

Committee on Superior Court  
Legislative Update  
May 20, 2011

**SB 1614: STATE BUDGET PROCEDURES; 2011-2012**

**CH 26**

**Senator Andy Biggs**

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1614h.pdf>

Any employee hired after the effective date of the bill is not eligible for state employee benefits until the employee has worked regularly for at least 90 days and any state employee is not eligible to become a member of the Arizona State Retirement System and the Long Term Disability program until the employee has worked regularly for at least 6 months.

Retroactive to July 1, 2011, in ASRS the 50/50 split of employee and employer contributions will change. The employee will now contribute 53% of the total required contributions and the employer will contribute 47% of the total contributions.

An agency director whose agency participates in ASRS may require agency covered employees to work reduced hours in order to comply with any reduction in appropriations.

For fiscal year 2010-2011 the six furlough days required is decreased to five days and the furlough days required in 2011-2012 are eliminated.

Statutes amended: A.R.S. § 38-736, 38-737, 38-797.05, 38.797.06, Amending Laws 2010, 7<sup>th</sup> special session, Chapter 3, Section 9; relating to state budget procedures.

Statutes enacted: A.R.S. § 38-671, 41-763.05

**SB 1621: BUDGET RECONCILIATION; CRIMINAL JUSTICE; 2011-2012;**

**CH 33**

**Senator Andy Biggs**

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1621h.pdf>

***Judicial***

In pertinent part, adds A.R.S. § 12-119.05, *Post of duty; Supreme Court justice*. The designated post of duty of a Supreme Court justice who resides outside of Maricopa County shall be deemed to be the justice's place of physical residence at the time of the justice's appointment.

Repeals A.R.S. § 12-270, *Probation revocation and crime reduction performance funding; reports*.

Suspends the reporting requirements for the following sections of laws for FY 2011-2012:

- Annual Juvenile Intensive Probation Report
- Community Punishment Program Report
- Emancipation of Minors Report
- Annual Drug Treatment and Education Fund Report
- Annual Lengthy Trial Fund Report
- Annual Child Support Committee Report
- Annual Domestic Relations Committee Report

Suspends the following:

- § 12-102.02, *State aid to the courts fund*, Subsection E:
  - All monies spent or distributed from the fund shall be used to supplement, not supplant, funding at the level provided in fiscal year 1997-1998 by the counties for the processing of criminal cases in the superior court, including the office of the clerk of the superior court, and justice courts.
- § 12-102.03, *Local courts assistance fund*, Subsection D:
  - All monies distributed or spent from the fund shall be used to supplement, not supplant, funding at the level provided in fiscal year 1997-1998 by the counties for the processing of criminal cases.

- § 12-135, *Alternative dispute resolution fund*, Subsection D:
- Monies from the alternative dispute resolution fund that are provided to local courts shall be used to supplement, not supplant, local funding that would otherwise be made available for alternative dispute resolution programs.
- § 12-135.01, *Local alternative dispute resolution fund; report*, Subsection D:
- Monies in the fund shall be used to supplement, not supplant, funding that would otherwise be made available for alternative dispute resolution programs.
- § 12-267, *Adult probation services fund*; Subsection D:
- State monies expended from the adult probation services fund shall be used to supplement, not supplant, county appropriations for the superior court adult probation department.
- § 12-268, *Juvenile probation fund; use*, Subsection D:
- State monies expended from the juvenile probation services fund shall be used to supplement, not supplant, county appropriations for the superior court juvenile probation department.
- § 12-299.01, *Submission of plan; use of monies; prohibitions*, Subsection C:
- The plan shall include a proposed budget necessary to implement and operate the plan. All monies provided shall be used to supplement monies currently used for community based sentencing and adult probation programs and services.

The Supreme Court shall submit a report to the Joint Legislative Budget Committee identifying any decrease in county funding relating to these suspending provisions, including the reasons for the decrease.

The Supreme Court shall not reimburse counties the 50% requirement for state funded representation of indigent defendants in capital post conviction relief proceedings pursuant to A.R.S. § 13-4041 or for grand jury expenses pursuant to A.R.S. § 21-428 and requires reimbursement only in the amount provided in the FY 2011 and FY 2012 General Appropriations Act.

