

AGENDA

FOR THE COMMITTEE ON LIMITED JURISDICTION COURTS

Wednesday, August 31, 2016

10:00 a.m. to 3:00 p.m.

State Courts Building, Conference Rooms 119 A&B

1501 West Washington Street, Phoenix, Arizona

Conference Call Number: **(602) 452-3288** or **(520) 388-4330** Access Code: **0357**

<https://arizonacourts.webex.com>

(All times shown on this agenda are approximate.)

Time	Regular Business	Presenter
10:00 a.m.	Call to Order	Judge Antonio Riojas, <i>Chair</i>
10:05	Approval of February 24, 2016, Meeting Minutes <i>Action Item</i>	Judge Riojas
Business Items and Potential Action Items		
10:10	Task Force on Fair Justice for All – Rule Change Petition	Judge Don Taylor
11:10	Criminal Rules Task Force	Judge Maria Felix Judge Eric Jeffery
11:20	Pima County Consolidated Justice Court Pro Tem Judge Training	Judge Maria Felix
11:30	Proposal from the Judicial College of Arizona to Change the Initial Training Requirements for Limited Jurisdiction Part-Time Pro-Tem Judges	Gabe Goltz <i>AOC, Education Services Division</i>
<i>☞ Lunch break ☞</i>		
12:15	Legislative Update (during lunch)	Jerry Landau <i>AOC, Government Affairs Director</i>
12:30	Arizona Commission on Access to Justice - Report on Rule Change Petition R-16-0040 Statewide Mandatory Eviction Forms Proposed Rule Change Petition Regarding Stipulated Judgments in Eviction Actions	Judge Lawrence Winthrop <i>Court of Appeals, Division 1</i>

Business Items and Potential Action Items
(Continued)

- | | | |
|-------|--|---|
| 12:50 | Court Security Standards | Jennifer Albright
<i>AOC, Court Services Division</i> |
| 1:05 | Court Interpreters | David Svoboda
<i>AOC, Court Services Division</i> |
| 1:20 | Proposed Revisions to ACJA 1-507: Protection of Electronic Case Records in Paperless Court Operations | Stewart Bruner
<i>AOC, Information Technology Division</i> |
| 1:35 | Protective Order Forms – “Petition for Protective Order” | Judge George Anagnost,
<i>Peoria Municipal Court</i> |
| 2:05 | Rule 41, Forms 2a & 2b Rules of Criminal Procedure | Patrick Scott
<i>AOC, Court Services Division</i> |
| 2:15 | Call to the Public | Judge Riojas |

Next Meeting:

Wednesday, November 16, 2016
10:00 a.m. to 3:00 p.m.
Conference Rooms 119 A&B
1501 West Washington Street, Phoenix, Arizona

Adjourn

Judge Riojas

**COMMITTEE ON LIMITED JURISDICTION COURTS
DRAFT MINUTES**

Wednesday, February 24, 2016

10:00 a.m. to 12:00 p.m.

Conference Room 119A/B

1501 West Washington Street

Phoenix, Arizona 85007

Telephonic: Judge Antonio Riojas, Chair, Judge Timothy Dickerson, Chief Dan Doyle, Julie Dybas, Judge Maria Felix, Jeffrey Fine, Judge Elizabeth R. Finn, Christopher Hale, Judge Eric Jeffery, Judge Dorothy Little, Judge Arthur Markham, Judge Steven McMurry, Marla Randall, Judge Laine P. Sklar, Judge J. Matias “Matt” Tafoya, Sharon S. Yates

Absent/Excused: Judge James William Hazel, Jr.

Presenters/Guests: Ellen Crowley, Arizona Supreme Court Staff Attorney’s Office; Theresa Barrett, Jerry Landau, Mark Meltzer, Patrick Scott, Administrative Office of the Courts (AOC)

Staff: Susan Pickard, Julie Graber (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The February 24, 2016, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 10:00 a.m. by Judge Antonio Riojas, Chair.

B. Approval of Minutes

The draft minutes from the October 28, 2015, meeting of the LJC were presented for approval.

Motion: To approve the October 28, 2015, meeting minutes, as presented. **Action:** Approve, **Moved by** Sharon Yates, **Seconded by** Judge Dorothy Little. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Proposed Supreme Court Rule 28.1, Approval of Local Rules

Ellen Crowley, Chief Staff Attorney, Arizona Supreme Court Staff Attorney’s Office, presented proposed Supreme Court Rule 28.1, which would implement a procedure for presiding judges to request approval of local rules for superior courts and limited jurisdiction courts. The proposal would require circulation to stakeholders before submission, and extension of the comment period from 30 to 60 days. Ms. Crowley sought feedback from members on the draft rule, which has not yet been submitted as a rule petition.

Member comments:

- Members suggested limiting the language to the courts affected by the rule proposal.

B. 2016 Rules Update

Mark Meltzer, AOC staff, discussed rule petitions of interest to LJC that were filed for consideration during the 2016 rules cycle. Checkboxes were added to the meeting handout for members to distinguish petitions that warrant the filing of a formal committee comment, or that merit further discussion by committee members. The deadline for comments is May 20, 2016.

Civil Procedure

R-16-0010: The rule petition proposes comprehensive revisions to the civil rules and might impact the Justice Court Rules of Civil Procedure.

R-16-0018: Would protect the confidential identity of jurors by allowing jurors to write their juror number and initials in lieu of a full signature.

R-16-0019: Would allow the court to enter a judgment against the fictitiously named defendant if the true name was not known at that time.

Criminal Procedure

R-15-0038: Would require the trial court to ensure compliance that the state has met its discovery obligations by engaging in a colloquy with the prosecutor.

Member comments:

- How can the court “ensure” the prosecutor has provided complete discovery. There is no possible way the court can “ensure” the prosecutor has “searched its files” or “the investigating police agency’s files.”
- The issue should be addressed with appropriate sanctions for violations, not the court engaging in a prosecutorial function of ensuring discovery is complete.

ACTION ITEM: Judge Jeffery will draft the comment for members’ review prior to submission.

R-16-0007: Would exclude from time limit computations an additional period of 30 days to allow the court and each party sufficient time to schedule and prepare for a trial.

R-16-0024: Would provide an additional circumstance where the court may exonerate a bond and make exoneration of the bond mandatory in both circumstances.

R-16-0031: Would delete Rule 20 because the court’s granting of a judgment of acquittal before the verdict is not reviewable on appeal and double jeopardy bars a retrial on the charge. This pre-verdict acquittal process deprives the State of its right to a jury trial on the charge and denies rights to justice and due process for a crime victim. Mr. Meltzer noted that the new criminal rules task force will be reviewing the issue further.

Member comments:

- Federal courts allow this to happen right now.

- How does it apply to bench trials? Does it preclude a Rule 20 on a bench trial? A Rule 20 is not always a jury trial.
- It is a waste of court resources and jury time if the judge makes a legal decision that there is not enough to go forward.

ACTION ITEM: Judge Riojas will draft the comment for members' review and comment.

Rules of Procedure for Juvenile Court

R-15-0036: Would request a uniform statewide rule on the use of mechanical restraints.

R-15-0042: Would increase the educational stability and graduation rates of children in foster care, and lower their rate of dropping out.

Rules of the Supreme Court

R-16-0003: Would exclude private court reporters and those hired by counsel from being the official record.

R-16-0008: Would make the removal of case management system data and case records from the court's online display pursuant to the applicable records retention schedule mandatory.

R-16-0013: Would make changes to the mission and structure of the State Bar of Arizona.

Rules of Family Law Procedure

R-16-0006: Would allow the signature of a jail or prison official on a return receipt or signature confirmation to constitute sufficient evidence of service of process when the party being served is incarcerated.

Other Rule Petitions that may be of interest

R-16-0022: Would allow litigants in an eviction action to have the same right to a change of judge as other civil litigants in justice and superior court.

Member comments:

- Concerns were raised that the rule petition would benefit landlords rather than tenants.
- The impact would be felt in smaller counties.

ACTION ITEM: Judge McMurry will redraft his previous comment and present it to the committee.

Motion: To ask Judge McMurry to redraft his previous comment and present it to the committee. **Action:** Approve, **Moved by** Sharon Yates, **Seconded by** Judge Maria Felix. Motion passed unanimously.

R-15-0035: Would add the requirement to allege each specific act of domestic violence that will be relied upon at the hearing regarding Injunctions Against Harassment or Injunctions Against Workplace Harassment. CIDVC will be filing a comment in support of the rule petition.

Motion: To support the rule petition, as presented. **Action:** Approve, **Moved by** Judge Sklar, **Seconded by** Marla Randall. Motion passed unanimously.

R-16-0026: Would expedite service of Orders of Protection by clarifying that courts are permitted to transmit orders electronically to cooperating law enforcement agencies. The benefits include saving time for plaintiffs and instant communication between courts and law enforcement. The deadline for comments is April 1, 2016.

Member comments:

- Concerns were raised about putting liability on the court to find the right agency to conduct service.
- If the language is discretionary, why is it needed?
- The consensus of the committee was that additional information was needed before making a motion.

Motion: To authorize Judge Riojas to file comments on behalf of LJC on rule petitions R-15-0038, R-16-0031, R-16-0022, and R-15-0035. **Action:** Approve, **Moved by** Sharon Yates, **Seconded by** Judge Dorothy Little. Motion passed unanimously.

C. Rule 41, Form 2, Rules of Criminal Procedure

Patrick Scott, AOC Specialist, discussed implementation concerns from courts, probation departments, and law enforcement following the adoption of Form 2, a new standardized warrant form in Rule 41, Arizona Rules of Criminal Procedure, on January 1, 2016. Mr. Scott sought member's feedback. The concerns raised to Mr. Scott include:

- Adding more space to put instructions about the type of bond and conditions of release.
- Including the defendant's social security number or any other identifiers.
- Adding a check box indicating that the defendant is on interstate compact.

Mr. Scott advised members that the AOC has scheduled a meeting on March 4, 2016, with the original workgroup and the stakeholders. The workgroup will discuss the concerns raised and make recommendations to the court about form changes before requiring strict compliance to the rule.

D. ACJA § 5-206: Fee Waivers and Deferrals

Patrick Scott, AOC Specialist, reported that a new workgroup was being created to review and amend the language in ACJA § 5-206: Fee Waivers and Deferrals. The goal of the workgroup is to consider incorporating language to clarify that the applicant has qualified for and received assistance from a legal services organization rather than being represented by legal services.

E. Legislative Update

Jerry Landau, AOC Government Affairs Director, presented the following legislative proposals of interest to limited jurisdiction courts:

HB2032: speed limits; local authority

Would allow a local authority to modify the speed limit in an area adjacent to or surrounding school grounds or public parks.

HB2122: tech correction; technical registration board

A strike everything bill would exclude the suspension of a person's driver license as punishment for the failure to appear in court from a photo enforcement citation.

HB2154: failure to appear; arrest; fingerprinting

Would clarify the procedure for ten-print fingerprinting of certain arrested persons and make violation of promise to appear in court a form of failure to appear in the second degree.

HB2287: presiding constable; selection; duties

Would require the constables of a county with four or more constables to elect a presiding constable and associate presiding constable for the county.

HB2288: constables; duties; training; discipline

Would make changes to the duties, training and ethical requirements for constables. The bill is moving forward.

HB2375: crime victims' rights; facility dog

Would require the court to allow minor victims to have a "facility dog" when testifying in court and permit the court to allow them under other circumstances. The bill is moving forward but there are still issues to resolve.

HB2376: victim restitution; stipulated amount; hearings

Would specify that the victim has the right to present evidence and make an argument to the court at proceedings to determine the amount of restitution.

