

for The Defense

■ Training Newsletter of the Maricopa County Public Defender's Office ■

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Legislative Update

47th Legislature, First Regular Session Laws 2005

By Kathleen Carey, Private Defense Attorney

The 2005 Legislative Session general effective date was August 12, 2005, unless otherwise noted with special effective dates. The Legislature posted 1311 bills and passed 392 with the Governor signing 334 bills and vetoing 58. Highlights include more DUI assessments, this time to fund DPS parity and the legislature's attempt to address *Blakely*, immigration (manifestations in the criminal code as non-bailable, aggravating factors and numerous prohibitions and/or restrictions, several of which were vetoed). The Arizona Public Defender Association's efforts toward adding an indigent defense presence on the Arizona Criminal Justice Commission passed the House but stalled in the Rules Committee in the Senate. A comprehensive victim rights omnibus bill impacting various aspects of the criminal justice system from plea negotiations to parole hearing eligibility and restitution was also enacted. If you have questions or need assistance, you can reach me at careyleglaw@aol.com or (480) 705-6688 as I continue to assist the defense bar in legislative affairs with the Arizona Attorneys for Criminal Justice and the Arizona Public Defender Association.

TITLE 4 – ALCOHOLIC BEVERAGES

4-241. Selling or giving liquor to underage person; illegally obtaining liquor by underage person; violation; classification:

Judicial discretion in suspending the license of an individual convicted of knowingly selling, giving or serving a minor alcohol with a maximum of 30 days for first offense and 6 months for second or subsequent offenses. Excludes parents or guardians of a minor child in their home or as part of a religious service. Chapter 268 (HB2115)

TITLE 8 - CHILDREN

8-321. Referrals; diversions; conditions; community based alternative programs; definition:

The term Community Restitution will be substituted for the term Community Service for individuals that are given Community Service as part of a sentence or diversion stemming from criminal behavior in order to separate volunteer status of non-offending volunteers from those that have committed crimes. Over three dozen statutes were

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for The Defense

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amended to reflect this change of terminology. Effective December 31, 2005. Chapter 187 (SB1047)

8-344. Restitution orders; juveniles:

Repeals the 180 day limit of jurisdiction over a juvenile until they turn 18 and instead allows the Court to enter a juvenile restitution order (replaces the Judgment). The order does not expire until paid and is statutorily excluded from bankruptcy as a criminal penalty. (Note: likely unconstitutional pursuant to case law and federal encroachment) Also increases administrative "fee assessment" from \$15 to \$25 upon the juvenile but excludes the fee assessment if the victim is the parent of the juvenile. Effective January 1, 2006. Chapter 93 (SB1152)

8-421. Statement of rights: Creates requirement similar to adult criminal court for Victim Rights Statement of Rights to be provided verbally by the Juvenile Court. Effective December 31, 2005. Chapter 102 (SB1267)

TITLE 9 – CITIES AND TOWNS

9-500.24 and 11-269.08. Work centers;

aliens; prohibition: Statute prohibits municipalities, towns or counties from creating day work centers if any part of the center is used to hire illegal aliens. Employer penalties and sanctions for violations were removed from the bill. Chapter 285 (HB2592)

TITLE 11 - COUNTIES

11-483. Records maintained by county recorder; confidentiality; definitions: Allows for victims of domestic violence, stalking or harassment to have their records made confidential similar to Judges, Justices of the Peace, law enforcement, prosecutors and public defenders. However, if a person (including judges, JP's, etc.) is a victim, they must provide supporting documentation and are not required to go through the "designated" person of agencies to have their records redacted and/or made confidential. Chapter 49 (SB1086)

11-483. Records maintained by county recorder; confidentiality; definitions: Expands the statute to allow eligible persons in ALL counties to have their personal information redacted and/or confidential from county recording and voter registration. For example, judges, peace officers, justices of the peace, prosecutors and public defenders. Effective Date June 20, 2006. Chapter 243 (HB2500)

TITLE 12 – COURTS AND CIVIL PROCEEDINGS

12-2451. Petition for emancipation order; requirements; notification; representation; waiver of filing fees: Establishes the provision for the emancipation of minors 16 years of age or older provided they can meet a stringent set of circumstances and requirements and provides for factors to be considered by court including criminal record. Chapter 137 (HB2428)

12-511. Civil action arising from criminal conduct; definitions: Extends the Statute of Limitations for civil actions arising from criminal conduct from one year of the event to one year after the finality of the criminal case and regardless of whether the defendant was convicted of the charges. Chapter 141 (HB2528)

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Liars, Prevaricators, and Frauds

A Discerning Look at Deceit - Part Two

By Donna Elm, Federal Public Defender's Office

Part II: Lying Arising from Delusions

A. Intractable, Isolated Delusions

Irrationally held truths may be more harmful than reasoned errors.

– Thomas H. Huxley

Witnesses or defendants may say something that is in fact not true, but they honestly and innocently believe it. A delusional person has a skewed concept of reality, reporting honestly what he believes to be true when it is in fact a twisted distortion of reality. Technically, delusions are *not* hallucinations, although hallucinating schizophrenics or manic-depressives do harbor delusions. For schizophrenics and similar psychotic individuals, their disorder affects every aspect of their behavior and disrupts their thought processes, but delusions are usually limited; people harboring delusions are usually functional, and often productive, clear-thinking members of society.

“Delusion Disorder,” as defined by the American Psychological Association, refers to a condition where the central feature is the presence of delusions and the absence of any other symptoms.¹ Delusions are characterized by fixed (meaning they remained over time), non-bizarre, false beliefs. “Non-bizarre” refers to being facially plausible, having a ring of truth to them (as opposed to the clearly impossible “I am an elephant” variety). A potent trait of delusional people is their absolute resistance to being disabused of these cherished delusions.² A psychologist explained that “No matter how much evidence you provide them with and no matter how much they see that other people don’t believe them, you cannot convince them that this idea is false.”³

Delusions run the gamut from a singular, isolated type (*e.g.*, being convinced that a rock star returns your affections) to very complex fantasy (*e.g.*, believing in a conspiracy to deprive you of your inheritance, involving your family, the IRS, courts, mental health system, and police). President Garfield’s assassin, Charles Guiteau, defended his homicide charges by insisting that God had told him to kill the president – a singular and isolated delusion. Guiteau’s trial judge instructed the jury, using examples of other isolated delusions: “beliefs that someone is trying to kill you, you are incredibly wealthy, you invented something that would revolutionize the world, you are God or Christ, you have a glass arm, or you are being pursued by enemies.”⁴

I think you’re the opposite of a paranoid.

You go around with the insane delusion that people like you.

– Harry Block (in *Deconstructing Harry*)

Delusional stalkers are well-known examples of mentally intact persons who nonetheless harbor an unshakable belief that the object of their affection wants them too. Due to the similarity of their delusions, they have their own diagnosis: Erotomania (a delusional mental disorder focused on erotic love). The erotomaniac typically fantasizes an idyllic romantic or spiritual relationship with someone who is usually of a higher social status or position of authority, or a very public figure. Acting on the delusional belief, the stalker often tries to establish an intimate relationship with the object of desire. His delusion may extend to believing that his love object has given signs of reciprocating, thus justifying his pursuit. In an empirical study of 1800 love letters sent to celebrities, 27% misbelieved the celebrity to be their spouse,

future spouse, or suitor, and an additional 26% placed the celebrity in the role of lover.⁵

Delusions can also be far more complicated without disrupting normal thinking. For example, a client may have solicited investors' money for a pyramid scheme that he promoted due to his delusional belief it was a legitimate system that the government had been secretly using for years to line its coffers; he might therefore insist that his case be defended by proving that the government (through a conspiracy of the G8) was prosecuting him to prevent his informing more people of its "classified" self-enrichment agenda.

