

Judiciary Committee

Senator Adam Driggs, Chairman



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JUDICIARY COMMITTEE

LEGISLATION ENACTED

domestic violence treatment programs; providers (S.B. 1035) – Chapter 194

Beginning January 1, 2016, authorizes a court to approve domestic violence offender treatment facilities pursuant to rules adopted by the Supreme Court.

technical correction; mobile home parks (NOW: criminal trespass; first degree; classification) (S.B. 1046) – Chapter 298

Increases the penalty for first-degree criminal trespass committed in or on a critical public-service facility from a class 6 to a class 5 felony.

vexatious litigants; fees; costs; designation (S.B. 1048) – Chapter 61

Beginning January 1, 2016, prohibits a court from waiving fees or costs for a vexatious litigant except in specified domestic-relations actions. Requires a court to order an applicant to pay deferred or waived fees and costs if the applicant who was granted a deferral or waiver is found to be a vexatious litigant during the pendency of the action. Allows a party in a non-criminal case to make an amended request to declare a pro se litigant a vexatious litigant.

service of process; regulation (S.B. 1064) – Chapter 138

Prescribes rules for alternative or substitute service of process for photo enforcement notices of violation. Requires alternative or substitute service of process of a photo enforcement notice of violation to be: 1) sent by certified and regular mail; and 2) posted on the front door of the business or residence of the person to be served and, if present and accessible, the residence's garage door. Stipulates that service of the complaint is complete on filing the mailing receipt and proof of posting in the court having jurisdiction of the violation.

aggressive solicitation; offense (S.B. 1094) – Chapter 146

Establishes the offense of *aggressive solicitation* and classifies it as a petty offense.

Prohibits a person from soliciting any money or other thing of value or soliciting the sale of goods or services within 15 feet of a bank entrance or exit or an automated-teller machine (ATM) without permission to be there from the bank or the owner of the property on which the ATM is located.

Prohibits a person from soliciting any money or other thing of value or soliciting the sale of goods or services in a *public area* by: 1) intentionally, knowingly or recklessly making any physical contact with another person in the course of the solicitation without the person's consent; 2) approaching or following the person being solicited in a manner that is likely to cause fear or intimidation, as specified; 3) continuing to solicit the person after the person has

JUDICIARY COMMITTEE (Cont'd)

clearly communicated a request that the solicitation stop; 4) intentionally, knowingly or recklessly obstructing the safe or free passage of the person being solicited or requiring the person to take evasive action to avoid physical contact with the person, except as outlined; or 5) intentionally, knowingly or recklessly using obscene or abusive language or gestures likely to cause fear or intimidation, as stipulated.

finest; fees; costs; community restitution (S.B. 1116) – Chapter 269

Beginning January 1, 2016, authorizes a municipal or justice court to order a defendant sentenced to pay a fine, fee, assessment or incarceration costs to complete community restitution in lieu of all or part of the amount owed if the defendant is unable to pay. This community restitution is compensated to the defendant at a rate of \$10 per hour.

criminal damage; gangs; criminal syndicates (S.B. 1179) – Chapter 41

Classifies criminal damage in the promotion, furtherance or assistance of a criminal street gang or criminal syndicate with the intent to intimidate as a class 5 felony. Stipulates that the penalty for criminal damage remains a class 4 felony if: 1) the property damage is reckless and in an amount of \$10,000 or more; 2) a utility property is recklessly damaged in the amount of \$5,000 or more; or 3) the damage is intentional and creates an imminent safety hazard to a utility.

health insurance; interstate purchase (NOW: firearm possession; setting aside conviction) (S.B. 1189) – Chapter 228

SEE THE PUBLIC SAFETY, MILITARY & TECHNOLOGY COMMITTEE.

fingerprinting; judgment of guilt; records (S.B. 1295) – Chapter 160

Allows for an alternative method of including a defendant's fingerprints in a case file and requires a booking agency to take an arrestee's fingerprints when they are otherwise illegible. Allows a court or its appointee, at the time of sentencing, to obtain and record a defendant's two-fingerprint biometric-based identifier in the court case file instead of affixing the defendant's fingerprint to the sentence document or minute order. Requires the sentence document or minute order to include whether the offense was committed while the offender was released from confinement.

uniform interstate family support act (S.B. 1313) – Chapter 253

Provides guidelines and procedures for foreign support orders. Outlines requirements for a party who seeks to establish or modify child support if one of the parties lives outside the U.S.

