

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 267

HOUSE BILL 2351

AN ACT

AMENDING SECTIONS 8-135, 12-284.03, AND 13-702, ARIZONA REVISED STATUTES; AMENDING SECTION 13-4518, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 1995, CHAPTER 250, SECTION 4; REPEALING SECTION 13-4518, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1999, CHAPTER 164, SECTION 2; AMENDING SECTIONS 14-5311, 14-5410, 14-5433, 14-5601, 14-5651, 36-342, 41-1750 AND 41-2401, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 14, CHAPTER 5, ARTICLE 7, ARIZONA REVISED STATUTES, TO "FIDUCIARIES"; AMENDING TITLE 14, CHAPTER 3, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-3722; AMENDING TITLE 14, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING LAWS 2001, CHAPTER 185, SECTION 3; RELATING TO FIDUCIARIES; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-135, Arizona Revised Statutes, is amended to
3 read:

4 8-135. Confidential intermediary and fiduciary fund

5 A. ~~A~~ THE confidential intermediary and private fiduciary fund is
6 established consisting of the monies received pursuant to section 12-284.03,
7 subsection A, paragraph 8, section 36-342, subsection B, section 14-5651,
8 subsection A, legislative appropriations, donations, fees, grants and
9 contracts for the purposes of implementing the confidential intermediary
10 program established by section 8-134 and performing the duties related to
11 private fiduciaries pursuant to section 14-5651. The supreme court shall
12 administer the fund subject to legislative appropriation. On notice from the
13 supreme court, the state treasurer shall invest and divest monies in the fund
14 as provided by section 35-313, and monies earned from investment shall be
15 credited to the fund. The fund is exempt from the provisions of section
16 35-190 relating to lapsing of appropriations.

17 B. The appropriated funds shall only be used for the designated
18 purposes specified in statute.

19 Sec. 2. Section 12-284.03, Arizona Revised Statutes, is amended to
20 read:

21 12-284.03. Distribution of fees

22 A. Excluding the monies that are kept by the court pursuant to
23 subsection B of this section, the county treasurer shall transmit, distribute
24 or deposit all monies received from the clerk of the superior court pursuant
25 to section 12-284, subsection J as follows:

26 1. 1.31 per cent to the state treasurer for deposit in the drug and
27 gang enforcement account established by section 41-2402 for the purposes of
28 section 41-2402, subsection H.

29 2. 8.87 per cent to the state treasurer for deposit in the domestic
30 violence shelter fund established by section 36-3002.

31 3. 1.93 per cent to the state treasurer for deposit in the child abuse
32 prevention fund established by section 8-550.01.

33 4. In the county law library fund established pursuant to section
34 12-305, either:

35 (a) 7.62 per cent if the county treasurer is serving in a county with
36 a population of more than five hundred thousand persons according to the most
37 recent United States decennial census.

38 (b) 15.30 per cent if the county treasurer is serving in a county with
39 a population of five hundred thousand persons or less according to the most
40 recent United States decennial census.

41 5. 0.35 per cent to the state treasurer for deposit in the alternative
42 dispute resolution fund established by section 12-135.

43 6. To the elected officials' retirement plan fund established by
44 section 38-802, either of the following percentages, which shall be
45 distributed to the fund pursuant to section 38-810:

1 (a) 23.79 per cent if the county treasurer is serving in a county with
2 a population of more than five hundred thousand persons according to the most
3 recent United States decennial census.

4 (b) 15.30 per cent if the county treasurer is serving in a county with
5 a population of five hundred thousand persons or less according to the most
6 recent United States decennial census.

7 7. 17.07 per cent to the state treasurer for deposit in the judicial
8 collection enhancement fund established by section 12-113.

9 8. 0.26 per cent to the state treasurer for deposit in the
10 confidential intermediary and private fiduciary fund established by section
11 8-135.

12 9. In the county general fund, the following percentages:

13 (a) 31.29 per cent if the county treasurer is serving in a county with
14 a population of more than five hundred thousand persons according to the most
15 recent United States decennial census.

16 (b) 32.10 per cent if the county treasurer is serving in a county with
17 a population of five hundred thousand persons or less according to the most
18 recent United States decennial census.

19 B. 7.51 per cent of the monies transmitted, distributed or deposited
20 pursuant to subsection A of this section shall be kept and used by the court
21 collecting the fees in the same manner as the seven dollars of the time
22 payment fee prescribed by section 12-116, subsection B.

23 Sec. 3. Section 13-702, Arizona Revised Statutes, is amended to read:
24 13-702. Sentencing

25 A. Sentences provided in section 13-701 for a first conviction of a
26 felony, except those felonies involving the discharge, use or threatening
27 exhibition of a deadly weapon or dangerous instrument or the intentional or
28 knowing infliction of serious physical injury upon another or if a specific
29 sentence is otherwise provided, may be increased or reduced by the court
30 within the ranges set by this subsection. Any reduction or increase shall be
31 based on the aggravating and mitigating circumstances contained in
32 subsections C and D of this section and shall be within the following ranges:

	<u>Minimum</u>	<u>Maximum</u>
33 1. For a class 2 felony	4 years	10 years
34 2. For a class 3 felony	2.5 years	7 years
35 3. For a class 4 felony	1.5 years	3 years
36 4. For a class 5 felony	9 months	2 years
37 5. For a class 6 felony	6 months	1.5 years

38 B. The upper or lower term imposed pursuant to section 13-604,
39 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may
40 be imposed only if the circumstances alleged to be in aggravation or
41 mitigation of the crime are found to be true by the trial judge upon ON any
42 evidence or information introduced or submitted to the court before
43 sentencing or any evidence previously heard by the judge at the trial, and
44

1 factual findings and reasons in support of such findings are set forth on the
2 record at the time of sentencing.

3 C. For the purpose of determining the sentence pursuant to section
4 13-710 and subsection A of this section, the court shall consider the
5 following aggravating circumstances:

6 1. Infliction or threatened infliction of serious physical injury,
7 except if this circumstance is an essential element of the offense of
8 conviction or has been utilized to enhance the range of punishment under
9 section 13-604.

10 2. Use, threatened use or possession of a deadly weapon or dangerous
11 instrument during the commission of the crime, except if this circumstance
12 is an essential element of the offense of conviction or has been utilized to
13 enhance the range of punishment under section 13-604.

14 3. If the offense involves the taking of or damage to property, the
15 value of the property so taken or damaged.

16 4. Presence of an accomplice.

17 5. Especially heinous, cruel or depraved manner in which the offense
18 was committed.

19 6. The defendant committed the offense as consideration for the
20 receipt, or in the expectation of the receipt, of anything of pecuniary
21 value.

22 7. The defendant procured the commission of the offense by payment,
23 or promise of payment, of anything of pecuniary value.

24 8. At the time of the commission of the offense, the defendant was a
25 public servant and the offense involved conduct directly related to the
26 defendant's office or employment.

27 9. The physical, emotional and financial harm caused to the victim or,
28 if the victim has died as a result of the conduct of the defendant, the
29 emotional and financial harm caused to the victim's immediate family.

30 10. During the course of the commission of the offense, the death of
31 an unborn child at any stage of its development occurred.

32 11. The defendant was previously convicted of a felony within the ten
33 years immediately preceding the date of the offense. A conviction outside
34 the jurisdiction of this state for an offense which THAT if committed in this
35 state would be punishable as a felony is a felony conviction for the purposes
36 of this paragraph.

37 12. The defendant was wearing body armor as defined in section 13-3116.

38 13. If The victim of the offense is sixty-five or more years of age or
39 is a disabled person as defined by section 38-492.

40 14. THE DEFENDANT WAS APPOINTED PURSUANT TO TITLE 14 AS A FIDUCIARY AND
41 THE OFFENSE INVOLVED CONDUCT DIRECTLY RELATED TO THE DEFENDANT'S DUTIES TO
42 THE VICTIM AS FIDUCIARY.

