

# **Public Safety & Human Services Committee**

Senator Linda Gray, Chairman



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# **PUBLIC SAFETY & HUMAN SERVICES COMMITTEE**

## **LEGISLATION ENACTED**

### driving under the influence; methadone (S.B. 1003) – Chapter 124

Specifies that a person who drives with a prescription drug in the person's body is only exempt from a charge of driving under the influence (DUI) if the person used the drug as prescribed.

### board of fingerprinting; hearings (S.B. 1009) – Chapter 21

Permits the Board of Fingerprinting (Board) to require good cause exception applicants to disclose evidence related to substantiated allegations of vulnerable adult abuse or neglect to determine the applicant's successful rehabilitation. Allows the Board to deny a good cause exception if the applicant fails to appear at the hearing without good cause.

### family law rules; conforming statutes (S.B. 1010) – Chapter 22

Conforms the marital and domestic relations statutes to the Arizona Rules of Family Law Procedure, rather than the Arizona Rules of Civil Procedure.

### dispersing unlawful assembly; peace officers (S.B. 1015) – Chapter 174

Adds peace officers to the list of officials who must issue a dispersal order or make arrests when persons are unlawfully or riotously assembled.

### adoption; consent (S.B. 1016) – Chapter 109

Permits the court to waive the requirement for the Department of Economic Security to consent to an adoption if the court determines that waiving the requirement is clearly in the child's best interest. The court must hold a hearing on actual notice to all persons who may be adversely affected.

### child safety (S.B. 1047) – Chapter 126

Expands the definition of *child abuse* to include unreasonable confinement of a child, and the definition of *neglect* to include: 1) permitting a child to enter or remain in a structure where certain chemicals or equipment for manufacturing a dangerous drug are present; 2) a determination by a health professional that a newborn infant was prenatally exposed to drugs not as the result of medical treatment; 3) diagnosis by a health professional of an infant under one year of age with clinical findings consistent with fetal alcohol syndrome or effects; 4) deliberate exposure of a child to certain sexual acts or materials; or 5) specified sexual acts committed by the child's parent, guardian or custodian with reckless disregard to whether the child is physically present. Outlines the basis for a health professional's determination of prenatal drug exposure.

Modifies requirements for entry of abuse and neglect information into the Child Protective Services (CPS) case management system. Extends the time limit for a CPS worker to submit a written report of the investigation from 21 days to 45 days after receipt of the initial information. If

the court finds a child dependent based on an allegation of abuse or neglect, CPS must record a substantiated finding in the case management system, and the person does not have the right to a hearing prior to the entry. If a person who requests a hearing regarding a substantiated finding fails to appear, the hearing must be vacated and a substantiated finding will be entered, except in specified circumstances.

#### fingerprint clearance cards (S.B. 1049) – Chapter 8 E

An emergency measure, effective June 29, 2009, that creates a fingerprint clearance card specifically for foster and adoptive parents, child care personnel, applicants for child care licensure and group home certification, Child Protective Services workers, Department of Economic Security (DES) contract providers, home and community based service providers, adult developmental home and child developmental foster home licensees, child care home providers, all other DES employees who are required to have cards and the members and personnel of the Board of Fingerprinting (Level I Card). Grandfathers current card holders unless they commit a precluding offense after the effective date of the act. Modifies the lists of offenses, with regard to the current card, that preclude an applicant from receiving a Level I Card, as follows: 1) specifies that felony domestic violence, indecent exposure, child neglect and offenses involved in contributing to the delinquency of a minor are unappealable offenses, instead of appealable; 2) stipulates that felony offenses related to drugs, alcohol or assault are unappealable, if committed within five years before the date of application; 3) moves, from the list of appealable to the list of unappealable offenses, manslaughter, negligent homicide and terrorism; and 4) adds the offense of aiming a laser pointer at a police officer to the appealable list.