Allows a person to file a request for recognition and enforcement of a support order or agreement. Requires a party seeking recognition of a convention support order or a foreign support agreement to register it in Arizona and enumerates the documents that must accompany the request. Provides related requirements if the other party wishes to contest registration of the

JUDICIARY COMMITTEE (Cont'd)

convention support order, including deadlines and the grounds on which the challenge must be based. The Arizona tribunal must recognize and enforce the order unless certain grounds are found, including that the issuing tribunal lacked jurisdiction, the order was obtained by fraud or the respondent did not have notice and an opportunity to be heard. Allows the modification of such an order only in limited circumstances as outlined.

subpoena compliance; copying; clerical costs (S.B. 1316) – Chapter 232

Increases the amount a non-party witness in a civil case may be reimbursed for producing documents pursuant to a subpoena from 10 cents per page to 25 cents per page for the standard reproduction of documents and from \$10 per hour to \$25 per hour for clerical costs of production.

judicially appointed psychologists; complaints (S.B. 1439) – Chapter 168

Replaces procedures outlining when the Board of Psychologist Examiners (Board) considers complaints against judicially appointed psychologists. Requires claims of unprofessional conduct to be reviewed by three members of the Board, one of which must be a public member. If one or more of the three members independently determines the claim has merit, the Board is required to open an investigation as a complaint.

Prohibits the Board from considering complaints for administrative action if the complaint is filed against certain persons affiliated with the Board and if the complaint relates to the person's performance of Board duties.

foreign country money judgments; enforcement (S.B. 1447) – Chapter 170

SEE THE FINANCIAL INSTITUTIONS COMMITTEE.

criminal justice; budget reconciliation; 2015-2016 (S.B. 1478) – Chapter 17

SEE THE APPROPRIATIONS COMMITTEE.

courts; days; transaction of business (H.B. 2013) – Chapter 28

Allows municipal courts, with the presiding judge's approval, to transact business on the second Monday in October if the city or town is open for the transaction of business on that day.

sex offender registration; address verification (H.B. 2087) – Chapter 22

Requires a registered sex offender to verify the person's address if requested by the Department of Public Safety. Eliminates a liability exemption related to providing information for the sex offender website if the person is required to register as a sex offender.

~~mental health; veteran; homeless courts.~~ (NOW: magistrates; municipal courts) (H.B. 2088) – Chapter 276

JUDICIARY COMMITTEE (Cont'd)

Shifts \$2,810,500 of the FY 2016 appropriation to the Arizona Judiciary from the Superior Court to the Supreme Court budget line items.

Removes language referring to *police courts* from statute and replaces it with *municipal courts*. Updates the definition of *magistrate* to include judges of the Court of Appeals and removes *dogs* from the definition of *personal property*.

aggravated assault; elected officials (NOW: aggravated assault; judicial officers) (H.B. 2089) – Chapter 95

Classifies, as aggravated assault and a class 6 felony, an assault committed against a judicial officer. Defines *judicial officer* as a justice of the Supreme Court, judge, justice of the peace, magistrate or a commissioner or hearing officer of a state, county or municipal court. Stipulates, for an assault to be considered an aggravated assault because of the victim's profession, that the assault must occur while the victim is engaged in, or as a result of, the official duties of that profession.

controlled substances; schedules (H.B. 2139) – Chapter 27

Updates the list of controlled substances in the Uniform Controlled Substance Act to conform to federal law.

release; bailable offenses; evidence (H.B. 2164) – Chapter 100

Requires, when determining the method of release or the amount of bail, a judicial officer to consider: 1) whether the accused has a prior arrest or conviction for a serious offense or violent or aggravated felony or an offense in another state that would be a serious offense or aggravated felony if committed in Arizona; 2) evidence that the accused poses a danger to others in the community; and 3) the results of a risk or lethality assessment in a domestic violence charge presented to the court.

