

Committee on Superior Court

Friday, November 4, 2016 – 10:30 a.m.

Conference Room 119 A/B

State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

[Committee on Superior Court Home Page](#)

Conference Number: 602-452-3288 or 520-388-4330

Access Code: 3126#

[Web Ex](#)

Time*	Agenda Items	Presenter
10:30 a.m.	Welcome and Opening Remarks	<i>Judge David Mackey, Chair</i>
	Approval of Minutes from September 9, 2016 <input type="checkbox"/> <i>Formal Action/Request</i>	
10:35 a.m.	Amendments to ACJA § 6-201.01: Standard Probation Evidence Based Practices and ACJA § 6-202.01: Adult Intensive Probation Evidence Based Practices <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Kathy Waters, Director AOC Adult Probation Services Div.</i>
11:00 a.m.	Legislative Update <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Jerry Landau AOC Government Affairs Director</i>
11:25 a.m.	Update from the Criminal Rules Task Force <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Judge Joseph Welty Chair, Criminal Rules Task Force</i>
11:40 a.m.	Good of the Order/Call to the Public Adjournment	<i>Judge Mackey</i>

Next Meeting

Friday, February 3, 2017; 10 a.m.

Arizona State Courts Building

Conference Room 119 A/B

2017 Meeting Dates

February 3

May 5

September 8

November 3

**All times are approximate and subject to change. The committee chair reserves the right to set the order of the agenda. For any item on the agenda, the committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration § 1-202. Please contact Kay L. Radwanski, COSC staff, at (602) 452-3360 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Sabrina Nash at (602) 452-3849. Requests should be made as early as possible to allow time to arrange the accommodation.*

Committee on Superior Court

DRAFT MINUTES

Friday, September 9, 2016
Conference Room 119 A/B, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey, Judge David Cunanan, Judge Charles Gurtler, Jr., Judge Charles Harrington, Toni Hellon, Judge Jason Holmberg, William Klain, Judge Kenneth Lee, Scott Mabery, Judge Paul McMurdie, Eric Silverberg, Megan Spielman, Judge Randall Warner, Judge Joseph Welty, Judge Timothy Wright

Telephonic: Judge Thomas Fink, Judge Richard Gordon, Judge Cathleen Brown Nichols, Ronald Overholt

Absent/Excused: Judge Sally Duncan, William Gibbs, Judge Celé Hancock, Judge Samuel Myers

Guests: Judge Larry Winthrop, Court of Appeals, Division 1; Adam Shelton, ASU extern

Administrative Office of the Courts (AOC): Jennifer Albright, Theresa Barrett, Stewart Bruner, Jerry Landau, Mark Meltzer, Marcus Reinkensmeyer, Kathy Sekardi

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The September 9, 2016, meeting of Committee on Superior Court (COSC) was called to order at 10:03 a.m. by Judge David Mackey, chair.

Judge Mackey welcomed two new members—Judge Jason Holmberg and Judge Timothy Wright—and thanked reappointed members Judge Sally Duncan, Toni Hellon, Bill Klain, and Judge Randall Warner for their continued service to COSC. He thanked and bid farewell to Judge Michala Ruechel and Judge Samuel Vederman, whose terms on COSC have expired. He also congratulated Ron Overholt on his promotion to court administrator for Pima County. He then directed COSC members to the last page of the agenda and asked them to note the 2017 meeting dates on their calendars as soon as possible.

Approval of Minutes from May 6, 2016

The draft minutes from the May 6, 2016, meeting of the COSC were presented for approval.

Motion: Eric Silverberg moved to approve the May 6, 2016, minutes as presented. **Seconded:** Judge Charles Gurtler. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Jerry Landau, AOC government affairs director, explained that seven proposals from the Arizona Judicial Council (AJC) are expected to go to the legislature next session. One comes from the limited jurisdiction courts and deals with criminal littering (2017-05, which was not

discussed), four are from the Fair Justice for All Task Force, one is from the Committee on Court Security, and one is from the Adult Probation Department.

1. Fair Justice for All Task Force

2017-01–Sentencing; fines; fees; probation – Allows a person charged with a misdemeanor to perform community restitution without being placed on probation, adds civil penalties and surcharges to the list of financial obligations for which the court may order community restitution, allows a judge to waive or mitigate part of the civil penalty, fine, surcharge, or fee if the cost causes financial hardship, and expands the community restitution program to superior court.

Motion: Judge Richard Gordon moved to support this proposal. **Seconded:** Judge Paul McMurdie. **Vote:** Unanimous.

2017-02–Driving; violations; restricted license; penalties – Authorizes specified restrictions to be placed on a person’s driving privileges in lieu of the suspension of the person’s license (allowing the person to drive to and from work, to and from school, to and from a dependent child’s school or appointments, or to seek medical treatment) and allows a judge to waive court-ordered financial obligations related to driving under the influence, pursuant to law. **No discussion or action taken.**

2017-03–Bailable offenses; hearing; schedule – Eliminates the bond schedule for criminal traffic cases that limited jurisdiction courts are required to prepare, permits a hearing to determine if a person should be held without bond based on being a danger to the community, removes the statutory timeframes for holding a hearing on the motion as well as the requirement that the case be placed on an expedited calendar.

Motion: Judge McMurdie moved to support the proposal. **Seconded:** Judge Randall Warner. **Vote:** Unanimous.

2017-04–Competency examination; jurisdiction – Allows the presiding judge of the superior court to authorize a limited jurisdiction court to exercise jurisdiction over competency hearings in that court upon the agreement of both judges.

Motion: Judge McMurdie moved to support with the addition of designee language. **Seconded:** Judge Timothy Wright. **Vote:** Unanimous.

2. Court Security Standards Committee

2017-06–Court Security Fund - This proposal recommends improvements to court security in response to the recent shootings in court buildings locally and nationwide. It proposes statewide standards for the courts, expands the authorized use of filing fee monies distributed by the Board of Supervisors to a local law library fund to allow for improvements, maintenance, or enhancements to courthouse security, directs any excess defensive driving school fees not distributed the Department of Public Safety crime labs to a newly established statewide court security fund, requires the Administrative Office of the Courts to use the monies in the statewide court security fund to meet minimum standards of courthouse security adopted by the AJC. These monies will not revert to the general fund and are exempt from lapsing.

Discussion ensued regarding the use of the law library funds for court security, the security needs of metropolitan versus rural courts, and fixed versus shared court facilities.

Motion: Mr. Silverberg moved to support the court security proposal. **Seconded:** Toni Hellon. **Vote:** 9-7 agreed to support this proposal; 2 members abstained.

3. Adult Probation

2017-07–IPS wages; distribution – Current law requires the chief adult probation officer to collect paychecks from probationers and establish accounts from which the chief adult probation officer must make payments for restitution, probation fees, fines and other payments. The introduction of direct deposit, check cards, and other payment options have made it difficult for adult probation departments to comply with the requirement of collecting paychecks from offenders. The proposed amendment would reflect current wage distribution practices and require the probation officer to monitor the probationer's income to ensure compliance with court-ordered financial obligations.

Motion: Scott Mabery moved to support the proposal. **Seconded:** Judge McMurdie. **Vote:** Unanimous.

B. Fair Justice for All Task Force

Judge Don Taylor, chief presiding judge, Phoenix Municipal Court, and a member of the Fair Justice for All Task Force, presented a summary of the task force's recommendations that are necessary to effectuate statewide changes and to reform the current criminal justice system. He outlined core values and introduced a two-component solution to achieve justice for all by creating reasonable sanctions and implementing pretrial bail reform.

Judge Taylor reviewed the average cost of a traffic ticket and illustrated how a small ticket can become a big problem later and have catastrophic consequences for low-income individuals. Although there should be consequences if a person breaks the law, criminal fines and penalties should not promote a cycle of poverty by imposing excessive amounts or unduly restricting people's ability to be gainfully employed. Judge Taylor highlighted the following principles to create reasonable sanctions as the first part to achieving justice for all:

1. Judges need discretion to set reasonable penalties–Legislative changes are needed for judges to mitigate mandatory minimum fines, fees, surcharges, and penalties for those upon whom they would cause undue economic hardship.
2. Provide convenient payment options and reasonable time payment plans–Test techniques that make it easier for defendants to make payments.
3. Provide alternatives to paying a fine–Allow judges additional discretion to convert fines into restitution hours and apply to sentences imposed by superior courts.
4. Employ practices that promote voluntary appearance–Implement an interactive messaging system that reminds defendants of court dates and missed payments.
5. Suspension of a driver's license should be a last resort–The first offense of driving on a suspended license should be a civil violation rather than a criminal offense.
6. Non-jail enforcement alternatives should be available–Restitution court and the FARE program provide non-jail and less costly compliance alternatives.
7. Special needs offenders should be addressed appropriately–People suffering from mental illness or drug addiction should be handled differently.

He noted that even short periods of pretrial incarceration cause collateral damage in terms of loss of employment, economic hardship, loss of place of residence, and inability to care for children or family, as well as the likelihood to commit new crimes before trial.

The second part to achieving justice for all is to implement pretrial reforms by eliminating money for freedom to the greatest extent possible and shifting from bail and bond to risk-based release criteria.

8. Detaining low- and moderate-risk defendants causes harm and higher rates of new criminal activity–Eliminate the use of non-traffic criminal bond schedules.
9. Only defendants who present a high risk to the community or individuals who repeatedly fail to appear in court should be held in custody–Amend the Arizona Constitution to expand the use of detention without the requirement for money bail.
10. Money bond is not required to secure appearance of defendants–The bond should be actual cash with the amount paid returned to the defendant if charges are not filed, the person is found innocent, or if no violations of the release conditions occur.
11. Release decisions must be individualized and based on a defendant’s level of risk– Expand the use of the Public Safety Assessment (PSA), a validated pretrial risk assessment tool, to limited jurisdiction courts.

Motion: Judge Kenneth Lee moved to support the recommendations in the final report and the filing of a rule petition to implement the recommendations. **Seconded:** Judge Charles Harrington. **Vote:** Unanimous.

C. Arizona Commission on Access to Justice – Report on Rule Change Petition R-16-0040

Judge Lawrence Winthrop, Court of Appeals, Division 1, provided a brief history of the Arizona Commission on Access to Justice (ACAJ) and its charge of “Advancing Justice Together: Courts and Communities” by making recommendations on how to best assist self-represented litigants and revising court rules and practices to facilitate access. The ACAJ’s Self-Represented Litigant in Limited Jurisdiction Courts Workgroup (SRL-LJC WG) worked with justice court managers, judicial staff, and tenant and landlord attorneys, all with subject-matter expertise in landlord-tenant matters, to create forms for use statewide. On July 6, 2016, a rule change petition (R-16-0040) was filed on behalf of the ACAJ that would require litigants statewide to use court-approved eviction action forms and authorizes the AOC administrative director to approve, modify, or delete eviction action forms as may be appropriate. The proposed rule is being circulated to appropriate groups for review and comment. The deadline to reply to comments is November 4, 2016. It is anticipated that the Supreme Court will consider this petition at its rules agenda meeting in December.

Motion: William Klain moved to support the petition, provided the forms are not mandatory for use in forcible detainer actions after trustee sales brought in superior court.

Seconded: Judge David Cunanan. **Vote:** Unanimous.

D. Court Security Standards Committee

Marcus Reinkensmeyer, director of the AOC Court Services Division, outlined the charge of the Court Security Standards Committee (CSSC), which was to assess court security, develop statewide standards, and develop security training for court personnel. Jennifer Albright, AOC Court Services Division, detailed how court security was assessed with a statewide survey that measured security practices currently in place in the courts and what security measures the courts would like to implement. Based on the responses to the survey and best practices, the CSSC developed five categories of standards:

1. Court security and emergency preparedness
2. Court security manual
3. Court self-assessment
4. Response to negative events
5. Incident and threat reporting

Mr. Reinkensmeyer then discussed proposed three-tier funding for court security. The proposed court security standards, funding recommendations, and an implementation timeline will be presented to the AJC upon completion of the CSSC's final report, he noted.

Discussion ensued regarding the use of the law library funds for court security, the security needs of metropolitan versus rural courts and fixed court facilities versus shared facilities. Other funding options were also discussed.

Motion: Judge Lee moved to support the court security standards and funding recommendations with the notation of concerns raised regarding funding, individual court needs, and the implementation timeline. **Seconded:** Judge Gurtler. **Vote:** Unanimous.

