

PROPOSED AMENDMENT  
SENATE AMENDMENTS TO S.B. 1393  
(Reference to printed bill)

1 Page 1, between lines 1 and 2, insert:

2 "Section 1. Section 13-105, Arizona Revised Statutes, is amended to  
3 read:

4 13-105. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Absconder" means a probationer who has moved from the  
7 probationer's primary residence without permission of the probation officer,  
8 who cannot be located within ninety days of the previous contact and against  
9 whom a petition to revoke has been filed in the superior court alleging that  
10 the probationer's whereabouts are unknown. A probationer is no longer deemed  
11 an absconder when the probationer is voluntarily or involuntarily returned to  
12 probation service.

13 2. "Act" means a bodily movement.

14 3. "Benefit" means anything of value or advantage, present or  
15 prospective.

16 4. "Calendar year" means three hundred sixty-five days' actual time  
17 served without release, suspension or commutation of sentence, probation,  
18 pardon or parole, work furlough or release from confinement on any other  
19 basis.

20 5. "Community supervision" means that portion of a felony sentence  
21 that is imposed by the court pursuant to section 13-603, subsection I and  
22 that is served in the community after completing a period of imprisonment or  
23 served in prison in accordance with section 41-1604.07.

24 6. "Conduct" means an act or omission and its accompanying culpable  
25 mental state.

1           7. "Crime" means a misdemeanor or a felony.

2           8. "Criminal street gang" means an ongoing formal or informal  
3 association of persons in which members or associates individually or  
4 collectively engage in the commission, attempted commission, facilitation or  
5 solicitation of any felony act and that has at least one individual who is a  
6 criminal street gang member.

7           9. "Criminal street gang member" means an individual to whom at least  
8 two of the following seven criteria that indicate criminal street gang  
9 membership apply:

- 10           (a) Self-proclamation.
- 11           (b) Witness testimony or official statement.
- 12           (c) Written or electronic correspondence.
- 13           (d) Paraphernalia or photographs.
- 14           (e) Tattoos.
- 15           (f) Clothing or colors.
- 16           (g) Any other indicia of street gang membership.

17           10. "Culpable mental state" means intentionally, knowingly, recklessly  
18 or with criminal negligence as those terms are defined in this paragraph:

19           (a) "Intentionally" or "with the intent to" means, with respect to a  
20 result or to conduct described by a statute defining an offense, that a  
21 person's objective is to cause that result or to engage in that conduct.

22           (b) "Knowingly" means, with respect to conduct or to a circumstance  
23 described by a statute defining an offense, that a person is aware or  
24 believes that the person's conduct is of that nature or that the circumstance  
25 exists. It does not require any knowledge of the unlawfulness of the act or  
26 omission.

27           (c) "Recklessly" means, with respect to a result or to a circumstance  
28 described by a statute defining an offense, that a person is aware of and  
29 consciously disregards a substantial and unjustifiable risk that the result  
30 will occur or that the circumstance exists. The risk must be of such nature  
31 and degree that disregard of such risk constitutes a gross deviation from the  
32 standard of conduct that a reasonable person would observe in the situation.

1 A person who creates such a risk but who is unaware of such risk solely by  
2 reason of voluntary intoxication also acts recklessly with respect to such  
3 risk.

4 (d) "Criminal negligence" means, with respect to a result or to a  
5 circumstance described by a statute defining an offense, that a person fails  
6 to perceive a substantial and unjustifiable risk that the result will occur  
7 or that the circumstance exists. The risk must be of such nature and degree  
8 that the failure to perceive it constitutes a gross deviation from the  
9 standard of care that a reasonable person would observe in the situation.

10 11. "Dangerous drug" means dangerous drug as defined in section  
11 13-3401.

12 12. "Dangerous instrument" means anything that under the circumstances  
13 in which it is used, attempted to be used or threatened to be used is readily  
14 capable of causing death or serious physical injury.

15 13. "Dangerous offense" means an offense involving the discharge, use  
16 or threatening exhibition of a deadly weapon or dangerous instrument or the  
17 intentional or knowing infliction of serious physical injury on another  
18 person.

19 14. "Deadly physical force" means force that is used with the purpose  
20 of causing death or serious physical injury or in the manner of its use or  
21 intended use is capable of creating a substantial risk of causing death or  
22 serious physical injury.