43 ~~14.~~ 15. Evidence that the defendant committed the crime out of malice
44 toward a victim because of the victim's identity in a group listed in section
45 41-1750, subsection A, paragraph 3 or because of the defendant's perception

1 of the victim's identity in a group listed in section 41-1750, subsection A,
2 paragraph 3.

3 ~~15.~~ 16. The defendant was convicted of a violation of section 13-1102,
4 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
5 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
6 committed while driving a motor vehicle and the defendant's alcohol
7 concentration at the time of committing the offense was 0.15 or more. For
8 the purposes of this paragraph, "alcohol concentration" has the same meaning
9 prescribed in section 28-101.

10 ~~16.~~ 17. Lying in wait for the victim or ambushing the victim during
11 the commission of any felony.

12 ~~17.~~ 18. The offense was committed in the presence of a child and any
13 of the circumstances exist that are set forth in section 13-3601, subsection
14 A.

15 ~~18.~~ 19. Any other factor that the court deems appropriate to the ends
16 of justice.

17 D. For the purpose of determining the sentence pursuant to section
18 13-710 and subsection A of this section, the court shall consider the
19 following mitigating circumstances:

20 1. The age of the defendant.

21 2. The defendant's capacity to appreciate the wrongfulness of the
22 defendant's conduct or to conform his THE DEFENDANT'S conduct to the
23 requirements of law was significantly impaired, but not so impaired as to
24 constitute a defense to prosecution.

25 3. The defendant was under unusual or substantial duress, although not
26 such as to constitute a defense to prosecution.

27 4. The degree of the defendant's participation in the crime was minor,
28 although not so minor as to constitute a defense to prosecution.

29 5. Any other factor that the court deems appropriate to the ends of
30 justice.

31 In determining what sentence to impose, the court shall take into account the
32 amount of aggravating circumstances and whether the amount of mitigating
33 circumstances is sufficiently substantial to call for the lesser term. If
34 the court finds aggravating circumstances and does not find any mitigating
35 circumstances, the court shall impose an aggravated sentence.

36 E. The court in imposing A sentence shall consider the evidence and
37 opinions presented by the victim or the victim's immediate family at any
38 aggravation or mitigation proceeding or in the presentence report.

39 F. Nothing in this section affects any provision of law that imposes
40 the death penalty, that expressly provides for imprisonment for life or that
41 authorizes or restricts the granting of probation and suspending the
42 execution of sentence.

43 G. Notwithstanding any other provision of this title, if a person is
44 convicted of any class 6 felony not involving the intentional or knowing
45 infliction of serious physical injury or the discharge, use or threatening

1 exhibition of a deadly weapon or dangerous instrument and if the court,
2 having regard to the nature and circumstances of the crime and to the history
3 and character of the defendant, is of the opinion that it would be unduly
4 harsh to sentence the defendant for a felony, the court may enter judgment
5 of conviction for a class 1 misdemeanor and make disposition accordingly or
6 may place the defendant on probation in accordance with chapter 9 of this
7 title and refrain from designating the offense as a felony or misdemeanor
8 until the probation is terminated. The offense shall be treated as a felony
9 for all purposes until such time as the court may actually enter an order
10 designating the offense a misdemeanor. This subsection does not apply to any
11 person who stands convicted of a class 6 felony and who has previously been
12 convicted of two or more felonies. If a crime or public offense is punishable
13 in the discretion of the court by a sentence as a class 6 felony or a class
14 1 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting
15 attorney:

16 1. Files an information in superior court designating the offense as
17 a misdemeanor.

18 2. Files a complaint in justice court or municipal court designating
19 the offense as a misdemeanor within the jurisdiction of the respective court.

20 3. Files a complaint, with the consent of the defendant, before or
21 during the preliminary hearing amending the complaint to charge a
22 misdemeanor.

23 Sec. 4. Section 13-4518, Arizona Revised Statutes, as added by Laws
24 1995, chapter 250, section 4, is amended to read:

25 13-4518. Petition for guardianship; immunity

26 A. Notwithstanding section 14-5311, if the court finds that a
27 defendant remains incompetent despite restoration attempts and is a threat
28 to public safety but that the defendant is not subject to civil commitment
29 pursuant to title 36, chapter 5, the court shall order the public fiduciary
30 for the county in which the defendant or any other interested person
31 resides to file a petition for guardianship of that person pursuant to title
32 14. For purposes of this section, persons have priority for appointment as
33 guardian in the following order:

34 1. The spouse of the incapacitated person.

35 2. A parent of the incapacitated person, including a person nominated
36 by will or other writing signed by a deceased parent.

37 3. Any relative of the incapacitated person with whom he THE
38 INCAPACITATED PERSON has resided for more than six months ~~prior to~~ BEFORE the
39 filing of the petition.

40 4. A private fiduciary, ~~professional guardian,~~ OR conservator or the
41 ~~Arizona veterans' service commission~~ DEPARTMENT OF VETERANS' SERVICES.

42 B. The need for a guardian shall be reviewed annually pursuant to
43 section 14-5307, subsection B.

44 C. As part of its guardianship duties, the ~~public fiduciary~~ GUARDIAN
45 shall take whatever steps are necessary to ensure that the person

1 participates in treatment or training programs ordered by the court or found
2 necessary by the fiduciary, including admission to a secure facility, subject
3 to availability.

4 D. The court shall have continuing jurisdiction over the guardian and
5 the ward. The court may enter orders as may be reasonable and necessary to
6 protect the ward and the interests of the public.

7 E. A person appointed as a guardian under this section in performance
8 of the duties of a guardian under title 14, chapter 5, article 3 is entitled
9 to immunity, except that the guardian may be liable if within the scope of
10 the guardianship the guardian intended to cause harm or was grossly negligent
11 in failing to apprise the court of conduct OF which the guardian had actual
12 knowledge that INDICATED THAT the ward was an imminent threat or danger to
13 others or that the guardian intentionally or with gross negligence failed to
14 monitor the ward as required in an order of the court establishing the
15 guardianship or a subsequent order modifying the duties of the guardian in
16 the guardianship.

17 Sec. 5. Repeal

18 Section 13-4518, Arizona Revised Statutes, as amended by Laws 1999,
19 chapter 164, section 2, is repealed.

20 Sec. 6. Title 14, chapter 3, article 7, Arizona Revised Statutes, is
21 amended by adding section 14-3722, to read:

22 14-3722. Compensation of appointees

23 A. IF NOT OTHERWISE COMPENSATED FOR SERVICES RENDERED, AN
24 INVESTIGATOR, ACCOUNTANT OR LAWYER APPOINTED PURSUANT TO THIS ARTICLE IS
25 ENTITLED TO REASONABLE COMPENSATION FROM THE ESTATE OF THE DECEDENT. IF THE
26 COURT COMPENSATES THE PROVIDER OF A SERVICE THE COURT MAY CHARGE THE ESTATE
27 FOR THE REASONABLE COST OF THE SERVICE AND SHALL DEPOSIT THESE MONIES IN THE
28 PROBATE FUND PURSUANT TO SECTION 14-5433.

29 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, IF COMPENSATION BY
30 THE ESTATE IS NOT FEASIBLE THE COURT SHALL DETERMINE AND PAY REASONABLE
31 COMPENSATION FOR SERVICES RENDERED BY AN INVESTIGATOR, ACCOUNTANT OR LAWYER
32 APPOINTED IN A PROBATE ADMINISTRATION PROCEEDING.

33 Sec. 7. Section 14-5311, Arizona Revised Statutes, is amended to read:

34 14-5311. Who may be guardian; priorities

35 A. Any qualified person may be appointed guardian of an incapacitated
36 person, subject to the requirements of section 14-5106.

37 B. The court may consider the following persons for appointment as
38 guardian in the following order:

39 1. A guardian or conservator of the person or a fiduciary appointed
40 or recognized by the appropriate court of any jurisdiction in which the
41 incapacitated person resides.