E. Proposed Amendments to ACJA § 7-206: Certified Reporter

Mark Wilson, director of the AOC Certification and Licensing Division, explained that some of the superior courts are having difficulty recruiting certified reporters. One reason is the amount of time it takes to perform background investigations. Each applicant must be fingerprinted and undergo a criminal background investigation. Fingerprint requests are taking four to six weeks to be processed. The proposed amendment to ACJA § 7-206 would allow individuals, not yet certified but currently employed or about to be employed by a superior court to receive a Conditional Initial Certification that would allow employment by a superior court while the criminal background investigation is being completed.

Motion: Mr. Silverberg moved to support the proposed amendments to ACJA § 7-206. **Seconded:** Judge Gurtler. **Vote:** Unanimous.

F. Proposed Revisions to ACJA § 1-507: Protection of Case Records in Paperless Court Operations

Stewart Bruner, AOC IT Division, discussed two proposed revisions to ACJA § 1-507. The first change deals primarily with wording changes to incorporate cloud storage technology for storage arrays, virtual servers, and virtual tape technology. These would cover protection of electronic records in paperless court operations and gateway access to the tertiary copies that prevent direct access to the storage media from systems being backed up. The other change deals with removal of language requiring certification requirements for technical staff operating the server and database environments that store electronic records. It would permit substitution of in-house skills assessment, professional experience, or formal education.

Motion: Judge Warner moved to support the proposed amendments. **Seconded:** Mr. Silverberg. **Vote:** Unanimous.

G. Task Force on Arizona Rules of Criminal Procedure

Judge Joseph Welty, Maricopa County Superior Court, provided a brief background on the Criminal Rules Task Force. At their first meeting, task force members adopted the restyling protocol established by the Civil Rules Committee last year. Four workgroups then began

redrafting assigned rules of criminal procedure. To date, the workgroups have met 40 times. All of the rules have been restyled, and half of them have been approved by the task force. The goal is to get a working draft to various committees for their input by the end of the year.

H. Update on the Annual Rules Agenda

Mark Meltzer, AOC Court Services Division, reported that the Supreme Court considered 46 rule petitions at its rules agenda meeting on August 29, 2016. All of the adopted rule petitions take effect January 1, 2017, unless otherwise noted. Petitions of interest to superior courts include:

R-16-0010 Task Force on the Arizona Rules of Civil Procedure proposed comprehensive stylistic and substantive revisions to the civil rules. This petition was adopted as modified.

R-16-0017 Civil Rule 5.1(a) was modified to allow a governmental law office, public or private law firm that has appeared as counsel of record to substitute or associate another member of that office or firm by filing a notice of substitution or association of counsel. This rule was adopted as modified and renumbered as Rule 5.3(a)(2).

R-16-0018 Civil Rule 49(a) would further protect the confidential identity of individual jurors by permitting a jury foreperson or six or more jurors who agree upon a verdict to sign the verdict form by writing their juror number and initials in lieu of a full signature. This rule was adopted as modified and renumbered as Rule 49(d)(2).

R-16-0007 Criminal Rule 8.4 seeks to amend Rule 8.4(a) to exclude from time limit computations an additional 30-day period when the reasons for the delay under Rule 8.4(a) end within 30 days of the time limits of Rules 8.2 and 8.3. This would allow the court and the parties sufficient time to schedule and prepare for a trial.

R-16-0024 Criminal Rule 7.5 would add an additional circumstance “where the defendant was released or transferred to the custody of another government agency, preventing the defendant from appearing in court” and make exoneration of the bond mandatory in both circumstances.

R-15-0036 Juvenile Rule (not numbered) would provide that children should “be free of mechanical restraints when appearing in superior court, juvenile division, unless there are no less restrictive alternatives that will prevent flight or physical harm to another person.” The proposed rule would require the court to provide the juvenile with the opportunity to be heard without restraints. The court must make written findings of fact in support of an order for restraints. Adopted as modified (Rule 12).

R-16-0034 ARCAP 5(a) eliminated the five calendar days currently added to the time for responding to an appellate filing that is served electronically.

III. OTHER BUSINESS

Good of the Order/Call to the Public. No one from the public was present.

Adjournment: The meeting adjourned at 1:23 p.m.

Next Meeting: Friday, November 4, 2016; 10 a.m.
Arizona State Courts Building, Conference Room 119 A/B

COMMITTEE ON SUPERIOR COURT

Meeting Date: 11/4/2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: ACJA 6-201.01 STANDARD PROBATION EVIDENCE BASED PRACTICES
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From: Adult Probation Services Division

Presenter: Kathy Waters

Description of Presentation: Recommended revisions to current ACJA to enhance Evidence Based Practices

Recommended Motion: Seeking motion to approve amendments to ACJA

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Proposal Cover Sheet

Part 6:

Chapter 2:

Section 6-201.01:

- 1. Effect of the proposal:** To bring about consistency between the 2 sections that govern standard and intensive probation in Arizona while updating and incorporating evidence based practices in the areas of case planning, supervision and reassessments.

- 2. Significant new or changed provisions:** Recommendation to revise time frames for conducting reassessments from every 6 months to every 12 months.

- 3. Committee actions and comments:**

- 4. Controversial issues:** K.8.a. “residence contact” vs. “verification”

- 5. Recommendation:** Recommend approval.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 2: Adult Services
Section 6-201.01: Standard Probation Evidence Based Practice

A. Definitions. In this section, the following definitions apply:

“Absconder” as provided in A.R.S. § 13-105(1) “means a probationer who has moved from the probationer’s primary residence without permission of the probation officer, who cannot be located within ninety days of the previous contact and against whom a petition to revoke has been filed in the superior court alleging that the probationer’s whereabouts are unknown. A probationer is no longer deemed an absconder when the probationer is voluntarily or involuntarily returned to probation service.”

“Actuarial risk” means measurable factors that have been correlated to the probability of offender recidivism that are gathered informally through routine interactions and observations with offenders and by formal assessment guided by instruments.

“Administrative director” means both the administrative director of the Administrative Office of the Courts and the director’s designee.

“Alcohol and drug testing” means any validated or verified method of determining the level of identifiable substances in the body including, but not limited to, breath, blood, oral fluid, urine, hair, and sweat testing.

“AOC” means Arizona Supreme Court, Administrative Office of the Courts.

“Arrest notification” means a notice, by any means, that the probationer has been arrested, cited or had official contact with law enforcement officer.

“Average caseload” means the departmental total of direct cases divided by total number of supervising probation officers.

“Case plan” means the documented behavior change plan and supervision strategy developed by the supervising probation officer, in collaboration with the juvenile and family or adult probationer, which clearly identifies the risk factors and needs of the probationer and how they will be addressed.

“Case record” means any record pertaining to a particular probationer maintained by the probation department in electronic or paper medium.

“Collateral” means any individual or agency that has a relationship to a particular probationer that serves as a source of information or point of contact, including but not limited to friends, family members, law enforcement, victims, community members, neighbors, treatment providers or other associates.

“Community restitution” means unpaid labor or services provided to a not-for-profit private or governmental agency.

“Court” means the superior court.

“Criminogenic need” means any issues of concern which are directly linked to criminal or delinquent behavior that when addressed and changed affect a probationer’s risk for recidivism, which include, but are not limited to criminal personality, antisocial attitudes, values, beliefs, low self control, criminal peers, substance abuse, dysfunctional family, unemployment and lack of education.

“Direct case” means probationers actively supervised.

“Employment verification” means face-to-face communication, telephone contact, or obtaining pay stubs, or other electronic means as approved by the department.

“Evidence-based practice” means strategies that have been shown through current, scientific research to lead to a reduction in recidivism.

“Hand counts” means the manual tabulation of all standard probation case files in the probation department, conducted independently from any automated system.

“Pro-social activity” means any action or event that promotes sobriety and/or provides an opportunity for building a social support system that encourages a crime free lifestyle and improved community bonds.

“Residing temporarily” means living at a location for 30 days or less.

“Residential treatment” means any type of licensed treatment or counseling where the probationer resides at the facility. “Short term residential treatment” is 30 days or less. “Long term residential treatment” is 31 days or more. Halfway houses are not considered residential treatment.

“Specialized caseload” means a group of probationers with similar presenting problems or needs who are supervised by a probation officer focusing on addressing the problem or need.

“Standardized assessment” means the state-approved tool to determine the offender’s needs related to ~~criminogenic~~ criminogenic criminal behavior and propensity to re-offend.

“Standardized reassessment” means the state-approved tool designed to measure changes in the offender’s needs related to ~~criminogenic~~ criminogenic criminal behavior and propensity to re-offend.

“Target interventions” means supervision related services determined by the probationer’s risk, criminogenic needs, and other factors such as temperament, learning style, motivation, gender and culture.

“Visual contacts” means face-to-face communication or visual contacts conducted via AOC approved policy and department approved technology with the probationer at any place, including but not limited to the probation department, the probationer’s residence, place of employment, treatment location or community restitution placement to discuss progress, issues of concern or other appropriate matters. Contacts with probationers are not ends in themselves but are opportunities for officers to achieve specific objectives. These objectives include establishing rapport with the offender, assessing the offender’s criminogenic factors and triggers, developing and, when needed, modifying a supervision plan, and using both subtle and overt incentives and sanctions to guide the offender toward positive change.

B. through D [No changes]

E. Budget Request Preparation.

1. A.R.S. § 12-262 provides:

A. The presiding judge of the superior court in each county desiring to improve, maintain or expand juvenile probation services, or to achieve or maintain the average adult probation case supervision requirement prescribed in § 12-251, may prepare a plan in accordance with guidelines issued by the supreme court. The plan shall be submitted to the state supreme court. The supreme court guidelines shall require that the plan include:

1. That funds received under this article shall be used primarily for payment of salaries of probation officers supervising adults or juveniles on probation to the superior, justice or municipal court.
2. That the funds provided by the state for this purpose will be used to supplement county funds provided for probation services.
3. The proposed budget necessary to implement the plan, including the amount currently budgeted for that county's probation program.

2. The administrative director shall review each request and may ~~notify~~ modify the request based on appropriate statewide considerations. The AOC shall include the court’s request or the modified request in the supreme court’s annual budget request. The administrative director shall allocate to the court the monies appropriated by the legislature to aid probation services based on the proposed plan, availability of funds, caseload population, past year use, county support and program effectiveness.

3. through 5. [No changes]

F. through I. [No changes]

J. Program Operations.

1. Each probation department shall develop:
 - a. Policies and procedures that aim to reduce offender risk and the likelihood of future criminal behavior that are consistent with the principles of evidence-based practices;
 - b. Policies and procedures which require probation officers providing standard supervision to use the results of the standardized assessment, as well as any other relevant information, when developing a case plan; Case plans are dynamic and therefore shall be updated as goals are completed and supervision strategies change based on criminogenic risk and needs of the offender. Case plans shall reference the most recent completed assessment;
 - ~~c. Policies and procedures which require the administration of standardized reassessments upon the discovery of significant changes in criminogenic risk and needs or continued criminal conduct, including arrests for new criminal offenses for probationers that assess as low on the initial standardized assessment;~~
 - ~~c.~~ Policies and procedures ~~that~~ which require probation officers to utilize graduated responses of consequences and incentives to address violation behavior and promote positive behavioral change;
 - ~~e~~d. Policies and procedures that identify the criteria for the recommendation of early termination for eligible probationers. This policy shall include requirements for officers to review case file to determine eligibility;
 - ~~f~~e. Policies and procedures regarding the alcohol and drug testing of persons on standard probation. The procedure shall address the methods used to select probationers for testing, the frequency of testing, and the type of test to be administered;
 - ~~g~~f. Policies and procedures concerning the monitoring of probationers' compliance with court-ordered or disclosed prescription medications for mental health or public health concerns. This policy shall include requirements to ensure routine and timely communication between the supervising probation officer and physician regarding the probationer's compliance with dosage requirements;
 - ~~h~~g. Policies and procedures ~~requiring~~ which require officers to maintain accurate and timely records of the completion of community restitution hours for each probationer. Credit toward court-ordered community restitution requirements are awarded on the basis of actual hours completed unless otherwise authorized by the court;
 - ~~i~~h. Protocols to work with the office of the clerk of court to establish policies and procedures by which supervising probation officers are provided with accurate and timely information concerning collections;

the circumstances of the offense, the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, including the ability to contribute to reimbursement for the costs of person's legal defense pursuant to § 11-584, education and personal habits. The presentence report shall contain a recommendation by the officer regarding contribution by the convicted person toward the cost of legal defense pursuant to § 11-584. The officer shall also promptly inquire into the physical, emotional and financial impact of the offense on the victim and the emotional and financial impact of the offense on the immediate family of the victim and shall notify the victim or the immediate family of the victim of the right to appear personally or by counsel at any aggravation or mitigation proceeding.

