

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
June 18, 2018	<input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislative Branch Update

FROM:

Jerry Landau, Government Affairs Director
Amy Love, Deputy Government Affairs Director

DISCUSSION:

Mr. Landau and Ms. Love will update members on the 2018 Legislative Session.

RECOMMENDED COUNCIL ACTION:

Review of Legislative Session

Arizona Judicial Council June 2018 Legislative Update

Administrative

Chapter 13, HB2178: secretary of state; notary public

In pertinent part, several statutes relating to electronic notarization are repealed. The secretary of state must adopt standards for secure and feasible implementation of electronic notarization before January 1, 2020. Notarial commission, duties, and acts may be performed electronically. A notary public may accept documents signed with an electronic signature.

The definition of “satisfactory evidence of identity” to include a nonoperating identification card, an inmate identification card from the Department of Corrections (if in DOC), and any form of inmate identification issued by a county sheriff (if in sheriff custody).

Section Added: §41-352

Sections Amended: §§38-294, 41-311, 41-313, 41-315, 41-317, 41-323, 41-332, 41-351, 44-7011

Sections Repealed: §§41-352, 41-353, 41-354, 41-355, 41-357, 41-358, 41-359, 41-360, 41-361, 41-362, 41-363, 41-364, 41-365, 41-366, 41-367, 41-368, 41-369, 41-370

Chapter 34, HB2155: notaries public; immigration law; prohibition

A non-attorney notary public is prohibited from rendering any service for compensation that constitutes the unauthorized practice of immigration and nationality law. The secretary of state is required to impose a civil penalty of not more than \$1,000 and the notary public’s commission must be permanently revoked. The offense is a Class 6 Felony.

Section Amended: §41-329

Chapter 56, SB1249: campaign finance violations; appeals

Penalties imposed for campaign finance violations may be appealed directly to the superior court in lieu of an administrative hearing. The superior court must conduct a trial

de novo and the enforcement officer has the burden of proving any alleged violation by a preponderance of the evidence.

Section Amended: §16-938

Delayed effective date of January 1st, 2019

Chapter 69, HB2189: prisoners; dedicated discharge account; use

The amount of money that must be collected and deposited in a prisoner's discharge account is increased from \$100 to \$250. The monies in the account are distributed to the prisoner on the prisoner's discharge, except that the prisoner may use monies in the account before the prisoner is discharged or transferred for items and services that the prisoner will require immediately after being released or transferred.

The department of corrections is required to withdraw any applicable fees required to obtain either a state driver license or a nonoperating identification card for the prisoner, if eligible.

Sections Amended: §§31-228, 31-327, 31-254

Chapter 73, HB2385: property tax appeals; court findings

If a property tax appeal is brought by a county assessor and the court finds that the valuation is insufficient, the court's finding of the property's full cash value cannot be greater than the full cash value that was appealed by the taxpayer to the Board of Equalization.

Section amended: §41-16213

Applies retroactively to property tax appeals filed beginning on January 1, 2017.

Emergency Clause: Effective March 23, 2018

Chapter 140, HB2545: EORP; cost-of-living adjustment

Repeals the EORP permanent benefit increase and replaces it with a cost of living increase up to two percent of a retired member's or survivor's base benefit annually. In the first year retirement the cost-of-living adjustment must be prorated based on the date

of retirement. The plan actuary is required to include the projected cost of providing the cost-of-living adjustment in the calculation of normal cost and accrued liability.

Conditionally enacted on the state constitution being amended, as prescribed in HCR2032, by the voters at the 2018 general election.

Section Added: §38-818.04

Section Amended: §38-914

Sections Repealed: §§38-818, 38-818.01, 38-818.02, 38-818.03, 38-819

Chapter 178, HB2184: secretary of state; rulemaking

In pertinent part, removes the requirement that all heads of state and local agencies submit to the secretary of state a list of public records in the agency's custody that are not needed in the transaction of current business and lack sufficient administrative, legal or fiscal value to necessitate the inclusion of the record in established disposal schedules. Currently failure to provide this information is a Class 2 Misdemeanor to.

Sections Added: §§41-131, 41-907, 41-1097.01

Sections Amended: §§41-124, 41-151.14, 41-1001, 41-1005, 41-1012, 41-1022, 41-1026, 41-1033,49-471.01, 49-471.04, 49-471.06, 49-471.07,49-471.08, 49-471.09 AND 49-471.11

Sections Repealed: §§23-1326, 41-131

Chapter 180, HB2238: admin decisions; review; scope

The court, in a proceeding brought by or against a regulated party, decides all questions of law including the interpretation of a constitutional or statutory provision or a rule adopted by an agency, without deference to any previous determination that may have been made on the question by the agency. Applies in any action for judicial review of any agency action that is authorized by law.

The current standard (not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion) still applies to an action arising out

Title 20, Chapter 15, Article 2 (health care appeals). Does not apply to the Corporation Commission.

Section Amended: §12-910

Chapter 213, SB1113: zoning violations; notice; service

A zoning inspector and any person authorized by the Arizona Rules of Civil Procedure may personally serve a notice of a zoning violation. Alternative methods of service are permitted under the Arizona rules of civil procedure if serving the notice in person may jeopardize the safety of the persons serving notice.

Section amended: §13-918

Chapter 218, SB1385: tax appeals; administrative hearings; confidentiality

A taxpayer who receives a deficiency assessment or refund denial from the Department of Revenue (DOR) for any tax aside from income tax may bypass all or part of the administrative appeals process and appeal directly to the State Board of Tax Appeals or bring an action in tax court by filing a notice of appeal in writing. A taxpayer must first confer with an appeals officer from DOR to attempt to resolve the issue. If DOR doesn't meet and confer with the aggrieved taxpayer within 45 days, the taxpayer may go straight to the State Board of Tax Appeals or tax court. This section applies retroactively to January 1, 2017.