HB2591: civil traffic violations; alternative service

Would prohibit the suspension or revocation of a person's driving privileges following the completion of an alternate service of process for a photo enforcement violation. The bill will share the same fate as HB2122.

HB2593: intersection; definition

Would define "intersection" for the purposes of traffic and vehicle regulation.

SB1057: crimes; culpable mental state; requirement

Would specify the culpable mental state required for an offense if one is not expressly prescribed, or expressly prescribe that it is a strict liability offense, for any new statute or ordinance adopted after January 1, 2017. The bill is moving forward.

SB1228: DUI; drugs; ignition interlock requirement

Would eliminate the ignition interlock device (IID) requirement for a driving under the influence (DUI) violation not involving intoxicating liquor and allow the court to require an IID. The fate of the bill is unclear.

SB1241: photo radar prohibition; state highways

Would prohibit the state or local authority from using a photo enforcement system on a state highway.

SB1257: misconduct involving weapons; public places

Would establish specified exemptions for violations of misconduct involving carrying concealed weapons in public establishments or public events. The bill has not moved through COW.

SB1295: DUI; watercraft; medical practitioner; authorization

Would expand the exemption from DUI or OUI if the drug was prescribed by a licensed medical practitioner who is authorized to prescribe the drug. The bill is not supported by prosecutors.

SB1510: judicial productivity credits; calculation; salary

The language regarding the calculation of judicial productivity credits was deleted in a strike everything bill.

Mr. Landau reminded the committee that the legislative conference calls are held each Friday at 11:45 a.m.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Committee Meeting Date

Wednesday, May 25, 2016

10:00 a.m. to 3:00 p.m.

State Courts Building, Room 119

1501 West Washington Street

Phoenix, Arizona 85007

The meeting adjourned at 11:19 a.m.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: August 31, 2016	This agenda item is for: [X] Formal Action/Request [] Information Only [] Other	Subject: REPORT ON THE FAIR JUSTICE FOR ALL TASK FORCE
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Presenter(s): Hon. Don Taylor, Chief Presiding Judge, Phoenix Municipal Court and Fair Justice for All Task Force member.

Discussion: Judge Taylor will update the Committee on Limited Jurisdiction Courts (LJC) on the efforts of the Fair Justice Task Force and present the final report and recommendations for the LJC's consideration.

Recommended Action or Request (if any): Recommend that the Committee on Limited Jurisdiction Courts support the recommendations of the Fair Justice for All Task Force and approve the filing of a rule petition to implement the recommendations and approve the inclusion of the legislative proposals in the AJC package for next session.



Justice for All

Report and Recommendations of the Task Force on Fair Justice for All:
Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies

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TASK FORCE ON FAIR JUSTICE FOR ALL: Court-Ordered Fines, Fees, and Pretrial Release Policies

Chair – **Mr. Dave Byers**, Administrative Director, AOC
Vice-Chair – **Mr. Tom O’Connell**, Pretrial Manager, AOC

MEMBERS

Mr. Kent Batty

Court Administrator
Superior Court in Pima County

Honorable Michael Robert Bluff

Associate Presiding Judge
Superior Court in Yavapai County

Honorable Maria Elena Cruz

Presiding Judge
Superior Court in Yuma County

Mr. Bob James

Deputy Court Administrator
Superior Court in Maricopa County

Ms. Rebecca Steele

Deputy Director
Maricopa County Clerk of Court

Honorable Lisa Roberts

Commissioner
Superior Court in Maricopa County

Honorable Dorothy Little

President, Arizona Justice of the Peace
Association
Payson Magistrate Court

Honorable Antonio Riojas

Presiding Magistrate
Tucson City Court

Honorable Thomas Robinson

Tempe Municipal Court

Honorable Don Taylor

Chief Presiding Judge
Phoenix Municipal Court

Mr. Doug Kooi

Court Administrator
Pima County Consolidated Justice Court

Mr. Jeffrey Fine

Court Administrator
Maricopa County Justice Courts

Mr. Michael Kurtenbach

Assistant Chief
Community Services Division
City of Phoenix Police Department

Ms. India Davis

Corrections Chief
Pima County Sheriff’s Department

Ms. Mary Ellen Sheppard

Assistant County Manager
Maricopa County

Mr. Ryan Glover

Prosecutor
Glendale City Prosecutor's Office

Mr. Paul Julien

Judicial Education Officer
Education Services Division, AOC
Judge Pro Tem

Ms. Kathy Waters

Director, Adult Probation Services, AOC
Liaison to Pretrial Advisory Committee

Mr. Jeremy Mussman

Deputy Director
Maricopa County Public Defender's
Office

Mr. Tony Penn

Arizona Judicial Council Public Member
Representative
President and CEO
United Way of Tucson and Southern
Arizona

Honorable John Hudson

Presiding Judge
Gilbert Municipal Court

Mr. Leonardo Ruiz

Deputy County Attorney
Maricopa County Attorney's Office

Ms. Dianne Post

Attorney
Arizona State NAACP

Ms. Alessandra Soler

Executive Director of the Arizona ACLU

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Mr. Patrick Scott

Senior Court Policy Analyst
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Ms. Sabrina Nash

Administrative Assistant
Court Services Division

Ms. Susan Hunt

Executive Assistant
Executive Office

Justice for All

Report and Recommendations of the Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies

Executive Summary

TASK FORCE PURPOSE

On March 3, 2016, Chief Justice Scott Bales issued Administrative Order No. 2016-16, which established the Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies. The administrative order outlined the purpose of the task force as to study and make recommendations as follows:

- a) Recommend statutory changes, if needed, court rules, written policies, and processes and procedures for setting, collecting, and reducing or waiving court-imposed payments.
- b) Recommend options for people who cannot pay the full amount of a sanction at the time of sentencing to make reasonable time payments or perform community service in lieu of some or all of the fine or sanction.
- c) Recommend best practices for making release decisions that protect the public but do not keep people in jail solely for the inability to pay bail.
- d) Review the practice of suspending driver's licenses¹ and consider alternatives to license suspension.

¹ Throughout this report, the terminology for a driver's license is used to reflect driving privileges or a driver license as defined in the Arizona Revised Statutes.

This report describes the work and recommendations of the members of the Task Force on Fair Justice for All and does not necessarily reflect the views or opinions of the members of the Arizona Supreme Court.

e) Recommend educational programs for judicial officers, including pro tem judges and court staff who are part of the pretrial decision-making process.

f) Identify technological solutions and other best practices that provide defendant notifications of court dates and other court-ordered deadlines using mobile applications to reduce the number of defendants who fail to appear for court and to encourage people who receive citations to come to court.

The Chief Justice asked the task force to file a report and make recommendations to the Arizona Judicial Council (AJC) by October 31, 2016. The report that follows consists of 53 recommendations, *plus* additional [educational and training recommendations](#) for the AJC's review and consideration.

TASK FORCE ABBREVIATED RECOMMENDATIONS

The annotated recommendations are set forth in more detail in the body of the report. Below is an abbreviated list with links to the full recommendations.

1. Authorize judges to [mitigate mandatory minimum fines](#), fees, surcharges, and penalties if the amount otherwise imposes an unfair economic hardship.
2. Use [automated tools](#) to determine a defendant's ability to pay.
3. Create a [Simplified Payment Ability Form](#) when evaluating a defendant's ability to pay.
4. Use [means-tested assistance program qualification](#) as evidence of a defendant's limited ability to pay.
5. Seek legislation to [reclassify certain criminal charges](#) to civil violations for first-time offenses.
6. Implement the Phoenix Municipal Court's [Compliance Assistance Program](#) statewide.
7. Conduct a [pilot program](#) that combines the Phoenix Municipal Court's Compliance Assistance Program with a fine reduction program and reinstatement of defendants' drivers' licenses.
8. Test techniques to make it easier for defendants to make [time payments](#) on court-imposed financial sanctions.
9. Seek legislation that would grant courts discretion to [close cases and write off fines](#) and fees for traffic and misdemeanor after a 20-year period if reasonable collection efforts have not been effective.

10. Allow probationers to receive [earned time credit](#) without consideration of financial assessments, other than restitution to victims.
11. Eliminate or reduce the imposition of the 10 percent [annual interest](#) rate on any Criminal Restitution Order.
12. Modify [court website information](#), bond cards, reminder letters, FARE (Fines/Fees and Restitution Enforcement) letters, and instructions for online citation payment to explain that if the defendant intends to plead guilty or responsible but cannot afford to pay the full amount of the court sanctions at the time of the hearing, the defendant may request a time payment plan.
13. Authorize judges to [impose a direct sentence](#) that may include community restitution (service) and education and treatment programs as available sentencing options for misdemeanor offenses.
14. Expand [community restitution](#) (service) to be applied to surcharges, as well as fines and fees, and expand this option to sentences imposed by superior courts.
15. Implement English and Spanish [Interactive Voice Response](#) (IVR), email, or a text messaging system to remind defendants of court dates, missed payments, and other actions to reduce failures to appear.
16. Modify forms to [collect cell phone numbers](#), secondary phone numbers, and email addresses.
17. Train staff to verify and [update contact information](#) for defendants at every opportunity.
18. Provide information to [law enforcement agencies](#) regarding the importance of gathering current contact information on the citation form.
19. After a defendant fails to appear, [notify the defendant](#) that a warrant will be issued unless the defendant comes to court within five days.
20. For courts operating [pretrial service programs](#), allow pretrial services five days to re-engage defendants who have missed scheduled court dates and delay the issuance of a failure to appear warrant for those defendants who appear on the rescheduled dates.
21. Authorize the court to [quash a warrant](#) for failure to appear and reschedule a new court date for a defendant who voluntarily appears in court after a warrant has been issued.

22. Consider [increasing access](#) to the court (e.g., offering hours at night, on weekends, or extending regular hours, taking the court to people in remote areas, and allowing remote video and telephonic appearances).
23. Develop and pilot a system that [communicates in English and Spanish](#) (such as video avatars) to provide explanations of options available to defendants who receive tickets or citations.
24. [Clarify on court informational websites](#) and bond cards that defendants may come to court before the designated court date to resolve a civil traffic case and explain how to reschedule the hearing for those defendants who cannot appear on the scheduled dates.
25. Implement the ability to [email proof of compliance](#) with a law—such as proof of insurance—to the court to avoid having to appear in person.
26. [Suspend a driver's license](#) as a last resort, not a first step.
27. Make a first offense of driving on a suspended license a [civil violation](#) rather than a criminal offense.
28. Provide courts with the ability to [collect and use updated contact information](#), such as a database service, before issuing a warrant or a reminder in aging cases.
29. Authorize courts to [impose restrictions on driving](#)—such as “to and from work only”—as an alternative to suspending a driver’s license altogether.
30. Prior to or in lieu of issuing a warrant to bring a person to court for failure to pay, courts should [employ proactive practices](#) that promote voluntary compliance and appearance.
31. Support [renewing efforts](#) to encourage the Conference of Chief Justices and the Conference of State Court Administrators to approach Congress about extending the federal tax intercept program to include intercepting federal tax refunds to pay victim restitution awards, with an exception for those who are eligible for the earned income tax credit.
32. Promote the use of [restitution courts](#), status conferences, and probation review hearings that ensure due process and consider the wishes of the victim. Provide judicial training on the appropriate use of Orders to Show Cause in lieu of warrants and appointment of counsel at hearings involving a defendant’s loss of liberty.
33. Coordinate where possible with the local [regional behavioral health authority](#) to assist the court or pretrial services in identifying defendants who have previously been diagnosed as mentally ill.