If the delusion does not impact relations with counsel or decisions on the case, it does not necessarily render the defendant incompetent (for Rule 11 purposes). In the above example, the pyramid schemer's competency must be questioned once he insists on a defense based upon a delusional conspiracy theory. Similarly, a drug possession client's delusion (that the Board of Ford Motor Company was trying to prevent her from claiming inheritance of its fortunes), would not interfere with her defense that the drugs belonged to the other person in the car; however, when it expands to her attorney joining forces with the company's scheme to deprive her of her birthright (by, for example, throwing the trial), effective assistance of counsel is jeopardized; her delusional system would impact her criminal competency.

But if a Court finds a delusional defendant incompetent, both state and federal jurisdictions could require him to participate in restoration treatment. To date, there has been little success in treating delusions.⁶ In *Sell*, the Supreme Court's recent case on force-medicating an incompetent defendant, Dr. Sell suffered from a paranoid delusional disorder leading to irrational outbreaks: he called police to report a leopard boarding a city bus, then asked them to shoot him; he complained that a governor and police chief were trying to kill him; he claimed, "God told me every FBI person I kill, a soul will be

saved."⁷ Although it was well-established that the Court could order a schizophrenic to take medication to render him competent to proceed (drugs can be effective against schizophrenia),⁸ that conflicts with the constitutionally protected liberty interest in avoiding administration of antipsychotic drugs.⁹ The *Sell* Court struggled with the question of how far courts should go when treatment may not improve competency.

The American Psychological Association weighed in as *amicus curiae*, pointing out research showing that psychiatric drugs would not improve Dr. Sell's delusions.¹⁰ Before forcing medication, the Court concluded that it would have to be persuaded that: (1) important government interests (like prosecuting important crimes) were at stake; (2) involuntary medication is "substantially likely" to render the defendant competent to stand trial (and substantially *unlikely* to have side-effects that will interfere significantly with his ability to assist counsel); (3) involuntary medication is "necessary" to further the government's interests to prosecute the case, and no less intrusive means could accomplish that; and (4) such medication is medically appropriate.¹¹ *Sell*, therefore, is a critical case to consult when dealing with a client whose delusions have rendered him incompetent.

Fortunately in Arizona, defendants are not precluded from asserting the insanity defense when they suffer from a "delusional disorder" (as opposed to a psychosis). The defense is available to anyone suffering from a "mental disease or defect";¹² arguably most delusional disorders fall within that. Moreover, defendants may use an alternate means of challenging their mental state with a *Christensen* defense. In *Christensen*, the defense argued that Christensen was unable to form the specific intent element of the crime due to interference from his mental illness.¹³ Instead of using psychological evidence to *prove* an *affirmative* defense of insanity, we can use it to *disprove* the element of mental state by *negating* it.

However, persistent delusions may wreak havoc with trying to get a favorable sentence via a plea agreement. Due to the strength and persistence of delusions, delusional clients feel they cannot honestly deny their beliefs when ordered to “tell the truth” in a factual basis. In a federal drug trafficking case (where the U.S. Sentencing Guidelines provide for a “Safety Valve” decrease in sentence if the defendant provides an interview where she *honestly* and openly acknowledges her crime), failure to be completely truthful can result in loss of that reduction.¹⁴ In one sad example, a defendant had acknowledged that she had distributed cocaine – but maintained the delusion that she was not the courier delivering drugs to the distributor; rather, she had stolen the drugs and approached the first car she came across to sell them. She could not be dissuaded from this figment despite compelling evidence to the contrary. In her sentencing interview, she conveyed the story that she earnestly believed was true. The defense scrambled to offer psychiatric testimony that she could not help those delusional beliefs, and so did not “lie” when making that (objectively false) statement. The 2nd Circuit discounted this psychological “defense,” reserving “Safety Valve” treatment only for persons who were *in fact* truthful.¹⁵ This unjustifiably harsh result can be understood in terms of the premise advanced at the start of this series: for the subculture of law, lying is a terrible taboo. That unfortunate defendant was punished specifically for the lie.

B. Pervasive Delusions of the Psychotic

Delusions of grandeur make me feel a lot better about myself.

– Jane Wagner

Delusion Disorder is distinguished from Schizophrenia, Manic-Depression (bipolar), and similar mental illnesses, which share a warped sense of reality but are far more widespread and involves decompensation in hygiene and thought disorders. Persons

experiencing a simple, confined paranoid delusion may worsen due to, for example, stress or a progressive brain condition, leading to a new diagnosis of one of these pervasive mental illnesses. The case of Ralph Steele is illustrative: during his divorce, he began to suspect that his wife was having an affair with her divorce attorney. He made vague threats for a few years, while his hardening of the arteries in his brain gradually made his condition worse. As he was losing his ability to function normally, his paranoid delusion grew, and he believed that the pair were conspiring to cheat him out of his money as well. Acting on that, he gunned down his wife and the attorney. By then, his diagnosis changed to Chronic Brain Syndrome.¹⁶

Major mental illnesses also feature delusions, but ones that are complex and all-encompassing, and are invariably accompanied by other symptoms such as loss of job/residence/marriage, hygiene deterioration, extreme paranoia, bizarre thoughts, unclear thinking, and emotional disturbances. For example, a Missoula man unexplainedly started circling a woman’s house, looking for a way in, calling her a “robot bitch.” He kicked at her car, pulled at her license plate, flattened all tires, but left the keys in the ignition. When the woman told him to leave, he merely grunted and mimicked whatever she said. When he finally broke into the house, she pointed a gun at him; evidencing no concern, he ordered her to leave *his* house. Upon arrest, he spoke about people being programmed by religious groups, with the government controlling their behavior.¹⁷ Another example is the business school educated secretary who, after a decade of professional work, suddenly changed her name to Billie Boggs, and took to living on the sidewalk, defecating and urinating on herself, begging – then tearing up any money given to her, wearing filthy, torn clothing, and screaming insults at passersby.¹⁸ These represent classic examples of paranoid schizophrenia.

The schizophrenic's delusions do not entirely replace reality; instead, they complicate his concept of reality until he cannot differentiate it from delusion.¹⁹ It is because those delusions seem to come into his consciousness just like real information does that they are so plausible to him. The brilliant Harvard mathematician, John Nash (subject of the film, "A Beautiful Mind"), worsened gradually until he eventually believed that he was communicating with extraterrestrials. After he was successfully treated, a colleague questioned how he could fall prey to such incredible delusions:

"How could you," began Mackey, "how could you, a mathematician, a man devoted to reason and logical proof ... how could you believe that extraterrestrials are sending you messages? How could you believe that you are being recruited by aliens from outer space to save the world? How could you ...?"