#### organized retail theft (S.B. 1059) – Chapter 127

Establishes the offense of organized retail theft as a class 4 felony. Specifies that a person commits organized retail theft if the person does one of the following without paying the purchase price: 1) removes merchandise from a retail establishment with the intent to resell or trade the merchandise; or 2) uses an artifice, instrument, container, device or other article to facilitate the removal of merchandise from a retail establishment.

#### law enforcement officers; discipline procedures (S.B. 1062) – Chapter 128

Allows a law enforcement or probation officer a period of time to consult with the officer's representative and to make a statement of less than five minutes addressing specific facts or related policies at the conclusion of an interview if the officer's employer reasonably believes the interview could result in the dismissal, demotion or suspension of the officer. Limits the ability of an employer to modify appeals decisions regarding disciplinary action. An employer or person acting on the employer's behalf may only amend, modify, reject or reverse a decision made by a hearing officer, administrative law judge or appeals board if both parties were able to equally participate in the hearing, the decision was arbitrary or without reasonable justification and the employer or person acting on the employer's behalf states the reason for the amendment, modification, rejection or reversal. Prohibits the employer from including investigation information in the public portion of the officer's personnel file until the investigation is complete or the employer has discontinued the investigation. The investigation is not complete until the conclusion of the appeals process.

#### domestic violence; dating relationships (S.B. 1088) – Chapter 129

SEE JUDICIARY COMMITTEE.

domestic violence; child custody (S.B. 1106) – Chapter 57

SEE JUDICIARY COMMITTEE.

~~trust lands; conservation; technical correction~~ (NOW: elections; hospital districts) (S.B. 1155) – Chapter 7 E

An emergency measure, effective June 17, 2009, that allows a hospital district with a population of less than 20,000 persons to hold a mail ballot election on any Tuesday on or before June 30, 2009 without prior approval from the county board of supervisors to authorize the imposition of a secondary property tax for the operation and maintenance of a hospital or urgent care center.

~~illegal aliens; enforcement; trespassing.~~ (NOW: performance of abortion; non-physician; prohibition) (S.B. 1175) – Chapter 178

Prohibits persons who are not physicians from performing surgical abortions.

children; foster care; rights (S.B. 1209) – Chapter 159

Outlines the rights of foster children, including appropriate care and treatment, according to the best judgment of the foster parent, in a safe, healthy and comfortable placement; protection from harm; and appropriate privacy. Specifies that the child has the right to know what will happen to the child and the child's family under certain circumstances and, whenever possible, to be placed with a foster family that can accommodate the child's communication needs. Prescribes requirements for discipline, clothing, education, food, training in hygiene, privacy of personal information, visitation with the child's family and contact and communication with a caseworker, judge and attorney, among others. The child may attend activities of the child's choice, as appropriate, and have personal possessions and space. The child must be able to participate in the child's service and permanency planning, if age appropriate. A foster child must receive a copy and may report a violation of these rights. Requires the foster parent to have full access to the child's records under certain circumstances.

A foster child who is 16 years of age or older may attend preparation for adult living classes and activities, as appropriate, and receive necessary personal information within 30 days of leaving foster care. The child must have a transition plan that includes career planning and assistance in enrolling in an educational or job training program and help obtaining a social security number, a birth certificate, independent residency and a driver license, except the foster parent has discretion to determine if the child is responsible and mature enough to become a licensed driver.

This legislation does not establish any cause of action on behalf of any person.

CPS information (S.B. 1246) – Chapter 154

Requires the court to consider whether an open proceeding could cause specific material harm to a criminal investigation when deciding whether to close proceedings related to dependent children, permanent guardianships and termination of parental rights. Permits any person to request to inspect court records involving the disclosure of Child Protective Services (CPS) information regarding a case of child abuse, abandonment or neglect that has resulted in a fatality or near fatality,

or request a transcript to be made of a closed proceeding. Requires the court, if it allows inspection or releases a transcript, to redact certain information related to privacy, safety interests and confidentiality laws. Limits proceedings any person may request to be reopened to closed cases relating to child abuse, abandonment or neglect that have resulted in a fatality or near fatality.