23 15. "Deadly weapon" means anything designed for lethal use, including a  
24 firearm.

25 16. "Economic loss" means any loss incurred by a person as a result of  
26 the commission of an offense. Economic loss includes lost interest, lost  
27 earnings and other losses that would not have been incurred but for the  
28 offense. Economic loss does not include losses incurred by the convicted  
29 person, damages for pain and suffering, punitive damages or consequential  
30 damages.

31 17. "Enterprise" includes any corporation, association, labor union or  
32 other legal entity.

1           18. "Felony" means an offense for which a sentence to a term of  
2 imprisonment in the custody of the state department of corrections is  
3 authorized by any law of this state.

4           19. "Firearm" means any loaded or unloaded handgun, pistol, revolver,  
5 rifle, shotgun or other weapon that will or is designed to or may readily be  
6 converted to expel a projectile by the action of expanding gases, except that  
7 it does not include a firearm in permanently inoperable condition.

8           20. "Government" means the state, any political subdivision of the  
9 state or any department, agency, board, commission, institution or  
10 governmental instrumentality of or within the state or political subdivision.

11           21. "Government function" means any activity that a public servant is  
12 legally authorized to undertake on behalf of a government.

13           22. "Historical prior felony conviction" means:

14           (a) Any prior felony conviction for which the offense of conviction  
15 either:

16           (i) Mandated a term of imprisonment except for a violation of chapter  
17 34 of this title involving a drug below the threshold amount.

18           (ii) Involved the intentional or knowing infliction of serious  
19 physical injury.

20           (iii) Involved the use or exhibition of a deadly weapon or dangerous  
21 instrument.

22           (iv) Involved the illegal control of a criminal enterprise.

23           (v) Involved aggravated driving under the influence of intoxicating  
24 liquor or drugs.

25           (vi) Involved any dangerous crime against children as defined in  
26 section 13-705.

27           (b) Any class 2 or 3 felony, except the offenses listed in subdivision  
28 (a) of this paragraph, that was committed within the ten years immediately  
29 preceding the date of the present offense. Any time spent on absconder  
30 status while on probation, on escape status or incarcerated is excluded in  
31 calculating if the offense was committed within the preceding ten years. If  
32 a court determines a person was not on absconder status while on probation or

1 escape status, that time is not excluded. For the purposes of this  
2 subdivision, "escape" means:

3 (i) A departure from custody or from a juvenile secure care facility,  
4 a juvenile detention facility or an adult correctional facility in which the  
5 person is held or detained, with knowledge that the departure is not  
6 permitted, or the failure to return to custody or detention following a  
7 temporary leave granted for a specific purpose or for a limited period.

8 (ii) A failure to report as ordered to custody or detention to begin  
9 serving a term of incarceration.

10 (c) Any class 4, 5 or 6 felony, except the offenses listed in  
11 subdivision (a) of this paragraph, that was committed within the five years  
12 immediately preceding the date of the present offense. Any time spent on  
13 absconder status while on probation, on escape status or incarcerated is  
14 excluded in calculating if the offense was committed within the preceding  
15 five years. If a court determines a person was not on absconder status while  
16 on probation or escape status, that time is not excluded. For the purposes  
17 of this subdivision, "escape" has the same meaning prescribed in subdivision  
18 (b) of this paragraph.

19 (d) Any felony conviction that is a third or more prior felony  
20 conviction.

21 23. "Intoxication" means any mental or physical incapacity resulting  
22 from use of drugs, toxic vapors or intoxicating liquors.

23 24. "Misdemeanor" means an offense for which a sentence to a term of  
24 imprisonment other than to the custody of the state department of corrections  
25 is authorized by any law of this state.

26 25. "Narcotic drug" means narcotic drugs as defined in section 13-3401.

27 26. "Offense" or "public offense" means conduct for which a sentence to  
28 a term of imprisonment or of a fine is provided by any law of the state in  
29 which it occurred or by any law, regulation or ordinance of a political  
30 subdivision of that state and, if the act occurred in a state other than this  
31 state, it would be so punishable under the laws, regulations or ordinances of

1 this state or of a political subdivision of this state if the act had  
2 occurred in this state.

3 27. "Omission" means the failure to perform an act as to which a duty  
4 of performance is imposed by law.