Nash looked up at last and fixed Mackey with an unblinking stare as cool and dispassionate as that of any bird or snake. "Because," Nash said slowly in his soft, reasonable southern drawl, as if talking to himself, "the ideas I had about supernatural beings came to me the same way that my mathematical ideas did. So I took them seriously."²⁰

Surprisingly, full-blown psychoses are more curable with anti-psychotic medications than the more limited delusional disorders.²¹ Psychiatric drugs that combat psychosis (which have no effect on Delusional Disorders) often alleviate delusional thought processes in, say, schizophrenics. Indeed some practitioners theorize that the roughly ten percent of delusional patients who respond favorably to antipsychotic medications were instead misdiagnosed schizophrenics who were in an early stage of that illness.

C. Delusional False Confessions and False Accusations

The deliberate implantation of false memories appears to be much easier than one would think.

– Dr. Elizabeth Loftus

Of particular concern to criminal justice is the deluded individual who either falsely confesses to a crime or falsely accuses another of a crime. Here, I am most concerned with those that arise from delusions, not deliberate, calculated lies. That individual believes what she is reporting, so can appear very sincere and understandably upset or remorseful, but her story is nevertheless not true. Moreover, given the resilience of delusions, she will not abandon them if challenged during an investigation, quite unlike the non-delusional witness who is not quite sure about his identification of an assailant.

1. Delusional False Accusations

Incest survivor books encourage women to incorporate the language of victimization into the organizing narrative of their identity as their major story – serving to create new victims.

– Carol Travis (New York Times book review)

When the mere statement of one witness is virtually the only evidence of a very serious crime, her truthfulness is critical. False accusations do occur, sometimes intentionally, but also sometimes based on a victim in the throes of a delusional system. The number of false accusations established is truly surprising, though most are deliberately and knowingly made for calculated purposes, not delusional in nature.²² Some statistics regarding false accusations are staggering:

~ In an Air Force study, 27% of accusers admitted, either before taking a polygraph or

after failing one, that they had lied in their accusation. D. McDowell, Ph.D., "False Accusations," 11 Forensic Science Digest 64 (Dec. 1988).

~ In a 9-year study of resolved rape charges in a midwestern city, of the 70,000 accusers whose cases were not already weeded out by the police for being "unfounded," 41% of them recanted at some point. E. Kanin, Ph.D., "False Rape Allegations," 23 Archives of Sexual Behavior 81-92 (no.1 1994).

~ A survey of forcible rape complaints during a 3-year period at two large universities found that accusers admitted that 50% of the charges were false. Id.

~ Those studying false accusations have found that, apart from persons deliberately fabricating complaints, delusional "victims" often have hysterical traits and frequently accuse for the attention that it provides.

Such untrue claims may arise from an angry, aggressive woman's disturbed thinking concerning her ambivalence about sexuality.²³ Another motivation may be a need to be showered with reinforcement and taken care of; the woman becomes the center of attention, and any shortcomings are overlooked.²⁴ Many women falsifying rape charges have traits of Pseudologia Fantastica (a pervasive pattern of deceit portraying the individual in very grandiose and dramatic or "fantastic" light) or Muchausen's Syndrome (a pervasive pattern of deceit about being injured or ill so as to secure attention from medical staff). Indeed, it is the very titillating, provocative, and often publicized nature of sexual offenses that leads to so many false accusations in this field of crime.

There are some rather disturbing accounts of women "crying rape" for the attention they could get from it. A middle aged woman emerged from the dressing room in a nationally known department store partially clothed, her hair disheveled, claiming tearfully that she had been raped in that

dressing room. This brought her national publicity and sympathy. Medical examination confirmed minor abrasions in her vagina and presence of semen on her clothing. The department store offered a reward, and the police held a news conference, asking for people who might have seen the perpetrator to come forward. A more reasoned investigation followed; eventually it was proven that the woman had inflicted the abrasions on herself with duct tape and had sprinkled herself from a vial of her husband's semen.²⁵ Clearly this was not an attempt to hurt a man, as she made sure that no one could be identified; instead it appears to have been done purely for the resulting media coverage and solicitous care she was given. Incidentally, she was not prosecuted for this fraud.

Although the case studies tend to reflect that women make the lion's share of false allegations, men may do so as well. When Lorena Bobbitt severed her husband's penis and casually tossed it out the car window, it captured the headlines and imagination of those needy souls who would be willing to go to great lengths to grab that spotlight. A California man sent detectives on a desperate hunt for "Brenda," a mystery woman blamed for cutting off his penis. He gave specific details, including that he had met Brenda at a gas station hours before, and they went to his trailer where they had sex; around 3:00 a.m., she told him she was seeking revenge for a 1983 killing of her friend and attacked him. His story was further supported by his being found unconscious and bleeding on the front lawn around then, freshly castrated. When "Brenda" could not be found after several days of a vigorous manhunt, police asked him to help create a composite sketch; it was during that meeting that he came clean that he had not been attacked, but had mutilated himself with a hobby knife! The man had had a 1983 conviction for manslaughter of a woman he killed after she made fun of his inability to achieve an erection during a tryst. Police speculated that the man's guilt over the killing her may have led to this bizarre self-

mutilation and false report.²⁶ He was not prosecuted, but was committed to a mental institution.

In an odd twist, evidence that a woman was starved for attention (supported by her numerous false accusations of rape) supported the theory that she would seek further attention by killing her children (Muchausen's Syndrome by Proxy).²⁷ A mother was prosecuted for murder following suspicious SIDS deaths of her first two babies and a near-fatal similar incident with her third. Investigators discovered that she had told numerous bizarre tales of being abused or raped, receiving treatment for cancer, and suffering miscarriages – none of which was substantiated. Meanwhile, one of the detectives was dispatched to take a rape report at the local hospital; he was surprised to find that the complainant was the mother. In a lengthy interview with her, she finally admitted that she had not been raped after all, and had inflicted her injuries on herself. Following up on the children's deaths, detectives re-interviewed her, resulting in her confession of having suffocated her two daughters and attempted to suffocate her son. The problem with confessions by an established habitual liar is that it is hard to know whether the original denial was the lie or the subsequent confession was. Indeed, she tried to defend herself by claiming that the confession was false (relying on the same evidence of delusion that was key to solving this investigation) to discredit it.

Courts have struggled to balance protecting a victim (who happens to have a mental illness history) against protecting a defendant facing extraordinarily charges (who happens to be innocent). In *Wesley*,²⁸ police were called to a domestic spat where they found the live-in girlfriend of the accused hiding in the bathroom with a cut on her head. She reported that her boyfriend had beaten her and placed the barrel of his sawed-off shotgun in her vagina. She later retracted the shotgun allegation – a fact that should have given the State pause – but it only dismissed

that charge, still proceeding to trial on the assault charges. The accused boyfriend maintained that she had accused him of having an affair. Despite his denials, she confronted him with a knife and later a gun. He disarmed her, but she continued to fight him, in the process bumping her head on the nightstand. Eventually, she fled to the bathroom. Her story grew more “fantastic” at trial. She testified that she had fixed him dinner, but he smacked the plate of food out of her hands and started kicking and pushing her; after hitting her in the head when she tried to escape, he told her his biggest fantasy was to kill her, bringing out his shotgun and beating her with it. Despite having just recanted the sexual assault aspect of her original report, the girlfriend testified that he threatened to ram it up her and blow her away. The jury convicted.