3. For all probation eligible cases, presentence reports shall also contain case information related to criminogenic risk and needs as documented by the standardized risk assessment and other file and collateral information. The report shall also contain the officer's recommendation for supervision and treatment services based upon the convicted person's documented criminogenic risk and needs when authorized.
4. A.R.S. § 12-253(1) provides that adult probation officers shall "Make and file a complete record of persons placed under suspended sentence by the court, and of all reports made to the officer in writing or in person, in accordance with the conditions imposed by the court." Adult probation officers shall immediately contact the law enforcement officer or agencies involved on receipt of an arrest notification to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The supervising probation officer shall document in the case record all contacts, information received pertaining to the incident, and actions taken as a result of the incident. Probations officers shall also document information, including but not limited to, violation behavior, positive progress and behavioral changes.
5. A.R.S. § 12-253(2) provides that adult probation officers shall "Exercise general supervision and observation over persons under suspended sentence, subject to control and direction by the court."
 - a. Adult probation officers shall:
 - (1) Administer the standardized assessment within 30 days of a probationer's placement on probation or initial release from custody if an assessment was not completed prior to sentencing;
 - (2) Re-evaluate the adequacy and applicability of the court-ordered conditions of probation as part of the ongoing assessment and planning process and, if applicable, petition the court for modifications;
 - (3) Utilize the results of the standardized assessment to establish a level of supervision and address needs for behavioral changes;
 - (4) Develop a case plan for all probationers that assess as medium or high risk on the standardized assessment within 60 days of a probationer's placement on probation

or initial release from custody. The officer shall ensure the case plan includes signatures of the officer and probationer and objectives in the case plan are measurable;

- (5) Develop and implement supervision strategies that are matched by standardized assessment results and criminogenic factors with the probationer's risks, needs and strengths that promote supervision goals and to provide effective supervision that is individualized, proportional and purposeful;
- (6) Target interventions to higher-risk cases to promote public safety;
- (7) Administer the first standardized reassessment ~~every 180 days~~ twelve months from the ~~last~~ initial assessment or release from custody for probationers that assess as medium or high risk to measure behavior changes. Subsequent reassessments shall be completed every twelve months until later assessments indicate a decrease in risk factors which assess the probationer as low risk;
- (8) Review the assessment and the previous case plan during the development of a new case plan to determine if a change in strategies is required to promote behavioral changes. Strategies shall be re-evaluated if there has been regress or no change in behavior;
- (9) Reassess low risk probationers ~~that assess as low risk upon discovery of new criminal conduct, if the current assessment is more than 180 days old; the discovery of significant changes in criminogenic risk and needs or new criminal conduct;~~
- (10) Complete a case plan if a probationer assessed as low risk has criminogenic risks and needs that require intervention: beyond those required as basic compliance with conditions of probation;
- (11) Document in the case record that a case plan is not needed for an assessed low risk probationer if no intervention case plan is required;
- (12) Conduct documented case file reviews for probationers assessed as low risk every year. Case file reviews shall include, but are not limited to, case notes, collateral information and investigation of any arrest notification. Actions shall be taken in response to indicators of changes in criminogenic risk and needs or involvement in criminal conduct. Probationers that are eligible and in compliance with court-ordered conditions of probation shall be recommended for early termination. The officer shall recommend that any outstanding financial obligations be reduced to a criminal restitution order. Probationers with outstanding restitution are not eligible for early termination;
- (13) Respond to emerging risk indicators with graduated increases in the level of supervision, pursuant to probation departmental policy;
- (14) Reduce the level of supervision, up to and including recommendation for early termination of supervision, as risk issues are addressed and probationers meet their objectives;
- (15) Provide probationers with feedback on the results of an assessment or reassessment and progress with the established behavioral goals and conditions of probation and provide positive reinforcement to encourage behavioral changes; and
- (16) Consider the suitability of early termination for all eligible cases.

- b. Adult probation officers shall provide a written directive to the probationer referring the probationer to an appropriate service provider within 60 days of sentencing, release from custody, or identification of the need if a need for treatment, education or counseling is identified through the use of a statewide standardized assessment or is ordered by the court. If more than one area of treatment or counseling is identified, the supervising probation officer shall prioritize the needs and address the one with highest priority within the prescribed time frame. The supervising probation officer shall then address the remaining treatment or counseling areas in descending order.
- c. The supervising officer shall administer or cause to have administered alcohol and drug tests on a variable schedule, when appropriate. The frequency of testing shall be dependent upon the probationer's substance abuse history, unless otherwise directed by the court, and shall be documented in the case record.

6. through 9. [No changes]

10. Probation officers, surveillance officers and absconder or warrant officers shall follow the minimum requirements for probationers on warrant status for less than 90 days:

- ~~a. Send a certified letter to last known physical address if any, except for probationers incarcerated or in residential treatment;~~
- ba. Physically check last known address and place of employment. Ask sources, such as neighbors, apartment managers and former employers, for information;
- eb. Contact collaterals who may know the probationer's whereabouts including former associates, relatives and friends;
- dc. Run a criminal history check;
- ed. Validate obtained information with agencies and companies such as law enforcement and utility companies.
- fe. Provide information that can be used for flyers and wanted posters for dissemination to local law enforcement that has jurisdiction.
- gf. Follow up on these requirements at least once every 30 days and document efforts to locate and reengage the probationer, if necessary; and
- hg. Maintain a complete record of activities in case notes.

11. through 12. [No changes]

K. Minimum Supervision Requirements.

1. A.R.S. § 12-253(2) provides: “Exercise general supervision and observation over persons under suspended sentence, subject to control and direction by the court.” The following supervision requirements are established as minimum thresholds for probationers supervised in the community. Each probation department may establish more rigorous supervision requirements. Each chief probation officer shall ensure that all established minimum supervision requirements are provided in writing to each supervising probation officer, along with appropriate training on adherence to those requirements.
2. The probation department shall establish and document minimum supervision requirements for probationers incarcerated in jail. Each probation department shall provide in writing to supervising probation officers the minimum supervision requirements established for probationers incarcerated in jail and furnish appropriate training on adherence to those requirements.
3. The probation department shall establish supervision strategies that are directed toward achieving desired outcomes that include, but are not limited to, the reduction of offender recidivism and criminogenic factors. The probation department shall ensure the majority of supervision resources are dedicated to medium high and high risk probationers in order to successfully complete their term of probation and promote positive behavioral changes. Supervision strategies shall include the following considerations:
 - a. Tailored to the risks, needs and strengths presented by the individual probationer as determined by the standardized assessment.
 - b. Supervision monitoring and intervention strategies are to involve no greater deprivations of liberty or property than are reasonably necessary to address sentencing purposes. Supervision programs and strategies utilized shall be the least intrusive means necessary to promote supervision goals.
 - c. Initial and subsequent supervision planning shall develop specific goal - directed objectives to be accomplished by the probationer during the term of supervision and include strategies the officer will use to monitor compliance and promote the accomplishment of those objectives. Supervision contacts shall be integral to implementing the overall supervision strategies, have a purpose that is directly related to case objectives and the probationer’s level and type of risk.
 - d. High risk cases shall require the concurrent implementation of multiple intervention strategies that apply the skills from a variety of disciplines to address the level and type of risk presented by the individual probationer, build on a probationer’s strengths, and provide probationers with incentives to change.
 - e. Document changes in the probationer’s circumstances throughout the period of probation and actively engage in assessing the impact of any changes on the level and type of supervision. Officers shall independently assess a probationer’s

circumstances through field and collateral contacts at a level proportional to the issues in the individual case.

- f. Responses to noncompliance shall be timely, realistic and escalating and shall include elements designed to both control and correct noncompliance.
 - g. The intensity and frequency of supervision activities shall be reduced over time for stable, compliant probationers meeting supervision objectives.
4. The high risk probation supervision level shall include a monthly minimum of two of the following:
- a. Visual contact with the probationer. Visual contacts shall be varied, scheduled and unscheduled. The probation officer shall determine a schedule for visual contacts and supervision strategies that are proportionate to the level of risk and needs of the probationer based upon the results of the standardized assessment and other significant case information including the probationer's readiness to change.
 - b. Contact with collateral sources who have meaningful knowledge of the probationer.
5. The high risk probation supervision level shall also include:
- a. An initial contact at the probationer's residence within 30 days of sentencing or release from incarceration;
 - ab. Employment verification or employment search verification as necessary;
 - bc. Investigation of arrest notification including periodic warrants check to be performed a minimum of no less than once prior to the termination of probation. Contact with probationers found to be involved in criminal conduct shall be initiated upon receipt of reliable information that criminal conduct has occurred. An officer shall respond to known serious violations and bring defaulting probationers into court when the conduct of the probationer justifies the court to revoke suspension of the sentence;
 - ed. Community restitution monitoring;
 - de. Alcohol and drug testing, as necessary;
 - ef. Treatment, counseling, or both, to include evidence-based interventions as necessary;
 - fg. Monitoring of court-ordered financial obligations;
 - gh. Development of case plans that target risk and needs areas evidenced to be significant predictors of risk to re-offend;

- hi. The use of communication techniques that engage the probationer in his or her own case plan, motivation and goals;
 - ij. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives;
 - jk. Evaluation of ongoing supervision and strategies; and
 - kl. Consideration for early termination for eligible probationers' meeting behavioral goals and in compliance with court-ordered conditions of probation. The probation officer shall recommend that outstanding financial obligations be reduced to a criminal restitution order. Probationers with outstanding restitution shall not be considered for early termination.
6. The medium risk probation supervision level shall include a monthly minimum of one of the following:
- a. An initial contact at the probationer's residence within 30 days of sentencing or release from incarceration;
 - ab. Visual contact with the probationer. Visual contacts shall be varied, scheduled and unscheduled. The probation officer shall determine a schedule for visual contacts and supervision strategies that are proportionate to the level of risk and needs of the probationer based upon the results of the standardized assessment and other significant case information including the probationer's readiness to change;
 - bc. Contact with collateral sources who have meaningful knowledge of the probationer.

7. **[No changes]**

8. The low risk probation supervision level shall include:
- a. A minimum of one visual contact as an initial interview to provide instruction on the conditions of probation and behavioral expectations. The probation officer shall determine supervision strategies that are proportionate to the level of risk and needs of the probationer based upon the results of the standardized assessment and other significant case information. Subsequent visual contacts shall be varied, scheduled and unscheduled, with at least one residence contact within 60 days of sentencing or release from incarceration;
 - b. through l. **[No changes]**

9. Waiver of Minimum Supervision Requirements.

- a. The chief probation officer may waive minimum supervision requirements, in writing, for a specified period of time only if exigent circumstances exists. The

supervising probation officer shall place a copy of the written waiver of minimum supervision requirements in the case file of each probationer for whom a waiver has been granted.

- b. The chief probation officers shall not grant a ~~wavier~~ waiver for minimum supervision for probationers on high risk supervision level and convicted of a sex offense as defined by A.R.S. § 13-1402 through 13-1412, 13-1417 through 13-1419, 13-3552 through 13-3556, a domestic violence offense under A.R.S. § 13-3601 or 3601.02, or an offense involving driving under the influence under A.R.S. § 28-1381 through 28-1383.
- c. The chief probation officer shall not waive minimum requirements when doing so would compromise public safety.

L. Specialized Caseloads.

1. Any court establishing or maintaining specialized caseloads shall have a written description of the specialized caseload, including objectives, ~~and~~ goals, and caseload size. Caseload sizes may be less than or greater than 65:1, based upon criteria proposed by the probation department and approved by the AOC, as long as the department maintains an overall average of 65:1 for the standard probation supervision population and adequate supervision is provided.
2. Any court establishing or maintaining specialized caseloads shall have research-based written screening and assessment criteria for placement on the caseload, as well as standardized criteria for exiting or graduating from the caseload.
3. Any court establishing or maintaining specialized caseloads shall have research-based written minimum supervision requirements specific to the needs and goals of the caseload.
4. Probation officers assigned to supervise specialized caseloads shall participate in AOC approved continuing education/training on the specific needs of the specialized population.