CPS information; redactions; challenges (S.B. 1285) – Chapter 69

Specifies that legislators have standing to bring or join special actions in the superior court regarding the release of Child Protective Services (CPS) information or to challenge the redaction of released CPS information on fatalities or near fatalities caused by abuse, abandonment or neglect.

safe haven providers; placement protocols (S.B. 1326) – Chapter 156

Establishes protocols for safe have providers. Requires all providers to transport an infant to a hospital, report certain information to Child Protective Services (CPS) and complete the Arizona Health Care Cost Containment System (AHCCCS) application on behalf of the infant. If the provider is a private child welfare agency, adoption agency or church that is associated with an agency, the agency may take custody of and place the child for adoption. In all other cases, CPS must contact adoption agencies on a rotating list within eight hours until CPS contacts an agency that agrees to take custody of and place the infant for adoption. To be placed on the rotating list, the adoption agency must be a nonprofit agency that does not specialize in international adoptions and has a 24-hour emergency contact number. An agency that agrees to take custody of a safe haven infant must do so within 24 hours after the hospital completes the physical examination and comply with all state and federal laws regarding adoption and placement of children. CPS must take custody of the infant if no agency takes custody within 48 hours or the infant is abused or older than 72 hours of age. Allows a health care provider to make treatment decisions for the infant before CPS or an agency takes custody and exempts the provider from liability for good faith medical decisions. Requires the entity or individual that ultimately takes custody of the infant to compensate the hospital for the medical examination and treatment provided to the infant, if the child is determined ineligible for AHCCCS or if AHCCCS does not reimburse the hospital. Modifies the signage requirements and list of safe haven providers.

schools; gun safety instructors; certification (S.B. 1437) – Chapter 97

Allows firearm safety instructors for the Arizona Gun Safety Program Course to be certified by a national association of firearms owners, in addition to the Arizona Game and Fish Department.

applicability; self-defense (S.B. 1449) – Chapter 190 W/O

Applies, retroactively, specified statutory changes relating to justification defenses to all cases in which the defendant did not plead guilty or no contest that were submitted to the fact finder after April 24, 2006. States that the Legislature intended to make Laws 2006, Chapter 199, effective retroactively to all cases in which the defendant did not plead guilty or no contest in cases that were pending at the time it was signed into law by the Governor on April 24, 2006, regardless of when the conduct underlying the charges occurred.

schools; contractors; fingerprint clearance cards (H.B. 2031) – Chapter 75

Requires contractors, subcontractors, vendors and their employees who are contracted to provide services on a regular basis at individual schools to have fingerprint clearance cards (cards). School district governing boards must adopt policies by December 31, 2009 that may exempt persons from the requirement who are unlikely to have independent access to or unsupervised contact with pupils as part of their normal job duties. Exempts persons who participate in certain teacher preparation programs but who do not participate in field experience or student teaching in Arizona from the requirement to receive a card. Employees or applicants for employment who are dismissed for failing to immediately report an arrest or charge of an offense which precludes the person from obtaining a card are not entitled to a hearing under due process for teachers.

motorcycle safety council (H.B. 2133) – Chapter 38

Extends the Motorcycle Safety Council and its funding source, mandatory deposits from motorcycle registration fees, until July 1, 2016.

child care facilities; licensure; exemptions (NOW: exemptions; licensure; child care facilities) (H.B. 2265) – Chapter 78

Allows facilities that are exempt from being licensed as child care facilities because children may come and go at their own volition to require the children to document their entrance and departure from the facilities without affecting their exempt status.