42 2. An individual or corporation nominated by the incapacitated person
43 if the person has, in the opinion of the court, sufficient mental capacity
44 to make an intelligent choice.

1 3. The person nominated in the incapacitated person's most recent
2 durable power of attorney.

3 4. The spouse of the incapacitated person.

4 5. An adult child of the incapacitated person.

5 6. A parent of the incapacitated person, including a person nominated
6 by will or other writing signed by a deceased parent.

7 7. Any relative of the incapacitated person with whom the
8 incapacitated person has resided for more than six months prior to BEFORE the
9 filing of the petition.

10 8. The nominee of a person who is caring for OR PAYING BENEFITS TO the
11 incapacitated person ~~or paying benefits to him.~~

12 9. A private fiduciary, professional guardian or conservator or the
13 department of veterans' services.

14 C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 may
15 nominate in writing a person to serve in that person's place. With respect
16 to persons who have equal priority, the court shall select the one the court
17 determines is best qualified to serve.

18 D. For good cause the court may pass over a person who has priority
19 and appoint a person who has a lower priority or no priority.

20 Sec. 8. Section 14-5410, Arizona Revised Statutes, is amended to read:

21 14-5410. Who may be appointed conservator; priorities

22 A. The court may appoint an individual or a corporation, with general
23 power to serve as trustee, as conservator of the estate of a protected person
24 subject to the requirements of section 14-5106. The following are entitled
25 to consideration for appointment in the order listed:

26 1. A conservator, guardian of property or other like fiduciary
27 appointed or recognized by the appropriate court of any other jurisdiction
28 in which the protected person resides.

29 2. An individual or corporation nominated by the protected person if
30 the protected person is at least fourteen years of age and has, in the
31 opinion of the court, sufficient mental capacity to make an intelligent
32 choice.

33 3. The person nominated in the protected person's most recent durable
34 power of attorney.

35 4. The spouse of the protected person.

36 5. An adult child of the protected person.

37 6. A parent of the protected person, or a person nominated by the will
38 of a deceased parent.

39 7. Any relative of the protected person with whom the protected person
40 has resided for more than six months prior to BEFORE the filing of the
41 petition.

42 8. The nominee of a person who is caring for or paying benefits to the
43 protected person.

44 9. A private fiduciary, professional guardian or conservator or the
45 department of veterans' services.

1 B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this
2 section may nominate in writing a person to serve in that person's place.
3 With respect to persons having equal priority, the court shall select the one
4 it determines is best qualified to serve. The court, for good cause, may
5 pass over a person having priority and appoint a person having a lower
6 priority or no priority.

7 Sec. 9. Section 14-5433, Arizona Revised Statutes, is amended to read:
8 14-5433. Probate fund; use

9 A. The presiding judge of the superior court IN EACH COUNTY may
10 establish a probate fund consisting of monies received pursuant to sections
11 14-3722, 14-5314 and 14-5414.

12 B. Each month the clerk of the court shall transmit all monies
13 collected pursuant to sections 14-3722, 14-5314 and 14-5414 to the county
14 treasurer for deposit in the probate fund.

15 C. The presiding judge of the superior court shall administer or spend
16 monies in the fund to preserve, audit and safeguard the estates and wards for
17 whom the court has a fiduciary responsibility.

18 D. On notice from the superior court the county treasurer shall invest
19 and divest monies in the probate fund, and monies earned from investment
20 shall be credited to the fund.

21 E. Fund monies supplement and do not supplant local funding that
22 otherwise is made available for probate services.

23 Sec. 10. Section 14-5601, Arizona Revised Statutes, is amended to
24 read:

25 14-5601. Establishment of office of public fiduciary;
26 appointments; costs

27 A. Each county board of supervisors shall, by resolution or ordinance,
28 create SHALL ESTABLISH the office of and appoint a public fiduciary. THE
29 SUPREME COURT SHALL CERTIFY EACH PUBLIC FIDUCIARY PURSUANT TO SECTION
30 14-5651.

31 B. The public fiduciary may, with the consent of and at salaries fixed
32 by the board of supervisors, MAY appoint assistants, deputies, stenographers,
33 clerks and other employees as necessary to conduct the affairs of the
34 office. The appointments shall be in writing and filed in the office of the
35 county recorder. Assistants and deputies hold office at the pleasure of the
36 public fiduciary and the board of supervisors.

37 C. Costs incurred in conducting the office of public fiduciary shall
38 be a charge against the county.

39 Sec. 11. Heading change

40 The article heading of title 14, chapter 5, article 7, Arizona Revised
41 Statutes, is changed from "PRIVATE FIDUCIARIES" to "FIDUCIARIES".

1 Sec. 12. Section 14-5651, Arizona Revised Statutes, is amended to
2 read:

3 14-5651. Fiduciaries; certification; qualifications; conduct;
4 removal; exemption; definitions

5 A. Except as provided by subsection G of this section, the superior
6 court shall not appoint a private fiduciary unless that person is registered
7 with CERTIFIED BY the supreme court. The supreme court shall administer the
8 registration CERTIFICATION program and shall adopt rules and establish and
9 collect fees necessary for its implementation. The supreme court shall
10 deposit, pursuant to sections 35-146 and 35-147, the monies collected
11 pursuant to this subsection in the confidential intermediary and private
12 fiduciary fund established by section 8-135. At a minimum the rules adopted
13 pursuant to this subsection shall include the following:

- 14 1. A code of conduct.
- 15 2. A requirement that private fiduciaries post a cash deposit or
16 surety bond with the supreme court.
- 17 3. Minimum qualifications.
- 18 4. Biennial registration RENEWAL OF CERTIFICATION.

19 B. As a condition of appointment, the supreme court shall require each
20 applicant for the position of private fiduciary to submit a full set of
21 fingerprints to the supreme court for the purpose of obtaining a state and
22 federal criminal records check to determine the suitability of the applicant
23 pursuant to section 41-1750 and Public Law 92-544. The department of public
24 safety may exchange this fingerprint data with the federal bureau of
25 investigation.

26 C. An applicant for registration CERTIFICATION shall:

- 27 1. BE AT LEAST TWENTY-ONE YEARS OF AGE.
- 28 ~~1.~~ 2. Be an adult A citizen of this country.
- 29 ~~2.~~ 3. Not have been convicted of a felony.
- 30 ~~3.~~ 4. Attest that the applicant has not been found civilly liable in
31 an action that involved fraud, misrepresentation, material omission,
32 misappropriation, theft or conversion.
- 33 ~~4.~~ 5. Attend an initial session and thereafter biennial training
34 sessions prescribed by the supreme court on the duties of a private
35 fiduciary.

36 6. CONSENT IN THE APPLICATION FORM TO THE JURISDICTION OF THE COURTS
37 OF THIS STATE FOR ALL ACTIONS ARISING UNDER THIS ARTICLE OR ARTICLE 6 OF THIS
38 CHAPTER AND APPOINT THE FIDUCIARY PROGRAM COORDINATOR AS THE LAWFUL AGENT FOR
39 THE PURPOSE OF ACCEPTING SERVICE OF PROCESS IN ANY ACTION, SUIT OR PROCEEDING
40 THAT RELATES TO THE DUTIES OF A FIDUCIARY. THE PROGRAM COORDINATOR SHALL
41 TRANSMIT BY REGISTERED MAIL TO THE PERSON'S LAST KNOWN ADDRESS THE LAWFUL
42 SERVICE OF PROCESS ACCEPTED BY THE PROGRAM COORDINATOR. NOTWITHSTANDING THE
43 PROVISIONS OF THIS PARAGRAPH, SERVICE OF PROCESS ON A PUBLIC FIDUCIARY OR THE
44 DEPARTMENT OF VETERANS' SERVICES SHALL BE MADE PURSUANT TO THE ARIZONA RULES
45 OF CIVIL PROCEDURE.

