

for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

Volume 13, Issue 7

July 2003



2003 Legislative Review

Forty-Sixth Legislature – First Regular Session

By Kathleen Carey, Legislative Liaison

The First Regular Session of the 46th Legislature began with a record number of freshman legislators and a budget crisis that likely caused the fewest number of bills to be considered (908) and submitted (285) in ten years. The Governor vetoed seventeen (17) bills in addition to 35 line item vetoes on budget bills. In the end, 268 bills were signed or filed into law.

The legislature adjourned sine die on June 19, 2003. The session lasted 158 days, the seventh longest in Arizona's history. Unless otherwise noted, the effective date for laws passed is ninety days after the session ends — 12:01 a.m. September 18, 2003.

I want to take this opportunity to thank everyone for his or her help. Since this was my first year as the Public Defender liaison, I needed my fair share of assistance. A special thank you has to go to Shannon Slattery for helping me with the transition. Thank you to all of the Legislative Committee members for your commitment and assistance, particularly on the GEI, Duty to Report and Hit and Run bills. Last but not least, to everyone who

provided me with special insight into the many areas of their expertise and practice. The work for next year's session is already underway at the Capitol, so please consider passing along your thoughts, concerns or issues as we head toward the next session.

As you might expect, some of this year's activity can be attributed to cases and events that took place over the past year (or more) in the state and across the country. September 11th brought about the elimination of the risk of employment termination to officers and employees of the state for belonging to the communist party, replacing it with the activity of aiding terrorism. Significant changes were made to Title 21 pertaining to juries, including the elimination of a law enforcement officer's mandatory obligation to serve as a juror. A lengthy trial fund was created along with substantial changes and burdens that a potential juror must meet in order to be excused. Public Defenders, broadly defined, have now been added to individuals eligible to request confidentiality of their personal records.



*Delivering
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for The Defense

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Volume 13, Issue 7

James J. Haas, Maricopa County Public Defender

There were, of course, more crimes and sentencing changes added to the books. "Spam" was addressed this year as was furnishing harmful material to minors on the internet. The duty to report child abuse crimes was broadened, along with the requirement for sex offender registration to include campus reporting and mandatory registration prior to a release from incarceration or custody. The authority for breath and blood alcohol testing standards was transferred from DHS to DPS. Attempts failed at making it a class one misdemeanor for a boat operator to refuse a test to determine the presence of alcohol or drugs with the resulting legislation actually eliminating the petty offense aspect of the existing law. However, it will cost the boat operator twice as much as it did last year in civil fines.

Capital punishment statutes now include more aggravating factors as well as the "conditional" passage of broadened victim's rights. If it becomes constitutional, victims will be permitted to appear and give statements and opinions at the penalty phase of the case. The victim will not be subject to cross-examination and statement(s) are not required to be disclosed to the court, the prosecutor or the defendant.

Some highlights of legislation that was successfully defeated include the determination of status for guilty except insane defendants as dangerous and not requiring treatment, despite the verdicts in their cases. An attempt

to require DNA testing for anyone arrested (including those individuals not charged or convicted) for a felony or misdemeanor failed due to budget constraints. Jessica's Law (named after the ASU freshman who was killed by a hit and run driver) was again defeated because of the unintended consequences of requiring mandatory prison if the presence or admission of "any" alcohol consumption was involved. A victim's omnibus bill of tremendous magnitude failed but portions of it were resurrected by amending a different bill. Activity in the victim's rights arena can be expected to return since similar efforts are pending at the federal level.

This update provides both the statute and bill number to assist you in reviewing the bills in their entirety prior to publication. This can be done by accessing the Arizona State Legislature's website at <http://www.azleg.state.az.us> or the Supreme Court's website at <http://www.supreme.state.az.us>. If you need assistance locating a bill, legislative history, testimony or research training, please contact me at the Maricopa County Public Defender's Office. I can be reached at (602) 506-2800.

TITLE 5 - AMUSEMENTS AND SPORTS

Section 5-395.03 - Test for alcohol concentration or drug content; refusal; civil penalty. Boating while intoxicated and penalty for a refusal to be tested for alcohol or drug use has been changed from a petty offense and a mandatory fine of \$300 to a discretionary fine of \$750 and no longer a petty offense. (SB1283)

TITLE 8 - CHILDREN

Section 1 - Open juvenile proceedings; pilot project; confidential records; report. Repeals a program that was established in 1997 but never implemented while establishing a new pilot project to open proceedings for five to ten percent of the juvenile court caseload to the public. (SB1304)

Section 8-243 - Liability of parents to bear expense. Expands the provision to evaluate financial ability and require payment by the parents, guardian or child's estate of a minor

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First Annual APDA Statewide Conference A Huge Success

If We Do Say So Ourselves!