34. Revise [mental health competency statutes](#) for expediting mental competency proceedings for misdemeanor cases.
35. Bring together [criminal justice and mental health stakeholders](#) in larger jurisdictions to adopt protocols for addressing people with mental health issues who have been brought to court.
36. Consider the use of specialty courts and other available resources to address a [defendant's treatment and service needs](#), as well as risk to the community, when processing cases involving persons with mental health needs or other specialized groups.
37. Modify [Form 6–Release Order](#) and [Form 7–Appearance Bond](#) to simplify language and clarify defendants' rights in an easy-to-understand format.
38. Eliminate the use of [non-traffic criminal bond schedules](#).
39. Amend Rule 7.4, Rules of Criminal Procedure, to require the [appointment of counsel](#) if a person remains in jail after the initial appearance.
40. Clarify by rule that [small bonds](#) (\$5-100) are not required to ensure that the defendant gets credit for time served when defendant is also being held in another case.
41. Authorize the court to temporarily [release a “hold”](#) from a limited jurisdiction court and order placement directly into a substance abuse treatment program upon recommendation of the probation department.
42. Expedite the [bond process](#) to facilitate timely release to treatment programs.
43. [Request amendment](#) of A.R.S. [§ 13-3961\(D\) and \(E\)](#) (*Offenses not bailable; purpose; preconviction; exceptions*) to authorize the court, on its own motion, to set a hearing to determine whether a defendant should be held without bail.
44. Encourage the presence of [court-appointed counsel](#) and prosecutors at initial appearance hearings to assist the court in determining appropriate release conditions and to resolve misdemeanor cases.
45. Request the legislature to refer to the people an amendment to the [Arizona Constitution](#) to expand preventive detention to allow courts to detain defendants when the court determines that the release will not reasonably assure the appearance of the person as required, in addition to when the defendant's release will not reasonably assure the safety of other persons or the community.
46. Eliminate the requirement for [cash surety](#) to the greatest extent possible and instead impose reasonable conditions based on the individual's risk.

47. Eliminate the use of a [cash bond](#) to secure a defendant's appearance.
48. Expand the use of the [public safety risk assessment](#) to limited jurisdiction courts.
49. [Encourage collaboration](#) between limited jurisdiction courts and pretrial service agencies in superior courts in preparing or providing pretrial risk assessments for limited jurisdiction cases.
50. Establish [information sharing](#) between a superior court that has conducted a pretrial risk assessment and a limited jurisdiction court when the defendant is arrested for charges in multiple courts and a release decision must be made in multiple jurisdictions.
51. Request the Arnold Foundation to conduct research on the impact of immigration status on the likelihood of not returning to court if released to ascertain whether it is good public policy to hold these defendants on cash bond.
52. Encourage the Arnold Foundation to conduct periodic reviews to [revalidate the Public Safety Assessment \[PSA\] tool](#) as to its effect on minority populations.
53. [Provide data](#) to judicial officers to show the effectiveness of the risk assessment tool in actual operation.
54. Develop an [educational plan](#) and conduct mandatory training for all judicial officers.
55. Create [multi-layer training](#) (court personnel and judicial staff) to include a practical operational curriculum.
56. Develop [online training modules](#) for future judicial officers.
57. Host a one-day [kick-off summit](#) inviting all stakeholders (law enforcement, prosecutors, county attorneys, public defenders, city council and county board members, the League of Towns and Cities, criminal justice commissions, legislature, and presiding judges) to educate and inform about recommendations of the task force and provide direction for leadership to initiate the shift to a risk-based system rather than a cash-based release system.
58. Train judicial officers on the risk principle and the methodology behind the [risk assessment](#) tool.
59. Educate judges about the continuum of [sentencing options](#).
60. Educate judges about available [community restitution](#) (service) programs and the types of services each offers so that courts may order services that "fit the crime."
61. Launch a [public education campaign](#) to support the adopted recommendations of the task force.

62. Provide a comprehensive and [targeted educational program](#) for all stakeholders (funding authorities, legislators, criminal justice agencies, media, and members of the public) that addresses the shift to a risk-based system rather than a cash-based release system.
63. Request that the Chief Justice issue an administrative order directing the education of all full- and part-time judicial officers about [alternatives to financial release conditions](#). Training and educational components should:
 - a. Inform judges that cash bonds are not favored. Judges should consider the least onerous terms of release of pretrial detainees that will ensure public safety and the defendant’s return to court for hearings.
 - b. Train limited jurisdiction court judges to more aggressively allow payment of fines through community service, as permitted by A.R.S. § 13-810.
64. Provide [focused judicial education](#) on A.R.S. § 11-584(D) and Arizona Rules of Criminal Procedure 6.7(D) about how to determine the amount and method of payment, specifically taking into account the financial resources and the nature of the burden that the payment will impose on the defendant and making specific findings on the record about the defendant’s ability to pay.
65. Update [bench books](#) and other judicial aides to be consistent with court-adopted recommendations.

INNOVATIONS ALREADY UNDER WAY

Arizona courts have a history of innovation. As pretrial release issues have arisen, local courts have already begun experimenting with initiatives that support fair justice to all in Arizona. Following are a few projects that highlight promising practices that can be considered for expansion to other jurisdictions.²

Compliance Assistance Program

The Phoenix Municipal Court has recently implemented a Compliance Assistance Program (CAP) that notifies defendants who have had their driver’s licenses suspended that they can come in to court, arrange a new and affordable time

² See Appendix B for detailed project descriptions of Innovations Already Under Way.

payment program, and make a down payment on their outstanding fine. More than 5,000 people have taken advantage of the program in the first six months.

Interactive Voice Response System

The Pima County Consolidated Justice Courts and the Glendale and Mesa Municipal courts have each implemented an Interactive Voice Response (IVR) system to notify defendants of upcoming court dates, missed payments, or the issuance of warrants. Each jurisdiction has experienced a reduction in the number of people failing to appear—up to 24 percent.³

Limited Jurisdiction Mental Competency Proceedings Pilot

A pilot project coordinated through the Superior Court in Maricopa County authorized Mesa and Glendale municipal courts to conduct Rule 11 mental health competency proceedings originating in their courts on behalf of the Superior Court in Maricopa County. The program has reduced the time to process these matters from six months to 60 days.

Justice Court Video Appearance Center

The Maricopa County Justice Court Video Appearance Center represents the first phase of an initiative to significantly reduce the amount of time defendants are held in custody on misdemeanor charges pending appearance in the justice courts.

Pima County – MacArthur Safety & Justice Challenge

In May 2015, Pima County was selected as one of 11 jurisdictions awarded \$150,000 from the John D. and Catherine T. MacArthur Foundation for Phase I of an initiative to reduce over-incarceration by changing how America thinks about and uses jails. The initiative is a competition to help jurisdictions create fairer, more effective local justice systems through bold innovation. Pima County was later awarded an additional \$1.5 million to move forward with Phase 2, which involves creating an implementation plan for broad system change.

³ See Appendix C for summary of statistics for Pima County Justice Courts using an IVR system.

Introduction

Every year in Arizona, thousands of people are arrested and sit in jail awaiting trial simply because they cannot afford to post bail. While people arrested are protected by a presumption of innocence, if they lack the access to money, they often remain in jail. The Arizona Constitution makes it clear that except in limited situations, a person must be bailable. That is, defendants are generally entitled to be released (bailable) from jail on their own recognizance or other conditions, while awaiting the disposition of their offenses. Defendants should not have to remain in custody simply because they are poor. Research has now shown that imposing money bail does not improve the chances that a defendant will return to court, nor does it protect the public because many high-risk defendants have access to money and can post bond. Instead, it serves only to treat differently those who can and cannot get money.

There shall be no imprisonment for debt.
Arizona Constitution, Article 2, Section 18

Arizona has the fourth highest poverty rate in the United States; more than 21 percent fall below the federal poverty line. That means that more than 1.2 million Arizonans struggle economically every day. Most of Arizona's poor are not the panhandlers on the highway off-ramps, but the "working poor"—that is, people whose household incomes are less than 150 percent of the federal poverty level.⁴ Arizona's [unemployment rates](#) exceed the national average as well. People of all income levels on occasion may commit an infraction of the law. If justice in Arizona is to be administered fairly, the justice system must take account of the challenges that court-ordered sanctions pose for those living in poverty or otherwise struggling economically.

Recently national attention, following the shooting of an 18-year-old black man, exposed criminal justice system deficiencies in the city of Ferguson, Missouri. Ferguson has sparked a national dialogue causing jurisdictions to examine their practices of imposing and enforcing financial sanctions and the severe impact they can have on the poor and minority groups.

The Department of Justice investigated the [Ferguson Police Department](#) and reported that Ferguson's municipal court allowed its focus on revenue generation to fundamentally compromise the role of the court. The court used its judicial authority as the means to compel payment of fines and fees that advanced the city's financial interests. These

⁴ For example, the gross monthly income for a household of four living at 150 percent of the federal poverty level is \$3,037.50.

practices imposed unnecessary harm, overwhelmingly on African-American individuals.⁵ Courts are not revenue-generating centers. While courts do collect monies in the form of restitution, fines, and fees, the purpose of courts is to administer justice—not produce revenue for governmental use.

Those examining the “Ferguson”-type issues note that often they occur in local limited jurisdiction courts not under the supervision of a state supreme court. But in Arizona, the Supreme Court has administrative oversight over all state courts—appellate, superior, justice, and municipal courts. Oversight includes ensuring that courts perform their appropriate functions, which include educating, training, and setting standards for when and on what conditions pretrial detainees are released from court. Furthermore, the Administrative Office of the Courts (AOC) sets forth specifications for minimum accounting standards, operational reviews, and training, and it provides the structure for a proper relationship between municipal courts, municipal city councils, and city managers.

Interference that impedes the court from carrying out the impartial administration of justice violates the distribution-of-powers provision of the Arizona Constitution and the fundamental principles of our constitutional form of government. The limited jurisdiction courts must continue to maintain independence from the executive and legislative branches so they can fairly act as a neutral when hearing cases. While the vast majority of Arizona’s limited jurisdiction courts operate in a high-quality manner, if a court severely fails to operate properly, administrative control of the court can be removed from the local judge and placed under the control of the county presiding judge until the problems are remedied. Such administrative authority has been exercised periodically in Arizona history. For example, in 2014 a combined justice and municipal court was placed under the control of the local county presiding judge.⁶ In this case, the judge was eventually removed from [office](#).⁷

Arizona already has in place many statutes, rules, and practices that provide flexibility for judges, in making pretrial release determinations, to take into account economic hardship. Unfortunately, this flexibility is not available in all types of cases, particularly with some of the more common offenses such as driving without insurance. As such, there is still work to do to achieve justice for all in Arizona.

⁵ Department of Justice Investigation of Ferguson Police Department Report, March 4, 2015, page 3.

⁶ [Administrative Order No. 2014-10](#)

⁷ <http://www.azcourts.gov/portals/137/reports/2014/14-114.pdf>

For years now, Arizona’s legislative bodies, like in many other states, have added on to the amount of a fine a variety of surcharges and fees in order to fund numerous meritorious programs (e.g., DNA testing, domestic violence shelters, and head injury fund). These programs depend on the stream of funding coming from those paying the costs of their citations. However, for a variety of reasons, the number of citations are plummeting. For example, civil traffic citations have dropped from 1.816 million at their peak in FY 2008 (34%) to 1.2 million in FY 2015. There are future expectations that new safety-equipped cars and eventually driverless cars, plus new law enforcement methods that use techniques to control traffic other than writing citations, will combine to continue this downward trend. Seeing the drop in citations, the Arizona Criminal Justice Commission in July agreed to establish a task force to explore this issue further and to make recommendations for alternative funding sources. It is likely that the legislature and city councils will need to re-examine the current dependency on revenue from citations to keep current programs funded. While the adoption of the recommendations in this report may result in some decreases in revenue, it is just as likely that there will be an increase in revenue. If people who are now not paying their sanctions at all are given sanctions based on ability to pay and more reasonable time payment plans, they may begin to pay. This exact result is being seen in the Phoenix Municipal Court pilot program, explained in the “Innovations Under Way” section of this report.

