

2015 LEGISLATIVE UPDATE

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A cooperative project of:

Utah Prosecution Council
Statewide Association of Prosecutors
Layton City Attorney's Office
Salt Lake County District Attorney's Office
Utah Attorney General's Office

Legislative Summary 2015 General Session

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This document is a publication of the Utah Prosecution Council

This publication constitutes summaries of legislation passed during the 2015 General Session of the Utah Legislature relating to criminal law and criminal procedure and to county and city government.

The publication contains summaries only, not the full text of bills. There is no substitute for reading the actual legislative language. Enrolled copies of bills passed during the 2015 General Legislative Session can be obtained by going to the Utah Legislature's web site: <http://le.utah.gov>. Please note: in the electronic version of this document each bill number is hyperlinked, thus allowing the enrolled copy to be accessed by clicking on the bill number. You may also call Utah Prosecution Council (UPC) at (801) 366-0202, or the Statewide Association of Prosecutors (SWAP) at (801) 366-7809. Either office will be glad to e-mail or fax a bill to you.

Beginning no later than April 14, 2015, this publication will be downloadable from the Utah Prosecution Council web site: www.upc.utah.gov.

**UNLESS OTHERWISE INDICATED, LEGISLATION PASSED
DURING THE 2015 GENERAL LEGISLATIVE SESSION
BECOMES EFFECTIVE ON MAY 12, 2015.**

All legislation passed during the 2015 General Legislative Session is accessible over the Internet at the web site maintained by the office of Legislative Research and General Counsel: www.le.utah.gov. When accessing or downloading a bill from that website, put your cursor over “Bills” on the left side, then click on “Passed Bills.” On the Passed Bills page, scroll to the bill for which you are looking and click on the hyperlinked bill number.

As of May 12, 2015, the effective date of most legislation passed during the 2015 general legislative session, the *ONLY* place one will be able to access an updated text of the Utah Code is on the Utah State Legislature’s web site: www.le.utah.gov. On the left side of the page is a column of links; move your cursor to “Utah Code/Constitution,” then click on “Title/Chapter/Section” or on “Utah Constitution.” Links to the various titles of the Utah Code or articles of the Utah Constitution will appear. Scroll down to the title or article in which you are interested and follow the links from there. If you want to do a word search for specific text, click on “Keyword Search” and follow the instructions.

A digest of all legislation, including effective dates, an index by subject matter, an index by bill number, a listing of bills which did not pass, and other useful material is also on the above cited legislative web page, and is published by:

The Office of Legislative Research and General Counsel
436 State Capitol Building
Salt Lake City, UT 84114

Phone: (801) 538-1032

The printed Utah Code, 2015 Edition will contain all amendments made to the code during the 2015 General Session and any special sessions, together with a comprehensive index. It will likely become available in late summer. Utah Codes are published by both Lexis Law Publishing and Thomson-West. They can be contacted at:

<p>LexisNexis 620 East Timpanogos Circle Building H Orem, UT 84097</p> <p>Phone: (801) 354-8000 Web site: http://www.lexisnexis.com/store/catalog/catalog.jsp?pageName=catalogProducts&catId=993&id=404</p>	<p>Thomson Reuters Publishing 610 Opperman Drive Eagan, MN 55123</p> <p>Phone: (651) 687-7000 Web site: http://legalsolutions.thomsonreuters.com/law-products/search?q=utah+code&r=13001&s=KEYWORDSEARCH&x=18&y=7&</p>
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HOUSE BILLS

DEATH PENALTY PROCEDURE AMENDMENTS

HB 11

Rep. Paul Ray

This bill requires the death penalty to be carried out by firing squad in the event the chemicals needed to carry out a lethal injection sentence warrant on the day specified are not available.

AMENDS: 76-2-404, 77-18-5.5 and 77-19-10

MOTOR VEHICLE EMISSIONS AMENDMENT

HB 17

Rep. Lee Perry

Section 41-6a-1626 already required vehicles to be equipped, maintained, and operated to prevent excessive or unusual noise by being equipped with a muffler or other effective noise suppressing system. It also prohibited use of a muffler cut-out, bypass, or similar device, and it prohibited the emission of visible contaminants during the operation of gas-powered vehicle.

This bill amends the visible contaminants provision applicable to diesel-engine-powered vehicles to prohibit diesel engines manufactured on or after January 1, 2008, from emitting visible contaminants during operation, except when the vehicle is being warmed up or under heavy tow, or unless the diesel engine is in a vehicle with a manufacturer's gross weight rating in excess of 26,000 pounds. The amendment also prohibits a diesel engine manufactured before January 1, 2008, from emitting visible contaminants of a shade or density that obscures a contrasting background by more than 20% for more than five consecutive seconds, except when the vehicle is being warmed up or under heavy tow, or unless the diesel engine is in a vehicle with a manufacturer's gross weight rating in excess of 26,000 pounds.

The fine structure applicable to gas-powered vehicles now mandates a minimum \$50.00 fine for a first offense and a minimum \$100.00 fine for a second or subsequent offense within three years of a previous violation.

AMENDS: 41-6a-1626

JURY DUTY AMENDMENTS

HB 20

Rep. Craig Hall

This bill exempts counties of the fourth, fifth, and sixth class, and counties of the third class with a population up to 75,000, from restrictions on the frequency with which an individual can be called for jury service.

AMENDS: 78B-1-110

WATER LAW – APPLICATION REVISIONS

HB 25

Rep. Lowry Snow

This legislation was in response to the *Jensen* case. It adds to the definitions of *permanent change* and *temporary change*, and adds the definition of *quantity impairment*. It establishes an opportunity to consult with the State Engineer before filing change applications, and makes that consultation nonbinding. Change applications must now contain the water right number and the nature and period of the use of the water. It describes the burden of proof the applicant must meet and the criteria to be satisfied. The bill clarifies the State Engineer's authority.

Other than familiarizing oneself with the changes, this bill requires no action by local governments.

AMENDS: 73-2-27, 73-3-3 and 73-3-8

DRIVER LICENSE RECORD DISCLOSURE TO EMPLOYERS

HB 26

Rep. Eric Hutchings

This bill authorizes the Driver License Division to disclose portions of a driving record to an employer or designee for purposes of monitoring the driving record and status of current employees who drive as a responsibility of their employment. The requester must show that the requester has obtained the written consent of the employee/driver.

The bill also authorizes DLD to disclose portions of a driving record to an employer or its designee to obtain or verify information relating to a holder of a commercial driver license that is required under federal law.

It also limits the authorized disclosure to current employees, amends content provisions related to disclosure of a commercial driver license motor vehicle record, and makes technical corrections.

This bill coordinates with SB 20.

AMENDS: 53-3-102, 53-3-109, 53-3-221, 53-3-402, 53-3-410.1, 53-3-420, 53-3-709 and 72-9-107

EFFECTIVE DATE: July 1, 2015

ANNEXATION AMENDMENTS

HB 42

Rep. John Westwood

When annexing properties, municipalities are not to leave unincorporated islands or peninsulas unless they make a finding that doing so is in that municipality's best interest, and the

area has fewer than 800 residents. This bill adds an exception, that the annexing entity can leave an unincorporated island or peninsula upon agreement with the county.

AMENDS: 10-2-402

EFFECTIVE DATE: April 1, 2015 (upon being signed by the governor)

WATER RIGHTS – CHANGE APPLICATION AMENDMENT

HB 43

Rep. Kay McIff

This bill clarifies that for purposes of this statute, the definition of *water companies* does not include public water entities. It goes on to provide a procedure whereby water shareholders can make change applications independent of the water company. It does require the involvement of the water company in the review process.

AMENDS: 73-1-4, 73-2-27, 73-3-3, 73-3-3.5, 73-3-3 and 73-3-8

POWDERED ALCOHOL AMENDMENT

HB 48

Rep. Steve Eliason

Powdered alcohol is a powder that, when mixed with water, turns into vodka, whiskey, or another spirit. It is not dehydrated or freeze-dried booze, rather, tiny bits of liquid alcohol – or, more specifically, ethanol – are enclosed in cyclodextrins, which are small rings of sugar. When water is added the sugar dissolves and the alcohol is freed into the drink.

This bill bans powdered alcohol by providing that it is unlawful to use, offer for use, purchase, offer to purchase, sell, offer to sell, furnish, or possess powdered alcohol for human consumption. It also makes it unlawful for a holder of a retail license to use powdered alcohol as an alcoholic product. This bill does not apply to the use of powdered alcohol in bona fide research.

Under the applicable default severity level provision in Section 32B-4-304(1), violation of this new law is a class B misdemeanor.

ENACTS: 32B-4-424

CHANGE APPLICATION MODIFICATIONS

HB 58

Rep. Keith Grover

This bill adds a new definition for *person entitled to the use of water*. It provides for those holding approved but unperfected applications, record owners of perfected water rights, an agent of

either of those, or a shareholder to file change applications with the State Engineer.

AMENDS: 73-3-3

NEPOTISM AMENDMENTS

[HB 73](#)

Rep. Bruce Cutler

This bill expands the definition of *relative* to include grandparents and grandchildren, adding them to the list of those that a public officer cannot “employ, appoint, or vote for or recommend the appointment of . . . to any position or employment, when the salary, wages, pay or compensation . . . will be paid from public funds and the appointee will be directly supervised by a relative . . .” with the same few exceptions.

AMENDS: 52-3-1

CONSENT DEFINITIONS AMENDMENTS

[HB 74](#)

Rep. Angela Romero

This bill changes the burden of proof for prosecutors for sexual assault cases where lack of consent is at issue. The bill removes confusing language in sub (5) to eliminate the requirement that the State prove an unconscious victim expressed a lack of consent to sexual activity. It adds language in sub (6) to expand the category of persons who are unable to give consent.

The statute now reads as follows:

An act of sexual [assault] is without the consent of the victim under any of the following circumstances:

...

(5) the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;

(6) the actor knows that as a result of mental disease or defect, or for any other reason the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it;

...

AMENDS: 76-5-406(5) and (6)

SAFETY BELT LAW AMENDMENTS

[HB 79](#)

Rep. Lee Perry

Under this bill a seat belt violation is a primary offense. However, a citation may not be issued to the violator unless he or she has previously received a warning for no seat belt.

To track warnings, the Department of Public Safety will begin collecting seat belt warnings from citations issued electronically and sent to UCJIS. The plan by the Department of Technology Services (DTS) is that when an officer enters a driver license number on their patrol vehicle computer, the response will display a notice if the person has previously received a seat belt warning, which law enforcement agency issued it, which officer issued it and the date and time of the warning. DTS has contacted private vendors who supply software for patrol vehicle computers (e.g., FATPOT, Spillman) to make this happen.

This bill sunsets on July 1, 2018. Under the bill, the court may now waive all of the maximum \$45.00 fine if the violator completes a 30-minute course about the benefits of safety belt or child restraint use.

AMENDS: 41-6a-1803 and 41-6a-1805

CRIMES AGAINST HEALTH CARE PROVIDERS IN CORRECTIONAL SYSTEM

HB 83

Rep. Brad Daw

This bill adds new language, “or an employee or a volunteer, including health care providers,” to include these people in the list of persons protected by the Propelling Substance or Object at a Correctional Officer statute (76-5-102.6). The bill also includes language in the simple Assault on a Health Care Provider statute (76-5-102.7) to make it clear that statute applies only if “(a) the person is not a prisoner or a person detained under Section 77-7-15. That is a helpful clarification because simple assault by a prisoner, even upon a health care worker, should be prosecuted as a felony under 76-5-102.5.

AMENDS: 53-10-403, 76-5-102.6 and 76-5-102.7

EFFECTIVE DATE: March 31, 2015 (upon being signed by the governor)

PEACE OFFICER TRAINING AMENDMENTS

HB 85

Rep. Marc Roberts

This bill provides a vehicle for possible additional funding for POST in years when the Criminal Fine Surcharge Fund does not produce sufficient funds.

The bill provides that the Legislature may appropriate up to \$500,000 from the Uninsured Motorist Identification Restricted Account each year to the Peace Officer Standards and Training Division for law enforcement training. The bill sunsets on July 1, 2020.

AMENDS: 41-12a-806 and 63I-1-241

COW-SHARE PROGRAM AMENDMENTS

HB 104

Rep. Marc Roberts

This bill modifies the Utah Dairy Act by removing a prohibition on cow-sharing programs. The Utah Dairy Act does not apply to milk or milk products produced on the farm if the milk or milk products are consumed by participants in a cow-share program. The Department of Agriculture and Food may not adopt rules restricting an individual's ability to transfer or obtain raw milk in accordance with the terms of a cow-share agreement or an interest in a cow-share program in accordance with the terms of the cow-share program agreement.

AMENDS: 4-3-1, 4-3-10 and 4-3-13

ENACTS: 4-3-1.3

MOTOR VEHICLE EMISSIONS AMENDMENTS

HB 110

Rep. Patrice Arent

This bill provides that the Driver License Division may suspend or revoke a registered vehicle's registration upon receipt from a local health department that the vehicle is unable to meet state or local air emissions standards. Exceptions: registered vehicles with a manufacturer's gross vehicle weight rating greater than 26,000 pounds, vessels or outboard motors and off-highway vehicles.

AMENDS: 41-1a-110

PUBLIC SAFETY RETIREMENT FOR DISPATCHERS

HB 115

Rep. Kraig Powell

This bill allows certified dispatchers to be covered in the public safety retirement systems. This bill requires the state to cover its certified dispatchers under the public safety retirement systems and authorizes other participating employers to elect to cover their certified dispatchers under the public safety retirement systems. The fiscal note states transition of the certified dispatchers to the public safety retirement system may result in increased retirement costs for the state and local government.

AMENDS: 49-14-102, 49-14-201, 49-15-102, 49-15-201, 49-23-102, 49-23-201 and 49-23-503

EFFECTIVE DATE: July 1, 2015

BOATING SAFETY AMENDMENTS

HB 116

Rep. Scott Chew

This bill will be important to those who are planning take part in the shell racing competition

in the next summer Olympics. It defines what a “Racing Shell” is and exempts persons in racing shells from the mandate to wear a personal flotation device.

AMENDS: 73-18-2 and 73-18-8

PUBLIC MEETING NOTICE REQUIREMENTS

HB 117

Rep. Jon Stanard

Before this Legislative Session, small towns, districts or other governmental entities with a budget of less than \$1 million were exempted from having to post notice of their public meetings on the Utah Public Notice Website. This included notices of an entity’s intent to amend its general or comprehensive plan. That exemption is no longer. They must all use the website. If the entities need assistance, they can contact the Division of Archives and Records Service.

AMENDS: 10-9a-203 and 52-4-202

MODIFICATIONS TO ELECTION LAW

HB 120

Rep. Craig Hall

This bill impacts various entities required to file financial disclosures, including state office candidates and officeholders, legislative office candidates and officeholders, political parties, county political parties, political action committees and corporations. It changes one of the dates upon which a financial disclosure report must be filed from August 31 to September 30. It also amends provisions relating to providing notice that a candidate on a ballot has been disqualified.