1 D. The superior court shall, and any person may, notify the supreme
2 court if it appears that a fiduciary has violated a rule adopted under this
3 section. The supreme court shall then conduct an investigation and hearing
4 pursuant to its rules. If the supreme court determines that the fiduciary
5 committed the violation it may withdraw REVOKE the fiduciary's registration
6 CERTIFICATION or impose other sanctions, including civil penalties, and shall
7 notify the superior court in each county of this action. The supreme court
8 may THEN also require the fiduciary to forfeit a cash deposit or surety bond
9 to the extent necessary to compensate the court for the expenses it incurred
10 to conduct the investigation and hearing.

11 E. A person who in good faith provides information or testimony
12 regarding a private fiduciary's misconduct or lack of professionalism is not
13 subject to civil liability. ~~Communications regarding a private fiduciary's~~
14 ~~conduct are confidential.~~

15 ~~F. Members of the private fiduciary advisory board, the program~~
16 ~~coordinator and all investigators, auditors, staff and hearing officers~~
17 PERSONS APPOINTED BY THE CHIEF JUSTICE TO SERVE IN AN ADVISORY CAPACITY TO
18 THE FIDUCIARY PROGRAM, STAFF OF THE FIDUCIARY PROGRAM, HEARING OFFICERS AND
19 EMPLOYEES OF THE ADMINISTRATIVE OFFICE OF THE COURTS WHO PARTICIPATE IN THE
20 FIDUCIARY PROGRAM are immune from civil liability for conduct in good faith
21 that relates to their official duties.

22 G. The requirements of this section do not apply to a financial
23 institution. This exemption does not prevent the superior court from
24 appointing a financial institution as a private fiduciary. The supreme court
25 may exempt a private fiduciary from the requirements of this section for good
26 cause.

27 H. This section does not grant any private fiduciary or any applicant
28 for a private CERTIFICATE AS A fiduciary the right to a direct appeal to the
29 supreme court.

30 I. The supreme court may receive and expend monies from the
31 confidential intermediary and private fiduciary fund established pursuant to
32 section 8-135 for the purposes of performing the duties related to private
33 fiduciaries pursuant to this section.

34 J. For the purposes of this section:

35 ~~2.~~ 1. "Private fiduciary" or "Fiduciary" means:

36 (a) A person who for a fee serves as a court appointed guardian or
37 conservator for one or more persons who are unrelated to the fiduciary.

38 (b) A person who for a fee serves as a court appointed personal
39 representative and who is not related to the decedent, is not nominated in
40 a will or by a power conferred in a will and is not a devisee in the will.

41 (c) A PUBLIC FIDUCIARY APPOINTED PURSUANT TO SECTION 14-5601.

42 (d) THE DEPARTMENT OF VETERANS' SERVICES.

43 ~~1.~~ 2. "Financial institution" means a bank THAT IS insured by the
44 federal deposit insurance corporation and chartered under the laws of the
45 United States or any state, a trust company THAT IS owned by a bank holding

1 company that is regulated by the federal reserve board or a trust company
2 THAT IS chartered under the laws of the United States or this state.

3 Sec. 13. Title 14, chapter 5, Arizona Revised Statutes, is amended by
4 adding article 8, to read:

5 ARTICLE 8. FIDUCIARY ARREST WARRANTS

6 14-5701. Fiduciary arrest warrants

7 A. IN AN ACTION OR PROCEEDING TO ENFORCE A COURT ACTION IN A CASE
8 FILED PURSUANT TO THIS TITLE OR TITLE 41, CHAPTER 4, ARTICLE 1, OR ON MOTION
9 BY A PARTY OR ON ITS OWN MOTION, THE COURT MAY ISSUE A FIDUCIARY ARREST
10 WARRANT IF THE COURT FINDS THAT ALL OF THE FOLLOWING APPLY TO THE PERSON FOR
11 WHOM THE WARRANT IS SOUGHT:

12 1. THE PERSON WAS ORDERED BY THE COURT TO APPEAR PERSONALLY AT A
13 SPECIFIC TIME AND LOCATION.

14 2. THE PERSON RECEIVED ACTUAL NOTICE OF THE ORDER, INCLUDING A WARNING
15 THAT THE FAILURE TO APPEAR MIGHT RESULT IN THE ISSUANCE OF A FIDUCIARY ARREST
16 WARRANT.

17 3. THE PERSON FAILED TO APPEAR AS ORDERED.

18 B. THE JUDICIAL OFFICER SHALL ORDER THE FIDUCIARY ARREST WARRANT AND
19 THE CLERK SHALL ISSUE THE WARRANT. THE WARRANT SHALL CONTAIN THE NAME OF THE
20 PERSON TO BE ARRESTED AND OTHER INFORMATION REQUIRED TO ENTER THE WARRANT IN
21 THE ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM. THE WARRANT SHALL COMMAND
22 THAT THE NAMED PERSON BE ARRESTED AND EITHER REMANDED TO THE CUSTODY OF THE
23 SHERIFF OR BROUGHT BEFORE THE JUDICIAL OFFICER OR, IF THE JUDICIAL OFFICER
24 IS ABSENT OR UNABLE TO ACT, BEFORE THE NEAREST OR MOST ACCESSIBLE JUDICIAL
25 OFFICER OF THE SUPERIOR COURT IN THE SAME COUNTY. THE WARRANT ISSUED
26 PURSUANT TO THIS SECTION REMAINS IN EFFECT UNTIL IT IS EXECUTED OR
27 EXTINGUISHED BY THE COURT.

28 C. THE WARRANT SHALL SET FORTH A BOND IN A REASONABLE AMOUNT TO
29 GUARANTEE THE APPEARANCE OF THE ARRESTED PERSON OR AN ORDER THAT THE ARRESTED
30 PERSON BE HELD WITHOUT BOND UNTIL THE ARRESTED PERSON IS SEEN BY A JUDICIAL
31 OFFICER.

32 D. A FACSIMILE OF THE JUDICIAL OFFICER'S SIGNATURE THAT IS APPLIED TO
33 THE FIDUCIARY ARREST WARRANT AT THE DIRECTION AND UNDER THE SUPERVISION OF
34 THE JUDICIAL OFFICER IS DEEMED TO BE THE AUTHORIZED SIGNATURE OF THE JUDICIAL
35 OFFICER.

36 E. A PEACE OFFICER ACTING PURSUANT TO A FIDUCIARY ARREST WARRANT HAS
37 THE SAME POWERS AS IF ACTING PURSUANT TO A CRIMINAL ARREST WARRANT.

38 14-5702. Time and manner of execution; information

39 A. A FIDUCIARY ARREST WARRANT IS EXECUTED BY THE ARREST OF THE PERSON
40 NAMED IN THE WARRANT. THE FIDUCIARY ARREST WARRANT MAY BE EXECUTED AT ANY
41 TIME.

42 B. WHEN MAKING AN ARREST PURSUANT TO A FIDUCIARY ARREST WARRANT THE
43 ARRESTING OFFICER SHALL INFORM THE PERSON NAMED IN THE WARRANT THAT THE
44 ARRESTING OFFICER HAS A FIDUCIARY ARREST WARRANT UNLESS:

1 determination, surgical alterations and chromosomal counts, or amendments to
2 existing records.

3 B. In addition to fees charged pursuant to subsection A of this
4 section, the department of health services shall assess an additional one
5 dollar surcharge on fees for all certified copies of birth certificates. The
6 monies received from the surcharge shall be deposited, pursuant to sections
7 35-146 and 35-147, in the confidential intermediary and private fiduciary
8 fund established pursuant to section 8-135.

9 C. The state registrar shall keep a true and accurate account of all
10 fees collected by him THE STATE REGISTRAR under this chapter and shall
11 deposit them, pursuant to sections 35-146 and 35-147, in the state general
12 fund.

13 D. In class A registration districts, and in class B registration
14 districts if the local registrar is an employee of a local health department,
15 the local registrar shall keep a true and accurate account of all fees
16 collected by him THE LOCAL REGISTRAR under this chapter and shall deposit
17 them with the county treasurer to be credited to a special registration and
18 statistical revenue account of the health department fund.

