

Pandemic Fallout: Emerging Legal Issues in the Courts and the General Assembly

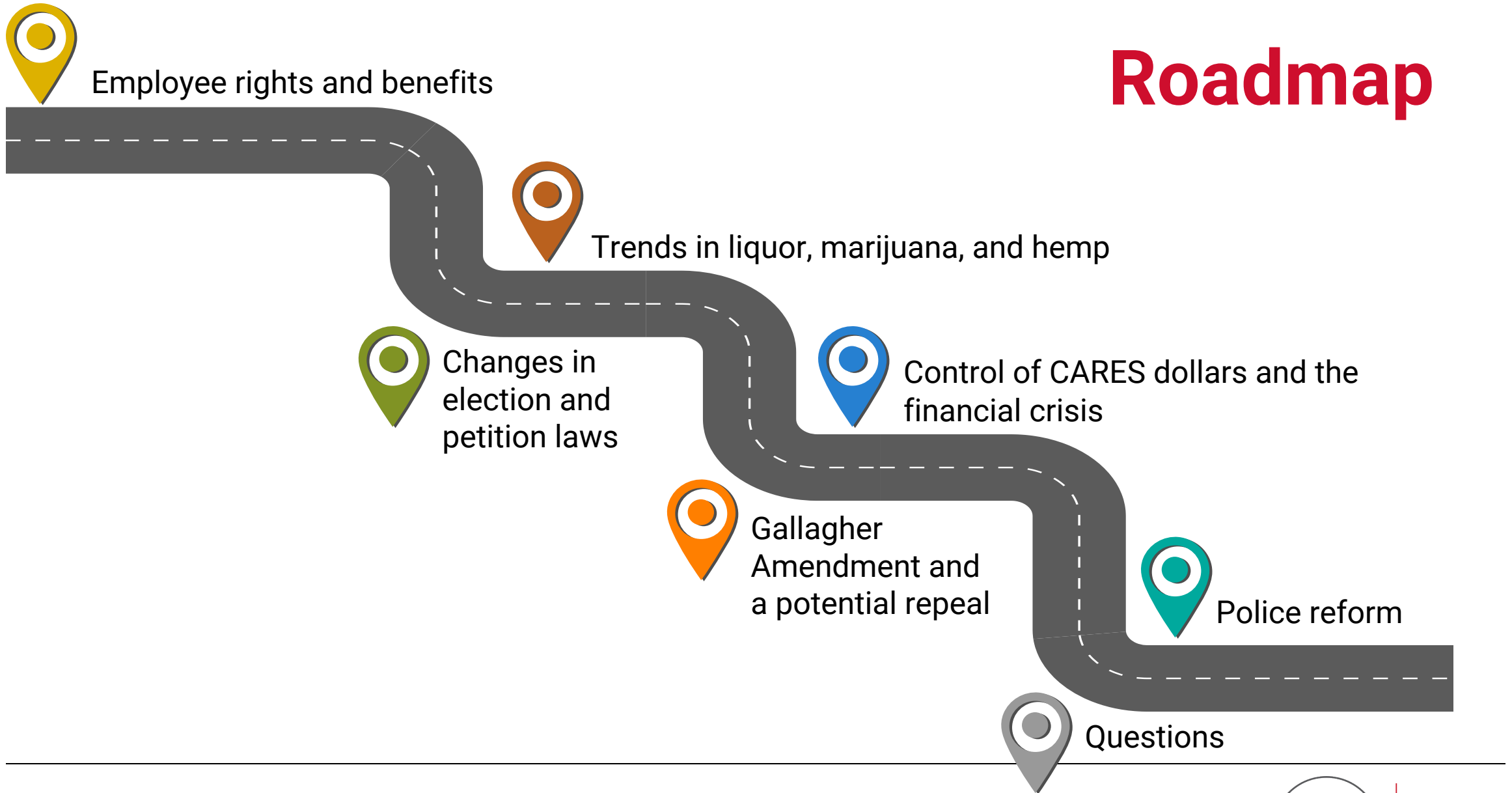
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Roadmap





Employee Rights and Benefits

- Federal Legislation and Local Response
 - Expansion of Unemployment
 - Families First Coronavirus Response Act
 - Emergency Paid Sick Leave
 - Emergency Paid Family Leave
- State Executive Orders
 - Lifting of certain unemployment requirements
 - Requirements for the safety of employees





Employee Rights and Benefits

- Area of focus for Legislature after returning from mid-session break
- Sick leave expanded, may require changes for municipalities
 - *SB 205, Sick Leave For Employees*
 - This bill is effective upon the Governor's signature; however, the paid leave thresholds begin on January 1, 2021 for employers with 16 or more employees. The thresholds are effective January 1, 2022 for employers with 15 or fewer employees.





Employee Rights and Benefits

- Unemployment benefits extended from Governor's Executive Order
 - *SB 207, Unemployment Insurance*
- Whistleblower requirements expanded to municipalities
 - *HB 1415, Whistleblower Protection Public Health Emergencies*
- Colorado legislature killed worker's compensation bill
 - *SB 216, Workers' Compensation For COVID-19*





Trends in Liquor

- Executive Orders temporarily changed liquor laws to assist businesses
 - Take out and delivery
 - Modification of premises
- Legislature extends take out and delivery of alcohol to July 1, 2021.
 - *SB20-213, Alcohol Beverage Retail Takeout And Delivery*
 - Likelihood that this will be extended next session