### ***State Department of Corrections / County Jail***

If a person is sentenced to serve one year or less in the Arizona Department of Corrections (ADC), the person shall be committed to the custody of the county jail, unless the sheriff of the county has entered into an agreement to reimburse the ADC for the incarceration costs. The county must enter into a reimbursement agreement at least one month before a person is transferred into the custody of the ADC to serve their sentence and the county is prohibited from cancelling a reimbursement agreement, unless it has provided ADC with at least a one month's notice.

A person sentenced to a concurrent term of incarceration for more than one year is to be incarcerated in ADC. Counties must make reimbursements within 30 days after a request by ADC and requires the Director of ADC, if the county fails to make the reimbursement, to notify the State Treasurer of the amount owed. The Treasurer must withhold the amount, including interest, from any transaction privilege tax distributions to the county. The Treasurer shall deposit the monies in the State General Fund.

The State Treasurer is required to deposit monies received from a county for the costs of incarcerating a person in the ADC who otherwise would be incarcerated in jail in the State General Fund. In session law, a sentencing county that does not intend to enter into an agreement with ADC must notify ADC by February 1, 2012.

Unless the Sheriff of the sentencing county has entered in an agreement to reimburse the ADC for the incarceration costs, a person who is convicted of the following violations must serve the required sentence in jail

- Aggravated operation of watercraft while under the influence
- Aggravated DUI
- Operation of aircraft while under the influence

### **State Capital Postconviction Public Defender Office**

Exempts the State Capital Post Conviction Relief Public Defender's Office from the Attorney General Legal Services Cost Allocation Fund pro rata charge.

Requires, in a county with a population of less than 1.5 million, the state to pay 19.25% of justice of the peace compensation and employee related expenditures.

Statutes amended: A.R.S. § 5-396, 12-267, 13-701, 22-117, 28-1383, 28-8288, 31-201.01, 31-230, 41-191.09, 41-1604, 41-1604.02, 41-1604.03, 41-1624, 41-1723, 41-1724, Amending Laws 2007, Chapter 6, Section 21 and Laws 2010, Seventh Special Session, Chapter 6, Section 24; making appropriations, relating to criminal justice budget reconciliation.

Statutes enacted: A.R.S. § 12-119.05, 31-133, 41-797, 41-1610.02

Statute repealed: A.R.S. § 12-270

### **SB 1245: CAPITAL POSTCONVICTION PUBLIC DEFENDER; CONTINUATION**

**CH 42**

#### **Senator Ron Gould**

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1245s.pdf>

Continues the State Capital Postconviction Public Defender Office until July 1, 2016.

Statute enacted: A.R.S. § 41- 3016.29

Statute repealed: A.R.S. § 41-3011.13

### **HB 2064: FOREIGN LAW; CONFLICT OF LAWS**

**CH 76**

#### **Representative Judy Burges**

<http://www.azleg.gov/legtext/50leg/1r/bills/hb2064s.pdf>

A court, arbitrator, administrative agency or other adjudicative, mediation or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the Constitution of this state or of the United States or conflict with laws of this state or the United States. Applies only to actual violations of the constitutional rights of a person or actual conflict with the laws of this state caused by the application of the foreign law.

Defines "foreign law" as "any law, rule, or legal code or system other than the Constitution, laws and ratified treaties of the United States and the territories of the United States, or the Constitution and laws of this state."

Statutes enacted: A.R.S. § 22-3101, 22-3102, 22-3103

### **HB 2353: SENTENCING; DANGEROUS OFFENSES; PROBATION**

**CH 90**

#### **Representative Eddie Farnsworth**

<http://www.azleg.gov/legtext/50leg/1r/bills/hb2353s.pdf>

Includes within the definition of "dangerous offense" the "use or exhibition of a deadly weapon or dangerous instrument." This terminology was excluded in the criminal code sentencing reorganization because the word "threatening" was inadvertently not added to the phrase in a few sections when the definition of "dangerous offense" was modified in 1993. (Section 1, 5, 22, 23)

A person who is over 18 commits Aggravated Assault if the assault is on a child under 15, rather than 15 or under. (Section 6)