5 28. "Peace officer" means any person vested by law with a duty to  
6 maintain public order and make arrests and includes a constable.

7 29. "Person" means a human being and, as the context requires, an  
8 enterprise, a public or private corporation, an unincorporated association, a  
9 partnership, a firm, a society, a government, a governmental authority or an  
10 individual or entity capable of holding a legal or beneficial interest in  
11 property.

12 30. "Petty offense" means an offense for which a sentence of a fine  
13 only is authorized by law.

14 31. "Physical force" means force used upon or directed toward the body  
15 of another person and includes confinement, but does not include deadly  
16 physical force.

17 32. "Physical injury" means the impairment of physical condition.

18 33. "Possess" means knowingly to have physical possession or otherwise  
19 to exercise dominion or control over property.

20 34. "Possession" means a voluntary act if the defendant knowingly  
21 exercised dominion or control over property.

22 35. "Preconviction custody" means the confinement of a person in a jail  
23 in this state or another state after the person is arrested for or charged  
24 with a felony offense.

25 36. "Property" means anything of value, tangible or intangible.

26 37. "Public servant":

27 (a) Means any officer or employee of any branch of government, whether  
28 elected, appointed or otherwise employed, including a peace officer, ~~and~~ any  
29 person participating as an advisor or consultant or otherwise in performing a  
30 governmental function, ANY CURRENT OFFICEHOLDER OR CANDIDATE FOR ANY OFFICE  
31 THAT IS ESTABLISHED BY CHARTER, ORDINANCE, RESOLUTION, STATUTE OR THE

1           CONSTITUTION OF ARIZONA OR ANY PERSON WHO HAS FILED AN EXPLORATORY COMMITTEE  
2           FOR CANDIDACY FOR ANY OF THOSE OFFICES.

3           (b) Does not include jurors or witnesses.

4           (c) Includes those who have been elected, appointed, employed or  
5           designated to become a public servant although not yet occupying that  
6           position.

7           38. "Serious physical injury" includes physical injury that creates a  
8           reasonable risk of death, or that causes serious and permanent disfigurement,  
9           serious impairment of health or loss or protracted impairment of the function  
10          of any bodily organ or limb.

11          39. "Unlawful" means contrary to law or, where the context so requires,  
12          not permitted by law.

13          40. "Vehicle" means a device in, upon or by which any person or  
14          property is, may be or could have been transported or drawn upon a highway,  
15          waterway or airway, excepting devices moved by human power or used  
16          exclusively upon stationary rails or tracks.

17          41. "Voluntary act" means a bodily movement performed consciously and  
18          as a result of effort and determination.

19          42. "Voluntary intoxication" means intoxication caused by the knowing  
20          use of drugs, toxic vapors or intoxicating liquors by a person, the tendency  
21          of which to cause intoxication the person knows or ought to know, unless the  
22          person introduces them pursuant to medical advice or under such duress as  
23          would afford a defense to an offense."

24          Renumber to conform

25          Page 1, line 5, strike ": definition"

26          Strike lines 23 through 26

27          Line 30, strike ": definition"

28          Lines 34 and 37, after "LINKS" insert "IN WRITING"

29          Page 2, strike lines 1 and 2

30          Page 9, line 39, after the period insert "SIGNATURE ROSTERS MAY BE RETAINED

31          PURSUANT TO THIS SECTION IN AN ELECTRONIC FORMAT."

1 Page 9, between lines 39 and 40, insert:

2 "Sec. 9. Section 16-312, Arizona Revised Statutes, is amended to read:

3 16-312. Filing of nomination papers for write-in candidates

4 A. Any person desiring to become a write-in candidate for an elective  
5 office in any election shall file a nomination paper, signed by the  
6 candidate, giving the person's actual residence address or description of  
7 place of residence and post office address, age, length of residence in the  
8 state and date of birth.

9 B. A write-in candidate shall file the nomination paper not later than  
10 5:00 p.m. on the fortieth day prior to the election, except that:

11 1. A candidate running as a write-in candidate as provided in section  
12 16-343, subsection D shall file the nomination paper not later than 5:00 p.m.  
13 on the fifth day before the election.