In order to support the study and recommendations of the Fair Justice for All Task Force, the AOC built a database of 800,000 cases to analyze what is occurring with misdemeanor, criminal traffic, and civil traffic defendants in Arizona. A summary analysis of that data can be found on the task force’s [website](#).⁸

Arizona’s courts are now bringing evidence-based practices to pretrial services. The Arizona Judicial Branch’s strategic agenda, [Advancing Justice Together](#), calls for examining pretrial release policies and procedures; release conditions for eligible defendants; and research-based practices to promote defendant accountability, crime reduction, and community protection.

To promote these goals, Arizona’s courts should reflect these principles in practice:⁹

1. People should not be jailed pending the disposition of charges merely because they are poor. Release decisions and conditions should protect public safety and ensure the defendant’s appearance at future proceedings.

⁸ Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) [Violation Review Data Driven Results](#)

⁹ [Administrative Order No. 2016-16](#).

2. Consistent with the Arizona Constitution, people should not be jailed for failing to pay fines or other court-assessed financial sanctions for reasons beyond their control.

3. Court practices should help people comply with their court-imposed obligations.

4. Sanctions such as fees and fines should be imposed in a manner that promotes, rather than impedes, compliance with the law, economic opportunity, and family stability.

Since Ferguson, many people talk about restoring faith in our criminal justice system. Many minorities and many of those who are poor have never had the degree of faith in the system that the majority does. For those, it cannot be restored but must be created. The recommendations of this task force, if fully enacted and implemented, will move Arizona closer to fair justice for all because justice for all is not just aspirational—it is an essential mandate of the Arizona justice system. The task force believes these recommendations are necessary to effectuate statewide changes and requests that the Arizona Judicial Council support and adopt its recommendations.

PART 1

JUSTICE FOR ALL.

Our ideal of “justice for all” embraces the notion that all people should be treated fairly in the justice system. Those without means should not be disparately punished because they are poor. While everyone should face consequences for violating the law, criminal fines and civil penalties should not themselves contribute to or further an individual’s impoverishment by imposing excessive amounts or unduly restricting a person’s ability to be gainfully employed. The task force also concludes that “justice for all” means just that—regardless of race, income, gender, culture, ethnicity, or other factors, fair justice should apply to everyone. In an effort to address this issue, the task force heard from advocacy groups representing diverse communities who shared concerns and recommendations regarding racial and income disparities.

Fines (or civil penalties) are the most common sanction imposed by courts for violations of law. However, the impact of fines varies greatly among people because of their different income levels. A typical speeding fine of \$270 has many times more significant an impact on a person making \$2,000 per month than on a person making \$10,000 per month. In some cases, such as driving without insurance, the legislature has required a mandatory minimum fine and with surcharges, the sanction totals \$1,040. For low-income individuals, a sanction that high can have catastrophic consequences. If one assumes that a typical sanction for an offense is meant to deter the average-income person from breaking the law, then judges should be able to adjust the amount for low-income people to achieve a similar deterrent effect.

The purpose of a sanction is to hold a person accountable and encourage future compliance with the law. Imposing a financial sanction on a low-income individual that is so high that it would be almost impossible for the person to pay may promote frustration, despair, and disrespect for the justice system. Suspending the person’s driving privilege as a result of an inability to pay the sanction further exacerbates the problem, fosters a cycle of poverty, and fills costly jail cells. Sanctions such as fees and fines should be imposed in a manner that is sustainable and promotes, rather than impedes, compliance with the law, economic opportunity, and family stability.

Principle One: Judges need discretion to set reasonable penalties.

The legislature is charged with setting public policy for defining unlawful activity—for example, “driving without insurance is against the law.” The legislature also determines whether a fine will be mandatory. Furthermore, the legislature determines whether a certain activity is a criminal offense or a civil violation and at what level an unlawful activity is charged—as a misdemeanor or a felony.

When a fine is mandatory, a judge should be required to impose a fine, but authorized to mitigate the amount due based on a person’s inability to pay or financial hardship. Without such authority, mandatory minimum fines affect the poor more severely than they do those with higher incomes, creating a cycle that can send a poor person (and perhaps his or her family as well) into a downward spiral, leading to additional fines and costs and even resulting in arrest and jail.

To assist judges in determining a person's ability to pay, private vendors indicate that they can offer software programs that can quickly provide a predictive score to assist the court in determining whether a person qualifies for indigent status or otherwise has the ability to pay all or a reduced amount of a fine. Making such a tool available—if the tool is able to provide accurate enough information—could assist judges in determining, in a fair manner, the appropriate amount of fine to impose by taking into account the individual's financial circumstances. These programs use public database information and aggregating tools to evaluate the individual and do not constitute a formal credit inquiry. While not perfect, combining this information with other documentation, such as proof of participation in a means-tested assistance program like the Supplemental Nutritional Assistance Program (SNAP), can help judges and court personnel determine more accurately a person’s ability to pay. Using this type of software in Arizona courts would promote fairness. Further, this type of software could be used:

- By probation officers:
 - When making recommendations for financial assessments in presentence reports.
 - When reevaluating a probationer’s ability to pay if the probationer’s circumstances change.
- By courts:
 - When determining whether a modification of monthly payments is warranted.
 - When establishing reasonable time payment plans.

Additionally, reclassifying first-time offenses of some misdemeanors, such as littering, speeding, and expired out-of-state vehicle registrations, to civil charges will make it easier

to process certain minor crimes. It could also reduce the stigma associated with a criminal record and eliminates the potential for incarceration for these minor offenses.

Recommendations:

1. *Request legislative changes to authorize judges to mitigate mandatory minimum fines, fees, surcharges, and penalties for those defendants for whom imposing mandatory fines and full fees and surcharges would cause unfair economic hardship.*
2. *Provide courts with automated tools to assist with determining a defendant's ability to pay assessments.*
3. *Create a Simplified Payment Ability Form to be used statewide by judges, probation officers, pretrial officers, or other court staff when evaluating a defendant's ability to pay.*
4. *Use a person's qualification in a means-tested assistance program (such as SNAP) as evidence of limited ability to pay sanctions, much like the fee waiver and deferral guidelines now in place.*
5. *Seek legislation to reclassify certain criminal charges to civil violations for first-time offenses such as:*
 - *Driving on a suspended license*
 - *Driver license restriction violations (for example, corrective lens)*
 - *Littering*
 - *Expired out-of-state registration*

Principle Two: Convenient payment options and reasonable time payment plans should be provided and based on a defendant's ability to pay.

Arizona law already gives judges the discretion to mitigate fines in many types of cases when the fine amount would impose economic hardship. Although the majority (59 percent) of people who are issued citations pay their fines in full, many are unable to pay the full amount at sentencing and for that reason enter into a time payment plan contract.¹⁰ The higher the fine and surcharge amount, the greater the number of people who choose to pay over time. It is important for courts to have reasonable time payment plans that realistically allow low-income individuals to make affordable payments. Setting a time payment plan amount that is beyond the low-income person's ability to pay may result in setting up the person to fail.

¹⁰ Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) [Violation Review Data Driven Results](#)

People increasingly use means other than checks to pay their bills. Many want to use a debit or credit card for payment. Courts need to provide online payment systems that allow customers to use these common bill-paying mechanisms.

Not all people who are ordered to pay a fine have a debit or credit card or even a bank account. Some operate on a cash basis, which can make it more difficult to make monthly payments to the court. Courts need to allow for other creative methods to pay, including providing defendants who do not have credit cards or debit cards with “postage-will-be-paid,” pre-addressed envelopes for mailing money order payments. Courts can also explore allowing people to pay at nontraditional locations—such as a grocery store service desk—as is now offered for paying utility and other bills.

A.R.S. [§ 28-1601](#) (*Failure to pay civil penalty; suspension of privilege to drive; collection procedure*) provides for a fine reduction program to encourage offenders who are delinquent to return to court and resolve their cases. Suspending driver’s licenses, like imposing too-steep fines, can adversely affect defendants. In some cases, it may cause them not to be able to take children to school or go to work. To avoid such harsh results, A.R.S. [§ 28-1601](#) permits some defendants, for whom payment would cause an economic hardship, to extend the time for payment or make installments. Combining the elements of the Phoenix Compliance Assistance Program (see Appendix B for details) with an incentive reduction authorized in statute may provide a pragmatic approach to resolving a large number of civil traffic cases in which driver’s licenses have been suspended and then allowed to be reinstated. The presiding judge in Yuma County has agreed to conduct a pilot, working with the AOC. Depending on the results, such a program could be extended to other jurisdictions.

Defendants who are placed on felony probation are routinely ordered to pay monthly financial assessments as a condition of probation. The legislature implemented A.R.S. [§ 13-924](#) (*Probation; earned time credit; applicability*), which authorizes “earned time credit” (ETC). ETC allows the probationer to earn a reduction in the length of the probation term if certain criteria are met, including being current on payments for court-ordered restitution and other obligations, exhibiting positive progress toward the goals and treatment of the probationer’s case plan, and completing community restitution (service). Many defendants who are exhibiting progress and have completed community restitution (service) may fall delinquent on financial payments because of high monthly payment amounts and an inability to pay. This makes them ineligible for ETC, even though the primary goals of probation have been accomplished. Defendants with financial means are able to earn the time credit by paying the financial assessments in full; those who lack the ability to pay become ineligible for this benefit. Removing the requirement for the probationer to be current on financial obligations will create fairness and will act as an incentive to complete probation.

Modification of this statute should not diminish the importance of restitution payments to victims.¹¹ Currently in Arizona, more than \$686 million is owed in restitution from felony cases. Reasonable adjustments to fines and fees will enable defendants with limited financial means to devote more of their resources to victim restitution. Therefore, revising the requirement to read "has paid at least the minimum ordered restitution payment for the month" would help maintain the requirement to make restitution payments.

Unpaid balances on financial obligations to the state are converted to criminal restitution orders pursuant to A.R.S. [§ 13-805](#) (Jurisdiction), which sets an annual interest rate of ten percent. This high interest rate is unrealistic in today's economy and should be reduced to a more appropriate amount, perhaps tied to market rates or eliminated altogether.

Currently, most court informational websites do not indicate that time payments are an option. Courts should modify online citation information to indicate clearly that if a person is unable to pay the full amount due at that time, the person can come to court to arrange for a time payment or community restitution (service) plan.

Recommendations:

6. *Implement the Phoenix Municipal Court's Compliance Assistance Program or similar program statewide to help ensure compliance with defendants' court-imposed financial obligations.*
7. *Conduct a pilot program that combines the features of the Phoenix Municipal Court's Compliance Assistance Program with a fine reduction program, coupled with reinstatement of defendants' driver's licenses.*
8. *To make it easier for defendants to make time payments on court-imposed financial sanctions, test techniques that may include:*
 - a. *Providing "postage-will-be-paid," pre-addressed envelopes to defendants who do not have credit cards or checking accounts for use in making time payments.*
 - b. *Discussing with employers the possibility of allowing, at an employee's request, payroll deductions to pay court-imposed fines.*
 - c. *Discussing with businesses, like grocery stores, the logistics and cost to allow individuals to make court payments on court-imposed fines in their places of business.*
 - d. *Creating a statewide web portal on which defendants can provide updated financial information and view outstanding balances.*
 - e. *Offering a statewide online payment system.*
9. *Request legislation similar to A.R.S. § 12-288 (Removal of debts from accounting system) that would grant courts discretion to close cases and write off fines and fees after a 20-year period if reasonable collection efforts have not been effective.*

¹¹ A.R.S. § 13-805 requires a judgment for restitution to be paid in full.