Permits the disclosure of the following confidential taxpayer information retroactive to May 23, 2015:

- a) a limited liability company's information to any member of the company or any company manager;
- b) government entity information to to the head of the entity, a member of the governing board of the entity or any delegated employee of the entity of its governing body;
- c) taxpayer information during a meeting or telephone call if the taxpayer is present and authorizes the disclosure;

- d) confidential DOR information to the Office of Administrative Hearings with the written consent of the taxpayer;
- e) DOR information the ADOA Risk Management Division and the Attorney General if related to a claim against the state involving the DOR;
- f) DOR confidential information to any other state agency if the taxpayer provides written authorization;
- g) DOR confidential information to determine whether an employer has paid all amounts due under the unemployment insurance program.

Defines “principal officer” as a chief executive officer, president, secretary, treasurer, vice president of tax, chief financial officer, chief operating officer, chief tax officer, or any other corporate officer who has the authority to bind the taxpayer on matters related to state taxes.

For the purposes of disclosing confidential taxpayer information DOR may rely on any sworn statement signed by a corporate officer swearing to be a principal officer,

Sections Amended: §§42-1251, 42-1253, 42-1254, 42-2003, 42-2059

Chapter 222, SB1447: juror questionnaire; investigations

The jury commissioner or manager may call on the county attorney for assistance in an investigation of the accuracy of a juror’s answers to the juror questionnaire.

Section Amended: §21-314

Chapter 259, HB2502 public safety; traumatic event counseling

Expands the Traumatic Event Counseling Program to include public safety employees, the definition of which includes probation officers. Sets for the criteria and terms of the program. The program for public safety employees and police and fire are divided into separate statutes. Probation is found in §38-672.

Employees are entitled to up to 12 visits of licensed counseling, which may be provided via telemedicine and is paid for by the employer. Events that trigger the program include visually witnessing the death or maiming of a person or the immediate aftermath

of the death or maiming of a person and responding to or being directly involved in a criminal investigation of an offense involving a dangerous crime against a child.

Section Added: §38-673

Section Amended: §38-672

Section Repealed: §38-673

Chapter 317, HB2564: court fees; EORP; state contribution

Increases the state statutory filing fee received by the clerk of the superior court and justice of the peace courts by 6%. The monies must be deposited in the Elected Officials' Retirement Fund. The percentages of the monies transmitted to various other funds are adjusted to hold all funds harmless.

Sections Amended: §12-284, 12-284.03, 22-281

Effective May 17, 2018 (per Arizona Constitution)

Chapter 343, SB1478: EORP; employer contributions

Requires each elected officials' retirement plan employer to make contributions for all member employees sufficient under an actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability over a closed period of 20-30 years.

In any fiscal year, an employer's contribution to the elected officials' retirement fund in combination with member contributions may not be less than the actuarially determined normal cost for that fiscal year.

Section Amended: §38-810

Emergency clause: Effective date of July 1, 2018

HCR2032: public retirement systems

Subject to voter approval in the 2018 general election, amends the Arizona Constitution so the provision barring public retirement system benefits from being diminished or impaired is amended to permit certain adjustments to the corrections officer

retirement plan pursuant to SB1442 and the elected officials' retirement plan pursuant to HB 2545.

Amending Article: XXIX, Section 1, Arizona Constitution

Civil

Chapter 26, HB2240: judgment renewal; time period

Increases, from 5 years to 10 years, the time period to enforce and renew a judgment after entry.

Sections Amended: §§12-1551, 12-1611, 12-1612, 12-1613, 33-964

Chapter 28, HB2038: drug overdose review teams; records

Law enforcement agencies must provide unredacted department reports to the chairperson of a local drug overdose fatality review team upon request. All information and records acquired by a local drug overdose fatality review team are not subject to subpoena, discovery or introduction evidence in a civil or criminal proceeding or disciplinary action. Information within the report that would otherwise be available through other sources is subject to subpoena, discovery or introduction into evidence.

Questioning a member of a local drug overdose fatality review team or any person who presented information to the review team in any civil or criminal proceeding or disciplinary action regarding information presented is prohibited. An individual may testify regarding information obtained independently of the review team or public information.

Section amended: §36-198

Chapter 127, SB1376: landlord tenant act; personal property

A landlord who repossesses a dwelling unit must hold the tenant's personal property for 14 calendar days, instead of 10 days or 21 days if the tenant was evicted. Grants discretion to the landlord for the removal and disposal of a tenant's perishable items, plants and animals, and any personal property in the unit that is contaminated or poses a health and safety risk. A landlord may immediately remove and release the tenant's abandoned animals to a shelter or boarding facility, or notify animal control.

If after 14 days the tenant makes no reasonable effort to recover the personal property, the landlord is permitted to donate the personal property to a qualifying charitable organization (in addition to the current authorization to sell the personal property). A landlord who complies with statutory requirements for disposition of personal property is not liable for any loss to the tenant or any third party that results from moving, storing or donating any personal property left in the dwelling unit.

If the tenant returns the keys to the dwelling unit and there is personal property remaining in the unit, the landlord is permitted to immediately remove and dispose of the personal property unless the landlord and tenant have agreed in writing to some other treatment of the property.

Sections Amended: §§§3-1368, 33-1370

Chapter 246, HB2588: service animals; misrepresentation

A person who fraudulently misrepresents an animal as a service animal or a service animal in training to a person or entity that operates a public place is subject to a civil penalty of not more than \$250 for each violation as imposed by a court or a duly appointed hearing officer.

Section Amended: §11-1024

Chapter 323, HB2651: landlord tenant; security deposits

A tenant may terminate a rental agreement if the tenant was a victim of sexual assault in the tenant's dwelling. If the tenant does not dispute the landlord's deduction made from the tenant's security deposit within 60 days after the security deposit is mailed, the amount is final and any further claims are waived. Clarifies the statutory list of offenses or actions that constitute a material breach is not exhaustive.

