

1-20-16

COMMITTEE ON JUDICIARY

Report of Regular Meeting
Wednesday, January 20, 2016
House Hearing Room 3 -- 10:00 a.m.

Convened 10:06 a.m.

Recessed

Reconvened

Adjourned 10:53 a.m.

Members Present

Mr. Friese
Mr. Hale
Mr. Kern
Mr. Mesnard
Mr. Borrelli, Vice-Chairman
Mr. Farnsworth, Chairman

Members Absent

Agenda

Original Agenda – Attachment 1

Request to Speak

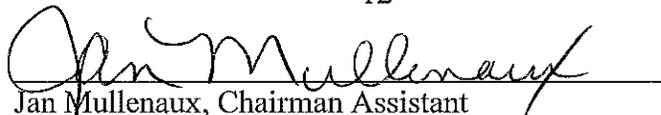
Report – Attachment 2

Presentations

<u>Name</u>	<u>Organization</u>	<u>Attachments (Handouts)</u>
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Committee Action

<u>Bill</u>	<u>Action</u>	<u>Vote</u>	<u>Attachments (Summaries, Amendments, Attendance)</u>
HB2042	HELD		
HB2374	DP	5-0-0-1	3, 4
HB2375	DP	5-0-0-1	5, 6
HB2376	DP	6-0-0-0	7, 8
HB2377	DPA	6-0-0-0	9, 10, 11
COMMITTEE ATTENDANCE			12


Jan Mullenau, Chairman Assistant
January 21, 2016

(Original attachments on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov>)

Convened 10:06 am
Adjourned 10:53 am

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-second Legislature - Second Regular Session

REGULAR MEETING AGENDA

COMMITTEE ON JUDICIARY

DATE Wednesday, January 20, 2016 ROOM HHR 3 TIME 10:00 A.M. NOTE TIME CHANGE
9:00 A.M.

Members:

Mr. Friese Mr. Kern Mr. Borrelli, Vice-Chairman
Mr. Hale Mr. Mesnard Mr. Farnsworth E, Chairman

Introduction of Committee Members and Staff

Bills	Short Title	Strike Everything Title
HB2042	<u>held</u> nunchaku prohibition; repeal (Finchem, Burges: Borrelli, et al) JUD, RULES	
*HB2374	<u>5-0-0-1</u> child prostitution; offense	
*HB2375	<u>dp</u> crime victims' rights; facility dog <u>5-0-0-1</u>	
*HB2376	<u>dp</u> victim restitution; stipulated amount; hearings <u>6-0-0-0</u>	
*HB2377	<u>dp</u> criminal sentencing; restoration of rights <u>6-0-0-0</u>	

* If printed, first read and assigned

ORDER OF BILLS TO BE SET BY THE CHAIRMAN

jb
1/14/16

People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032, TDD (602) 926-3241.

Information Registered on the Request to Speak System

House Judiciary (1/20/2016)

HB2042, nunchaku prohibition; repeal

Support:

Elisha Dorfsmith, representing self; Eric Orrill, representing self; Dave Kopp, Manager, AZ CITIZENS DEFENSE LEAGUE INC

Oppose:

kathleen mayer, Pima County Attorney's Office; Kimberly MacEachern, AZ PROSECUTING ATTORNEYS ADVISORY COUNCIL; Austin Hoopes, PINAL COUNTY ATTORNEY'S OFFICE

All Comments:

Elisha Dorfsmith, Self: It is time to legalize the Nunchak in Arizona. There is no logical reason to keep these out of the hands of law abiding citizens.; kathleen mayer, Pima County Attorney's Office: too easily these could be used as offensive weapons to strangle - by gang members and DV offenders

HB2374, child prostitution; offense

Testified in support:

Will Munsil, Maricopa County Attorney's Office

Support:

Don Isaacson, FRATERNAL ORDER OF POLICE (AZ STATE LODGE)

Oppose:

kathleen mayer, Pima County Attorney's Office

All Comments:

Will Munsil, Maricopa County Attorney's Office: Maricopa County Attorney's Office supports this bill