10. Request amendments to A.R.S. § 13-924 (Probation; earned time credit; applicability) to allow probationers to receive earned time credit without consideration of financial assessments, other than restitution to victims.
11. Request amendments to A.R.S. § 13-805(E) (Jurisdiction) to eliminate or reduce the 10 percent annual interest rate on any Criminal Restitution Order.
12. Modify court website information, bond cards, reminder letters, FARE letters, and instructions for online citation payment to explain in language appropriate to the defendant that if the defendant intends to plead guilty or responsible but cannot afford to pay the full amount of the court sanctions at the time of the hearing, the defendant may request a time payment plan.

Principle Three: There should be alternatives to paying a fine.

The United States Supreme Court has held that states may not impose incarceration as an alternative sanction or as punishment for nonpayment of a financial obligation imposed in a criminal case solely because an offender is unable to pay the obligation. In *Williams v. Illinois*, 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970) the court overturned a sentence that required additional incarceration beyond the maximum imprisonment for the committing offense for nonpayment of a \$505 criminal fine at the rate of \$5.00 per day as “...impermissible discrimination that rests on the ability to pay...” 399 U.S. at 241. In *Tate v. Short*, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971) the court overturned a sentence of incarceration for nonpayment of a \$425 traffic fine for an offense for which only a fine could be imposed. In doing so the court held “the Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.” 401 U.S. at 398, 91 S.Ct. at 671. In *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983) the court overturned a probation revocation for failure to pay restitution and held: “Only if alternate measures are not adequate to meet the State’s interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay.” 461 U.S. 672, 103 S.Ct. 2072. *Tate* and *Bearden* have been cited in many Arizona appellate opinions for the proposition that the trial court cannot incarcerate a defendant because he cannot pay a fine immediately after sentencing or revoke probation because the defendant is too poor to pay a court-ordered monetary obligation. See, e.g., *State v. Davis*, 159, Ariz. 562, 769 P.2d 1008 (Sup.Ct. 1989); *In re Application of Collins*, 108 Ariz. 310, 497 P.2d 523 (Sup.Ct. 1972); *State v. Wilson*, 150 Ariz. 602, 724 P.2d 1271 (Ct. App. Div. 1, 1986).

Judges now have the authority to allow defendants to “work off” fines by doing community service. See A.R.S. [§ 13-824](#) (*Community restitution in lieu of fines, fees, assessments, or incarceration costs*) (allowing defendants to pay off fines through community restitution

(service) at a rate of \$10 per hour). Unfortunately, however, A.R.S. § 13-824 does not currently allow for surcharges, which, once combined with other court fees and mandatory assessments, often exceed the amount of the fine itself, to be worked off through community restitution (service). Further, the beneficial effects of this statute are limited to sanctions from municipal or justice courts and should be expanded to also include superior court sanctions. We should seek to expand the reach of the statute, both in terms of the types of sanctions and fees it covers and the courts to which it applies.

While community restitution (service) is appropriate in many cases, in many instances it would be more productive to require participation in a treatment program and give credit against the monetary obligation for successful completion. For example, a person addicted to alcohol or drugs would benefit—as would the community—if the person successfully completed a treatment program that might lead to a reduction in future offenses and potential gainful employment. Such a sentence would produce better results than simply picking up trash or performing some other community service that does not address the defendant’s underlying treatment needs. Judges should also be provided additional sentencing options that address the defendant’s underlying behavior. Currently, judges may impose only incarceration, fines, probation, and, in limited circumstances, community service.

Those charged with certain traffic offenses may have the option to attend defensive driving school as a way to resolve their cases. Recent changes in law now allow a person to attend defensive driving online or in-person classes, once per year. Twenty-two percent of individuals charged with eligible traffic offenses resolved their cases by completing defensive driving courses in FY2014.¹² Although the legislature has added additional fees that raise the cost of attending defensive driving school, the benefit of lowered auto insurance premiums remains for those attending a class.

Recommendations:

13. *Request amendment of A.R.S. § 13-603 (Authorized disposition of offenders) to authorize judges to impose a direct sentence that may include community restitution (service) and education and treatment programs as available sentencing options for misdemeanor offenses.*
14. *Request amendment of A.R.S. § 13-824 (Community restitution in lieu of fines, fees, assessments, or incarceration costs) to expand community restitution (service) to be applied to surcharges, as well as fines and fees imposed, and to include sentences imposed by superior courts.*

¹² Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) [Violation Review Data Driven Results](#)

Principle Four: Courts should employ practices that promote a defendant's voluntary appearance in court

Regardless of how many options and reminders the court may provide, a person must take personal responsibility to avoid consequences that could escalate and include incarceration. Those who appear in court when first cited might have the case dismissed (15 percent) if there is a defense, have the fine reduced, be allowed to make time payments, or perform community service as an alternative to paying fines. Failure to appear, on the other hand, puts into motion consequences that can be devastating to an individual.

Defendants who fail to appear in court pose a significant challenge. In FY2014, 11 percent of those charged or ticketed—103,000 people—failed to appear in court or attend defensive driving school after receiving a civil traffic citation.¹³ Arizona data shows that people who fail to appear in court live in all income zip codes. When people willfully fail to appear in court, serious consequences follow, including additional costs, loss of driving privileges and charges for driving on a suspended license, a criminal offense. What started as a civil traffic matter quickly escalates into a criminal matter.

Fifty-three percent (54,400) of the defendants who were initially cited for civil traffic violations and lost their licenses because they failed to appear for the court hearing were subsequently cited for the criminal offense of driving on a suspended license. Notably, 28 percent (15,200) of the 54,400 cited for driving on a suspended license also failed to appear for the court hearing on the second criminal citation, too. In FY2014, 41 percent of all criminal traffic offenses were for driving on a suspended license.

Compounded sanctions can devastate lives. In most cases, people—including those with suspended driver's licenses—need to drive to work. A person stopped by law enforcement while driving on a suspended license faces arrest, detention in jail, and vehicle impoundment. Defendants who are sentenced to jail may lose their jobs because they cannot show up to work. In turn, this can lead to additional consequences, such as eviction because of the inability to make rent or home payments.

Some Arizona courts have instituted automated phone call systems to remind people of upcoming court dates. Pima County Consolidated Justice Courts achieved a 23 percent reduction in failures to appear after installing a phone reminder system.¹⁴ Mesa Municipal Court reports similar results. Court practices should encourage people to comply with their court-imposed obligations. Alerting people to appearance dates, sending reminders to make a payment, or sending notifications when a time payment is missed promotes and encourages compliance.

¹³ Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) [Violation Review Data Driven Results](#)

¹⁴ See Appendix C: Pima County Consolidated Justice Court's IVR Summary.

Nearly 27 percent of Arizona’s population speak a language other than English at home—predominately Spanish. Providing forms, instructions, webpage avatars, notifications, and critical court procedures and processes in Spanish will help remove barriers to understanding the judicial system for many Arizonans.

Failure to have current proof of insurance in the vehicle is a frequent citation. Requiring a defendant to come to court to show proof of insurance in order to dismiss the citation causes a person to take time from work or other responsibilities to travel to the courthouse. Today’s technology allows for scanning or photographing the “proof of insurance” document and emailing it to the court. Pima County Consolidated Justice Court now allows persons to do just that, avoiding the inconvenience and potential loss of income for time away from work.

Recommendations:

15. *Implement English and Spanish Interactive Voice Response (IVR), email, or a text messaging system to remind defendants of court dates, missed payments, and other actions to reduce failures to appear and encourage compliance with obligations.*
16. *Modify forms to collect cell phone numbers, secondary phone numbers, and email addresses. Forms should include a reminder to the defendant to keep contact information current with the court.*
17. *Train staff to verify and update contact information for the defendant at every opportunity.*
18. *Provide information to law enforcement agencies regarding the importance of gathering current contact information on the citation form.*
19. *After a defendant fails to appear, notify the defendant that a warrant will be issued unless the defendant comes to court within five days.*
20. *For courts operating pretrial service programs, allow pretrial services five days to re-engage defendants who have missed scheduled court dates and delay the issuance of a failure to appear warrant for those defendants who appear on the rescheduled dates.*
21. *Authorize the court to quash a warrant for failure to appear and reschedule a new court date for a defendant who voluntarily appears in court after a warrant has been issued, allowing the defendant to remain out of custody upon a promise to appear for the new court date.*
22. *Consider increasing access to the court (e.g., offering hours at night, on weekends, or extending regular hours, taking the court to people in remote areas, and allowing remote video and telephonic appearances through applications such as FaceTime or Skype).*
23. *Develop and pilot a system that communicates in English and Spanish (such as video avatars) to provide explanations of options available to defendants who receive tickets or citations.*

24. Clarify on court informational websites and bond cards that defendants may come to court before the designated court date to resolve a civil traffic case and explain how to reschedule hearings for those defendants who cannot appear on the scheduled dates.
25. Implement the ability to email proof of compliance with a law—such as proof of insurance—to the court to avoid having to appear in person.

Principle Five: Suspension of a driver's license should be a last resort.

In both the urban and rural areas of Arizona, it is difficult to work or manage a family without driving. Yet courts must issue a complaint and notify the Motor Vehicle Department (MVD) to suspend a person's driver's license if a civil penalty is not paid or an installment payment is not made when due. See A.R.S. [§ 28-1601](#) (*Failure to pay civil penalty; suspension of privilege to drive; collection procedure*). Courts therefore must notify those defendants that their licenses will be suspended unless they come to court to resolve the matter. Because suspension of a driver's license can so greatly impact a person's life, it should be a sanction of last resort imposed only after other enforcement options have been considered.

People move often, and it is not uncommon for court notices to be returned because they are sent to an old address. Although people are required to update their addresses with the courts and the MVD, many do not. Those who have moved without alerting the MVD or court may fail to appear for court appearances because they are unaware of them. Because driving on a suspended license is a criminal offense, the courts should use search tools and other readily available methods to locate better addresses to effect notice, such as subscribing to a database service that can provide updated phone numbers and addresses to the court. The court would then use the updated contact information to populate email systems (IVR) for notifying the defendant. Court staff should interact with court customers at every opportunity to update and verify addresses, similar to queries when one has a dental or medical appointment. Law enforcement can also partner by requesting current addresses and phone numbers at the time of arrest or citation.

It would also be desirable to change the current classification of driving on a suspended license for the first time from a criminal offense to a civil violation. A.R.S. [§ 28-3316](#) (*Operation of vehicle under a foreign license prohibited during suspension or revocation*).

Recommendations:

26. Suspend a driver's license as a last resort, not a first step.
27. Request amendment of A.R.S. [§ 28-3316](#) to make a first offense of driving on a suspended license a civil violation rather than a criminal offense.

28. *Provide courts with the ability to collect and use updated contact information, such as a database service, to find current location information before issuing a warrant or a reminder in aging cases.*
29. *Authorize courts to impose restrictions on driving—such as “to and from work only”—as an alternative to suspending a driver’s license altogether.*

Principle Six: Non-jail enforcement alternatives should be available.

Some jurisdictions have benefitted by establishing restitution courts. Like other problem-solving courts, restitution courts require defendants to return to court often to monitor restitution payments, and they assist in eliminating barriers to making those payments.