Comments and Responses to ACJA Section 6-201.01: Standard Probation Evidence Based Practice

PARAGRAPH	COMMENT	RESPONSE
J.5.a.(9).	Recommendation to change language back to “low risk” from proposed “any” probationer. Paragraph would now read: “Reassess <u>low risk</u> probationers that assess as low risk upon discovery of <u>significant changes in criminogenic risk and needs or new criminal conduct, if the current assessment is more than 180 days old</u> ”	Change incorporated
K.8.a.	Change “contact” to “verification.”	Change not incorporated
J.	Reorganize language in this entire section to mirror program operations language in ACJA 6-202.01 (IPS)	Existing language and structure; Change not incorporated
J.	Change semi-colons to periods as in ACJA 6-202.01, L. (IPS)	Change incorporated
A. “Standardized assessment” and “Standardized reassessment”	Recommendation to change “criminogenic” to “criminal” in both of these definitions to be consistent with ACJA 6-202.01 (IPS)	Change incorporated
A. “Visual contact”	Recommendation to add language “confirm compliance with conditions of probation and”	Change not incorporated; this would be redundant language and not necessary
A. “Arrest notification”	Recommendation to add “a” in front of law enforcement	Change not incorporated; existing language, not necessary
A. “Average caseload”	Suggested underlining of “direct” is needed and “of” is not	Change not incorporated; direct is existing language, of is new language
A. “Case record”	Recommendation to add “an” in front of electronic	Change not incorporated; existing language and “an” is not necessary.
J. 1.h.	Recommendation to change language to ACJA 6-202.01 L.1.h.	Change not incorporated; existing language, not necessary
J.1.i.	Recommendation to change language as in ACJA 6-202.01 L.1.i. to be consistent. <u>“Probation officers shall not recommend incarceration solely for non-payment of court-ordered financial obligations”</u>	Change incorporated.
J.5.a.(2).	Recommendation to add “applicability” after the word adequacy to be consistent with ACJA 6-202.01, L.2.b.	Change incorporated.

J.5.a.(3)(4)	Recommendation to combine these 2 paragraphs.	Change not incorporated.
J.1.j. and J.5.a.(7).	Was it intended to change “nine” months to “12?”	Yes
J.1.l. and J.1.m.	Recommendation to remove word “finalize” and replace with “update”	Agree to remove “finalize” and leave develop which is consistent between codes. “Update” not incorporated.
J.5.a.(7).	Recommendation to remove language “first” and “or release from custody”	Change not incorporated; this new language will assist officers in determining when a reassessment is due
J.10.f.	Appears to be redundant to J.10.g.	Change not incorporated; existing J.10.g. will become J.10.f. and new language is being added to address efforts documented to locate and reengage absconders
J.1.l.	Recommendation for clarification for training purposes to revise new language to read <u>“Policies and procedures which require an officer to develop case plans for probationers who assess as medium or high risk a minimum of once every twelve months from the completion of the last case plan. Case plans shall reference the most recent completed assessment and shall be completed more frequently if there are goals that need to be completed by the probationer.”</u>	Change incorporated.

COMMITTEE ON SUPERIOR COURT

Meeting Date: 11/4/2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: ACJA 6-202.01 ADULT INTENSIVE PROBATION EVIDENCE BASED PRACTICES
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From: Adult Probation Services Division

Presenter: Kathy Waters

Description of Presentation: Recommended revisions to current ACJA to enhance Evidence Based Practices

Recommended Motion: Seeking motion to approve amendments to ACJA

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Proposal Cover Sheet

Part 6:

Chapter 2:

Section 6-202.01:

- 1. Effect of the proposal:** To bring about consistency between the 2 sections that govern standard and intensive probation in Arizona while updating and incorporating evidence based practices in the areas of case planning, supervision and reassessments.
- 2. Significant new or changed provisions:** Restructuring and renaming of existing contact levels in subsection O.
- 3. Committee actions and comments:**
- 4. Controversial issues:** None
- 5. Recommendation:** Recommend approval.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 2: Adult Services
Section 6-202.01: Adult Intensive Probation Evidence-Based Practices

A. Definitions. In this section the following definitions apply:

“Absconder” as provided in A.R.S. § 13-105(1) “means a probationer who has moved from the probationer’s primary residence without permission of the probation officer, who cannot be located within ninety days of the previous contact and against whom a petition to revoke has been filed in the superior court alleging that the probationer’s whereabouts are unknown. A probationer is no longer deemed an absconder when the probationer is voluntarily or involuntarily returned to probation service.”

“ACJIS” means Arizona Criminal Justice Information System.

“Actuarial risk” means measurable factors that have been correlated to the probability of offender recidivism that are gathered informally through routine interactions and observations with offenders and by formal assessment guided by instruments.

“Administrative director” means both the administrative director of the Administrative Office of the Courts and the director’s designee.

“Alcohol and drug testing” means any validated or verified method of determining the level of identifiable substances in the body including, but not limited to, breath, blood, oral fluid, urine, hair, and sweat testing.

“AOC” means Arizona Supreme Court, Administrative Office of the Courts.

“Arrest notification” means notice, by any means, that the probationer has been arrested, cited or had official contact with a law enforcement officer.

“Case plan” means the documented behavior change plan and supervision strategy developed by the supervising probation officer, in collaboration with the juvenile and family or adult probationer, which clearly identifies the risk factors and needs of the probationer and how they will be addressed.

“Case record” means any record pertaining to a particular probationer maintained by the probation department in an electronic or paper medium.

“Collateral” means any individual or agency that has a relationship to a particular probationer that serves as a source of information or point of contact, including but not limited to friends, family members, law enforcement, victims, community members, neighbors, treatment providers or other associates.

“Community restitution” means unpaid labor or services provided to a not-for-profit private or governmental agency.

“Court” means the superior court.

“Criminogenic need” means any issues of concern which are directly linked to criminal or delinquent behavior that when addressed and changed affect a probationer’s risk for recidivism, which include, but are not limited to criminal personality, antisocial attitudes, values, beliefs, low self control, criminal peers, substance abuse, dysfunctional family, unemployment and lack of education.

“Direct case” means probationers actively supervised.

“Employment verification” means face-to-face communication, telephone contact, obtaining pay stubs, or other electronic means as approved by the department.

“Evidence-based practice” means strategies that have been shown through current, scientific research to lead to a reduction in recidivism.

“Hand counts” means the manual tabulation of all intensive probation case files in the probation department, conducted independently from any automated system.

“Intensive probation team” means one probation officer and one surveillance officer, two adult probation officers, or one probation officer and two surveillance officers, or one probation officer if a waiver of standards is granted.

“Pro-social activity” means any action or event that promotes sobriety and/or provides an opportunity for building a social support system that encourages a crime free lifestyle and improved community bonds.

“Residential treatment” means any type of licensed treatment or counseling where the probationer resides at the facility. “Short term residential treatment” is 30 days or less. “Long term residential treatment” is 31 days or more. Halfway houses are not considered residential treatment.

“Schedule” means documentation of the hours the probationer is to be at the probationer’s residence or other approved locations pursuant to A.R.S. §13-914(E)(4).

“Standardized assessment” means the state-approved tool to determine the offender’s needs related to criminal behavior and propensity to re-offend.

“Standardized reassessment” means the state-approved tool designed to measure changes in an offender’s needs related to criminal behavior and propensity to re-offend.

“Target interventions” means supervision related services determined by the probationer’s risk, criminogenic needs, and other factors such as temperament, learning style, motivation, gender and culture.

“Visual contact” means face-to-face communication or visual contacts conducted via AOC approved policy and department approved technology with the intensive probationer at any place including but not limited to the probation department, the intensive probationer’s residence, place of employment, treatment location or community restitution placement to confirm compliance with conditions of probation and discuss progress, issues of concern ~~and~~ or other appropriate matters. Contacts with probationers are not ends in themselves but are opportunities for officers to achieve specific objectives. These objectives include establishing rapport with the offender, assessing the offender’s criminogenic factors and triggers, developing and, when needed, modifying a supervision plan, and using both subtle and overt incentives and sanctions to guide the offender toward positive change.

B. Applicability. Pursuant to Az. Const. Art. 6, § 3 and A.R.S. §§ 13-913 through 13-920, the following requirements are adopted to govern the administration and operation of adult intensive probation programs. The AOC shall administer adult intensive probation programs on behalf of the supreme court. A.R.S. § 13-805(A)(B)(C) provides:

A. The trial court shall retain jurisdiction of the case for purposes of ordering, modifying and enforcing the manner in which court-ordered payments are made until paid in full or until the defendant’s sentence expires.

B. At the time the defendant is ordered to pay restitution by the superior court, the court may enter a criminal restitution order in favor of each person who is entitled to restitution for the unpaid balance of any restitution order. A criminal restitution order does not affect any other monetary obligation imposed on the defendant pursuant to law.

C. At the time the defendant completes the defendant’s period of probation or the defendant’s sentence or the defendant absconds from probation or the defendant’s sentence, the court shall enter both:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered, if a criminal restitution order is not issued pursuant to subsection B of this section.

The provisions of this code section requiring a probation officer to request a criminal restitution order apply to a probationer who moved from the probationer’s primary residence on or after July 20, 2011 without permission of the probation officer.

C. Purpose. ~~Intensive probation is a structured program aimed to provide high and medium risk probationers intensive interventions to promote positive behavioral changes and reduce the likelihood of future criminal conduct. A.R.S. § 13-913 provides that intensive probation supervision is a “... highly structured and closely supervised probation which emphasizes the~~

~~payment of restitution.”~~ A.R.S. § 13-913 provides that intensive probation supervision is a “. . . highly structured and closely supervised probation which emphasizes the payment of restitution.” Intensive Probation Supervision (IPS) will be most beneficial to those offenders assessed as medium-high and high risk. Research shows that IPS has potential negative impact for low-risk offenders.

D. General Administration.

1. The AOC shall:
 - a. Administer and direct intensive probation programs on behalf of the supreme court;
 - b. Monitor intensive probation programs;
 - c. Prepare written material setting forth various techniques, practices, guidelines and other recommendations regarding the operation and management of intensive probation programs and distribute this material to judges and probation personnel;
 - d. Inspect, audit, or have audited the records of any superior court operating an intensive probation program;
 - e. Prescribe and adopt procedures, forms and reports necessary for financial administration, program administration, operation and management of intensive probation programs;
 - f. Conduct seminars and educational sessions regarding the purpose and operation of intensive probation programs;
 - g. Establish performance measures and expectations in consultation with the court for determining compliance with each court’s intensive probation program plan and budget request;
 - h. Assist courts in developing their intensive probation program plans and budgets;
 - i. Provide general assistance to courts on the operation of intensive probation programs;
~~and~~
 - j. Adopt other administrative practices and procedures, consistent with this section, as necessary for the administration of the intensive probation supervision program; and
 - k. Provide the probation departments with data regarding probationers who score medium-low and low risk and are placed on IPS.
2. To promote uniform administration, each adult probation department operating an intensive probation program shall comply with this section.

E. through G. [No changes]

H. Eligibility Requirements for Intensive Probation.

1. A.R.S. § 13-914(A) provides:

An adult probation officer shall prepare a presentence report for every offender who has either:

1. Been convicted of a felony and for whom the granting of probation is not prohibited by law.
2. Violated probation by commission of a technical violation that was not chargeable or indictable as a criminal offense.

2. Pursuant to A.R.S. § 13-914(B), “The adult probation officer shall evaluate the needs of the offender and the offender’s risk to the community, including the nature of the offense and the criminal history of the offender” Adult probation department staff shall administer the standardized assessment. The adult probation officer shall consider these factors in making a recommendation to the court for placement on intensive probation.

23. The presentence report assists the court in determining appropriateness for placement on intensive probation. For all probation eligible cases, presentence reports shall also contain case information related to criminogenic risk and needs as documented by the standardized risk assessment and other file and collateral information. The report shall also contain the officer’s recommendation for supervision and treatment services based upon the convicted person’s documented criminogenic risk and needs when authorized.

34. Probation officers shall support any recommendation for the placement of an offender on intensive probation with the standardized assessment or reassessment. Probation officers shall not recommend placement on intensive probation for an offender who scores outside the acceptable limits of the standardized assessment or reassessment unless approved in writing by the chief probation officer or designee.

- ~~4. Pursuant to A.R.S. § 13-914(B), “The adult probation officer shall evaluate the needs of the offender and the offender’s risk to the community, including the nature of the offense and the criminal history of the offender...” Adult probation department staff shall administer the standardized assessment. The adult probation officer shall consider these factors in making a recommendation to the court for placement on intensive probation.~~

5. Probation officers shall only recommend intensive probation supervision for offenders that assess as high or medium-high risk on the standardized assessment or reassessment, unless approved in writing by the chief probation officer or designee. In determining appropriateness for intensive probation the probation officer shall also consider:

- a. Community safety;
- b. The potential harm to the victim including the victim’s attitude toward placing the offender on intensive probation;

- c. The offender's assessment scores in areas known to be significant predictors of the risk to re-offend, which include but are not limited to criminal history, anti-social cognition, anti-social personality and anti-social companions;
 - ed. The offender's need for structure, accountability, and close monitoring in order to maximize treatment and intervention outcomes;
 - de. The focus on treatment inherent in the intensive probation program;
 - ef. The benefits of the intensive probation program to the offender; and
 - fg. The probability the offender will remain at liberty without violating the law; ~~and,~~
 - g. ~~The offender's assessment scores in areas known to be significant predictors of the risk to re-offend, which include but are not limited to criminal history, anti-social cognition, anti-social personality and anti-social companions;~~
6. The probation officer shall also consider the following when determining the appropriateness for intensive probation:
- a. ~~Payment of~~ The probationer's ability to pay restitution;
 - b. The probationer's ability to ~~Performance of~~ perform community restitution hours; ~~and~~
 - c. ~~The offender's~~ probationer's legal eligibility to work in the United States.;
 - d. The recommendation for a specialty court or special conditions, such as but not limited to Drug Court, Mental Health Court, and Veteran's Court; and
 - e. The probationer's inability to meet the statutory requirements.
7. The probation officer shall include the reasons supporting intensive probation in the presentence report.

