

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
June 19, 2008	<input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislative Update

FROM:

Jerry G. Landau, Director of Government Affairs, AOC

DISCUSSION:

Review of Legislation proposed by and of interest to the Arizona Judicial Council and Superior Court Presiding Judges.

RECOMMENDED COUNCIL ACTION:

No action required.

Arizona Judicial Council
June 2008 Legislative Report

2008 LEGISLATIVE PROPOSALS

CHAPTER 54/ SB1050: COURT REPORTER CERTIFICATION (SEN. LINDA GRAY)

The requirement that certificates issued by the Board of Certified Court Reporters be renewed every year is removed. The time frame for the expiration and renewal of certificates is to be set in Rule. The sunset date of the Board is also removed.

A.R.S. § 32-4009, 32-4023

CHAPTER 185/ SB1043: RETIREMENT; CORP; JUDICIARY; OTHER DESIGNATED POSITIONS (SEN. TIBSHRAENY)

The local board of the judiciary under the Correctional Officer Retirement Plan (CORP) may designate a position within the Administrative Office of the Courts (AOC) as a CORP position if the employee filling the position:

- Is a current member of CORP
- Is already in a designated position in the judiciary
- Has at least five years of credited service in CORP
- Has direct contact with and primarily provides training or technical expertise to probation, surveillance or juvenile detention officers.

The position is returned to non-designated status when the employee leaves the position.

A.R.S. § 38-881, 38-881, 38-891

HB2109: INTERSTATE COMPACT (REP. YARBROUGH)

The requirement of a legislative appropriation for an increase to Arizona's annual Interstate Compact for Supervision of Adult Offenders assessment in excess of the statutory amount is replaced with the requirement of a report to the Joint Legislative Budget Committee (in addition to the existing approval of the assessment by the state council).

A.R.S. § 12-267, 31-467

HB2207: SENTENCING; REORGANIZATION (REP. FARNSWORTH)

The classification and sentencing provisions of the Criminal Code (Title 13, Chapters 6 and 7) are reorganized. Sentencing provisions requiring math are replaced with charts. Related provisions are grouped in the same statute and unrelated provisions are grouped in separate statutes. Definitions common to multiple statutes in Title 13 are placed in one section (§13-105). Virtually all sentencing provisions in Chapter 7 are organized in a logical sequence. No substantive or philosophical changes are made to the sentencing code, with the exception of three minimum or maximum sentences that are rounded. Delayed effective date will either be January 1, 2009 or October 1, 2009.

A.R.S. § 8-201, 8-203.01, 8-321, 8-341, 8-348, 8-350, 11-361, 11-459, 12-2703, 13-105, 13-107, 13-501, 13-502, 13-604, 13-607, 13-610, 13-701, 13-702, 13-703, 13-704,

13-709.01, 13-709.02, 13-709.03, 13-709.04, 13-710, 13-901.01, 13-902, 13-905, 13-906, 13-907, 13-909, 13-910, 13-912.01, 13-921, 13-1104, 13-1105, 13-1204, 13-1207, 13-1212, 13-1304, 13-1307, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1414, 13-1417, 13-1423, 13-2308.01, 13-2312, 13-2411, 13-3107, 13-3113, 13-3206, 13-3212, 13-3407, 13-3407.01, 13-3408, 13-3409, 13-3411, 13-3419, 13-3422, 13-3552, 13-3553, 13-3554, 13-3601, 13-3623, 13-3716, 13-3727, 13-3821, 13-3824, 13-3828, 13-3994, 13-4032, 13-4062, 13-4501, 13-4511, 13-4515, 15-341, 15-512, 15-550, 20-448, 25-411, 31-281, 31-403, 31-412, 41-1604.08, 41-1604.10, 41-1604.11, 41-1604.13, 41-1604.14, 41-1604.15, 41-1604.16, 41-1609.05, 41-1758.03, 41-1967.01, 41-2814 and 46-321

