Arizona Judicial Council
2018 Legislative Proposals
December 2017

2018-01 driving violations; restricted licenses; penalties

Permits the court to restrict, in addition to suspend, a person's driver license or permit to drive as a sanction for non-major traffic offenses, and Failure to pay a civil traffic penalty. Defines the scope of restrictions that may be placed on a license and makes consistent the scope of restrictions throughout the code.

Adds assessments to the list of financial obligations the Supreme Court may include in the current statutorily authorized program intended to reduce the number of outstanding fines, penalties and surcharges.

The court may employ alternative sanctions to community restitution ordered upon a DUI conviction if the court determines that education, treatment or other alternative sanctions are more appropriate.

Permits the court to mitigate a mandatory civil penalty if the payment would cause a hardship on the person convicted or on the person's immediate family. Outlines factors for the court to consider when determining whether to mitigate a civil penalty.

Reclassifies Driving on a license suspended for Failure to appear or pay a civil traffic violation and Driving without corrective lenses, to a civil traffic violation.

Removes the requirement that law enforcement impound a vehicle if a person is driving on a suspended license. Retains the requirement if the person is driving on a revoked license.

Delayed effective date of January 1, 2019.

Titles affected: 25, 28

2018-02: sentencing; monetary obligations; fine mitigation

Permits a judge to mitigate a fine if the payment would cause a hardship on the person convicted or on the person's immediate family. Outlines factors for the court to consider when determining whether to mitigate a fine. Permits a judge to waive all or part of mandatory community restitution due to the medical condition of the defendant unless the community restitution is ordered in lieu of a monetary obligation.

Adds civil penalties and surcharges to the list of financial obligations for which a court may order community restitution in lieu of payment of a monetary obligation after a finding that the defendant is unable to pay all or part of the obligation. Expands the community restitution program to superior court. The community restitution program does not apply to the Clean Elections surcharge.

Reduces the annual interest that accrues on a criminal restitution order in favor of the state from 10% to 4%. Interest on a criminal restitution order in favor of the victim or the state on behalf of the victim remains at 10%.

Permits an Order to Show Cause hearing and resulting consequences and garnishment if a defendant fails to pay a surcharge or assessment ordered by the court. Current law provides for a hearing and garnishment for failure to pay other court ordered monetary obligations.

Allows a probationer to be eligible for the earned time credit if restitution payments are current and the probationer is in compliance with all other nonmonetary obligations.

Removes the ability to revoke probation at a civil contempt hearing and substitutes the ability to refer for revocation as provided by law. Transfers the portions of statute authorizing revocation to the appropriate sections of the criminal code.

Delayed effective date of January 1, 2019.

Titles affected: 12, 13, 31, 41

2018-03 misdemeanor sentence; authorized disposition

Authorizes a court to impose a term of community restitution, education or treatment in addition to any other authorized for misdemeanor offenses. Directs the court to determine and fix the number of community restitution hours that must be performed and the program of education or treatment, however, limits the length of time a person may be sentenced to education or treatment to the term of probation permitted under law.

Does not preclude the imposition of any other sentence permitted by law.

Title affected: 13

2018-05 intensive probation; employment wages; monitoring

Repeals antiquated language requiring the chief adult probation officer to collect, deposit, and distribute wages payed by paycheck to a probationer and then parse out for court ordered financial obligations. Requires a person's probation officer monitor the person's income to ensure compliance with court ordered financial obligations. Many paychecks are direct deposited.

Title affected: 13

2018-08: juvenile court facilities; shelters; use

Allows the presiding judge of the superior court, if appropriate facilities are available to the juvenile court, to authorize court staff to provide services within the facility as well as enter into an agreement for the use of those facilities by a provider of juvenile shelter or treatment services.

Title affected: 8

2018-09: Setting aside conviction' requirements

With exceptions, a person may apply to the court to have a conviction set aside. Requires the court to inform the person about the application process at the time of sentencing. A person sentenced or revoked to the Department of Corrections must wait two years from absolute discharge to apply for set aside.

Does not permit an application for set aside if the defendant is convicted of a dangerous, serious, violent or aggravated offense, any act of organized crime, fraud, or terrorism, an offense for which the defendant is required to register as a sex offender where there is a finding of sexual motivation, or of most traffic violations.

A person whose conviction is set aside is not required to disclose the conviction or arrest for any charge stated in the complaint, information or indictment for which the person was found guilty and the conviction was set aside. Does not preclude an employer or prospective employer from conducting a background check or obtaining the person's criminal history, as allowed by law. Does not require law enforcement to redact or remove a record and does not affect the requirement, if applicable, to obtain a fingerprint clearance card.