Sections Amended: §§33-1318, 33-1321

Criminal

Chapter 22, SB1076: assault; public safety contractors; workers

The definition of “public safety employee or volunteer” in §13-1210, having to do with the ability to petition the court for an order authorizing another person be tested for HIV, common blood borne or other diseases is expanded to include contractors of a state or local law enforcement agency or correctional facility as well as any other person authorized to perform official duties or be present within a correctional facility.

Section Amended: §13-1210

Chapter 48, SB1063: produce safety rule; state administration

In pertinent part, it is a Class 1 Misdemeanor to impede the department of agriculture in efforts to perform duties related to produce safety or make any materially false statements or representations in written documents required to be maintained. An inspector who knowingly makes a wrong or improper inspection or produce seizure, accepts monies or other consideration for improper performance, or fails to bring an action to prosecute a violation is also subject to a Class 1 Misdemeanor. Violations of enumerated statutes pertaining to produce safety or rules adopted by the department related to produce safety may be assessed a civil penalty of up to \$1,000 which may be appealed to an administrative law judge, subject to review by the director of the department.

Sections Added: §§3-483, 3-525, 3-525.01, 3-525.02, 3-525.03, 3-525.04, 3-525.05, 3-525.06, 3-525.07

Sections Amended: §§3-102, 3-144, 3-401, 3-413, 3-415-441, 3-443, 3-444, 3-445, 3-446, 3-447, 3-448, 3-449, 3-449.02, 3-449.03, 3-449.04, 3-449.05, 3-450, 3-458, 3-466, 3-481, 3-484, 3-485, 3-486, 3-487, 3-488, 3-489, 3-490, 3-491, 3-492, 3-494, 3-496, 3-497, 3-498 3-521, 3-527.01, 3-527.02, 36-104, 36-136, 41-1005 and 49-221

Sections Repealed: §§3-415 and 3-483

Chapter 49, SB1077: fund solicitations; charities; unlawful acts

The list of unlawful acts when planning, conducting, or executing a solicitation of funds for a charitable purpose is expanded to include the misrepresentation of a donation as tax-deductible, going to a non-profit, or qualifying for a tax credit. A contracted fundraiser who commits any of these acts is subject to a Class 6 Felony and an independent solicitor who commits any of these acts is subject to a Class 1 Misdemeanor.

Section Amended: §44-6561

Chapter 61, HB2007: disguise; aggravating circumstances

It is an aggravating circumstance if a defendant used a mask or disguise during or immediately following an offense to obscure the defendant's face in order to avoid identification.

Section Amended: §13-701

Chapter 76, HB2053: sexual extortion

The crime of sexual extortion is created for knowingly communicate a threat (defined) with the intent to coerce another person to do any of the specifically listed sexual acts. The offense is a Class 3 Felony, except it is a Class 2 Felony and a dangerous crime against children if the victim is under 15 years of age. If the victim is under 15 years of age, the defendant must register as a sex offender.

Section Added: §13-1428

Sections Amended: §§13-705, 13-3821

Chapter 83, HB2312: setting aside conviction; requirements

The court must inform a defendant about the application process at the time of sentencing. Persons convicted of a dangerous offense, an offense for which the defendant is required to register as a sex offender, an offense where there is a finding of sexual motivation, an offense where the victim is under fifteen years of age or most traffic violations the defendant is not eligible to have the conviction to set aside.

The clerk of court may not charge a fee for an application to set aside a conviction. The clerk must notify the department of public safety (DPS) who must annotate the set aside on the person's criminal history; however, the clerk may not redact or remove any part of the record.

Law enforcement is not required to redact or remove a record or information from the record of the person whose conviction has been set aside. DPS and the board of fingerprinting may still consider a conviction that has been set aside in evaluating an application for a fingerprint clearance card.

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, pled and proven in a subsequent prosecution of the person, and by the department of transportation to enforce its administrative provisions.

Section Amended: §13-907

Chapter 109, SB1502: ignition interlock device; incarceration credits

The time that a person is required to have an ignition interlock device installed in a motor vehicle as a result of a DUI or Aggravated DUI Drugs conviction is reduced by the length of time that the person is incarcerated.

Section Amended: §29-3319

Chapter 115, HB2245: prohibited bail; sexual conduct; molestation

Amends the offenses that are nonbailable to include Sexual conduct with a minor and Molestation of a child under either of the following circumstances:

- at the time of the offense, the person was at least 18 years of age and the victim was under 13 years of age; or
- at the time of the offense, the victim was 13 or 14 years of age and the person was at least 10 years older than the victim.

Section Amended: §13-3961

Chapter 135, HB2248: incompetency; screening; sexually violent persons

Upon receiving a report that a defendant is incompetent to stand trial, the county attorney may request a screening to determine if the defendant is a sexually violent person if the report concludes there is no substantial probability that the defendant will regain competency within 21 months after the date of the original finding of incompetency and the defendant was ever convicted or found guilty but insane of a sexually violent offense.

Section Amended: §13-4518

Chapter 150, SB1381: service contracts

In pertinent part, it is a Class 2 Misdemeanor to sell any service contract that has not been approved by the department of insurance, not just motor vehicle service contract programs.

Section Added: §20-1095.06

Sections Amended: §§20-1095, 20-1095.01, 20-1095.02, 20-1095.03, 20-1095.04, and 20-1095.07

Section Repealed: §20-1095.06

Chapter 170, SB1494: environment; underground injection control program

In pertinent part, commencing underground injection or construction of an underground injection well without a permit or violating an underground injection standard or permit requirement is subject to a Class 2, 5, or 6 Felony depending on intent.