The Administrative Office of the Courts also operates a non-jail-based court order enforcement program called FARE [Fines/Fees and Restitution Enforcement], which uses a variety of techniques to locate offenders, send reminder notices, encourage people to establish time payment plans, place “holds” on license plate renewals, and intercept state income tax refunds and lottery winnings. As a final resort, FARE uses private collections companies to enforce court orders. FARE is self-sustaining and so imposes fees for those who continue further into the system. However, FARE fees are much lower than booking and jail fees or car impound costs. Only 29 percent of defendants whose cases are not dismissed proceed into FARE. A person making time payments is not referred to FARE. Persons participating in a compliance assistance-type program have their cases removed from collections. Only after failing to appear or failing to make payments and not returning to court to request modification of a time payment plan is a person referred to FARE. FARE serves as a better enforcement alternative than arrest and jail. While some might argue that additional fees should not be required for those who fail to appear or participate in a reasonable time payment plan, they are cheaper than jail and provide an incentive to pay.¹⁵

Recommendations:

30. *Prior to or in lieu of issuing a warrant to bring a person to court for failure to pay, courts should employ proactive practices that promote voluntary compliance and appearance such as: notifying defendants of non-payment, consequences and resolution options; scheduling of an Order to Show Cause hearing, or sentence review.*
31. *Support renewing efforts to encourage the Conference of Chief Justices and the Conference of State Court Administrators to approach Congress about extending the federal tax intercept program to include intercepting federal tax refunds to pay victim restitution awards, with an exception for those who are eligible for the earned income tax credit.*

¹⁵ While FARE used to report failure to pay court-ordered fines to the credit bureaus, a determination was made to no longer do so and 1.027 million cases have been withdrawn.

32. *Promote the use of restitution courts, status conferences, and probation review hearings that ensure due process and consider the wishes of the victim. Provide judicial training on the appropriate use of Orders to Show Cause in lieu of warrants and appointment of counsel at hearings involving a defendant's loss of liberty.*

Principle Seven: Special needs offenders should be addressed appropriately.

Statewide estimates show that 272,250 defendants were charged with criminal traffic or non-criminal traffic misdemeanor complaints as a primary charge in FY2014.¹⁶ The largest number of these complaints included offenses such as liquor violations, failure to comply with a court order, shoplifting and trespassing (related to shoplifting), drug offenses, and driving under the influence (DUI). For defendants charged with a criminal traffic misdemeanor, 68 percent received a sentence of a fine, community service, or diversion. Nineteen percent were sentenced to jail; 80 percent of those sentenced to jail were defendants with a DUI.

Within criminal misdemeanors, those charged with shoplifting (56 percent), property (58 percent), or drug offenses (52 percent) have a high rate of committing a subsequent offense or offenses. For example, a person convicted of shoplifting has a 47 percent chance of being convicted of additional shoplifting crimes (up to 10 or more) within 12 months. The same is true for drug offenders. These are the repeat offenders who are frequently in and out of jail. Those experienced in dealing with these offenders note that many are addicts suffering from substance abuse issues. These offenders are unlikely to pay their fines, and having them perform community restitution (service) is not always practical or in the interest of public safety.

A second specialized group that is brought to court are those individuals exhibiting mental health issues. A number of individuals appearing in limited jurisdiction courts have been arrested for “quality of life” issues (i.e., shoplifting, urinating in public, trespassing, and loitering) and appear to have mental health concerns. Under the current law, the process to determine the competency of a person charged with a misdemeanor or a felony is the same. See A.R.S. §§ [13-4501](#) *et seq.* The process is cumbersome and expensive. Mesa and Glendale municipal courts have been piloting a streamlined process to handle these cases that shows promise; however, the process will not work for handling all municipal cases, as it requires the superior court to appoint the limited jurisdiction court judges as superior court pro tempore judges as well as designating the city courthouses as satellite facilities of the

¹⁶ Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) [Violation Review Data Driven Results](#)

superior court.¹⁷ While this process is an improvement, a better solution is to modify the current mental health competency proceeding statutes for handling misdemeanor cases.

The handling of cases involving individuals with mental health issues is a challenge for all parts of the criminal justice system. Protocols for best handling those brought to court with mental health issues need to be adopted locally since resources will vary from jurisdiction to jurisdiction. The presiding judge of each county and of each large municipal court should bring the criminal justice and mental health stakeholders in their jurisdictions together to develop protocols that will be used to better handle these cases. Such an effort is currently under way in Yavapai County.

Many of the defendants brought to jail who exhibit mental health issues have previously received services from the local regional behavioral health authority (RBHA). In Maricopa County, the RBHA works with the Pretrial Services Division of the Adult Probation Department to inform them of defendants who have previously received mental health services. This assists in identifying those defendants diagnosed as seriously mentally ill and allows for the coordination of necessary services while the defendant is in custody or upon release. Implementation of procedures like this in jurisdictions throughout Arizona is recommended.

Recommendations:

- 33. Coordinate where possible with the local regional behavioral health authority to assist the court or pretrial services in identifying defendants who have previously been diagnosed as mentally ill to allow for the coordination of necessary services.*
- 34. Revise mental health competency statutes for expediting mental competency proceedings for misdemeanor cases.*
- 35. Bring together criminal justice and mental health stakeholders in larger jurisdictions to adopt protocols for addressing people with mental health issues who have been brought to court.*
- 36. Consider the use of specialty courts and other available resources to address a defendant's treatment and service needs, as well as risk to the community, when processing cases involving persons with mental health needs or other specialized groups.*

¹⁷ Maricopa Superior Court [Administrative Order No 2015-125](#).

PART 2

ELIMINATE MONEY FOR FREEDOM.

The task force was charged with making best practices recommendations for making release decisions that protect the public but do not keep people in jail solely for the inability to pay a cash surety (bail).

Courts, the Department of Justice¹⁸, and many criminal justice stakeholder groups and foundations throughout the United States are joining in pretrial justice reform efforts with the goal of eliminating a “money for freedom” system, often based on the individual charge — not on the risk the defendant poses—and replacing it with a risk-based release decision system. The goal is to keep the high-risk people in jail and release low- and medium-risk individuals, regardless of their access to money.

Even short pretrial stays of 72 hours in jail have been shown in national and a local Arizona study to increase the likelihood of recidivism.¹⁹ Pretrial incarceration can cause real harm, such as loss of employment, economic hardship, interruption of education or training, and impairment of health or injury because of neglected medical issues.

Requiring a defendant to post money to get out of jail does not ensure that the person will be more likely to return to court, nor does it protect public safety. Indeed, in analyzing more than 750,000 cases, a study financed by the Laura and John Arnold Foundation found that in two large jurisdictions, “nearly half of the highest-risk defendants were released pending trial.” Some of the highest-risk individuals are likely to have access to money to post a cash surety. Communities are better served by assessing the risk defendants pose and their likelihood of appearing for their future court hearings.

Arizona courts already use a risk-based release system for juveniles. A juvenile may be held in detention if “the juvenile will not be present at any hearing, or the juvenile is likely to commit an offense injurious to self or others...”²⁰ There is no money for freedom system in the juvenile court.

¹⁸ Department of Justice, “Dear Colleague Letter.” (March 14, 2016)

¹⁹ Cotter, Ryan and Justice System Planning and Information (May 2016). [*The Hidden Cost of Pretrial Detention*](#)

²⁰ Rule 23, Rules of Procedure for the Juvenile Court

Principle Eight: Detaining low- and moderate-risk defendants causes harm and higher rates of new criminal activity.

Many of these defendants remain in custody only because they cannot afford the bond, and so they are held in jail until their cases are heard.

“Many of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but lack the financial means to be released.”²¹ “Conversely, some with financial means are released despite a risk of flight or threat to public safety, as when a bond schedule permits release upon payment of a pre-set amount without any individual determination by a judge of a defendant’s flight risk or danger to the community.”²²

The American Bar Association Criminal Justice Standards Committee published a pamphlet entitled “ABA Standards for Criminal Justice - Pretrial Release” that defines the purpose of the pretrial release decision as follows:

“The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. ... The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support.”

“In our society, liberty is the norm and detention prior to trial or without trial is the carefully limited exception.”

—Chief Justice William Rehnquist

Detaining low-risk defendants pretrial causes harm and correlates to higher rates of new criminal activity. Research shows that “detaining low-risk and moderate-risk defendants, even for a few days strongly correlates with higher rates of

²¹VanNostrand, M. and Crime and Justice Institute (2007). *Legal and Evidence-Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services*. Washington, DC: US Department of Justice, National Institute of Corrections.

²²Pepin, Arthur W., *2012-2013 Policy Paper Evidence-Based Pretrial Release*. Conference of State Court Administrators

new criminal activity both during the pretrial period and years after case disposition; as length of pretrial detention increases up to 30 days, recidivism rates for low-risk and moderate-risk defendants also increases significantly.”²³

Moreover, for low-risk and moderate-risk pretrial detainees—all of whom are presumed to be innocent—the collateral consequences of even short periods of incarceration can be severe. Incarceration can disrupt the positive factors in the defendant’s life and lead to negative collateral consequences, including job loss, loss of place of residence, inability to care for children, and disintegration of other positive social relationships.

In misdemeanor matters, a prosecutor may charge a person and specify that jail time will not be requested as part of the sentence. Such a declaration makes the defendant ineligible for a court-appointed lawyer. If such a person is required to post a financial bond but cannot pay it, the unconvicted defendant likely will remain incarcerated for a longer period than if he or she were found guilty of the offense. This certainly constitutes incarceration and should make the person eligible for the appointment of an attorney.

There are times when a defendant who has been placed on supervised probation for a felony case remains in custody while awaiting release to a treatment program. While the release to the treatment program is being facilitated, it may be discovered that the defendant is the subject of an unresolved misdemeanor complaint. In such a case, the defendant may be required to post a bond in a limited jurisdiction case before the release on the felony matter can be resolved. Because of the processing time to transport the defendant to the limited jurisdiction court or post a secured bond, the treatment opportunity may be lost. A revision to the Arizona Rules of Criminal Procedure is recommended to authorize the superior court judge or the probation officer to work with the limited jurisdiction court to remove the “hold” or modify the release conditions, allow for an unsecured bond, or set the court date following the defendant’s release from treatment or otherwise expedite the processing of the limited jurisdiction case so it does not impede the defendant’s release to a treatment program.

Current practices in Arizona and in many jurisdictions throughout the United States rely on the use of a secured financial bond to secure the release of defendants arrested for crime. National data indicate that approximately 60 percent of jail inmates are pretrial offenders who have not been convicted of any crime. Some remain in jail awaiting trial for periods longer than the period for which they could have been sentenced had they been convicted.

Numerous justice system improvement organizations have called for this reform, including the Bureau of Justice Assistance, the National Institute of Corrections Association of

²³Lowenkamp, C. T., VanNostrand, M., and Holsinger, A. (2013). *The Hidden Costs of Pretrial Detention*, Laura and John Arnold Foundation

Prosecuting Attorneys, the National Center for State Courts, the Conference of State Court Administrators, the Conference of Chief Justices, and the National Association of Counties.

Recommendations:

37. *Modify Form 6–Release Order and Form 7–Appearance Bond in the following ways:*
 - Change the order of headings in Form 6:*
 - a. *First: “Other Conditions of Release”*
 - b. *Second: “Financial Conditions of Release”*
 - c. *Third: Include “Unsecured Bond” header and narrative.*
 - Add “Unsecured Appearance Bond” as a heading in Form 7. (See examples in Appendices D and E.)*
38. *Eliminate the use of non-traffic criminal bond schedules.*
39. *Amend Rule 7.4, Rules of Criminal Procedure, which currently provides for a 10-day bail review hearing to require the appointment of counsel if a person remains in jail after the initial appearance hearing.*
40. *Clarify by rule or statute that small bonds (\$5 - \$100) are not required to ensure that the defendant gets credit for time served when defendant is also being held in another case.*
41. *Authorize the court to release a “hold” from a limited jurisdiction court and order placement directly into a substance abuse treatment program upon recommendation of the probation department.*
42. *Expedite the bond process to facilitate timely release to treatment programs.*
43. *Request amendment of A.R.S. § 13-3961(D) and (E) (Offenses not bailable; purpose; preconviction; exceptions) to authorize the court, on its own motion, to set a hearing to determine whether a defendant should be held without bail.*
44. *Encourage the presence of court-appointed counsel and prosecutors at initial appearance hearings to assist the court in determining appropriate release conditions and to resolve misdemeanor cases.*

Principle Nine: Only defendants who present a high risk to the community or individuals who repeatedly fail to appear in court should be held in custody.