AMENDS: 20A-11-204, 20A-11-206, 20A-11-303, 20A-11-305, 20A-11-507, 20A-11-508, 20A-11-511, 20A-11-512, 20A-11-602, 20A-11-603, 20A-11-701, 20A-11-702, 20A-11-802, 20A-11-803, 20A-11-1303, 20A-11-1305 and 20A-11-1502

FISHING LICENSE AMENDMENTS

HB 125

Rep. Bruce Cutler

Under this amendment an adult who supervises a fishing activity put on by a youth organization or school must possess a valid Utah fishing license or combination license. The bill authorizes a person under 16 years of age to fish without a license during a youth organization or school activity.

AMENDS: 23-19-14.5

LOCAL LAND USE AMENDMENTS

HB 127

Rep. Jeremy Peterson

This bill limits the ability of counties and cities to retroactively apply the building code to increase the size of egress windows in rental dwellings if the window was of the proper size when installed - a.k.a. legally nonconforming. Regulating the style of the window, requiring that the window be “fully openable”, and prohibiting the reduction of the size of the window are still permissible.

AMENDS: 10-9a-511 and 15A-3-202
ENACTS: 10-9a-511.5 and 17-27a-510.5

TOBACCO SHOP AMENDMENTS

HB 131

Rep. Kraig Powell

This bill re-defines “electronic cigarette” and creates a new definitions for “electronic cigarette product” and “electronic cigarette substance.” It provides that a person less than 19 years old may not enter or be present in a tobacco specialty shop unless the person is: a) accompanied by a parent or legal guardian, b) present at the tobacco shop for a commercial purpose other than to buy a cigarette, tobacco, or an electronic cigarette, or c) 18 years old or older and an active duty member of the United States Armed Forces. An accompanying parent or legal guardian may not allow the person to buy a cigarette, tobacco, or an electronic cigarette product. A violation is a class C misdemeanor for a first offense, a class B misdemeanor for a second offense and a class A misdemeanor for third and subsequent offenses.

AMENDS: 76-10-101 and 76-10-105.1

FIREFIGHTER RETIREMENT AMENDMENTS

HB 133

Rep. Don Ipsom

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending retirement eligibility provisions for firefighters. This bill provides that a person employed as the state fire marshal or a deputy state fire marshal is eligible to earn service credit in the Firefighters' Retirement System or the New Public Safety and Firefighter Tier II Contributory Retirement System. The fiscal note does not anticipate increased costs to state or local government.

AMENDS: 49-16-102, 49-16-201 and 49-23-102

DUI SENTENCING REVISIONS

HB 146

Rep. Steve Eliason

Prior to passage of this bill, sentencing for a second DUI offense within 10 years was

measured from conviction date to conviction date. DUI defendants who committed a second DUI offense within, say, nine years of their first conviction would attempt to prolong disposition of the second offense to a date outside the 10-year period, thus making the second offense a first conviction for sentencing purposes. Under this bill the 10-year period is measured from first conviction date to the date when the second offense was committed, thus making it consistent with felony DUI sentencing provisions in section 41-6a-503.

AMENDS: 41-6a-505

AFFILIATED EMERGENCY SERVICE WORKER POST RETIREMENT EMPLOYMENT AMENDMENTS

HB 151

Rep. Douglas Sagers

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions for postretirement reemployment. This bill provides that reemployment as an affiliated emergency service worker is not subject to postretirement reemployment provisions under certain circumstances and provides that a member is not required to cease employment as an affiliated emergency service worker of a participating employer to be eligible to retire. The fiscal note does not anticipate increased costs to state and local government.

AMENDS: 49-11-505, 49-12-401, 49-13-401, 49-14-401, 49-15-401, 49-16-401, 49-22-304 and 49-23-303

JURY DUTY EXEMPTION AMENDMENTS

HB 154

Rep. Mike McKell

This bill exempts a mother who is breast-feeding a child from jury duty. The mother shall make the showing by affidavit, sworn testimony, or other competent evidence.

AMENDS: 78B-1-109

DRILL STATUS TRAVEL AMENDMENTS

HB 158

Rep. Val Peterson

This bill clarifies the conditions under which a Utah Army/Air National Guardsman is privileged from arrest or citation. It sets forth specific conditions of the privilege and modifies its penalties. No longer is simply driving to and from drill a “get out of a speeding ticket” pass. There must be exigent circumstances, an emergency or similar circumstance requiring the member’s presence.

The privilege exists during military formations, exercises, mobilizations or other duty when exigent, perilous, emergency or similar circumstances require the member’s presence AND while

traveling to and from the military duty locations when such conditions exist.

AMENDS: 39-1-54

OFF HIGHWAY HUSBANDRY VEHICLE AMENDMENTS

[HB 159](#)

Rep. Scott Sandall

This bill provides that an off-highway implement of husbandry sticker is valid for an all-terrain type I vehicle, motorcycle, all-terrain type II vehicle, or snowmobile that is being operated adjacent to a roadway when the vehicle is being used to travel on land permitted or leased for agricultural purposes by the owner of the vehicle.

AMENDS: 41-22-5.5

ELECTION REVISIONS

[HB 166](#)

Rep. Robert Spendlove

A small but important change in election ballot forms. Please let your election officers / county clerks know they must amend their election ballots to conform to this statutory amendment. The bill eliminates *a facsimile of the signature of the county clerk* on the ballot and changes the wording “county clerk” to “Clerk of _____ County.”

AMENDS: 20A-1-102, 20A-5-406 and 20A-6-301

RECOVERY DOG TRAINING AMENDMENTS

[HB 173](#)

Rep. Dixon Pitcher

This bill allows a medical examiner to retain tissue from an unclaimed deceased body “in order to donate the tissue to an individual who is affiliated with an established search and rescue dog organization, for the purpose of training a dog to search for human remains.” The bill also requires a county to provide, at the county’s expense, a decent burial for an unclaimed body found within the county. However, the county is off the hook if the body is requested by the dean of the school of medicine at the University of Utah.

AMENDS: 26-4-4, 35A-3-401 and 53B-17-301

REPEALS AND REENACTS: 26-4-25

PROCUREMENT CODE MODIFICATION

[HB 174](#)

Rep. David Lifferth

This bill modifies the Utah Procurement Code by removing a fiscal emergency exemption

for the Division of Parks and Recreation.

AMENDS: 63G-6a-107

MODIFICATIONS TO VOTING LAW

HB 177

Rep. Fred Cox

This bill gives more control to the voter who requests absentee voter status and establishes that a voter's absentee status will not expire unless the voter chooses to terminate the status or the voter is no longer listed in the official register. The bill also requires county clerks to record a voter's party affiliation as the last party designated by the voter unless the voter did not previously designate a party, most recently designated the voter's party as unaffiliated or did not previously register.

AMENDS: 20A-2-107, 20A-2-201, 20A-3-304 and 20A-4-108

LICENSE PLATE FEE AMENDMENTS

HB 179

Rep. John Westwood

This bill provides an exemption for peace officer recipients of the Purple Heart Award and military recipients of the Purple Heart Award from paying the new license plate fee.

AMENDS: 41-1a-1211

EFFECTIVE DATE: July 1, 2015

VICTIM RESTITUTION AMENDMENTS

HB 184

Rep. Brad Wilson

The purpose of this bill is to give the Utah Office for Victims of Crime (UOFC) a little more teeth attempting to collect restitution from defendants. The bill does this in three ways.

First, it makes any record relating to a victim in the custody of UOFC, such as the victim's application for benefits, a protected record under 63G-2-305.

Next, the bill changes 63M-7-503 to say that UOFC "may file with the sentencing court a notice of restitution listing the amounts or estimated future amounts made or anticipated to be made to or on behalf of a victim." The bill adds that the "amount of restitution sought by the office may be updated at any time, subject to the right of the defendant to object." And, failure to provide the notice may not invalidate the imposition of the judgment or order of restitution provided the defendant is given the opportunity to object and be heard." This new procedure replaces the current procedure of UOFC simply giving notice to the court of an assignment of the claim for restitution

by UOFC.

Finally, the bill makes changes to the definitions found in 76-3-201 and 77-38a-102 so that a the term "Victim" does not include any coparticipant in the defendant's criminal activities, a codefendant, or accomplice. "Victim" does include "any person or entity, including the Utah Office for Victims of Crime, who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities."

AMENDS: 63G-2-305, 63M-7-503, 76-3-201 and 77-38a-102

TRANSPORTATION CORRIDOR PRESERVATION AMENDMENTS

HB 188 **Rep. Kay Christopherson**

The State has a fund from which money may be allocated to counties and cities for corridor preservation. The statute prohibited the purchasing county or city from charging the State for that purchase. The amendment allows the State to be charged for that purchase if there is a prior written agreement.

AMENDS: 72-2-117.5

PROPERTY RIGHTS OMBUDSMAN AMENDMENTS

HB 192 **Rep. Timothy Hawkes**

This clarifies that the Ombudsman, and those attorneys in that office, cannot represent other individuals or entities involved in the office's review process, and announces that the work with third parties by those attorneys does not create an attorney-client relationship.

AMENDS: 13-43-203

TRAFFIC CODE REPEALER

HB 195 **Rep. Lee Perry**

- This bill repeals some old, outdated portions of the traffic code. It repeals:
- The requirement to drive as near to the right hand edge of the road as possible when driving in a canyon or on a mountain highway;
 - The requirement to give an audible warning (honk the horn) when approaching a blind curve; and
 - Repeals the prohibition on coasting while on a downgrade.

REPEALS: 41-6a-1708 and 41-6a-1709

WILDLAND FIRE LIABILITY AMENDMENTS

HB 212

Rep. Mark Wheatley

This limits the use of tracer or incendiary ammunition to military reservations, or with the written permission of the director of the Division of Forestry, Fire, and State Lands.

AMENDS: 65A-3-2

MISREPRESENTATION OF TELEPHONE AND TEXT

HB 214

Rep. David Lifferth

This newly enacted code section makes it a crime for any person, in connection with any telecommunications service or VoIP voice service, to knowingly cause any caller identification service or text message service to transmit false, misleading, or inaccurate caller or text message identification information:

- (a) with the intent to harm the recipient of the call or text message; or
- (b) to a public safety answering point when reporting an emergency.

Each separate call or text message transmitted in violation of this section is class C misdemeanor for a first violation and a class B misdemeanor for a second or subsequent violation.

The bill provides that a recipient of a call or text sent in violation of the statute may bring a civil action for damages.

ENACTS: 76-10-1802

SEX OFFENDER REGISTRY AMENDMENTS

HB 215

Rep. Jack Draxler

This bill clarifies the requirements for registry when a person is convicted of a kidnap or sex offense in another state, federal or military court. It clarifies that registry is required in Utah if the person would be required to register in the venue of conviction, regardless of the date of conviction or of previous registration requirements.

The bill also adds a requirement that all persons required to register, provide the phone numbers for places they are employed or are doing volunteer work.

AMENDS: 53-3-216, 53-3-807, 62A-7-104, 76-9-702, 76-9-702.1, 77-41-102, 77-41-103, 77-41-105, 77-41-106, 77-41-107, 77-41-109 and 78B-8-302

WORKPLACE ABUSIVE CONDUCT AMENDMENTS TO PROMOTE A HEALTHY WORKPLACE

HB 216

Rep. Keven Stratton

The bill applies only to the State and its employees. It requires the establishment of training and education regarding violence in the workplace.

ENACTS: 67-19-44

EFFECTIVE DATE: July 1, 2105

ELECTION DAY VOTER REGISTRATION PILOT PROJECT AMENDMENTS

HB 219

Rep. Rebecca Chavez-Houck

The legislature has allowed counties to participate in a pilot program to test the effect of allowing voters to register on the day of voting. The pilot program is currently scheduled to end on January 1, 2017. This bill amends the law to allow voters to also register and vote on a day when early voting is held. Participating counties will now need to prepare for same day registration and voting on early vote days.

AMENDS: 20A-2-307, 20A-3-601 and 20A-4-108

LICENSE PLATE OBSTRUCTION AMENDMENTS

HB 238

Rep. Edward Redd

Under this bill, the requirements that a license plate be in a place and position to be clearly visible, free from foreign materials and in a condition to be clearly legible, do not apply to a license plate that is obscured exclusively by one or more of the following devices, provided the device is properly installed, or by the cargo attached to or being carried by the obscuring device:

- a trailer hitch;
- a wheelchair lift or wheelchair carrier;
- a trailer being towed by the vehicle;
- a bike rack, ski rack or luggage rack; or
- a similar cargo carrying device.

CAUTION: This bill removes some fact patterns that formerly provided reasonable suspicion for a traffic stop.

AMENDS: 41-1a-404

STATE AND LOCAL GOVERNMENT EMPLOYEE POLICY

HB 242

Rep. Justin Miller

All governmental entities are to provide breaks and an accommodation to facilitate an employee who is breast feeding or needing to express milk. The facility must be near the work site, be clean, private, and have an electrical outlet. The frequency and length of the breaks are to be reasonably accommodated. There is an exception if the requirements create an undue hardship on the employer. Employers are also prohibited from discriminating against anyone breast feeding or expressing milk in the workplace.

ENACTS: 34-49-101, 34-49-102 and 34-49-201 through 34-49-204

INCORPORATION PROCESS FOR CITIES AND TOWNS

HB 245

Rep. Mel Brown

Instead of the counties being the center of attention and activity during the incorporation process, it is now the Lieutenant Governor's office that will facilitate and oversee that process. No change to the process itself.

AMENDS: 10-2-102 through 10-2-111, 10-2-123, 10-2-125 through 10-2-127 and 63I-2-210

ENACTS: 10-2-102.3 and 10-2-131

AMENDMENTS TO FIRE CODE

HB 246

Rep. Mike Kennedy

There is a now statutorily provided appeal process from interpretations and applications of the Fire Code. Additionally, those agencies that have any buildings with required key boxes, the agency must adopt an ordinance, resolution, or other rule or policy to ensure that each key to each key box is accounted for and secure. Finally, each secondary school shall have 4 fire/emergency drills each school year, weather permitting.

AMENDS: 15A-5-102, 15A-5-202, 15A-5-202.5 and 15A-5-203

AMENDMENTS TO THE INTERLOCAL ACT

HB 251

Rep. Johnny Anderson

This bill creates a number of changes to the Interlocal Act. It creates the concept of a joint or cooperative undertaking, which is not an interlocal entity, and is governed by a Joint Administrator. The agreement for a joint or cooperative undertaking must specify how votes are weighted, functions of the joint undertaking, and the powers of the Joint Administrator.

The bill establishes fiscal procedures for an interlocal entity, which govern instead of the

fiscal procedures that govern the public agencies that are part of the interlocal entity. These fiscal procedures cover areas such as the fiscal year, uniform accounting system, funds and account groups, required budgets for certain funds (including a capital projects fund), other budgetary requirements (including notice and hearing requirements; accumulated fund balances, excess balances, and reserves; appropriations), purchasing procedures, transfer of balance between accounts, budget amendments, emergency expenditures, loans to other funds, operating & capital budgets for proprietary funds, financial reporting, audits, and the process for imposing or increasing a fee (including calculation of fee credits).

The bill expressly authorizes interlocal entities to impose rates, fees, or charges, and also authorizes an interlocal entity to create a local disaster recovery fund, as local governments can do. Bonds issued by an interlocal entity are governed by Chapter 14 (Local Government Bonding Act) and Chapter 27 (Utah Refunding Bond Act). These bonds are secured by the interlocal entity's rates, fees, or charges, sales and property tax, and government grants, all of which shall be pledged per section 11-14-501. The Interlocal Entity's board shall adopt procurement rules or policies. An interlocal entity shall also create a personnel administration system. Taxed Interlocal Entities and Project Entities are not subject to the fiscal procedures for Interlocal Entities (Part 5 of the statute) or governance of Interlocal Entities (Part 4 of the statute).