Prohibits the Clerk of Court from charging a fee for an application to set aside a conviction. If a conviction is set aside, the clerk must restrict public access and not disclose any information from the clerk's records that contains the name and other identifying information of the person whose conviction was set aside except to a law enforcement agency, prosecuting agency, probation department or the defendant or by court order. The clerk is not required to remove the name and identifying information of the person from an exhibit.

The clerk will notify DPS and DPS must annotate the set aside on the person's criminal history but may not redact or remove any part of the record.

The conviction may be used as if it had not been set aside to allege an element of an offense, allege as a prior conviction, plead and prove in a subsequent prosecution of the person and by ADOT to enforce its administrative provisions.

Title affected: 13

2018-A Order of Protection; Procedure (ACJC)

When granting an Order of Protection, requires the court to forward the order to the applicable law enforcement agency for service. The agency serving the order is required to provide confirmation of service to the plaintiff as soon as practicable. If an order cannot be completed within 15 days, the agency attempting service shall notify the plaintiff and continue to attempt service. The Plaintiff can no longer decide to hold the order for service at a later date.

Subject to statutory exception, service of an order of protection shall be served by a “serving agency.” Serving agency is not defined; however, the proposal states that the Order is served as follows:

For each order of protection issued by a municipal court, if the defendant can be served within that city, service will be by the law enforcement agency of that city. If the order can be served in another city, by the law enforcement agency of that city. If the order cannot be served within a city or town, by the sheriff in the county in which the defendant can be served. Note, “town” is not mentioned in the proposal, but that might be an oversight.

For each order of protection issued by a justice of the peace, service will be by the sheriff of the county where the defendant can be served. A constable may serve an order of protection.

For each order of protection that is issued by a superior court judge or commissioner, service will be by the sheriff of the county where the defendant can be served. (The Judicial Branch is looking to add the ability of a constable to serve the order of protection in the precinct where the order is to be served).

The order can also be served by an entity permitted pursuant to the Rules of Civil Procedure. How the “serving agency” is determined is not yet clear in the proposal. Also, not clear is whether the court will need to maintain a running list of serving agencies and how the order gets from one serving agency to another if it is originally sent to the wrong one.

Each affidavit, acceptance or return of service must be filed as soon as practicable, but not to exceed 72 hours (instead of promptly filed), excluding weekends and holidays, with the clerk of the issuing court, or as directed by court rule. The filing can be completed electronically, in person or by fax.

The court is the holder of the order and is required to register the order with NCIC.

Delayed effective date of September 1, 2019.

Title affected: 13

2018-B electronic documents; signatures; wills; trusts (Legal Zoom)

Permits the production and signing of a will by electronic means. Requires the will contain an authentication characteristic unique to the individual that can be measured and recognized through an electronic record, such as a fingerprint, retinal scan, voice recognition, facial recognition, video recording, digitized signature, or other commercially reasonable authentication used a unique characteristic.

Requires video recording of witnesses but is silent as to when and where the witness must be at the time of signature. Revocation of an electronic will may only be accomplished via a statement or other affirmative act of the testator.

Several unknowns exist now as there is not a current draft available for review. Where a will is stored, who can access it, and where it is probated remain unanswered are some of the questions.

Title affected: 14

2018-C: Probate code (State Bar)

Various technical corrections to Title 14 primarily affecting trust and estate practitioners and financial institutions. In pertinent part, clarifies that both heirs and devisees have four months to commence a formal probate after informal probate begins, making the statute apply consistently to both testate and intestate beneficiaries. Directs that publication related to a formal probate must be made at least once 14 days before the hearing on the formal probate petition. The current statute is ambiguous, leading to inconsistent interpretation and application.

A.R.S. §14-2517, a provision in a will that purports to penalize an interested party for contesting the will is unenforceable if probable cause exists for that action is extended to trusts.

Title affected: 14

2018-D: life imprisonment; parole (Pima County Attorney's Office)

Notwithstanding any other law, a person convicted of first degree murder and sentenced to life with the possibility of parole is eligible for parole after serving the minimum number of calendar years specified in the sentence.

If granted parole, the person remains on parole for the remainder of the person's life, except that the person's parole may be revoked pursuant to section 31-415. The Director of DOC will include this category in the parole eligibility classification system.

Titles affected: 13, 41

2018-E: PCR defense; appointment (Maricopa County)

Allows the Presiding Judge of a county to establish and maintain a list of qualified persons to provide counsel to capital defendants in PCR proceedings and authorizes the Judge to appoint counsel from that list. If a county has not established a list, the Presiding Judge of that county may appoint counsel from a list established and maintained by either the Court or by another county.

Title affected: 13

WITHDRAWN