Although most defendants pose risks that are manageable at reasonable levels outside of the jail,²⁴ some defendants pose such risks that no bond or conditions of release can reasonably assure public safety or court appearance.

There is no question that people should not remain in jail solely because they cannot afford bail. But there are those for whom pretrial detention is appropriate: those whose release

²⁴ Schnacke, T.R., *Money as a Criminal Justice Stakeholder: The Judge’s Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections (2014).

would jeopardize the public and those with a very high likelihood of not appearing for future court hearings. Arizona statutes list several circumstances in which bail may or must be denied. See A.R.S. [§ 13-3961](#) (*Offenses not bailable; purpose; preconviction; exceptions*).

In Arizona, a court must detain a defendant after a hearing when there is "clear and convincing evidence that the person charged poses a substantial danger to another person or the community or engaged in conduct constituting a violent offense" if no condition or combination of conditions of release will reasonably assure the safety of the other person or the community. See A.R.S. [§ 13-3961](#) (*Offenses not bailable; purpose; preconviction; exceptions*). Currently, the referenced hearing may be initiated only by the state, and in many initial appearance courts throughout the state, a prosecutor is not present. Therefore, the court should be able to order this hearing based on the circumstances of the offense, the information contained in a pretrial risk assessment, and other information available to the court at the time a bail determination is being made. Revisions to A.R.S. § 13-3961(D) and (E) are recommended to allow for the hearing to be set by the court and not only on the state's motion.

For those defendants who present a high risk to public safety, and for whom there is "clear and convincing evidence that no condition or combination of conditions of release . . . will ensure the defendant's appearance in court or to protect the safety of the community or any person, the judicial officer should order the detention of the defendant before trial."²⁵ The use of a pretrial risk assessment at the initial appearance can assist the court in making this determination.

Currently, the Arizona Constitution does not permit a defendant to be held in custody for repeated failures to appear or for serious misdemeanor cases when a defendant is a danger to the community or any member of the community. The task force concludes that a constitutional change should be referred by the legislature to the people to determine whether money surety can be eliminated from our system altogether and high-risk individuals can be kept in jail without the use of high-money bonds. Such a proposal will come before the voters in New Mexico in November 2016.

The task force believes that Arizona should strive to eliminate money for freedom and shift to a risk-based system. Fully achieving this goal will require a constitutional amendment, rule changes, and a change in the current culture to substitute preventive detention for the current practice of imposing high-dollar bonds. A high-dollar bond may keep some individuals in jail. In two of the large jurisdictions the Arnold Foundation researched nearly 50 percent of high-risk individuals with high-dollar bonds had the ability to post the bond and be released. The task force recognizes these changes will take some time to fully

²⁵ American Bar Association *Standards for Criminal Justice: Pretrial Release* Standard 10-5.8 (3d ed. 2007).

implement. In the meantime Arizona should move ahead to implement a risk-based release decision system and eliminate money for freedom to the greatest extent possible, including expanded use of the provisions of [Article 2; Section 22\(3\)](#) of the Arizona Constitution, instead of the more common practice of setting a high-dollar bond as a substitute for trying to keep a high-risk individual in jail.

The taskforce also noted that a recent Court of Appeals case, *Simpson v. Miller*, __ P.3d __, 2016 W.L. 3264151 (Ct. App. Div. 1 June 14, 2016) now under appeal at the Supreme Court, may have some impact on this subject.

Recommendation:

45. *Request the legislature to refer to the people an amendment to the Arizona Constitution to expand preventive detention to allow courts to detain defendants when the court determines that the release will not reasonably assure the appearance of the person as required, in addition to when the defendant's release will not reasonably assure the safety of other persons or the community.*

Principle Ten: Money²⁶ bond is not required to secure appearance of defendants.

The use of secured bonds or surety bonds requires that the defendant pay a fee, usually 10 percent of the face value of the bond, and provide collateral if required, to a commercial bail agent who assumes responsibility for the full bail amount should the defendant fail to appear in court. If the defendant does appear in court, the 10 percent fee is retained by the commercial bail agent, even if the defendant is later found not guilty or the charges are dismissed. Further, the bail agent will decide to whom bail will be extended without consideration of the defendant's assessed risk level. "The traditional money bail system has little to do with actual risk, and expecting money to effectively mitigate risk, especially risk to public safety, is historically unfounded."²⁷ "From a public policy perspective, this flies in the face of good government, because the result is that public officials have little control over the use of one of the most expensive and limited resources in any community—a jail bed."²⁸

The [ABA Standards for Pretrial Release \(Standard 10-5.3\)](#) recommend the use of "unsecured" bonds or release on conditions that will help assure court appearance. See Standard 10-5.3.

²⁶ Money bond means either cash or commercial surety.

²⁷ Schnacke, T.R., (2014) *Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections.

²⁸ John Clark, *Solving the Riddle of the Indigent Defendant in the Bail System*, Trial Briefs (Oct. 2007); Schnacke, T.R., (2014) *Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections.

Standard 10-5.3 states in part:

“(a) Financial conditions other than unsecured bond should be imposed only when no other less restrictive condition of release will reasonably ensure the defendant's appearance in court. The judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay. (b) Financial conditions of release should not be set to prevent future criminal conduct during the pretrial period or to protect the safety of the community or any person. (c) Financial conditions should not be set to punish or frighten the defendant or to placate public opinion.”

Recommendation:

46. *Eliminate the requirement for cash surety to the greatest extent possible and instead impose reasonable conditions based on the individual's risk. When it must be used, the preference should be for the bond to be in actual cash deposited with the clerk of the court 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.*

Principle Eleven: Release decisions must be individualized and based on a defendant's level of risk.

The judicial officer establishing a defendant's release terms and conditions should order the least restrictive conditions that will still reasonably assure the defendant's appearance at court and protect public safety. Therefore, the bail process must be individualized, “taking into account the special circumstances of each defendant, the defendant's ability to meet the financial conditions and the defendant's flight risk, and should never be set by reference to a predetermined schedule of amounts fixed according to ‘the nature of the charge.’”²⁹ The Supreme Court agrees:³⁰

“Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant. The traditional standards, as expressed in the Federal Rules of Criminal Procedure [at the time, the nature and circumstances of the offense, the weight of the evidence against the defendant, and the defendant's financial situation and character] are to be applied in each case to each defendant. ... To the extent that states do not use these factors, such as when over-relying on monetary bail bond schedules that merely assign amounts of money to charges for all or average

²⁹ American Bar Association *Standards for Criminal Justice: Pretrial Release*, Standard 10-5.3 (3d ed. 2007).

³⁰ *Stack v. Boyle*, 342 U.S. 1,5 (1951)

defendants, the non-individualized bail settings are vulnerable to constitutional challenge.”³¹

The Public Safety Assessment (PSA), a validated pretrial risk assessment tool, helps provide such an individualized assessment. Pretrial service programs in all superior courts in Arizona use the PSA as the approved pretrial risk assessment tool. The Arizona Code of Judicial Administration requires the use of the PSA in initial appearance courts for most felony arrests in order to provide courts with a separate risk score for risk of failure to appear for future pretrial hearings and a risk score for risk of engaging in new criminal activity during the pretrial period. It also provides a “violence flag” in cases where the defendant poses a high risk of engaging in new violent criminal activity during the pretrial period.

This evidence-based assessment, combined with additional information, can be used by the judicial officer to assist in making individualized release and detention decisions. Thus, by using the PSA, judicial officers are able to individually assess which defendants are appropriate for a release on their own recognizance and which should be released only with certain conditions, which may include monitoring by a court pretrial services agency.

When using the risk assessment to make pretrial release decisions, generally judges should release low-risk defendants with minimal or no conditions, release moderate-risk defendants with interventions and services targeted to mitigate the risk, and should detain the highest-risk defendants in custody. In jurisdictions where evidence-based risk assessments are employed, such as Washington, D.C., three primary release types are used:

- Low-risk defendants are released on their own recognizance or with unsecured appearance bonds,
- Moderate-risk defendants are released to Pretrial Services with specific release conditions imposed to mitigate the risks presented,
- High-risk defendants are held in custody as preventive detention when no condition or combination of conditions of release can reasonably assure the appearance of the person or will endanger the safety of any person or the community.

Pretrial supervision consists of various levels of monitoring based on the defendant’s assessed risk level. This may consist solely of court date reminders by phone, text messages, or email for low-risk offenders; the preceding plus check-ins with the pretrial office by phone or face-to-face for moderate-risk offenders; and all of the foregoing coupled with home visits and electronic monitoring for those defendants determined to be high-

³¹ Schnacke, T.R., (2014) *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*. U.S. Department of Justice, National Institute of Corrections.

risk. The task force recommends expanding the use of the PSA to limited jurisdiction courts (municipal and justice courts) for appropriate defendants.

Recognizing that expansion of pretrial risk assessments to limited jurisdiction courts may require additional resources, courts may explore the feasibility of collaborating with the pretrial services agency in the superior court. This concept is currently being explored by the Mesa Municipal Court in collaboration with Pretrial Services Division of the Maricopa County Adult Probation Department.

It is not uncommon for a defendant to have charges pending in both a limited jurisdiction court and a general jurisdiction court that are being addressed at the same initial appearance. On many occasions, the judicial officer may grant release on a felony case; however, the defendant remains in custody on a bond imposed by a limited jurisdiction court. The initial appearance court judge cannot modify the release conditions in that matter, and the defendant then remains in custody on the limited jurisdiction court matter even though he or she is entitled to release on the more serious matter. In these situations, superior courts may consider sharing with the limited jurisdiction court the results of a pretrial risk assessment that was conducted for the general jurisdiction case that provided the basis for the defendant's release without bail.

One condition that is often ordered is pretrial supervision. A study conducted by the [Arnold Foundation in 2013](#) found that moderate- and high-risk defendants who received pretrial supervision were more likely to appear in court, and all defendants who were supervised pretrial for 180 days or more were less likely to be arrested for new criminal activity.³²

"Therefore, judges should be guided by recent research demonstrating that a decision to release that is immediately effectuated (and not delayed through the use of secured financial conditions) can increase release rates while not increasing the risk of failure to appear or the danger to the community to intolerable levels. Second, the use of pretrial risk assessment instruments can help judges determine which defendants should be kept in or let out of jail. Those instruments, coupled with research illustrating that using unsecured rather than secured bonds can facilitate the release of bailable defendants without increasing either the risk of failure to appear or the danger to the public, can be crucial in giving judges who still insist on using money at bail the comfort of knowing that their in-or-out decisions will cause the least possible harm."³³

³² Christopher T. Lowenkamp, Ph.D. Marie VanNostrand, *Exploring the Impact of Supervision on Pretrial Outcomes* (Laura and John Arnold Foundation 2013).

³³ Schnacke, T.R., (2014) *Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections.