19 E. In addition to fees collected pursuant to subsection A of this
20 section, the department of health services shall assess an additional one
21 dollar surcharge on fees for all certified copies of death
22 certificates. Pursuant to sections 35-146 and 35-147, the department shall
23 deposit monies it receives from this surcharge in the child fatality review
24 fund established pursuant to section 36-3504.

25 Sec. 15. Section 41-1750, Arizona Revised Statutes, is amended to
26 read:

27 41-1750. Central state repository; department of public safety;
28 duties; funds; accounts; definitions

29 A. Notwithstanding section 41-2205, the department is responsible for
30 the effective operation of the central state repository in order to collect,
31 store and disseminate complete and accurate Arizona criminal history records
32 and related criminal justice information. The department shall:

33 1. Procure from all criminal justice agencies in this state accurate
34 and complete personal identification data, fingerprints, charges, process
35 control numbers and dispositions and such other information as may be
36 pertinent to all persons who have been charged with, arrested for, convicted
37 of or summoned to court as a criminal defendant for a felony offense or an
38 offense involving domestic violence as defined in section 13-3601 or a
39 violation of title 13, chapter 14 or title 28, chapter 4.

40 2. Collect information concerning the number and nature of offenses
41 known to have been committed in this state and of the legal steps taken in
42 connection with these offenses, such other information that is useful in the
43 study of crime and in the administration of criminal justice and all other
44 information deemed necessary to operate the statewide uniform crime reporting

1 program and to cooperate with the federal government uniform crime reporting
2 program.

3 3. Collect information concerning criminal offenses that manifest
4 evidence of prejudice based on race, color, religion, national origin, sexual
5 orientation, gender or disability.

6 4. Cooperate with the central state repositories in other states and
7 with the appropriate agency of the federal government in the exchange of
8 information pertinent to violators of the law.

9 5. Ensure the rapid exchange of information concerning the commission
10 of crime and the detection of violators of the law among the criminal justice
11 agencies of other states and of the federal government.

12 6. Furnish assistance to peace officers throughout this state in
13 crime scene investigation for the detection of latent fingerprints and in the
14 comparison of latent fingerprints.

15 7. Conduct periodic operational audits of the central state
16 repository and of a representative sample of other agencies that contribute
17 records to or receive criminal justice information from the central state
18 repository or through the Arizona criminal justice information system.

19 8. Establish and enforce the necessary physical and system safeguards
20 to ensure that the criminal justice information maintained and disseminated
21 by the central state repository or through the Arizona criminal justice
22 information system is appropriately protected from unauthorized inquiry,
23 modification, destruction or dissemination as required by this section.

24 9. Aid and encourage coordination and cooperation among criminal
25 justice agencies through the statewide and interstate exchange of criminal
26 justice information.

27 10. Provide training and proficiency testing on the use of criminal
28 justice information to agencies receiving information from the central state
29 repository or through the Arizona criminal justice information system.

30 11. Operate and maintain the Arizona automated fingerprint
31 identification system established pursuant to section 41-2411.

32 12. Provide criminal history record information to the fingerprinting
33 division for the purpose of screening applicants for fingerprint clearance
34 cards.

35 B. The director may establish guidelines for the submission and
36 retention of criminal justice information as deemed useful for the study or
37 prevention of crime and for the administration of criminal justice.

38 C. The chief officers of criminal justice agencies of this state or
39 its political subdivisions shall provide to the central state repository
40 fingerprints and information concerning personal identification data,
41 descriptions, crimes for which persons are arrested, process control numbers
42 and dispositions and such other information as may be pertinent to all
43 persons who have been charged with, arrested for, convicted of or summoned
44 to court as criminal defendants for felony offenses or offenses involving

1 domestic violence as defined in section 13-3601 or violations of title 13,
2 chapter 14 or title 28, chapter 4 that have occurred in this state.

3 D. The chief officers of law enforcement agencies of this state or
4 its political subdivisions shall provide to the central state repository such
5 information as necessary to operate the statewide uniform crime reporting
6 program and to cooperate with the federal government uniform crime reporting
7 program.

8 E. The chief officers of criminal justice agencies of this state or
9 its political subdivisions shall comply with the training and proficiency
10 testing guidelines as required by the department to comply with the federal
11 national crime information center mandates.

12 F. The chief officers of criminal justice agencies of this state or
13 its political subdivisions also shall provide to the criminal identification
14 section information concerning crimes that manifest evidence of prejudice
15 based on race, color, religion, national origin, sexual orientation, gender
16 or disability.

17 G. The director shall authorize the exchange of criminal justice
18 information between the central state repository, or through the Arizona
19 criminal justice information system, whether directly or through any
20 intermediary, only as follows:

21 1. With criminal justice agencies of the federal government, Indian
22 tribes, this state or its political subdivisions and other states, upon
23 request by the chief officers of such agencies or their designated
24 representatives, specifically for the purposes of the administration of
25 criminal justice and for evaluating the fitness of current and prospective
26 criminal justice employees.

27 2. With any noncriminal justice agency pursuant to a statute,
28 ordinance or executive order that specifically authorizes the noncriminal
29 justice agency to receive criminal history record information for the purpose
30 of evaluating the fitness of current or prospective licensees, employees,
31 contract employees or volunteers, on submission of the subject's fingerprints
32 and the prescribed fee. Each statute, ordinance, or executive order that
33 authorizes noncriminal justice agencies to receive criminal history record
34 information for these purposes shall identify the specific categories of
35 licensees, employees, contract employees or volunteers, and shall require
36 that fingerprints of the specified individuals be submitted in conjunction
37 with such requests for criminal history record information.

38 3. With the board of fingerprinting for the purpose of conducting
39 good cause exceptions pursuant to section 41-619.55.

40 4. With any individual for any lawful purpose on submission of the
41 subject of record's fingerprints and the prescribed fee.

42 5. With the governor, if the governor elects to become actively
43 involved in the investigation of criminal activity or the administration of
44 criminal justice in accordance with the governor's constitutional duty to

1 ensure that the laws are faithfully executed or as needed to carry out the
2 other responsibilities of the governor's office.

3 6. With regional computer centers that maintain authorized
4 computer-to-computer interfaces with the department, that are criminal
5 justice agencies or under the management control of a criminal justice agency
6 and that are established by a statute, ordinance or executive order to
7 provide automated data processing services to criminal justice agencies
8 specifically for the purposes of the administration of criminal justice or
9 evaluating the fitness of regional computer center employees who have access
10 to the Arizona criminal justice information system and the national crime
11 information center system.

12 7. With an individual who asserts a belief that criminal history
13 record information relating to the individual is maintained by an agency or
14 in an information system in this state that is subject to this section. On
15 submission of fingerprints, the individual may review this information for
16 the purpose of determining its accuracy and completeness by making
17 application to the agency operating the system. Rules adopted under this
18 section shall include provisions for administrative review and necessary
19 correction of any inaccurate or incomplete information. The review and
20 challenge process authorized by this paragraph is limited to criminal history
21 record information.

22 8. With individuals and agencies pursuant to a specific agreement
23 with a criminal justice agency to provide services required for the
24 administration of criminal justice pursuant to that agreement if the
25 agreement specifically authorizes access to data, limits the use of data to
26 purposes for which given and ensures the security and confidentiality of the
27 data consistent with the provisions of this section.

28 9. With individuals and agencies for the express purpose of research,
29 evaluative or statistical activities pursuant to an agreement with a criminal
30 justice agency if the agreement specifically authorizes access to data,
31 limits the use of data to research, evaluative or statistical purposes and
32 ensures the confidentiality and security of the data consistent with this
33 section.

34 10. With the auditor general for audit purposes.

35 11. With central state repositories of other states for noncriminal
36 justice purposes for dissemination in accordance with the laws of those
37 states.