By Dana Hlavac, Mohave County Public Defender
Jim Haas, Maricopa County Public Defender

In an incredible showing of solidarity, over 550 attorneys, paralegals, investigators, mitigation specialists, and administrative professionals came together in Tempe on June 17th and 18th for the First Annual Arizona Public Defender Association (APDA) Statewide Conference. The conference was attended by attorneys and staff from every county public defense office in Arizona, the public defender offices of the cities of Phoenix and Tucson, the Arizona Federal Public Defender offices, and the Navajo Nation Public Defender's Office. They were joined by a large number of contract and private attorneys and staff from around the state. By all accounts, the conference was a huge success.

The energy of that many people, all dedicated to indigent representation, in one place at one time was amazing. There were countless reunions of old friends and untold introductions to new ones. There was the gratifying feeling of having support staff finally being included and recognized as the full-fledged partners of their attorneys that they have always been. The overwhelming sensation was elation that we finally have something to call our own. It was great fun.

The conference offered a wide array of topics for the attendees to choose from, organized in nine tracks that expanded to eleven for part of the first day. Over 50 sessions were presented by over 70 speakers. The vast majority of the speakers were members of Arizona public defense offices or contract attorneys or staff, as one of APDA's goals in presenting the conference was to recognize and showcase the immense talent that is enjoyed within the indigent defense family.

At lunch on the first day of the conference, the APDA board recognized several individuals for their remarkable dedication and contribution to indigent representation. The award winners were chosen by the board from nominations solicited throughout the state. They were:

Outstanding Administrative Professional – **Delores Amos**, Cochise County Public Defender; **Nancy Bolt**, Mohave County Public Defender; and **Adella Perry**, Pima County Public Defender.

Outstanding Investigator – **Gene Reedy**, Pima County Legal Defender.

Outstanding Paralegal – **Anita Pitroff**, Yavapai County Public Defender.

Outstanding Mitigation Specialist – **Linda Shaw**, Maricopa County Public Defender.

Outstanding Attorney – **Donna Beumler**, Cochise County Public Defender; and **Dean Brault**, Pima County Public Defender.

Lifetime Achievement Award – **Christopher Johns**, Maricopa County Public Defender; and **Frank Leto**, Pima County Public Defender.

Gideon Award – **Hon. Dean Trebesch**, former Maricopa County Public Defender and current Maricopa County Superior Court Judge.

In addition, a special award was given to **Chris McBride** for his extraordinary effort in helping attorneys across the state deal with litigation concerning the ADAMS database fiasco.

Like most seminars, APDA asked participants

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to evaluate the conference and to share ideas for making future conferences even better. According to the evaluations, the conference was received in an overwhelmingly positive manner. Seventy-three percent of those who completed the evaluation rated it "Excellent," the remaining 27% rated it "Good." One hundred percent of those who completed the survey said that they would recommend the seminar to their colleagues.

The comments on the evaluation included the following:

"Outstanding organization. Best service by a facility of any seminar I've attended (the snack selection was unbelievable)."

"I've been practicing criminal law in the State of AZ for 12 years and this is the best seminar I have ever attended. Excellent work."

"The facility was excellent. Seminar very organized and flawless - Reaching national levels of long established providers."

"I have coordinated seminars on a professional level and was very impressed with this seminar! Thanks."

"The only issue I have with the seminar is that there are too many sessions I would like to attend occurring at the same time. I really like the location. It was easy to get to and very accommodating."

The logistical and financial implications of organizing a statewide conference of this size are daunting under the best of circumstances. The difficulty was multiplied this year by the fact that APDA had only two months to pull it all together. The reason for this is that the APDA wanted to hold its conference at the same time as the statewide judicial conference, to enable as many people as possible to attend. Unfortunately, because of the uncertainty of the budget situation this year, the Administrative Office of the Court considered canceling the judicial conference. In April, the AOC had still

not decided whether the judicial conference would be held. When it finally decided that the judicial conference would proceed as planned, the APDA had only two months to put its conference together.

Luckily, the APDA is blessed to have on its board of directors a person who is very experienced at putting together large conferences: City of Phoenix Public Defender Gary Kula. Gary worked tirelessly and, with the help of the other directors and their staffs, the conference came together in what must have been record time. The APDA board would like to publicly thank Gary for all of his hard work and expertise on this conference. We truly could not have done it without him.

The directors of the APDA want to build on the success and enthusiasm that so many of you exhibited during the conference. We received many good ideas, and plan to expand the conference to two full days to add more programs. Several people suggested a golf tournament - we will look into it.