Sections Added: §§49-257 and 49-257.01

Sections Amended: §§49-203, 49-210, 49-250, 49-261, 49-262, 49-263 and 49-264

Chapter 181, HB2244: dangerous crimes; children; fictitious age

It is not a defense to a dangerous crime against a child if the minor victim is fictitious, an adult, a peace officer posing as a minor, or older in age than the defendant

believed, if the defendant knew or had reason to know the purported minor was under 15 years of age.

Sections Amended: §§13-705, 31-412, 41-1604.11, 41-1604.13

Chapter 186, SB1041: residency restrictions; sex offenders; victims

An individual convicted of a dangerous crime against a child who is required to register as a sex offender is prohibited from living within 1,000 feet of the real property where a former victim resides. Allows for an exception if the conviction requiring registration is failure to register or failure to change address or name or the person receives written consent from the victim or victim's parent or guardian if the victim is a minor unless the parent or guardian is the offender.

It is a defense if the person unknowingly established the residence within 1,000 feet of a former victim's residence, the individual moved within 30 days after receiving actual knowledge of the victim's residence and the individual did not have contact with the victim within that 30-day period.

A first offense is a Class 1 Misdemeanor, a second or subsequent violation is a Class 6 Felony.

Section Amended: §13-3727

Chapter 190, SB1386: high tech tax fraud

In pertinent part, it is a Class 5 Felony to manufacture, develop, possess, sell, purchase, transfer, use, install or sell as a service the installation of, any automated sales suppression device, service, zapper or phantom-ware with the intent to defeat or evade any tax that is due. A first offense may be designated a Class 1 Misdemeanor.

Section Added: §42-1116.02

Section Amended: §42-1127

Chapter 202, HB2246: jail; prohibited items; drugs

A person is prohibited from knowingly bringing marijuana, narcotic drugs, or dangerous drugs as defined in §13-3401 into a jail or onto the grounds of a jail. A violation is a Class 5 Felony.

Section Amended: §31-129

Chapter 203, HB2314: misdemeanor sentence; authorized disposition

A court may impose a term of community restitution, education, or treatment for misdemeanor offenses. The court must determine the program of education or treatment and fix the number of community restitution hours to be performed. The length of time a person may be sentenced to education or treatment is limited to the term of probation permitted under law.

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

Section Added: §13-717

Section Amended: §13-603

Chapter 204, HB2315: intensive probation; employment wages; monitoring

Antiquated language requiring the chief adult probation officer to collect, deposit, and distribute wages paid by paycheck to a probationer is replaced with a requirement that a person's probation officer monitors the person's income to ensure compliance with court-ordered financial obligations.

Section Amended: §13-918

Chapter 219, SB1394: DHS; reporting; abortions

In pertinent part, a technical change that reletters statute designating a Class 3 Misdemeanor for the willful disclosure of information obtained from abortion provider reports.

Section Amended: §36-2161

Section Added: §36-2163

Chapter 223, SB1451: patient referral inducements; prohibited compensation

It is illegal for a person, health care provider, health care facility or sober living home to refer patients or clients to or from a sober living home or a substance use disorder treatment facility or accept or acknowledge the enrollment of a patient or client for substance use disorder services at a sober living home in exchange for any form of compensation. The penalty ranges from a Class 3,4, or 6 Felony based on the value of the unauthorized compensation.

Statute Added: §13-3730

Chapter 226, SB1503: delinquent restitution; procedure

Adult probation departments must notify the court when a probationer misses the equivalent of four full monthly restitution payments, including the reason for the arrearage, the expected duration of the arrearage, and a recommendation to the court that either further action is not warranted (including specific reasons) or that a review hearing should be held. Requires a copy of the report be submitted to the state as well as the victim if the victim requested notice.

Any objection by the prosecutor or the victim to the recommendation must be filed with the court within ten days after the notification was provided to the party. The court may hold a review hearing on its motion after considering the report from the probation officer and any objection filed and an automatic hearing within 45 days is required upon request of the state or victim. Nothing precludes the filing of a petition to revoke or modify probation or an order to show cause and a hearing isn't required if a petition to revoke probation or an order to show cause is filed.

Section Amended: §13-804

Chapter 232, HB2249 protective orders; filing requirements

Various changes to statutes relating to protective orders and injunctions against harassment are enacted. After granting an order of protection, the court is now required to provide the order to a law enforcement agency, constable or entity authorized to serve process based on which court issued the protective order. The service entity must provide

confirmation of service to the plaintiff as soon as practicable or notify the plaintiff if service cannot be completed within 15 days of receiving the order. The service entity must continue to try to serve the defendant. An affidavit, declaration, acceptance or return of service must be filed no later than 72 hours, excluding weekends and holidays, with the clerk of the issuing court or as otherwise required by court rule.

The plaintiff's contact information must be provided to the court for notification and service purposes on a separate document or database not subject to disclosure unless ordered by the court. An emergency order of protection expires at the end of the next judicial business day or 72 hours after issuance, whichever is longer. All other injunctions against harassment or orders of protection expire within one year of issuance if not served.

A judicial officer who issues an oral emergency order of protection must document the order as soon as practicable. The law enforcement agency must file a certificate of service with the court and register the emergency order of protection with the National Crime Information Center as soon as practicable. For non-emergency orders, the court is required to register the injunction with the National Crime Information Center, instead of with the county sheriff, within 24 hours of filing. The supreme court, instead of the county sheriff, must maintain a central repository for orders of protection and injunctions.

Sections Amended: §§12-284, 12-1809, 12-1810, 13-3602, 13-3624

Delayed effective date of January 1, 2020

Chapter 236, HB2306: towing companies; insurance companies; owners

In pertinent part, failure by a tow company to release a vehicle on receipt of a request for release and payment of authorized fees and charges is a petty offense for the first violation. Any subsequent violation within three years is a Class 3 Misdemeanor.