HB2375, crime victims' rights; facility dog

Testified in support:

Rebecca Baker, Maricopa County Attorney's Office; kathleen mayer, Pima County Attorney's Office; Colleen Clase, representing self

Support:

Farrell Quinlan, State Director, representing self; Shannon Rich, AZ COALITION TO END SEXUAL AND DOMESTIC VIOLENCE

All Comments:

kathleen mayer, Pima County Attorney's Office: would like to also include vulnerable adult victims and child/vulnerable adult witnesses

HB2376, victim restitution; stipulated amount; hearings

Testified in support:

Rebecca Baker, Maricopa County Attorney's Office; Colleen Clase, representing self; Richard Coffinger, representing self

Testified as neutral:

Jerry Landau, Arizona Judicial Council

Support:

kathleen mayer, Pima County Attorney's Office; Shannon Rich, AZ COALITION TO END SEXUAL AND DOMESTIC VIOLENCE; Andrew LeFevre, Arizona Criminal Justice Commission

HB2377, criminal sentencing; restoration of rights

Support:

Jerry Landau, Arizona Judicial Council



HOUSE OF REPRESENTATIVES

HB 2374

child prostitution; offense

Prime Sponsor: Representative Farnsworth E, LD 12

X Committee on Judiciary

Caucus and COW

House Engrossed

OVERVIEW

HB 2374 makes it a Class 2 felony to knowingly provide the means for a minor to engage in prostitution and prescribes specific penalties for the offense.

PROVISIONS

1. Expands the offense of *child prostitution* to include knowingly providing a means for a minor to engage in prostitution.
2. Designates the violation as a Class 2 felony.
 - a. If the victim is under 15 years of age, the offense is punishable as a dangerous crime against children with a presumptive prison term of 20 years (A.R.S. § 13-705)
 - b. If the victim is 15, 16 or 17 years of age, the offense carries a specific sentence outlined in A.R.S. § 13-3212(G) with a presumptive prison term of 13.5 years.

CURRENT LAW

A.R.S. Title 13, Chapter 32 outlines various offenses involving prostitution. *Child prostitution* is defined in A.R.S. § 13-3212 as knowingly:

- Causing a minor to engage in prostitution or using a minor for prostitution
- Allowing a minor in the person's custody to engage in prostitution
- Receiving any benefit for procuring or placing a minor in any place or in anyone's custody for the purpose of prostitution
- Receiving any benefit through an agreement to participate in the proceeds of prostitution
- Financing, managing, supervising, controlling or owning prostitution activity involving a minor
- Transporting or financing the transportation of a minor with the intent that the minor engage in prostitution

If the victim is under 15 years of age, *child prostitution* is punishable as a *dangerous crime against children* and carries a presumptive prison term of 20 years (no predicate felony). If the victim is 15, 16 or 17 years old, *child prostitution* is a Class 2 felony with a presumptive prison term of 13.5 years (first offense).

If the person is at least 18 years old, the offense of *child prostitution* also includes knowingly engaging in prostitution with a minor. Various penalties are provided based on the age of the victim and whether the offender should have known that the victim was underage.

**ARIZONA HOUSE OF REPRESENTATIVES
Fifty-second Legislature - Second Regular Session**

ROLL CALL VOTE

COMMITTEE ON JUDICIARY BILL NO. HB 2374

DATE January 20, 2016 MOTION: dp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese		✓			
Mr. Hale		✓			
Mr. Kern		✓			
Mr. Mesnard					1
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		5	0	0	1

APPROVED:

 EDWIN W. FARNSWORTH, Chairman
 SONNY BORRELLI, Vice-Chairman


 COMMITTEE SECRETARY

Attachment 4



HOUSE OF REPRESENTATIVES

HB 2375

crime victims' rights; facility dog

Prime Sponsor: Representative Farnsworth E, LD 12

X Committee on Judiciary

Caucus and COW

House Engrossed

OVERVIEW

HB 2375 requires the court to allow minor victims to be accompanied by a *facility dog* when testifying in court.