Interlocal Entities are governed by a Board, which has authority to direct litigation, enact bylaws, rules, or regulations, and to impose fees. Compensation for the governing authority is authorized, including the same insurance as employees of an Interlocal Entity have. Rules for meetings of the governing authority are established, including rules for a quorum, application of the open meetings act, authority to enact rules of order or procedure, and election of officers.

This bill has significant impacts on Interlocal Entities, particularly in regards to fiscal procedures. Such entities will want to study carefully the fiscal requirements of the bill on an Interlocal Entity and how those requirements differ from the fiscal requirements of the public agencies that have formed the Interlocal Entity, which will no longer apply. Even if not part of an Interlocal Entity, all public agencies should be aware of the requirements for a joint or cooperative undertaking.

AMENDS: 11-13-103, 11-13-201, 11-13-202.5, 11-13-203, 11-13-204 (Effective 5/12/15), 11-13-206, 11-13-207, 11-13-208, 11-13-211, 11-13-217, 11-13-218, 11-13-219, 11-13-222, 11-13-224, 11-13-315 (Effective 05/12/15), 52-4-103, 53-2a-605 and 63G-2-103

ENACTS: 11-13-218.1, 11-13-225, 11-13-226, 11-13-401, 11-13-402, 11-13-403, 11-13-404, 11-13-501, 11-13-502, 11-13-503, 11-13-504, 11-13-505, 11-13-506, 11-13-507, 11-13-508, 11-13-509, 11-13-510, 11-13-511, 11-13-512, 11-13-513, 11-13-514, 11-13-515, 11-13-516, 11-13-517, 11-13-518, 11-13-519, 11-13-520, 11-13-521, 11-13-522, 11-13-523, 11-13-524, 11-13-525, 11-13-526, 11-13-527, 11-13-528, 11-13-529, 11-13-530, 11-13-531 and 11-13-532

REPEALS: 11-13-223 (Effective 05/12/15)

EFFECTIVE DATE: July 1, 2015 (except the three sections noted above)

HUMAN TRAFFICKING AMENDMENTS

[HB 252](#)

Rep. Brian King

This legislation makes Human Trafficking of a Child a 1st Degree Felony. Defines human trafficking of a child to instances where a defendant recruits, harbors, transports, or obtains a child for sexual exploitation or forced labor. Forced labor includes work in industrial facilities, sweatshops, households, agricultural enterprises or any other work place. This bill further defines that human trafficking for sexual exploitation includes all forms of commercial sexual activity with a child including sexual explicit performances, prostitution, participation in pornography, or performance in a strip club and exotic dancing. If any person involved in these activities receives any thing of value they are in violation.

AMENDS: 76-5-309 and 76-5-310

ENACTS: 76-5-308.5

LIVESTOCK BRANDING AMENDMENTS

[HB 254](#)

Rep. Michael Noel

The bill defines the term "livestock emergency" as:

- (a) the presence of a contagious, infectious, or transmissible disease risk to livestock; or
- (b) a natural disaster which may affect livestock.

During a "livestock emergency," the Commissioner of Agriculture may require that a person transporting livestock have the livestock brand inspected;

Any website created and maintained within the state that markets the sale of livestock shall have the following language clearly visible on each web page that displays advertised livestock:

"Legality of Sales and Purchase, Health Laws. If you sell or purchase livestock on this site, you shall comply with all applicable legal requirements governing the transfer and shipment of livestock, including Utah Code Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, and Title 4, Chapter 31, Control of Animal Disease. Please contact the Utah Department of Agriculture and Food at 801-538-7137 with any questions."

A violation of this chapter is guilty of a class B misdemeanor and may subject the violator to administrative fines of up to \$1,000 per violation.

ENACTS: 4-24-16.3, 4-24-31 and 4-24-32

REPEALS: 4-24-16

HORSE TRIPPING AMENDMENTS

[HB 261](#)

Rep. Ken Ivory

This bill will impose reporting requirements on the owner of any venue at which "horse

events” are held. That will include virtually all counties and some cities.

Definitions:

"Board" means the Agricultural Advisory Board created in Section 4-2-7.

"Horse event" means an event in which horses are roped or tripped for the purpose of a specific event or contest.

"Horse tripping" means the lassoing or roping of the legs of an equine, or otherwise tripping or causing an equine to fall by any means, for the purpose of entertainment, sport, or contest, or practice for entertainment, sport, or contest.

The owner of a venue at which a horse event is scheduled shall:

- (a) at least 30 days before the event, notify the board of the date, time, and name of the horse event; and
- (b) within 30 days after the event is held, notify the board of:
 - (I) the number and type of competitions held at the horse event;
 - (ii) the number of horses used;
 - (iii) whether horse tripping occurred, and if so, how many horses were used in horse tripping and how many times each horse was tripped; and
 - (iv) whether a veterinarian was called during the horse event, and if so:
 - (A) the name and contact information of the veterinarian;
 - (B) the outcome of the veterinarian's examination of a horse; and
 - (C) all veterinarian charges incurred.

The department shall fine the owner of a venue that fails to comply with the above reporting requirements \$500 per violation.

AMENDS: 4-2-7

ENACTS: 4-2-501, 4-2-502, 4-2-503 and 4-2-504

PRACTICE NOTE: The bill makes it clear the reporting requirement is on the owner of the venue, not on the sponsor of any event. Thus, governmental entities will need to include compliance clauses for this bill in their lease agreements.

STATUTE OF LIMITATIONS FOR CIVIL ACTIONS

HB 277

Rep. Ken Ivory

Eliminates the statute of limitations for civil actions for acts or attempted acts of “sexual intercourse, sodomy or sexual molestation” committed by an adult against a child.

Provides that a person may file a civil action “against a non-perpetrator for intentional or negligent sexual abuse suffered as a child” in any of the following circumstances: (1) within four years after the person turns 18; (2) within four years of the discovery of the sexual abuse.

AMENDS: 78b-2-308

EFFECTIVE DATE: March 23, 2015 (upon being signed by the governor)

PRACTICE NOTE: Prosecutors should direct people to seek the advice of private counsel and not give advice on these issues.

MINOR ALCOHOL OR DRUG RELATED OFFENSES AND DRIVING PRIVILEGES

HB 284

Rep. Edward Redd

This bill amends the sentencing provisions applicable to:

- unlawful purchase, possession or consumption of alcohol by a minor;
- unlawful admittance or attempt to gain admittance to a tavern or social club by a minor;
- minor's unlawful use of proof of age;
- minor under 18 years of age in possession of a controlled substance;
- minor committing any other violation of Title 58, Chapter 37; and
- intoxication.

For a first offense, the court may order a screening, and, if indicated, an assessment, educational series or substance abuse treatment. For a second or subsequent offense, the court *shall order* a screening and, if indicated, an assessment, educational series or substance abuse treatment.

This bill allows the court to reduce the driver license suspension period for these offenses, based on completion of an educational series or demonstrated substantial progress in substance abuse treatment.

AMENDS: 32B-4-409, 32B-4-410, 32B-4-411, 53-3-220, 58-37-8, 76-9-701 and 78A-6-606
ENACTS: 58-37a-7 and 58-37b-9

LINE-OF-DUTY DEATH BENEFITS FOR PEACE OFFICERS AND FIREFIGHTERS

HB 288

Rep. Paul Ray

This bill increases the death benefits for line-of-duty deaths for peace officers and firefighters. The lump sum payment is increased from \$1000.00 to an amount equal to 6 month's average salary for the officer, or the 6 month's salary and \$1500.00 depending on which division of the State system the officer is in. Additionally, the surviving spouse and children can remain on the health care plan of the employing entity. The spouse can remain covered until either remarriage or is eligible for Medicare, whichever is earlier. The children can remain covered until age 26.

The funding for this is as follows:

- For the first two years, the employing entity must cover all of the health care costs for the surviving family members.
- Thereafter, the costs are covered by a trust created by this statute, IF the entity is a

participating member of the trust. If not, the entity will cover all costs during the eligibility period.

- The trust is funded by those entities desiring to participate. The amount of their participation will be determined by a board that is statutorily created and empowered by this bill.

AMENDS: 49-14-501, 49-14-502, 49-15-501, 49-15-502, 49-16-501, 49-16-502, 49-23-301 and 49-23-503

ENACTS: 53-17-101, 53-17-102, 53-17-201, 53-17-301, 53-17-401, 53-17-402 and 53-17-501

EFFECTIVE DATE: July 1, 2015

HIGHWAY SPECIAL EVENT PERMITTING

HB 289

Rep. Gage Froerer

This bill enacts language authorizing the Department of Transportation to make rules related to the issuance of special use permits on state highways.

ENACTS: 72-1-212

PROCUREMENT CHANGES

HB 291

Rep. Keven Stratton

This bill modifies the Utah Procurement Code by:

- modifying definitions relating to grants and procurements in which the source of the funds imposes requirements on the procurement;
- modifying a provision regarding the application of the procurement code;
- modifying a provision relating to exemptions from the procurement code; and
- modifying a provision relating to issuing and conducting procurement units.

AMENDS: 63G-6a-103, 63G-6a-105, 63G-6a-107, 63G-6a-109 and 63G-6a-1702

EMERGENCY MEDICAL SERVICE PROVIDERS AMENDMENTS

HB 292

Rep. Dan McCay

This bill creates a peer review board for emergency medical service providers. Any action taken against the certificate of one of these providers must be done in consultation with this board. The statute requires the Department of Health to establish this board, the qualifications of its members, the board's investigation and recommendation processes, and rules regarding the status of the license or certification of the provider during the pendency of this process.

AMENDS: 26-8a-105 and 26-8a-503

GOVERNMENT USE OF UNMANNED AERIAL VEHICLES

[HB 296](#)

Rep. Scott Sandall

Last year the concern over use of a “drone” was all the rage. A law was passed which requires that law enforcement obtain a search warrant before using a drone, except in certain circumstance. This year, the drone statute was tweaked, with some interesting results.

First, the bill updates the proper terminology for a drone. It is no longer an “unmanned aerial vehicle” – it is instead an “unmanned aircraft system.” So, no to UAV, yes to UAS. The new language then gives a definition for a “testing site.” This is an area no larger than 3 square miles which has no structures on it, and for which a law enforcement agency has clearly identified the boundaries by GPS coordinates, in writing, to the Department of Public Safety.

With these definitions in place, the bill adds two new exceptions to the normal requirement that a law enforcement agency first obtain a search warrant. These are: *(d) at a testing site or (e) to locate a lost or missing person in an area in which a person has no reasonable expectation of privacy.* However, the bill then adds the following very limiting language: *(3) A law enforcement agency that obtains, receives, or uses data acquired under Subsection (1)(d) or (e) shall destroy the data as soon as reasonably possible after the law enforcement agency obtains, receives, or uses the data.*

Applying this language in a couple of examples:

- A law enforcement agency may use a UAS to conduct drone testing without a warrant – but, if while using a UAS in a testing site the agency happens to capture evidence of a crime, the law enforcement agency must, apparently, destroy that evidence as soon as it can.
- And, if a law enforcement agency has a UAS available for use in a kidnapping scenario, the law enforcement agency still could not use the UAS to locate the missing child without a warrant if the UAS were to fly over, oh, say the kidnapper’s home where the child is being held, as the kidnapper would have an expectation of privacy there.
- And, even if the law enforcement agency were able use a UAS to locate a missing person without a warrant, the agency must then destroy that evidence as soon as possible.

So it’s probably best to get the warrant.

Finally, the bill adds a new reporting requirement for a law enforcement agency that does use a UAS. It requires that an agency report the source of any funds used to operate its UAS program.

UAS does seem a more appropriate acronym after all.

AMENDS: 63G-18-101, 63G-18-102, 63G-18-103, 63G-18-104 and 63G-18-105

EFFECTIVE DATE: March 27, 2015 (upon being signed by the governor)

FIREARM AND DANGEROUS WEAPONS AMENDMENTS

HB 300

Rep. Brian Greene

This bill legalizes the concealment of any dangerous weapon other than a firearm.

In the case of *Salt Lake City vs. Miles*, 2014 UT 47, the Utah Supreme Court interpreted the 2011 version of 76-10-501, which defines “dangerous weapon”. Although that definition was changed in a bill run last year by this same sponsor the case still raised concerns for him. The *Miles* case was actually based on a conviction for Possession by a Restricted Person but the definitional language also applied to Possession of a Concealed Dangerous Weapon. It was SWAP’s position that this legislation was not required by case law. However the sponsor and many of his colleagues have been concerned for some time about potential over-broad enforcement of concealment of a knife or other tool which might be construed to be a dangerous weapon.

The bottom line is that this bill limited 76-10-504 to prohibit only the concealment of a firearm and not any other dangerous weapon. In an attempt to compensate somewhat for legalizing the concealment of non-firearm dangerous weapons, the bill broadens 76-10-507 Possession of Deadly Weapon with Criminal Intent. This little used statute has applied only to possession of a weapon with intent to “unlawfully assault another”. That language has been changed to “use it to commit a criminal offense”. It remains a Class A Misdemeanor.

AMENDS: 53-5a-104, 76-10-501, 76-10-504 and 76-10-507

TRAFFIC SAFETY LIGHTS ON VEHICLES

HB 302

Rep. Lee Perry

This bill provides that a motor vehicle, trailer, semitrailer, and pole trailer may be equipped with a continuously flashing light system. A continuously flashing light system is a light system for a supplemental stop lamp in which the stop lamp or reflector pulses rapidly for no more than five seconds when the brake is applied and then converts to a continuous light as a normal stop lamp or reflector until the time the brake is released, and in which the rapid pulsing may not be repeated upon a subsequent application of the brakes for a five-second lock-out time period after the release of the brakes.

AMENDS: 41-6a-1604 and 41-6a-1616

LEGISLATIVE APPROVAL OF LAND TRANSFERS

HB 303

Rep. Kevin Stratton

This bill applies to governmental entities, defined to include counties, but not cities or districts. Before selling or transferring more than 500 acres of its land to the federal government, a governmental entity must obtain approval from the Utah legislature (and either wait for the next legislative session, or a special session called for that purpose). The old threshold for legislative

approval was 10,000 acres, and it did not apply to counties selling/transferring property. For sales or transfers of less than 500 acres, the governmental entity is required to notify the Natural Resources, Agriculture, and Environment Interim Committee. A governmental entity may, in its discretion, notify the Legislative Management Committee of negotiations with the federal government regarding sale/exchange/transfer of its land, or designation of its land as a federal park, monument, or wilderness area.

A county needs to be aware of these new requirements when it is exchanging with or selling its lands to the federal government.

AMENDS: 63L-2-201

EFFECTIVE DATE: July 1, 2014

DESTRUCTION OF LIVESTOCK

HB 317

Rep. Merrill Nelson

When determining and ordering restitution in a case of Wanton Destruction of Livestock, the court shall consider, in addition to the restitution criteria in Section 77-38a-302, the restitution guidelines in Subsection 76-6-111(5).