I. Sentencing Provisions.

1. A.R.S. § 13-914(E) provides:

E. Intensive probation shall be conditioned on the offender:

1. Maintaining employment or full-time student status at a school subject to title 15 or title 32, chapter 30, or a combination of employment and student status, and making progress deemed satisfactory to the probation officer, or being involved in supervised job searches and community restitution work at least six days a week throughout the offender's term of intensive probation.
2. Paying restitution and probation fees of not less than seventy-five dollars unless, after determining the inability of the offender to pay the

fee, the court assesses a lesser fee. Probation fees shall be deposited in the adult probation services fund established by § 12-267. Any amount assessed pursuant to this paragraph shall be used to supplement monies used for the salaries of adult probation and surveillance officers and for support of programs and services of the superior court adult probation departments.

3. Establishing a residence at a place approved by the intensive probation team and not changing the offender's residence without the team's prior approval.

4. Remaining at the offender's place of residence at all times except to go to work, to attend school, to perform community restitution and as specifically allowed in each instance by the adult probation officer.

5. Allowing administration of drug and alcohol tests if requested by a member of the intensive probation team.

6. Performing not less than forty hours of community restitution each month. Offenders who are full-time students, employed or in a treatment program approved by the court or the probation department may be exempted or required to perform fewer hours of community restitution. For good cause, the court may reduce the number of community restitution hours performed to not less than twenty hours each month.

7. Meeting any other conditions imposed by the court to meet the needs of the offender and limit the risks to the community, including participation in a program of community punishment authorized in title 12, chapter 2, article 11.

2. Good cause, in the context of reducing an intensive probationer's monthly community restitution requirement, includes but is not limited to:
 - a. Physical or mental disability;
 - b. Physical or mental illness;
 - c. Completion of residential treatment;
 - d. Successful completion of any level of intensive probation; or
 - e. Progress with positive behavioral changes.
3. An officer shall not recommend a good cause reduction of below twenty hours per month.
4. The court shall exempt community restitution requirements while the probationer is incarcerated or participating in residential treatment.

5. A.R.S. § 13-918(B) provides:

The person's wages shall be paid directly to an account established by the chief adult probation officer from which the chief adult probation officer shall make payments for restitution, probation fees, fines and other payments. The balance of the monies shall be placed in an account to be used for or paid to the person or his immediate family in a manner and in such amounts as determined by the chief adult probation officer or the court. Any monies remaining in the account at the time the person successfully completes probation shall be paid to the person.

J. and K. [No changes]

L. Program Operations.

1. Each probation department shall develop:

- a. Policies and procedures that aim to reduce offender risk and the likelihood of future criminal behavior that are consistent with the principles of evidence-based practices.
- b. Policies and procedures which require probation officers providing intensive supervision to use the results of the standardized assessment, as well as any other relevant information, when developing a case plan. Case plans are dynamic and therefore shall be updated as goals are completed and supervision strategies change based on criminogenic risk and needs of the offender and shall be updated at a minimum of once every twelve months from the completion of the last case plan. Case plans shall reference the most recent completed assessment.
- c. Policies and procedures which require ~~that once every 180 days the supervising an~~ intensive probation officer to administer the standardized reassessment twelve months after the initial assessment and every twelve months thereafter ~~and develop a new case plan.~~
- d. Policies and procedures ~~that~~ which require probation officers to utilize graduated responses of consequences and incentives to address violation behavior and promote positive behavioral change.
- e. Policies and procedures which require supervising intensive probation officers to monitor intensive probationer compliance, behavioral changes and level of risk and request the court modify an intensive probationer's level of supervision when behavior and compliance with conditions of intensive probation have been achieved. Documentation regarding the compliance factors and justification for a requested level change shall be maintained in the intensive probationer's case record. A.R.S. § 13-917(A) provides:

The adult probation officer shall periodically examine the needs of each person granted intensive probation and the risks of modifying the level of supervision of the person. The court may at any time modify the level of supervision of a person granted intensive probation, or may transfer the person to supervised probation or terminate the period of intensive probation pursuant to A.R.S. § 13-901, subsection E.

- f. Policies and procedures regarding the alcohol and drug testing of persons on intensive probation. The procedure shall address the methods used to select intensive probationers for testing, the frequency of testing, and the type of test to be administered.
- g. Policies and procedures by which accurate and timely records of the completion of community restitution hours are maintained for each intensive probationer. Credit toward court-ordered community restitution requirements are awarded on the basis of actual hours completed unless authorized by the court.
- h. Protocols for working with the office of the clerk of the court to establish a process by which supervising intensive probation officers are provided with accurate and timely information concerning collections.
- i. Policies and procedures to ensure the collection of monies owed as a condition of intensive probation. Each probation department and intensive probation team shall immediately address any arrearage. Each probation department and intensive probation team shall also encourage the intensive probationer's payment of other assessments, such as child support or traffic fines, ordered by any court. Modification of monthly payments as income changes during the supervision period is permitted, based upon the probationer's ability to pay. Prior to imposing consequences for non-payment, officers shall consider the probationer's ability to pay. Probation officers shall not recommend incarceration solely for non-payment of court-ordered financial obligations.
- j. A written policy concerning the monitoring of intensive probationers' compliance with court-ordered or disclosed prescription medications for mental health or public health concerns. This policy shall include protocols to ensure routine and timely communication between the supervising intensive probation officer and physician regarding the intensive probationer's compliance with dosage requirements.
- k. Policies and procedures to ensure the accurate and timely recording of information on persons placed on intensive probation in the ACJIS maintained by the Arizona department of public safety. Members of intensive probation teams shall respond to each arrest notification received through ACJIS or through any law enforcement officer.

1. Supervision guidelines that are directed toward achieving desired outcomes that include, but are not limited to the reduction of the offender recidivism and criminogenic factors and will ensure that the majority of intensive probation supervision resources are dedicated to high risk probationers in order to successfully complete their term of probation and promote positive behavioral changes. Supervision guidelines shall include the following considerations:
 - (1) Supervision is tailored to the risks, needs and strengths presented by the individual probationer as determined by the standardized assessment;
 - (2) Supervision monitoring and intervention strategies are to involve no greater deprivations of liberty or property than are reasonably necessary to address sentencing purposes. Supervision programs, surveillance, and strategies that are utilized shall be the least intrusive means necessary to promote public safety and supervision goals;
 - (3) Initial and subsequent supervision planning shall develop specific goal-directed objectives to be accomplished by the probationer during the term of supervision and the strategies that the officer will use to monitor compliance and promote the accomplishment of those objectives. Supervision contacts shall be integral to implementing the overall supervision strategies, have a purpose that is directly related to case objectives and the probationer's level and type of risk;
 - (4) High risk cases require the concurrent implementation of multiple intervention strategies that apply the skills from a variety of disciplines to address the level and type of risk presented by the individual probationer, build on a probationer's strengths, and provide probationers with incentives to change;
 - (5) Document changes in a probationer's circumstances throughout the period of probation and actively engage in assessing the impact of any changes on the level and type of supervision. Officers shall independently assess a probationer's circumstances through field and collateral contacts at a level proportional to the issues in the individual case;
 - (6) Responses to noncompliance shall be timely, realistic and escalating; and shall include elements designed to both control and correct noncompliance; and
 - (7) The intensity and frequency of supervision activities shall be reduced over time for stable, compliant probationers who are meeting their supervision objectives.
2. Each intensive probation officer or team shall:
 - a. Administer the standardized assessment within 30 days of a probationer's placement on probation or initial release from custody if an assessment was not completed prior to sentencing;
 - b. Re-evaluate the adequacy and applicability of the court-ordered conditions of probation as part of the ongoing assessment and planning process and, if applicable, petition the court for modifications;
 - c. Utilize the results of the standardized assessment to establish a level of supervision and ~~finalize~~ develop a case plan within 30 days of a probationer's placement on intensive probation or initial release from custody. The officer shall ensure the case

- plan includes signatures of the probation officer, surveillance officer and probationer and objectives in the case plan are measurable;
- d. Develop and implement supervision strategies that are matched by standardized assessment results and criminogenic factors with the probationer's risks, needs and strengths that promote supervision goals and to provide effective supervision that is individualized, proportional and purposeful. Surveillance and other interventions shall be proportionately matched to emerging or decreasing risk factors;
 - e. Assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use may be accepted in lieu of alcohol or drug testing;
 - f. Evaluate the case plan and supervision strategies on an ongoing basis;
 - g. Use communication techniques that engage the probationer in their own case plan, motivation and goals;
 - h. Administer the standardized reassessment ~~every 180 days~~ twelve months after the initial assessment and every twelve months thereafter. The results of the standardized reassessment, along with the intensive probationer's compliance with the conditions of intensive probation and any other relevant factors, shall be used to develop a new case plan;
 - i. through n. **[No changes]**
 - o. Provide a written directive to the intensive probationer referring the intensive probationer to an appropriate service provider within ~~60~~ 30 days of sentencing, initial release from custody as a condition of intensive probation, or when a need for treatment, education or counseling is identified. If more than one area of treatment or counseling is identified, the intensive probation officer shall prioritize the needs and address the one with highest priority within the prescribed time frame. The intensive probation officer shall then address the remaining treatment or counseling areas in descending order. Additional referrals to social services that may promote the individual's ability to function under decreasing levels of supervision should be made as necessary;
 - p. through s. **[No changes]**
 - t. Document efforts to locate and reengage the intensive probationer. ~~Make a documented effort to locate an intensive probationer.~~ If the intensive probationer is not located within 72 hours, the intensive probation officer shall file a petition to revoke probation no later than the next business day and request that the court issue a warrant. The probation department's efforts to locate the intensive probationer shall continue until the intensive probationer is apprehended; and

- u. The probation officer shall seek a criminal restitution order upon the expiration of 90 days, pursuant to A.R.S. § 13-805(C)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1). The probation officer shall ensure any criminal restitution order is for monies not already ordered in a previous criminal restitution order.

3. through 9. [No changes]

M. Program Placement.

1. through 3. [No changes]

- 4. An intensive probationer may exit intensive probation at any supervision level. Levels are not required to be sequential because progressive movement through IPS is based on risk and needs or compliance.

N. Minimum Supervision Requirements.

- 1. The following supervision requirements are established as minimum thresholds for intensive probationers being supervised in the community without waiver provisions. Each probation department may establish more rigorous intensive supervision requirements. Each chief probation officer shall ensure that all established minimum intensive supervision requirements are provided in writing to each intensive probation team, along with training on adherence to those requirements.
- 2. The probation department shall establish and document minimum intensive supervision requirements for intensive probationers incarcerated in jail. Each probation department shall provide, in writing to each intensive probation team, the minimum intensive supervision requirements established for intensive probationers incarcerated in jail and furnish training on adherence to those requirements.
- 3. Supervision level I (Entrance and Planning) is reserved for newly sentenced probationers ~~who assess as high risk on the standardized assessment or reassessment as well as newly sentenced probationers who assess as medium or low risk~~ and shall include:
 - a. Visual contacts. The intensive probation team shall have a minimum of four visual contacts each week with each intensive probationer. Home and other community contacts are required on a random and varied basis. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
 - b. An initial contact at the probationer's residence to verify the suitability of the environment within ten days of sentencing or release from incarceration.