raffles; lawful conduct (H.B. 2182) – Chapter 278

Allows certain tax-exempt entities with at least 20 years of experience providing comprehensive child abuse prevention services and child abuse victim services to contract with an outside agent who participates in the management, sales or operation of a raffle if: 1) the proceeds of the raffle are used to provide comprehensive services to prevent child abuse or to provide services and advocacy for victims of child abuse; 2) the raffles are conducted no more than three times per year; and 3) the fee for the outside agent is no more than 15 percent of the net raffle proceeds.

postconviction release hearings; recordings; free (H.B. 2203) – Chapter 237

Allows a crime victim to obtain a free copy of any electronic recordings made during a postconviction or postadjudication release hearing.

JUDICIARY COMMITTEE (Cont'd)

criminal restitution order; courts (H.B. 2204) – Chapter 238

Permits limited jurisdiction courts to enter criminal restitution orders at the time a defendant is ordered to pay restitution. Allows a court to order a defendant to pay, as restitution to the victim, all or part of an imposed fine for hit-and-run accidents resulting only in damage to a vehicle.

~~traffic offense; restitution~~ (NOW: emergency service providers; civil liability) (H.B. 2205) – Chapter 239

Repeals existing statutory language relating to civil liability for providers of emergency 911 services and replaces it with a revised standard for liability. Stipulates that, in the provision of 911 services, a person, provider, public entity or employee of a public entity is not liable for damages in a civil action for injuries, death or loss to a person or property that are incurred by any person with respect to all decisions made and actions or omissions taken that are based on good faith implementation except in cases of wanton or willful misconduct.

The standard of liability applies to persons, providers or public entities, regardless of the technology platform, that: 1) receives, develops, collects or processes information for the service's location information databases; 2) relays, transfers, operates, maintains or provides emergency notification services or system capabilities; or 3) provides emergency communications or services for ambulances, police, fire departments or other public safety entities.

~~charter schools; agricultural buffer zones~~ (NOW: notice of claim; public schools) (H.B. 2208) – Chapter 302

Specifies that *notice of claim* requirements apply to claims against any public school.

~~notice; attorney general; trial court~~ (NOW: majority vote calculation; municipal elections) (H.B. 2214) – Chapter 105

Makes changes to the procedure for calculating a majority of votes cast in city or town general and runoff elections.

Removes the current procedure for calculating a majority of votes cast in a city or town primary election that is based off the total number of all votes tabulated for the office of mayor and replaces it with the following three-step method: 1) calculate the total number of actual votes cast for all candidates for an office whose names were lawfully on the ballot for that office; 2) divide the sum by the number of seats to be filled for the office; and 3) divide the number reached by two and round that number to the highest whole number. Requires, if more candidates receive a majority than there are seats to be filled, that the candidates who receive a majority and highest vote total to be elected to the seats to be filled.

police reports; victims; attorneys (H.B. 2239) – Chapter 303

JUDICIARY COMMITTEE (Cont'd)

Allows a crime victim's attorney, on behalf of the victim, to receive a copy of the police report from the investigating law enforcement agency free of charge.

repetitive offenders; sentencing (H.B. 2289) – Chapter 51

Makes clarifying changes to the sentencing of repetitive offenders. Stipulates that a person who is convicted of multiple felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions must be sentenced: 1) as a first-time felony offender for the first offense; 2) as a category-one repetitive offender for the second offense; and 3) as a category-two repetitive offender for the third and subsequent offenses.