The minimum restitution value for cattle and sheep is the sum of the following, unless the court states on the record why it finds the sum to be inappropriate:

- (a) the fair market value of the animal, using as a guide the market information obtained from the Department of Agriculture and Food created under Section 4-2-1; and
- (b) 10 years times the average annual value of offspring, for which average annual value is determined using data obtained from the National Agricultural Statistics Service within the United States Department of Agriculture, for the most recent 10-year period available.

AMENDS: 76-6-111

JAIL CONTRACTING TREATMENT RATE AMENDMENTS

HB 319

Rep. Michael E. Noel

This bill modifies the State Institutions Code by increasing the compensation rate from 79% to 84% for counties that house state inmates in county facilities and provide rehabilitative treatment. It only applies to the daily incarceration rate for beds in a county that are dedicated to an approved treatment program to state inmates.

AMENDS: 64-13e-103

VOTE BY MAIL REVISIONS

HB 321

Rep. John Westwood

This bill requires that if a county wishes to administer an election entirely by absentee ballot, the county must provide at least one election day voting center that includes at least one voting device that is accessible to individuals with disabilities. In other words, at least for counties, there is no longer such a thing as an election entirely by absentee ballot. The bill also clarifies that a county is not required to pay return postage for an absentee ballot for an election “entirely” by absentee ballot.

AMENDS: 20A-3-302

SEARCH AND RESCUE FINANCIAL ASSISTANCE AMENDMENTS

HB 324

Rep. Sophia DiCaro

This bill creates within the Emergency Management Act the Utah Search and Rescue Assistance Card Program regarding reimbursement of rescue expenses.

The bill establishes a voluntary Utah Search and Rescue Assistance Card Program with cards to be issued by the Division of Emergency Management for the purpose of providing an additional revenue source for the Search and Rescue Financial Assistance Program. It requires the division to provide a discount of not less than 10% on the search and rescue card fee if the applicant has paid for a hunting or fishing license, an off-highway vehicle registration or a motorboat or sailboat registration in the same year the person applies for the assistance card program. The bill also allows counties the option to bill individuals for the costs of their rescue if the individual is not registered as having a current Search and Rescue Assistance Card at the time of the rescue.

AMENDS: 53-2a-1102

EFFECTIVE DATE: July 1, 2015

LOCAL TRANSPORTATION CORRIDOR PRESERVATION FUND AMENDMENTS

HB 332

Rep. Michael Kennedy

This bill:

- provides that the expenditure of revenues from the Local Transportation Corridor Preservation Fund shall be authorized and managed by the local highway authority rather than the Department of Transportation;
- requires the State Tax Commission to allocate the revenues provided to each county, city, or town imposing certain fees and taxes of funds;
- requires the Department of Transportation to distribute the funds allocated to each county, city, or town; and

- provides that a highway authority may not expend money to purchase a right-of-way for a state highway unless the highway authority has a transportation corridor property acquisition policy or ordinance in effect that meets Department of Transportation requirements for the acquisition of real property or any interests in real property except in certain circumstances.

I believe this bill was passed in response to claims by a county that UDOT was responsible for a contractor's noncompliance with federal standards on a local highway project. This bill limits UDOT's role in county highway projects as merely a pass-through. The biggest impact is on counties, who are now responsible (instead of UDOT) for ensuring that funds are used properly.

AMENDS: 72-2-117.5

EFFECTIVE DATE: July 1, 2015.

BUDGET RESERVE ACCOUNT AMENDMENTS

HB 333

Rep. Dean Sanpei

This bill addresses the transfer limit for the General Fund Budget Reserve Account and the Education Fund Budget Reserve Account. Each year, if there is a surplus revenue where the actual revenues exceeded estimated revenues for each of the budgets, 25% of the surplus is transferred to the General Fund Budget Reserve Account and the Education Fund Budget Reserve Account, respectively. However, there is a limit that the transfer of the surplus revenue cannot exceed a certain percentage of the respective appropriations for the current fiscal year. This bill extends that percentage limitation from 8% to 9% for the General Fund Budget Reserve Account and from 9% to 11% for the Education Fund Budget Reserve Account.

AMENDS: 63J-1-312 and 63J-1-313

VOTER PREREGISTRATION AMENDMENTS

HB 340

Rep. Jon Cox

In an attempt to encourage the younger generation to vote, this bill allows individuals who are 16 or 17 years of age to preregister to vote so that they will be automatically registered to vote in the first election for which they are eligible. The bill requires county clerks to retain the preregistration form, register the individual for the first election he or she will be eligible to vote, and send notices to the individual giving the individual information regarding their registration and the first election in which they will be able to vote. The bill also classifies the registration record of an individual who preregisters as private under GRAMA.

AMENDS: 20A-2-104, 20A-2-108, 20A-2-201, 20A-2-202, 20A-2-204, 20A-2-205, 20A-2-206, 20A-2-302, 20A-2-401, 20A-4-108 and 63G-2-302

ENACTS: 20A-2-101.1

UTAH COMMUNICATION AUTHORITY EMERGENCY RADIO AND 911 AMENDMENTS

HB 343

Rep. Brad Dee

This bill amends the Utah Communications Authority Act and the Emergency Telephone Service Law to implement a statewide public communications network for 911 emergency services. This bill:

- rennumbers the Utah Communications Authority Act;
- amends definitions;
- amends powers of the Utah Communications Authority;
- amends the duties of the board of the authority;
- creates the 911 Division within the authority and:
 - establishes the division's duties;
 - specifies the role of the 911 Division in recommending disbursements from certain restricted accounts;
 - requires the 911 Division to report to the executive director of the authority; and
 - creates a 911 advisory committee to the 911 Division and designates membership and duties of the advisory committee;
- creates the Radio Network Division within the authority and:
 - establishes the division's duties;
 - creates a Utah Statewide Radio System Restricted Account within the General Fund and specifies its purpose;
 - specifies the role of the Radio Network Division in the disbursement of money from certain restricted accounts; and
 - authorizes the appointment of an advisory committee and designates membership and duties;
- creates the Interoperability Division within the authority and:
 - establishes the division's duties;
 - creates a statewide interoperability coordinator and the coordinator's duties; and
 - authorizes the appointment of an advisory committee and designates membership and duties;
- creates the Administrative Services Division within the authority and:
 - establishes the division's duties, which include the investment, safekeeping of funds, and financial reporting for the authority; and
 - appoints a financial officer for the authority and establishes the duties of the financial officer; and
- makes technical and conforming amendments.

AMENDS: 26-8b-102, 59-1-403, 63A-4-205.5, 63E-1-102, 63G-2-305, 63I-4a-102, 63J-7-102, 69-2-5, 69-2-5.5, 69-2-5.6, 69-2-5.7 and 69-2-7

ENACTS: 63H-7a-402, 63H-7a-403, 63H-7a-404, 63H-7a-405, 63H-7a-502, 63H-7a-503, 63H-7a-504, 63H-7a-601, 63H-7a-603, 63H-7a-700 and 63H-7a-800

EFFECTIVE DATE: July 1, 2015

The Political Process

This 257 page bill is the implementation of the Justice Reinvestment Initiative which officially began with Governor Herbert's 2014 State of the State Address in which he announced a "full review of our current system to develop a plan to reduce recidivism, maximize offender's success in becoming law abiding citizens, and provide judges with the tools they need to accomplish these goals" he then stated the goal that "prison gates through which people re-enter society must be a permanent exit, and not just a revolving door" the initial promotion of this idea was publicly supported by the Chief Justice, the Senate President, the Speaker of the House, the Attorney General and others.

Technical assistance was requested from the Public Safety Performance Projects of The Pew Charitable Trusts and the US Department of Justice. On direction from the Governor the Utah Commission of Criminal and Juvenile Justice set to work developing a "package of data driven policy recommendations that will reduce recidivism and safely control the growth in the state prison population".

The Pew Charitable Trust expended an enormous amount of capital providing a team of researchers and lobbyist to see this project through. In November of 2014 CCJJ issued its Justice Reinvestment Report. Although based on research from the Pew study, it was the product of CCJJ.

As all prosecutors are aware, many concerns were - and still are - raised about some of the recommendations - in particular the lowering of some penalties in §58-37-8. SWAP and the county attorneys held numerous meetings with the Pew researchers / advocates and CCJJ.. A delegation of prosecutors also met with Governor Herbert, Lt. Governor Cox and others to express concerns. Through the course of the legislative session changes were made in the drug section and other sections of the bill to at least moderate some of our concerns. For instance the recommendations for reductions in penalty for distribution crimes was taken out of the bill with the only reduction being a change in the 2nd degree felony from 1 to 15 to 0 to 15 years imprisonment. The original recommendation for simple possession was that the first four possessions would be Class A misdemeanors. That was eventually reduced to the first two possessions as Class A misdemeanors.

The concern of the prosecutors has not been driven by a desire for punishment but rather a concern that disposition as lesser offenses might result in less supervision and less motivation to complete needed treatment. We have been in full agreement with most of the other points in the Pew study and have in fact have been advocating for several of those improvements for a long time. The full CCJJ report is available on the CCJJ web site and is worth reading.

Practical Review

The immediate task at hand is to review the provisions of this bill which apply to prosecutors and develop a strategy in each office as to how to deal with them. We suggest first going to the legislative web site and downloading a PDF copy of HB 348 at <http://le.utah.gov/~2015/bills/static/HB0348.html>. It is rumored that one needs to file an environmental impact statement before making a hard copy of this voluminous bill.

Traffic Offense Penalties

The first changes to go into effect will be a reduction in penalties on misdemeanor traffic offenses. The **effective date** of these changes is **May 12, 2015**. Those changes start on line 350 of

HB 348 and go through line 4384 on page 157 of the bill. They pick up again at line 4458 and go through 4612. More changes are then found on lines 5674 through 6463. All of these reductions are motor vehicle related. Depending on how one counts the separate offenses there are 42 Class B Misdemeanors which are reclassified as Class C Misdemeanors. Offenses such as DUI and reckless driving are of course not changed. In the course of this process SWAP-LAC was provided with a spread sheet of these traffic related reductions. Upon review, we made a number of recommendations all of which were incorporated in the bill.

Of major importance to prosecutors is the fact that about 240 misdemeanors were reclassified as infractions. As there will now be no possibility of jail for those offenses there will be no need to have jury trials or appointed counsel in those cases. We have yet to hear a prosecutor complain about those reductions.

Attached is a useful chart of the traffic penalty reductions.

Controlled Substances

The provisions attracting the most attention and heat were the changes to controlled substance penalties in 58-37-8. These changes are **effective October 1, 2015**.

Distribution

The basic penalty for distribution, production, manufacture, possession with intent to distribute etc. was not significantly changed. The current penalty is a 2nd degree felony for distribution of schedule I or II controlled substances or a GHB. The only change is to make those offenses a 2nd degree felony “punishable by imprisonment for not more than 15 years” (0 to 15). That change is on line 4633. A second or subsequent conviction for distribution is still a 1st degree felony. Penalties for distribution of other scheduled and listed drugs remain unchanged (lines 4635 through 4652). Kingpin and firearm enhancements are not changed.

Simple Possession

The most significant change in the bill is found beginning with line 4668. It now provides that simple possession of a schedule I or II substance is a Class A misdemeanor on a first or second conviction and on a third or subsequent conviction is a 3rd degree felony. Note on line 4680 that simple possession of marijuana remains a Class B Misdemeanor but enhancement to a Class A misdemeanor is now on the third conviction rather than the second and enhancement for simple possession of marijuana to a 3rd degree felony is now on fourth conviction rather than third. In working out the practical application of these reductions it became obvious that separating amounts of marijuana by weight became more of a hindrance than a help. At SWAP’s suggestion the penalty for possession of 100 pounds or more of marijuana remained a 2nd degree felony (line 4666) but the other weight specifications were deleted. Defending the 100 pound provision is rather simple as possession of more than 100 pounds of marijuana is a fairly rare occurrence and is clearly a major operation. On line 4668 the provision regarding more than 16 ounces but less than 100 pounds of marijuana has been deleted. The reason for this is that any amounts larger than typical of personal use can be prosecuted as possession with intent to distribute with minimal expert testimony from the officer.

Obtaining By Fraud Etc.

A slightly more complicated issue arose on line 4739 where the 3rd degree felony penalty was reduced to a Class A misdemeanor for behaviors typically used by drug addicts to get controlled substances such as changing prescriptions using false names etc. the complication is that some of

those activities are descriptive of corrupt practitioners or commercial criminal activities of one sort or another. Some study of this area may be in order to distinguish between typical addict behavior and commercial crime in future legislation. Subsection (iv) found at line 4735 describes activities which are typically used only by commercial criminal activity to make fake drugs. Therefore the penalty for violation of that subsection remains a 3rd degree felony as noted at line 4745.

Zone Enhancements

If any change was predictable this year it would be that the zone enhancements would be severely curtailed. First the zone enhancements **no longer apply to simple possession** but now **apply only to subsection 1a (distribution manufacture etc.)**, 58-37a-5 (paraphernalia) and 58-37b-4 imitation controlled substance. Please review those sections carefully before filing zone enhancements under the new provisions which take **effect October 1st**. On line 4754 elementary or secondary schools or their grounds are zones only during the hours of 6 a.m. through 10 p.m. the same is true of vocational or post-secondary institutions (line 4756). At line 4757 the buildings used for school sponsored activities are deleted. At line 4760 the grounds of a preschool or child care facility are limited to the hours of operation. At line 4762 the parks or amusement centers are limited to the time when they are open to the public. At line 4765 shopping malls theaters etc. are deleted. At line 4767 grounds of the library are limited to the hours when the library is open to the public. At line 4768 the 1,000 feet limitation is reduced to 100 feet.

Counting Prior Convictions

In determining prior convictions for distribution or simple possession a plea of guilty or no contest or a conviction for an attempt is a prior conviction (line 4802 *et seq*). Each prior conviction and the current crime must be from a separate criminal episode (lines 4807 through 4811).

Practical Concerns

Although the changes in 58-37-8 are not effective until October 1st, a person convicted before the effective date of the change but **sentenced after the effective date** by long standing case law receives the benefit of the lower penalty. This leads to a high likelihood that defendants convicted before that date will be attempting to stall the sentencing on first or second convictions for simple possession of a controlled substance until after that date. Therefore each prosecution office would be well advised to establish a policy for dealing with first and second offenders between now and the effective date of the act. The simplest plan is to allow a plea to a class A for all 1st or 2nd possession cases between now and October absent some other aggravating circumstance.

Given all the above, it is important to be making decisions in your area as to whether city attorneys will be taking over prosecution of first and second time drug offenders and what services may be available.

Restricted Person

Law enforcement became particularly concerned that reductions for the first two possessions of schedule one and two controlled substances may create an officer safety issue due to the fact that those offenders would no longer be restricted persons. Law enforcement and the Attorney General's office negotiated an amendment to 76-10-503 which is found on line 6581 of the bill and includes as a category 1 restricted person one who "is on probation for a conviction of possessing a substance classified in schedule I or II in §58-37-8 or a controlled substance analog or a substances listed in §58-37-4.2". You may also have noticed that in this case a conviction means a conviction only. A

plea in abeyance does not make one a restricted person. This may be of some convenience in motivating a first or second offender to enter and complete a plea in abeyance program if you set one up in your jurisdiction. That change is **effective May 12, 2015**.