Wesley's successful post-conviction relief was based on his attorney not even trying to admit evidence of the girlfriend's lengthy psychiatric history. The defense had almost 300 pages of compelling psychological records reflecting an established history of delusions and false reports of being injured. She had been admitted to a psychiatric ward for “inappropriate behavior with delusional thinking.” Later, she reported that her niece had cut her with a razor, making her “bleed from head to toe,” but medical staff found only old scrapes and no lacerations on her; she was diagnosed as acutely psychotic and hospitalized. A few years later, she was readmitted after being found partially clothed in a McDonald's, reporting to police that she feared someone was trying to hurt her; while hospitalized, she tried to report to police that her husband had killed five children, told staff her boyfriend was a biker who threatened to kill her if she pressed charges, and claimed that “Epolian Youngblood” was trying to kill her.

In a case turning on victim credibility, the failure to examine or admit this evidence amounted to ineffective representation. Distinguishing that prior psychiatric diagnoses

or involuntary commitments alone would not necessarily be admissible, the *Wesley* Court recognized that delusions coupled with evidence that she reported those delusions to others as true was very relevant.

On the other hand, in *Velasquez*,²⁹ the Court excluded the accusing victim's psychiatric history. The complainant, a teenager babysitting the defendant's daughter, claimed that Velasquez came home drunk and had attempted to rape her; he denied any sexual encounter. In fact, the babysitter had told a different story to a family member: he had merely started to expose himself to her. Later, she later recanted altogether. Velasquez was tried regardless, and he sought to admit the girl's psychological records from three years later where she was prescribed the antipsychotic tranquilizer, Haldol, after reporting that she thought her pastor and his wife were trying to kill her. Noting that there was no expert opinion linking the later psychosis to the earlier offense, the Court excluded her post-offense psychiatric history. Although Velasquez would be permitted cross-examination to show a history of *false* accusations, he had done nothing to show that the murder attempt accusation was in fact false.

A more thoughtful approach was offered in *Morgan*³⁰ where a rape defendant sought to admit the victim's two separate prior allegations of rape that she later recanted. The Court noted that some jurisdictions refused this impeachment based on evidentiary rulings: the rules prevent impeaching character for honesty with specific instances of dishonesty; moreover they bar impeaching a person (who denies something on cross-examination) with extrinsic evidence of collateral matters. But that evidentiary disposition ignored the nature of this type of evidence; as Dean Wigmore explained, it is legitimately admitted to impeach with interest and bias, as well as character. Moreover, the essential discrediting element of a previous false accusation is its relevance to prove the victim's willingness to corrupt the legal

process and obstruct the discovery of "truth."³¹ Once again, the law's focus on truth was paramount. The *Morgan* Court adopted the better approach that, where the prior false accusations are compelling, the Confrontation Clause requires this type of impeachment – though the defense must first prove the falsity of those accusations by a preponderance of the evidence.

Finally, the Court's overriding respect for truth was seen when a false accuser was prosecuted. In *Fritz*,³² a teenager accused an acquaintance of rape when he was overheard during an argument mentioning having slept with her. After the investigating officer found "holes in her story" and confronted her, she admitted that she made the story up to prevent losing her present boyfriend. Pleading guilty to Obstruction of Justice as well as False Information, she was sentenced to a month in jail. The Court would not back off of this penalty, noting that she was completely lackadaisical about this serious transgression, and had potentially subjected an innocent friend to extraordinarily serious consequences "with absolutely no justification."

2. Delusional False Confessions

Too much of nothing can turn a man into a liar.

– Bob Dylan

Police are all too familiar with the phenomena of persons voluntarily – but falsely – confessing to crimes.³³ They are taught ways to weed out these "kooks" when solving crimes; most commonly, they omit or change critical facts of a crime in their press conference, and then question anyone confessing to the offense about that detail to see if he knew what had really occurred.³⁴ Although police might use a polygraph to verify a confession, would-be defendants who believe their delusions often can pass a lie detector test.³⁵ Some police departments have "regulars" who can be counted on to drop by to confess any sensational crime.

Nonetheless, many people who falsely confess to crimes (whether voluntary due to delusions or involuntary due to interrogation techniques) have been prosecuted and convicted of them. Barry Scheck calculated that of the sixty-two exonerations (by 2000) that the Innocence Project won through DNA evidence, a startling 24% involved false confessions!³⁶ This fueled former Illinois Governor George Ryan's decision to commute the death sentences to life of every person on their death row. Furthermore, in Alaska in 1996, Richard Bingham was arrested after he confessed to the highly publicized murder and rape of a local 17-year-old girl. Although he was unable to provide police with a description of unusual properties of the murder scene or explain how the victim had been silenced – and although DNA testing and latent prints analysis revealed no match with Bingham – charges against him went forward. At great risk by going to trial, a jury finally acquitted him.³⁷

Furthermore in 1989, a jogger in New York's Central Park was brutally raped and beaten. Five men eventually confessed to the "Central Park jogger" rape and, despite later vociferous denials, were convicted. They remained behind bars until 2002 when another imprisoned rapist took sole responsibility for it, leading to their exoneration and freedom. A month later, chagrined New York police offered their own "revisionist" theory that the cellblock confession of the new suspect was actually the false confession!³⁸ In some instances there is irrefutable proof that the suspects could not have committed the crimes they admitted. For example in 1987, Los Angeles police secured confessions to a double murder and robbery independently from two different men who each claimed sole responsibility; subsequent investigation revealed, however, that one of them was incarcerated in a county jail and the other imprisoned in the California Youth Authority at the time of the crime.³⁹ Similarly, police obtained a confession to arson from Jose Martinez in 1993, but prosecutors dropped charges when they learned he was in a Mexican prison at the time.⁴⁰

Probably the most notorious Arizona false confession case arose during the investigation of the Buddhist Temple murders: a coerced (vis-à-vis deluded) false confession case.⁴¹ The unsolved murders of nine Buddhist monks and ransacking of their temple made national headlines until police interrogated four marginal individuals (dubbed the "Tucson Four"), extracting a confession from each about their joint participation in the homicides. While the Maricopa County Attorney's Office was preparing capital prosecutions of them – even though they did not have any physical evidence connecting them to the atrocity – police stumbled across the murder weapon, leading in turn to Doody and Garcia instead of the Tucson Four. Searches revealed that Doody and Garcia also had the loot stolen from the temple; they both confessed as well. Additionally, Garcia admitted having murdered a woman in a campground shortly before the Buddhist Temple massacre – police were already prosecuting another man for that murder, a mentally ill adult who capitulated to a confession after another 16-hour interrogation!⁴²

