During the hearing and prior to ruling, the court must provide all parties with the opportunity to be heard and allow any party to introduce evidence. The state holds the burden of establishing by a preponderance of the evidence that a factor in the petition has not been met. If any of the required factors have not been met the court must deny the petition. Additionally, if the court finds that a denial is in the best interests of justice or tends to ensure public safety, the court may deny the petition.

JUDICIARY COMMITTEE (Cont'd)

~~postsecondary campuses; public forums; activities~~ (NOW: public forums; activities; postsecondary campuses) (H.B. 2548) – Chapter 249

SEE THE EDUCATION COMMITTEE.

~~campuses; free speech zone; prohibition~~ (H.B. 2615) – Chapter 250

SEE THE EDUCATION COMMITTEE.

~~criminal justice; budget reconciliation; 2016-2017.~~ (H.B. 2701/S.B. 1532) – Chapter 119

SEE THE APPROPRIATIONS COMMITTEE.

LEGISLATION VETOED

~~judicial productivity credits; calculation; salary~~ (NOW: incompetent persons; mental health evaluations) (S.B. 1510) – VETOED

Modifies, effective January 1, 2017, court and mental health processes related to certain incompetent defendants. Adds an option during the competency examination process for a screening to determine if the defendant is a sexually violent person. Additionally, establishes procedures as outlined below for the prosecuting agency and court to track a defendant determined incompetent to stand trial through the civil commitment process.

If the court finds that there is no substantial probability that an incompetent defendant will regain competency within 21 months and the court therefore remands the defendant to the custody of the Department of Health Services, the bill requires the prosecutor to file a petition for evaluation and provide any known criminal history for the defendant. It modifies the process for the evaluation and establishes a related deadline. However, the court may retain jurisdiction over the defendant in specified circumstances, including if notified that the defendant has not had such an evaluation or if the defendant is out of custody.

Additionally, both the court and prosecuting agency must receive notice if an evaluation or civil commitment order expires, if the evaluation agency intends to release a person who was being evaluated on an inpatient basis or if the mental health treatment agency intends to discharge the patient. Before the patient is discharged, the prosecuting agency may request a hearing to determine whether the court should order the defendant returned to custody for an incompetency disposition. In these various scenarios, the medical director must provide the patient's records to the court and prosecuting agency.

Establishes procedures if the defendant fails to comply with terms of specified treatment orders, including notice requirements and remedies. Requires a treatment agency to make active and diligent efforts to find and return a patient on unauthorized absence to appropriate treatment and to file related reports with the court. Exempts a treatment agency that does so in good faith from civil liability related to the patient's actions. Allows the court to direct a peace officer to take a patient into custody, as specified, if the patient refuses to comply with an amended order for inpatient treatment, the medical director rescinds a conditional outpatient treatment order or the patient is absent without authorization.

JUDICIARY COMMITTEE (Cont'd)

The Governor indicates in his veto message that the bill could jeopardize the credentials and staff licenses of the Arizona State Hospital. He mentions that the FY 2017 budget establishes a study committee to make policy recommendations in this area and that the group will research this and other ideas (Please see the summary for H.B. 2701/S.B. 1532 for more information).