

Judiciary Committee

Senator Rick Murphy, Chairman



Jake Agron, Research Analyst

Alexandra Evans, Intern

JUDICIARY COMMITTEE

LEGISLATION ENACTED

paternity. (S.B. 1061) – Chapter 230

SEE THE HEALTH AND HUMAN SERVICES COMMITTEE.

constables; prohibited acts (S.B. 1179) – Chapter 242

Prohibits constables from acting as private process servers or owning an interest in any entity that operates a private process serving business. Excludes constables currently in office from the prohibition until their current terms are over.

precinct officers; salaries (S.B. 1217) – Chapter 113

Increases, based on precinct size, the cap for salaries of constables that county boards of supervisors authorize at the regular June meeting preceding a general election.

misconduct involving weapons; judicial officers (S.B. 1266) – Chapter 189

Exempts an elected or appointed judicial officer from *misconduct involving weapons* if the officer carries a deadly weapon in the court facility where the judicial officer works and the officer demonstrates the competence requirements needed to receive a concealed carry permit. The judicial officer must still comply with rules and policies of the presiding judge of the superior court while in the court facility. Hearing officers and part-time judicial officer pro-tempores are excluded from the definition of *judicial officer*.

unlawful mutilation; female genitalia (S.B. 1342) – Chapter 224

Establishes the criminal offense of *unlawful mutilation* and classifies the offense as a class 2 felony. Under the offense, it is unlawful to do any of the following: 1) mutilate a minor female; 2) knowingly transport a minor female to another jurisdiction for the purpose of mutilation; or 3) recklessly transport a minor female to another jurisdiction where mutilation is likely to occur. Consent of the minor, or the parents of the minor, on whom the mutilation is performed, is not a defense to an *unlawful mutilation* prosecution. Defines *mutilate* and *mutilation* and specifies that those terms do not include procedures performed by a licensed physician that are proven to be medically necessary due to a medically recognized condition. Establishes permissible fines, civil penalties and sentencing guidelines for the offense. Stipulates that unlawful mutilation is punishable as a dangerous crime against children if the victim is under the age of 15.

used catalytic converter; purchase; sale (S.B. 1460) – Chapter 195

Resolves a statutory conflict by allowing scrap metal dealers to purchase and sell used catalytic converters as long as they are acquired: 1) through a transaction with an industrial

account; 2) through another scrap metal dealer; or 3) after authorized for release by a peace officer.

watercraft; civil and criminal penalties (H.B. 2003) – Chapter 127

Establishes an assessment and civil penalties for a person who refuses to submit to an alcohol or drug test related to an alleged offense of operating a watercraft under the influence (OUI). Removes specified elements of an aggravated OUI offense, thereby classifying any OUI violation as aggravated if a child under 15 years of age is aboard the watercraft. Additionally, classifies failing to stop a watercraft after a collision as a class 3 misdemeanor if there is any property damage. This classification applies regardless of whether the other damaged watercraft is operated or attended by another person. Requires OUI related assessments to be deposited in the Law Enforcement and Boating Safety Fund instead of the Public Safety Equipment Fund.

vexatious litigants; designation (NOW: litigants designation; vexatious) (H.B. 2021) – Chapter 41

Beginning January 1, 2015, allows, in a noncriminal case, the presiding judge of a superior court or its designee to designate a pro se litigant as a vexatious litigant. Designates a pro se litigant as a vexatious litigant if the court finds the pro se litigant engaged in vexatious conduct, which is defined. Prohibits a vexatious litigant from filing any new pleading, motion or other document without prior leave of the court.

concealed carry permit; qualifications (H.B. 2103) – Chapter 85

Requires the Department of Public Safety to issue a permit to carry a concealed weapon to a person who is at least 19 years old if that person provides evidence of current military service or proof of honorable discharge or general discharge under honorable conditions from the U.S. Armed Forces, U.S. Armed Forces Reserve or a state national guard.

certification; family-oriented gaming (NOW: amusement gambling) (H.B. 2151) – Chapter 49

Increases, from \$35 to \$550, the maximum value of a merchandise prize that may be redeemed as part of amusement gambling.

