

**Arizona Judicial Council
Government Affairs Group
Legislative Update
March 19, 2020**

Judicial Council Bills:

HB2087: Lengthy Trial Fund; Digital Evidence

Permits the court to spend unused fund balances in the renamed Arizona Lengthy Trial and Digital Evidence Fund (ALTDEF) to construct a digital evidence storage and display system. Requires the court to compensate jurors for lengthy trial prior to spending money from the ALTDEF for digital evidence and display.

Repeals current law requiring all available medical and criminal history records be provided to the court within three working days of the filing of a Rule 11 petition. Court rule mandates the records be provided to the examining mental health expert(s) within three days of the expert's appointment by the court.

Permits the court to appoint "one or more" experts to examine the defendant and report to the court as to the defendant's competency in misdemeanor cases. The current statute requires two experts. No other state has such a requirement.

HB2233: Court Rules; Electronic Signatures; Court Documents

Permits the Supreme Court to adopt rules governing signatures on court documents, including the implementation of electronic signatures that require a sworn written declaration, verification, certificate, statement, oath, or affidavit.

HB2235: Record of Proceedings; Certified Reporter

Requires a court reporter on all felony and sexually violent persons cases with five court days' notice, if a reporter is available. Permits a party to have a court reporter take down the proceeding, however, the court record is the official record.

HB2411: Conviction; Penalties; Surcharge Distribution

Surcharge revenue is distributed for crimes committed before 2019 as per the law in effect, essentially on Dec. 31, 2018 so the victim funds will obtain the monies.

Contains an emergency clause but would not take effect until July 1, 2020.

HB2412: Conviction; Set Aside; Traffic Violations

Removes traffic and vehicle violations, civil traffic offenses and any local ordinance relating to stopping, standing or operation of a vehicle from the list of offenses that cannot be set aside.

HB2413: Juvenile Court; Disposition

Builds on the provisions of last session's bill to improve case disposition for juveniles involved in the criminal justice system who are making progress toward their sentences or have successfully completed their sentencing requirements.

- Grants authority to the prosecutor to file a Notice of Intent to Retain Jurisdiction at any time prior to adjudication. Current law limits that authority to the time the petition is filed, or the case is transferred from the criminal court. Current law remains the same in that if the prosecutor files the notice, jurisdiction is automatically extended.
- The juvenile court is granted jurisdiction to modify a monetary obligation imposed by the court (victim restitution is excluded) after the person's eighteenth.
- Clarifies the process for restoration of the juvenile's second amendment rights, any judicial officer in the superior court can restore the rights, not just the judge who discharges the person. The Clerk of Court instead of the applicant must provide a copy of the application to the county attorney. The clerk cannot charge a fee for the application.
- A person whose referral to juvenile court resulted in either a completed diversion program or no charges being filed and who turned eighteen prior to August 27, 2019 may apply to have the juvenile records destroyed within ninety days of the petition being granted. Current law covers only persons who turn eighteen on or after August 27, 2019.
- Removes the requirement that a juvenile be placed on intensive probation for a second felony adjudication if the court determines based upon the severity of the offense and a risk assessment that intensive probation services are not required. Does not preclude intensive probation.
- Removes the statement that a juvenile who is on probation for an alcohol or drug offense who is found to have consumed alcohol, or a drug is in violation of probation (that is a court finding after a plea or hearing). Removes the requirement that the person be brought before the court, for a third violation.
- Removes the prohibition against placing a juvenile on probation for over a year if the parent objects.
- Rewrites the mandatory warning given to a juvenile offender upon adjudication as to subsequent consequences to comply with current law and make it easier for the juvenile to understand.
- Requires the Clerk of Court to notify the DPS if a juvenile record is destroyed.

HB2611: Records; Confidentiality; Hearing Officer

Permits a Hearing Officer (defined as a Civil Traffic Hearing Officer), former prosecutor, Municipal Court Commissioner and Appellate Court Commission member to petition the superior court to prohibit the general public from accessing records relating to the person as maintained by the department of transportation, the county treasurer, assessor, and recorder, including voter registration records.

Other Bills:

HB2257: Arrest Procedures; Magistrates

Allows a peace officer to take an arrested person to either the nearest or most accessible magistrate in the county in which the arrest occurs, or a magistrate in the county where the offense was committed.