Section Amended: §28-4847

Chapter 237, HB2313: sentencing; monetary obligations; fine mitigation

The court may adjust the period of a probationer's supervised probation on the recommendation of an adult probation officer for earned time credit if the probationer is current on court ordered restitution and in compliance with all other nonmonetary obligations. A probationer must comply with all nonmonetary obligations to be eligible for probation earned time credit. The court may mitigate all or part of the \$20 probation assessment.

A judge may mitigate a fine, except a mandatory fine, if the payment would cause a hardship on the person convicted or on the person's immediate family. Hardship criteria are enumerated. If a mandatory fine is imposed, a judge may mitigate a surcharge, other than the clean elections surcharge. Civil penalties and surcharges are added to the list of financial obligations for which a court may order community restitution in lieu of payment after a finding that the defendant is unable to pay all or part of the monetary obligation. The victim related portion of the surcharge is eliminated and replaced with a fixed assessment to hold victim funds harmless. The community restitution program is expanded to superior court. The court may not impose community restitution in lieu of the clean election surcharge, family offenses assessment, dangerous crimes against children and sexual assault assessment, victims' rights enforcement assessment, victims' rights fund assessment, or the address confidentiality program assessment.

The annual interest that accrues on a criminal restitution order in favor of the state is reduced from 10% to 4%. Victim restitution remains at 10%. Conforming changes are made to the restitution, garnishment and probation revocation statutes.

Sections Added: §§12-116.08, 13-825, 13-915, 31-404

Sections Amended: §§12-114.01, 12-116.01, 12-116.02, 13-805, 13-810, 13-812, 13-824, 13-924, 41-191.08, 41-1730, 41-2401, 41-2407

Section Repealed: §41-2407

Delayed Effective Date of January 1, 2019

Chapter 256, SB1400: aggravated DUI; sentence; county jail

The sheriff of a county with fewer than 500,000 people may establish an aggravated DUI jail program. The program cannot be implemented without an agreement between the department of corrections (DOC) and county board of supervisors.

A person's mandatory term of incarceration may be served in a county jail if the person is convicted of an aggravated DUI in the county the offense was committed in or a contiguous county. A person who is incarcerated in a county jail pursuant to the program is not eligible for any release, work detail, or monitoring program that would not be otherwise available in DOC.

Sections Amended: §§28-1383, 28-1443, 41-2405

Chapter 269, SB1211: sentence; life imprisonment; parole eligibility

A person who was convicted of first-degree murder, sentenced to life imprisonment, and entered into a plea agreement stating that person would be eligible for parole after serving a minimum number of calendar years is eligible for parole after serving the specified number of years in the agreement.

Applies to those who were sentenced to life with the possibility of parole between January 2, 1994 to August 3, 2018. A person is granted parole is required to remain on parole for the remainder of the person's life unless revoked.

Section Added: §13-717

Section Amended: §41-1604.09

Chapter 287, SB1098: industrial hemp; licensing

In pertinent part, industrial hemp propagation, manufacturing, distribution and market research subject to regulation by the department of agriculture and violations of statutes, rules or orders pertaining to industrial hemp are a Class 1 Misdemeanor.

It is an affirmative defense to prosecution for possession or cultivation of marijuana if the accused is an industrial hemp licensee or designee or agent of a licensee

in compliance with statute. It is not a defense to prosecution for possession, sale, transportation or distribution of marijuana if the product is not industrial hemp.

Delayed Effective Date. August 3, 2019

Sections Added: §§3-311, 3-312, 3-313, 3-314, 3-315, 3-316, 3-317, 3-318, 3-319, and 3-320

Sections Amended: §§13-3405, 41-619.51, 41-1758, 41-1758.01 and 41-1758.07

Chapter 296, HB2235: dental therapy; licensure

In pertinent part, it is a Class 6 Felony for a person to practice dental therapy unless the person has obtained a license from the state board of dental examiners.

Section Added: §32-1276, 32-1276.01, 36-1276.02, 32-1276.03, 32-1276.04, 32-1276.05, 32-1276.06, 32-1276.07, and 32-1276.08

Sections Amended: §§32-1201, 32-1201.01, 32-1207, 32-1231, 32-1235, 32-1263, 32-1263.02, 32-1264, 32-1291.01, 32-1299, 41-619.51, 41-1758 and 41-1758.01,

Chapter 344, SB1496: prisoners; drug sentences; out-of-custody treatment

An inmate convicted of possession or use of marijuana, dangerous drugs, narcotic drug, or drug paraphernalia who is not concurrently serving another sentence for an offense is eligible for the prison transition drug treatment program. The Department of Corrections may not exclude an inmate from the transition program solely due to a lack of identified housing upon released. The director must exclude an inmate who has been previously convicted of a violent crime, is the subject of a felony detainer, has been in violation of a major rule, or has a history of violating conditions of release.

Section Amended: §31-281

Family

Chapter 54, SB1198: blind persons' rights; adoption; custody

A court may not solely use a person's blindness as cause for refusing to certify a prospective adoptive parent or denying an adoption petition, authorizing the removal of a

child from home or denying reunification efforts, limiting parenting time and decision making, or denying a guardianship. Any person alleging that a person's blindness is detrimental to a child must prove by clear and convincing evidence that the blind person's behavior endangers the health, safety, or welfare of the child. The court must make specific findings on the record if adoption, guardianship, visitation, reunification rights were denied or limited.

Sections added: §§§8-136, 8-509.01, 8-831, 14-5213, 25-417

Chapter 128, SB1393: dissolution; human embryos; disposition

In the event of a dissolution of marriage in which there is a dispute over custody of human embryos, the court must award the embryos to the spouse who intends to allow them to develop to birth. If only one spouse provided gametes but both spouses intend to allow the embryos to develop to birth, the spouse who provided the gametes must be given custody of the embryos.