PROVISIONS

1. States that the court must allow victims under 18 years of age to be accompanied by a *facility dog* while testifying in court.
 - a. Requires that a victim file a notice with the court that includes the dog's certification and proof that the dog is insured.
 - b. Requires the court to notify the jury of the presence of a *facility dog* and outlines specific jury instructions that must be provided.
2. Defines *facility dog* as a dog that is a graduate of an assistance dog organization that meets specific criteria.
3. Contains an intent clause.

CURRENT LAW

Article II, § 2.1 of the Arizona Constitution was enacted by the voters in 1990 and outlines specific rights that crime victims are entitled to. *Victim* is defined as a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative (unless the person is in custody for an offense or is the accused). Subsection D grants to the Legislature and the people the right to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims under § 2.1. Numerous statutes further implement § 2.1, along with A.R.S. Title 13, Chapter 40 (crime victims' rights).

**ARIZONA HOUSE OF REPRESENTATIVES
Fifty-second Legislature - Second Regular Session**

ROLL CALL VOTE

COMMITTEE ON JUDICIARY BILL NO. HB 2375

DATE January 20, 2016 MOTION: dp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese					✓
Mr. Hale		✓			
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		5	0	0	1

APPROVED:


EDWIN W. FARNSWORTH, Chairman
SONNY BORRELLI, Vice-Chairman


COMMITTEE SECRETARY

Attachment 6



HOUSE OF REPRESENTATIVES

HB 2376

victim restitution; stipulated amount; hearings
Prime Sponsor: Representative Farnsworth E, LD 12

X Committee on Judiciary
Caucus and COW
House Engrossed

OVERVIEW

HB 2376 makes changes to statutes governing crime victims' rights related to restitution.

PROVISIONS

1. Grants a victim or the victim's counsel the right at any restitution proceeding to:
 - a. Present information or evidence
 - b. Make an argument to the court
2. Clarifies that the state, in a restitution hearing, may make an argument relevant to the issue of restitution.
3. Requires the court to order that a restitution amount stipulated to in a plea agreement be paid, if the plea agreement is entered and accepted by the court.
4. Clarifies that the rights outlined in the following belong to the victim:
 - a. Article II, § 2.1 of the Arizona Constitution (Victims' Bill of Rights)
 - b. Implementing legislation
 - c. Court rules
5. Contains an intent clause.
6. Makes technical and conforming changes.

CURRENT LAW

Article II, § 2.1 of the Arizona Constitution was enacted by the voters in 1990 and outlines specific rights that crime victims are entitled to. *Victim* is defined as a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative (unless the person is in custody for an offense or is the accused). Subsection D grants to the Legislature and the people the right to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims under § 2.1. Numerous statutes further implement § 2.1 along with A.R.S. Title 13, Chapter 40 (crime victims' rights).

A.R.S. § 13-603(C) states that the court shall require a convicted person to make restitution to a victim in the full amount of the *economic loss* (defined in A.R.S. § 13-105(15)). The process for determining and ordering restitution is outlined in A.R.S. § 13-804. If the court does not have enough evidence to determine the amount of restitution or how the restitution should be paid, the court may hold a restitution hearing. At this hearing, the state may present evidence and information, but it does not represent the victim. Once a determination is made, the court must

Fifty-second Legislature
Second Regular Session

Judiciary

HB 2376

enter a restitution order. Any monies paid by the defendant to the court must first be applied to satisfy the restitution order (and any arrears) before being applied to fines or court fees.

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-second Legislature - Second Regular Session

ROLL CALL VOTE

COMMITTEE ON _____ JUDICIARY _____ BILL NO. HB 2376

DATE January 20, 2016 MOTION: dp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese		✓			
Mr. Hale		✓			
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		6	0	0	0

Jan Mullen
 COMMITTEE SECRETARY

APPROVED:

Edwin W. Farnsworth
 EDWIN W. FARNSWORTH, Chairman
 SONNY BORRELLI, Vice-Chairman

Attachment 8



HOUSE OF REPRESENTATIVES

HB 2377

criminal sentencing; restoration of rights
Prime Sponsor: Representative Farnsworth E, LD 12

X Committee on Judiciary
Caucus and COW
House Engrossed

OVERVIEW

HB 2377 allows a judicial officer to restore a person's civil rights after a felony conviction and makes conforming changes in other criminal statutes.