Requires a sentence imposed for a person who commits a dangerous offense while released from confinement for a conviction of any felony, not only certain felonies, to: 1) revoke the convicted person's release if the person was on release; and 2) be consecutive to any other sentence in which the convicted person had been temporarily released or had escaped.

sexual offenses; definitions; defenses (H.B. 2299) – Chapter 209

Prevents a defendant from asserting a defense of consent in certain instances of sexual abuse if the defendant is in a *position of trust*. Applies the class 2 felony classification for sexual conduct with a minor who is at least 15 years old to a person in a *position of trust*, rather than to a delineation of specific persons.

historical prior felony conviction; sentencing (H.B. 2301) – Chapter 74

Modifies the definition of *historical prior felony conviction*, for the purpose of classifying a third or subsequent felony, to include any offense committed outside the jurisdiction of Arizona that was punishable by that jurisdiction as a felony. Allows a person's conviction for a felony in another state to be considered in classifying a person as a category-one repetitive offender or classifying a person as a category-two repetitive offender who has three or more felony convictions that were not committed on the same occasion, but that are consolidated for trial or are not historical prior felony convictions.

aggravated assault; simulated deadly weapon (H.B. 2304) – Chapter 109

SEE THE GOVERNMENT COMMITTEE.

board of executive clemency; continuation (H.B. 2305) – Chapter 53

Retroactive to July 1, 2015, the State Board of Executive Clemency is continued until July 1, 2017.

JUDICIARY COMMITTEE (Cont'd)

court-ordered treatment; hearings (H.B. 2307) – Chapter 75

Modifies prerequisites that outline when a hearing on a petition for court-ordered treatment may proceed in the patient's absence to allow the court to proceed with a hearing if the patient is unable to be present for psychiatric reasons. Requires the court to consider whether the patient can appear by other reasonably feasible means and states the requirement for the patient's record of drug, medication or other treatment received during the 72 hours immediately preceding the hearing applies to proposed patients being treated as an inpatient by the evaluation agency.

mental health courts; establishment (H.B. 2310) – Chapter 54

Permits the establishment of regional mental-health courts in counties that have a population of less than 250,000 persons and outlines procedures for referral to the court.

judgment liens; recordation; real property (H.B. 2311) – Chapter 110

Allows a certified copy of a justice or municipal court judgment to be filed directly with the county recorder as a lien on real property for judgments recorded on or after January 1, 2016. Allows a justice or municipal court judgment to be certified for recording by the justice or municipal court's clerk on request and payment of a fee.

amusement gambling; merchandise prize value (H.B. 2312) – Chapter 111 RFEIR

Increases, from \$4 to \$10, the maximum value of a single-win merchandise prize as part of amusement gambling.

misbranded drugs; counterfeit marks; offense (H.B. 2322) – Chapter 113

Classifies the manufacture, sale or distribution of misbranded drugs as a class 4 felony and adds such conduct to the definition of *racketeering*. Classifies knowingly possessing or using a misbranded drug as a class 2 misdemeanor. The bill outlines several exceptions concerning misbranded drugs. Specifically, a drug or device is not considered misbranded if it is: 1) intended for use in pharmaceutical compounding; 2) mislabeled or incorrectly filled because of a filling error by a pharmacy or pharmacist; or 3) used for instances including clinical research pursuant to an announcement by the Federal Drug Administration.

wrongful death actions; disqualified party (H.B. 2374) – Chapter 212

Treats a person as predeceased and disqualifies the person from recovering wrongful-death benefits if the person has pled or is found guilty of, pled guilty except insane for or no contest to the following offenses: 1) first-degree murder involving the death of the decedent; 2) second-degree murder involving death of the decedent; 3) manslaughter involving the death of the decedent; or 4) child abuse involving death of the child decedent.

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peace officers; unlawful sexual conduct (H.B. 2378) – Chapter 214

Stipulates that a peace officer commits unlawful sexual conduct by knowingly engaging in sexual contact, oral sexual contact or sexual intercourse with a person who is in the officer's custody or a person who the officer knows or has reason to know is the subject of an investigation. Classifies the peace officer's unlawful sexual conduct as: 1) a class 2 felony if the victim is under 15 years of age; 2) a class 3 felony if the victim is at least 15 years of age but under 18 years of age; and 3) a class 5 felony if the victim is 18 years of age or older.