A.R.S. § 13-119; 13-604 as amended by Laws 2007, Chapter 248, Section 1; 13-604 604 as amended by Laws 2007, Chapter 287, Section 1; 13-604.03, 13-702.01, 13-702.02, 13-711, 13-712 (repealed)

A.R.S. § 13-604.01 as 13-705, 13-604.02 as 13-708, 13-604.04 as 13-901.03, 13-609 as 13-709, 13-703 as 13-751, 13-703.01 as 13-752, 13-703.02 as 13-753, 13-703.03 as 13-754, 13-703.04 as 13-755, 13-703.05 as 13-756, 13-704 as 13-757, 13-705 as 13-758, 13-706 as 13-759, 13-708 as 13-711, 13-709 as 13-712, 13-713 as 13-706 (transfer and renumber)

SCM1004: FEDERAL TAX INTERCEPT PROPOSAL (SEN. TIBSHRAENY)

Urges the United States Congress to enact legislation authorizing the Dept. of Treasury to intercept federal tax refunds to pay overdue victim restitution and other financial obligations ordered by criminal and traffic courts.

BILLS OF INTEREST

CHAPTER 39/ HB2488: DEFENSIVE DRIVING SCHOOLS (REP. JIM WEIERS)

The court's prerogative to contract with a primary defensive driving school provider is eliminated. A violator may attend any defensive driving school that complies with the court's automation and reporting requirements. An individual may attend another Supreme Court certified defensive driving school on application to the court if the individual shows that attending any of the defensive driving schools that comply with the court automation and reporting requirements creates a hardship.

A law enforcement officer or a jurisdiction issuing a civil traffic citation must provide notice to the violator that the person may attend any of the Supreme Court certified driving schools, if eligible. Effective January 1, 2009.

A.R.S. § 29-3393

CHAPTER 152/HB2745: EMPLOYER SANCTIONS S/E SAME SUBJECT (SEN. BURNS)

Makes changes to the Employers Sanctions from last year including:

1) *Expanding statutory identity theft*: The definition of 'taking the identity of another person' is expanded to include accepting personal identification information of another person with the intent of obtaining or continuing employment. The definition of

'trafficking in the identity of another person' is expanded to include the intent of obtaining or continuing employment.

2) *Establishing protocols for allegations of and punishments for violations of employing unauthorized aliens:* A complaint must be filed on form prescribed by the attorney general; requiring notarization or the social security number of the person filling out the complaint is prohibited. The 'frivolous' standard is changed to 'false and frivolous'. The attorney general and county attorney may investigate allegations not submitted on the complaint form; the investigation of complaints based solely on race, color or national origin is prohibited. Complaints must be filed in the county the alleged unauthorized alien was employed in. The county sheriff and local law enforcement agency may assist in investigating a complaint; any state, county or local officer is prohibited from making an independent determination as to whether or not an individual is authorized to work here.

For a first violation the court shall order:

- 1) The employer to terminate all unauthorized alien employees;
- 2) The employer to a five year term of probation for the business location where the unauthorized alien worked;
- 3) The appropriate agencies to suspend all license held by the employer for a minimum of ten days; and
- 4) The employer to sign a sworn affidavit which states that the employer has terminated the employment of all unauthorized aliens and will not intentionally or knowingly employ an unauthorized alien.

When determining whether or not an individual is an unauthorized alien the court is only permitted to consider the federal government's determination. Licenses eligible for suspension are those specific to the site where the unauthorized alien worked. If the employer does not have a license specific to the particular location, the employer's general license is suspended. The length of suspension of relevant licenses is determined by the court based on:

- 1) The number of unauthorized aliens employed,
- 2) Any prior misconduct by the employer,
- 3) The degree of harm resulting from the violation,
- 4) The duration of the violation,
- 5) Whether or not the employer made a good faith effort to comply with regulations,
- 6) Any other factors the court deems appropriate.

For a second violation licenses are permanently revoked rather than suspended.

3) *Amending state employment law requirements:*

Several changes to state employment laws are enacted.

