

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 20, 2014	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislative Review

FROM:

PRESENTER(S): Honorable Ron Reinstein, Chair

DISCUSSION & TIME ESTIMATE: (15 min) Review of victim-rights related legislation and rule changes from the most recent Arizona legislative sessions.

RECOMMENDED MOTION (IF ANY):

Fifty-First Legislature
Second Regular Session 2014

Committee on Victims in the Courts
June 20, 2014

Chapter 38. HB2505: leaving accident scene; alcohol; penalty (Rep. Gray)

Requires the court to order a person convicted of Leaving the scene of an accident involving death or physical injury to complete alcohol or other drug screening if the court finds by a preponderance of the evidence that the person's use of intoxicating liquor, any drug listed in §13-3401, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances was a contributing factor to the accident.

If reasonable suspicion exists to believe that the person's use of intoxicating liquor, any drug listed in the §13-3401, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances was a contributing factor to the accident, the department of transportation (ADOT) may require the person to complete alcohol or other drug screening as a condition of license reinstatement. The statute is not clear on who finds the reasonable suspicion, but it seems to be MVD (ADOT).

The classification for failure to give information and assistance is increased from a Class 3 Misdemeanor to a Class 6 Felony. If the court finds by a preponderance of the evidence that the person's use of intoxicating liquor, any drug listed in §13-3401, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances was a contributing factor to the accident that caused death or physical injuries, the court shall order the person to complete alcohol or other drug screening.

Sections amended: §28-661, 28-662, 28-663

Chapter 151. HB2454: human trafficking; prostitution (Representative Farnsworth)

Engaging in prostitution with a minor who the person should have known is 15, 16 or 17 years old is added to the Child prostitution statute. Increases the presumptive, minimum and maximum sentence for a person convicted of child prostitution if the minor is 15, 16 or 17 years old.

Creates an affirmative defense for knowingly engaging in prostitution if the defendant committed the acts as a direct result of being a victim of sex trafficking.

Adds to the Commercial sexual exploitation of a minor statute, knowingly using an advertisement for prostitution that contains a visual depiction of a minor. This provision is not applicable to an act in violation of §13-3555, Portraying an adult as a minor, or to websites or internet service providers that host advertisements created and published by third parties and do not participate in creating or publishing the advertisements.

Clarifies language in the pandering statute, §13-3209.

Adds as an aggravating circumstance when a defendant is convicted of Sex trafficking or Trafficking of persons for forced labor or services, whether the defendant recruited, enticed or obtained the victim from a shelter that is designed to serve runaway youth, foster children, homeless persons or victims of human trafficking, domestic violence or sexual assault.

Includes child prostitution, sex trafficking and forced labor trafficking within the offenses included in the definition of racketeering. Allows monies in the anti-racketeering revolving fund and county anti-racketeering revolving funds to be used for programs that provide assistance to victims of criminal offenses that are subject to racketeering.

Establishes the Human Trafficking Victim Assistance fund consisting of monies received from civil penalties imposed for Unlawful advertising by escort services and massage therapists. Requires the Governor's Office for Children, Youth and Families to establish program priorities for the Fund and to spend monies in the Fund to provide assistance to victims of sex trafficking and trafficking of persons for forced labor or services.

Prohibits an escort or escort agency or a massage therapist or massage therapy business to advertise escort or massage services unless enumerated requirements are met. Subjects an escort or escort agency or a massage therapist or massage therapy business to a civil penalty for violating advertising requirements and allows the Attorney General, a county attorney or a city or town attorney to bring an action to enforce escort and massage therapy advertising requirements. Requires the court to deposit any civil penalties collected into the Human Trafficking Victims Assistance Fund. Defines advertising, advertisement, escort, escort agency and massage therapy business.

Enacts an affirmative defense in a civil action brought against an escort or escort agency or a massage therapist or massage therapist business for the first failure to display a license number in an advertisement if the escort or escort agency or massage therapist or massage therapy business possessed a valid license at the time the advertisement was published.