It is important that this organization serve your needs. To that end, the directors are discussing the formation of committees to work on issues faced by APDA members of all functional categories: attorneys, paraprofessionals, administrative professionals, and managers. In addition, members are being sought to serve on committees dealing with standards of practice, public awareness/education, technology/website, juvenile law, fund-raising, and annual conference planning. If you would like to actively participate in ensuring the success of the APDA as an organization formed to serve you, or if you have any ideas, please contact the director of your office, who is an APDA board member.

On behalf of all of the directors and officers of the APDA, we thank you for your participation in the annual conference and look forward to working with you in the coming year. Stay tuned for the dates for the Second Annual Statewide Conference in 2004.

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committed to the Department of Juvenile Corrections or other institutions to include the costs of foster care, probation or treatment programs. (HB2020)

Section 8-368 – Adoption of interstate compact for juveniles. Addition of Article 5.1 authorizing the Governor to enter into compacts with other states for the purpose of juvenile runaways, criminals and their victims. Establishes the committee, requirements, and funding for membership in the Compact and includes data collection provisions. Effective upon 35 member states or July 1, 2004, whichever is later and supercedes the earlier 1955 Compact. (HB2106)

Section 8-385.01 - Victims' rights for neighborhood associations. Adds crimes of graffiti and the firing of a firearm at an occupied structure to the list of those for which neighborhood associations may receive victim rights notice and/or to be permitted to invoke victim rights. (HB2482)

Section 8-802 - Protective services worker; powers and duties; alteration of files; violation; classification (i.e., Child Abuse Reports). Makes changes to requirements for investigation and reporting of child abuse findings to include determination of "probable cause" and advising guardian, parent and/or reporting individual of the results of the investigation. Also requires a separate entry into the DES Case Management Information System regarding whether a suspect has been identified or not and adds an additional burden for the Department to make efforts to determine if a specific person is responsible for the abuse or neglect of a child. (HB2133)

TITLE 11 CRIMINAL PROCEEDINGS; TIMING

Section 11-461 – Recording instruments; keeping records; identification; location. Expands current statute to allow the county recorder to accept the digitized image of a recordable instrument from active members of the Arizona State Bar. (HB2129)

Section 11-483 – Records maintained by county

recorder, confidentiality, definitions. Adds justices, judges, public defenders, and victims of domestic violence in counties with a population of more than 500,000 (presently, Maricopa and Pima counties) to those eligible for limiting access of personal information from the public. Defines public defenders to include county, municipal, federal, legal defender and county contract defenders. In order to apply for this coverage, an applicant must complete a form that is processed following specific guidelines. The forms are filed quarterly by the Public Defender unless an emergency requires sooner protection. The information to be confidential is provided by the applicant (i.e., self reported and initiated) with a requirement to provide copies of supporting documentation. (HB2108)

Section 11-584 - Public Defender duties; reimbursement. Amends the time period to collect the maximum \$25 administration fee from a defendant's initial appearance or a juvenile's advisory hearing to anytime during the proceedings for court appointed cases. Funds collected are used to help offset public defender and court appointed counsel costs. (HB2110)

Section 11-1024 - Service animals; rights of individuals with disabilities; violation; classification; definitions. Prohibits discrimination (and offers examples of some types of discrimination) of a disabled person with a service animal. Provides for criminal penalty of a Class One Misdemeanor for discrimination in addition to civil penalties. Creates a standard of taking responsible precautions to avoid injury by operators of motor vehicles by yielding to blind person utilizing a cane, service animal and/or sighted individual as a guide. (HB2410)

TITLE 12 – COURTS AND CIVIL PROCEEDINGS

Section 12-115 - Additional filing, appearance and answer or response fees; deposit. Requires the Supreme Court to establish additional fees for each filing, appearance and answer or response fee charged by the Clerk of the Superior Court. Provides for exemptions for state, county and city filings (12-304) and indigent individuals. (12-302) (HB2520) See

also: 21-202

Section 12-511 - Civil action arising from criminal conduct; definitions. Extends the time period for a victim to sue a defendant until one year after the conviction or adjudication of criminal proceedings if no conviction. Extension does not apply to insurance carrier or defendant's employer suits. (HB2407)

Section 12-1551 - Issuance of writ of execution; limitation; renewal; death of judgment debtor; exemptions. Adds types of fees and costs to types of permitted judgments for supervision fees and for incorrigible or delinquent juveniles while exempting them from five-year time limit for execution. (HB2131)

Section 12-2239 - Domestic violence victim advocate and victim; definition. Defines Domestic Violence Victim Advocate, training requirements, reporting duties and "privileged communications" as to no examinations for civil litigation, abuse of minors, while providing for a mechanism to request in-camera review by a judge upon motion. (SB1098)