Note: For information only

HB2320: Psychiatric Security Review Board; Hearings

Makes numerous reforms to the Psychiatric Security Review Board (“PSRB”), the body overseeing criminal defendants who have been adjudicated guilty except insane (“GEI”). Among other statutory changes, the bill:

- Adds a former Appellate or Superior Court judge to the Board as the chairperson and a nonvoting member, except if necessary to break a tie vote.
- Establishes requirements for a person who is conditionally released by the Board, including that a supervised treatment plan must be in place (still under PSRB jurisdiction).
- Establishes specific hearing requirements and procedures.
- After a hearing, if the Board finds by clear and convincing evidence that the defendant no longer suffers from a mental disorder, no longer needs ongoing treatment, is not dangerous, and does not have a propensity to re-offend, jurisdiction over the person may be transferred to Superior Court for judicial review, imposition of the sentence, placement on probation, or both.

Note: Would like to support both the “former judge” and “ability to place the defendant on probation” provisions. Rep. Barto is allowing us to use one of her bills for the Digitization of Evidence striker (which we are using that bill for Court Reporters). Dave suggested the judge on PSRB provision and I suggested the judge be the chair. Probation numbers are small.

HB2304: Federal Only Ballots; Paper; Tabulation

Requires the AOC to obtain the following information from each county, city and town of people who were disqualified in the previous month for jury service based on lack of United States citizenship and transmit to the SOS and AG:

- Name
- Date of birth
- Residence
- Father's name or mother's maiden name, if available.

Note: Probably do not want a vote. No sense going on record when the bill most likely will not go anywhere.

HB2383: Sentencing Ranges; Minimum; Maximum; Repeal

The sentencing ranges for various criminal offenses are modified. The "minimum" and "maximum" sentencing ranges are deleted. The ranges formerly called "mitigated" are renamed as "minimum" ranges and the ranges formerly called "aggravated" are renamed as "maximum". One exceptional circumstance is required to deviate from the presumption. Consolidates various duplicative provisions.

Note: Would like to support, all parties agree the changes would simplify the sentencing code. The recommendations arise out of the Earned Release (Criminal Justice Reform) committee, which I chaired and included Ron Reinstein, Barry Aarons and a few more. MCAO included recommendations for simplification. At least in Maricopa County, the plea script does not include the middle ranges.

HB2644: Liability Insurance Restatement; Prohibition

The Restatement of Law Liability Insurance is not the law or public policy of Arizona if the statement of the law is inconsistent with, in conflict with or otherwise not addressed by the U.S. Constitution, the Arizona Constitution, state statute, Arizona case law precedent, or other common law adopted by the state.

As legislative findings the bill states:

- The Restatement of the Law, Liability Insurance is not an unbiased compilation of the law on liability insurance.
- Restatement of the Law, Liability Insurance does not follow the established precedent or summarize legal trends.
- For these reasons, the legislature's purpose in adopting this act is to identify the Restatement of the Law, Liability Insurance as a publication consisting of the recommendations and opinions of its authors rather than an orderly statement of existing law applicable in this state.

Note: The opponents were trying to get President Fann to ask you for an opinion. It is moving.

SB1487: Caregiver Protections; Placement Provider Investigation

Establishes procedures the Department of Child Safety is required to follow if an allegation of abuse is made against an out-of-home placement provider and a process for a conflict resolution conference if an allegation other than abuse is made against an out-of-home placement provider.

Requires two members of the local Foster Care Review Board or Court Appointed Special Advocates to be present at conflict resolution conferences within three days after an allegation is made.

Note: Most of it is a DCS battle, except for the expanded use of the FCRB and CASA. Bill was brought to Sen. Eddie Farnsworth by some constituents. He seems to simply be deferring to them. Recommend Neutral on the bill, however, oppose the FCRB and CASA provisions.

SB1507: Administrative Review of Agency Decisions

For review of final administrative decisions of agencies that regulate a profession or occupation under Title 32 (Professions and Occupations), or specified articles in Title 36 (Public Health), which refer to nursing care institution administrators, assisted living facilities managers, midwives, hearing aid dispensers, audiologists and speech-language pathologists, there must be a trial de novo if demanded in the notice of appeal or motion of an appellee other than the agency.

In a proceeding brought by or against the regulated party, the court must decide all questions of fact without deference to any previous determination that may have been made on the question by the agency.

Note: The AG is trying to kill behind the scenes, mainly affects them and Maricopa County Superior Court. There is a fiscal note pending that could help doom it. We should stay Neutral but back up Maricopa County in request for resources. There is talk the Governor will Veto, however, cannot count on that. Comes from Americans for Prosperity and Goldwater Institute.

3/16/2020