limited liability; space flight activities (H.B. 2163) – Chapter 165

SEE THE COMMERCE, ENERGY AND MILITARY COMMITTEE.

laser pointer; aircraft; violation (H.B. 2164) – Chapter 257

Establishes the offense of *aiming a laser pointer at an occupied aircraft* as intentionally or knowingly directing the beam of light from a laser pointer or laser emitting device at an aircraft if the person knows or reasonably should know that the aircraft is occupied. Classifies the offense as a class 1 misdemeanor and designates the act as an assault if it renders the pilot unable to safely operate the aircraft or causes serious physical injury to any person on board the aircraft.

county medical examiner; autopsies; images (H.B. 2225) – Chapter 88

Prohibits the disclosure of specified visual depictions of human remains that are created by a medical examiner, alternate medical examiner or their employees or agents during a death investigation unless a superior court judge first grants disclosure of all or part of the materials following an in camera review. Requires the judge to balance the interests under the public records laws to determine whether to order disclosure of all or part of the materials. Allows a person seeking disclosure to file a petition in the superior court where the death investigation occurred for an in camera review of the materials. Permits specified individuals to examine and obtain such visual depictions created during a death investigation. Immunizes a county medical examiner, alternate medical examiner and their employees or agents and the county from liability for lawfully disclosing a death investigation photograph, digital image, x-ray or video recording.

civil liability; damages; metal theft (H.B. 2269) – Chapter 138

Provides an affirmative defense in a civil action if the defendant did not act intentionally and the claimant, or the decedent if applicable, was attempting to commit, committing or immediately fleeing from an act in violation of metal theft laws, and as a result, the claimant or decedent was in any way responsible for the accident or event that caused the claimant's or decedent's harm.

~~sentencing; probation~~ (NOW: deferred prosecution fund) (H.B. 2307) – Chapter 206

Allows a county to establish a County Attorney Deferred Prosecution Fund (Fund) consisting of: 1) county general fund appropriations; 2) federal monies that are appropriated for deferred prosecution programs; and 3) grants, gifts, devises and donations from any public or private source. Requires Fund monies to be used for administering deferred prosecution programs at the discretion of the county attorney. Requires the Arizona Prosecuting Attorney's Advisory Committee to modify guidelines, as necessary, in order to conform to changes made to deferred prosecution program authorization statutes. Requires the county attorney of a county that has established a deferred prosecution program to maintain specified records as outlined and to submit the annual evaluation of the deferred prosecution program to the Joint Legislative Budget Committee.

criminal justice information; court reporting (H.B. 2310) – Chapter 142

Requires the Director of the Department of Public Safety to authorize the exchange of criminal justice information between the Central State Repository or through the Arizona Criminal Justice Information System with the superior court for the purpose of determining an individual's eligibility for substance abuse and treatment courts in a family or juvenile case.

military justice; courts-martial (H.B. 2311) – Chapter 143

SEE THE COMMERCE, ENERGY AND MILITARY COMMITTEE.

tampering with a witness (H.B. 2312) – Chapter 144

SEE THE PUBLIC SAFETY COMMITTEE.

national instant criminal background checks (H.B. 2322) – Chapter 261

SEE THE PUBLIC SAFETY COMMITTEE.

firearms; law enforcement officers (H.B. 2336) – Chapter 147

SEE THE PUBLIC SAFETY COMMITTEE.

conspiracy; homicide; statute of limitation (H.B. 2382) – Chapter 208

Removes the statute of limitations for a prosecution of conspiracy to commit homicide if the homicide resulted in the death of a person.

synthetic drugs; reporting (H.B. 2453) – Chapter 36 E

An emergency measure, effective April 15, 2014, that expands the definitions of *dangerous drug* and *narcotic drugs* by adding additional synthetic substances. Eliminates duplicate reporting requirements to the Department of Public Safety for manufacturers, wholesalers, retailers or other persons who sell, transfer or furnish precursor chemicals or regulated chemicals.

human trafficking; prostitution (H.B. 2454) – Chapter 151

Prostitution – Increases, from a class 6 to a class 2 felony, engaging in prostitution with a minor who the person should have known is 15, 16 or 17 years old. Increases the presumptive, minimum and maximum sentences for a person convicted of *child prostitution* if the minor is 15, 16 or 17 years old. Establishes an affirmative defense for knowingly engaging in prostitution if the defendant committed the acts as a direct result of being a victim of sex trafficking. Classifies knowingly using an advertisement for prostitution that contains a visual depiction of a minor, with exceptions as outlined, as *commercial sexual exploitation of a minor*.

