

**STAFF SAFETY ADVISORY COMMITTEE (SSAC)
SUBCOMMITTEE OF THE COMMITTEE ON PROBATION (COP)**

**MINUTES
JUNE 7, 2012
10:00 A.M. - 2:00 P.M.**

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS (AOC)
1501 W. WASHINGTON
CONFERENCE ROOM 101**

MEMBERS PRESENT:

Brenda Flynn
Steve Hardy
Clay Hildahl
Katie Howard
Shawn Hughes
Steve Nesky
Lance Nickell
George Owens

Alan Palomino
Kendall Rhyne, Vice Chair
David F. Sanders, Chair
Saul Schoon
Wes Shipley
Mark Smalley
Jon Thompson
Art Waterman

MEMBERS ABSENT:

Heather Boyer
Charles Counts
Amber Freed
Henry Meraz

Jim Meyer
Tim Schouten
Dan Tomlinson

GUESTS:

David Chaison
Chad Kewish
Sherry Pommer
Nina Preston

Darrell Reeves
Delcy Scull
Kathy Waters

STAFF:

Kevin Jeffries

Lorraine Lerma

CALL TO ORDER

David Sanders called the meeting to order at 10:00 a.m. In addition to the SSAC members, the chiefs and directors were invited to attend this meeting. David welcomed everyone and asked everyone to introduce themselves. There is a new member to SSAC: Wes Shipley, Maricopa County Adult.

I. APPROVAL OF THE MARCH 9, 2012, MINUTES

MOTION: Steve Hardy made a motion to approve the March 9, 2012, meeting minutes. Jon Thompson seconded the motion. Motion passed with 16 votes, 0 opposed, and 0 abstentions. SSAC 12-04

ALL MEMBERS WERE ASKED TO REVIEW THE FOLLOWING AGENDA ITEMS BEFORE COMING TO THE MEETING AND TO COME PREPARED AND OFFER ANY SUGGESTED UPDATES OR MODIFICATIONS:

II. ACJC CODE 6-106: PERSONNEL PRACTICES

David Sanders mentioned the most significant change in the Personnel Practices code (handout attached) is the physical standards, if it is decided to go that route.

Kathy Waters gave an overview. This program has been in place for at least 10 years. In consultation with the Attorney General's office (AG), they advised that if the AOC were going to require a program such as this with Defensive Tactics (DT) and all of the requirements and have policy that 1) the AOC needed to do their due diligence to make sure that the credentialing of the program was what the national experts said it should be, and 2) if the AOC were going to require physical requirements, that it matched with the job descriptions and that everything had to be reasonable. Studies were requested of Bob Thornton and Concentra (reports attached). AOC Legal Counsel advised the AG of what was done based on their direction. AOC received a letter from the Asst. AG, Dennis Carpenter, that basically said "what you have set out to do you have proven". The advice the AG gave is:

- Continue with due diligence;
- What you can and cannot require at the front end;
- Cannot do medical examinations;
- At what point in time can you ask for the physical agility and how to do that.

Next Steps is to validate the test that Concentra has developed. Nina Preston recommended that if there is good cause to deviate and develop something different than what Concentra has done, AOC will need to go back to the AG and explain why that change was made. The AG will have to defend anything the probation departments do and it is wise to obtain their counsel at the outset. To validate the process, ADOA Occupational Health Division indicated that there was someone at ADOA who did this or might be able to steer the AOC in the direction of someone who was on state contract

who could do the validation (may have to do an IGA and pay them to do this because it is not necessarily their job).

The letter from the AG says “employers may give physical agility tests during the job application process”, “although medical examinations may not be given prior to the making of a job offer”.

ACTION ITEM: Nina Preston will clarify with the AG as to when medical examinations may be given.

ACTION ITEM: Kevin Jeffries and David Chaison to form a subcommittee to review/edit this code and add a section regarding physical agility will be for new hires and then for Nina Preston’s review and present back to SSAC.

Once the code has been finalized, a manual will be developed for DT instructors on how to do these various steps.

Discussions took place regarding section L.2.f. and Appendix A, VIII.A.6., there are references to preemployment and reasonable suspicion testing for alcohol.

ACTION ITEM: Kathy Waters will get with Jeannie Brandner in Juvenile Justice Services Division regarding alcohol testing of employees.

Discussions took place on the essential functions from the Concentra report and needs clarification on some of the functions.

ACTION ITEM: Kathy Waters will make inquiries as to what other departments are doing, will work with Concentra to firm up the validity of these essential functions and with the AG as well, which would have to go back through legal, and will consult with Nina Preston.

There is consensus of adopting these physical standards.

Nina Preston mentioned by going to a uniform job description statewide, and putting these physical requirements, they have to be job related and a business necessity in terms of the impact it would have on the ADA population.

III. ACJC CODE 6-107: SAFETY TRAINING

The Safety Training code (handout attached) was reviewed and discussed.