4) *Requirements of government entities when entering into contracts and of employers to receive state benefits are enacted:*

Various situations and circumstances to the law requiring the participation in the E-Verify program are included.

5) *Clarifying confusion surrounding 'independent contractors' and redefining related terms:*

Defines 'independent contractor' and 'social security number verification service'. Enumerates factors for determining if an individual is an independent contractor. In

cases of independent contractor, the independent contractor is the employer, not the person that uses the contract labor. Redefines 'employee', 'employ' and 'employer'.

Emergency Clause: effective May 1, 2008

A.R.S. § 13-2008, 13-2010, 23-211, 23-212, 23-212.01; 23-214, 23-215, 23-216; 23-361.01, 41-1080, 41-4401

CHAPTER 193/SB1339: LAW ENFORCEMENT; PROBATION; OFFICERS; INVESTIGATIONS
(SEN. LINDA GRAY)

The employer of a law enforcement or probation officer may require an employee to submit to a polygraph if the officer makes a statement during an investigation that differs from information known to the employer about the investigation and it is necessary to reconcile the differences in order to complete the investigation. The polygraph must be recorded and a copy must be provided to the officer.

The right to a peremptory change of hearing officer that currently applies to cases being heard by the Office of Administrative Hearings is expanded to include cases where the employer is located in a county of two hundred and fifty thousand or more or a city of sixty-five thousand or more. The employer carries the burden of proof in the appeal of a disciplinary action. The definition of a disciplinary action is modified to include any dismissal, demotion or suspension of more than 24 hours, currently 40 hours.

Note that population is based on most recent decennial census.

A.R.S. § 38-1101

HB2159: STATE EMPLOYEE; PERSONNEL RECORDS (REP. PATON)

A public body is required to maintain all records necessary to maintain an accurate knowledge of disciplinary actions of any public officer or employee including employee responses to disciplinary actions. These records are open to inspection and available for copying unless specifically prohibited by law.

A.R.S. § 39-128

HB2321: IDENTITY THEFT; FACTUAL INNOCENCE (REP. DRIGGS) S/E SAME SUBJECT

A person may petition the superior court for a judicial determination of factual innocence or factual improper party status if the person's name was, as the result of identity theft, used by another individual who was arrested, charged or convicted of a criminal offense or entered as a record in a civil action or judgment. The petition must be filed in superior court. The process for the transfer of records from the JP court and provides specific requirements for service to affected parties is enumerated. The standard of proof for making the determination is clear and convincing evidence. A victim must be notified of the proceedings and may to be present. The proceeding cannot be used to delay or affect in any other way a criminal case.

Effective January 1, 2009

A.R.S. §12-771, 12-772, 12-773, 13-4440

HB2453: CHILDREN; OPEN COURT PROCEEDINGS (REP. PATON)

All court proceedings related to dependency, permanent guardianship and termination of parental rights are open to the public. The court may close a proceeding for good cause or open a previously closed proceeding upon request. The factors to be considered by the court when determining the closure of a proceeding are enumerated. The court may find an individual in contempt for disclosure of identifying information of a child, sibling or parent.

A.R.S. § 8-824 (Repealed)

A.R.S. § 8-525

SB1160: JUROR SUMMONS; QUESTIONNAIRE; RETURN POSTAGE (SEN. CHUCK GRAY)

A prospective juror is not responsible for paying the return postage, or any other cost, when returning a prospective juror questionnaire issued by a court.

A.R.S. § 21-314, 21-331

SB1265: PERSONNEL ADMINISTRATION; LAW ENFORCEMENT OFFICERS (SEN. JOHNSON)

The right to a peremptory change of hearing officer that currently applies to cases being heard by the Office of Administrative Hearings is expanded to include cases where the employer is located in a county of two hundred and fifty thousand or more or a city of sixty-five thousand or more. The employer carries the burden of proof in the appeal of a disciplinary action. The definition of a disciplinary action is modified to include any dismissal, demotion or suspension of more than 24 hours, currently 40 hours.

Note that population is based on most recent decennial census.