Examples of voluntary delusional confessions are more troublesome, and suggest a deeper pathology than false accusations. In the late 1940's, Timothy Evans presented himself at a police station, claiming he had killed his wife and daughter. No other perpetrator was identified, and he was prosecuted for capital murder even though subsequent interrogations (where he continued to admit guilt) were highly inconsistent. Eventually, he recanted altogether. Evans was a life-long liar, a fact conveyed to the jury deciding his fate. Unfortunately, it considered his character for lying when discounting the recantation and inconsistent statements, but credited it when weighing his original confession; he thus was convicted and hanged. It was not until after his execution that he was proven irrefutably innocent.⁴³ In a similar Austin case in 1990, Billy Gene Davis confessed to having killed his ex-girlfriend;

however, she subsequently was found, alive and well, in Tucson.⁴⁴

In a 1993 sensational confession, Christina Mason of Phoenix admitted to having killed her 3-month-old son by letting another woman inject him with a mixture of heroin and cocaine to stop his crying. The autopsy, however, revealed no drugs at all in the baby's system except Tylenol. The Medical Examiner also concluded that the infant died of pneumonia or a viral infection, and was *not* murdered.⁴⁵ Recently, a teenaged mother confessed that, while high on drugs, she strangled her baby because it would not stop crying. Prosecutors dropped homicide charges after an autopsy revealed that the baby had succumbed to pneumonia, and had no evidence whatsoever of strangling, plus blood tests of the mother revealed no drug use at all.⁴⁶ A month earlier in Indiana, townsfolk were shocked when Chuck Hickman confessed that he had kidnapped and murdered a 10-year-old girl. She had disappeared last winter, and her body was found in the forest soon thereafter; the unsolved crime deeply disturbed the community. Hickman claimed he did it because she had witnessed methamphetamine activity at an apartment complex, but his stories were inconsistent every time he told them. To their credit, police continued to investigate after getting his confession, and after two months of intense verification, concluded that he could not have done it.⁴⁷

People who falsely confess a crime, earnestly believing that they did it, usually suffer from delusions of guilt or are attracted to the spotlight of media attention.⁴⁸ Unresolved guilt is often the culprit when the victim is a beloved family member. It has been postulated that Timothy Evans' confession to having killed his wife and daughter arose from a breakdown secondary to his grief over their loss, and guilt because he failed in his husband/father role of protector of females. The same drive may have prompted Billy Gene Davis' false confession of murder of his ex.

Moreover, the teenager who falsely reported strangling her baby, as well as Christina Mason who reportedly injecting her baby, also may have been wracked with guilt when failed in the overwhelming maternal burden of caring for their infants. Hickman, confessing to murdering a girl over her witnessing methamphetamine activity, may have responded to the community's need for retribution as opposed to personal guilt.

Scientists researching the bases for false confessions found that false confessors are usually low in intelligence, and are highly suggestible as well as compliant by nature.⁴⁹ Timothy Evans, for instance, had below average intelligence and was barely able to read. Chuck Hickman was a 21-year-old high school drop-out was additionally vulnerable due to extensive methamphetamines use and mental lapses secondary to it. The same mental impairments may be found in non-delusional coerced false confessors. One of the Central Park jogger suspects had an IQ of 87, while another was only 16 and had a second grade reading level. Arizona's Tucson Four were marginal and the fellow originally prosecuted for the collateral murder of the woman in the campground had been mentally ill. Another famous false confessor to murder was a man who styled himself as "Lord A., the Fifth Marquis of Bath;" he had average intelligence, but also suffered from dyslexia and other neurological problems, and was highly suggestible and compliant.⁵⁰

Persons desperate for attention comprise the bulk of the false confessors, and they are drawn to confessing crimes that made big splashes in the headlines like moths are drawn to flame. The continued news coverage of the unsolved murder of a 10-year-old girl may have attracted Chuck Hickman to confess just as the heavily covered double-murder may have attracted the two jailed California men to confess. The same thing probably motivated Richard Bingham's false confession in the Alaska murder. The Buddhist Temple massacre was a heinous and disturbing mass

murder of peaceful clerics; unsolved for some time, it continued to be headline news. By confessing, the Tucson Four became celebrities of a nefarious sort. Often the attention-hungry false confessors suffer from additional psychological symptoms (sometimes from Pseudologia Fantastica) indicating a need for attention; indeed Timothy Evans was a compulsive liar and the “Marquis” invented a dramatic persona.

The prevalence of false confessions led to curative evidentiary rules. The *corpus delicti* rule was developed in response to the problem of false confessions. It bars convictions based merely on uncorroborated confessions. Our Supreme Court noted that the rationale behind that rule is “the regrettable historical experience with false confessions and the concern that convictions lacking in fundamental fairness could too-readily result from these statements.”⁵¹ Professor Wigmore also commented that the *corpus delicti* rule arose from “The danger [lying] wholly in a false confession of guilt.”⁵²

Note that “admissions of party-opponents,” non-hearsay statements under Evidence Rule 801(d)(2), permit introduction of virtually any confession of a criminal defendant. The rationale behind that rule is that no one would admit she did a crime (penal consequences) unless she actually did it, thus confessions are considered very trustworthy. Paradoxically, the opposite *should* be presumed when the confessor is delusional or has a history of lying – especially when her lies/delusions do not benefit her. Indeed, the Supreme Court warned in *Escobedo* that too much reliance on confessions could jeopardize accurate convictions: “A system of criminal law enforcement which comes to depend on the ‘confession’ will, in the long run, be less reliable and more subject to abuses” than a system relying on independent investigations.⁵³

(Endnotes)

1. Diagnostic and Statistical Manual of Mental Disorders IV, 297.1 (4th ed. 2000).
2. Dorland’s Illustrated Medical Dictionary, 355 (25th ed. 1981). And see *State v. Uyesugi*, 100 Hawai’i 442, 469 n.10, 60 P.3d 843, 879 n.10 (2002)(quoting several experts who testified about the intractability of delusions).
3. *Id.*
4. *Guiteau’s Case*, 10 F.161, 170-71 (C.C.D.C. 1882).
5. P. Dietz, “Threatening and Otherwise Inappropriate Letters to Hollywood Celebrities,” 36 J. Forensic Sci. 185 (1991).
6. *United States v. Ghane*, 392 F.3d 317, 319-20 (8th Cir. 2004)(discussing studies reflecting that only about 10% of delusional patients respond to psychiatric medications).
7. *Sell v. United States*, 539 U.S. 166, 170 (2003).
8. *Illinois v. Allen*, 397 U.S. 337 (1970).
9. *Washington v. Harper*, 494 U.S. 210, 221-22 (1990).
10. Recent medical and clinical research has given serious scientific study to what prescription medication is effective in combating delusions. The studies are fairly consistent to date that psychiatric drugs have very little impact on delusional disorders (as opposed to psychotic mental illnesses). See, e.g., A. Felthous, “Are Persecutory Delusions Amenable to Treatment?” 29 Am. Acad. Psych. L. 461 (2001); H. Silva, “Effects of Primozide on the Psychopathology of Delusional Disorder,” 22 Prog. Neuro-Psychopharmacol. & Biol. 331 (1998). Feldhous concluded that pure persecutory delusions are “hopelessly resistant to treatment.”
11. *Sell*, 539 U.S. at 180-82.
12. A.R.S. §13-502(a).
13. *State v. Christensen*, 129 Ariz. 32, 628 P.2d 580 (1981).
14. 18 U.S.C. § 3553(f)(explaining qualifications for Safety Valve).
15. *United States v. Reynoso*, 239 F.3d 143 (2nd Cir. 2000).
16. *People v. Steele*, 237 Cal.App.2d 182, 46 Cal.Rptr. 704 (1965).
17. *State v. Cowan*, 260 Mont. 510, 520-21, 861 P.2d 884, 890-91 (1993).
18. *In re Retention of Boggs*, 522 N.Y.S.2d 407, 410 (App. 1987).
19. J. Davoli, “Psychiatric Evidence on Trial,” 56 SMU L.Rev. 2191, 2215 (Fall 2003).
20. S. Nasar, *A Beautiful Mind* 11 (1998).
21. *Ghane*, 392 F.3d at 319-20. One-third of the DNA scans now routinely done for rape cases are non-matches to the accused suspect. K. Krajick, “Genetics in the Courtroom: Controversial DNA