Human Trafficking – Adds, as a possible aggravating circumstance when a defendant is convicted for a violation of sex trafficking or forced labor trafficking, the consideration that the defendant recruited, enticed or obtained the victim from a shelter that is designed to serve runaway youth, foster children, homeless persons or victims of human trafficking, domestic violence or sexual assault. Establishes the Human Trafficking Victim Assistance Fund (Fund) consisting of monies received from civil penalties for unlawful advertising by escort services and massage therapists. Fund monies are to be spent to provide assistance to victims of sex trafficking and trafficking of persons for forced labor or services. Includes child prostitution, sex trafficking and forced labor trafficking within the offenses included in the definition of *racketeering* and allows monies in the Anti-Racketeering Revolving Fund and county anti-racketeering revolving funds to be used for programs that provide assistance to victims of criminal offenses that are subject to racketeering.

Escort and Massage Therapy Advertising – Prohibits advertising for services unless appropriate license numbers of the escort, massage therapist or related business are provided in the advertisement. Establishes an affirmative defense in a civil action brought against an escort, massage therapist or related business for the first failure to display a license number in an

advertisement if a valid license was possessed at the time the advertisement was published. Requires an escort, massage therapist or related business to retain proof of the age of any escort or massage therapist whose services are offered in any advertisement for at least one year. Establishes an affirmative defense in a civil action for failure to retain proof of age if the person whose services were offered in an advertisement was at least 18 years old at the time the advertisement was published. Subjects an escort, massage therapist or related business to a civil penalty for violating advertising requirements. Prohibits a person from advertising massage therapy services unless that person is properly licensed.

mental health; veterans courts; establishment (H.B. 2457) – Chapter 37

Allows the superior court presiding judge in each county to establish a veterans court and a mental health court to adjudicate cases filed in justice or municipal courts within the county. Requires the presiding judge to establish eligibility criteria for referral to a veterans or mental health court and outlines procedures for referral from justice and municipal courts.

firearms; private land; lawful discharge (H.B. 2483) – Chapter 62

SEE THE PUBLIC SAFETY COMMITTEE.

certification of firearm transfers (H.B. 2535) – Chapter 173

Requires a chief law enforcement officer (CLEO) to either certify or deny the transfer of a firearm, if certification is required by federal law, within 60 days of receipt of a request for certification. If the request is denied, the CLEO is required to notify the applicant, in writing, of the reason for the denial. A CLEO of a law enforcement agency with 15 or fewer peace officers may refer a request for certification to the county sheriff. Stipulates that a county attorney or a tribal agency is not subject to these guidelines but that a county attorney or a tribal agency is not prohibited from providing an applicant with a certification. A CLEO may not refuse to provide certification based on a generalized objection to private persons or entities making, possessing or receiving firearms or any certain type of firearm not prohibited by law.

juvenile crime victims' rights (H.B. 2563) – Chapter 269

Conforms victims' rights statutes for victims of juvenile offenders to current statutes relating generally to victims' rights in the Criminal Code.

manslaughter; assisting suicide (H.B. 2565) – Chapter 270

Modifies the assisted suicide provision within the definition of *manslaughter*. A person now commits the offense, rather than by intentionally aiding another to commit suicide, by intentionally offering or providing the physical means that another person uses to commit suicide with the knowledge that the person intends to commit suicide.