Criminal Trespass

As is always the case something unexpected may be added to a bill. On the floor of the house a change was made to 76-6-206 criminal trespass. The changes are seen at lines 6565 through 6569 of the bill. The former language “the actor’s conduct did not substantially interfere with the owner’s use of the property” is deleted and replaced with “the actor complied with all lawful conditions imposed on access to or remaining on the property. That change is **effective May 12, 2015**

SENTENCING GUIDELINES

Beginning at line 5196 there are specific directions to the Utah Sentencing Commission to revise the Adult Sentencing and Release Guidelines. It is contemplated that the commission revise the criminal history score so that no elements are double counted. Also the criminal history score is to be limited to factors which are relevant to the accurate determination of an individual’s risk of re-offending. The Sentencing Commission has already adopted a preliminary draft of an adjusted matrix to comply with this statutory requirement. It is expected that the Commission will finalize guidelines in all of these categories in June.

Beginning at 5207 the commission is to develop guidelines for length of stay for offenders who violate a condition of probation. Those guidelines are to provide guidance to the court revoking probation.

For parolees who are being revoked by the Board of Pardons there is direction on line 5213 directing the commission to establish similar guidelines for length of stay on parole revocations. Starting at 5219 the commission is to establish graduated sanctions to be used by Adult Probation and Parole to implement “prompt and effective response to an individual’s violation of the terms of probation or parole”. These sanctions are to be implemented directly by AP&P. The commission is to establish guidelines as to when the violations must be reported to the court or the Board of Pardon & Parole. These sanctions may not exceed incarceration of more than 3 consecutive days and 5 days in any period of 30 days. These provisions all appear in 63M-7-404 and are **effective beginning May 12, 2015**.

Beginning at line 5297 the Department of Corrections is required to establish a case action plan for every offender under its supervision. Beginning at line 5358 the Department of Corrections is required to update the case action plan for offenders who are in prison and are about to be released.

COURT TO FOLLOW PROBATION GUIDELINES

Beginning at line 6869 there is new language which requires that if the court finds the defendant has violated conditions of probation and determines that there should be incarceration imposed for the violation that the imposition is to be within guidelines established by the Sentencing Commission. Obvious exceptions to that are where the judge decides to revoke probation all together and execute the previously imposed sentence or where the defendant needs treatment which is immediately available in the community. Also in this section is a requirement that the defendant be given credit for time served toward the prison sentence for time served as a condition of probation. That requirement is **effective October 1st**.

PAROLE REVOCATION GUIDELINES - BOARD TO FOLLOW

Beginning at line 7107 there is statutory direction for the Board of Pardons and Parole to follow the guidelines established by the Sentencing Commission. The parole violator is to be given credit for time served where time in jail awaiting a parole revocation decision. That provision is **effective October 1st**.

EARNED TIME PROGRAM

Beginning on line 6983 the Board of Pardons and Parole is directed to establish an earned time program that reduces the period of incarceration for those who successfully complete specified programs. The new §77-27-5.4 is quite specific in the structure of the earned time program. There are of course exceptions for those sentenced to life without parole or those ordered by the Board to serve a life sentence etc. Earned time credits may be forfeited for major discipline violations. That provision is effective **May 12, 2015**.

TREATMENT STANDARDS AND CERTIFICATION

Beginning at line 4952 the Division of Substance Abuse and Mental Health is directed to promote programs that address health and criminal risk factors. They are to establish and promote an evidence-based continuum of screening, assessment, prevention, treatment etc. These services are to be provided in the community for individuals with substance abuse and mental illness issues and are to address criminal risk factors. This language is of particular importance as it recognizes that a medical model of treatment which does not take into consideration criminal risk factors is simply not effective at reducing recidivism.

At line 5043 the Division is to establish by rule treatment standards for substance abuse and mental health treatment for those required to participate in treatment by the court or Board of Pardons and Parole. In a very significant move, the Division is to establish a certification program for treatment providers. The idea is to insure that the treatment will be of a type that is established by evidence to be effective in reducing recidivism. The importance of this certification is that any money which is to be provided to assist in treatment programs will be limited to certified programs. These provisions are **effective May 12th, 2015**.

Starting at line 5500 the Department of Corrections is to establish minimum standards and qualifications for treatment programs provided in county jails which house state inmates by contract. Those changes are found in §64-13-25 and are **effective May 12th**.

Starting at 5512 the Department of Corrections is required to establish minimum standards of treatment for sex offenders.

DRUG COURT

At line 7151 Code Section 78A-5-201 is amended to direct the Judicial Counsel to develop rules prescribing requirements for drug court. The following language appears at line 7153 “acceptance of an offender into a drug court shall be based on a risk and needs assessment, without regard to the nature of the offense.” The purpose of that language was to insure that offenders who were charged with Class A Misdemeanor Possession of a Controlled Substance might be eligible to participate in drug court if they were in fact high risk high need offenders. Additionally the rules are to insure that a person who is convicted of a crime other than a drug crime is eligible for drug court. The effective date of that provision is **May 12, 2015**. It will be important to give sufficient feedback in the rule-making process to assure that crimes which show the person to be dangerous may be considered in determining eligibility.

COUNTY INCENTIVE GRANTS

At line 5182 the Sentencing Commission duties are amended to add “establish and administer a performance incentive grant program that allocates funds appropriated by the Legislature to programs and practices implemented by counties that reduce recidivism and reduce the number of offenders per capita who are incarcerated.” While only \$2, 218,700.00 has been directly appropriated for county incentive grants (which is a lot better than nothing), additional funds which have been appropriated for supervision should be of some help. The Division of Substance Abuse and Mental Health is already working on recommendations to the Sentencing Commission on how these grants may be apportioned. Nonetheless some expansion of Medicaid will still be the key to meeting the goals of this legislation.

TRACKING

CCJJ is required to study and evaluate programs both state and local which are designed to reduce recidivism. They are also required to analyze data and compile a report to interim legislative committees. At the request of the Utah Association of Counties, there is language included at line 5557 requiring the Department of Corrections to track a sub-group of participants in treatment to determine if there is enough positive result to justify the general use of treatment and supervision as an alternative to incarceration. The good news is that CCJJ has sufficient funding to support this tracking requirement. These provisions are **effective May 12th, 2015**.

JAIL REIMBURSEMENT HOLD HARMLESS

At line 5613 there is a change to 64-13e-104 requiring that funds appropriated for jail reimbursement remaining after all jail reimbursement payments are made shall be distributed to counties to compensate for housing probationers and parolees who are incarcerated for short jail stays due to a violation of probation or parole. This was a request of U.A.C. and is intended to offset partially the cost shift of drug possession cases going to the counties. This provision is **effective July 1st, 2015**.

DRIVER LICENSE SUSPENSION

Beginning at line 4401 there is an amendment to 53-3-218. This was a recommendation from SWAP at the suggestion of Davis County Attorney Troy Rawlings. It provides that the Driver’s License Division may not impose a mandatory license suspension for a controlled substance conviction if the defendant is participating in a substance abuse treatment program. We believe this should be at least somewhat effective in encouraging participation in treatment.

AMENDS: Hundreds of code sections. If you’re interested in learning whether a particular section is amended, go to the [bill](#), scroll down through the VERY LONG list of co-sponsors and through the long title to the list of affected sections.

ENACTS: 64-13-10.5 and 77-27-5.4

EFFECTIVE DATES: Except as provided in Subsections (2) and (3), this bill takes effect on May 12, 2015.
(2) Section 64-13e-104 takes effect on July 1, 2015; and
(3) The following sections take effect on October 1, 2015:
(a) Section 58-37-8;
(b) Section 64-13-6;

- (c) Section 64-13-10.5;
- (d) Section 64-13-14.5;
- (e) Section 64-13-21;
- (f) Section 64-13-29;
- (g) Section 76-3-202;
- (h) Section 77-18-1;
- (I) Section 77-27-10; and
- (j) Section 77-27-11.

PLANNING DISTRICT AMENDMENTS

HB 351

Rep. Brad Dee

This bill applies only in counties of the first class, that is, Salt Lake County, and creates a new planning district and commission with jurisdiction over certain mountain and canyon areas. The bill is based on the idea that mountain and canyon recreational areas are used by residents of the entire county, including city residents, and therefore those residents have a stake in land use within the mountain planning district. The bill provides for adoption of a county ordinance that finds and designates an area “primarily used for recreational purposes, including canyons, foothills, ski resorts, wilderness areas, lakes and reservoirs, campgrounds, or picnic areas;” which is used by people who live both within and outside cities; and which contains less than 5% of the population of the county. The ordinance establishes a planning commission for the designated mountain/canyon area – the planning commission consists of persons living both within cities and the mountain planning area. Its land use jurisdiction preempts that of any city which has territory within the district, including that city’s master plan, but preserves the planning power of a city wholly within the district and also maintains the authority of cities which have legal control of watershed areas within the new planning district. The bill sunsets by its own terms, unless sooner re-enacted, in the summer of 2016.

AMENDS: 10-9a-304, 17-27a-102, 17-27a-103, 17-27a-210, 17-27a-301, 17-27a-302,
17-27a-305, 17-27a-401, 17-27a-403, 17-27a-502, 17-27a-505.5, 17-27a-602,
17-27a-604, 17-27a-605, 63I-2-210 and 63I-2-217

ENACTS: 17-27a-901

PROBATION AMENDMENTS

HB 353

Rep. Mike Shultz

This legislation requires Adult Probation and Parole to give advanced, written notice to the courts, prosecuting agency and State Debt Collection in all cases in which termination of supervised probation will be requested by AP&P.

AMENDS: 77-18-1

INVESTIGATION PROTOCOLS FOR PEACE OFFICER USE OF FORCE

HB 361

Rep. Marc Roberts

Representative Roberts and Senator Deidre Henderson both from Utah county had considerable concerns regarding the need for consistency and transparency in investigation of officer involved critical incidents. They held several meetings with stake holders including a number of law enforcement agencies. The county attorneys were represented by Jeff Buhman, the Utah County Attorney. After the discussion of many issues this bill was agreed upon. It enacts section 76-2-408 Peace Officer Use of Force - Investigations.

“Investigating agency” is defined to include a law enforcement agency, the county or district attorney’s office or an inter-agency task force. “Officer-Involved Critical Incident” includes the use of a dangerous weapon by an officer causing injury to any person, a fatal injury to a person other than an officer resulting from the use of a motor vehicle, the death of a person in law enforcement custody (excluding disease) or a fatal injury resulting from an attempt to prevent escape or make arrest, etc.

When a critical incident occurs the law enforcement agency having jurisdiction where the incident occurred is to notify the county or district attorney. The chief executive of the law enforcement agency and the county or district attorney then jointly designate an investigative agency for the officer involved critical incident. If the incident involves multiple investigations, they also designate which agency is the lead investigative agency. The lead agency investigating the critical incident may not be the law enforcement agency employing the officer.

This section specifically does not prevent the agency which employs the officer from conducting an internal administrative investigation. Clearly the county or district attorney and each law enforcement agency is going to need to work out in advance how such investigations will be handled.

The new section also required every law enforcement agency by December 31, 2015, to adopt and post on a web-site its policies and procedures adopted for selecting the investigative agency if an officer involved critical incident occurs in their jurisdiction.

Every law enforcement agency and county or district attorney has some work to do before December 31st.

ENACTS: 76-2-408

TRANSPORTATION INFRASTRUCTURE FUNDING

HB 362

Rep. Johnny Anderson

This is the big transportation bill that increased the state gas tax. That tax is administered by the State but the bill also has significant impacts on local government. It authorizes counties to impose a quarter cent local option sales tax for highways and public transit (not either or), the

proceeds to be distributed to a public transit district, eligible political subdivision (political subdivision that provides public transit but is not part of a public transit district), county, city, and town according to the percentages outlined in the bill.

Taxes distributed to counties, cities and towns shall be used for class B or C roads; traffic and pedestrian safety; sidewalk; curb & gutter; safety feature; traffic sign; traffic signal; street lighting; construction, maintenance, or operation of an active transportation facility that is for nonmotorized vehicles and multimodal transportation (bike and walking trails?); or public transit system services. Taxes distributed to public transit districts or eligible political subdivisions shall be used for capital expenses and service delivery expenses of that district or political subdivision.

Taxes may not be used to supplant existing general fund appropriations that a county, city or town has budgeted for transportation as of the date the tax become effective. This limitation does not apply to a designated transportation capital or reserve account that a county, city or town established prior to the effective date of the tax. A political subdivision shall verify compliance with these limitations in its audit, review, compilation, or fiscal report, and shall identify the amount of revenue from this sales tax that it budgets for transportation in the same report. Finally, the bill amends the apportionment formula for revenues deposited in the class B and class C roads account.

AMENDS: 51-2a-202, 59-12-2203, 59-12-2206, 59-13-102, 59-13-201, 59-13-301, 63I-1-259 and 72-2-108

ENACTS: 59-12-2219, 63I-1-251, 72-1-212

REPEALS: 59-13-104

EFFECTIVE DATE: July 1, 2015

LOCAL ELECTION AMENDMENTS

HB 365

Rep. Merrill Nelson

Good news for those who believe that we do not have enough partisan politics in county elections. This bill prohibits counties from changing to a process that elects its county officers through a nonpartisan election if that county used a partisan election in or after the 2000 general election.

AMENDS: 17-52-402

WHITE COLLAR CRIME REGISTRY

HB 378

Rep. Mike McKell

This bill authorizes the Office of the Utah Attorney General to develop, operate and maintain a Utah White Collar Crime Registry. This registry will operate as a website that will be accessible to the public. It will include the name, aliases, physical description, date of birth, height, weight, eye color, hair color and a recent photograph of the offender. For purpose of this statute, persons are considered offenders when they have been convicted of a second degree felony of any of the

following offenses:

- securities fraud;
- theft by deception;
- unlawful dealing of property by a fiduciary;
- fraudulent insurance act;
- mortgage fraud;
- communications fraud; or
- money laundering.

A first offence gets one placed on the registry for 10 years. A second offence gets the offender an additional 10 years and a third offence results in a life time entry on the registry. Those convicted of the enumerated offences after December 31, 2005, are required to be registered unless they have complied with all court orders, have paid all restitution and have not been convicted of any similar offences.

Offenders are able to petition a court for removal from the registry earlier if they have paid restitution, have met their probation terms and have no further violations.

AMENDS: 76-8-504.6

ENACTS: 77-42-101, 77-42-102, 77-42-103, 77-42-104, 77-42-105, 77-42-106, 77-42-107 and 77-42-108

SOLID FUEL BURNING AMENDMENTS

HB 396

Rep. Brad Dee

Those fighting for the right to burn wood achieved a great victory at the legislature. The Division of Air Quality had been contemplating a ban on wood burning during the winter to decrease air pollution. The legislature ensured this would not happen by passing HB 396, which prohibits the division from imposing a “burning ban prohibiting burning during a specified seasonal period of time.” The bill did, however, provide for a \$70,000 appropriation to study how to reduce emissions and the impact of a program to encourage citizens to replace unapproved solid fuel burning devices in their homes.