Removes the special sentencing sections for certain crimes added in the sentencing reorganization and reinserts the sentencing provisions in the actual criminal offense. The special sentencing provisions were placed together in order to make them more easily visible, however, were found not to be beneficial to the understanding of the code. (Section 3, 4, 8, 9, 10, 11, 12, 13, 15, 16, 17 )

Resolves an issue created by the enactment of Laws, 2010, chapters 97, 241 and 276 that resulted in two provisions of A.R.S. § 13-1204, *Aggravated Assault*, having to do with code enforcement officers and park rangers not having a penalty provision. (Section 6, 7)

A person commits Aggravated Assault if the assault is on a public defender, a code enforcement officer, or a park ranger. (Section 6)

Removes the reference in the DUI treatment statute to alcohol or drug education and treatment ordered by MVD, as MVD only orders alcohol or drug screening, not education and treatment (Section 18)

Repeals the version of the Adult Offender Compact that was superseded by a newer compact ratified in 2002. (Section 20, 21)

Makes conforming and technical changes (Section 2, 14, 19)

Statutes amended: A.R.S. § 13-105, 13-708, 13-709.02, 13-907, 13-1204, 13-1207, 13-1212, 13-1402, 13-1403, 13-2308.01, 13-2312, 13-3101, 13-3407, 13-3411, 13-3601, 13-3961, 28-1387, 31-418, 41-1604.10, 41-1604.13

Statutes repealed: A.R.S. § 13-709.01, 13-709.03, 13-709.04, 13-709.05, 13-1204, A.R.S. Title 31, Chapter 3, Article 4

## **SB 1212: CIVIL APPEAL BONDS; LIMITS**

**CH 99**

**Senator Al Melvin**

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1212h.pdf>

Enforcement of a criminal restitution order or a juvenile restitution order by any person who is entitled to restitution or by the state includes the collection of interest, which accrues at 10% annum.

The rate for calculating interest that accrues from and after the date a medical malpractice judgment is entered shall be adjusted on June 30 and December 31 of each year to equal one percentage point, rather than three, above the federal post judgment interest rate.

Sets the bond that is necessary to stay execution during the course of all appeals or discretionary reviews of a civil judgment for damages as the lesser:

- The total amount of damages awarded excluding punitive damages
- 50% of the appellant's net worth
- 25 million dollars

If the appellee proves by clear and convincing evidence that the appellant is intentionally dissipating assets outside the ordinary course of business to avoid payment of a judgment, the court may require the appellant to post a bond in an amount up to the full amount of the judgment. If an appellant proves by clear and convincing evidence that the appellant is likely to suffer substantial economic harm if required to post the required bond amount, the trial court may lower the bond amount to an amount that will not cause the appellant substantial economic harm.

Interest on any judgment that is based on a written agreement evidencing a loan, indebtedness or obligation that bears a rate of interest not in excess of the maximum shall be at the rate of interest provided in the agreement and shall be specified in the judgment. Unless otherwise provided by law, interest on any judgment is set at the lesser of 10% per annum or at a rate per annum that is equal to one percent plus the prime rate as published by the Board of Governors of the Federal Reserve System in Statistical Release H.15 or any other publication that supersedes it.

A court is precluded from awarding prejudgment interest for any unliquidated, future, punitive or exemplary damages that are found by the Trier of fact or interest for any future, punitive or exemplary damages that are found by the Trier of fact.

"Future damages" is defined. Prejudgment interest is set as above.

Repeals A.R.S. § 38-849, *Limitations on receiving pension*.

Statutes amended: A.R.S. § 8-344, 12-352, 13-805, 25-510, 32-2188, 32-2193.38, 32-2193.39, 36-3411, 38-809, 38-849, 38-897, 38-912, 44-1201

Statute enacted: A.R.S. § 12-2108

Statute repealed: A.R.S. § 38-849

**SB 1291: PRISONERS; CREDITS FOR FINES**

**CH 102**

**Senator Gail Griffin**

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1291s.pdf>

A county jail prisoner sentenced to pay a fine shall be allowed up to a \$50 credit per day, rather than \$10, for each day employed at hard labor.

