
ARIZONA JUDICIAL COUNCIL LEGISLATIVE UPDATE MARCH 2016

AJC Bills

HB2260: foster care review board; continuation (Rep. Brophy-McGee)

Modifies the makeup and continues the state Foster Care Review Board for ten years until July 1, 2026. Delays repeal of laws governing the FCRB until January 1, 2027. Permits non-DCS child welfare agency employees to serve on an FCRB.

Title affected: 41

SB1293: mediation; confidential communications; exception (Sen. Driggs)

Permits court appointed mediators to disclose information obtained during the course of mediation to law enforcement, the Department of Child Safety, or Adult Protective Services if the mediator reasonably believes a child or vulnerable adult has been a victim of abuse, neglect, exploitation or physical injury. Defines *abuse, child abuse, neglect, physical injury, exploitation, reportable offense, and vulnerable adult*.

Title affected: 14

SB1296: guardianship; proceedings; ward's relationships (Sen. Driggs)

Requires any petition for appointment of guardian of an incapacitated person include the most recent family court order if applicable.

Outlines who must be appointed guardian or co-guardian if the petition for guardianship is filed before or within two years of the incapacitated person's eighteenth birthday, with good cause exemptions. Requires a person with sole legal decision making at the time the incapacitated person turned eighteen be appointed as guardian while persons with shared legal decision making at the time the child reached the age of majority must be appointed co-guardians. Permits the court to make other co-guardian appointments if in the best interests of the incapacitated person and clarifies that neither co-guardian has rights that are superior to the others.

Directs guardians to make good faith efforts to maintain the ward's significant relationships and ensure access to family and friends. A ward or a person who has a significant relationship to the ward may petition the court for an order compelling the guardian to allow contact with the ward. Places the burden of proof that a relationship is "significant" and in the best interest of the ward on the person seeking the order for

contact. Requires the petition to describe the type and frequency of contact being requested and allows for a suspension of contact process in the event of a material change in circumstance.

Notice of hospitalization of the ward must be given to the ward's family within three days, defined to include the ward's spouse, parents, adult siblings, adult children, or anyone who has filed a demand for notice. Notification is also required in the event of death of the ward, along with any known burial arrangements.

Title affected: 14

SB1297: paternity; preliminary injunction (Sen. Driggs)

Requires the Clerk of Court, pursuant to an order by the Superior Court, to issue a preliminary injunction in actions to establish legal decision making and parenting time for a child or children born out of wedlock. The injunction must prohibit harassment or assault of any party, removal of any child subject to the proceedings from the jurisdiction of the court, and cancellation of any insurance coverage for the child. Sets forth documentation that must accompany the petition in order to trigger the injunction. Current law mandates a similar order at the time of filing for separation or dissolution of a marriage with children.

Title affected: 25

SB1298: probation; juvenile; adult (Sen. Driggs)

Conforms the list of offenses for which an adjudicated juvenile is required to be fingerprinted to those which the Department of Public Safety is required to maintain fingerprints pursuant to other statute.

Current law conditions juvenile intensive probation on the juvenile spending thirty two hours in one of four activities: school, a court ordered treatment program, employment or supervised community restitution work. This proposal adds a fifth, an activity that improves the juvenile's pro-social skill development, including enhancing the family relationship. Either the court or the probation officer can order the activity.

When the mandatory GPS law was enacted the law required all persons convicted of a dangerous crime against children be placed on GPS or Electronic Monitoring for life. In July of 2009, the law was amended to only persons convicted of a dangerous crime against children who are level three sex offenders and who are required to register as sex offenders to be placed on GPS. The law was not made retroactive. The bill allows probationers who fell under the mandatory GPS prior to July of 2009 to petition the court to remove the GPS.

Current law requires all persons on adult intensive probation to maintain employment or full time student status. The bill permits a combination of employment and student status.

Current law requires persons on adult intensive probation to perform not less than forty hours of community restitution. The hours may be reduced for full time students. The bill permits the hours to be reduced for probationers who are employed or in an approved treatment program.

Current law requires an intensive probation team make weekly contact with a probationer's employer. The bill permits weekly verification instead.