Section A. Definitions., “Safety sensitive positions” “...community restitution coordinators...”, Pima County has contract employees 2-3 days a week, community

restitution (CR) crew supervisors with no benefits, they do have radios, they do not have handcuffs, they are given the 8 hours of safety orientation, and inquired as to whether they would attend DT, unless it is a requirement in code, and asked how other counties are handling their CRs.

- Coconino County Adult – their part-time work crew supervisor does attend the DT academy, they do carry their gear, and they do carry handcuffs, but do not have the powers to arrest.
- Gila County Adult/Juvenile – they do not have any community service coordinators, but any project they may do is typically done by a probation officer and they do have all their equipment with them.
- Cochise County Juvenile – they have fulltime CR supervisors and do not consider them safety sensitive. They do not have the ability to arrest, they are equipped with radios to call for assistance, and they have an in-house radio system to keep constant contact with them.
- Maricopa County Juvenile – their CR JCORP that supervise kids are surveillance officers, they have all their equipment to carry, their electronic monitoring people work under detention and not in the field go through DT, but are still in the field.

CR coordinators that are supervising crews, would have to attend the 8-hour safety academy.

Nina Preston mentioned that if CR is different than community supervision, may need to modify the definition. Community supervision would mean all the things that a probation officer does pursuant to the codes in EBP. If talking about a CR placement, would need to look at that very specifically and differently; perhaps is not part of this definition, will need to clean up the definition. Nina also mentioned that if a person doing supervision would need to have the qualifications of a probation officer, she thinks would need to have the full authority of a probation officer.

Section G.1. "...safety sensitive positions and prior to assignment...", is not happening and may be problematic. Need to decide what the processes are going to be and apply everything consistently. May need to change the verbiage to say "at your earliest convenience" or take out and say what the training is.

- Yavapai County Adult – their officers do not go out in the field until the supervisor allows them to go with their mentor who is the DT trained officer until they can attend a DT class.
- Coconino County Juvenile – their practice is all new officers complete the initial 8 hour officer safety orientation first, then go out with an officer who has been through DT, and then attend a DT academy.

ACTION ITEM: There is consensus that the DT academy as referenced in Section G. should apply to all officers, not just safety sensitive positions. Prior to making any changes in section G., AOC will

need to seek advice from experts in law enforcement employment law for clarification. .

Section G.2. Anyone dealing with Medical issues (Temporary Waiver) should contact the AG's office for guidance. There is no such thing anywhere in the codes for permanent medical waivers and should not roll into year after year. Will need to talk to the chiefs/directors and make clear that rollovers are not considered temporary waivers, but a fit for duty issue.

Kathy Waters mentioned there is a very big clear distinction between a permanent medical and having a permanent medical condition, which does not say you cannot go through DT because the permanent medical condition is actually that you are now applying for an accommodation within the training. Temporary medical waiver is that you are not going to go through it at this time, but will go through it in the future. That temporary may turn into a permanent medical condition that would then trigger the accommodation. It is more of a training issue and not sure that this has really been followed and gotten confused along the way. This may require training to help people to understand not only the instructors but the chiefs/directors and everyone.

Anyone who is dealing directly with offenders, e.g. presentence writers, receptionists, should go through some form of DT.

IV. ACJC CODE 6-112: USE OF FORCE

Discussions took place of getting the TASER pilot program out of pilot program status. Both Dave Byers and Mike Baumstark want to incorporate into existing code or in the Firearms code.

Discussions took place of putting the TASER in Section E. in the Use of Force code (handout attached), to read along the lines of "Electroshock weapons may be deployed as necessary by trained and authorized officers as members of Fugitive Apprehension Units." List as a new #3, or between #3 & #4, or between #2 & #3, not #3 & #4.

Since the TASER is an option, it is recommended to remove the definition of "Continuum of control" in Section A. as well as Appendix 1. Or, rename the Appendix 1 "Use of Force Options".

After much discussion, Jon Thompson made a motion.

MOTION: Jon Thompson made a motion that to remove the continuum of control language both in code and in the Appendix or utilize the continuum of control chart theory practice from the policy and use it as a training tool. Clay Hildahl seconded the motion.

After a brief discussion, Jon amended his motion.

MOTION: Jon Thompson made a motion that to remove the continuum of control language both in code and in the Appendix or utilize the continuum of control chart theory practice from the policy and use it as a training tool; and to include a review of the reasonable and necessary language. Clay Hildahl seconded the motion. Motion passed unanimously. SSAC 12-05

After further discussion of the TASER, Lance Nickell made a motion.

MOTION: Lance Nickell made a motion of placing electronic control devices (ECD) under Section E. as an option as COP stated for specialized warrants units as a use of force option. Steve Hardy seconded the motion.

After a brief discussion as to who should use the TASER, Lance Nickell amended his motion.