TITLE 13 – CRIMINAL CODE

Section 13-604 – Sentences. Defines "Absconder" while excluding the time period in absconder status for purposes of alleging priors and enabling an enhancement of sentence to be extended for the prior. Absconder is defined as a probationer who has moved from his or her permanent address, without probation's permission, has been gone for 90 days and has had a petition filed against him alleging that his whereabouts are unknown. A provision was included to avoid exclusion of time if a court finds the probationer was not on absconder status. (HB2019)

Section 13-610 – Deoxyribonucleic acid testing; exception (i.e., DNA). Clarifies law passed in 2002 and corrects inconsistencies that required individuals subject to testing to pay for the costs when funding is already being derived from surcharges. Requires DNA samples to be submitted by individuals who are in the control

or custody of DOC, Probation or Jail if they were adjudicated (for eligible offenses) prior to the enactment date of January 1, 2003. Also changes provision to require testing of a juvenile that "may be" prosecuted under 13-501(B)(2) instead of "is" prosecuted. Effective January 1, 2004, any felony offense under 13-501 will trigger mandatory DNA testing. (HB2021)

Section 13-702 – Sentencing. Criminalizes (Class 6 Felony) threatening or intimidating to cause physical harm, serious property damage or serious public disturbance against someone who reports crimes individually or members of a non-law enforcement crime prevention organization. Retaliation against a victim for reporting crime is also added as an aggravating factor for purposes of sentencing. (HB2208)

Section 13-703 - Sentence of death or life imprisonment; aggravating and mitigating circumstances; definition. Serious crimes committed on the same occasion, consolidated for trial, or while on probation for a felony are added as aggravating factors for use in determining whether to impose the death penalty by the trier of fact. (SB1267)

Section 13-703.01 - Sentences of death, life imprisonment or natural life; imposition; sentencing proceedings; definitions. Adds additional factors for use in determining life imprisonment or natural life as a sentence in a non-death penalty first-degree murder conviction (if not alleged or not imposed). Trier of fact "may" consider any evidence introduced before sentencing or at any other sentencing proceeding. "Shall" consider aggravating or mitigating circumstances from 13-703 and any statements made by a victim. Provides that victim has a right to be heard at the penalty phase pursuant to 13-4426. SB1267)

Section 13-4426 – Sentencing. Provides victim the right to be heard at the penalty phase of the proceeding while broadening what the victim may present to any information or opinion. Places a requirement upon the Attorney General

to notify the Legislature of the effective date the condition is met or not met. *Conditional enactment of June 30, 2013 unless Arizona or U.S. Supreme Court finds Constitutional for victim to make a sentencing recommendation.* (SB1267)

Section 13-4426.01 - Sentencing; victims' right to be heard. New section added that at any proceeding where the victim has a right to be heard that a victim is not a witness and is not subject to cross-examination. Victim's statement is not subject to disclosure to the state, defendant or the court. *Conditional enactment not before June 30, 2013 unless Arizona or U.S. Supreme Court finds Constitutional for victim to make a sentencing recommendation.* (SB1267)

Section 13-1501 – Definitions; Manipulation Key. Defines “manipulation key” as a key used to open a lock or cylinder other than one designed specifically for a lock, including, wiggle keys, jiggle keys or rocker keys. (SB1057)

Section 13-1504 – Definitions. Defines, more broadly, fenced residential, fenced commercial or fenced yard. Creates a new category entitled Critical Public Service Facilities and a Class 6 Felony for entering or remaining unlawfully. (SB1059)

Section 13-1504 - Criminal trespass in the first degree; classification. Distinguishes which type of criminal trespass is a Class One Misdemeanor (entering or remaining unlawfully in fenced in yard) and a Class 6 Felony (entering or remaining unlawfully on a Critical Public Service Facility.) (SB1059)

Section 13-1505 - Possession of burglary tools master key; manipulation key; classification. Adds manipulation keys to the category of burglary tools subject to prosecution for a Class 6 Felony. Provides for exclusions of manipulation keys by legitimate uses by certain types of businesses. (SB1057)

Section 13-3821 - Persons required to register; procedure; identification card. The previously “optional” registration of a sex offender prior to

release from DOC is now mandatory. *Effective 12/31/03.* (SB1088)

Campus Notification. Adds an additional provision for sex offenders required to register to notify the County Sheriff (this is in addition to other registration requirements for the offender's employment and residence) that the offender is attending, volunteering or working at a public or private postsecondary educational institution. Requires offender to notify the County Sheriff of any changes in enrollment or employment status at the institution. Also requires the County Sheriff to notify the law enforcement agency with jurisdiction at the learning institution and for school officials and community notification requirements to be performed. Excludes juveniles adjudicated by a juvenile court unless ordered by the court. (SB1088)