38 12. On submission of the fingerprint card, with the department of
39 economic security to provide criminal history record information on
40 prospective adoptive parents for the purpose of conducting the preadoption
41 certification investigation under title 8, chapter 1, article 1 if the
42 department of economic security is conducting the investigation, or with an
43 agency or a person appointed by the court, if the agency or person is
44 conducting the investigation. Information received under this paragraph

1 shall only be used for the purposes of the preadoption certification
2 investigation.

3 13. With the department of economic security and the superior court
4 for the purpose of evaluating the fitness of custodians or prospective
5 custodians of juveniles including parents, relatives and prospective
6 guardians. Information received under this paragraph shall only be used for
7 the purposes of that evaluation. The information shall be provided on
8 submission of either:

9 (a) The fingerprint card.

10 (b) The name, date of birth and social security number of the person.

11 14. On submission of a fingerprint card, provide criminal history
12 record information to the superior court for the purpose of evaluating the
13 fitness of investigators appointed under section 14-5303 or 14-5407, or
14 guardians appointed under section 14-5206.

15 15. With the supreme court to provide criminal history record
16 information on prospective private fiduciaries pursuant to section 14-5651.

17 16. With the department of juvenile corrections to provide criminal
18 history record information pursuant to section 41-2814.

19 17. On submission of the fingerprint card, provide criminal history
20 record information to the Arizona peace officer standards and training board
21 or a board certified law enforcement academy to evaluate the fitness of
22 prospective cadets.

23 18. With the internet sex offender web site database established
24 pursuant to section 13-3827.

25 19. With the state board of education for the purpose of evaluating
26 the fitness of a certificated teacher or administrator or an applicant for
27 a teaching or an administrative certificate provided that the state board of
28 education or its employees or agents have reasonable suspicion that the
29 certificated person engaged in conduct that would be a criminal violation of
30 the laws of this state or was involved in immoral or unprofessional conduct
31 or that the applicant engaged in conduct that would warrant disciplinary
32 action if the applicant were certificated at the time of the alleged conduct.
33 The information shall be provided on the submission of either:

34 (a) The fingerprint card.

35 (b) The name, date of birth and social security number of the person.

36 H. The director shall adopt rules necessary to execute the provisions
37 of this section.

38 I. The director, in the manner prescribed by law, shall remove and
39 destroy records that the director determines are no longer of value in the
40 detection or prevention of crime.

41 J. The director shall establish a fee in an amount necessary to cover
42 the cost of federal noncriminal justice fingerprint processing for criminal
43 history record information checks that are authorized by law for noncriminal
44 justice employment, licensing or other lawful purposes. An additional fee
45 may be charged by the department for state noncriminal justice fingerprint

1 processing. Fees submitted to the department for state noncriminal justice
2 fingerprint processing are not refundable.

3 K. The director shall establish a fee in an amount necessary to cover
4 the cost of processing copies of department reports, eight by ten inch black
5 and white photographs or eight by ten inch color photographs of traffic
6 accident scenes.

7 L. Except as provided in subsection 0 of this section, each agency
8 authorized by this section may charge a fee, in addition to any other fees
9 prescribed by law, in an amount necessary to cover the cost of state and
10 federal noncriminal justice fingerprint processing for criminal history
11 record information checks that are authorized by law for noncriminal justice
12 employment, licensing or other lawful purposes.

13 M. A fingerprint account within the records processing fund is
14 established for the purpose of separately accounting for the collection and
15 payment of fees for noncriminal justice fingerprint processing by the
16 department. Monies collected for this purpose shall be credited to the
17 account, and payments by the department to the United States for federal
18 noncriminal justice fingerprint processing shall be charged against the
19 account. Monies in the account not required for payment to the United States
20 shall be used by the department in support of the department's noncriminal
21 justice fingerprint processing duties. At the end of each fiscal year, any
22 balance in the account not required for payment to the United States or to
23 support the department's noncriminal justice fingerprint processing duties
24 reverts to the state general fund.

25 N. A records processing fund is established for the purpose of
26 separately accounting for the collection and payment of fees for department
27 reports and photographs of traffic accident scenes processed by the
28 department. Monies collected for this purpose shall be credited to the fund
29 and shall be used by the department in support of functions related to
30 providing copies of department reports and photographs. At the end of each
31 fiscal year, any balance in the fund not required for support of the
32 functions related to providing copies of department reports and photographs
33 reverts to the state general fund.

34 O. The department of economic security may pay from appropriated
35 monies the cost of federal fingerprint processing or federal criminal history
36 record information checks that are authorized by law for employees and
37 volunteers of the department, guardians pursuant to section 46-134,
38 subsection A, paragraph 15, the licensing of foster parents or the
39 certification of adoptive parents.

40 P. The director shall adopt rules that provide for:

- 41 1. The collection and disposition of fees pursuant to this section.
42 2. The refusal of service to those agencies that are delinquent in
43 paying these fees.

44 Q. The director shall ensure that the following limitations are
45 observed regarding dissemination of criminal justice information obtained

1 from the central state repository or through the Arizona criminal justice
2 information system:

3 1. Any criminal justice agency that obtains criminal justice
4 information from the central state repository or through the Arizona criminal
5 justice information system assumes responsibility for the security of the
6 information and shall not secondarily disseminate this information to any
7 individual or agency not authorized to receive this information directly from
8 the central state repository or originating agency.

9 2. Dissemination to an authorized agency or individual may be
10 accomplished by a criminal justice agency only if the dissemination is for
11 criminal justice purposes in connection with the prescribed duties of the
12 agency and not in violation of this section.

13 3. Criminal history record information disseminated to noncriminal
14 justice agencies or to individuals shall be used only for the purposes for
15 which it was given. Secondary dissemination is prohibited unless otherwise
16 authorized by law.

17 4. The existence or nonexistence of criminal history record
18 information shall not be confirmed to any individual or agency not authorized
19 to receive the information itself.

20 5. Criminal history record information to be released for noncriminal
21 justice purposes to agencies of other states shall only be released to the
22 central state repositories of those states for dissemination in accordance
23 with the laws of those states.

24 6. Criminal history record information shall be released to
25 noncriminal justice agencies of the federal government pursuant to the terms
26 of the federal security clearance information act (P.L. 99-169).

27 R. This section and the rules adopted under this section apply to all
28 agencies and individuals collecting, storing or disseminating criminal
29 justice information processed by manual or automated operations if the
30 collection, storage or dissemination is funded in whole or in part with
31 monies made available by the law enforcement assistance administration after
32 July 1, 1973, pursuant to title I of the crime control act of 1973, and to
33 all agencies that interact with or receive criminal justice information from
34 or through the central state repository and through the Arizona criminal
35 justice information system.

36 S. This section does not apply to criminal history record information
37 contained in:

38 1. Posters, arrest warrants, announcements or lists for identifying
39 or apprehending fugitives or wanted persons.

40 2. Original records of entry such as police blotters maintained by
41 criminal justice agencies, compiled chronologically and required by law or
42 long-standing custom to be made public if these records are organized on a
43 chronological basis.

44 3. Transcripts or records of judicial proceedings if released by a
45 court or legislative or administrative proceedings.

1 4. Announcements of executive clemency or pardon.

2 5. Computer databases, other than the Arizona criminal justice
3 information system, that are specifically designed for community notification
4 of an offender's presence in the community pursuant to section 13-3825 or for
5 public informational purposes authorized by section 13-3827.

6 T. Nothing in this section prevents a criminal justice agency from
7 disclosing to the public criminal history record information that is
8 reasonably contemporaneous to the event for which an individual is currently
9 within the criminal justice system, including information noted on traffic
10 accident reports concerning citations, blood alcohol tests, intoxilyzer tests
11 or arrests made in connection with the traffic accident being investigated.