Title affected: 13

Other Bills of Interest

HB2221: attorney regulation; assessments; membership dues (Rep. Kern)

Requires the Arizona Supreme Court to handle all regulatory functions related to the practice of law including regulating attorneys. Permits the Court to collect a mandatory assessment from each attorney to be used only for the following:

- licensing attorneys for the practice of law in Arizona
- maintaining attorney records
- enforcing ethical rules governing attorneys;
- regulating any continuing legal education for attorneys
- maintaining attorney trust account records
- preventing unauthorized practice of law

Directs the Court to incorporate any mandatory assessments into its budget and keep mandatory assessments separate from voluntary assessments. Prohibits any other entity in Arizona from collecting mandatory assessments from an attorney. Requires the State Bar to annually publish a list of expenditures if mandatory assessment monies that are collected by the Arizona Supreme Court are accepted by the State Bar to carry out regulatory functions. By December 31 of each year that that mandatory assessment monies are accepted the Bar is required to make publicly available all expenditures made with the monies and provide for an independent audit to ensure all expenditures were in furtherance of the above regulatory functions.

Allows the Bar to charge a fee in advance for copies, printouts or photographs of records not otherwise furnished on the State Bars website requested in person or by mail. Requires the State Bar to promptly furnish the documents and provide an index or categories of records for any records withheld including the reason for withholding, upon request. Information expressly privileged or confidential by law may not be included in the index.

Authorizes the Bar to collect and use voluntary membership dues from an attorney for any lawful activity not required to be performed by the Arizona Supreme Court. Creates a process for any person denied access to records to appeal through a special action in the superior court and allows the court to award attorney fees and other legal

costs if the person seeking the records substantially prevails. Grants any person wrongfully denied access to records a cause of action against the State Bar from resulting damages.

Defines *record* as any record or other matter in the custody of the State Bar related to mandatory assessment monies collected by the Arizona Supreme Court and accepted by the State Bar.

HCM2002: state bar; rules; first amendment

The Legislature urges the Arizona Supreme Court to modify its rules related to the State Bar of Arizona to ensure compliance with the U.S. Supreme Court decision in *Keller v. State Bar of California* and the protection of the First Amendment freedoms of Arizona attorneys. The Legislature urges the Arizona Supreme Court to establish improved transparency measures with respect to the practices and policies of the State Bar of Arizona in spending member dues. The Secretary of State is directed to transmit copies of this memorial to each justice of the Arizona Supreme Court.

Title affected: None

HB2537: supreme court; justices; number

Increases the number of Arizona Supreme Court justices from five to seven.

Title affected: 12

SB1039: jury service; eight-year exemption (Sen. Kavanagh)

Authorizes the court to temporarily excuse a juror from service for four years after the person's last day of service on the grand jury. Excludes alternate grand jurors.

Title affected: 21

SB1228: ignition interlock requirement; DUI; drugs (Sen. Kavanagh)

If a person is convicted of DUI or Aggravated DUI and the offense does not involve alcohol, the court may order the person to install a certified ignition interlock device in any vehicle the person drives. If the court determines that alcohol is involved in the offense the mandatory interlock requirement remains.

Repeals the requirement that the driver license of a person convicted of §28-1383(A) (3), DUI per se drugs, be revoked for one year.

Title affected: 28

SB1295: DUI; watercraft; medical practitioner; authorization (Sen. Driggs)

The bill states that it is a defense to a violation of §28-1383(A) (3), DUI per se drugs, that the person was using the drug as prescribed by any medical practitioner licensed pursuant to Title 32 and who is authorized to prescribe the drug. Current law

provides a defense only if the drug is prescribed by a podiatrist, dentist, allopathic physician (MD) or Osteopathic Physician (DO).

Title affected: 28

SB1308: juvenile charged as adult; detention (Sen. Griffin)

Permits a juvenile charged as an adult with an offense that is not dangerous (defined in §13-105) to be detained in a juvenile detention center instead of the county jail. Dangerous offense does not need to be alleged in order to require the defendant be held in the county jail.

Title affected: 8 and 13

SB 1510: nonrestorable defendants; incompetent; involuntary commitment (Sen. Driggs)

Establishes a statutory scheme and process to determine if a person is dangerous and should be civilly committed.

Authorizes the County Attorney to request the court order a screening of a defendant to determine if the defendant is a sexually violent person if the defendant is charged with a sexually violent offense and the expert determines that the defendant is incompetent to stand trial and not restorable to competency within 21 months.

Private or public benefits available to be applied to the expenses of the defendant's maintenance and treatment. DHS is responsible for all remaining costs.

Permits the use of any statement by a defendant during an examination or evidence resulting from a statement by any party in a hearing to determine if the defendant should be committed as dangerous, however not in the underlying criminal offense. Allows reports that are otherwise sealed at the conclusion of the case to be ordered open by the court for purposes of a hearing to determine if the defendant is dangerous or eligible for court-ordered treatment.