Section 13-1506 - Burglary in the third degree; classification. Entry into any part of a motor vehicle with the use of a master key or manipulation key for the purpose of theft or to commit any felony in the vehicle is burglary in the third degree, a Class 4 Felony. (SB1057)

Section 13-1706 - Burning of wildlands; exceptions; classification. Provides for criminal prosecution ranging from Class 2 Misdemeanor to Class 3 Felony based on the intent of the offender and/or damages. Includes provisions for criminal prosecution for failing to leave public land if ordered by a fire control authority. (HB2507)

Section 13-2314 – Racketeering, unlawful activity; civil remedies by private causes of action, definitions. Adds a retroactivity clause to the Section of August 22, 2002. (HB2021)

Section 13-3112 - Permit to carry concealed weapon; qualification; application; training program; program instructors; report; applicability; violation; classification. Allows concealed weapon permit holders from other states to carry and conceal weapons here in Arizona if the state from where their permit was issued meets specified criteria that are similar to Arizona's requirements. Excludes individuals

under 21 or with a record of any felony convictions, regardless of restoration of rights. (HB2353)

Section 13-3506.01 - Furnishing harmful items to minors; internet activity; classification.

Limits the scope of violations by modifying and defining more specifically “internet” and “web site” and detailing more specific direct types of transmission while specifically excluding postings to a “listserv” or subscribers to a list if the poster does not administer the list. Creates a new crime of a Class 6 Felony for failure to report a violation. (SB1352)

Section 13-3620 - Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions.

Significantly expands the duty to report child abuse to include anyone who reasonably believes a minor has been abused while extending the reporting requirement to numerous medical, counseling and religious practitioners. Also rewrites definitions including “reportable offense” and makes some discovery inadmissible if obtained during court ordered sex offender treatment other than as permitted through the rules of evidence. Eliminates most privileges of nondisclosure, other than attorney client and some statements made in the course of court ordered or in-custody treatment. Failure to report “reportable offenses” is increased from a Class One Misdemeanor to a Class 6 Felony. (SB1352)

TITLE 21 - JURIES

Section 21-202 - Peace Officers excused. Allows a peace officer to be excused from jury duty if the officer submits an application requesting to be excused. *Effective 12/31/03.* (HB2124)

Section 21-202 - Persons entitled to be excused from jury service. All citizens have an “obligation” to serve as jurors when summoned; increases penalties for failure to appear from \$100 to \$500 maximum. Significantly modifies what qualifies as an excuse from jury duty and places the burden upon potential jurors not only

to show that they are eligible for being excused (with documentation) but requiring prospective jurors to pre-qualify for excusal prior to their summons date. *Effective 12/31/03.* (HB2520)

Section 21-222 - Lengthy Trial Fund. Requires Court to collect additional \$20.00 on all filing, appearance and Clerk Fees charged by the court for the purpose of funding the newly created Lengthy Trial Fund while exempting specific types of litigation. The Fund monies will be used by the Court to pay replacement or supplemental wages to jurors required to serve on trials in excess of ten days (if hardship is shown for the fourth through the tenth day of service) up to \$300.00 per day. *Effective 12/31/03.* (HB2520)

Section 21-236 - Absence from employment for jury duty; vacation and seniority rights; automatic postponement; violation; classification. While not requiring an employer to compensate an employee while serving on a jury, prohibits employers from requiring employees to use personal, annual or sick leave in order to serve. Provides for some relief to small business employers who have had more than one juror summoned within a specific time period, without affecting a person’s one automatic postponement. *Effective 12/31/03.* (HB2520)

Section 21-336 - Postponement of jury service. Provides for one automatic postponement of jury service by an individual if one has not been granted previously (or, under an emergency request, on a second postponement, if the emergency could not have been foreseen at the time of the first postponement). Requires the setting of a date certain service by prospective juror not to exceed six months from the date of initial service date. *Effective 12/31/03.* (HB2520)

Section 21-336.01 - Jurors’ term of service; exemption. Defines criteria to determine when an individual has fulfilled their jury duty obligation (i.e., in order to qualify for a 24 month juror service waiting period) and allows Superior Court Judges an exemption for a specified period

of time, but not longer than one year. *Effective 12/31/04.* (HB2520)

TITLE 28 - TRANSPORTATION

Section 28-645 - Traffic control signal legend.