theft of trade secrets; offense (H.B. 2567) – Chapter 155

Establishes the offense of *theft of trade secrets* and stipulates that a person commits the offense if, with the intent to deprive or withhold the exclusive control of a trade secret from its

owner or with the intent to make any use of a trade secret, the person does any of the following: 1) takes, transmits, exhibits, conveys, alters, destroys, conceals or uses a trade secret without the permission of the owner; 2) makes or causes to be made a copy of a trade secret without the permission of the owner; or 3) receives, purchases or possesses a trade secret, knowing that the trade secret has been obtained unlawfully. Stipulates that it is not a defense to a prosecution if the person charged with the offense returned or intended to return the trade secret. Defines *trade secrets* and classifies the offense as a class 5 felony.

death; postconviction; appellate proceedings; dismissal (H.B. 2593) – Chapter 156

Deems a person sentenced to life imprisonment, with the possibility of release after serving a minimum number of calendar years, eligible for parole for an offense that was committed before the person turned 18 years old, upon completion of service of the minimum sentence. Applies the parole eligibility to persons regardless of whether the offense was committed on or after January 1, 1994.

Requires the court to dismiss a pending appeal or postconviction proceeding if the convicted defendant dies, and prohibits the death of a convicted defendant from abating the defendant's criminal conviction or sentence or any restitution, fine or assessment imposed by the sentencing court.

penalty assessment; victims' rights enforcement (H.B. 2625) – Chapter 158

Beginning January 1, 2015, establishes the Victims' Rights Enforcement Fund (Fund) and prescribes an additional two dollar assessment collected by the courts for criminal offenses and certain civil penalties to be deposited in the Fund. Monies in the Fund are continuously appropriated. Requires the Department of Public Safety (DPS) to administer the Fund and distribute the monies to qualifying organizations and entities; DPS may use up to five percent of the monies deposited in the Fund for administrative costs.

Requires DPS, on application, to annually distribute monies from the Fund to nonprofit organizations and entities that demonstrate a five-year history of providing, without cost to the crime victim, each of the following services to crime victims: 1) legal representation to enforce the rights of crime victims as counsel of record in criminal cases; and 2) social services to assist the crime victim during the course of the legal representation. An organization or entity that applies for monies from the Fund may establish the required qualifications through an attorney.

CPS information; law enforcement; prosecutors (H.B. 2638) – Chapter 64

SEE THE HEALTH AND HUMAN SERVICES COMMITTEE.

identity theft; violation; penalties (H.B. 2639) – Chapter 159

Increases, from a class 4 to a class 3 felony, the offense of knowingly accepting the identity of another person. Decreases, from \$3,000 to \$1,000, the minimum economic loss a victim of identity theft must suffer to constitute aggravated taking the identity of another person or entity.

criminal justice; budget reconciliation; 2014-2015. (H.B. 2706) – Chapter 12

SEE THE APPROPRIATIONS COMMITTEE.

LEGISLATION VETOED

technical correction; escape; secure facility (NOW: firearm; definition) (S.B. 1366) – VETOED

SEE THE JUDICIARY COMMITTEE.

aggressive solicitation; offense (H.B. 2024) – VETOED

Establishes the offense of *aggressive solicitation* and classifies the offense as a class 1 misdemeanor. Prohibits a person from soliciting any money or other thing of value or soliciting the sale of goods or services in public areas as outlined. Removes, from the definition of *loitering*, intentionally being in a public place to beg.

The Governor indicates in her veto message that it is unclear what statewide concern the legislation intends to address. The Governor indicates that political subdivisions are in a better position to address the issue of aggressive solicitation as it applies to their local communities.

capital sentencing; aggravators; serious offenses (H.B. 2313) – VETOED

Includes, as an aggravating circumstance that may be considered during a capital case, whether there is a substantial likelihood that the defendant would commit criminal acts of violence that constitute a continuing threat to society. Adds, to the definition of *serious offense*, smuggling and participating in or assisting a human smuggling organization.

The Governor indicates in her veto message that the aggravating circumstance language in H.B. 2313 is overly broad and vague and the expansion of serious offenses contemplated in the bill does not appear necessary in light of existing offenses. She also states the proposed additional language in the legislation broadens the scope of those eligible for the death penalty to the point where the constitutionality of Arizona's death penalty statute would likely be challenged and potentially declared unconstitutional.

settlement of claims of minor (NOW: motor vehicle; definition; exclusion; insurance) (H.B. 2327) – VETOED

Excludes from the definition of *motor vehicle*, for purposes of cancellation or non-renewal of automobile insurance, any motor vehicle principally garaged out-of-state.