Statute amended: A.R.S. § 31-145

**HB 2406: CRIMES; FORENSIC INTERVIEWS; MANDATORY FINE**

**CH 115**

**Representative Ted Vogt**

<http://www.azleg.gov/legtext/50leg/1r/bills/hb2406h.pdf>

An assessment of \$500 is imposed on a person convicted of a Dangerous Crime Against Children (DCAC) or sexual assault. The assessment cannot be waived and is not subject to surcharge. The money collected is transmitted to the county treasurer to be used for the cost of medical expenses needed in the investigation of a DCAC or sexual assault.

Any forensic interview expense as well as medical expense that is needed in order to secure evidence that a person has been a victim of a DCAC children shall be paid for by the county in which the offense occurred.

**Delayed effective date: Jan. 1, 2012**

Statute amended: A.R.S. § 13-1414

Statute enacted: A.R.S. § 13-824

**HB 2191: PUNITIVE DAMAGES; UNLAWFUL ENTRY**

**CH 137**

**Representative Jim Weiers**

<http://www.azleg.gov/legtext/50leg/1r/bills/hb2191s.pdf>

A person present in this state in violation of a federal immigration law related to improper entry by an alien shall not be awarded punitive damages in any action in any court in this state.

**Retroactive to any cause of action that accrues on or after January 1, 2004.**

Statute enacted: A.R.S. § 12-512

**SB 1167: LEGISLATION; REFERENDA CHALLENGES**

**CH 159**

**Senator Steve Yarbrough**

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1167h.pdf>

A challenge to the legal sufficiency of a measure referred by the legislature must be filed within:

- 20 days after the referendum is filed with the Secretary of State if the referendum is filed in an odd numbered year
- Ten days after the referendum is filed with the Secretary of State if the referendum is filed in an even numbered year

The court is required to hear and decide the action as soon as possible. Either party may appeal to the Supreme Court within five days after judgment. The Superior Court in Maricopa County has jurisdiction over the action. The President of the Senate or the Speaker of the House may intervene as a party, file briefs or choose not to participate.

Contains an *emergency clause*.

**Date effective: April 18, 2011**

Statute enacted: A.R.S. § 19-161

**Representative J.D. Mesnard**

<http://www.azleg.gov/legtext/50leg/1r/bills/hb2302s.pdf>

Amends A.R.S. § 16-153, *Voter registration; confidentiality*, to include border patrol agents in persons eligible to request that the general public be prohibited from accessing the address, telephone number, and voting precinct number contained in their voter registration record.

The court may seal the change of name application and judgment on request if a person is protected under an order of protection or is a victim of stalking pursuant to A.R.S. § 13-2923, *Stalking, classifications, definitions*. If the offense took place in another jurisdiction, but would be classified as a violation or attempted violation of A.R.S. § 13-2923 if committed in this state, these provisions still apply. A person who obtained a judgment on or after Jan. 1, 2009, may request that the court seal the application and judgment pursuant to this section.

Directs the Secretary of State (SOS), by January 1, 2013, to establish the Address Confidentiality Program (ACP). The ACP allows victims of domestic violence, sexual offenses, or stalking to keep their residential address confidential, by giving them a substitute lawful address. Outlines what the application will include and what is considered evidence of domestic violence, a sexual offense, or stalking.

Allows an ACP participant to be served by certified or registered mail with any process, notice, or demand required by law and clarifies that this provision does not prescribe the only or necessary means of serving an ACP participant. Adds five days to the timeframe within which an ACP participant legally has a right to act, if they were served in accordance with law by mail or first-class mail. This provision does not apply if the time period is otherwise corrected by a court rule.

Individuals are certified into the ACP for four years following the date of filing. Certification may be renewed by filing a renewal application with the SOS within 30 days of the current certification expiring. ACP participants may withdraw certification by filing a request for withdrawal that is acknowledged before a notary public. If the ACP participant fails to notify the SOS of a change in legal name, current address, telephone number, or knowingly submits false information, certification of the program participant can be cancelled. Requires the SOS to send notice and the reason for cancellation to the program participant if it is determined that there is reason for cancelling certification. The program participant has 30 days to appeal the cancellation decision. Under A.R.S. § 41-155, the SOS cannot disclose any address or telephone number of an ACP participant except under the following circumstances:

- The information is required under a court order
- The SOS grants a request by a state or local government entity pursuant to A.R.S. § 41-157, *Request for disclosure*

Any person to whom an ACP participant's actual address or telephone number has been disclosed cannot further disclose the information to any other person unless required by court order or as otherwise provided by law. The SOS shall immediately notify an ACP participant if it has disclosed a participant's information.