12 U. In order to ensure that complete and accurate criminal history
13 record information is maintained and disseminated by the central state
14 repository:

15 1. The arresting authority shall take legible fingerprints of all
16 persons arrested for offenses specified in subsection C of this section and,
17 within ten days of the arrest, the arresting authority shall forward the
18 fingerprints to the department in the manner or form required by the
19 department. On the issuance and service of a summons for a defendant who is
20 charged with a felony offense, a violation of title 13, chapter 14 or title
21 28, chapter 4 or a domestic violence offense as defined in section 13-3601,
22 the court shall order that the defendant be fingerprinted by the appropriate
23 law enforcement agency and that the defendant appear at a designated time and
24 place for fingerprinting. At the initial appearance or on the arraignment of
25 a summoned defendant who is charged with a felony offense, a violation of
26 title 13, chapter 14 or title 28, chapter 4 or a domestic violence offense
27 as defined in section 13-3601, the court shall order that the defendant be
28 fingerprinted at a designated time and place by the appropriate law
29 enforcement agency if the court has reasonable cause to believe that the
30 defendant was not previously fingerprinted.

31 2. In every criminal case in which the defendant is incarcerated or
32 fingerprinted as a result of the charge, an originating law enforcement
33 agency or prosecutor, within forty days of the disposition, shall advise the
34 central state repository of all dispositions concerning the termination of
35 criminal proceedings against an individual arrested for an offense specified
36 in subsection C of this section. This information shall be submitted on a
37 form or in a manner required by the department.

38 3. Dispositions resulting from formal proceedings in a court having
39 jurisdiction in a criminal action against an individual who is arrested for
40 an offense specified in subsection C of this section or section 8-341,
41 subsection R shall be reported to the central state repository within forty
42 days of the date of the disposition. This information shall be submitted on
43 a form or in a manner specified by rules approved by the supreme court.

44 4. The state department of corrections or the department of juvenile
45 corrections, within forty days, shall advise the central state repository

1 that it has assumed supervision of a person convicted of an offense specified
2 in subsection C of this section or section 8-341, subsection R. The state
3 department of corrections or the department of juvenile corrections shall
4 also report dispositions that occur thereafter to the central state
5 repository within forty days of the date of the dispositions. This
6 information shall be submitted on a form or in a manner required by the
7 department of public safety.

8 5. Each criminal justice agency shall query the central state
9 repository before dissemination of any criminal history record information
10 to ensure the completeness of the information. Inquiries shall be made
11 before any dissemination except in those cases in which time is of the
12 essence and the repository is technically incapable of responding within the
13 necessary time period. If time is of the essence, the inquiry shall still
14 be made and the response shall be provided as soon as possible.

15 V. The director shall adopt rules specifying that any agency that
16 collects, stores or disseminates criminal justice information that is subject
17 to this section shall establish effective security measures to protect the
18 information from unauthorized access, disclosure, modification or
19 dissemination. The rules shall include reasonable safeguards to protect the
20 affected information systems from fire, flood, wind, theft, sabotage or other
21 natural or man-made hazards or disasters.

22 W. The department shall make available to agencies that contribute
23 to, or receive criminal justice information from, the central state
24 repository or through the Arizona criminal justice information system a
25 continuing training program in the proper methods for collecting, storing and
26 disseminating information in compliance with this section.

27 X. Nothing in this section creates a cause of action or a right to
28 bring an action including an action based on discrimination due to sexual
29 orientation.

30 Y. For purposes of this section:

31 1. "Administration of criminal justice" means performance of the
32 detection, apprehension, detention, pretrial release, post-trial release,
33 prosecution, adjudication, correctional supervision or rehabilitation of
34 criminal offenders. Administration of criminal justice includes enforcement
35 of criminal traffic offenses and civil traffic violations, including parking
36 violations, when performed by a criminal justice agency. Administration of
37 criminal justice also includes criminal identification activities and the
38 collection, storage and dissemination of criminal history record information.

39 2. "Administrative records" means records that contain adequate and
40 proper documentation of the organization, functions, policies, decisions,
41 procedures and essential transactions of the agency and that are designed to
42 furnish information to protect the rights of this state and of persons
43 directly affected by the agency's activities.

1 3. "Arizona criminal justice information system" or "system" means
2 the statewide information system managed by the director for the collection,
3 processing, preservation, dissemination and exchange of criminal justice
4 information and includes the electronic equipment, facilities, procedures and
5 agreements necessary to exchange this information.

6 4. "Central state repository" means the central location within the
7 department for the collection, storage and dissemination of Arizona criminal
8 history records and related criminal justice information.

9 5. "Criminal history record information" and "criminal history
10 record" means information that is collected by criminal justice agencies on
11 individuals and that consists of identifiable descriptions and notations of
12 arrests, detentions, indictments and other formal criminal charges, and any
13 disposition arising from those actions, sentencing, formal correctional
14 supervisory action and release. Criminal history record information and
15 criminal history record do not include identification information to the
16 extent that the information does not indicate involvement of the individual
17 in the criminal justice system or information relating to juveniles unless
18 they have been adjudicated as adults.

19 6. "Criminal justice agency" means either:

20 (a) A court at any governmental level with criminal or equivalent
21 jurisdiction, including courts of any foreign sovereignty duly recognized by
22 the federal government.

23 (b) A government agency or subunit of a government agency that is
24 specifically authorized to perform as its principal function the
25 administration of criminal justice pursuant to a statute, ordinance or
26 executive order and that allocates more than fifty per cent of its annual
27 budget to the administration of criminal justice. This subdivision includes
28 agencies of any foreign sovereignty duly recognized by the federal
29 government.

30 7. "Criminal justice information" means information that is collected
31 by criminal justice agencies and that is needed for the performance of their
32 legally authorized and required functions, such as criminal history record
33 information, citation information, stolen property information, traffic
34 accident reports and wanted persons information. Criminal justice
35 information does not include the administrative records of a criminal justice
36 agency.

37 8. "Disposition" means information disclosing that a decision has
38 been made not to bring criminal charges or that criminal proceedings have
39 been concluded or information relating to sentencing, correctional
40 supervision, release from correctional supervision, the outcome of an
41 appellate review of criminal proceedings or executive clemency.

42 9. "Dissemination" means the written, oral or electronic
43 communication or transfer of criminal justice information to individuals and
44 agencies other than the criminal justice agency that maintains the

1 information. Dissemination includes the act of confirming the existence or
2 nonexistence of criminal justice information.

3 10. "Management control":

4 (a) Means the authority to set and enforce:

5 (i) Priorities regarding development and operation of criminal
6 justice information systems and programs.

7 (ii) Standards for the selection, supervision and termination of
8 personnel involved in the development of criminal justice information systems
9 and programs and in the collection, maintenance, analysis and dissemination
10 of criminal justice information.

11 (iii) Policies governing the operation of computers, circuits and
12 telecommunications terminals used to process criminal justice information to
13 the extent that the equipment is used to process, store or transmit criminal
14 justice information.

15 (b) Includes the supervision of equipment, systems design,
16 programming and operating procedures necessary for the development and
17 implementation of automated criminal justice information systems.

18 11. "Process control number" means the Arizona automated fingerprint
19 identification system number that attaches to each arrest event at the time
20 of fingerprinting and that is assigned to the arrest fingerprint card,
21 disposition form and other pertinent documents.

22 12. "Secondary dissemination" means the dissemination of criminal
23 justice information from an individual or agency that originally obtained the
24 information from the central state repository or through the Arizona criminal
25 justice information system to another individual or agency.

26 13. "Sexual orientation" means consensual homosexuality or
27 heterosexuality.

28 14. "Subject of record" means the person who is the primary subject of
29 a criminal justice record.

30 Sec. 16. Section 41-2401, Arizona Revised Statutes, is amended to
31 read:

32 41-2401. Criminal justice enhancement fund

33 A. ~~A~~ THE criminal justice enhancement fund is established consisting
34 of monies collected pursuant to section 12-116.01 and monies available from
35 any other source. The state treasurer shall administer the fund.