A.R.S. §38-1101

SB1332: DNA TESTING; ARREST (SEN. CHUCK GRAY)

The court at initial appearance is required to order a DNA sample be collected if charged with an enumerated offense only if the defendant appears on a summons. The change is intended to eliminate collection of duplicate samples. The judicial officer at an advisory hearing where the juvenile appeared on a summons is required to order a juvenile to report and provide a DNA sample within 5 days to the law enforcement agency that arrested the juvenile for one of the now clarified enumerated offenses. If the juvenile does not comply the court is required to revoke the juvenile's release.

A.R.S. § 13-610, 13-3967

A.R.S. § 8-238 (added)

SB1476: PROBATION; FACILITIES; SAFE COMMUNITIES ACT (SEN. HUPPENTHAL)

Probation Earned Time Credits

The court may adjust a probationer's period of probation for earned time credit (ETC) in the amount of 20 days for every 30 days that the probationer meets specific requirements. The following offenders are excluded from being eligible for the new ETC option:

- On probation for Class 2 or 3 felony,

- Exclusively on probation for a misdemeanor,
- On lifetime probation, or
- Required to register as a sex offender.

This new section does not impact the ability of the court to early terminate probation pursuant to A.R.S. 13-901 (E)—the current early termination statute.

Fiscal Incentives

Appropriates, beginning in fiscal year (FY) 2011, 40% of the savings achieved by reducing probation revocations resulting in sentences to ADC to the county if there is a reduction in the number of supervised probationers convicted of new felony offense. The amount of savings is based on comparing the previous FY rate to the baseline rate established in FY 2008. Outlines the process for calculating the savings and specifies how the appropriated savings must be used. Monies appropriated as savings may not used to supplant any other state or county appropriation for probation. A joint report from the Arizona Department of Corrections and the Administrative Office of the Courts must be submitted to various legislative agencies by October 1 and the data that must be contained in the joint report is specified. A performance audit of this new program must be completed by the Auditor General by June 30, 2014.

The new ETC section is effective January 1, 2009 to allow for rulemaking. The new ETC section applies to anyone on probation from and after the effective date of the act.

A.R.S. §12-267

A.R.S. §12-270, 13-924 (added)

JUDICIARY BILLS

CHAPTER 82/SB1186: JUDICIAL PERFORMANCE REVIEWS; COURT COMMISSIONERS (SEN. CHUCK GRAY)

Superior Court Commissioners in counties with a population of 250,000 or more in are now included in judicial performance review. Public participation in the process is required through hearings and public dissemination of reports, including posting on the Supreme Court website.

Note that population is based on most recent decennial census.

§12-119.04

HCR2024: AIRCRAFT; LICENSE TAX; TECHNICAL CORRECTION S/E JUDGES; MERIT SELECTION; POPULATION THRESHOLD (REP. PEARCE)

The population threshold for merit selection of judges within a county is increased from 250,000 to 600,000 population. Current judges are grandfathered in and allowed to continue serving for the duration of the current term.

Article VI, Arizona Constitution

HCR2063: ACCOUNTABILITY; CLEAN ELECTIONS FOR JUDGES (REP. PEARCE)

The Arizona Constitution is amended to repeal merit selection of judges. A separate and different process is established for the election of judges in counties with populations of 800,000 people or more. In these counties, the board of supervisors will establish

judicial districts that consist of nearly equal populations and coincide with board of supervisors districts. Judges in counties with populations of 800,000 or more serve staggered six year terms and must reside in the district and county in which they are running for a position, however, current judges are grandfathered in. The presiding judge is directly elected. In the case of a vacancy, the board of supervisors will appoint a judge of the same political party as the judge vacating office to serve out the term. The Clean Elections Act is expanded to include judges, prescribe the primary election spending limits and increase the amount of money that the Citizen's Clean Elections Commission may spend.

Article VI, Arizona Constitution

A.R.S. § 12-102, 12-121, 16-311, 16-322, 16-949, 16-962, 38-431.08