



ARIZONA STATE SENATE
Fifty-Fifth Legislature, Second Regular Session

FACT SHEET FOR H.B. 2595

grounds; decision; change of judge

Purpose

Outlines requirements and establishes grounds for a change of judge for cause or as a matter of right in criminal and civil proceedings.

Background

If either party to a civil action in a superior court files an affidavit alleging any of the grounds outlined in statute, the judge must transfer the action to another division of the court if there is more than one division or request a judge of the superior court of another county to preside at the trial of the action.

Grounds which may be alleged for change of judge include that: 1) the judge has been engaged as counsel in the action prior to appointment or election as judge; 2) the judge is otherwise interested in the action; 3) the judge is of kin or related to either party to the action; 4) the judge is a material witness in the action; or 5) the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice or interest of the judge, the party cannot obtain a fair and impartial trial ([A.R.S. § 12-409](#)).

Not more than one change of judge may be granted in any action and each party must be heard to urge the party's objections to a judge in the first instance. A change of judge must be to the most convenient judge to which the objections of the parties do not apply or are least applicable. If the parties agree upon a judge, the agreed upon judge must be selected ([A.R.S. § 12-411](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Change of Judge as a Matter of Right – Criminal Proceedings

1. Repeals statute relating to the justification and procedure for a change of judge.
2. Entitles each party in a criminal case to one change of judge as a matter of right.
3. Allows the presiding judge or presiding judge's designee to grant additional changes of judge if two or more parties have adverse or hostile interests.
4. Specifies that criminal cases, including consolidated cases, are treated as only having two sides.

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5. States that a party that exercises a change of judge as a matter of right is not entitled to another change of judge as a matter of right.
6. States that a party is not entitled to a change of judge as a matter of right in a case that is remanded for resentencing.
7. Requires a party who requests a change of judge to file a *notice of change of judge* document signed by an attorney or a self-represented defendant and must include the following:
 - a) the name of the judge to be changed; and
 - b) an avowal that the party is making the request in good faith and not for improper purpose.
8. Defines an *improper purpose* as:
 - a) for the purpose of delay;
 - b) to obtain a severance;
 - c) to interfere with the judge's reasonable case management practices;
 - d) to remove a judge for reasons of race, gender or religious affiliation;
 - e) to use the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group or law firm;
 - f) to obtain a more convenient geographical location; or
 - g) to obtain an advantage or avoid a disadvantage in connection with a plea bargain or at sentencing, except as allowed by the Arizona Rules of Criminal Procedure.
9. Prohibits, if a notice of change of judge is timely filed, the judge from proceeding further in action except to enter any necessary temporary orders before the action can be transferred to the presiding judge or the presiding judge's designee.
10. Requires a party to file a change of judge notice within 10 days after any of the following occurs:
 - a) the arraignment, if the case is assigned to a judge and the parties are given actual notice of the assignment at or before the arraignment;
 - b) the superior court clerk's filing of a mandate issued by an appellate court; or
 - c) if none of the above apply, actual notice to the requesting party of the assignment of the case to a judge.
11. Requires, if a new judge is assigned to a case less than 10 days before trial, a notice of change of judge to be filed with appropriate notice to the other party or parties no later than 5:00 p.m. on the next business day following receipt of a notice of assignment or by start of trial, whichever is first.
12. Allows, if a notice of change of judge is timely filed, the notice to inform the court that all parties have agreed on a judge who is available and willing to accept the assignment.
13. Prohibits, if the agreement is honored, any further changes of judge as a matter of right unless the agreed on judge becomes unavailable.

14. Allows, if the judge becomes unavailable due to change of calendar assignment, death, illness or other legal incapacity, the parties to assert any rights given by this legislation that existed immediately before the assignment of the action to that judge
15. Requires, if notice of change of judge is timely filed and no judge has been agreed on by all parties, the presiding judge to immediately reassign the action to another judge.
16. States that a party loses the right to a change of judge if the party participates before that judge in any contested matter in the case, a plea of guilty or no contest, or the beginning of a trial.
17. Allows a party, unless previously exercised, to exercise a change of judge as a matter of right following an appellate court's remand for a new trial and an event that is connected with the first trial does not constitute a waiver.
18. Prohibits a party from exercising a change of judge as a matter of right following a remand for resentencing.

Change of Judge for Cause – Criminal Proceedings

19. Entitles a party in a criminal case to a change of judge if the party shows that the assigned judge's interest or prejudice would prevent a fair and impartial hearing or trial.
20. Requires a party seeking a change of judge to file a motion no later than 10 days after discovering that the grounds exist, except that a party is prohibited from filing a motion after the hearing or trial begins.
21. Requires a motion for a change of judge to state the specific grounds for the change of judge and be supported by an affidavit.
22. Allows allegations of interest or prejudice that arise after commencement of the hearing or trial to be preserved for appeal on an appropriate motion.
23. Prohibits, if a notice of change of judge is timely filed, the judge from proceeding further in action except to enter any necessary temporary orders before action can be transferred to the presiding judge or the presiding judge's designee.
24. Requires, after a party files a timely motion for change of judge, the presiding judge to promptly provide for a hearing on the motion before a judge other than the challenged judge.
25. Requires the hearing judge to decide the issues by a preponderance of the evidence and enter an order stating the findings and ruling on the motion and return the matter to the presiding judge.
26. Requires the presiding judge to promptly assign the action back to the original judge if the motion is denied or make a new assignment if the motion is granted.

27. States that if there are multiple defendants in a case and the grant for a motion of change of judge is filed by one or more defendants, a change of judge is not required for the other defendants regardless of possible results in severance for trial purposes.