- Testing can Clear a Suspect," *Newsweek* 64 (Jan. 11, 1993).
23. S. Snyder, "Pseudologia Fantastica in the Borderline Patient," 143 *Am. J. Psychiatry* 1287-89 (1986).
24. C. Ford, *Lies! Lies! Lies! The Psychology of Deceit* 191 (1996).
25. S. Jones, "Details of the Nordstrom's Rape Hoax Released," *San Diego University Tribune* (May 16, 1993).
26. "Man Makes False Accusation of Malicious Wounding," reported through AP (December 13, 1997).
27. *United States v. Welch*, 36 F.3d 1098 (6th Cir. 1994)(unpublished).
28. *Wesley v. State*, 753 N.E.2d 686 (Ind.App. 2001).
29. *United States v. Velasquez*, 801 A.2d 72 (D.C.App. 2002).
30. *Morgan v. State*, No. A-7700 (Alaska App. 9/27/2002)(unpublished).
31. J. Wigmore, 3A *Evidence* 802-03.
32. *State v. Fritz*, No. 04-1808-CR (Wis.App. 2005) (unpublished).
33. Ford at 192.
34. For example, in the rape and murder of a 17-year-old Alaska girl, although Richard Bingham voluntarily admitted the crime, he was unable to provide police with a description of unusual properties of the murder scene or explain how the victim had been silenced. R. Leo, R. Ofshe, "The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation," *J. Crim. L. & Criminology* § III.A.4 (Winter 1998).
35. C. Patrick, W. Iacono, "Psychopathology, Threat, and Polygraph Accuracy," 74 *J. App. Psychology* 374-55 (1989).
36. B. Scheck, P. Neufeld, J. Dwyer, *Actual Innocence* at 219-20 (2000).
37. Leo & Ofshe, § III.A.4.
38. A. Perina, "The False Confession," *Psychology Today* (April 30, 2003).
39. Leo & Ofshe, § III.A.2 .
40. Id.
41. *State v. Doody*, 189 Ariz. 363, 930 P.2d 440 (App. 1996); Leo & Ofshe.
42. Leo & Ofshe (citing Kimball, Greenberg, *False Confessions*).
43. R. Sharrock, M. Cresswell, "Pseudologia a: a Case Study of a Man Charged with Murder," 29 *Med. Sci. Law* 323-28 (1989).
44. Leo & Ofshe, § III.A.1.
45. Leo & Ofshe at § III.1.
46. "Prosecutors Drop Charges against Mother, Citing False Confession," *Philly Blurbs* (June 3, 2005).
47. "False Confession Baffles Experts, Local Residents," *Louisville Courier-Journal* (May 21, 1005).
48. Ford at 192.
49. G. Gudjonsson, "One Hundred Alleged False Confession Cases: Some Normative Data," 29 *Br. J. Clin. Psych.* 249-50 (1990).
50. Sharrock & Cresswell.
51. *State v. Jones ex rel. County of Maricopa*, 198 Ariz. 18, 21, 6 P.3d 323, 326 (App. 2000)(citing *Smith v. United States*, 348 U.S. 147, 153 (1954)).
52. J. Wigmore, *Evidence* § 2070 (1978).
53. *Escobedo v. Illinois*, 378 U.S. 478, 488-89 (1964).

TITLE 13 – CRIMINAL CODE

13-604. Protection of Unborn Child:

Criminal acts that result in injury, harm or death to the fetus/unborn child is separated from the crime against the mother as a dangerous crime against children. Crime whether or not the defendant knew the mother was with child. Excludes abortion or medical procedures. Chapter 188 (SB1052)

13-604.01. Human Trafficking; Forced Labor:

Adds several new crimes to criminal code involving unlawfully obtained labor of individuals or smuggling of individuals as a Class 4 felony; forced prostitution as a Class 3 felony; sex trafficking is added to the list of Dangerous Crimes Against Children as a Class 2 felony. Chapter 2 (SB1372)

13-702. Sentencing; definition: Sentencing guidelines for class 2 through class 6 felonies are amended to require aggravating factors to be determined beyond a reasonable doubt by the “trier-of-fact” which is the jury in a jury trial or the court if there is no jury. Mitigating factors continue to be determined by the trial judge regardless of whether there is a jury. Chapter 20 (HB2522)

13-702. Sentencing Aggravator for Illegal

Aliens: Violation of federal immigration laws pursuant to Title 8, U.S.C. at the time of committing a felony other than a capital crime is considered an aggravating factor for sentencing. Chapter 133 (HB2259)

13-702. Stun Guns; Crimes of Assault: The use of a stun gun (as defined) during the commission of a crime is added to list of factors for aggravating sentences. Additionally, the taking or attempted taking of a law enforcement officer’s weapon (note, language includes “implement”) is aggravated assault. It is a crime to sell a stun gun without registering the purchaser with the manufacturer. Chapter 166 (HB2713)

13-703. Sentence of death or life imprisonment; aggravating and mitigating circumstances; definition: Revises aggravating and mitigating circumstances for capital-case sentencing by adding crimes to the list of aggravating factors; commission of a crime to further the goals or to join a street gang or syndicate; commission to prevent another person’s cooperation with law enforcement; and commission in a “cold, calculated manner without pretense of moral or legal justification.” Delineates which party bears the burden of proof to determine what phase the death penalty is imposed: if the defendant, the issue is determined in the penalty phase; if the state, the issue is determined in the aggravation phase. If during the penalty phase the trier of fact finds mitigation to warrant leniency, a natural life sentence must be imposed (25 years of confinement if the victim is 15 or older and 35 years if younger than 15). The definition of “victim” is expanded to include any lawful representative of the victim and relatives to the second degree of affinity. Terrorism and second degree burglary are added to a list of serious offenses for which a prior conviction may be considered an aggravating circumstance in determining whether to impose a death sentence. Chapter 325 (SB1429)

13-712. Sentence for certain drug offenses – Methamphetamine and Dangerous Drugs: A person convicted of manufacturing a dangerous drug in the presence of a minor under 12 (i.e., DCAC) must be sentenced to a life sentence or a presumptive term of 20 years; if minor between ages of 12 and 15 a 20 year sentence must be imposed (30 with a predicate prior). Creates a rebuttable presumption that no condition of release or amount of bail would assure the safety of the community or its members when the offender tests positive for the drugs and is arrested for manufacturing. The amount of pseudoephedrine, norpseudoephedrine or phenylpropanolamine that a person can purchase without a prescription is reduced to 9g from 24g. The sale, transfer or furnishing

of anhydrous ammonia is regulated unless used by a business or other lawful activity that provides or uses the product for refrigeration. Effective November 1, 2005. Chapter 327 (SB1473)