- bc. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall verify the probationer's employment each week. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.
- d. Planning. If not already completed, the standardized assessment shall be completed within 30 days of sentencing or release from incarceration. If the assessment indicates that the probationer can move beyond the Entrance and Planning phase quickly, the probation officer shall petition the court for modification to the appropriate level of supervision. In the Entrance and Planning phase, the case plan shall be developed and any needed programming referrals shall be completed prior to a request for modification to Level II.
4. Supervision level II (Intervention) is reserved for probationers who ~~assess as high risk on the standardized assessment or reassessment and who have demonstrated positive behavioral change~~ have successfully completed Entrance and Planning. A modification must be obtained from the court prior to placement on level II. Supervision level II shall include:
- a. Visual contacts. The intensive probation team shall have a minimum of two visual contacts each week with each intensive probationer, with at least one occurring at the intensive probationer's residence. Home and other community contacts are required on a random and varied basis. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
- b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall verify the probationer's employment every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.
- c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every ~~two weeks~~ month, if applicable.
- d. Intervention. During the Intervention phase, the probationer shall be actively following the case plan referrals. The intensive probation team shall have contact with a designated provider, if in treatment, a minimum of one time monthly, in

addition to the collateral contact. The probationer shall have made progress in required programming prior to any request for modification to Level III.

5. Supervision level III (Maintenance) is designed for ~~transitioning~~ stabilizing high and medium-high risk probationers who continue to participate and make progress in case plan referrals to standard probation supervision and as a step down from level I for probationers assessed as medium, medium-low or low risk. A modification must be obtained from the court prior to placement on level III. Supervision level III shall include:
 - a. Visual contacts. The intensive probation team shall have a minimum of one visual contact each week with each intensive probationer, with at least one occurring at the intensive probationer's residence every other week. Home and other community contacts are required on a random and varied basis. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
 - b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall verify the probationer's employment every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.
 - c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every ~~two weeks~~ month, if applicable.
 - d. Maintenance. During the Maintenance Phase, the probationer shall continue to make progress in case plan referrals. The intensive probation team shall have contact with a designated provider, if in treatment, a minimum of one time monthly, in addition to the collateral contact. The probationer shall be required to be making progress in case plan referrals and other case plan goals prior to any request for modification to standard probation.
6. Supervision level IV (Transition) ~~is reserved for probationers who assesses as medium or low risk on the standardized assessment or reassessment~~ and is designed to be a transition between intensive and standard probation. The supervising probation officer may petition the court to reduce the level of supervision for a probationer that assesses as low risk on the standardized assessment or standardized reassessment. The case record shall document the circumstances for continuing probationers that assess as low risk on the standardized risk needs instrument on intensive probation supervision. A modification must be obtained from the court prior to placement on level IV. Supervision level IV shall include:

- a. Visual contacts. The intensive probation team shall have a minimum of one visual contact every two weeks with each intensive probationer, occurring at the intensive probationer's residence. Home and other community contacts are required on a random and varied basis. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
 - b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall verify the probationer's employment every four weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.
 - c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 4 weeks, if applicable.
 - d. Transition. If the probationer has successfully completed and progressed through court ordered levels, the probation officer may recommend placement on standard probation supervision based on risk and needs.
7. Supervision level V (Residential Treatment) is reserved for intensive probationers participating in residential treatment. On release from residential treatment, the intensive probation team shall utilize the results of the standardized assessment or reassessment, along with the intensive probationer's compliance with the conditions of intensive probation, discharge plan supported by and involving the treatment provider, intensive probation team and intensive probationer, and any other relevant factors to recommend to the court placement on an appropriate supervision level. Supervision level V shall include:
- a. Visual contacts. The intensive probation team shall have a minimum of one visual contact every 30 days with each intensive probationer. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled.
 - b. Treatment provider contacts. The intensive probation team shall have a minimum of one ~~face to face, telephonic or written~~ contact every 30 days with the intensive probationer's treatment provider.
 - c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 30 days, if applicable.
 - d. Community restitution. Intensive probationers participating in residential treatment are exempt from community restitution requirements.

O. Waiver Provisions.

1. A.R.S. § 13-919 provides:

The requirements of § 13-916, subsection A, subsection B and subsection F, paragraph 2 may be waived for a county if the case load of adult probation officers supervising persons on intensive probation is not more than fifteen persons and the program requires visual contact with each probationer at least one time a week.

2. The presiding judge shall file a waiver request pursuant to A.R.S. §§ 13-916 and 13-919 with the AOC on a form prescribed by the administrative director. The administrative director shall consider the following when determining whether to grant the waiver:
 - a. The number of offenders on intensive probation supervision in the requesting county;
 - b. The geographical make up of the requesting county and the communities that would be served under the waiver; and
 - c. The impact to the program and the implementation of evidence-based supervision by utilizing one-person teams.
3. If a waiver is granted, it will be in force until such time as the presiding judge notifies the AOC in writing that use of the waiver is no longer necessary or when the AOC notifies the presiding judge that the waiver is no longer authorized.
4. The following supervision requirements are established as minimum thresholds for intensive probationers being supervised in the community. Each probation department may establish more rigorous intensive supervision requirements. Each chief probation officer shall ensure that all established minimum intensive supervision requirements are provided in writing to each intensive probation officer, along with training on adherence to those requirements.
5. The probation department shall establish and document minimum intensive supervision requirements for intensive probationers incarcerated in jail. Each probation department shall provide, in writing to each intensive probation officer, the minimum intensive supervision requirements established for intensive probationers incarcerated in jail and furnish training on adherence to those requirements.
6. A person placed on intensive probation and assigned to a waived officer shall be supervised by the intensive probation officer at supervision Contact Level 21 (CL 1) Entrance and Planning until the completion of the standardized assessment and initial case plan. In the Entrance and Planning Phase, the case plan shall be developed and any needed programming referrals shall be completed prior to a request for modification to Contact Level 2 (CL 2). The intensive probation officer shall utilize the results of the standardized assessment, along with the probationer's compliance with the conditions of

intensive probation and any other relevant factors, and recommend to the court placement on an appropriate supervision contact level. Pursuant to A.R.S. § 13-917, if reductions or increases in supervision level are warranted, such reductions or increases shall be made by the court upon recommendation of the probation officer, as further described in L(8)(k). (CL1). Minimum contact standards include:

~~a. Contact Level 2 (CL2) shall be recommended for probationers assessing as high risk on the standardized assessment or reassessment. Minimum contact standards shall include:~~

- ~~(1) Visual contacts: a minimum of two per week with the probationer, with at least one occurring at the probationer's residence. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.~~
- ~~(2) Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation officer shall verify the probationer's employment every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.~~
- ~~(3) Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable.~~

~~b. Contact Level 3 (CL3) may be recommended for probationers who have demonstrated positive behavioral change while under supervision contact level 2. Minimum contact standards shall include:~~

- ~~(1) Visual contacts: a minimum of one visual contact per week, with at least one contact occurring at the probationer's residence every other week. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.~~
- ~~(2) Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation officer shall verify the probationer's employment every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.~~
- ~~(3) Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable.~~

~~e. Contact Level 4 (CL4) may be recommended for probationers assessing as medium or low risk on the standardized assessment or reassessment and who have demonstrated positive behavioral change while under supervision contact level 3. Intensive probation officers shall not recommend supervision contact level 4 for probationers who assess as high risk. Minimum contact standards shall include:~~

~~(1) Visual contacts: a minimum of one visual contact every two weeks, occurring at the probationer's residence. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.~~

~~(2) Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation officer shall verify the probationer's employment every four weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.~~

~~(3) Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every four weeks, if applicable.~~

~~d. Contact Level 5 (CL5) intensive probationers participating in residential treatment on release from residential treatment, the intensive probation officer shall utilize the results of the standardized assessment or reassessment, along with the intensive probationer's compliance with the conditions of intensive probation, discharge plan supported by and involving the treatment provider, intensive probation officer and intensive probationer, and any other relevant factors to recommend to the court placement on an appropriate supervision contact level. Minimum contact standards shall include:~~

~~(1) Visual contacts. The intensive probation officer shall have a minimum of one visual contact every 30 days with each intensive probationer. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled.~~

~~(2) Treatment provider contacts. The intensive probation officer shall have a minimum of one face-to-face, telephonic or written contact every 30 days with the intensive probationer's treatment provider.~~

~~(3) Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 30 days, if applicable.~~

a. Visual contacts. A minimum of two contacts per week are required with at least one occurring at the probationer's residence. Home and other community contacts are required on a random and varied basis. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation

officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.

- b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation officer shall verify the probationer's employment every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.
- c. Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable.
- d. Planning. If not already completed, the standardized assessment shall be completed within 30 days of sentencing or release from incarceration. If the assessment indicates that the probationer can move beyond the Entrance and Planning phase quickly, the probation officer shall petition the court for modification to the appropriate level of supervision. In the Entrance and Planning phase, the case plan shall be developed and any needed programming referrals shall be completed prior to a request for modification to Contact Level 2.

7. Contact Level 2 (CL2) (Intervention) may be recommended for probationers who have completed Entrance and Planning. Minimum contact standards shall include:

- a. Visual contacts. A minimum of one visual contact per week is required with at least one contact occurring at the probationer's residence every other week. Home and other community contacts are required on a random and varied basis. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
- b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation officer shall verify the probationer's employment every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.
- c. Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every 30 days, if applicable.
- d. Intervention. The probationer shall be actively following the case plan referrals. The intensive probation team shall have contact with a designated provider, if in treatment, a minimum of one time monthly, in addition to the collateral contact. The

probationer shall be required to be making progress in required programming prior to any request for modification to Contact Level 3.

8. Contact Level 3 (CL3) (Maintenance) is designed for stabilizing high and medium high risk probationers who continue to participate and make progress in case plan referrals and as a step down from CL Level I for probationers assessed as medium or low risk. A modification must be obtained from the court prior to placement on CL Level III. Minimum contact standards shall include:
 - a. Visual contacts. A minimum of one visual contact every two weeks is required at the probationer's residence. Home and other community contacts are required on a random and varied basis. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
 - b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation officer shall verify the probationer's employment every four weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.
 - c. Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every 30 days, if applicable.
 - d. Maintenance. During the Maintenance Phase, the probationer shall continue to make progress in case plan referrals. The intensive probation team shall have contact with a designated provider, if in treatment, a minimum of one time monthly, in addition to the collateral contact. The probationer shall be required to be making substantial progress in required programming and other case plan goals prior to any request for modification to standard probation.
9. Contact Level 4 (CL4) (Residential Treatment) is reserved for intensive probationers participating in residential treatment. On release from residential treatment, the intensive probation team shall utilize the results of the standardized assessment or reassessment, along with the intensive probationer's compliance with the conditions of intensive probation, discharge plan supported by and involving the treatment provider, intensive probation team and intensive probationer, and any other relevant factors to recommend to the court placement on an appropriate supervision level. Minimum contact standards shall include:
 - a. Visual contacts. The intensive probation officer shall have a minimum of one visual contact every 30 days with each intensive probationer. Mandatory visual contacts

- may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled.
- b. Treatment provider contacts. The intensive probation officer shall have a minimum of one contact every 30 days with the intensive probationer's treatment provider.
 - c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 30 days, if applicable.

P. Required Records.

1. A.R.S. § 13-916(F)(l) provides: “The intensive probation team shall: (1) Secure and keep a complete identification record of each person supervised by the team and a written statement of the conditions of the probation.”
2. The intensive probation team shall also maintain verifiable case records for each intensive probationer, including, but not limited to:
 - a. An individual case plan setting forth behavioral and program expectations;
 - b. Contact logs detailing the time, nature and location of each contact related to each intensive probationer;
 - c. Current photograph of each intensive probationer; and
 - d. Documentation regarding violation behavior, positive progress and behavioral changes while under supervision.