AMENDS: 19-2-107.5

EFFECTIVE DATE: July 1, 2015

CATASTROPHIC WILDFIRE AND PUBLIC NUISANCE AMENDMENTS

HB 408

Rep. Kay Christofferson

- This bill addresses catastrophic public nuisances. This bill:
- defines terms;

- states that a chief executive officer of a political subdivision or a county sheriff may determine that a catastrophic public nuisance exists;
- describes the criteria for determining whether a catastrophic public nuisance exists;
- describes the procedure for serving notice of the catastrophic public nuisance determination to the federal or state agency managing land; and
- authorizes a chief executive officer of a political subdivision or a county sheriff to abate a catastrophic public nuisance, under certain circumstances.

ENACTS: 11-51a-101, 11-51a-102, 11-51a-103, 11-51a-104 and 11-51a-201

AMENDMENTS TO THE PROCUREMENT CODE

HB 409

Rep. Lowry Snow

This bill:

- modifies the Utah Procurement Code provisions relating to the procurement of the services of an architect or engineer;
- authorizes the head of a procurement unit with independent procurement authority to address a procurement or contract that is out of compliance;
- modifies a provision relating to exemptions from the procurement code;
- modifies a provision relating to thresholds for small purchases;
- modifies a provision relating to a multiple stage bidding process;
- enacts a provision relating to changes in contract price;
- modifies procurement appeal provisions relating to local government procurement units; and
- modifies provisions relating to the forfeiture of a security deposit or bond.

AMENDS: 17B-1-108, 63G-6a-103, 63G-6a-104, 63G-6a-105, 63G-6a-106, 63G-6a-107, 63G-6a-204, 63G-6a-303, 63G-6a-402, 63G-6a-408, 63G-6a-609, 63G-6a-707, 63G-6a-1203, 63G-6a-1501, 63G-6a-1502, 63G-6a-1503, 63G-6a-1504, 63G-6a-1505, 63G-6a-1506, 63G-6a-1603, 63G-6a-1702, 63G-6a-1703, 63G-6a-1802, 63G-6a-1903 and 63G-6a-1904

ENACTS: 63G-6a-1206.5, 63G-6a-1502.5 and 63G-6a-1503.5

UTAH BROADBAND OUTREACH CENTER

HB 414

Rep. Stephen Handy

This bill creates the Utah Broadband Outreach Center within the Governor's Office of Economic Development (GOED). This bill;

- defines terms;
- creates the Utah Broadband Outreach Center (center) within GOED;
- authorizes the executive director of GOED to appoint a director of the center;
- describes the duties of the center, which include:
 - coordinating broadband development policy and promotion among broadband providers, state and federal agencies and local government entities;
 - making recommendations to the governor and Legislature regarding policies and

- initiatives that promote the development of broadband-related infrastructure in the state; and
- coordinating with broadband providers and other relevant stakeholders to promote the voluntary expansion of broadband infrastructure in both rural and urban communities;
- describes reporting requirements of the center; and
- provides a sunset date of July 1, 2018.

AMENDS: 63I-1-263

ENACTS: 63N-12-301, 63N-12-302, 63N-12-303, 63N-12-304 and 63N-12-305

EFFECTIVE DATE: July 1, 2015

DESIGNATING START BY BELIEVING DAY

HCR 1

Rep. Angela Romero

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the Utah Commission on Criminal and Juvenile Justice's 2007 study "Rape in Utah" found that one in three Utah women will be sexually assaulted in her lifetime, a rate that is higher than the national average for sexual assault crimes;

WHEREAS, the Utah Department of Public Safety reports that in 2012, there were 966 reports of rape or attempted rape, which is one rape every nine hours;

WHEREAS, research by the Utah Commission on Criminal and Juvenile Justice in 2007 and a United States Senate subcommittee 2010 hearing on crime and drugs indicate that many victims of sexual assault do not report the crime for fear of not being believed;

WHEREAS, national research has shown that false reports of sexual assault are rare and no more common than false reports of other types of crime;

WHEREAS, sexual assault is a violent crime and has devastating safety and health implications for every person in Utah, be they a victim, survivor, family member, loved one, friend, neighbor, or co-worker of a victim;

WHEREAS, End Violence Against Women International has developed a public awareness campaign entitled "Start by Believing" a message that, in part, confronts the reality that many victims do not get the support they need when they do report a crime;

WHEREAS, local governments and private business organizations around the state are adopting the Start by Believing campaign, and it is appropriate for Utah as a whole to support this simple and important message of support for victims of sexual assault; and

WHEREAS, if victims of sexual assault are believed and supported, they will heal more completely and more quickly, making Utah a better and healthier place:

NOW, THEREFORE,

BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, expresses support for victims of sexual assault and the Start by Believing campaign.

BE IT FURTHER RESOLVED that the Legislature and the Governor designate the first Wednesday in April as "Start by Believing Day."

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the state legislatures of the other 49 states, members of Utah's congressional delegation, End Violence Against

Women International, Chief Jerald Monahan, the Utah Sexual Violence Council, and the Utah Crime Victims Council.

SENATE BILLS

UTAH RETIREMENT SYSTEMS REVISIONS

[SB 11](#)

Sen. Todd Weiler

Anytime legislation is passed impacting our Utah Retirement System (URS) we should sit up and take note. This bill has limited application, but does apply to exemptions from participation in the retirement system as well as exemption from vesting requirements for employer nonelective contributions to a defined contribution plan at the death of an active member. It clarifies that the maximum number of positions that a municipality, county, or political subdivision may exempt from participation with the Utah Retirement Systems applies to the total number of exempted positions for employees covered under both the Tier I and Tier II retirement systems. The bill also specifies additional positions covered under the Tier II retirement system that are eligible to file for an exemption from participation in the retirement systems. It amends the applicability of contribution vesting periods and the effect of system elections for individuals who elect to be exempt from participation in the Tier II Utah Retirement Systems. A full-time elected official or legislator initially entering office on or after July 1, 2011, who has service credit accrued in a Tier I retirement system or a Tier II hybrid retirement system before July 1, 2011, shall continue in the Tier I or Tier II system for which the full-time elected official or legislator is eligible. It further provides that if an active member dies, employer nonelective contributions made on behalf of the employee to a defined contribution plan are exempt from the vesting requirements and vest to the member upon death.

AMENDS: 49-12-203, 49-13-203, 49-22-201, 49-22-203, 49-22-303, 49-22-401, 49-23-201 and 49-23-401

ENACTS: 49-22-205, 49-22-503, 49-23-203 and 49-23-504

WATER LAW – FORFEITURE EXEMPTIONS

[SB 15](#)

Sen. Margaret Dayton

There are several conditions that exempt a water right from being forfeited for non-use. This adds to the list of exemptions the water rights that are being *diligently* pursued in a change application.

AMENDS: 73-1-4

UNIFORM DRIVER LICENSE ACT AMENDMENTS

[SB 20](#)

Sen. Kevin Van Tassell

This bill:

- prohibits the Driver License Division from issuing a CDL to any person who is younger than 18 years of age at the time of the application;

- provides that a CDL may be issued to an individual who is an out-of-state resident if the person qualifies for a non-domiciled CDL;
- adds requirements prerequisite to taking the skills test;
- authorizes DLD to accept a skills test result from another state or a party compliant with certain federal CDL requirements; and
- makes other provisions for out-of-state applicants.

The bill coordinates with HB 26.

AMENDS: 53-3-204, 53-3-205, 53-3-402, 53-3-407 and 53-3-408

ENACTS: 53-3-401.1

FIRE CODE AMENDMENTS

SB 22

Sen. Curtis Bramble

This bill modifies provisions of the State Fire Code relating to carbon monoxide detection by modifying references to certain standards established by Underwriters Laboratories, Inc. that relate to carbon monoxide detection systems.

AMENDS: 15A-5-204

SCHOOL PLANNING AND ZONING PROCESS

SB 29

Sen. Evan Vickers

School districts and charter schools are to notify the local governmental entity of school sites – even before acquisition and then again before construction. This is to aid in determining the propriety of the site and adequacy of supporting infrastructure. The school is to inform the local entity of the potential community impacts, building and lot size, enrollment, and other issues caused by the proposed school. The school is also to supply a rough site plan that is to be reviewed by the entity's design review committee. The local entity may also require a traffic study be completed.

AMENDS: 53A-20-108

CONDITIONS OF PROBATION

SB 39

Sen. Scott Jenkins

This is a cost saving bill relating to the numbers of inmates a county jail may properly release, depending upon funding. Here is the language:

64-13e-104. Housing of state probationary inmates or state parole inmates -Payment.

- (1) (a) A county shall accept and house a state probationary inmate or a state parole inmate in a county correctional facility, subject to available resources.

(b)A county may release a number of inmates from a county correctional facility, but not to exceed the number of state probationary inmates [and state parole inmates] in excess of the number of inmates funded by the appropriation authorized in Subsection (2), if

(i)the state does not fully comply with the provisions of Subsection (9) for the most current fiscal year; or

(ii) funds appropriated by the Legislature for this purpose are less than 50% of the average actual state daily incarceration rate.

AMENDS: 64-13e-104

ASSET FORFEITURE AMENDMENTS

SB 52

Sen. Howard Stephenson

This bill creates a whole gambit of reporting requirements for law enforcement agencies that do asset forfeitures, and requires that The Commission on Criminal and Juvenile Justice (CCJJ) make a yearly summary of that report, which will be available online. For those that do asset forfeitures, be aware that CCJJ will be creating an electronic reporting format for the required data, which should be simplified with the use of drop-down menus and data entry fields. Some of the data this new statute will require for each concluded forfeiture include:

The agency name, agency case number, seizure date, number of claimants, type of property seized, whether it was civil or criminal, alleged offense giving rise to forfeiture, and the final disposition (whether it was by default, stipulation, trial, etc). The purpose of these reporting requirements is said to be “for transparency” – but we do know that some supporters of the bill simply want to make it more difficult for law enforcement to do forfeitures. The bill is better than it began, though, and we expect that your asset forfeiture official will be able to glean and enter the necessary data in a few moments, drawing the data from the disposition document sent by the prosecutor at the time disbursement of the forfeited property is being requested.

AMENDS: 24-4-114 and 24-4-117

ENACTS: 24-4-118

EFFECTIVE DATE: July 1, 2015

CREDIT MONITORING FOR MINORS

SB 54

Sen. Aaron Osmond

This bill allows the representative of a minor less than 16 years of age, incapacitated person, or protected person to request a consumer reporting agency place a security freeze on behalf of the individual. The consumer reporting agency must place the security freeze within 30 days from the date of request and if the consumer reporting agency does not have a record for the individual, it must create one. Once a security freeze is in place, the consumer reporting agency is prohibited from releasing the individual’s consumer credit report, any information derived from the report, or any record created for the individual unless the security freeze is requested to be removed. A consumer

reporting agency may charge a fee not to exceed \$5 for placement and removal of the security freeze.

AMENDS: 13-45-102, 13-45-201, 13-45-202 and 13-45-401

ENACTS: 13-45-501, 13-45-502, 13-45-503, 13-45-504, 13-45-505 and 13-45-506

WILDLAND FIRE POLICY

SB 56

Sen. Evan Vickers

This bill modifies the responsibilities of the Division of Forestry, Fire, and State Lands. This bill:

- requires the director of the Division of Forestry, Fire, and State Lands to:
 - coordinate the development of a state-wide wildland fire policy; and
 - report to the Natural Resources, Agriculture, and Environment Interim Committee on the director's recommendation for a state-wide wildland fire policy;
- describes the goals of a state-wide catastrophic wildfire reduction strategy; and
- states that the division may use funds to promote wildfire prevention, wildfire mitigation, and wildfire preparedness.

AMENDS: 65A-8-103

ENACTS: 65A-8-103.5

DOMESTIC VIOLENCE AMENDMENTS

SB 59

Sen. Todd Weiler

Imposes a duty on prosecutors to “examine the criminal history of the defendant” before filing an Information or agreeing to accept a guilty or no contest plea.

Provides that a court may not accept a plea of guilty or no contest to a domestic violence offense unless:

- 1) the prosecutor agrees to the plea in open court, in writing or by other means of communication that the court finds adequate to record the prosecutor’s agreement;

OR

- 2) the offense is filed by Information, the court receives a copy of the defendant’s criminal history and the history contains no record of a conviction or a pending qualified domestic relations charge within 5 years of the date the plea is entered.

Provides that pleas are not invalidated by failure of the court, prosecutor or law enforcement agency to comply with these requirements.

The intent of these changes are to prevent a defendant from pleading before a prosecution agency can determine if a DV charge should be enhanced, and also to ensure that the court has appropriate information before sentencing a defendant.

AMENDS: 77-36-1 and 77-36-1.1

ENACTS: 77-36-1.2

FORCIBLE ENTRY AMENDMENTS

SB 82

Sen Stephen Urquhart

This bill may leave you speechless! But in its current form, it is a great improvement from earlier, far more drastic versions.

77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring a warrant.

- (1) (a) Subject to Subsection (2), a peace officer when making an arrest may forcibly enter the building in which the person to be arrested is located, or in which there is probable cause for believing the person to be.
 - (b) Before making the forcible entry, the officer shall:
 - (i) identify himself or herself as a law enforcement officer;
 - (ii) demand admission;
 - (iii) wait a reasonable period of time for an occupant to admit access; and
 - (iv) explain the purpose for which admission is desired.
 - (c) (i) The officer need not give a demand and explanation, or identify himself or herself, before making a forcible entry under the exceptions in Section 77-7-6 or where there is probable cause to believe evidence will be easily or quickly ~~[secreted or]~~ destroyed. (NOTE: THE CHANCE OF HIDING EVIDENCE IS NO LONGER A BASIS FOR FORCIBLE ENTRY).

(3) Notwithstanding any other provision of this chapter, forcible entry under this section may not be made solely for the alleged:

- (a) possession or use of a controlled substance under Section 58-37-8; or
- (b) the possession of drug paraphernalia as defined in Section 58-37a-3.

77-23-210. Force used in executing a search warrant -- When notice of authority is required as a prerequisite.

- (1) (a) No later than July 1, 2015, any law enforcement agency that seeks a warrant under this section shall comply with guidelines and procedures which are, at a minimum, in accordance with state law and model guidelines and procedures recommended by the Utah Peace Officer Standards and Training Council created in Section 53-6-106.
 - (b) Written policies adopted pursuant to this section, shall be subject to public disclosure and inspection, in accordance with Title 63G, Chapter 2, Government Access and Management Act.

PRACTICE TIP ONE FOR POLICE AGENCIES. Adopt a Search Warrant Policy by July 1, 2015.

- (2) When a search warrant has been issued authorizing entry into any building, room, conveyance, compartment, or other enclosure, the officer executing the warrant may enter:
 - (a) if, after giving notice of the officer's authority and purpose, there is no response or the officer is not admitted with reasonable promptness; or
 - (b) without notice of the officer's authority and purpose as provided in Subsection (3).
- (3) (a) The officer may enter without notice only if:
 - (i) there is ~~[reason]~~ reasonable suspicion to believe that the notice will endanger the life or safety of the officer or another person;

(ii) there is probable cause to believe that evidence may be easily or quickly [~~secreted or~~] destroyed; or

(iii) the magistrate, having found probable cause based upon proof provided under oath, that the object of the search may be easily or quickly [~~secreted or~~] destroyed, or having found reason to believe that physical harm may result to any person if notice were given, has directed that the officer need not give notice of authority and purpose before entering the premises to be searched under [~~Rule 40,~~] the Rules of Criminal Procedure; or

(iv) the officer physically observes and documents a previously unknown event or circumstance at the time the warrant is being executed which creates probable cause to believe the object of the search is being destroyed, or creates reasonable suspicion to believe that physical harm may result to any person if notice were given.