If an ACP participant is involved in divorce proceedings, child support, or the allocation of parental responsibilities or parenting time, the SOS must notify the court that the participant has been certified and is part of the ACP.

Anyone who knowingly and intentionally obtains or discloses an ACP participant's information is guilty of a Class 1 Misdemeanor.

The ACP participant is responsible for requesting that a state or local government entity use the substitute address as the participant's residential, school, or work address.

Except as otherwise provided for in the statute or by order of the court, if a participant submits a current and valid address confidentiality program card to the court, the court shall accept the substitute address as the home, work, and school address for the participant. The court may make a photocopy of the card and shall return the card to the participant.

Outlines how participants shall be able to register to vote and to vote.

A state or local government agency requesting disclosure of an ACP program participant's actual address must make the request in writing on letterhead. This provision does not apply to the court. The SOS must notify the participant of a request for address disclosure and allow the participant an opportunity to be heard regarding the request. The SOS must provide the participant with written notification if a request for disclosure has been granted or denied. Notice or opportunity to be heard shall not be afforded to the participant if the request for disclosure is made by a state or local law enforcement agency conducting a criminal investigation or if providing notice would jeopardize an ongoing criminal investigation or the safety of law enforcement personnel. The director of the program, or the director's designee, must be available to state and local governments 24 hours a day for purposes of a request for disclosure.

Outlines an expedited disclosure process to be used by a court, criminal justice official or agency, or a probation department when disclosure is required pursuant to a trial, hearing, proceeding, or investigation involving an ACP participant. An official or agency obtaining information under the expedited disclosure process shall certify to the SOS that it has a system in place to protect the confidentiality of a participant's actual address from the public and personnel involved in the trial, hearing, proceeding, or investigation. A court or administrative tribunal may seal the portion of any record containing an actual address.

Permits a state or local government agency, at its discretion, to use an actual address in any document or record filed with a court or administrative tribunal if, at the time of filing, the document or record is not a public record.

Effective January 1, 2012, adds A.R.S. § 12-116.04, *Address confidentiality program assessment*, that adds a \$50 assessment for a person who is convicted of a domestic violence offense, a sexual offense, or stalking. The court may waive all of or a portion of the assessment if the court finds that the defendant is unable to pay the assessment. 95% of the assessment goes to the address confidentiality fund and 5% is retained by the clerk of the court for administrative costs.

Defines "actual address," "address confidentiality program," "applicant," "application assistant," "domestic violence," "program participant," "public record," "sexual offense," "stalking," "state or local government entity," and "substitute address."

#### **The SOS program sunsets July 1, 2021.**

Statutes amended: A.R.S. § 12-601, 16-153, 39-123, 39-124

Statute enacted: A.R.S. § 12-116.04

### **SB 1482: APPELLATE JUDGES; JUDICIAL PERFORMANCE REVIEWS**

**CH 210**

#### **Senator Ron Gould**

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1482s.pdf>

Within 60 days prior to the regular primary election for the retention of an appellate court judge, the Commission on Judicial Performance Review shall present a list on its website of the decisions of that justice or judge, including the citation and an electronic copy of the text of the decision.

Statutes amended: A.R.S. § 12-120.07

**HB 2352: COURT COMMISSIONER; QUALIFICATIONS**

**CH 217**

**Representative Eddie Farnsworth**

<http://www.azleg.gov/legtext/50leg/1r/bills/hb2352h.pdf>

Modifies the minimum qualifications for serving as a Superior Court Commissioner to mirror that of a Superior Court Judge. Requires an appointed Commissioner to be admitted to the practice of law in and be a resident of the state of Arizona for five years preceding the appointment. This language is taken word for word from the Arizona Constitution, Article VI, Section 22. The qualifications replace that of being engaged in the practice of law for not less than three years preceding the appointment.