Comments and Responses to ACJA Section 6-202.01: Adult Intensive Probation Evidence-Based Practices

PARAGRAPH	COMMENT	RESPONSE
L.2.c.	Recommendation to change “finalize” to “develop” as recommended by the workgroup and to be consistent with ACJA 6-201.01 J.5.a.(4).	Change incorporated
L.1.b.	Recommendation to add language as proposed in ACJA 6-201.01 J.1.b. so there is consistency between the codes in the area of case plans: <u>Policies and procedures which require an officer to develop a case plan for intensive probationers a minimum of once every twelve months from the completion of the last case plan. Case plans shall reference the most recent completed assessment. Case plans are dynamic and therefore shall be updated as goals are completed and supervision strategies change based on criminogenic risk and needs of the offender.</u>	Content of change incorporated. Proposed language was changed slightly for grammatical purposes only.
L.1.g.	Model verbiage per ACJA 6-201.01 J.1.g.	Change not incorporated
L.1.i.	Model verbiage per ACJA 6-201.01 J.1.i.	Change not incorporated
L.1.j.	Model verbiage per ACJA J.1.f.	Change not incorporated
L.1.c. and L.2.h.	Was it intended to change “nine” months to “12?”	Yes
L.1.c.	Recommendation to change proposed language to “Policies and procedures which require that once every 180 days the supervising <u>an intensive probation officer to administer the standardized reassessment twelve months after the initial assessment and every twelve months thereafter and develop a new case plan.</u>	Change incorporated.
M.4.	Recommendation to change proposed language to “An intensive probationer may exit intensive probation at any supervision level. <u>Levels are not required to be sequential because progressive movement through IPS is based on risk and needs or compliance.</u>	Change incorporated.
M.4.	Recommendation to change proposed language to “An intensive probationer may exit intensive probation at any supervision level <u>based on risk and needs and their progressive movement through the levels.</u>	Change not incorporated.
N.3.d. and O.6.d.	Recommendation to change word “finalized” to “developed”	Change incorporated; as it relates to case plans, “developed” or “develop” will

		be used instead of “finalized” or “final.” If adopted, this will require a modification to case plan screens in APETS.
N.5.	Recommendation to change “probationers assessed as medium or low risk” to “probationers assessed as <u>medium-low</u> or low risk”	Existing language remains; change incorporated to add “medium-low” only.
N.6.c.	Recommendation to change “every 4 weeks” to “every <u>month</u> ”	Existing language, Change not incorporated
N.6.d.	Remove the capitalization of Probation Officer to be consistent	Change incorporated
N.7 a.b.c. and O.9.a.b.c.	Inconsistency between existing language and proposed language of “every 30 days” or “every month”	Change incorporated to ensure “every 30 days” is used consistently.
N.3.	Recommendation to change proposed language to ensure no probationer category gets missed to “Supervision level I (<u>Entrance and Planning</u>) is reserved for <u>newly sentenced</u> probationers who assess as high risk on the standardized assessment or reassessment as well as newly sentenced probationers who have not been assessed and shall include:	Change incorporated
O.6.	Recommendation to add language “(CL1) following Contact Level 2; change “finalized” to “developed” and add (CL2) following Contact Level 2.	Change incorporated.
O.7.d.	Model the verbiage in N.4.d.	Change not incorporated; the language of the supervision levels does not have to mirror the language in the Contact levels
P.1.	Appears to be a typo in the statute language	This is not a typo; the change is necessary to track current statutory language.
L.	Model program operations section to match ACJA 6-201.01	Change not incorporated
Entire Code	References to supervision levels and contact levels are inconsistent. Use capitalization and numbering consistently.	Change not incorporated; clean-up will occur at later date
A. “Alcohol and drug testing”	Add a comma between oral fluid and urine	Change incorporated
A. “Visual contact”	Revise to be consistent with ACJA 6-201.01 “Visual contact” by changing “and” to “or” following word “concern”	Change incorporated

COMMITTEE ON SUPERIOR COURT

Meeting Date: November 4, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: AJC LEGISLATIVE PROPOSALS - 2017 SESSION
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From: Kay Radwanski

Presenter: Jerry Landau, AOC Government Affairs Director

Description of Presentation: Discussion and possible vote on potential legislation for the upcoming 2017 session

Recommended Motion: Recommend support, opposition, or neutrality/no action

Background:

While people of all income levels commit infractions of the law, the impact a court-imposed fee has is greater on indigent populations. Arizona law already permits judges in limited circumstances to mitigate fines using community restitution to avoid an economic hardship; however, community restitution may not always be the most appropriate response. Sanctions are necessary and intended to hold persons accountable and deter future illegal behavior; as such, courts should be able to adjust the amount ordered for low-income people to achieve a similar deterrent effect or order them to treatment and education classes if more appropriate. The cost of pursuing a case often exceeds the benefit that would be realized if collection efforts are successful but courts are unable to write off debt as is permitted for other government entities, such as the Department of Revenue.

Solution:

Proposal 2017-01 modifies the requirements of various court ordered financial obligations, increases judicial discretion with respect to sentencing of misdemeanants, permits debt removal from court accounting systems under specified limited circumstances, and provides for changes in the calculation of imprisonment terms due to pre-trial incarceration. Modernizes statutory language with respect to probation monitored supervision of payments to reflect current wage distribution practices.

Provisions:

- Allows a defendant charged with a misdemeanor to perform community restitution without the necessity of placing the person on probation, thus achieving the same result at lower cost. Virtually no limited jurisdiction courts have a probation department.
- Adds civil penalties and surcharges to the list of financial obligations for which a court may order community restitution in lieu of payment after a finding that the defendant is unable to pay all or part of the monetary obligation.
- Expands the community restitution program to superior court.
- Permits a judge to mitigate part of a civil penalty, fine, surcharge, fee, forfeiture, assessment or incarceration cost if the payment would cause a hardship on the person convicted or adjudicated or on the person's immediate family. If a portion of the civil penalty, fine, forfeiture, surcharge, fee, assessment or incarceration cost is mitigated, the

amount assessed must be divided according to the proportion that the civil penalty, fine, surcharge, fee, forfeiture, assessment and incarceration cost represent to the total amount due. A judge may also waive all or part of mandatory community restitution due to the medical condition of the defendant.

- Permits a court to order a period of education or treatment for a person convicted of a misdemeanor not to exceed the period of probation permitted under law. Any treatment program selected will be determined by the court or the defendant's probation officer.
- Allows the court to adjust a period of supervised probation for earned time credit for each month that a probationer is current on court ordered restitution and community restitution (current law prohibits the credit from being awarded if any portion of restitution is not paid or completed).
- The court may credit time spent in custody against a term of imprisonment if the defendant is released from custody pending trial on one offense but remains in custody due to not being released on another case.
- Reduces the annual interest that accrues on a criminal restitution order from 10% to 4%.
- Authorizes limited and general jurisdiction courts to remove all or part of any debt due to the court as the result of a misdemeanor or felony conviction from the court's accounting system if 20 years has elapsed from the date the fine resulting in the debt and the court:
 - Notifies the prosecutor and the defendant and victim, if their whereabouts are known and waits thirty days for the either party or the victim to file an objection. The court must consider any objection in determining whether to remove the debt, and
 - Makes reasonable attempts to collect the debt, including billing the debtor at least four times, and
 - Submits the debt for collection to a collection agency licensed pursuant to Title 32, Chapter 9 and waits at least one year while the agency attempts collection, and
 - Notifies the Department of Revenue of the debt pursuant to section §42-1122, and
 - Notifies the appropriate city or county treasurer.
- Repeals antiquated language requiring chief adult probation officers to collect, deposit, and distribute wages via paycheck from a probationer for court ordered financial obligations. Requires a person's probation officer monitor the person's income to ensure compliance with court ordered financial obligations.
- Provides a delayed effective date of January 1, 2018

Background:

Current law requires Justice of the Peace and Municipal Courts to establish bond schedules for various criminal traffic offenses. There is a growing trend throughout the country to declare “bond schedules” for criminal offenses unconstitutional.

In felony cases, currently only the state may request a hearing to determine if a person should be held without bond for reasons of public safety and in many parts of the state, prosecutors are not present at the initial appearance to make such a motion.

Solution:

Proposal 2017-03 replaces the criminal traffic bond schedule in limited jurisdiction courts with a deposit schedule. Modifies the process related to bond hearings in superior court where a person is initially held without bond. Will require amendments to court rule.

Provisions:

- Replaces the bond schedule for criminal traffic cases that limited jurisdiction courts are required to prepare with a deposit schedule (retains the requirement that a penalty schedule be maintained of civil violations listing a specific deposit for each).
- Requires a hearing to determine if a person should be held without bond based upon being a danger to the community if a person is held without bond at the initial appearance.
- Removes the statutory time frames for holding a hearing on the motion (to be addressed by court rule) as well as the requirement the case be placed on an expedited calendar and any trial be given a priority. The filing of a complaint does not add to the strength of the proof or the presumption required to be drawn.

Background

The handling of cases involving individuals with mental health issues is a challenge for the criminal justice system. The process for determining competency can be cumbersome if the case is in a municipal or justice of the Peace Court. Current law requires the Superior Court to hear the competency portion of the case, and when completed return the case to the municipal or justice court. A recent pilot between Mesa Municipal Court and Maricopa County Superior Court where through an agreement the Mesa court hears the competency portion of the case reduced the processing time from six months to 60 days.

Solution:

Proposal 2017-04 provides for increased jurisdiction of limited jurisdiction courts with respect to competency hearings if approved by the superior court presiding judge.

Provisions:

Allows the presiding judge of the superior court to authorize a justice of the peace or municipal court to exercise jurisdiction over competency hearings in that court upon the agreement of the justice of the peace or municipal court judge. Further, allows the presiding judge to authorize a justice of the peace court or municipal court to hear a competency case from another limited jurisdiction court with the approval of both limited jurisdiction court judges.

Background:

Court security is of nationwide concern. Here in Arizona several fatal shootings and other incidents have occurred inside or on courthouse property in recent years, including some here in Arizona. As a result, the Arizona Supreme Court is recommending system-wide improvements including security system screening equipment, panic alarms, bullet proof material, bullet resistant courtroom benches, electronic door locks or similar locking mechanisms, video cameras and communication systems.

Solution:

Proposal 2017-06 creates a new Statewide Court Security Fund consisting of monies appropriated by the legislature, with monies used to fund courthouse security at the local and state levels.

Provisions:

- Creates a new Statewide Court Security Fund consisting of monies appropriated by the legislature.
- Requires the Administrative Office of the Courts to administer the fund.
- Requires monies in the fund to be used to provide assistance and training to courts to enable them to meet minimum standards of courthouse security adopted by the Supreme Court.

Background:

Current law requires the chief adult probation officer to collect paychecks from probationers and establish accounts from which the chief adult probation officer must make payments for restitution, probation fees, fines and other payments. The practice of issuing paychecks is becoming obsolete with direct deposits, check cards and other payment methods; as a result, adult probation departments are unable to comply with the requirement of collecting paychecks from offenders who have direct deposit, check card payment and those who are paid in cash.

Solution:

Proposal 2017-07 modernizes statutory language with respect to probation monitored supervision of payments to reflect current wage distribution practices.

Provisions:

- Repeals antiquated language requiring chief adult probation officers to collect, deposit, and distribute wages via paycheck from a probationer for court ordered financial obligations.
- Requires a person's probation officer monitor the person's income to ensure compliance with court ordered financial obligations.

COMMITTEE ON SUPERIOR COURT

Meeting Date:	Type of Action Requested:	Subject:
November 4, 2016	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	UPDATE FROM THE CRIMINAL RULES TASK FORCE

From: Task Force on the Arizona Rules of Criminal Procedure ("CRTF")

Presenter: Hon. Joseph Welty, Task Force Chair

Description of Presentation: Judge Welty introduced the work of this Task Force at the September 9, 2016, COSC meeting. To recap, the chair assigned each of the 41 criminal rules to one of four Task Force workgroups. Each workgroup has as members at least one judge, one prosecutor, and one criminal defense attorney. The workgroups reviewed the rules in depth, and then presented their proposed revisions to the full Task Force. At the present time, the Task Force has reviewed most of the 41 rules.

The Task Force work product is available online, although it would be burdensome to include hundreds of pages of restyled rules in the COSC meeting materials. Rather, today's meeting materials include one rule, Rule 9, as an example of the restyling effort. The restyled version is followed by the current rule.

Please note that the numbering and basic structure of the current rule remains intact in the restyled version. However, certain provisions are reorganized. For example, the order of current Rule 9.2(b) and (c) is reversed to provide a more intuitive sequence of these provisions. The language of the restyled rule is simplified (for example, "reacquisition of the right" in Rule 9.2(b) is now "reacquiring the right" in Rule 9.2(c).) The ambiguous word "shall" is eliminated in the text; it is either "must" or "may" in the restyling. Lengthy provisions, for example, Rule 9.3(b) and (c), are broken down into subparts, and the subparts have their own subheadings to assist users in locating a particular provision. Any essential substance in a comment has been moved to the body of the rule. Extraneous and historical comments have been deleted, which considerably shortens the rule.

Recommended Motion: The Task Force is continuing its progress with the objective of filing a rule petition by January 10, 2017. The petition would request adoption of a comprehensive set of restyled criminal rules. The Task Force now asks COSC for its formal support of the work of the Task Force.

Rule 9. Presence of the Defendant, Witnesses, and Spectators

Rule 9.1. The Defendant's Waiver of the Right to Be Present

Except for sentencing or as these rules otherwise provide, a defendant's voluntary absence waives the right to be present at any proceeding. The court may infer that a defendant's absence is voluntary if the defendant had notice of the date and time of the proceeding, the right to be present, and notice that the proceeding would go forward in the defendant's absence.