14 2. A candidate running as a write-in candidate for an election that  
15 may be canceled pursuant to section 15-424, 15-1442, 16-822, 48-802, 48-1012,  
16 48-1082, 48-1208, 48-1404, 48-1908, 48-2010, 48-2107 or 48-2208 shall file  
17 the nomination paper not later than 5:00 p.m. on the seventy-sixth day before  
18 the election.

19 C. The write-in filing procedure shall be in the same manner as  
20 prescribed in section 16-311. Any person who does not file a timely  
21 nomination paper shall not be counted in the tally of ballots. The filing  
22 officer shall not accept the nomination paper of a candidate for state or  
23 local office unless the candidate provides or has provided both of the  
24 following:

25 1. A political committee statement of organization or the five hundred  
26 dollar threshold exemption statement for that office.

27 2. The financial disclosure statement as prescribed for candidates for  
28 that office.

29 D. The secretary of state shall notify the various boards of  
30 supervisors as to write-in candidates filing with the secretary of state's  
31 office. The county school superintendent shall notify the appropriate board  
32 of supervisors as to write-in candidates filing with the superintendent's



1 office. The board of supervisors shall notify the appropriate election board  
2 inspector of all candidates who have properly filed such statements. In the  
3 case of a city or town election, the city or town clerk shall notify the  
4 appropriate election board inspector of candidates properly filed. No other  
5 write-ins shall be counted. The election board inspector shall post the  
6 notice of official write-in candidates in a conspicuous location within the  
7 polling place.

8 E. Except as provided in section 16-343, subsection E, a candidate may  
9 not file pursuant to this section if any of the following applies:

10 1. For a candidate in the general election, the candidate ran in the  
11 immediately preceding primary election and failed to be nominated to the  
12 office sought in the current election.

13 2. For a candidate in the general election, the candidate filed a  
14 nomination petition for the immediately preceding primary election for the  
15 office sought and failed to provide a sufficient number of valid petition  
16 signatures as prescribed by section 16-322.

17 3. For a candidate in the primary election, the candidate filed a  
18 nomination petition for the current primary election for the office sought  
19 and failed to provide a sufficient number of valid petition signatures as  
20 prescribed by section 16-322.

21 4. For a candidate in the general election, the candidate filed a  
22 nomination petition for nomination other than by primary for the office  
23 sought and failed to provide a sufficient number of valid petition signatures  
24 as prescribed by section 16-341.

25 F. A person who files a nomination paper pursuant to this section for  
26 the office of president of the United States shall designate in writing to  
27 the secretary of state at the time of filing the name of the candidate's  
28 vice-presidential running mate, the names of presidential electors who will  
29 represent that candidate and a statement signed by the vice-presidential  
30 running mate and designated presidential electors that indicates their  
31 consent to be designated. A nomination paper for each presidential elector  
32 designated shall be filed with the candidate's nomination paper. The number

1 of presidential electors shall equal the number of United States senators and  
2 representatives in Congress from this state."

3 Renumber to conform

4 Page 24, between lines 25 and 26, insert:

5 "Sec. 22. Section 16-924, Arizona Revised Statutes, is amended to  
6 read:

7 16-924. Civil penalties; attorney general; county, city or town  
8 attorney

9 A. Unless another penalty is specifically prescribed in this article,  
10 if the filing officer for campaign finance reports designated pursuant to  
11 section 16-916, subsection A has reasonable cause to believe that a person is  
12 violating any provision of this article, the secretary of state shall notify  
13 the attorney general for a violation regarding a statewide office or the  
14 legislature, the county officer in charge of elections shall notify the  
15 county attorney for that county for a violation regarding a county office or  
16 the city or town clerk shall notify the city or town attorney for a violation  
17 regarding a city or town office. The attorney general, county attorney or  
18 city or town attorney, as appropriate, may serve on the person an order  
19 requiring compliance with that provision. The order shall state with  
20 reasonable particularity the nature of the violation and shall require  
21 compliance within twenty days from the date of issuance of the order. The  
22 alleged violator has twenty days from the date of issuance of the order to  
23 request a hearing pursuant to title 41, chapter 6.