13-902 and 13-3824. Sex Offenders;

Lifetime Probation: Sex offenders that are convicted of failing to register may be given lifetime probation when probation is available. Chapter 320 (S1384)

13-907. Setting aside judgment of convicted person on discharge; making of application; release from disabilities; exceptions:

Amends statute to include 28-3319 actions after license suspension, revocation or denial for driving under the influence or refusal of test; IID requirement. Chapter 313 (SB1254)

13-922. Persons convicted of sexual offenses; residency restrictions; exceptions; definitions:

Expands information required to be provided by sex offender registrant to include mailing address and landlord if different from physical residence. Sex trafficking of a minor is added to dangerous crime against children and carries a mandatory 20-year prison sentence if life sentence not imposed. Probation officers are prohibited from approving residence in a multi-family housing of a sex offender on probation unless the residence occupancy of sex offender registrants is less than 10% of the dwelling units. Chapter 282 (SB1338)

13-1400. Sexual Assault of a Spouse:

Sexual Assault of a spouse is increased from a Class 6 felony to a Class 2 felony to mirror classification of a stranger rape. False Reporting of Sexual Assault is a Class 1 Misdemeanor. Includes a reporting component for sexual assault and false reporting of sexual assault to the Arizona Criminal Justice Commission. Amendment includes offenses committed prior to this amendment under the higher class felony as well as a new sex offender registration component retroactive to before the effective date. Chapter 185 (SB1040)

13-2009. Aggravated taking identity of another person or entity; classification: A new crime of Identity Theft is created as a Class 3 felony if an individual takes, purchases, manufactures, records, possesses or uses information for an unlawful purpose without permission for an unlawful purpose of causes economic loss in excess of \$3,000. Creates new crime of Trafficking of ID theft as a Class 2 Felony if information is sold for an unlawful purpose. Presumption of crime if more than five items are in the possession of the offender, regardless of whether or not any economic loss upon the victims or whether or not the entity or person is real or fictitious. Excludes possession by individuals under the age of 21 presumably to exempt this category of charging on underage minors in possession of false identification for the purpose of misleading or purporting to be a different age. Chapter 190 (SB1058)

Title 13, Chapter 23. Heading is changed to Organized Crime, Fraud and Terrorism:

Redines racketeering as animal or ecological terrorism with intent to seriously injure another or cause death or financial gain; also adds human smuggling to RICO offenses. Definition is for 3 people acting in concert with a deadly weapon to cause substantial financial loss to lawful animal activity, animal facility or research facility. Effective January 1, 2006. Chapter 308 (SB1116)

13-2411. Impersonating a peace officer; classification; definition:

Increases the penalty from a Class 6 Felony to a Class 4 Felony if crime is committed during the commission of (almost all) specific types of criminal felonies. Chapter 110 (SB1369)

13-2412. Refusing to provide truthful name when lawfully detained; violation;

classification: Creates a new crime of a Class 2 Misdemeanor for failure to provide the true full name upon request of law enforcement that has probable cause a crime has or is about to be committed. Law enforcement must advise suspect that failure to provide information upon a legitimate

request is a crime. (Note: Possible unintended benefit from statutorily required warning by peace officer to CL4 charge of providing false information) Chapter 214 (SB1488)

13-2907. False reporting; emergency response costs; classification; definitions: Amends the criminal penalty by raising the Class 1 Misdemeanor to a Class 6 felony for the crime of false reporting of an emergency for second or subsequent offenses of false reporting as well as providing for reimbursement by the defendant of all costs incurred in responding to the false call. Chapter 83 (SB1031)

13-2926. Abandonment or concealment of a dead body; classification: Creates Class 6 felony making it unlawful to knowingly conceal a dead human body or parts thereof with the intent to abandon or conceal. Chapter 69 (HB2166)

13-3112. Permit to carry concealed weapon; qualification; application; training program; program instructors; report; applicability; violation; classification: Adds County Detention Officers that is weapon certified to peace officers permitted to carry concealed weapons. Chapter 57 (SB1269)

13-3821. Persons required to register; procedure; identification card: Closes the gap/loophole for sex offenders relocating to a new jurisdiction in Arizona and requiring registration if the offender was required to register in the original jurisdiction. Chapter 176 (SB1382)

13-3875. Cross-certification of federal peace officers; policy; powers; qualifications; liability; records: Adds and broadens definition of federal agents to include all federal officers eligible for cross certification as peace officers in Arizona. Chapter 44 (SB1039)

13-3918. Time of execution and return: Clarifies the time period for returning affidavits of service for executed warrants as well as requirements and/or limitations for extending the time period to serve a warrant. Chapter 51 (SB1113)

13-4013. Fee of counsel assigned in criminal proceeding or insanity hearings; appointment of investigators and expert witnesses in case: Expands requirement for Judges to appoint expert witnesses and investigators on behalf of indigent defendants in non-capital cases. Takes away judicial discretion to determine reasonable fees for appointments and requires fees to be determined based on the contract rates established by the County. Chapter 145 (SB1144)

13-4042. Victim Rights Omnibus: Multiple changes in victim rights statutes including notification requirements to victims in juvenile court; provisions to allow victims to continue as victims in a case where the count was dismissed as part of a plea agreement; restitution orders; allowing victims to file notice of appearance in appellate proceedings; expands time period for parole review for defendants convicted of certain crimes to be ineligible for another 5 years. Effective Date December 31, 2005. Chapter 260 (SB1433)

13-4402.01. Victims' rights; dismissed counts: Provides for a victim that has opted in for victim rights to remain a victim in counts that are dismissed as part of a plea agreement. Effective December 31, 2005. Chapter 154 (HB2337)

TITLE 15 - EDUCATION

15-342. Schools, Crime Reports; Pupil Interviews: Authorization for School Boards to establish guidelines and policies to deal with parental notification and presence as well as exceptions when law enforcement requests access to a minor for interrogation. Chapter 167 (SB1004)

TITLE 21 - JURIES

21-202. Persons entitled to be excused from jury service: Amends statute to include provisions for elderly and/or disabled individuals to be excused from jury duty either permanently or temporarily with or without a physician certifying the inability of the individual to serve on a jury. Chapter 74 (HB2305)

TITLE 25 – MARITAL AND DOMESTIC RELATIONS

25-403. Custody; best interests of child: Complete rewrite of Child Custody statutes with Legislative Council indicating no substantive changes. However, the rewrite is substantive and includes Domestic Violence, false reporting and/or child abuse as factors for determining best interest of the child as well as rebuttable presumptions. Chapter 45 (SB1045)

TITLE 28 - TRANSPORTATION

28-454. Public records; peace officers; prosecutors; redaction; definition: If a law enforcement officer has requested confidentiality of personal records, state photographs will not be released. However, photographs may be released to assist law enforcement in the filing of a complaint against the officer or if the photo was obtained by other means. Chapter 181 (HB2254)