Requires an escort or escort agency or a massage therapist or massage therapy business to retain proof of the age of any escort or therapist whose services are offered in any advertisement of escort services or massage therapy services for at least one year. Creates an affirmative defense in a civil action for failure to retain proof of age of an escort or therapist if the escort or therapist whose services were offered in an advertisement was at least 18 years old at the time the advertisement was published. Prohibits a person from advertising massage therapy services unless that person is properly licensed, violation of this is a Class 1 Misdemeanor. A

victim has a right in any court proceeding not to testify regarding any identifying and locating information subject to exceptions. The information obtained by a law enforcement agency or a prosecution agency must be redacted from discovery disclosed to the defendant. Defines *identifying information* and *locating information*.

Sections amended: §9-500.10, 13-701, 13-2301, 13-2314.01, 13-2314.03, 13-3209, 13-3212, 13-3214, 13-3551, 13-3552, 13-4434, 32-4255 Sections enacted: §9-500.10, 32-4260, 41-113

Chapter 158. HB2625: penalty assessment; victims' rights enforcement (Rep. Tobin)

Establishes a penalty assessment of \$2 to be levied on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and on any civil penalties imposed and collected for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor

vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes. Monies collected from the assessment are deposited into the newly established Victim's Rights Enforcement Fund, to be administered by the Department of Public Safety (DPS). DPS is required to distribute monies from the fund to nonprofit organizations and entities that provide specified services to crime victims and meet other specified requirements.

Sections enacted: §12-116.09, 41-1722

Delayed effective date: January 1, 2015

Chapter 159. HB2639: identity theft; violation; penalties (Rep. Townsend)

Increases the offense of knowingly accepting the identity of another person in hiring an employee to Aggravated identity theft, a Class 3 Felony, instead of Identity theft, a Class 4 Felony. Sections amended: §13-2008, 13-2009

Chapter 224. SB1342 unlawful mutilation; female genitalia (Senator Burges)

An action for recovery of damages based on the commission against the plaintiff of an action in violation of the Unlawful mutilation and Duty to report abuse statutes must be commenced not later than ten years from the date the plaintiff turns 18 years old or within six years of July 24, 2014, whichever is longer. Requires the court to award the plaintiff treble damages, costs, and reasonable attorney fees if the judgment is for the plaintiff.

Enacts an Unlawful Mutilation statute, classifies it as a dangerous crime against children pursuant to §13-0705, subsection D, and adds it to the Duty to report abuse statute. It is unlawful for a person to mutilate a female less than 18 years of age, knowingly transport a female under 18 years of age to another jurisdiction for the purpose of mutilation or recklessly transport a female under 18 years of age to a jurisdiction where mutilation is likely to occur. Requires the court to order a person convicted of this section to pay a fine of at least \$25,000 in addition to any other penalty. Unlawful mutilation is classified as a Class 2 Felony and the person is not eligible for suspension of sentence, probation, pardon, or release from confinement on any basis except as authorized pursuant to §31-233 or until the sentence has been served or commuted. Sets the sentencing ranges for the violation.

Defines *mutilate or mutilation* as the partial or total removal of the clitoris, prepuce, labia minora, with or without the excision of the labia major, the narrowing of the vaginal opening through the creation of a covering or seal formed by cutting and repositioning the inner or outer labia, with or without the removal of the clitoris, or any harmful procedure to the genitalia, including pricking, piercing, incising, scraping or cauterizing. Mutilate and mutilation does not include procedures performed by a licensed physician that are proven to be medically necessary due to a medically recognized condition.

The act is cited as the Girls and Young Women's Sufferance Act.

Sections amended: §13-705, 13-3620

Sections enacted: §12-513, 13-1214

6/16/14

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TO:
Rule 28 Distribution
David K Byers, Administrative Director, Administrative Office of the
Courts

ATTACHMENT*

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 39. Victims' Rights

a. [no change in text]

b. Victims' Rights. These rules shall be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other rule in these Rules of Criminal Procedure, a victim shall have and be entitled to assert each of the following rights:

1. - 9. [no change in text]

10. The right to require the prosecutor to withhold, during discovery and other proceedings, the victim's date of birth, social security number, official state- or government-issued driver license or identification number, home address, ~~and~~ telephone number ~~of the victim,~~ e-mail address, the address and telephone number of the victim's place of employment, and the name of the victim's employer; provided, however, that for good cause shown by the defendant, the court may order that such information be disclosed to defense counsel and may impose such further restrictions as are appropriate, including a provision that the information shall not be disclosed by counsel to any person other than counsel's staff and designated investigator and shall not be conveyed to the defendant.

11. - 16. [no change in text]

c. - g. [no change in text]

* Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.