A spouse who is not awarded embryos has no parental responsibility, right, obligation, or interest concerning any child resulting from the disputed embryos unless the spouse provided gametes and consents in writing to be a parent to any resulting child of the disputed embryos.

A spouse who provided gametes and does not consent to be a parent must provide the spouse awarded the embryos with detailed written nonidentifying information that includes the health and genetic history of the spouse and spouse's family.

Section Added: §25-318.03

Chapter 153, SB1473: dependent children; placement; kinship care

A petition alleging that a child is dependent must include whether the Department of Child Safety (DCS) believes that an aggravating circumstance exists and the list of aggravating circumstances is expanded to include substance exposure to a child under the age of six months in certain circumstances. DCS must provide written notice at least 15 days before the disposition hearing to the court and the parties if there is evidence being presented that an aggravating circumstance exist. Requires DCS file a motion for

termination of parental rights within ten business days if the court finds that an aggravating circumstance exists unless termination of parental rights is not in the best interests of the child.

DCS must file information with the court regarding attempts to identify and notify relatives and individuals with a significant relationship with a child. A foster parent or kinship care placement with whom a child under three has lived with for nine months or more is presumed to be a person with a significant relationship with the child.

Sections Added: §8-514.06, §8-844.01

Sections Amended: §§8-503, 8-514, 8-514.03, 8-514.04, 8-841, 8-845, 8-846

Juvenile

Chapter 14, HB2278: child support rights transfer

The Department of Economic Security may transfer child support rights to a child's caretaker without requiring a written statement from the caretaker if there is a court order placing the child with the caretaker.

Section amended: §46-444

Chapter 136, HB2259: juvenile court facilities; shelters; use

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

Section amended: §8-209

Chapter 149, SB1380: children; out-of-home placement

A child welfare agency, licensed foster home, or kin that is the out-of-home placement for an individual who is at least 16 years of age must obtain and provide access for the individual to her or his own birth certificate, identification card, and immunization records.

The Department of Health Services and ADOT must give the placement provider a birth certificate, nonoperating identification license, or immunization records if the provider makes a request and the Department of Child Safety verifies the current placement.

DCS must provide a foster parent or kinship placement with the social security number of a child upon request for a lawful purpose within 90 days and any child in DCS custody who is at least 14 years of age must be given the child's social security card within 120 days of a written request from the child.

Requires an out of home provider who is providing care for a child who is at least 16 years old to work with independent living programs to assist the child in meeting career, education, and future developments planning goals.

Section added: §8-514.06

Section amended: §8-513

Chapter 173, HB2006: minimum age; marriage

A person who is under 16 years of age is forbidden to marry and a minor who is at least 16 years of age but under 18 years of age may only be married if the minor's prospective spouse is no more than three years older. The minor must either be emancipated or the parent or guardian with custody of the minor must consent to the marriage. The clerk of the superior court is prohibited from issuing a marriage license to a person who is under 18 years of age who does not meet these requirements.

Section amended: §25-102

Section repealed: §25-122

Chapter 191, SB1395: temporary custody without court order

The superior court, based upon a dependency petition filed by an interested person, a peace officer, a child welfare investigator or a child safety worker under oath or upon a sworn statement or testimony by a peace officer, a child welfare investigator or a child safety worker may issue an order authorizing the department to take temporary

custody of a child if the court finds there is probable cause believe that temporary custody is clearly necessary to protect the child from suffering abuse or neglect and it is contrary to the child's welfare.

A child may be taken into temporary custody without a court order if exigent circumstances exist. Exigent Circumstances is defined as the child being likely to suffer serious harm in the time it would take to obtain a court order for removal and either of the following are true:

- a) There is no less intrusive alternative that would reasonably and sufficiently protect the child's health or safety; or
- b) The child is a suspected victim of a sexual offense or an offense involving a serious physical injury that can only be diagnosed by a physician or a healthcare provider who is specifically trained in evaluations of child abuse.

The court must find independent probable cause for each child subject to a petition for court authorized removal.

Section amended: §8-821

Chapter 301, HB2356 juvenile court; jurisdiction; age

The juvenile court must extend its jurisdiction over a juvenile until the juvenile turns 19 if the child is at least 17 years old, has been adjudicated delinquent, and notice is filed by the state. A juvenile who is 18 years of age and under the juvenile court's extended jurisdiction who commits a new criminal offense must be discharged from the juvenile court's jurisdiction.

The court can order continued probation supervision and treatment services until the juvenile turns 19 unless terminated earlier by the court. Probation supervision and treatment services may be discontinued if the court determines it is not required or in the best interest of the juvenile or the state, or if the juvenile commits a criminal offense after turning 18 years of age.

A juvenile between the ages of 18 and 19 may be detained in a juvenile detention center if charged with a non-dangerous offense.

Removes all employees of a juvenile court, except for probation officers, juvenile surveillance officers, and juvenile detention officers, from mandatory inclusion in a county merit system or judicial merit system. Allows discretion to the presiding judge of each county superior court to include juvenile court employees or deputy directors in the merit system.

The Supreme Court's Director of Juvenile Court Services must submit an annual report to the presiding judge of the superior court and the legislature that includes the number of juveniles that the court has retained jurisdiction over and provide a copy to the secretary of state.

Sections amended: §8-202, §8-204, §8-246, §8-272, §8-273, §8-305, §8-341, §8-341.01, §8-342, §8-344, §8-371, §41-1450, §41-2801, §41-2504.01, §41-2815, §41-2820.

Probate

Chapter 102, SB1204: trusts and estates

An interested person may contest a will or institute other proceedings or actions relating to an estate without penalty if probable cause exists for the contest or action. A devisee, in addition to an heir, may commence a formal probate proceeding no more than four months after receiving the information about the will unless a later will is discovered.