Statute amended: A.R.S. § 12-213

**SB 1235: LAW ENFORCEMENT OFFICERS; DISCIPLINARY PROCEDURES**

**CH 230**

**Senator Linda Gray**

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1235p.pdf>

After an employer completes an investigation of a law enforcement officer or probation officer, if the employer seeks disciplinary action, the employer must provide a basic summary or file copies of any discipline ordered against any other law enforcement officer or probation officer of generally similar rank and experience employed within the previous two years for a similar violation at the request of the officer. The employer cannot take final action or schedule the hearing until the summary or file copies have been provided. This provision does not apply if court rule prohibits the release of file copies of disciplinary cases.

In cases before the office of administrative hearings or if the employer is a county, city, or town, a party may request a change or hearing officer or administrative law judge, which shall be granted on the first request. A city or town with a population of less than 65,000 persons or a county with a population of less than 250,000 persons must provide for an alternative hearing officer by means of an interagency agreement. If the law enforcement officer or probation officer is the party who requested the alternate hearing, the officer shall pay ½ of the additional expenses. If the alternate hearing officer is requested by means of an interagency agreement, the law enforcement or probation officer or employer has the option to continue the hearing for an additional ten days.

Prohibits a critical incident stress management team member who acquires information from an emergency services medical technician, officer, firefighter, or probation officer secretly and in confidence in the course of the member's response to a critical incident from being compelled or allowed to disclose the information in a legal proceeding, trial, or investigation, except under these specified circumstances:

- The communication indicates a clear and present danger to the designated person who received crisis response services or other persons
- The designated person who received crisis response services gives express consent to the testimony
- The communication or advice is made during the course of a criminal investigation
- The designated person who received crisis response services voluntarily testifies, therefore the team member may be compelled to testify on the same subject
- There is a breach of department policy which is in violation of the law

Defines "critical incident stress management team member," "law enforcement officer," and "probation officer".

Adds city and town law enforcement officers to the "whistle blower" statutes in Title 38.

Statutes amended: A.R.S. § 38-531, 38-532, 38-534, 38-1101

Statute enacted: A.R.S. § 38-1105

**HB 2355: COURT SURCHARGES**

**CH 260**

**Representative Eddie Farnsworth**

<http://www.azleg.gov/legtext/50leg/1r/bills/hb2355s.pdf>

Surcharges are applied to the base fine and not to any other surcharge. Replaces the words ‘penalty assessment’ and ‘assessment’ with ‘surcharge’ in A.R.S. § 12-116.01 and A.R.S. § 12-116.02.

Statutes amended: A.R.S. § 12-114.01, 12-116.01, 12-116.02, 28-121, 28-702.01, 28-710, 28-797, 28-907, 28-1598, 41-2419, 41-2421

**SB 1472: PUBLICITY PAMPHLETS; JUDICIAL PERFORMANCE; COMMENT**

**CH 272**

**Senator Ron Gould**

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1472h.pdf>

Within 60 days prior to the regular primary election, the Commission on Judicial Performance Review must prepare and file with the Secretary of State the following:

- The length of time a Supreme Court justice or Court of Appeals judge has served on the bench
- The justice’s or judge’s educational background
- A list of published decisions in which the justice or judge declared a statute constitutional or unconstitutional and the provision of the Constitution relied upon in making this determination

Contains a legislative intent clause.

Statute enacted: A.R.S. § 19-124.01

**HB 2024: ASRS; AMENDMENTS**

**CH 277**

**Representative Bob Robson**

<http://www.azleg.gov/legtext/50leg/1r/bills/hb2024s.pdf>

Any employee hired on or after the effective date is not eligible for state employee benefits until the employee has worked for at least 90 days. Any state employee, not including current members, hired on or after the effective date is not eligible to become a member of any state retirement system until the 27<sup>th</sup> week of employment.

“State employee” means a person who is employed by an agency, department, board or commission of this state, a university under the jurisdiction of the Arizona Board of Regents, the Judicial Branch, the Arizona Corporation Commission or the Legislature.

“State employee benefits” means any coverage provided pursuant to Title 38, Chapter 4, Article 4 relating to health and accident coverage.

One provision under the definition of “current annual compensation” is changed to be equal to the annualized compensation of the partial year if the member has less than 12 months total compensation, rather than credited service, on the date of a request to purchase credited service.