Defines *custody* as the imposition of actual or constructive restraint pursuant to an on-site arrest, a court order or any contact in which a reasonable person would not feel free to leave. Specifies that *custody* excludes detention in a correctional facility, juvenile detention facility or state hospital.

wildlife; guides; firearms (H.B. 2396) – Chapter 122

SEE THE GOVERNMENT COMMITTEE.

~~sanitary districts; bids; contractor~~ (NOW: campaign finance; contribution limitations) (H.B. 2415) – Chapter 286 W/O

Campaign Contributions – Increases campaign contribution limits for individuals and political committees from \$2,500 per election to \$6,250 per election cycle. Increases campaign contribution limits for higher limit political committees from \$5,000 per election to \$12,500 per election cycle. Applies campaign contribution limits to each election cycle rather than to the primary and general elections separately. Removes requirements and procedures for candidate committees to distinguish contributions between the primary and general elections and requires candidates to maintain one campaign account per election cycle. Allows a legislator or the Governor to accept a campaign contribution that is received within three calendar days after the regular session has commenced, if the campaign contribution was mailed and postmarked prior to the commencement of regular session. Allows an individual to make contributions from a revocable trust.

Partnership Contributions – Allows a partnership to contribute up to \$6,250 per election cycle and allows the individual partners to designate the contributions. An individual's contributions from a partnership are combined with that person's other nonpartnership contributions. However, an individual's nonpartnership contributions do not count against the partnership's contribution limits.

Applicability – Contains session law for the transfer of monies and debt from political committees formed for the 2014 election cycle to committees formed for the 2016 and 2018 election cycles. Candidates who have surplus monies in 2014 campaign committee accounts may dispose of those surplus monies as prescribed or transfer those monies to a new campaign committee established for the 2016 or 2018 election cycle. Candidates who have debt remaining in 2014 campaign committee accounts may: 1) transfer the debt to a new campaign committee established for the 2016 or 2018 election cycle with contributions to retire the transferred debt

JUDICIARY COMMITTEE (Cont'd)

counting against the contribution limits for the new campaign committee; or 2) retain the debt in the 2014 campaign committee and accept contributions to retire the debt with contributions counting against contribution limits for the 2014 election cycle. Contributions to retire debt retained by 2014 candidate campaign committees do not count against contribution limits for new campaign committees established for the 2016 or 2018 election cycle.

internet crimes against children; fund (H.B. 2517) – Chapter 245 E

Internet Crimes Against Children Enforcement Fund – An emergency measure, effective April 9, 2015, that establishes the Internet Crimes Against Children Enforcement Fund (Fund) administered by the Attorney General (AG). Directs \$900,000 to the Fund from proceeds of any lottery games that are sold from a vending machine in an age-restricted area. Requires, if there are insufficient funds transferred from lottery game revenue to reach \$900,000, that the difference be transferred from unclaimed lottery prize money. Requires, subject to legislative appropriation, the AG to use Fund monies to enter into intergovernmental agreements to further the federal Internet Crimes Against Children Task Force Program.

Victims' Rights Enforcement Fund – Directs \$100,000 to the Victims' Rights Enforcement Fund from proceeds of any lottery games that are sold from a vending machine in an age-restricted area. Requires, if there are insufficient funds transferred from lottery game revenue to reach \$100,000, that the difference be transferred from unclaimed lottery prize money.

Communication Service Providers – Requires law enforcement agencies to serve notice to a communication service provider if a law enforcement agency receives information that a communication service provider is hosting a website that contains an alleged violation relating to sexual exploitation of children. Requires notice to include specific information on the location of the alleged violation.

State Lottery – Allows rules adopted by the Director of the Lottery Commission to relate to the method used for the validation of a ticket, which may be by physical or electronic presentation of a ticket. Requires the Lottery Commission to transfer monies in the State Lottery Fund on a quarterly basis. Requires monies in excess of the amount required to be transferred to the Fund and the Victims' Rights Enforcement Fund to be deposited in the State Lottery Fund.

prohibited laws, rules, ordinances; firearms (H.B. 2527) – Chapter 126

SEE THE GOVERNMENT COMMITTEE.

human trafficking victim; vacating conviction (NOW: sex trafficking victim; vacating conviction) (H.B. 2553) – Chapter 219