Requires law enforcement officer issuing citation for red light running to advise the offender, in writing, that he or she may attend Defensive Driving School, but if the offender is not eligible, chooses not to attend, or is convicted of the offense, that the offender must attend mandatory Traffic Safety School. This notice must also advise the offender that if Traffic Safety School is required, notice will be given by MVD. Prior to this amendment, the statute did not provide for a mandatory notice by MVD and the Traffic Safety School was mandatory with no provision to attend Defensive Driving School in lieu of Traffic Safety School. Also includes a provision that when an offender is cited in another jurisdiction outside of Arizona, the offender must complete the mandatory Traffic Safety School requirement within sixty days of any judgment. (SB1118) See also, (HB2002)

Section 28-627 – Powers of local authorities.

Permits the service of process by unarmed police aids, volunteers and traffic safety officers for process originating within the municipality the authorized employee works. Excludes service of process for criminal speeding or traffic control violations obtained from automated enforcement technology citations (i.e., cameras or similar devices). (HB2333)

Section 28-667 - Written accident report;

definition. Replaces the requirement that a law enforcement agency maintain a written copy of a police officer's investigation and report from "shall" to "may," except that if the agency does not maintain a written copy, an electronic copy shall be maintained. (HB2388)

Section 28-1322 through 1326 and 28-1462 – Motor Vehicle DUI Rules and Interlock. Provides for MVD to give notice regarding the Imposition of Ignition Interlock Requirement similar to the way that notice is given for suspensions, revocations and cancellations. Also transfers

the rulemaking authority to the Department of Public Safety and away from the Department of Health Services for breath and blood alcohol tests with a provision to keep the regulations in place until they are superceded or adopted by DPS. Also provides that permits for all DHS permit holders for operation of testing devices will remain in effect until revoked. (HB2002) and (SB1044)

Section 28-3168 - Driver license and nonoperating identification license applications; selective service registration; reimbursement.

Requires the Department to include a statement authorizing DOT to provide information for the purpose of selective service registration for males between the ages of 18 to 25 applying for or renewing of driver license applications or identification cards. Implementation shall not occur unless the Selective Service provides funding. *Delayed implementation December 31, 2003 (if funded).* (HB2293)

Section 28-3512-2514 - Suspended Driver License enforcement.

Transfers from MVD to impounding agency (i.e., law enforcement) the requirement to establish and hold post-storage hearings and changes the mandatory language (i.e., "shall") for the allowance of a hearing for other interested parties to permissive ("may"). If the impounding agency does not provide for a hearing, the hearing shall take place in a justice court with the impounding agency required to appear. Reduces from five years to one year the time period by other interested owner from requiring unlicensed driver not to operate the vehicle. Minimizes the impoundment fees to no more than 15 days if notice is not timely provided by impounding agency to the other interested owner/party. (HB2299)

Section 28-4032 – Persons subject to financial responsibility requirements.

Owners of taxis, limousines, etc. are required to comply with financial responsibility requirements and adds provisions for suspension or revocation of owner's driver's license and vehicle registration(s) and a notice provision. *Delayed effective date: July 1, 2004.* (HB2239)

TITLE 31 – PRISONS AND PRISONERS

Section 31-161 - Inmate health care; costs. The costs of medical care permitted to be collected by the Sheriff of county inmates was increased from no more than \$3.00 per medical visit to no more than \$10.00. (SB1268)

Section 31-254 - Compensation for labor performed; price of prison made articles; distribution of earnings; workers' compensation. Prisoners convicted of drug offenses are subject to an additional eight percent deduction from wages to fund a newly created transition program. (SB1291)

Section 31-281 - Transition program; drug offenders; report. Requires Department of Corrections to establish a transition program for drug offenders while setting out eligibility and requirements of program and reporting obligation by the Department. The program may include assistance with employment, job training, housing, treatment services, health care, mentoring and provides for eligible inmates to be released from DOC within 90 days of release date to the program. Inmates who are eligible for release with six months of the enactment date or histories of certain crimes (arson, dangerous, violent or sex offenses) are not eligible to participate. Funding for the program is provided through inmate deductions for wages, liquor taxes already in place and the savings to prisons from releasing inmates early. (SB1291)

TITLE 32 – PROFESSIONS AND OCCUPATIONS

Section 32-1502-1581 – Naturopathic Physicians. Makes numerous changes and additions to definitions for a Class 6 felony for unlawful acts (as added or amended). (SB1084)

TITLE 36 – PUBLIC HEALTH AND SAFETY

Section 36-540.01 - Conditional outpatient treatment. Allows the Medical Director to release an individual ordered for treatment

pursuant to 13-540 (i.e., dangerous to self, others or disabled from the mandatory treatment facility for up to five days to a responsible party (i.e., spouse, relative). Previously, this type of discretion was not permitted. Also adds a provision to allow the Medical Director to permit an individual to leave hospital grounds “unaccompanied” as long as it is part of the individualized treatment and discharge plan and a determination has been made that the patient will not become dangerous or suffer serious physical harm or illness. (SB1111)