All charter cities or ASRS retirement service credit transfers shall be made pursuant to A.R.S. § 38-922, *Transfer or redemption of service credits*.

An employer must pay interest on delinquent contribution payments or any other delinquent payments under Title 38 Chapter 5, Article 2.1, *Long term disability program*, Article 7, *Transfers of another retirement system or plan* or Article 8, *Supplemental defined contribution plans*. Employers must record delinquent payments.

A member who was previously a member of another public employee retirement system and who is either receiving or is eligible to receive retirement benefits from that system is ineligible to receive retirement benefits from ASRS for the same period.

Employer contributions for an active member who is called to active military service shall be for a period ending the date the member returns to employment or the date the member should have returned to employment, whichever is earlier. Also, the period in which the contributions shall be made may end either

when the member is released from service related to hospitalization or two years after initiation of service related hospitalization, whichever is earlier.

On the death of a member who is not yet retired, the member's natural or adopted child under the age of 21 or the member's natural or adopted child of any age who is disabled is eligible to receive the member's survival benefits.

The lump sum retirement threshold is increased from a periodic payment of \$20 to an amount determined by the ASRS board. A member will continue to have rights to the ASRS Health Insurance Program, however the member will not be eligible for a permanent benefit increase.

For a member who elects to have any portion of an eligible rollover distribution paid directly to a retirement plan the definition "eligible retirement plan" includes, beginning Jan 1, 2008, a "Roth" IRA.

Under a Qualified Domestic Relations Order (QDROs) if an alternate payee dies before the member, the amount payable to the alternate payee ceases on the death of the alternate payee and the amount formerly payable to the alternate payee is given to the member.

Monthly Long Term Disability Program benefits are not payable to a member who files an initial claim for disability more than 12 months after the date of the disability, unless the member demonstrates to ASRS good cause for not filing the initial claim within the 12 months. ASRS may suspend or terminate a member's long term disability if the member fails to provide the necessary information requested by ASRS or the insurance company or claims administration. The benefits or claim will be retroactively reinstated once the member provides the information.

ASRS is granted rule making authority.

Statutes amended: A.R.S. § 38-711, 38-730, 38-735, 38-744, 38-745, 38-756, 38-762, 38-764, 38-770, 38-773, 38-797.07, 38-922

Statute enacted: A.R.S. § 28-671

Statute repealed: A.R.S. § 28-671 as enacted in Laws 2011, Chapter 26, Section 1

## **SB 1424: ASSESSMENT FOR FAMILY OFFENSES; STALKING**

**CH 296**

**Senator John Nelson**

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1424h.pdf>

In addition to any other penalty, fine, fee, or assessment, a person convicted of a violation of § 13-2921, 13-2921.01, 13-2923, or an offense listed in title 13, chapter 36, (all related to harassment and stalking), shall pay an additional assessment of \$50 to be deposited into the Domestic Violence Shelter Fund. This is not subject to any additional surcharge.

Statute amended: A.R.S. § 36-3002

Statute enacted: A.R.S. § 12-116.04

## **HB 2645: FIREARMS; RIGHTS RESTORATION; PEACE OFFICERS**

**CH 304**

**Representative Michele Ugenti**

<http://www.azleg.gov/legtext/50leg/1r/bills/hb2645s.pdf>

A person who is a prohibited possessor as a result of being found to constitute a danger to himself or others or to be persistently or acutely disabled or gravely disabled pursuant to court order under § 36-540, or who has been found to be a mental defective or was committed to a mental institution under federal law, 18 USC § 922(d)(4) or (g)(4) and whose right to possess a firearm has not been restored may petition the court that prohibited the person from possessing a firearm for restoration. The person or the person's guardian may file the petition. The petition is to be served on the attorney for the state who appeared in the underlying case.