Allows a court to vacate a prostitution conviction committed prior to July 24, 2014, if the person's participation in the offense is found to be a direct result of sex trafficking. Allows a person whose prostitution conviction is vacated to state that the person has never been arrested for, charged with or convicted of the offense in all instances, including in response to questions

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on employment, housing, financial aid or loan applications, except on an employment application that requires a fingerprint clearance card.

real property; purchaser dwelling actions (H.B. 2578) – Chapter 60

SEE THE COMMERCE & WORKFORCE DEVELOPMENT COMMITTEE.

personal injury action; asbestos; requirements (H.B. 2603) – Chapter 246

Requires a plaintiff to provide to all parties a sworn statement identifying each personal-injury claim that the plaintiff has filed or reasonably anticipates filing against an asbestos trust in any action involving a personal injury claim within 45 days, as specified. Requires, if a plaintiff identifies an asbestos trust the plaintiff reasonably anticipates filing a lawsuit against, the court to stay all proceedings until the plaintiff files a claim against the asbestos trust and provides the court and all parties a copy of the final executed proof of claim and all other trust-claims materials relevant to each claim the plaintiff has against each asbestos trust.

Permits a defendant in a personal-injury claim to seek discovery against an identified asbestos trust and prohibits the plaintiff from claiming privilege or confidentiality to bar discovery. Prohibits a court from scheduling a trial in a personal-injury action until at least 180 days after the plaintiff makes the required asbestos trust disclosures. Requires the court, on motion by the defendant, to determine whether to order the plaintiff to file a claim against an asbestos trust if a defendant identifies a trust not named by the plaintiff that the defendant reasonably believes the plaintiff should file a claim against.

Requires the court to stay the immediate action, if the court orders the plaintiff to file a claim with an asbestos trust, until the plaintiff: 1) swears or affirms that the plaintiff has filed the claim against the asbestos trust; and 2) provides the court and all parties a final executed proof of claim and all other trust materials relevant to each claim the plaintiff has against an asbestos trust. Permits a jury or other trier of fact to consider a plaintiff's submission of a claim to an asbestos trust and related trust-claims materials to determine liability and apportion fault in a personal-injury claim. Requires, if a plaintiff in a personal-injury claim proceeds to trial before an asbestos trust claim is resolved but subsequently receives compensation from an asbestos trust, the amount of compensation to be credited against a judgment entered against a defendant found to be at fault to the extent that the compensation amount exceeds the fault apportioned to the asbestos trust.

Specifies that plaintiffs who fail to timely provide all of the required information set forth in the bill are subject to sanctions. Applies the provisions of the bill retroactively to actions involving personal-injury claims that are pending or filed on or after the general effective date.

campaign finance; political committee; definition (H.B. 2649) – Chapter 297

Modifies the definition of *political committee* to include an association or combination of persons that meets both of the following requirements: 1) is organized, conducted or combined for the primary purpose of influencing the result of any election in the state or in any county,

JUDICIARY COMMITTEE (Cont'd)

city, town or other political subdivision, including a judicial retention election; and 2) knowingly receives contributions or makes expenditures of more than \$500 in connection with any election during a calendar year, including a judicial retention election. Requires a political committee formed under the new definition to file a statement of organization with the filing officer within five business days after meeting the definition. Provides that such a political committee does not need to file an exemption statement stating that it intends to make expenditures or accept contributions of \$500 or less.

~~small claims divisions; permissible motions~~ (NOW: satisfaction of judgment) (H.B. 2663) – Chapter 249

Allows a satisfaction of judgment to be filed in a small claims action.

LEGISLATION VETOED

justice of the peace; residency (H.B. 2592) – VETOED

Requires a candidate for justice of the peace (JP) to be a qualified elector of the precinct the person proposes to represent at the time of filing a nomination paper and a resident of the precinct the person proposes to represent for at least one year prior to the general election. Exempts JPs who are appointed to fill a vacancy from those requirements.

The Governor indicates in his veto message that he believes it is inappropriate to create a separate residency standard for one specific elected office.