Change of Judge as a Matter of Right – Civil Proceedings

28. Entitles each party in a civil action in superior court, except for an action in tax court, to a change of judge as a matter of right.
29. Requires each action, including consolidated actions, to be treated as having only two sides.
30. Allows, if two or more parties on a side have adverse or hostile interests, the presiding judge to grant additional changes of judge as a matter of right provided that each side has the right to the same number of changes.
31. Requires a party seeking a change of judge as a matter of right to either file a written notice or make an oral request on the record.
32. Requires a written notice of change of judge to be served on all other parties, the presiding judge, the noticed judge and the court administrator and include:
- a) the name of the judge to be changed; and
 - b) a statement that the notice is timely, a waiver has not occurred and the party's side has not been granted a change of judge as a matter of right in a previous action.
33. Requires an oral request to include the same information as is required in a written notice for a change of judge.
34. Requires the presiding judge, for an oral notice of change of judge, to enter on the record the date of the notice, the requesting party's name and the judge's disposition of the request.
35. Specifies that an oral notice is deemed filed on the date it is made on the record.
36. Requires a party to submit a notice of change of judge within 90 days after the party giving notice appears in the case.
37. States that if an assignment identifies a judge for the first time after the 90-day time period, has expired or fewer than 10 days before it has expired, notice is considered timely if the notice is filed within 10 days after the party receives notice of the new assignment or within 10 days after the new judge is assigned, whichever is later.
38. Requires, if a right to a change of judge is renewed, a notice to be submitted within 15 days after issuance of the appellate court's mandate of final order.

39. States that a notice is ineffective if the notice is filed within three days of a scheduled proceeding unless the parties have received five days' notice of that proceeding or the judge's assignment.
40. Specifies that a filing of an ineffective notice does not require a change of judge or bar the party that filed it from later filing a notice of change of judge.
41. States that a party waives the right to a change of judge who is assigned to preside over any proceeding in the action if any of the following apply:
 - a) the party agrees to the assignment;
 - b) the judge rules on any contested issue or grants or denies a motion to dispose of any claim or defense if the party had an opportunity to file a notice of change of judge before the ruling is made;
 - c) a scheduling, pretrial, trial-setting or similar conference begins;
 - d) a scheduled contested hearing begins; or
 - e) trial begins.
42. States that in actions remanded from an appellate court, the right to a change of judge is renewed and an event that is connected with the first trial does not constitute a waiver if both of the following apply:
 - a) the appellate decision requires a new trial; and
 - b) the party seeking a change of judge, or the side on which the party belongs, has not previously exercised the party's right to change of judge in the action.
43. Prohibits, if a notice of change of judge is timely filed and a waiver has not occurred, the judge from proceeding further in action except to enter any necessary temporary orders to prevent immediate and irreparable injury, loss or damage from occurring before the action can be transferred to another judge.
44. Allows a named judge, if they are the only judge in the county, to also reassign the case.
45. Allows the named judge to proceed with the action if the court determines that the party who filed the notice is not entitled to a change of judge.
46. Specifies that, if a notice of change of judge is filed, the parties should inform the court in writing if the parties have agreed on an available judge who is willing to hear the action.
47. Prohibits, if the agreement is honored, any further changes of judge as a matter of right unless the agreed upon judge becomes unavailable.
48. Allows, if the judge becomes unavailable due to change of calendar assignment, death, illness or other legal incapacity, the parties to assert any rights given relating to change of judge that existed immediately before the assignment to that judge.

Change of Judge for Cause – Civil Proceedings

49. Requires to a party any civil action in superior court seeking a change of judge for cause to establish grounds for the change of judge by affidavit.
50. Allows a party to allege, in establishing grounds for a change of judge, that:
 - a) the judge has been engaged as counsel in the action before appointment or election as judge;
 - b) the judge is otherwise interested in the action;
 - c) the judge is of kin or related to either party to the action;
 - d) the judge is a material witness in the action; or
 - e) the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice or interest of the judge the party cannot obtain a fair and impartial trial.
51. Requires the affidavit to be filed and copies served on the parties, the presiding judge, the noticed judge and the court administrator, if any.
52. Requires a party to file an affidavit seeking change of judge for cause within 20 days after discovering that the grounds exist for a change of judge.
53. Prohibits case events or actions taken before discovering cause for change of judge from waiving a party's right to a change of judge for cause.
54. Allows, within five days of a party timely filing and serving an affidavit, any other party to file an opposing affidavit or a responsive memorandum that does not exceed two pages in length.
55. Prohibits a reply memorandum or affidavit unless authorized by the presiding judge.
56. Allows the presiding judge to hold a hearing to determine the issues raised in the affidavit or decide the issues based on any affidavits and memoranda filed by the parties.
57. Prohibits, on the filing of the affidavit, the named judge from proceeding further in the action except to enter any necessary temporary orders to prevent immediate and irreparable harm from occurring before the action can be transferred to another judge.
58. Allows a named judge, if they are the only judge in the county, to also perform the functions of the presiding judge.
59. Requires the presiding judge to decide the issues by a preponderance of the evidence and determine the sufficiency of any cause to believe that a change of judge is warranted by an objective standard and not by reference to the affiant's subjective belief.
60. Requires the presiding judge to promptly reassign the action if grounds for disqualification are found and requires any new assignment to comply with change of judge requirements outlined in statute.

61. Allows the named judge to proceed with the action if the court determines that the party who filed the affidavit is not entitled to a change of judge.

Miscellaneous

62. Defines *judge* as any judge, judge pro tempore or court commissioner.

63. Defines *presiding judge* as the presiding superior court judge in the county where the action is pending or that judge's designee.

64. Becomes effective on the general effective date.

House Action

JUD	2/2/22	DP	6-4-0-0
3 rd Read	2/17/22		31-28-1

Prepared by Senate Research

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ZD/HK/sr