PROVISIONS

1. Allows a judicial officer to restore civil rights that are either lost or suspended by a felony conviction, instead of the presiding judge or the judge that sentenced the person or his/her successor.
2. Corrects internal references related to Laws 2015, Ch. 51 as related to repetitive offender sentencing.
3. Removes a penalty in the aggravated assault statute specific to victims under 15 years of age if the aggravated assault involves taking or attempting to take an officer's weapon.
4. Makes technical and conforming changes.

CURRENT LAW

Several statutes address the process for a person convicted of one or more felonies to petition the court to have civil rights restored. These sections refer to either the sentencing judge or his/her successor (A.R.S. §§ 13-905, 13-906, 13-908 and 13-912.01) or the presiding judge (A.R.S. §§ 13-909, A.R.S. 13-910 and A.R.S. 13-911) as having the authority to restore rights.

Laws 2015, Ch. 51 (HB 2289--repetitive offenders; sentencing) made numerous changes to A.R.S. § 13-703, including collapsing Subsection B into Subsection A, creating one paragraph. References to the prior Subsection B are still contained in A.R.S. § 12-2703, A.R.S. § 13-703(L) and A.R.S. § 41-1604.10.

Laws 2015, Ch. 109 (HB 2304--aggravated assault; simulated deadly weapon) expanded the aggravated assault statute (A.R.S. § 13-1204) to include a new offense related to the use of a simulated deadly weapon. The bill also created a penalty for the offense of taking/attempting to take an officer's weapon if the victim was under 15 years of age.

COMMITTEE ON JUDICIARY
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2377
(Reference to printed bill)

1 Page 5, between lines 11 and 12, insert:

2 "Sec. 5. Section 13-907, Arizona Revised Statutes, is amended to read:

3 13-907. Setting aside judgment of convicted person on discharge;
4 application; release from disabilities; firearm
5 possession; exceptions

6 A. Except as provided in subsection E of this section, every person
7 convicted of a criminal offense, on fulfillment of the conditions of
8 probation or sentence and discharge by the court, may apply to the COURT
9 judge, ~~justice of the peace or magistrate who pronounced sentence or imposed~~
10 ~~probation or such judge, justice of the peace or magistrate's successor in~~
11 ~~office~~ to have the judgment of guilt set aside. The convicted person shall
12 be informed of this right at the time of discharge.

13 B. The convicted person or, if authorized in writing, the convicted
14 person's attorney or probation officer may apply to set aside the judgment.

15 C. If the COURT judge, ~~justice of the peace or magistrate~~ grants the
16 application, the COURT judge, ~~justice of the peace or magistrate~~ shall set
17 aside the judgment of guilt, dismiss the accusations or information and order
18 that the person be released from all penalties and disabilities resulting
19 from the conviction except those imposed by:

20 1. The department of transportation pursuant to section 28-3304,
21 28-3306, 28-3307, 28-3308 or 28-3319, except that the conviction may be used
22 as a conviction if the conviction would be admissible had it not been set
23 aside and may be pleaded and proved in any subsequent prosecution of such
24 person by the state or any of its subdivisions for any offense or used by the

1 department of transportation in enforcing section 28-3304, 28-3306, 28-3307,
2 28-3308 or 28-3319 as if the judgment of guilt had not been set aside.

3 2. The game and fish commission pursuant to section 17-314 or 17-340.

4 D. Notwithstanding section 13-905 or 13-906, if a judgment of guilt is
5 set aside pursuant to this section, the person's right to possess a gun or
6 firearm is restored. This subsection does not apply to a person who was
7 convicted of a serious offense as defined in section 13-706.

8 E. This section does not apply to a person who was convicted of a
9 criminal offense:

10 1. Involving a dangerous offense.