If the defendant is found by the court to be incompetent to stand trial with no substantial probability that the defendant will regain competency within 21 months, the court is authorized to remand the defendant to the custody of DHS. The prosecutor must file a petition for evaluation. The court retains jurisdiction over the defendant until the defendant is committed to treatment or a guardian is appointed.

If the court remands the defendant to the custody of DHS and is notified that the defendant has not had a civil commitment evaluation, the court may order the sheriff to take the defendant into custody to allow the court to explore options of appointing a guardian or releasing the defendant and dismissing the charges.

The state may request a hearing to determine if a defendant, who has been to be incompetent and not restorable to competency, is dangerous and should be involuntarily committed. The state must prove by clear and convincing evidence that the defendant is

dangerous. If the court finds that the defendant is dangerous, it is required to order the defendant to be committed to a secure health facility that will provide the defendant with education, care, supervision and treatment. If the court issues a commitment order under this section, the order must require that the defendant remain in the custody of the mental health facility until the court finds the defendant competent, the court finds that the defendant is no longer dangerous or the expiration of a period of time equal to the sentence the defendant would have received under §13-751 or the presumptive sentence for all other offenses. The court retains jurisdiction over a defendant committed until the court discharges the defendant from treatment.

If the defendant is found incompetent to stand trial the report of the expert must include the nature of the mental health disorder, disease or defect or of any personality or other disorder that makes the defendant likely to be dangerous or a sexually violent person and whether the defendant should be considered dangerous or may be an SVP, whether the prognosis includes a determination that there is no substantial probability that the defendant will regain competency within 21 months of the original finding of incompetency.

The medical supervisor of the facility where the defendant is held may file a petition stating that the defendant requires involuntary commitment because the defendant is dangerous if the defendant is discharged or released on the expiration of treatment orders or renewal orders. Sets forth a process for the filing of a petition and the holding a hearing. If the defendant is remanded for civil commitment proceedings and the court is notified that the evaluation is not completed, the court may order the sheriff to take the defendant into custody.

A number of changes to the civil commitment law.

Eliminates the requirement an application of a court-ordered evaluation or prescreening, if a petition for court-ordered evaluation is filed by a prosecutor. Requires that a petition filed by a prosecutor include any known criminal history of the proposed patient, this includes whether there was been a finding of incompetency. Creates a time limit of 72 hours after a person is delivered to the evaluation agency for the completion of an evaluation if the person is the subject of a petition filed by a prosecutor.

A court may order a peace officer to take a person into custody and deliver to an evaluation agency, if the person does not or cannot submit to an evaluation at a designated time and place.

The court, if it orders treatment, may order that the medical director provide notice to the court of any noncompliance with the terms of the order. The court may amend its original order if it determines that the patient is not complying with the terms. The court may order that the medical director provide notice to the court of specific instances of noncompliance. If a medical director rescinds an order for conditional outpatient treatment, the medical director is required to give notice to the court that issued the order and the prosecuting agency, if it filed a petition. The court may order a peace officer to

take a patient into custody if a medical director rescinds an order for conditional outpatient treatment.

An evaluation or treatment agency may apply to the court for a warrant or court order if a patient who is being evaluated or treated is absent without authorization. The court may order a peace officer to take the patient into custody and deliver the patient to the agency. The period of court-ordered treatment may be tolled during unauthorized absence if confirmed in a court order.

Requires annual examinations of each committed person by a psychiatrist, psychologist or other competent professional. The examination report must be submitted to the court and must include the treatment and education the patient has received and a prognosis for restoration to competency. If the report indicates that the patient is competent to stand trial or no longer dangerous, the court must hold a hearing to determine whether the person is competent or no longer dangerous. If the report indicates the person is no longer dangerous due to medication, it must state whether the patient will continue taking the medication if released.

After a hearing if the court finds the person has been restored to competency, the court shall order that criminal proceedings resume. If the court finds the person has not been restored to competency and is not dangerous, the court must release the person from treatment. If the court finds the person has not been restored to competency and is not dangerous due to treatment, including medication, the court can release the person to a less restrictive alternative. If the court finds that the person has not been restored to competency and is dangerous, the person must remain committed to treatment.

Sets forth a process for conditional release to a less restrictive alternative.

Defines a number of terms.

Title affected: 13, 36

3/21/16