(5) An officer executing a warrant under this section shall wear readily identifiable markings, including a badge and vest or clothing with a distinguishing label or other writing which indicates that he or she is a law enforcement officer.

PRACTICE TIP TWO FOR POLICE AGENCIES. Train officers to always wear proper attire clearly identifying themselves as police officers before executing any search warrant (never wear just plain clothes), and train officers – in the event that forcible entry is made for some unforeseen reason – to thoroughly document the previously unknown evidence that supported the entry.

(6) (a) An officer executing a warrant under this section shall comply with the officer's employing agency's body worn camera policy when the officer is equipped with a body worn camera.

(b) The employing agency's policy regarding the use of body worn cameras shall include a provision that an officer executing a warrant under this section shall wear a body worn camera when a camera is available, except in exigent circumstances where it is not practicable to do so.

PRACTICE TIP THREE FOR POLICE AGENCIES. Be sure that your agency has made a decision regarding use of body cameras in execution of search warrants. Spell out that policy clearly to include circumstances in which cameras are not to be worn. Then train officers to comply with that policy.

(8) Notwithstanding any provision in this chapter, a warrant authorizing forcible entry without prior announcement may not be issued under this section, solely for:

(a) the alleged possession or use of a controlled substance; or

(b) the alleged possession of drug paraphernalia as provided in Section 58-37a-3.

PRACTICE TIP FOUR FOR POLICE AGENCIES. This bill prohibits the use of a no-knock warrant in any circumstance solely for simple possession or use of any controlled substance. In reality, this section makes the execution of search warrants a far more dangerous thing for everybody involved, and may lead to more incidents such as the one that occurred in Ogden a few years back. But, if you are able to articulate within the affidavit any other crime for which evidence may be obtained, or for distribution of a controlled substance, forcible entry is a possibility.

PRACTICE TIP FOR PROSECUTORS. The bill does not have an explicit exclusionary rule within the language (originally, the bill had such language) for a violation of its provisions. However, expect greater scrutiny of no-knock warrants. When reviewing warrants - or screening cases - make certain the justification for any no-knock request – especially for narcotics – is clearly documented.

AMENDS: 77-7-8 and 77-23-210

SEX OFFENDER TESTING AMENDMENTS

SB 113

Sen. Ann Miller

Removes Catch-22 type language from the statute that gives victims the right to request that an offender be tested for HIV. Previously, the judge could only order testing upon a showing of probable cause that a victim had been exposed to HIV. That, however, would be impossible to show before the offender is tested.

The new language provides that a judge may order the defendant to submit to HIV testing if there is probable cause to believe that the victim was exposed to “conduct or activities that may result in” an HIV infection.

AMENDS: 76-5-501.

ASSAULT OFFENSE AMENDMENTS

SB 115

Sen. Daniel Thatcher

This bill moves subsection (b) of our current assault statute to the threats statute. The effect is that any domestic violence offender convicted of violating the amended misdemeanor assault statute for conduct against his or her spouse, former spouse, parent of a child of the offender, or current or former cohabitant, will become a disqualified/restricted person under federal firearms law. Those relationship statuses meet the controlling federal definition of “intimate partner” under 18 U.S.C. § 921(a)(32).

This change will enable our state Bureau of Criminal Identification to make more accurate, cost-efficient and timely decisions to approve or deny an application when a convicted domestic violence offender applies to buy a gun, significantly reduce or eliminate default gun-purchase approvals for convicted domestic violence offenders, and reduce delays of gun-purchase approvals for domestic violence offenders who may lawfully buy a gun.

This bill also amends our aggravated assault statute, which was necessary since it incorporated by reference our assault statute.

AMENDS: 76-5-102, 76-5-103 and 76-5-107

PRESCRIPTION DATABASE REVISIONS

SB 119

Sen. Todd Weiler

Prosecutors and Law Enforcement need to be aware of some of the changes made by this bill regarding access to the State Prescription Database. The changes are as follows:

- Requires law enforcement to use a search warrant to gain database information related to a controlled substance investigation and requires specification of the person regarding whom the information is sought;
- Adds the standards of negligently or recklessly to the elements of the criminal offense of unlawfully releasing database information. (New class C misdemeanor.)
- A person may request that the Division of Occupational and Professional Licensing provide to the person his or her records that are in the controlled substance database;
- Provides a procedure for a patient to correct erroneous information in the database;
- Authorizes a person whose information is in the database to obtain a list of persons who have had access to that person's information, except when the information is subject to an investigation; and
- Provides that a physician employed as medical director for a licensed workers' compensation insurer or an approved self-insured employer may have access to the database regarding requests for workers' compensation.

AMENDS: 58-37f-203, 58-37f-301 and 58-37f-601

PROCUREMENT CODE REVISIONS

SB 121

Sen. Karen Mayne

This bill modifies the Utah Procurement Code relating to work site safety programs. The bill includes information about a work site safety program in information that a person submitting a statement of qualification may be required to provide and includes a work site safety program among the criteria that may be used to evaluate a bid or proposal.

AMENDS: 63G-6a-403, 63G-6a-606 and 63G-6a-707

LAND USE AMENDMENTS

SB 124

Sen. Jerry Stevenson

In addition to expanding and clarifying some definitions, this bill:

1. Allows a city or county to allow property that houses public utility facilities to be exempt from the entity's zoning district standards;
2. Restricts who the city or county can require to sign a plat. The purpose of this was to avoid having non-governmental entities holding a development hostage by refusing to sign a plat until they obtained certain conditions, particularly when those conditions were excessive;
3. No longer requires underground facility operators to approve the subdivision plat, but simply to verify the accuracy of the depiction of their facilities;

4. Allows common or community areas in subdivisions to be sold by amending the subdivision plat if: a) the city/county approves; b) at least 75% of the voting interest in the HOA (that has an interest in the common area) agree; c) in the absence of an HOA, at least 75% of the owners of lots, units or parcels agree; and d) it does not create a new building lot;
5. Allows lot line adjustments regarding common or community areas if: a) at least 75% of the voting interest in the HOA (that has an interest in the common area) agrees; b) in the absence of an HOA, at least 75% of the owners of lots, units or parcels agree; and c) it does not create a new building lot;
6. A building permit cannot be denied based on infrastructure that has not been completed, yet is not essential to meet the building and fire codes applicable to that building, and for which a bond is in place.

AMENDS: 10-9a-103, 10-9a-505, 10-9a-603, 10-9a-604.5, 10-9a-606, 10-9a-802, 17-27a-103, 17-27a-505, 17-27a-603, 17-27a-604.5, 17-27a-606 and 17-27a-802

GAME FOWL FIGHTING AMENDMENTS

SB 134

Sen. Gene Davis

Senator Davis has been attempting for several years to create a felony for game fowl fighting. Apparently the lesser penalties in Utah have made the state more inviting for those who stage game fowl fights. The elements of the new crime are to “intentionally cause a game fowl to fight with or attack another game fowl for the purpose of entertainment, sport or contest or promote any activity that involves game fowl fighting...” The first violation is a Class B Misdemeanor, the second violation is a Class A Misdemeanor and a third or subsequent violation is a 3rd degree felony.

AMENDS: 76-9-301

ENACTS: 76-9-301.3

STATUTE OF LIMITATIONS FOR CRIMINAL FINES, FEES, AND RESTITUTION

SB 136

Sen. Lyle Hillyard

This helpful bill provides that criminal judgment accounts receivable administered by the Office of State Debt Collection do not expire. The meat of the language is this:

- (11) (a) Criminal judgment accounts receivable are not subject to civil statutes of limitations and expire only upon payment in full.
- (b) This Subsection (11) applies to all criminal judgment accounts receivable not paid in full on or before May 12, 2015.

AMENDS: 76-3-201.1 and 78B-2-115

DRIVING PRIVILEGE AMENDMENTS

SB 146

Sen. Ann Millner

This bill provides that the privilege to operate a road roller, road machinery, or any farm tractor or implement of husbandry on a highway without a driver license only applies if the person is operating the vehicle in conjunction with a construction or agricultural activity. The bill was aimed at preventing those with a DUI driver license suspension from driving their tractor to the convenience store to buy beer.

AMENDS: 53-3-202

DISPOSITION TO IMPAIRED DRIVING AND DUI SENTENCING REVISIONS

SB 150

Sen. Scott Jenkins

Under this amendment an impaired driving plea is not available to a person who has a prior DUI-related conviction as defined in 41-6a-501(2).

- The bill also provides that the court is required to:
7. for a felony DUI conviction, impose an order requiring the person to obtain a screening and assessment for alcohol and substance abuse as appropriate; and
 8. order installation of an ignition interlock system for all motor vehicles registered to the person and all motor vehicles operated by the person if a person is convicted of a DUI violation within 10 years of a prior conviction.

AMENDS: 41-6a-502.5, 41-6a-505, 41-6a-512 and 41-6a-518

WILDLIFE MODIFICATIONS

SB 163

Sen. Margaret Dayton

It is a Class A Misdemeanor to release live terrestrial or aquatic wildlife into the wild except as provided in title 23 and rules and regulations established by the Wildlife Board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

It is a new 3rd Degree Felony to knowingly and without lawful authority import, transport, or release a live species of wildlife, knowing the wildlife is listed as threatened or endangered, or is a candidate to be listed under the Endangered Species Act, 16 U.S.C. Sec. 1531 et seq., with the intent to establish the presence of that species in an area of the state not currently known to be occupied by a reproducing population of that species.

AMENDS: 23-13-14

JUVENILE OFFENDER AMENDMENTS

[SB 167](#)

Sen. Aaron Osmond

The sponsor of this bill was very concerned about the transfer of juveniles to district court and other issues regarding juvenile justice. Other parties including SWAP also had interest in making some significant juvenile justice changes. Through an interesting interaction the various interests were balanced and this bill contains something for nearly everyone to like and something else for nearly everyone to dislike.

Both the prosecutors and the Division of Juvenile Justice Services have been in favor of finding a way to house most young offenders who have adult prison commitments in more suitable facilities such as those operated by Juvenile Justice Services. The concern has been that those under age 18 who are committed to prison have to be administratively segregated from general population which makes it very difficult to provide any appropriate services for them. Because they are in such a crucial stage of brain development it is not a good idea to isolate them and end up with even more hardened criminals. To implement this concept this bill contains a new section 78-A-6-705 Youth Prison Commitment. It provides that a youth who has been transferred to the adult system may not be sentenced to prison without first receiving a report from the Division of Juvenile Justice Services regarding the potential risk which the offender would pose to other juveniles if he were to be committed to the custody of the division. After receiving that report, if the district court judge finds that probation is not appropriate and determines that the minor should be sentenced to prison the minor is committed to the custody of the Division of Juvenile Justice Services to be kept in a secure facility until the minor reaches the age of 18. Except for the location that person is considered as having been committed to prison and is under the exclusive jurisdiction of the Board of Pardons and Parole.

If the court finds that the minor would present an unreasonable risk to others in the custody of the Division, the minor has been previously committed to prison or committed to a JJS facility or that it would be contrary to the interest of justice, the court may order the juvenile committed directly to the Department of Corrections.

As a further protection against dangerous minors, the Division of Juvenile Justice Services shall adopt procedures regarding the transfer of a minor to the Department of Corrections. If under those rules the Division determines that housing the minor presents an unreasonable risk to others or is not in the best interest of the minor the Division may transfer the minor to the custody of the Department of Corrections. Once the minor turns 18 years of age the Division has until the minor turns 18 years and 6 months to transfer the minor to the Department of Corrections.

Although the Youth Parole Authority does not have any direct jurisdiction over a minor who has been transferred to the adult system it may hold hearing and receive reports regarding a minor in JJS custody and forward recommendations to the Board of Pardons and Parole.

There were also several changes made in the procedures by which a minor is transferred to the adult system. Under 78A-6-701 the direct file statute, there have been two categories of crimes which must be filed directly in the district court. The first category is when a minor 16 years of age or older is charged with an offense which would be murder or aggravated murder if committed by

an adult. There is no change in that requirement.

The second category of direct filing is for a minor who has previously been committed to secure care and then commits another felony. Under current law the charge must be filed in district court even though the new felony may be non-violent. Under the new provisions if the minor has been previously committed to a secure facility direct filing is only required if the new charge is a felony violation of one of the same crimes currently listed for serious youth offender (aggravated arson, aggravated assault resulting in serious bodily injury, etc.). Any other new felony after secure care now becomes a qualifier for serious youth offender. 78A-6-702 Serious Youth Offender is amended in some other ways in addition to the inclusion of the new category of non-violent felony committed after commitment to secure care.

Under current law serious youth offender has been a mandatory filing if the minor has committed a crime fitting the stated categories. The prosecutor charging the minor 16 years of age or older now “may” charge by criminal information to initiate a serious youth offender prosecution. Another change in serious youth offender is that “the minor was a principal actor in the offense” this language addresses the sponsors major concern about the serious youth offender statute. Originally his intention was to repeal the serious youth offender statute. Note that the language says “a principal actor” not “the principal actor”. The intent here was to eliminate peripheral parties to an offense to not to narrow it only to one.

With regard to retention factors after the preliminary hearing under serious youth offender, *current* law allows the defense to present evidence that “it would be contrary to the best interest of the minor and best interest of the public to bind the defendant over to the jurisdiction of the district court”. In this bill additional similar language is added regarding whether the juvenile system or the adult system is more likely to rehabilitating the minor and reducing the threat which the minor presents to the public.

In the retention faze of a serious youth offender proceeding the defendant’s burden of persuasion is clear and convincing evidence that the defendant should be retained in juvenile court. That burden of persuasion is changed here to a preponderance of evidence. [Personal opinion: that application of a standard of persuasion to a decision which is essentially a judgement call has always seemed out of place.]

There are no substantive changes in the certification procedure.

Two other unrelated issues were also included in the bill. First there is a new section 78A-6-122 Restraint of Juveniles. Some proponents were very exercised about wanting to statutorily regulate the use of restraints on juveniles appearing in court. The bottom line on the restraint of juveniles issue is that there is now a section requiring the Judicial Counsel to adopt rules which address the use of restraints balancing the welfare of the juvenile and the safety of the court.

Another issue addressed in this bill is the right to counsel. 78A-6-1111 is amended to provide that in cases where a minor is facing a felony level offense the court shall appoint counsel who shall appear until counsel is retained on the minors behalf. It also provides that the minor may not waive counsel unless the minor has had “a meaningful opportunity to consult with a defense

attorney” it goes on to require that counsel may not be waived unless there is a finding that the waiver is done voluntarily and the minor understands the consequences.

AMENDS: 62A-7-201, 78A-6-701, 78A-6-702, 78A-6-703 and 78A-6-1111

ENACTS: 78A-6-122 AND 78A-6-705.

EFFECTIVE DATES: The restraint of juveniles provision and 78A-6-122 takes effect October 1, 2015, other provisions take effect May 12, 2015.