11 2. For which the person is required or ordered by the court to
12 register pursuant to section 13-3821.

13 3. For which there has been a finding of sexual motivation pursuant to
14 section 13-118.

15 4. In which the victim is a minor under fifteen years of age.

16 5. In violation of section 28-3473, any local ordinance relating to
17 stopping, standing or operation of a vehicle or title 28, chapter 3, except a
18 violation of section 28-693 or any local ordinance relating to the same
19 subject matter as section 28-693.

20 Sec. 6. Section 13-908, Arizona Revised Statutes, is amended to read:

21 13-908. Restoration of civil rights in the discretion of a
22 judicial officer in the superior court

23 Except as provided in section 13-912, the restoration of civil rights
24 and the dismissal of the accusation or information under the provisions of
25 this chapter shall be in the discretion OF A JUDICIAL OFFICER of the superior
26 court ~~judge by whom the person was sentenced or his successor in office."~~

27 Renumber to conform

28 Between lines 37 and 38, insert:

29 "Sec. 8. Section 13-910, Arizona Revised Statutes, is amended to read:

30 13-910. Applications by persons discharged from federal prison

31 A. On proper application, a person who has been convicted of two or
32 more felonies and who has received an absolute discharge from imprisonment in
33 a federal prison may have any civil rights which were lost or suspended by

1 the conviction restored by A JUDICIAL OFFICER IN the ~~presiding judge of the~~
2 superior court in the county in which the person now resides.

3 B. A person who is subject to subsection A of this section may file,
4 no sooner than two years from the date of his absolute discharge, an
5 application for restoration of civil rights that shall be accompanied by a
6 certificate of absolute discharge from the director of the federal bureau of
7 prisons, unless it is shown to be impossible to obtain such
8 certificate. Such application shall be filed with the clerk of the superior
9 court in the county in which the person now resides, and such clerk shall be
10 responsible for processing applications for restoration of civil rights upon
11 request of the person involved or the person's attorney.

12 C. If the person was convicted of an offense which would be a
13 dangerous offense under section 13-704, the person may not file for the
14 restoration of the right to possess or carry a gun or firearm. If the person
15 was convicted of an offense which would be a serious offense as defined in
16 section 13-706, the person may not file for the restoration of the right to
17 possess or carry a gun or firearm for ten years from the date of the person's
18 absolute discharge from imprisonment. If the person was convicted of any
19 other felony offense, the person may not file for the restoration of the
20 right to possess or carry a gun or firearm for two years from the date of the
21 person's absolute discharge from imprisonment."

22 Renumber to conform

23 Amend title to conform

and, as so amended, it do pass

EDWIN W. FARNSWORTH
CHAIRMAN

2377JUDICIARY
01/20/2016
11:10 AM
H: KP/rca

**ARIZONA HOUSE OF REPRESENTATIVES
Fifty-second Legislature - Second Regular Session**

ROLL CALL VOTE

COMMITTEE ON JUDICIARY BILL NO. HB 2377

DATE January 20, 2016 MOTION: dpa

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese		✓			
Mr. Hale		✓			
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		6	0	0	0

APPROVED:



EDWIN W. FARNSWORTH, Chairman
SONNY BORRELLI, Vice-Chairman



COMMITTEE SECRETARY

Attachment 11

ARIZONA STATE LEGISLATURE
Fifty-second Legislature - Second Regular Session

COMMITTEE ATTENDANCE RECORD

COMMITTEE ON _____ JUDICIARY _____

CHAIRMAN: Edwin W. Farnsworth VICE-CHAIRMAN: Sonny Borrelli

DATE	11/20/16	/16	/16	/16	/16
CONVENED	10:06 ^{am}	m	m	m	m
RECESSED					
RECONVENED					
ADJOURNED	10:53 ^{am}				
MEMBERS					
Mr. Friese	✓				
Mr. Hale	✓				
Mr. Kern	✓				
Mr. Mesnard	✓				
Mr. Borrelli, Vice-Chairman	✓				
Mr. Farnsworth E, Chairman	✓				

√ Present -- Absent exc Excused