Sections 36-2514, 36-2515, 36-2522 - Substances in schedule III; schedule IV definitions; Registration requirements; Prescription order. Makes changes to controlled substance categories by adding esters of GHB to schedule III; Carisoprodol to Schedule IV; prohibits dispensing a prescription for a controlled II substance after 60 days of Rx order. (SB1300)

TITLE 38- PUBLIC OFFICERS AND EMPLOYEES

Section 38-231 - Officers and employees required to take loyalty oath; form; classification; definition. Officers and employees of the state are no longer at risk for mandatory termination of employment if they join the communist party; language is replaced to terminate employment if officer or employee aids in terrorism. (SB1257)

Section 38-783 - Retired members; dependents; health insurance; premium payment; separate account; definitions. Provides for the election and payment of optional health and accident premium for surviving spouse (similar to other contingent annuitant elections). Available only to individuals who retire after 2003 and must be in a health and accident plan in order for benefit to occur. Can be rescinded after designation only if done before retirement begins. A decision to rescind designation is irrevocable. (SB1037)

Section 38-952 - Supplemental defined contribution plan; establishment; administration. Makes statutory changes to Arizona State Retirement System supplemental

defined contribution plan in order to qualify it as a certified plan under Section 401(a) of the Internal Revenue Code. These changes were necessary in order to allow the funds for this “additional” retirement saving mechanism to be withheld on a pre-tax basis. (SB1224)

Section 38-1101 - Law enforcement officers; right to representation; definition. Provides an officer with the right to a legal observer if the officer and the employer believe an interview will subject the officer to termination, suspension or demotion. Precludes right from interviews in the normal course of duty, counseling, instruction, informal verbal admonishments, unplanned contact with a supervisor or other law enforcement officer, preliminary investigations or activities conducted within the course of a criminal investigation. (SB1338)

TITLE 44 – TRADE AND COMMERCE

Sections 44-1372 through 44-1372.05 - Definitions, Regulations, Powers, Remedies, Damages, Court Proceedings, Applicability and Violation Classification. Creates new Article to define and regulate SPAM including secret court proceedings upon request for protection of privacy and trade secrets, remedies and damages and a Class 2 Misdemeanor for violations. (SB1280)

Section 44-1376 - Restricted use of social security numbers; definition. Makes it illegal to intentionally provide someone’s social security number to another, include an individual’s social security number on any card required for receiving services or products, or to require transmission of the number over the internet or to be mailed. *Delayed effective date of January 1, 2005 (if revisions occur such as renewals of insurance policies and identification card changes; otherwise no later than January 1, 2006).* (HB2429).

Epiphany Number Two

By Zachary Cain, Defender Attorney

I remember sitting in the back of the courtroom at justice court. I was in my last semester of law school. It was a Thursday afternoon and I sat in the cheap hard plastic seats in the gallery. No one else sat in the gallery but me, a Rule 38 student-attorney from the Public Defender's Office. On the bench sat the black-robed presiding justice of the peace. To the judge's left sat an expressionless uniformed Phoenix police officer, perfectly perched in the witness box. At one counsel table sat the formally dressed county attorney, his eyes in a fixed stare to his left. At the defense counsel table sat a man in his mid-thirties. The defendant wore dark blue jeans, old brown work boots, a dark green frayed collared shirt and a five o'clock shadow. The defendant teetered nervously back and forth as he leaned forward on his swivel chair. Absolute silence.

Judge: "Sir, would you like to cross-examine Officer Smith?"

Defendant: "Well, see there was this big garbage truck in front of me and I didn't know..."

Judge: "Sir, this is the time for cross-examination. Do you have any cross-examination for the officer?"

Defendant: "But, see, uh, your honor, I didn't know..."

Prosecutor: "Objection. This is not the time for argument."

Judge: "Sir, would you like me to explain what cross-examination is?"

Defendant: "Your honor, if I could just tell you what happened..."

Prosecutor: "Objection!"

As I sat alone in the gallery, I looked at the eyes of the officer, the judge and the county attorney. All three chuckled sarcastically, shaking their heads so as to communicate, "You poor stupid fool." Here was the defendant, Mr. Lopez, thinking he would seek justice by demanding his right to trial. He would prove to the judge he was not an "imprudent driver." Mr. Lopez figured if he could just tell the judge the

circumstances...that he swerved hard and sped-up quickly because the garbage truck in front of him drifted into his lane, nearly forcing him to side-swipe traffic in the next lane...and that the officer obviously only saw the last few seconds of this near-miss.