The Governor indicates in her veto message that H.B. 2327 does not define *principally garaged outside out-of-state* and therefore enables an insurance company to determine if a vehicle is principally garaged outside of Arizona. The Governor states that the legislation may have the unintended consequence of removing important consumer protections, such as receiving proper notice of the cancellation and the right to protest a cancellation, from customers.

aggravated assault; firearm (H.B. 2338) – VETOED

Stipulates that a person commits aggravated assault if the person knowingly takes or attempts to exercise control over a person's lawfully possessed firearm with the intent to cause harm with that firearm. Exempts the following from aggravated assault for taking or attempting to exercise control over a person's firearm: 1) a peace officer while engaged in the execution of any official duties; and 2) a person who is justified in using physical force or deadly physical force. Taking or attempting to exercise control over a person's firearm with the intent to cause harm with that firearm is a class 4 felony.

The Governor indicates in her veto message that H.B. 2338 is not necessary because current law already provides appropriate penalties for the described conduct.

firearms; permit holders; public places (H.B. 2339) – VETOED

Exempts, from *misconduct involving weapons*, a person who carries a deadly weapon in a public establishment other than a vehicle or craft or at a public event if that person possesses a valid permit to carry a concealed weapon (CCW). Stipulates that the exemption for persons with a CCW permit does not: 1) relieve or limit an operator of a public establishment or a sponsor of a public event from current requirements for providing storage for firearms; or 2) limit, restrict or prohibit the existing rights of a private property owner, private tenant, private employer or private business entity.

Excludes the following locations from the exemption for persons with a CCW permit: 1) any public establishment or public event that has security personnel and electronic weapons screening devices at each entrance or that has security personnel electronically screen each person who enters the public establishment or public event to determine if the person is carrying a deadly weapon, and the security personnel require each person carrying a deadly weapon to leave the weapon in possession of security personnel while in the establishment or at the event; 2) any community college district in the state or any university under the jurisdiction of the Arizona Board of Regents; 3) any licensed premises of a public establishment or public event with a liquor license; and 4) any educational institution.

The Governor indicates in her veto message that H.B. 2339 does not address her concerns from similar legislation passed in 2011 and 2012. The Governor states H.B. 2339 would establish an unfunded mandate on state and local governments and that it is an unnecessary diversion of limited resources.

firearms; state preemption; penalties (H.B. 2517) – VETOED

Requires a court to declare invalid any act, ordinance, regulation, tax or rule enacted by a political subdivision in violation of state firearm preemption laws. A permanent injunction must be issued against a political subdivision from continuing the act or enforcing the ordinance, regulation, tax or rule. It is not a defense that the political subdivision was acting in good faith or on the advice of counsel.

Requires the court to assess a civil penalty of up to \$5,000 against the elected or appointed government official or administrative agency head under whose jurisdiction the

violation occurred if the violation is knowing and wilful. Subjects, to termination from employment, a person who knowingly and wilfully violates a provision of state firearm preemption laws while acting in the person's official capacity.

Any person or organization adversely affected by an ordinance, rule, regulation, tax, measure, directive, order or policy that violates firearm preemption laws may file a civil action for declaratory relief and actual damages against the political subdivision. A prevailing plaintiff is entitled to reasonable attorney fees, costs and actual damages incurred of up to \$100,000.

The Governor indicates in her veto message that H.B. 2517 broadly mandates that a court make findings and take prescribed action without regard to the consideration of facts. She also states she is troubled by the vague and punitive provision that a person in violation of the statute is subject to termination from employment. The Governor states that a person or an organization that perceives an ordinance is illegal may already seek remedies through the legal system.

rescue operation personnel; limited liability (H.B. 2611) – VETOED

Exempts a person who is a member of an organized search and rescue team, unit or organization and who is involved in a search and rescue operation from liability for an injury to, or death of, a person subject to the search and rescue unless the person is grossly negligent.

The Governor indicates in her veto message that H.B. 2611 is overly broad and does not define an organized search and rescue team.