Rule 9.2. Defendant's Forfeiture of the Right to Be Present Due to Disruptive Conduct

(a) Generally. A defendant who engages in disruptive conduct, after being warned that such conduct will result in expulsion from a proceeding, forfeits the right to be present at that proceeding. At the time of expulsion, the court must inform the defendant that he or she can return upon a promise to the court of future orderly conduct.

(b) Continuing Duty to Permit Participation. After expulsion, the court must use every feasible means to allow the defendant to watch, hear, and be informed of the proceeding's progress, and to consult with counsel at reasonable intervals. The court should inquire periodically if the defendant wishes to reacquire the right to be present.

(c) Reacquiring the Right. The court must allow the defendant to return to the proceeding if the defendant personally assures the court of future good behavior. If the defendant later engages in disruptive conduct, the court may exclude the defendant from the proceeding without additional warning.

Rule 9.3. Exclusion of Witnesses and Spectators

(a) Witnesses.

(1) Generally. The court may and, at the request of either party must, exclude prospective witnesses from the courtroom during opening statements and other witnesses' testimony. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may not exclude the person

(2) Exceptions.

(A) Victim. A victim as defined in Rule 39(a) has a right to be present at all proceedings at which the defendant has that right.

[https://azcourts-my.sharepoint.com/personal/jgraber_courts_az_gov/Documents/Shared with Everyone/CRTF Criminal Rules Task Force/Workgroup 3/Rule 9.docx](https://azcourts-my.sharepoint.com/personal/jgraber_courts_az_gov/Documents/Shared%20with%20Everyone/CRTF%20Criminal%20Rules%20Task%20Force/Workgroup%203/Rule%209.docx)

(B) *Investigator.* If the court enters an exclusion order, both the defendant and State are nevertheless entitled to the presence of one investigator at counsel table.

(3) *Instruction.* As part of its exclusion order, the court must instruct the witnesses not to communicate with each other about the case until all of them have testified.

(4) *After Testifying.* Once a witness has testified on direct examination and has been made available to all parties for cross-examination, the court must allow the witness to remain in the courtroom, unless a party requests continued exclusion because the witness may be recalled or the court finds that the witness's presence would be prejudicial to a fair trial.

(b) Spectators.

(1) *Generally.* All proceedings must be open to the public, including news media representatives, unless the court finds, on motion or on its own, that an open proceeding presents a clear and present danger to the defendant's right to a fair trial by an impartial jury.

(2) *Record.* The court must keep a complete record of any closed proceedings and make it available to the public following the trial's completion, or, if no trial occurs, disposition of the case.

(c) Protection of a Witness. The court may exclude all spectators except press representatives during a witness's testimony if the court finds it is reasonably necessary to protect the witness's safety or to protect the witness from embarrassment or emotional disturbance.

Note: Draft Rule 9.3(c) includes the phrase "if the court finds" to provide a basis for reviewing the court's discretion to exclude spectators.

Rule 9. Presence of Defendant, Witnesses and Spectators

Rule 9.1. Defendant's waiver of right to be present

Except as otherwise provided in these rules, a defendant may waive the right to be present at any proceeding other than sentencing by voluntarily absenting himself or herself from it. The court may infer that an absence is voluntary if the defendant had personal notice of the time of the proceeding, the right to be present at it, and a warning that the proceeding would go forward in his or her absence should he or she fail to appear.

COMMENT [AMENDED 2007]

The first sentence of Rule 9.1 retains the waiver by voluntary absence of the defendant contained in the 1956 Ariz. Rules of Criminal Procedure, as amended, Rule 231(B) and Federal Rules of Criminal Procedure 43. No major change in the law is intended. The Arizona rule was challenged and ultimately sustained in *In re Hunt*, 276 F.Supp. 112 (1967), vacated 408 F.2d 1086 (6th Cir.1969).

The second sentence of Rule 9.1 embodies the rule of the District of Columbia Circuit Court of Appeals, which has held that “voluntary” in the phrase “voluntary absence” must be construed to mean “an intentional relinquishment or abandonment of a known right or privilege,” *Johnson v. Zerbst*, 58 S.Ct. 1019, 304 U.S. 458, 82 L.Ed. 1461 (1938), and has therefore reversed convictions in which the defendant was not informed of his right to be present throughout the entire trial and warned that the trial would continue even in his absence. See *United States v. McPherson*, 421 F.2d 1127, 137 U.S.App.D.C. 192 (D.C.Cir.1969). The adoption of this standard in Arizona has the implied approval of the supreme court, *State v. Tacon*, 107 Ariz. 353, 355, 488 P.2d 973, 975 (1971), certiorari dismissed 93 S.Ct. 998, 410 U.S. 351, 35 L.Ed.2d 346 (February 21, 1973):

In order for a defendant to make a knowing and intelligent waiver of his right to be present at the trial, he must be aware that the trial will proceed without him if he fails to appear. 107 Ariz. at 355, 488 P.2d at 975.

It is quite practical to add the warning required by the rule to the release order received by the defendant after he posts bond or is released on his own recognizance. See Form 6.

The word “infer” is used in Rule 9.1 to indicate that the presumption of voluntariness is rebuttable. Obviously, a defendant who has received the required warnings might still be involuntarily absent and should be permitted to prove that fact.

Rule 9.2. Defendant's forfeiture of right to be present

(a) Disruptive Conduct. A defendant who engages in disruptive or disorderly conduct after having been warned by the court that such conduct will result in the defendant's expulsion from a proceeding shall forfeit his or her right to be present at that proceeding.

(b) Re-acquisition of Right. The court shall grant any defendant so excluded reasonable opportunities to return to the court upon the defendant's personal assurance of good behavior. Any subsequent disruptive conduct on the part of the defendant may result in his or her exclusion without additional warning.

(c) Continuing Duty of Court. The court shall employ every feasible means to enable a defendant removed from a proceeding under this rule to hear, observe or be informed of the further course of the proceeding, and to consult with counsel at reasonable intervals.

COMMENT

Except for the first sentence of section (c), Rule 9.2 follows the recommendations of the ABA, Standards Relating to the Judge's Role in Dealing with Trial Disruptions § C. 1 (Tentative Draft, 1971) and those of the U.S. Supreme Court in *Illinois v. Allen*, 90 S.Ct. 1057, 397 U.S. 337, 25 L.Ed.2d 353 (1970), rehearing denied 90 S.Ct. 1684, 398 U.S. 915, 26 L.Ed.2d 80. In this the rule partially reverses the precedents of *State v. Martin*, 102 Ariz. 142, 426 P.2d 639 (1967) and *State v. Van Bogart*, 85 Ariz. 63, 331 P.2d 597 (1958), certiorari denied 79 S.Ct. 886, 359 U.S. 973, 3 L.Ed.2d 838, in that it prefers excluding the disruptive defendant to binding and gagging him. See ABA, *supra*; *Illinois v. Allen*, *supra*, at 344.

The first sentence in section (c) directs the court to use every feasible means to permit the defendant to hear and observe the proceedings. The language is intended to encourage use of any practical audiovisual devices in communicating the progress of the trial to the defendant. The rule directs the court to employ means that will let the defendant hear and observe, not participate. The cost of a simple loudspeaker system can be afforded by any small court in Arizona. No court is required to use impractical and expensive technology.

Of course, the court's contempt power (see Rule 33) is also applicable to such situations.

Rule 9.3. Exclusion of witnesses and spectators

(a) Witnesses. The court may, and at the request of either party shall, exclude prospective witnesses from the courtroom during opening statements and the testimony of other witnesses. The court shall also direct them not to communicate with each other until all have testified. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, the person shall not be excluded from the courtroom. Once a witness has testified on direct examination and has been made available to all parties for cross-examination, the witness shall be allowed to remain in the courtroom unless the court finds, upon application of a party or witness, that the presence of the witness would be prejudicial to a fair trial. Notwithstanding the foregoing, the victim, as defined in Rule 39a, Rules of Criminal Procedure, shall have the right to be present at all proceedings at which the defendant has such right.

(b) Spectators. All proceedings shall be open to the public, including representatives of the news media, unless the court finds, upon application of the defendant, that an open proceeding presents a clear and present danger to the defendant's right to a fair trial by an impartial jury. A

complete record of any closed proceedings shall be kept and made available to the public following the completion of trial or disposition of the case without trial.

(c) Protection of witness. The court may, in its discretion, exclude all spectators except representatives of the press during the testimony of a witness whenever reasonably necessary to prevent embarrassment or emotional disturbance of the witness.

(d) Investigator. If an exclusion order is entered, both the defendant and the prosecutor shall nevertheless be entitled to the presence of one investigator at counsel table.

COMMENT

Rule 9.3(a). Section (a) extends the language of the 1956 Arizona Rules of Criminal Procedure, as amended, Rule 27, (exclusion and separation of witnesses at preliminary hearing) to all proceedings. The power to exclude and separate witnesses at trial has long been held to be an element of the trial court's discretionary power. See the 1956 Ariz. Rules of Criminal Procedure, as amended, Rule 271; *State v. Denton*, 101 Ariz. 455, 420 P.2d 930 (1966).

Rule 9.3(b). Section (b) sets forth as the standard for all proceedings the standard set forth for preliminary hearings in *Phoenix Newspapers, Inc. v. Jennings*, 107 Ariz. 557, 490 P.2d 563 (1971), in which the supreme court held that there was no "clear and present danger to a fair trial" from newspaper coverage of a pretrial hearing, in the absence of a claim that evidence inadmissible at trial would be forthcoming at the hearing. See ABA, *Standards Relating to Fair Trial and Free Press* § 3.1 (Approved Draft, 1968).

Rule 9.3(c). Section (c) is included to give the judge or magistrate clear authority to clear the courtroom, except for representatives of the press, whenever reasonably necessary to protect an emotionally unstable or immature witness, such as a young rape victim. The defendant's consent is not required. See *Geise v. United States*, 262 F.2d 151 (9th Cir., 1958), rehearing denied 265 F.2d 659, certiorari denied 80 S.Ct. 94, 361 U.S. 842, 4 L.Ed.2d 80 (1959); *Schavey v. Royston*, 8 Ariz.App. 574, 448 P.2d 418 (1968); Annotation, 48 A.L.R.2d 1436, 1450 (1954).

Rule 9.3(d). Section (d) represents a departure from current law, entitling both parties to the presence and advice of an investigator, to call attention to factual matters of which counsel may not be aware.

COMMENT [TO 1989 AMENDMENT]

Prior to the adoption of the Arizona Rules of Evidence in 1977, the rule in Arizona was that sequestration of witnesses lay within the sound discretion of the trial court. The source of Rule 615, Arizona Rules of Evidence, was the counterpart federal rule, Rule 615, Federal Rules of Evidence, under which the trial court in both civil and criminal cases no longer has discretion and sequestration is a matter of right. Under Arizona's Evidence Rule 615, therefore, sequestration of witnesses in civil cases in Arizona's trial courts is a matter of right except as to those individuals specifically exempted by the rule. *Kosidlo v. Kosidlo*, 125 Ariz. 32, 607 P.2d 15 (App.1979), disapproved on other grounds, 125 Ariz. 18, 607 P.2d 1. The policy underlying

the mandatory sequestration rule of Federal Rule 615 is that, by preventing a witness from hearing the testimony of another witness, the risk of fabrication, collusion, inaccuracy and shaping of testimony is minimized. 10 Moore's Federal Practice, § 615.01[4]; 6 Wigmore §§ 1837-1838.

The 1989 amendment to Rule 9.3(a) retains the mandatory sequestration rule and in that respect is consistent with federal practice. However, it permits witnesses to attend the trial after they have concluded their testimony on cross-examination. It also permits them, even before concluding their testimony on cross-examination, to be present at all phases of the trial except opening statements or other testimony. Because it is only at those phases where exclusion promotes the truth-finding process, prospective witnesses are permitted to attend during other phases, such as jury selection, motions, and legal argument. It is believed that the rule, as amended, harmonizes the interest of a fair trial with the interest of witnesses, including alleged victims, in being personally present at the trial. The trial court retains discretion to exclude witnesses from the courtroom in those rare cases where it can be demonstrated that a fair trial cannot be held without such exclusion. The 1989 amendment also makes clear that the court is not bound by a party's mere assertion that a person is a witness for purposes of exclusion under the rule.

COMMENT TO 1991 AMENDMENT

The 1991 amendment, adding the last sentence of Rule 9.3a, was designed to help implement the Victims' Bill of Rights, which was incorporated into the Arizona Constitution in 1990 as Art. II, § 2.1. § 2.1(A)(3) gives the victim the right "To be present at ... all criminal proceedings where the defendant has the right to be present." Under prior law, as set forth in the first four sentences of Rule 9.3a, the court could, and at the request of either party was required to, exclude a victim who was also a witness until the victim had testified.