I watched the court and the county attorney abuse Mr. Lopez for another 15 minutes. After that, I had to leave. Each time the judge or the county attorney spoke, Mr. Lopez gave a completely puzzled expression. Mr. Lopez's eyes begged for help from anyone. He did not understand the formalities of a bench trial. But help came from no one. And my guess is that Mr. Lopez will forever have a bad taste in his mouth for cops, prosecutors and judges. Mr. Lopez was not a bad person. And Mr. Lopez was not a bad person simply because he received a traffic ticket. But Mr. Lopez's bench trial made him feel like an immoral degenerate.

I hate to see people get bullied. When I was a child, I wanted to be a doctor. My desire to become a doctor did not stem from a deep-seeded love for medicine. Rather, I saw the incredible impact a physician could have on a community. My grandfather was a surgeon in my hometown. I grew up in southwestern Montana community of roughly 35,000 people. As a child, I swore every single person in that town knew my grandfather. Even as I started college, I continually ran into people my grandfather treated over the years. And today, when I return home for the holidays, if I dare take my 78 year-old grandfather anywhere, we run into adoring patients wherever we go. The common thread among all these people is their immense respect, admiration and gratitude for my grandfather and the care he administered to them.

I have always aspired to be my grandfather. More specifically, I have always aspired to have the same impact on people's lives as he did. I cannot identify all the qualities that make my

grandfather a fine physician. However, I think at the core, my grandfather was so successful because he truly cared for his patients.

When it comes to medical care, we as patients are entirely helpless due to our lack of knowledge. Many of us place as much blind faith in our doctors as we do our religion. Like medicine, people are just as helpless in the legal system and fear its complexity. Most do not want to attempt to understand the legal system. As a result, we are forced to place a great deal of blind faith in our lawyers as well. After walking myself through this thought process, I decided that good lawyers could have a profound impact on people's lives just as my grandfather did. That conclusion led me to law school. This epiphany came late. I did not decide to go to law school until my last semester of college. In fact, up until that point, I had never before considered becoming a lawyer. I knew absolutely nothing about the process of becoming a lawyer. I lived in darkness for 22 years.

But finally, I saw the light. Once I started law school, I enjoyed the classes because the subject matter was drastically different than the biology and chemistry I studied in undergraduate. My two clerking experiences in law school involved civil litigation. Though I understood the necessity of developing efficient research and writing skills, I could not help but notice that I was not offering a great deal of assistance to people on a one-on-one basis. My last semester of law school, I decided to enroll in one of the school's clinical programs. I was pretty certain I would do the prosecutor's clinic. I knew I had little desire to work in criminal law, but I figured the practical experience could not hurt. I conferred with a good friend who participated in the Public Defender Clinic the semester before. We actually discussed his experiences frequently. He spoke incessantly about the value of his experience in the office. He also spoke very highly about his supervising instructor. He raved about his instructor so much, I chose to enroll in the PD clinic just to make him stop talking.

Wham!! Epiphany number two. I could not

believe the dumb luck that brought me to the job. It was like being blindsided. From the first day of clinic, I knew that I wanted to be a public defender. I was struck by so many things. First, I was impressed by the quality of the people to whom I was exposed. Not only were they good people, they were so talented as attorneys. Second, I realized like medicine, as a public defender I would continue to learn every single day that I worked. That aspect appealed to me. Third, I saw the profound impact a good defense lawyer could have on his clients. I would be able to help people in need every single day. Lastly, I had never known a job to be more entertaining. I have always been a quiet, keep-to-myself kind of person. But in my very short time as a defense lawyer, I have more stories to tell than I know what to do with. I will never lack for conversation again.

After working a few months as a defense lawyer, I do not feel as though I have over-idealized the job. I learned that the job carries baggage as well. But that baggage pales in comparison to the virtues of being a defense lawyer. I continue to meet "good" people. I continue to meet and learn from very talented attorneys. I continue to be entertained to no end by my clients. To their dismay, my family continues to grow tired of my war stories. But most importantly, I continue to meet people who need help...help only a defense attorney can give.

Author's note: This piece originally appeared in AACJ's *The Defender* in April 2001. After two years and eight months, I still enjoy my work as a public defender. I also continue to be thankful for the unlimited access to the great legal minds throughout the office.

Jury and Bench Trial Results

May 2003

Due to conversion problems, the Trial Results for this issue are not included in this electronic version. If you would like to view the Trial Results for this issue of for The Defense, please contact the Public Defender Training Division.

Arizona Advance Reports

Our regular Arizona Advance Reports column will return in our next issue. Thank you for your patience!



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