DRIVER LICENSE MODIFICATIONS

SB 181

Sen. Curtis Bramble

This bill provides that a court is not required to send to the Driver License Division (DLD) an abstract of a record of a conviction for certain drug violations, and DLD is not required to suspend a person’s license for certain drug violations if the person convicted was not an operator of a motor vehicle at the time of the violation.

Also, under this bill a passenger in a motor vehicle found to be in possession of a controlled substance or drug paraphernalia will not be required to have their license suspended.

AMENDS: 53-3-218

AMENDMENTS TO SALES AND USE TAX EXEMPTIONS

SB 182

Sen. Curtis Bramble

If you have been patiently waiting for your turn to get a sales tax exemption, assuming you are a drilling equipment manufacturer, your wait is over. This bill exempts purchases or leases made by a drilling equipment manufacturer of machinery, equipment, materials, or normal operating repair or replacement parts that are used exclusively in the drilling equipment manufacturer’s manufacturing process. However, this does not apply to office equipment and supplies and until June 30, 2017, only 50% of the tax paid is refunded. For those who are not drilling equipment manufacturers, you will need to get a better lobbyist.

AMENDS: 59-12-102 and 59-12-104

DRIVER PRIVILEGE APPLICATION AMENDMENTS

SB 184

Sen. Curtis Bramble

This bill provides that every applicant for an original driving privilege card shall submit with the application a set of fingerprints, a photograph, and a signed waiver from the applicant whose fingerprints are being registered in the FBI’s Next Generation Identification system’s Rap Back Service. The waiver is an acknowledgment that the person is aware his or her fingerprints will be

stored for use in the Rap Back Service for use if a violation is committed subsequent to the prints being submitted.

AMENDS: 53-3-205.5 and 53-10-202

EFFECTIVE DATE: July 1, 2015

LOCAL GOVERNMENT REVISIONS

SB 199

Sen. Karen Mayne

This bill applies only in counties of the first class, that is, Salt Lake County, and creates an entirely new form of municipal government – the Metropolitan Township. Metro townships will have many of the features of a city or town, except that the Metro will not provide its own public services nor will it levy taxes. It will have the authority to enact local police power ordinances of all kinds, including land use, traffic, health and safety, business regulation, animal control and so forth, and will have a local planning commission. Metro townships are governed by a council of five persons, elected in municipal election years. This form of government will be similar to the ‘weak mayor’ form of city government, with a council chair, elected by the council from its members, who will exercise executive powers.

Municipal services in the townships will be provided by regional service entities, including pre-existing police and fire interlocal entities and a new municipal services district, created by the county. The district will be governed by a board of trustees consisting of the chairs of each township council, plus county council representatives and a representative of any city which desires to annex into the district. The county’s elected executive will serve as the district’s executive branch officer and the county will provide a district executive director. The district will have property tax authority, but no sales or utility franchise tax. All administrative functions and staff services will be provided by county officers and employees.

The Metros will be created in an election held in November 2015. The ballot will give voters the option to incorporate as a Metro township or as a city and, if Metro is chosen, the voters will also vote to be part of the municipal services district or to self-provide municipal services. The election will also ask the voters who live in unincorporated islands, surrounded by one or more cities, if they want to annex to the city or retain status quo.

AMENDS: 10-1-104, 10-1-114, 10-2-302, 10-2-401, 10-2-402, 10-2-403, 10-2-405, 10-2-407, 10-2-408, 10-2-411, 10-2-413, 10-2-414, 10-2-415, 10-2-416, 10-2-418, 10-2-425, 10-3-205.5, 10-3-1302, 10-3b-102, 10-3b-103, 10-3b-202, 10-5-102, 10-6-103, 10-6-111, 15A-5-202.5, 17-23-17, 17-23-17.5, 17-27a-103, 17-27a-301, 17-27a-302, 17-27a-306, 17-27a-505, 17-34-3, 17-41-101, 17B-1-102, 17B-1-502, 17B-1-505, 17B-1-1002, 17B-1-1102, 17B-2a-1102, 17B-2a-1103, 17B-2a-1104, 17B-2a-1106, 17B-2a-1107, 20A-1-102, 20A-1-201.5, 20A-1-203, 20A-1-204, 20A-11-101, 53-2a-208, 53-2a-802, 53A-2-402, 53B-21-107, 59-12-203, 63I-2-210, 67-1a-2, 69-2-5, 69-2-5.5, 69-2-5.6, 69-2-5.7 and 78A-7-202

ENACTS: 10-2-301.5, 10-2a-101, 10-2a-201, 10-2a-301, 10-2a-401, 10-2a-402, 10-2a-403,

10-2a-404, 10-2a-405, 10-2a-406, 10-2a-407, 10-2a-408, 10-2a-409, 10-2a-410, 10-2a-411, 10-2a-412, 10-2a-413, 10-3b-601, 10-3b-602, 10-3b-603, 10-3b-604, 10-3b-605, 10-3b-606, 10-3b-607, 10-3c-101, 10-3c-102, 10-3c-103, 10-3c-201, 10-3c-202, 10-3c-203, 10-3c-204, 10-3c-205, 17B-2a-1110, 17B-2a-1111 and 17B-2a-1112

REPEALS AND REENACTS:

10-3b-501, 10-3b-502, 10-3b-503 and 10-3b-504

RENUMBERS AND AMENDS:

10-2a-102, 10-2a-103, 10-2a-104, 10-2a-105, 10-2a-202, 10-2a-203, 10-2a-204, 10-2a-205, 10-2a-206, 10-2a-207, 10-2a-208, 10-2a-209, 10-2a-210, 10-2a-211, 10-2a-212, 10-2a-213, 10-2a-214, 10-2a-215, 10-2a-216, 10-2a-217, 10-2a-218, 10-2a-219, 10-2a-220, 10-2a-221, 10-2a-302, 10-2a-303, 10-2a-304, 10-2a-305 and 10-2a-306

REPEALS: 10-2-408.5, 10-3b-505, 10-3b-506, 10-3b-507, 17-27a-307, 10-2-102.13, 10-2-111, 10-2-116, 10-2-127, 10-2-128.1, 10-2-128.2, 10-2-131

ASSESSMENT AREA REVISIONS

SB 205

Rep. Curtis Bramble

Under the current statute, a local entity is able to purchase property at a foreclosure or tax sale when an assessment is not paid. If the local entity purchases the property, it is required to pay the annual assessment, or the local entity can transfer title to the property to the holder of the bond, as payment in full for all delinquent assessments. The bill requires that if the local entity desires to transfer title to the bond holder, the bond holder must agree in writing to the transfer. This may require a change to county/city/town ordinance governing assessment areas.

AMENDS: 11-42-504

EFFECTIVE DATE: July 1, 2015

VETERAN'S COURT

SB 214

Rep. Peter Knudson

This bill authorizes the creation of veteran's courts statewide.

The judicial council may create a veteran's court in any jurisdiction or geographic region, provided certain conditions are met. There must be a need and there must be a collaborative strategy between the courts, prosecutors, defense counsel, corrections, substance abuse treatment services and the U.S. Dept. of Veterans Affairs Veterans Justice Outreach Program.

The bill also establishes requirements for monitoring the program effectiveness, supervising veterans in the program, screening requirements and sanctions for non-compliance.

ENACTS: 78A-5-301, Utah Code Annotated 1953.

SEARCH AND SEIZURE AMENDMENTS

SB 226

Sen. Mark Madsen

This bill requires that law enforcement obtain a search warrant before using “Imaging Surveillance.” What is imaging surveillance?

According to the definition in the bill, *an "Imaging surveillance device" means a device that uses radar, sonar, infrared, or other remote sensing or detection technology used by the individual operating the device to obtain information, not otherwise directly observable, about individuals, items, or activities within a closed structure.*

77-23d-103. Use of imaging surveillance device -- Warrant required -- Exceptions.

(1) Except as provided in Subsection (2), a government entity may not operate an imaging surveillance device without a search warrant issued upon probable cause.

(2) A government entity may operate an imaging surveillance device without a search warrant:

- (a) for testing equipment or training if the testing or training:
 - (i) is not conducted as part of an investigation or law enforcement activity; and
 - (ii) is conducted with the knowledge and consent of:
 - (A) each individual who is imaged; and
 - (B) an owner of each property that is imaged;
- (b) in exigent circumstances; or
- (c) in fresh pursuit of a person suspected of committing a felony.

The bill also requires that in the event an agency does use an imaging surveillance device, the agency must provide written notification of its use to the targets of the investigation within 14 days of execution of the warrant. The bill allows extensions to delay the reporting requirement, for periods of 30 days, upon a showing of good cause.

The bill then imposes data retention and destruction requirements. If an entity obtains any data or evidence of a person who is not a target of the investigation, that data must be destroyed as soon as is reasonably possible, unless:

- The data relates to the target of the investigation and is necessary,
- The data is received through a court order which required its release and prohibits its destruction,
- The data was collected inadvertently but pertains to the commission of a crime, or
- The data pertains to an emergency situation and using or disclosing the data would ‘remedy’ the emergency.

ENACTS: 77-23d-101, 77-23d-102, 77-23d-103, 77-23d-104 and 77-23d-105

EMERGENCY ORDER AMENDMENTS

SB 228

Sen. Ralph Okerlund

This bill modifies the Public Safety Code regarding the Emergency Management Act. This bill makes technical corrections to the Emergency Management Act regarding notification that the

governor is required to provide to the Legislature when the governor suspends the enforcement of a statute during a declared disaster.

AMENDS: 53-2a-209

PROSTITUTION AMENDMENTS

SB 238

Sen. Ann Millner

To get around the elements of “sex for a fee”, creative Johns were providing other items of value in exchange for sex, such as huge HD TV’s, other electronic paraphernalia, or whatever the rate of the day might be. This bill broadens the “*fee*” element by adding the language “or the functional equivalent of a fee.” Careful what you barter for.

AMENDS: 76-10-1302, 76-10-1303 and 76-10-1313

TRAX CROSSING BARS OPERATIONS AMENDMENTS

SB 249

Sen. Scott Jenkins

Apparently this bill is intended to deal with a situation where a person stops his vehicle at a TRAX crossing, notes that if there is a gate it is raised and that there is no train approaching or passing etc. but there is an electric or mechanical signal device stating that one should not cross. The bill creates an affirmative defense for one who takes all of those precautions.

So one who takes those precautions and survives now has an affirmative defense to failure to stop in violation of a clearly visible electric or mechanical signal device.

AMENDS: 41-6a-305 and 41-6a-1203

STREET LEGAL ALL TERRAIN VEHICLE AMENDMENTS

SB 258

Sen. Scott Jenkins

This bill removes the restriction on operating a street legal all-terrain type I vehicle, utility type vehicle, or full-sized all-terrain vehicle as a street legal ATV on limited access highways. Thus, such vehicles may be operated on limited access highways, *except* in a county of the first class (Salt Lake County) or a municipality that is within a county of the first class. Salt Lake County or a municipality within Salt Lake County may, at its option, designate highways and streets as open for street-legal ATV use. Apart from the exception for Salt Lake County and municipalities in it, street legal ATVs will now be legal on all streets and highways, *including* controlled access highways that are not designated as interstate freeways as defined in Section 41-6a-102 and 72-1-102.

AMENDS: 41-6a-1509, 41-6a-1633, 41-22-10.2 and 41-22-10.5

ANTIDISCRIMINATION AND RELIGIOUS FREEDOM AMENDMENTS
SB 296 **Sen. Stephen Urquhart and Sen. Stuart Adams**

This bill extends non-discrimination protections to employment and housing, while balancing those interests with religious freedom.

The bill defines “gender identity” and “sexual orientation” and extends protection from discrimination, in employment and housing, regarding the defined terms to the same extent discrimination protection already exists for race, color, religion, sex, pregnancy, age, national origin and disability. Certain expressions of religious belief by employees may not be penalized by employers, provided the expression is not disruptive, is on equal terms with similar expressions of belief the employer permits in the workplace, or does not conflict with the employer’s essential business-related interests. Similar employee protections are afforded for an employee’s religious or marriage expressions made outside the workplace.

Regarding access to housing, discrimination on the basis of sex, sexual orientation or gender identity is generally prohibited, but is permitted under limited circumstances: reasons of modesty or privacy, furtherance of a religious institution’s free exercise of religion, where the dwelling is owned or operated by a religious institution, or where the dwelling is occupied by no more than four families and the owner resides in one of the units.

The bill does not prohibit an employer’s reasonable dress and grooming standards and does not prohibit reasonable policies regarding sex-specific facilities such as restrooms or showers, if reasonable accommodations are made for all employees.

The bill includes a nonseverability clause and preempts local ordinances on the subject.

PRACTICE NOTE: Local government officials should be made aware that local anti-discrimination ordinances are preempted.

AMENDS: 34A-5-102, 34A-5-104, 34A-5-106, 34A-5-107, 57-21-2, 57-21-3, 57-21-5, 57-21-6, 57-21-7 and 57-21-12

ENACTS: 34A-5-102.5, 34A-5-102.7, 34A-5-109, 34A-5-110, 34A-5-111, 34A-5-112, 57-21-2.5 and 57-21-2.7

AFFECTED BY REVISOR INSTRUCTIONS:
34A-5-102.7 and 57-21-2.7

**PROTECTIONS FOR RELIGIOUS EXPRESSION AND
BELIEFS ABOUT MARRIAGE, FAMILY, OR SEXUALITY**
SB 297 **Sen. Stuart Adams**

This bill requires county clerks, or their designees, to solemnize legal weddings, whether by the clerk, a clerk’s employee, or by some other willing person designated by the clerk to perform marriages during regular business hours. Furthermore, the clerk is required to establish office

policies regarding the issuing of marriage licenses and the performing of weddings. Persons authorized by statute to solemnize marriages are listed and they may perform weddings at their discretion.

Certain religious protections are expressly established in the bill including, no government or government official:

- may require a religious official to perform any wedding contrary to religious beliefs;
- deny a religious official the authority to perform weddings based on the official's refusal to perform a wedding contrary to religious beliefs;
- require a religion or religious official to provide goods or services contrary to religious beliefs;
- require religious programs or counseling be provided contrary to religious beliefs;
- retaliate against a religious official or organization for exercising rights under the bill; or
- deny or penalize a person holding a license based on actions regarding that person's religious beliefs.

A civil cause of action, with costs and attorneys' fees awarded, is created.

PRACTICE NOTE: County clerks must find and designate a person who is willing to perform any and all weddings. County clerks must adopt office policies about performing weddings and issuing licenses. Local government officials authorized to perform weddings – municipal mayors, county executives, justice court judges – should be aware that their power to perform weddings is at their discretion.

AMENDS: 17-20-4 and 30-1-6

ENACTS: 63G-20-101, 63G-20-102, 63G-20-103, 63G-20-201, 63G-20-202, 63G-20-203, 63G-20-204, 63G-20-301, 63G-20-302 and 63G-20-303

ENACTS UNCODIFIED MATERIAL

JOINT RESOLUTION SUPPORTING CREATION OF GI BILL FOR THE UTAN NATIONAL GUARD

[SJR 14](#)

Rep. Karen Mayne

This resolution strongly urges the Utah Legislature and Utah's federally elected delegation to recognize the valuable contribution service members and veterans make in the nation's defense. It strongly urges these elected officials to enact laws to provide for state and federally supported educational programs longer than 36 months for eligible service members and veterans.

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