Marijuana

- Accelerator license changed to social equity license
 - Legislation amended at a late hour to give the governor the power to expunge the records of those convicted with possession of up to two ounces of marijuana.
 - *HB20-1424, Social Equity Licensees In Regulated Marijuana*
- Residency requirement removed from marijuana business licensing
 - *HB20-1080, Remove Residency Requirement For Marijuana License*
- A quick note about marijuana delivery
 - *HB19-1234, Regulated Marijuana Delivery*





Hemp

- Agriculture Improvement Act of 2018 (2018 Farm Bill)
 - *SB 19-220 and SB 19-240* require a plan be submitted to the USDA
- State Hemp Management Plan
 - [Submitted to the USDA on June 16, 2020](#)
- The Colorado Blueprint
 - What is it?
 - Overall guiding document
 - Currently in development stages
 - [CHAMP Process](#)
 - CML's Role





Elections and Petitions

- Strict compliance standard applies to some state petitioning laws
 - *Griswold v. Ferrigno Warren*, 462 P.3d 1081 (Colo. 2020)
- Governor allows petitions to be circulated and signed via email
- Legal challenge to Governor rockets directly to Supreme Court
 - *Ritchie v. Polis*
- General Assembly does nothing to relax petition statutes while in session





Control of CARES Act dollars

- Gov. Polis ultimately asserts control over all \$1.6 billion under “custodial funds doctrine”
- Doctrine says federal funds allocated to the state for a specific purpose are controlled by the executive and not subject to appropriation
 - *Colorado General Assembly v. Lamm*, 738 P.3d 1156 (Colo. 1987)





Coping with the Fiscal Crisis

- Diversion of fee revenue from existing cash funds
 - Example: HB 20-1406 tapping 21 cash funds
 - Authority: *Barber v. Ritter*, 196 P.3d 238 (Colo. 2008)
- Elimination of tax breaks and exemptions
 - Example: HB 20-1420 eliminating certain income tax exemptions tied to federal law
 - Authority: *BOCC of Mesa County v. Ritter*, 203 P.3d 519 (Colo. 2009); *TABOR Foundation v. RTD*, 416 P.3d 101 (Colo. 2018)





Coping with the Fiscal Crisis

- Increase the “budget stabilization factor” for schools
 - HB 20-1418 School Finance Act, doubles the BS factor to \$1.17 billion in FY 20-21
 - Authority: *Dwyer v. State*, 357 P.3d 185 (Colo. 2015)
- Repurpose voter-approved taxes
 - Example: HB 20-1401 freeing up \$137 million in marijuana revenue
 - HB 20-1400 Gaming tax revenue increases





Coping with the Fiscal Crisis

- Fees and fee increases.
 - Now that state revenues are expected to fall far below the state’s “excess state revenue cap” adopted by the voters in Referendum C of 2005, the path is clear for the state to adopt new fees to pay for government services without triggering a TABOR refund. The courts have repeatedly blessed fees that are do not require voter approval under TABOR.
 - SB 20-215 Health Insurance Affordability Enterprise
- **SURPRISE: No suspension of senior homestead property tax exemption!**





Gallagher Amendment Repeal?

- "Without increasing property tax rates, to help preserve funding for local districts that provide fire protection, police, ambulance, hospital, kindergarten through twelfth grade education, and other services, and to avoid automatic mill levy increases, shall there be an amendment to the Colorado constitution to repeal the requirement that the general assembly periodically change the residential assessment rate in order to maintain the statewide proportion of residential property as compared to all other taxable property valued for property tax purposes and repeal the nonresidential property tax assessment rate of twenty-nine percent?"





SB 20-217: Police Reform

- A bill touching all three prongs of the separate but interrelated processes that play out after a police use of force incident, and adds a fourth:
 - Employment discipline
 - Criminal liability
 - Civil Liability
 - (P.O.S.T certification)





SB 20-217: Police Reform

- Understanding the political realities of SB 217
 - Passed with strong bipartisan support
 - The entire law enforcement lobby supported the final version of the bill: district attorneys, police chiefs, county sheriffs, FOP
 - Hastily and heavily amended throughout
 - Will inevitably be revisited and amended further in future sessions
 - Designed to minimize state fiscal impacts by exempting the state from certain requirements and delaying certain effective dates.
 - No funding created to cover local implementation costs given the state's fiscal crisis.





SB 20-217: Police Reform

- Focus on the civil liability section of the bill:
 - New way to sue for damages against police officers under any provision of Art. II, Colo. Const.
 - No qualified immunity defense
 - No statutory immunities; no cap on damages or attorney fees
 - Entitlement to attorney fees
 - Broad duty to indemnify except where officer has been convicted of a crime





SB 20-217: Police Reform

- What the attorney/proponents said about the civil liability components of the bill (and the earlier "Colorado Rights Act" HB 20-1287):
 - Qualified immunity makes it practically impossible to hold bad cops accountable
 - Qualified immunity is on its last legs anyway, the SCOTUS or Congress will soon get rid of it
 - Excessive force claims under SB 217 will be adjudicated under the same standards as Fourth Amendment claims in federal court
 - Local government need not fear fiscal impact, because SB 217 will lead to fewer claims





SB 20-217: Pressing Tasks

- Training on new use of force standards required by September 1, 2020
- Data collection for all police “contacts”
 - Intended to populate a statewide database to be administered by Colorado DCJ starting in 2023.
 - Will the Colorado DCJ provide interpretive guidance?
 - Effective June 19, 2020?
 - What is a “contact” really? What does “officer initiated” mean?
 - What is the import of the requirement for a “legal basis” for a “contact”?
 - Must officers immediately change the way they interact with the public?
 - To what extent do existing data-collection procedures already cover the new mandates?



Thank you for attending!



QUESTIONS?

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