MOTION: Lance Nickell amended his motion to have the electronic control devices (ECD) added into the codes as necessary and appropriate. Steve Hardy seconded the motion. Motion passed unanimously. SSAC 12-06

V. ACJC CODE 6-113: FIREARMS STANDARDS

David Sanders provided some feedback that was discussed at COP regarding 1) thigh holsters for the Fugitive Apprehension Units in Maricopa County; and 2) holster concealment. SSAC had recommended that the Holster Guidelines be modified to delete the requirement that the holsters “be readily concealable” was not put on as an action, but as a discussion; therefore, COP did not vote on this issue. After talking to a number of executive branch officers, they have both a hip and thigh holsters. To conceal one of their weapons, they put one in the trunk and wear the other one.

After various discussions took place, the following motion took place.

MOTION: Art Waterman made a motion to delete the requirement “be readily concealable” from the Holster Guidelines and present to COP as an agenda item for action. Steve Nesky seconded the motion. Motion passed unanimously. SSAC 12-07

Graham, Maricopa, Navajo, and Pima Juvenile counties requires that their officers cannot attend a Firearms (FA) Academy and carry a FA while they are on probation their first year is an issue with the Probation Officers Association. The FA Standards code does not preclude a new officer from going to the academy carrying a FA upon completing successfully, but the code does provide remedies for an officer to appeal.

Kendall Rhyne has some concerns that the DT refreshers are not providing the required hours of training and that it may roll into the FA training as well. He is not certain if there is Quality Assurance in place. As in DT, he would like to see a pass/fail in FA.

Kevin Jeffries responded that this should not be happening and if anyone has any knowledge of this happening, should be called on.

MOTION: Darrell Reeves, member of COP, made a motion that SSAC recommends to COP to grant or deny officers on initial probation to qualify and carry a FA based solely on the code, not how long they have been at the job or local policy, and to be consistent in the application of code, i.e. to deny FAs the first year would be prohibited. Seconded by Kendall Rhyne.

After a lengthy discussion took place, Darrell Reeves amended his motion.

MOTION: Darrell Reeves, member of COP, made a motion that SSAC recommends to COP to grant officers the option to attend a FAs training and for the officers to make the decision, after the fact, about whether to carry or not carry a FA and to be consistent statewide in the application of code. Seconded by Kendall Rhyne. Motion approved unanimously. SSAC 12-08

The above motions will be taken to AMM/JAM and to COP that SSAC has discussed this and give some thoughts to consider for those chiefs/directors who do not allow weapons during the first year.

After reviewing the Firearms Standards code (handout attached), these were some recommended modifications and why:

- Section D. – delete “...for defensive purposes only...” Why: It is very specific when an officer is authorized to draw, display and use their firearm.
- Section E.1. – Remove the language “wishing and desiring” and that last phrase “...and submit to the following screening and testing requirements.” Rewrite to say “An officer seeking authorization to carry a firearm or training on firearms shall submit a written request to the chief probation officer or director of juvenile court services.” Why: already listed in Section E.2.
- Section K.1. – change the language from “incident report to “written report”. Why: an officer might unholster without an incident; and this section is requiring an incident report be written every time a firearm is unholstered.
- Section M.4.b. – “In an administrative investigation of a weapons discharge of a firearm...”. Remove the word “weapons”. Why: sounds like the weapon is discharging a firearm.
- Section M.4.c. – References a departmental response to an officer who discharges a weapon. Edit by adding something like “Likewise the department shall provide aid and assistance to an officer who is the victim of a shooting.” Why: we run to the

officers aid if the officer is the shooter, but we do not run to the officers aid if the officer is a victim.

- Section P.8. – Nothing to change, just referencing multiple holsters.
 - Coconino County Adult officers are allowed to carry more than one holster as long as they are qualified on it, e.g. paddle holster, at officers own expense and are qualified on it by one of their FA’s instructor’s.
- Section Q.1. – “An officer authorized to carry a firearm shall observe and practice the following safety regulations:” and Section Q.1.c. – “An officer shall ensure that any unholstered firearm that is brought into a probation department facility is unloaded;” Why: the firearm cannot go from the holster into a departmental approved storage locker due to it being loaded and unholstered.
- Section Q.2. – delete the word “holstered”. Why: this would take care of Q.1.c.

DUE TO THE LATENESS OF THE MEETING, THE REMAINING AGENDA ITEMS VI. THROUGH IX. WILL BE DISCUSSED AT THE NEXT MEETING

Kathy Waters mentioned that everybody recognizes, including all of the chiefs/directors, they are proud that this is a model officer safety program. If there are any other issues regarding the codes that were talked about today, to contact Kathy Waters, Kevin Jeffries, David Chaison, or Nina Preston.

VI. ACJC CODE 6-104: PROBATION OFFICER CERTIFICATION AND TRAINING

VII. ACJC CODE 1-302: EDUCATION AND TRAINING

**VIII. RESOURCE MATERIALS:
BOB THORNTON REPORT
CONCENTRA REPORT**

IX. NON AGENDA ITEMS

X. ADJOURNMENT

David Sanders thanked everyone for their participation and apologized for keeping everyone over and drive safely. The next meetings of AMM/JAM and COP are August 2 and 3, 2012, respectively. SSAC will meet sometime thereafter.

The meeting adjourned at 2:38 p.m.