36 B. On or before November 1 of each year, each department, agency or
37 office that receives monies pursuant to this section shall provide to the
38 Arizona criminal justice commission a report for the preceding fiscal year.
39 The report shall be in a form prescribed by the Arizona criminal justice
40 commission and shall be reviewed by the director of the joint legislative
41 budget committee. The report shall set forth the sources of all monies and
42 all expenditures. The report shall not include any identifying information
43 about specific investigations.

1 C. On or before December 1 of each year, the Arizona criminal justice
2 commission shall compile all reports into a single comprehensive report and
3 shall submit a copy of the comprehensive report to the governor, the
4 president of the senate, the speaker of the house of representatives and the
5 director of the joint legislative budget committee.

6 D. On the first day of each month, the state treasurer shall
7 distribute or deposit:

8 1. 6.46 per cent in the Arizona automated fingerprint identification
9 system fund established by section 41-2414.

10 2. 1.61 per cent to the department of juvenile corrections for the
11 treatment and rehabilitation of youth who have committed drug-related
12 offenses.

13 3. 16.64 per cent in the peace officers' training fund established by
14 section 41-1825.

15 4. 3.03 per cent in the prosecuting attorneys' advisory council
16 training fund established by section 41-1830.03.

17 5. 9.35 per cent to the supreme court for the purpose of reducing
18 juvenile crime.

19 6. 8.56 per cent to the department of public safety. Fifteen per cent
20 of the monies shall be allocated for deposit in the Arizona deoxyribonucleic
21 acid identification system fund established by section 41-2419. Eighty-five
22 per cent of the monies shall be allocated to state and local law enforcement
23 authorities for the following purposes:

24 (a) To enhance projects that are designed to prevent residential and
25 commercial burglaries, to control street crime, including the activities of
26 criminal street gangs, and to locate missing children.

27 (b) To provide support to the Arizona automated fingerprint
28 identification system.

29 (c) Operational costs of the criminal justice information system.

30 7. 9.35 per cent to the department of law for allocation to county
31 attorneys for the purpose of enhancing prosecutorial efforts.

32 8. 6.02 per cent to the supreme court for the purpose of enhancing the
33 ability of the courts to process criminal and delinquency cases, orders of
34 protection, injunctions against harassment and any proceeding relating to
35 domestic violence matters, FOR AUDITING AND INVESTIGATING PERSONS OR ENTITIES
36 LICENSED OR CERTIFIED BY THE SUPREME COURT AND FOR PROCESSING JUDICIAL
37 DISCIPLINE CASES. Notwithstanding section 12-143, subsection A, the salary
38 of superior court judges pro tempore who are appointed for the purposes
39 provided in this paragraph shall, and the salary of other superior court
40 judges pro tempore who are appointed pursuant to section 12-141 for the
41 purposes provided in this paragraph may, be paid in full by the monies
42 received pursuant to this paragraph.

43 9. 11.70 per cent to the state department of corrections for
44 allocation to county sheriffs for the purpose of enhancing county jail

1 facilities and operations, including county jails under the jurisdiction of
2 county jail districts.

3 10. 1.57 per cent to the Arizona criminal justice commission.

4 11. 9.00 per cent to the state general fund.

5 12. 2.30 per cent in the crime laboratory assessment fund established
6 by section 41-2415.

7 13. 7.68 per cent in the victims' rights fund established by section
8 41-191.08.

9 14. 4.60 per cent in the victim compensation and assistance fund
10 established by section 41-2407.

11 15. 2.13 per cent to the supreme court for the purpose of providing
12 drug treatment services to adult probationers through the community
13 punishment program established in title 12, chapter 2, article 11.

14 E. Monies distributed pursuant to subsection D, paragraphs 3, 4, 7,
15 9, 11, 12, 13 and 14 of this section constitute a continuing appropriation.
16 Monies distributed pursuant to subsection D, paragraphs 1, 2, 5, 8, 10 and
17 15 of this section are subject to legislative appropriation.

18 F. The portion of the eighty-five per cent of the monies for direct
19 operating expenses of the department of public safety in subsection D,
20 paragraph 6 of this section is subject to legislative appropriation. The
21 remainder of the monies in subsection D, paragraph 6 of this section
22 including the portion of the eighty-five per cent for local law enforcement
23 is continuously appropriated.

24 G. The allocation of monies pursuant to subsection D, paragraphs 6,
25 7, 8 and 9 of this section shall be made in accordance with rules adopted by
26 the Arizona criminal justice commission pursuant to section 41-2405.

27 Sec. 17. Laws 2001, chapter 185, section 3 is amended to read:

28 Sec. 3. Conditional repeal

29 A. Notwithstanding Laws 1995, chapter 250, section 20, as amended by
30 Laws 1996, chapter 359, section 9, Laws 1998, chapter 113, section 61, Laws
31 1999, chapter 292, section 6 and this act, the following are repealed if
32 monies are not appropriated to the department of economic security in fiscal
33 year 2002-2003 for a separate and secure facility for developmentally
34 disabled individuals:

35 1. Section 11-584, Arizona Revised Statutes, as amended by Laws 2000,
36 chapter 32, section 4.

37 2. Section 13-4518, Arizona Revised Statutes, as added by Laws 1995,
38 chapter 250, section 4 and as amended by ~~Laws 1999, chapter 164, section 2~~
39 THIS ACT.

40 3. Section 13-4519, Arizona Revised Statutes, as added by Laws 1995,
41 chapter 250, section 4.

42 4. Section 14-5312, Arizona Revised Statutes, as amended by Laws 1999,
43 chapter 83, section 1.

1 5. Section 31-502, Arizona Revised Statutes, as amended by Laws 1995,
2 chapter 250, section 8.

3 6. Section 36-560.01, Arizona Revised Statutes, as added by Laws 1995,
4 chapter 250, section 14.

5 8. If the department of economic security does not receive the
6 appropriation described in subsection A of this section, the director of the
7 department of economic security shall send formal written notice to the
8 executive director of the legislative council that states that the department
9 of economic security did not receive the appropriation.

10 Sec. 18. Conditional enactment

11 Section 13-4518, Arizona Revised Statutes, as added by Laws 1995,
12 chapter 250, section 4 and as amended by this act, is effective on October
13 1, 2003 unless the condition specified in Laws 2001, chapter 185, section 3,
14 as amended by this act, is met.

APPROVED BY THE GOVERNOR MAY 21, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 22, 2002.



Passed the House April 4, 2002,

by the following vote: 53 Ayes,

1 Nays, 6 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate April 25, 2002,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

H.B. 2351

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

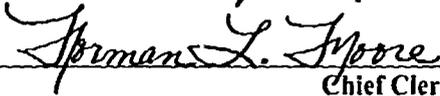
May 15, 2002,

by the following vote: 52 Ayes,

6 Nays, 2 Not Voting



Speaker of the House



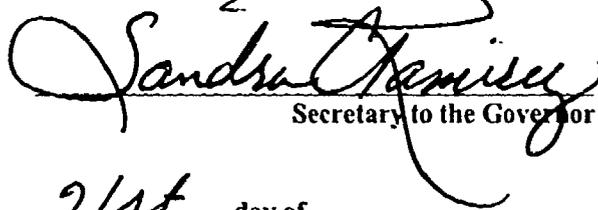
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

15 day of May, 2002

at 3:00 o'clock P M.



Secretary to the Governor

Approved this 21st day of

May, 2002,

at 10:18 o'clock A M.



Governor of Arizona

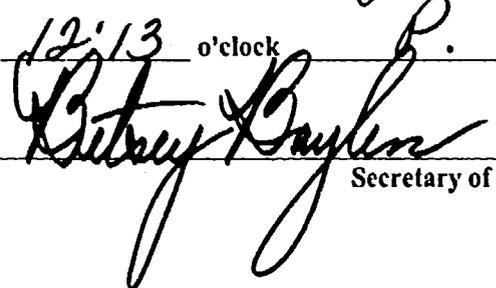
H.B. 2351

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 22 day of May, 2002,

at 12:13 o'clock P M.



Secretary of State