On commencement of a formal testacy proceeding a petitioner must give notice of where the hearing will be held via publication in a newspaper of general circulation at least three times before the date set for the hearing and post the notice at least fourteen days before the hearing.

A person is not a beneficiary solely because the person is or would be entitled under the terms of a trust instrument to one or more specific distributions of property that have already been satisfied.

Prohibits a person from requiring a trustee furnish copies of excerpts from the trust instrument unless the person provides the trustee with a verified statement that presents a reasonable basis for the request.

Section added: §14-10113

Sections amended: §14-1304, §14-2517, §14-3306, §14-3403, §14-10105, §14-10506, §14-10813, §14-10819, §14-11013

Chapter 328, HB2656: electronic wills and trusts

The definition of “will” is expanded to authorize the use of an electronic will, defined as a testamentary instrument executed and maintained in an electronic medium. Electronic wills must be created and maintained in an electronic record, contain the electronic signature of the testator or someone directed by the testator, and contain the electronic signature of at least two persons who are physically present when the will is signed. The witnesses must electronically sign at a reasonable time after witnessing the testator sign the will. The electronic must be dated and contain a copy of government-issued identification.

Questions raised about an electronic will are to be determined in the same manner as paper wills, and the law is exempt from applying to trusts other than a testamentary trust created in an electronic will.

An electronic will is self-proving if it meets the requirements for an electronic will and contains the electronic signature and seal of a notary public. The electronic will must be in the custody of a designated qualified custodian at all times until the will is offered for probate or reduced to a paper copy. The qualified custodian cannot be related by blood, marriage, or adoption or be a devisee or a relative to a devisee under the electronic will. Directs the custodian to include a visual record of the testator and the witnesses taken contemporaneously with the execution of an electronic will and to store electronic records in a safe manner. The custodian must also store a visual record of any documentation taken with the execution of the electronic will, and an audio and video recording of the testator, the witnesses, and the notary public if applicable. Furthermore, allows the custodian to be called to serve as a fact witness regarding the electronic will. Additionally, the bill creates standards for the qualified custodian agreeing to serve or cease service.

Access to the electronic will is restricted to the testator or another person directed by the testator in written instructions. After the death of the testator access to the electronic will is permitted by the nominated personal representative of the testator or interested persons.

An electronic will may be destroyed one hundred years after the testator's death, five years after the testator's last will is admitted to probate, and after appellate opportunities have been exhausted. A qualified custodian may destroy an electronic will by written direction of the testator.

Creates directions for obtaining a certified paper original of an electronic will and allows the persons entitled to real property to obtain a certified paper original.

Sections added: §14-2518, §14-2519, §14-2520, §14-2521, §14-2522, §14-2523

Sections amended: §14-1201, §14-2502, §14-2506, §14-2507, §14-3402, §14-3971

Delayed effective date of July 1, 2019

Transportation

Chapter 81, HB2243: wrong-way driving; violation; DUI

Driving the wrong way (defined) on a controlled access highway constitutes a civil traffic violation. The violator is required to attend and complete an approved traffic survival school class. Driving the wrong way on a controlled access highway while DUI constitutes an aggravated DUI.

Section Added: §28-694

Section Amended: §28-1383

Chapter 113, HB2169: driving violations; restricted licenses; penalties

The court may restrict as well as suspend a person's driver license or permit to drive as a sanction for non-major traffic offenses (excludes DUI, reckless driving, aggressive driving and hit and run) and failure to pay a civil traffic penalty. Standardizes the scope of restrictions throughout the transportation code.

Law enforcement is no longer required to impound a vehicle if a person is driving on a suspended license. If the person is driving on a revoked license, law enforcement must still impound the vehicle.

The court may mitigate a court-ordered civil penalty if the payment would cause a hardship on the person convicted or on the person's immediate family. Hardship criteria are enumerated. Surcharges are reduced as they are a component of the mitigated fine.

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.

Driving on suspended license for failure to appear or failure to pay a civil traffic violation and driving on a restricted license for failure to wear corrective lens are reclassified to a civil traffic violation.

Sections Added: §§28-144, 28-1603, 28-3482, 28-3483

Sections Amended: §§25-518, 28-661, 28-1387, 28-1401, 28-1402, 28-1601, 28-3308, 28-3473, 28-3480, 28-3511, 28-4135

Delayed effective date of January 1, 2019

Chapter 123, SB1110: photo radar; review; penalty

Law enforcement agencies, not photo enforcement companies, must review the evidence of a photo radar ticket to determine whether there was a violation for excessive speed before issuing a citation. A violation is a Class 1 Misdemeanor.

Section Amended: §28-1602

Chapter 147, SB1203: vehicle towing

In pertinent part, a person must register with the department of public safety before operating a tow truck for the purpose of towing vehicles. Failure to register is a civil traffic violation.

Section Added: §28-1108

Sections Amended: §§28-1095, 28-2153 and 41-1830.51

Chapter 224, SB1455: civil traffic violations; procedures; penalties

A complaint for a violation of a speeding restriction must include the identification of the defendant, the date and time of the alleged violation, the location of the alleged violation, as well as the speed at which the defendant was driving, and the maximum speed allowed. The speed at which the defendant was driving, and the maximum speed allowed are no longer required to be included on the summons.

An original civil traffic citation must be amended through the court pursuant to court rules if a peace officer or duly authorized traffic agent changes the date, time or location of the violation or the section of law that is allegedly violated.

The department of transportation (ADOT) cannot not consider a civil traffic violation resulting from operating a bicycle to determine whether the person's driver license should be suspended or revoked. The court will not transmit an abstract of the record of the violation to the ADOT.

An insurer cannot consider a civil traffic violation resulting from operating a bicycle as a moving violation against the person for the purpose of establishing rates for motor vehicle liability insurance or determining the insurability of the person. An insurer cannot cancel or refuse to renew an insurance policy because of the violation.