28-1321. Implied consent; tests; refusal to submit to test; order of suspension; hearing; review; temporary permit; notification of suspension; special ignition interlock restricted driver license: Provides for individuals whose license has been suspended for refusal to submit to a blood alcohol content test or whose driving privilege is revoked for certain DUI offenses may apply to the MVD for a special ignition interlock restricted driver's license in order to drive to and from work, doctor's office. Also makes changes to IID requirements. Effective February 1, 2006. Chapter 312 (SB1240)

28-1382 and 5-395. DUI Assessments, DPS Equipment, GITEM: Creates additional assessments that are non-waivable by the court for DUI and OUI convictions. \$500 first offense and \$1,250 for a second offense within 5 years. Extreme DUI, \$1,000 for a first offense and \$1,250 for a second offense within 5 years. Aggravated DUI \$1,500. Refusal to provide test sample is subject to a civil penalty of \$500, motor vehicles only, not watercraft. Proceeds are deposited in the state general fund. Appropriation to the Dept of Public Safety from the general fund, \$3 million for flak jackets, stun guns and other safety equipment. Appropriation of \$3,897,400 from the general fund to DPS for the Gang Intelligence Team Enforcement Mission (GITEM). Chapter 307 (SB1160)

28-3511. Removal and impoundment of vehicle: Creates mandatory requirement for law enforcement to impound the vehicle of any individual driving on a suspended or lacking a license (from Arizona or any jurisdiction) in an uninsured vehicle. Discretionary language for impounding vehicles of drivers with suspended license (only). Creates increased mandatory penalties from \$250 to \$500 for a DOSL first offense; \$500 to \$750 for second DOSL offense; \$750 to \$1000 for subsequent DOSL offenses. Chapter 113 (SB1420)

28-3511. Removal and impoundment of vehicle; immobilization of vehicle: Upon arrest of a driver of a vehicle for extreme or aggravated DUI or a driver under 21 that has been drinking an alcoholic beverage, officers must remove the vehicle and either immobilize it or impound it. An exception is provided if the spouse of the driver is present, has a valid license, is not impaired by alcohol, and represents to the peace officer that the car will be driven only to the driver's home or to a place of safety. Regulations governing duration, notification, early release, charges, etc. that currently pertain to impounded vehicles are extended to immobilized vehicles. Effective October 31, 2005. Chapter 313 (SB1254)

28-5808. Vehicle license tax distribution: Vehicle License Tax, Law Enforcement Bonus Fund. Provides for a 1.51 percentage of licensing taxes collected to be removed from the general fund for the purpose of providing bonuses to DPS law enforcement. Retroactive to July 1, 2005. Chapter 306 (SB1119)

TITLE 29 - PARTNERSHIP

10-1632. Interrogatory or signature violations; corporate records; classification;

29-613. Interrogatory or signature violations; limited liability company records; classification: Increases the Class 5 felony to a Class 4 for failing to respond to interrogatories of the Corporation Commission and adds a new section 29-613 to include LLC's. Chapter 13 (HB2161)

TITLE 32 – PROFESSIONS AND OCCUPATIONS

32-1982 – 32-1985 and 32-1996. Prescription Only Drugs: Makes substantive changes to pharmacy wholesaler statutes with violations ranging from a Class 2 Misdemeanors to a Class 2 Felony. Chapter 290 (H2193)

32-4001. Certified Court Reporters; Verbatim Records: Expands definition of Court Reporting to include voice records and establishes requirements for preserving the record and certifying court reporters. Effective January 1, 2007. Chapter 107 (SB1311)

32-4222. Board of Massage Therapy: Adds restrictions for licensing (i.e., fingerprint cards) of massage therapists if convicted of crimes of moral turpitude whether a felony or a misdemeanor, prostitution or solicitation or felonies that are reasonably related to the profession and any class 1 or 2 felony. Chapter 160 (HB2521)

TITLE 36 – PUBLIC HEALTH AND SAFETY

36-402. Prisoners, Health Care Facilities: Expands list of facilities exempted from DHS regulations to include DOC care facilities. Exemptions include licensing and number of beds per room so long as health care facility is not limited to behavioral health care or treatment. Emergency enactment effective April 1, 2005. Chapter 15 (HB2206)

36-543. Release from treatment of gravely disabled patient or persistently or acutely disabled patient; annual review and examination: Requires the annual review of gravely disabled persons ordered by a court to undergo treatment to apply to persistently or acutely disabled persons as well. If a hearing is held to renew a court order, the person seeking the renewal must prove the patient is a danger to self or others; is persistently or acutely disabled; or is gravely disabled; and the individual needs treatment and is unwilling or unable to accept treatment. Chapter 291 (HB2242)

TITLE 41 – STATE GOVERNMENT

41-198. Domestic violence fatality review teams; duties; membership; report; confidentiality; violation; classification; definitions: Allows for cities, counties and towns (individually or jointly) to create fatality review teams in order to better understand the dynamics of such fatalities. review shall not be conducted until after a criminal investigation has been completed. Chapter 87 (SB1071)

41-1609.05. Community accountability pilot program; fund; program termination; definition: Amends language from original statute and restricts providers from offering housing but does not restrict the providers from offering counseling on obtaining housing. Providers will be known as Community Accountability Reporting Centers. Chapter 119 (HB2087)

41-2407. Victim compensation and assistance fund; subrogation: Provides for the Fund to be reimbursed for claims paid through subrogation of the defendant causing the injury and/or damages. Chapter 175 (SB1376)

TITLE 44 – TRADE AND COMMERCE

44-7201. Internet Representations: Creates a new Class 5 felony for the crime of inducing others to take actions to provide identifying information while putting business out as a business without the permission of the true business (i.e., enterprise ID theft). Also creates civil penalties to recover the greater of actual damages or \$500,000. Chapter 114 (SB1447)

MISCELLANEOUS

Section 1. Cold case file task force; membership; duties; report: Creates a Legislative Cold Case Task Force for the purpose of reviewing law enforcement agency procedures for homicides and preserving evidence. Includes the requirement of taking testimony as well as Task Force membership by victims. Chapter 96 (SB1182)

Section 1. Drug Court Appropriation; purpose; exemption. Appropriates \$5 Million in Fiscal years FY06 and FY07 to fund juvenile and adult drug courts by the Superior Court Presiding Judge. (Note: The juvenile drug court program in Maricopa County does not conform to national juvenile drug court standards, it uses an adult model and punitive measures). Chapter 296 (HB2620)

New Attorney Training Group

August 2005



From Left to Right: Kathryn Petroff, Kathryn Tomlinson, Roy "Chuck" Whitehead, Harla Davison, Janis Williams, Benjamin Taylor, Carissa Jakobe

Thank You

Gracias

Merci

Thanks

To all Public Defender staff who participated in Phase I of the Indigent Representation Information System planning, development, testing, and training. Thanks, also, to those who are patiently working with us through the change and working with the system while Phase I refinements continue.

This project was an enormous undertaking that has unlimited benefits for our staff, clients and for the administration of justice. We appreciate your patience and support throughout the initial and subsequent stages of the project.-

In particular, we extend our appreciation to members of the original Case Management Planning and Development team, our IRIS Project Team, Records and Support personnel, Information Technology Staff, and all who have volunteered to help make this project a success.

The Project Team still has a way to go before the full value of the system can be realized. We look forward to working cooperatively with you on this crucial project.

Jury and Bench Trial Results

July 2005

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

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P

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