The court must set a hearing. The person is required to present psychological or psychiatric evidence in support of the petition and the state is required to provide the court with the person's criminal history records, if any. The court is required to receive evidence and consider the following:

- The circumstances that resulted in the person being a prohibited possessor as defined in A.R.S. § 13-3101,(a)(7)(a) or subject to 18 USC § 922(d)(4) or (g)(4)
- The person's record, including the person's mental health record and criminal history record, if any
- The person's reputation based on character witness statements, testimony or other character evidence
- Whether the person is a danger to self or others, is persistently, acutely or gravely disabled or whether the circumstances that led to the original order, adjudication or finding remain in effect
- Any change in the person's condition or circumstances that is relevant to the relief sought
- Any other evidence deemed admissible by the court

The petitioner shall prove by clear and convincing evidence that the petitioner is not likely to act in a manner that is dangerous to public safety and granting the requested relief is not contrary to the public interest. The court shall issue findings of fact and conclusions of law at the conclusion of the hearing.

A victim has the right to be present and heard at any of these proceedings. If the victim has made a request for post conviction notice, the attorney for the state is required to provide notice to the victim as least five days before the hearing.

If the court grants the petition for relief, the original order, finding or adjudication is deemed not to have occurred for the purposes of applying the prohibited possessor and federal statutes listed above to that person. The granting of a petition only restores the person's right to possess a firearm and does not apply to and has no affect on any other rights or benefits the person receives.

An appeal may be taken to the Court of Appeals from a final order granting or denying the petition.

The court is requested to promptly notify the Department of Public Safety, which shall update the person's record in any database that DPS maintains and make available to the national instant criminal background check system. Within ten days after receiving the notification from the court, DPS must notify the U.S. Attorney General.

A retired peace officer shall not be prohibited from carrying a firearm. Some exceptions apply.

Defines "retired peace officer."

Statutes amended: A.R.S. § 12-2101, 38-1102

Statute enacted: A.R.S. § 13-4441

Statute repealed: A.R.S. § 13-925

## **SB 1398: MOVING VIOLATIONS; ASSESSMENT; EQUIPMENT; ENFORCEMENT**

**CH 308**

### **Senator Andy Biggs**

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1398h.pdf>

In pertinent part:

Levies a penalty assessment of \$13 on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and civil penalties for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in Title 17. The first one million dollars will be deposited in the state general fund and distributed as follows:

- \$4 to the Department of Public Safety Equipment Fund to be used by the Department of Public Safety (DPS) for protective armor, electronic stun devices, and other safety equipment
- \$4 to Gang and Immigration Intelligence Team Enforcement Mission Fund (GIITEM)
- \$4 to the agency that issues the citation or investigates the offense
- \$1 to the Justice courts
  - For counties with a population less than two million the monies are distributed to the Justice Courts proportionately based on the judicial productivity credits calculated pursuant to A.R.S. § 22-125

- For counties with a population of two million or more the monies are distributed to the Justice Court administration

If a law enforcement agency issues a photo enforcement system citation and serves the citation in a manner other than what is authorized by the Rules of Civil Procedure, the agency is required to inform the person that there is no obligation to identify the driver or respond to the citation. Failure to respond to the citation will result in the probability that the person will be formally served, which will likely result in the person being required to pay the cost of the service.

If a person receives a Notice of Violation by mail for a violation of Title 28, Chapter 3, Article 3 (Traffic, signs, signals and markings) or Article 6 (Speed restrictions) or for a violation of a city or town ordinance for excessive speed or failure to obey a traffic control device that is obtained using a photo enforcement system, the person is not required to identify who is in the photo or respond to the notice of violation.

The Notice of Violation must state:

- The notice is not a court issued document and the recipient is under no obligation to identify the person or respond to the notice
  - Failure to respond to the notice may result in official service that may result in an additional fee
- “Notice of Violation” and “Photo enforcement system” are defined.

Redirects FY 2011-12 monies from the State Aid to Indigent Defense Fund to the GIITEM Board Security sub account

40% of the monies remaining in the Photo Enforcement Fund in FY 2011 and FY 2012, after paying expenses and court costs and not exceeding \$7 million, are deposited in the Public Safety Equipment Fund.

Statutes enacted: A.R.S. § 12-116.04, 28-1602

Statutes amended: A.R.S. § 28-1592, 28-1593, 41-1723, and 41-1724

Repeals A.R.S. § 28-1602, *Photo enforcement; notice of violation, complaint, penalties*

Repeals A.R.S. § 28-3323, *Suspension or revocation of license; state photo enforcement system.*

Repeals A.R.S. § 41-1722, *State photo enforcement system; fund* on July 1, 2012.