vulnerable adults; financial exploitation (H.B. 2344) – Chapter 119

Modifies theft with regard to a vulnerable adult and the possible civil penalties for a person in a position of trust and confidence who commits financial exploitation of a vulnerable adult. To be considered theft, the person no longer must take control of a vulnerable adult's property through intimidation or deception, but instead must take control of the property without lawful authority. States that taking property without adequate consideration may give rise to an inference that the person intended to deprive the vulnerable adult of the property, but specifies affirmative defenses if the property was given consistent with a pattern of gift giving that existed before the adult became vulnerable or the superior court approved the transaction before it occurred. If a person commits theft or financial exploitation of a vulnerable adult, the person is subject to actual damages. Gives the court discretion to award additional damages in an amount up to two times the amount of actual damages and to order the person to forfeit all or a portion of the person's benefits with respect to the estate of the vulnerable adult. Also allows the court to revoke a disposition or appointment of property that is made in a governing instrument, a provision in a governing instrument that confers a power of appointment on the person and a nomination or appointment of the person to serve in any fiduciary or representative capacity. The court may also sever the interests of the person and the vulnerable adult in property held by them as joint tenants or community property with the right of survivorship, and transform the interests into tenancies in common. Outlines who has priority to file a civil action. Adds a person who is in a confidential relationship with the vulnerable adult to the definition of *position of trust and confidence*.

foster parents; participation (H.B. 2375) – Chapter 104

Reduces the amount of time a foster child must have resided in a receiving foster home or shelter care facility, from 30 days to 10 days within the last six months, for the home or facility to be included in the child's periodic review hearing.

partial-birth abortions; definition (H.B. 2400/S.B. 1138) – Chapter 170

Modifies the definition of partial-birth abortion as an abortion in which the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a headfirst presentation, the entire fetal head is outside the body of the mother or, in the case of a breech presentation, any part of the fetal trunk past the naval is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus and the person performs that overt act, other than completion of delivery, that kills the fetus. There is an exception to the partial-birth abortion ban if performing the partial-birth abortion is necessary to save the life of the mother because of a physical illness, physical injury or life-endangering physical condition caused by or arising from the pregnancy itself. Requires a person who performs a partial-birth abortion to be fined or imprisoned not more than two years, or both, but allows a defendant accused of performing the partial-birth abortion to seek a hearing before the board that licensed the physician whether the physician's conduct was necessary to save the life of the mother. The board's findings are admissible, in the court's discretion, at the defendant's trial.

~~mandatory fingerprinting; central state repository (NOW: fingerprinting; arrest; procedures) (H.B. 2449)~~ – Chapter 120

Effective January 1, 2010, establishes a mechanism to fingerprint persons arrested for felony, domestic violence, sexual or driving under the influence (DUI) offenses when the law enforcement officer releases the person from custody in lieu of taking the person to the police station. Prohibits a law enforcement officer from releasing the person until the person provides a right index fingerprint to the arresting agency, and requires the arresting agency to provide the person a mandatory fingerprint compliance form that includes instructions on reporting for ten-print fingerprinting. An arresting authority, however, may instead transfer an arrestee to a booking agency for ten-print fingerprinting and obtain a process control number. The arresting authority must provide a document that indicates proof of the fingerprinting and informs the person that the document must be presented to the court. If the defendant does not present a mandatory fingerprint compliance form or the court did not receive a process control number, the court must order the defendant to be ten-print fingerprinted within 20 calendar days or remand the defendant into custody for fingerprinting.

developmental disabilities; program plans; burial (H.B. 2461) – Chapter 51

Requires a developmentally disabled person's individual program plan to include provisions relating to the person's burial arrangements. Specifies that the state is not financially responsible for the burial costs and outlines when monies set aside for burial arrangements will be considered as income or resources for eligibility determinations for other government programs.

abortion (H.B. 2564/S.B. 1206) – Chapter 172

Makes various changes to abortion statutes. Requires parental consent to be notarized for a pregnant, unemancipated minor to obtain an abortion. If the minor is seeking a judicial bypass of the

parental consent requirement, the minor must prove by clear and convincing evidence that she is sufficiently mature and capable of giving informed consent without consulting her parent or guardian based on her experience level, perspective and judgment. Outlines relevant factors for the court to consider when making the determination. Allows the minor's parents to bring a civil action in superior court to obtain relief for a violation of the parental consent law.