24 B. ~~If a person fails to take corrective action within the time~~  
25 ~~specified in the compliance order issued pursuant to subsection A,~~ The  
26 attorney general, county attorney or city or town attorney, as appropriate,  
27 ~~shall~~ MAY issue an order assessing a civil penalty of not more than one  
28 thousand dollars **FOR A VIOLATION OF THIS ARTICLE**. The person alleged to have  
29 violated the compliance order has thirty days from the date of issuance of  
30 the order assessing the civil penalty to request a hearing pursuant to title  
31 41, chapter 6.

1 C. Any party aggrieved by an order or decision of the attorney  
2 general, county attorney or city or town attorney, as appropriate, may appeal  
3 to the superior court as provided in title 12, chapter 7, article 6.

4 D. For THE purposes of this section, failure to comply with a  
5 compliance order issued by the attorney general, county attorney or city or  
6 town attorney, as appropriate, as prescribed in subsection A is deemed an  
7 intentional act."

8 Renumber to conform

9 Page 28, between lines 12 and 13, insert:

10 "Sec. 27. Section 41-121, Arizona Revised Statutes, is amended to  
11 read:

12 41-121. Duties

13 A. The secretary of state shall:

14 1. Receive bills and resolutions from the legislature, and perform  
15 such other duties as devolve upon the secretary of state by resolution of the  
16 two houses or either of them.

17 2. Keep a register of and attest the official acts of the governor.

18 3. Act as custodian of the great seal of this state.

19 4. Affix the great seal, with the secretary of state's attestation, to  
20 public instruments to which the official signature of the governor is  
21 attached.

22 5. File in the secretary of state's office receipts for all books  
23 distributed by the secretary of state and direct the county recorder of each  
24 county to do the same.

25 6. Certify to the governor the names of those persons who have  
26 received at any election the highest number of votes for any office, the  
27 incumbent of which is commissioned by the governor.

28 7. Publish slip laws of each act of the legislature promptly upon  
29 passage and approval of such act, make such acts available to interested  
30 persons for a reasonable fee to compensate for the cost of printing and  
31 provide each house of the legislature and the legislative council with a

1 certified copy of each bill or resolution, showing the chapter or resolution  
2 number of each, as each is filed in the secretary of state's office.

3 8. Keep a fee book of fees and compensation of whatever kind and  
4 nature earned, collected or charged by the secretary of state, with the date,  
5 the name of the payer and the nature of the service in each case. The fee  
6 book shall be verified annually by the secretary of state's affidavit entered  
7 in the fee book.

8 9. Perform other duties imposed on the secretary of state by law.

9 10. Report to the governor on January 2 each year, and at such other  
10 times as provided by law, a detailed account of the secretary of state's  
11 official actions taken since the secretary of state's previous report  
12 together with a detailed statement of the manner in which all appropriations  
13 for the secretary of state's office have been expended.

14 11. Transfer all noncurrent or inactive books, records, deeds and other  
15 papers otherwise required to be filed with or retained by the secretary of  
16 state to the custody of the Arizona state library, archives and public  
17 records.

18 12. Make available to the public, without charge, title 33, chapters 10  
19 and 11 on the secretary of state's website.

20 13. Accept, and approve for use, electronic and digital signatures that  
21 comply with section 41-132, for documents filed with and by all state  
22 agencies, boards and commissions. In consultation with the government  
23 information technology agency, the department of administration and the state  
24 treasurer, the secretary of state shall adopt rules pursuant to chapter 6 of  
25 this title establishing policies and procedures for the use of electronic and  
26 digital signatures by all state agencies, boards and commissions for  
27 documents filed with and by all state agencies, boards and commissions.

28 14. Meet at least annually with personnel from the federal voting  
29 assistance office of the United States department of defense and with county  
30 recorders and other county election officials in this state to coordinate the  
31 delivery and return of registrations, ballot requests, voted ballots and  
32 other election materials to and from absent uniformed and overseas citizens.

1           B. The secretary of state may refuse to perform a service or refuse a  
2           filing based on a reasonable belief that the service or filing is being  
3           requested for an unlawful, illegitimate, false or fraudulent purpose or is  
4           being requested or submitted in bad faith or for the purpose of harassing or  
5           defrauding a person or entity. THIS SUBSECTION DOES NOT APPLY TO ELECTION  
6           FILINGS."

7           Renumber to conform

8           Amend title to conform

JONATHAN PATON

1393JP  
02/18/2010  
5:46 PM  
C: myr