The court may dismiss a disability parking complaint if no vehicle operator was present at the time the citation was written, the officer served a complaint on the registered owner of the vehicle and the person produces proof of a disability placard for the registered owner's vehicle that was valid on the date of the violation.

Sections Amended: §§28-707, 28-812, 28-885, 28-1592

Chapter 260, SB1200: transportation revisions

In pertinent part, a nonresident daily commuter is no longer required to display nonresident daily commuter indicia on a motor vehicle. The Class 1 Misdemeanor designation for making a false certification on an application for renewal of a driver license

by mail is repealed along with the authority of the department of transportation's ability to renew certain licenses by mail.

Sections Added: §§28-7618, 28-7711

Sections Amended: §§28-305, 28-363, 28-755, 28-871, 28-960, 28-961, 28-1385, 28-2059, 28-2261, 28-2293, 28-2294, 28-2295, 28-2356, 28-2513, 28-3153, 28-3158, 28-3166, 28-3171, 28-4145, 28-5615, 28-5639, 28-5648, 28-5703, 28-5721, 28-5724, 28-5952, 28-6922, 28-7058, 28-7059, 28-824241-835.01 and 41-835.03

Sections Repealed: §§28-481, 28-482, 28-483, 28-484, 28-485, 28-486, 28-487, 28-488, 28-489, 28-490, 28-1821, 28-1822, 28-1823, 28-1824, 28-3051, 28-3052, 28-3172, 28-3477, 28-4543, 41-512, 41-513, 41-514, 41-515, 41-516, 41-517, and 41-518

Chapter 298, HB2307: scrap vehicles; sales

In pertinent part, a person who knowingly gives false, fraudulent or erroneous information in a signed statement, falsely certifies the truthfulness and accuracy of information supplied in connection with the statement or who knowingly sells a vehicle that is subject to an unsatisfied lien is subject to a Class 1 Misdemeanor and a fine of \$2,500.

Sections Added: §§28-2098, 44-1642.02

Sections Amended: §§13-1802, 13-3728, 28-101, 28-2097, 28-4301, 28-6991, 41-3451, 44-1321 and 44-1641

Chapter 302, HB2383: HOV lane; emergency vehicle

An authorized emergency vehicle that is in use by a first responder on duty may use the HOV lane.

Section Amended: §28-737

Chapter 303, HB2384 unlawful flight; vehicle impoundment

The crime of unlawful flight from law enforcement is expanded to include a driver who flees or attempts to flee an unmarked law enforcement vehicle if the driver admits to

knowing the vehicle was a law enforcement vehicle or there is evidence the driver knew the vehicle was a law enforcement vehicle.

An officer may remove a vehicle if the driver leaves the vehicle and continues to engage in unlawful flight from a law enforcement by other means, including on foot or in another vehicle.

Sections Amended: §§28-622.01, 28-4834

Chapter 310, HB2522: traffic violations; penalties

The penalty for causing serious physical injury or death by moving violation is increased from a Class 3 to a Class 1 Misdemeanor. The maximum discretionary driver license suspension is increased to 180 days for a first offense if the offense results in serious physical injury and one year if it results in death. The mandatory driver license suspension for a second or subsequent offense within 36 months is increased to 180 days for a first offense if the offense results in serious physical injury and one year if it results in death. The suspension period is consecutive to any other suspension period. The restitution cap is increased to \$100,000 and the fine cap of \$1,000 is removed.

The definition of causing death by a vehicle is expanded to include causing death or serious injury if at the time of the accident the person's license is suspended for failure to provide proof of financial responsibility resulting from a DUI. The sentence is consecutive to any other sentence imposed out of the same accident and restitution is required. The department of transportation must revoke the person's license or permit to drive for one year (not including time incarcerated) as a result of a conviction of any portion the section. Causing death by a vehicle is reclassified to a Class 3 Felony if the person's license was suspended at the time due to implied consent or failure to provide proof of financial responsibility resulting from a DUI.

Sections Amended: §§28-672, 28-675, 28-676

Chapter 312, HB2527 ticket surcharge; public safety equipment

The surcharge on court ordered diversion programs for traffic offenses is increased by \$4 with the additional monies dedicated to the newly established Peace Officer

Training Equipment Fund. An additional assessment of \$4 is also added on every civil penalty imposed and collected for a civil traffic violation, and on every fine, penalty, or forfeiture for a criminal violation of the motor vehicle statutes, or for any local ordinance relating to stopping, standing, or operation of a vehicle. This assessment is also deposited into the fund. The court may mitigate all or part of the assessment in the same manner and subject to the same limitations as the mitigation of fines in section 13-825, subsection B (enacted by Chapter 237, HB 2313).

Appropriates \$20,000 for one-time programming costs for the supreme court.

Sections Added: §12-116.08, 41-1731, 41-1732

Sections Amended: §§12-114, 41-1273

Delayed effective date of January 1st, 2019

Chapter 322, HB2650: commercial license; defensive driving school

A commercial driver license holder may attend defensive driving school if the offense was committed in a non-commercial vehicle. The court must forward an abstract of a record of judgement against a CDL holder to the department of transportation (ADOT) who cannot consider the violation when determining whether to revoke or suspend the driver's license of the person.

The court may not impose a civil penalty for the traffic citation for which the individual attended and successfully completed defensive driving school.

Insurance companies must consider the citation as a dismissed traffic citation if the CDL holder successfully completes the defensive driving school program, though an insurer may consider the citation for underwriting and rating purposes for any policy covering the vehicle.

All fees that apply to a person attending defensive driving school as a diversion program apply to a CDL holder.

Section Added: §28-3394.01

Sections Amended: §§12-114, 28-3392, 28-3394, 28-3396

Delayed effective date of September 1, 2019

General effective date: August 3, 2018, unless otherwise noted.