Requires a woman to give informed consent before an abortion is performed. The physician must inform the woman at least 24 hours before the abortion of the name of the physician who will perform the abortion, the nature of the procedure, the associated medical risks of the abortion and carrying the child to term, alternatives to the procedure and the probable gestational age and anatomical and physiological characteristics of the unborn child. The physician or another health professional must also inform the woman that medical assistance benefits may be available, the father of the child must support the child, it is unlawful for a person to coerce the woman to undergo an abortion and the woman is free to withhold or withdraw her consent. The information must be provided individually and in a private room. If a medical emergency compels an abortion the physician must inform the woman, before the abortion if possible, of the medical indications that support the physician's judgment that an abortion is necessary to prevent the woman's death or substantial and irreversible impairment of a major bodily function. A physician who knowingly violates the informed consent law commits an act of unprofessional conduct and is subject to license suspension or revocation. The woman and, under certain circumstances, the father or maternal grandparents of the unborn child may file a civil action for a violation of the informed consent law.

Prohibits an individual who is not a physician from performing a surgical abortion and specifies that pharmacies, hospitals, health professionals and their employees are not required to facilitate or participate in the provision of an abortion, abortion medication or emergency contraception.

civil liability; affirmative defenses (H.B. 2610) – Chapter 123

Modifies presumptions in civil liability cases. In a product liability action, prohibits any change made in the warnings after the product was first sold by the defendant from being admissible as direct evidence of a defect. Includes in the current civil liability presumption a case in which a victim or officer threatens to use or uses a police tool product under certain circumstances. Expands the injuries that allow the use of the presumption to include if a person intentionally or knowingly caused a certain type of disfigurement or impairment of any body organ or part or a fracture of any body part of another person. Stipulates, in specified situations, that any warning or instruction that accompanies a police tool product is presumed not to be defective. Requires the court to award costs and attorney fees if the court grants a motion by a party to dismiss or a motion for summary judgment.

~~living wills; health care directives~~ (NOW: health care directives; guardian decision) (H.B. 2616 / S.B. 1448) – Chapter 147

Prohibits a surrogate who is not a patient's agent or guardian to approve the permanent withdrawal of the artificial administration of food or fluid and adds a requirement for the petition for the appointment of a guardian. If a petition is filed to challenge the decision of a guardian to permanently withdraw the artificial administration of food and fluid from a patient who is in an irreversible coma or persistent vegetative state, establishes a rebuttable presumption that a patient who does not have a valid living will, power of attorney or other health care directive has directed the

patient's health care providers to provide the patient with food and fluid to a degree that is sufficient to sustain life, and that the provision is in the patient's best interests. Outlines circumstances when the presumption is rebutted, including: 1) situations in which the provision of food or fluid is not medically possible or would hasten death or the patient is incapable of absorbing the food or fluid; or 2) the court finds by clear and convincing evidence that the patient is in an irreversible coma or persistent vegetative state and, while competent, the patient manifested the intent that medically invasive life prolonging treatment not be administered in those situations. Prohibits permanent withdrawal of food or fluid pending a decision on the merits of the case by the court of appeals or a decision on a petition by the Supreme Court.

~~dependent children; relatives; disclosure~~ (NOW: relatives; disclosure; dependent children) (H.B. 2622) – Chapter 148

Effective January 1, 2010, requires the parent or guardian of a child removed from the child's home to provide information to the Department of Economic Security (DES) or the court regarding relatives or others with significant relationships with the child. Requires the removal notice and dependency petition to include notification of this requirement. The court must order the parent or guardian to provide the information at the preliminary protective hearing and initial dependency hearing. Also, at the initial dependency hearing and each periodic review hearing the court must determine whether DES has identified and assessed placement of the child with a relative or other person with a significant relationship with the child. If the court determines that termination of parental rights or permanent guardianship is clearly in the child's best interests and the child has been placed in a prospective permanent placement, H.B. 2622 allows removal of the child from the placement to occur only under specified circumstances.