The American Bar Association's (2007:4) Standards for Pretrial Release state that an agency should "monitor, supervise, and assist defendants released prior to trial, and to review the status and release eligibility of detained defendants for the court on an ongoing basis." The National Association of Pretrial Services Agencies (2004:4) has adopted a similar standard, indicating that "every jurisdiction should have the services of a pretrial services agency or program..." and the agency or program should "provide monitoring and supervisory services in cases involving released defendants... ."

The task force discussed concerns of potential bias with the PSA tool when addressing minority populations. This same matter was addressed by the Arnold Foundation when the risk assessment was developed, however, and "researchers found that defendants in each category failed at similar rates, regardless of their race or gender. The results confirmed that the assessment does not over-classify non-whites' risk levels, which has been a concern in some other areas of risk assessment.³⁴ While no issues have been found with the PSA instrument to date, some other assessments have been found to be problematic, indicating that this is an area that requires careful and constant examination.

To ensure these concerns are addressed over time, the task force considered requesting that PSA data be periodically reviewed by the Arnold Foundation and, if appropriate, incorporate adjustments to the tool as necessary to remediate any bias found. Additionally, the task force discussed concerns that the PSA does not take into consideration the immigration status of defendants and recommend that additional research be conducted for this population. Finally the task force understands that no instrument can eliminate all bias that may creep into the justice system and therefore recommends that judges continue to receive training regarding ways to recognize and avoid implicit bias.

Recommendations:

47. *Eliminate the use of a cash bond to secure a defendant's appearance.*
48. *Expand the use of the public safety risk assessment to limited jurisdiction courts for use in felony and high-level or select misdemeanor cases, i.e., those involving defendants entitled to counsel or those with a potential for a jail sentence.*
49. *Encourage collaboration between limited jurisdiction courts and pretrial service agencies in superior courts in preparing or providing pretrial risk assessments for use in limited jurisdiction cases.*
50. *Establish information sharing between a superior court that has conducted a pretrial risk assessment and a limited jurisdiction court when the defendant is arrested for charges in multiple courts and a release decision must be made in multiple jurisdictions.*

³⁴ Laura and John Arnold Foundation, (2013), *Research Summary: Developing a National Model for Pretrial Risk Assessment*

51. *Request the Arnold Foundation to conduct research on the impact of immigration status on the likelihood of not returning to court if released to ascertain whether it is good public policy to hold these defendants on cash bond.*
52. *Encourage the Arnold Foundation to conduct periodic reviews to revalidate the Public Safety Assessment (PSA) tool as to its effect on minority populations.*
53. *Provide data to judicial officers to show the effectiveness of the PSA risk assessment tool in actual operation. The outcome measurements should include information regarding failure to appear data and the impact that release has on public safety.*

Educational Recommendations:

In late 2015, the AOC conducted an informal survey of Arizona courts regarding initial appearance and bond review hearing processes. The results indicated:

- Judges use a variety of methods to conduct these hearings.
- Most courts do not have additional release options.
- These type of hearings are heard by full- and part-time judges, judges pro tempore, and commissioners.
- To determine bond amounts, judges use presumptive sanction charts, bond schedules, face-to-face interaction with the defendant, or the judges' inherent discretion.
- Initial appearance hearings are conducted in person at the court or in a specialized initial appearance court by video-conferencing, over the telephone and through first class mail.

The need for educational efforts and engaging leadership within the judiciary were constant themes throughout the task force discussions. The AOC's Education Services Division should develop a comprehensive educational plan and proposed timeline based on the recommendations proposed by the task force.

54. *Develop an educational plan and conduct mandatory training for all judicial officers.*
55. *Create multi-layer training (court personnel and judicial staff) to include a practical operational curriculum.*
56. *Develop online training modules for future judicial officers.*
57. *Host a one-day kick-off summit inviting all stakeholders (law enforcement, prosecutors, county attorneys, public defenders, city council and county board members, the League of Towns and Cities, criminal justice commissions, legislature, and presiding judges) to educate and inform about recommendations of the task force and provide direction for leadership to initiate culture change.*
58. *Train judicial officers on the risk principle and the methodology behind risk assessment tools.*
59. *Educate judges about the continuum of sentencing options.*

60. Educate judges about available community restitution (service) programs and the types of services each offers so that courts may order services that “fit the crime.”
61. Launch a public education campaign to support the adopted recommendations of the task force.
62. Provide a comprehensive and targeted educational program for all stakeholders (funding authorities, legislators, criminal justice agencies, media, and members of the public) that addresses the shift to a risk-based system rather than a cash-based release system.
63. Request that the Chief Justice issue an administrative order directing the education of all full- and part-time judicial officers about alternatives to financial release conditions. Training and educational components should:
 - a. Inform judges that cash bonds are not favored. Judges should consider the least onerous terms of release of pretrial detainees that will ensure public safety and the defendant’s return to court for hearings.
 - b. Train limited jurisdiction court judges to more aggressively allow payment of fines through community service, as permitted by A.R.S. § 13-810.
64. Provide focused judicial education on A.R.S. § 11-584(D) and Arizona Rules of Criminal Procedure 6.7(D) about how to determine the amount and method of payment, specifically taking into account the financial resources and the nature of the burden that the payment will impose on the defendant, and making specific findings on the record about the defendant’s ability to pay.
65. Update bench books and other judicial aids to be consistent with court-adopted recommendations.

APPENDIX A

Key Findings from the Violation Review Data Driven Results

Misdemeanor, Criminal Traffic and Civil Traffic by Defendant

FY2014 Filings

CRIMINAL

- 63% conviction rate, while DUI conviction rate is 76%.
- 19% of criminal traffic and 28% of defendants convicted of misdemeanors are sentenced to jail.
- Average assessment in misdemeanor cases (excluding DUI) is \$766; average DUI assessment is \$2,015.
- Overall, 44% of criminal defendants return with subsequent violations, 35% from criminal traffic and 51% of misdemeanors.

CIVIL TRAFFIC

- 83% conviction rate; 22% attended defensive driving.
- Average assessment is \$342; average “no insurance” assessment is \$1,040.
- Estimated 11% or 103,000 defendants statewide fail to appear or fail to pay and driver license is suspended.
- 28% of civil traffic defendants are cited for a subsequent violation.

APPENDIX B

Innovations Already Under Way

Detailed Project Descriptions

Compliance Assistance Program

The Phoenix Municipal Court has recently implemented a Compliance Assistance Program (CAP) that notifies defendants who have had their driver’s licenses suspended that they can come in to court, arrange a new and affordable time payment program, and make down payments on their outstanding fines. In exchange, the court will provide a clearance letter for the Motor Vehicle Department so the individual’s driver’s license may be reinstated. In the first four months of this new operation, more than 5,200 citizens have taken advantage of this program. The program has also resulted in the payment of \$2.3 million to the City of Phoenix for outstanding fines, with a low non-compliance rate.

Interactive Voice Response System

The Pima County Consolidated Justice Courts and the Glendale and Mesa Municipal courts have each implemented an Interactive Voice Response (IVR) system to notify defendants of upcoming court dates, missed payments, or the issuance of a warrant. Each has experienced a reduction in the number of people failing to appear—up to 24 percent.³⁵

Limited Jurisdiction Mental Competency Proceedings Pilot

Through a pilot project, the Mesa and Glendale municipal courts have been conducting Supreme Court Criminal Rule 11 (mental health competency) proceedings originating in their courts on behalf of the Superior Court in Maricopa County. This pilot authorizes these limited jurisdiction courts to act as satellites of the superior court. To date, 44 cases have proceeded through this pilot program, reducing warrants for non-appearances at doctor appointments and at superior court hearings. Conducting the Rule 11 proceedings at the Mesa Municipal Court has reduced the “no show” rate to less than five percent. Previously, these proceedings were taking between nine to twelve months; Mesa Municipal Court reports resolving these cases in less than 60 days. Additional cost savings have been realized by resolving the proceedings with one doctor appointment instead of requiring and paying for two appointments.

³⁵ See Appendix C. Summary of statistics for Pima County Justice Courts using an IVR system.

Justice Court Video Appearance Center

The Maricopa County Justice Court Video Appearance Center (Center) represents the first phase of an initiative to reduce significantly the amount of time defendants are held in custody on misdemeanor charges pending appearance in the justice courts. The Center is expected to reduce pretrial confinement time in such cases by 50 percent, with an additional 30 percent to be realized in Phase Two when the Intake and Release Facility becomes operational. The Center will also virtually eliminate the need to transport any prisoners to and from the 26 justice courts geographically distributed across the county. Development and operation of the Center is a collaborative effort of multiple Maricopa County agencies, including the justice courts, the County Attorney's Office, the Office of the Public Defender, the Maricopa County Sheriff's Office, and the superior court. The Center complements the Arizona Supreme Court's Fair Justice initiative as well as the county's Smart Justice program.

Pima County – MacArthur Safety & Justice Challenge

In May 2015, Pima County was awarded \$150,000 from the John D. and Catherine T. MacArthur Foundation for an initiative to reduce over-incarceration by changing how America thinks about and uses jails. The initiative is a competition to help jurisdictions create fairer, more effective local justice systems through bold innovation. During Phase 1, Pima County developed a plan for system change to reduce the jail population by fifteen to nineteen percent (15-19 percent) and to reduce racial and ethnic disparities. Pima County was awarded an additional \$1.5 million to move forward with Phase 2, which involves creating an implementation plan for broad system change. Some of the innovations developed by planning and policy teams included decision-makers from the county administration, jail, superior court, limited jurisdiction courts, law enforcement, prosecution, defense, and community organizations.

Proposed court system innovations and treatment alternatives include extending evidence-based risk screening to all defendants; adding a behavioral health screen prior to initial appearance and expanding pretrial supervision capacity; training criminal justice system partners (including the judiciary) on implicit bias and the use of money bail; reducing the incidence of failure to appear by implementing reminder systems and offering more accessibility to courts through periodic weekend warrant resolution courts; and expanding the use of home detention and electronic monitoring, including for those sentenced to jail on felonies but who are on work release. If successful, the innovations are expected to reduce the jail population by twenty percent (20%), which would potentially allow the closure of six 64-person pods at the jail, resulting in an estimated cost savings of \$2.7 million per year and improvement of pretrial justice in Arizona.

APPENDIX C

Pima County Consolidated Justice Court's IVR Summary

Phase	Description	Time period	IVR calls	Successful IVR Calls	Percentage Successful	Criminal hearings	FTA warrants issued	FTA rate	Reduction
1	No IVR Reminders	02/2014 - 08/2014	0	-	-	29,983	4,216	14.06%	--
2	IVR Reminders Enabled	09/2014-11/2015	46,980	36,671	78%	70,650	8,113	11.78	16.20%
3	IVR Reminders with Sanction warning	12/2015-03/2016	17,705	12,700	72%	17,930	1,926	10.74%	23.6%*
4	IVR Warrant Notifications	01/01/2016 - 6/21/2016	4,739*	2,564*	54%*	Call is placed after the warrant is issued, no significant effect on the FTA rate; however, this step encourages defendants to appear after the warrant is issued and may decrease total number of active warrants.			
5	Warrant Resolution Court Reminders	12/2015-03/2016	3,808**	2,342**	62%**	Calls were placed from Monday, June 6, to Friday, June 7, at a rate of 762 calls per day for Warrant Resolution Court, held Saturday, June 11, 2016. 75 of 2,342 who received a call appeared (3%), and 75 of 75 who appeared had their warrant quashed (100%).			

**Includes Warrant Notification calls only; does not include regular IVR court date reminder calls*

***Includes Warrant Resolution Court reminder calls only; does not include regular IVR court date reminder calls*

If you violate any condition of an appearance bond, the court may order the bond and any related security deposit forfeited to the State of Arizona. In addition, the court may issue a warrant for your arrest upon learning of any violation of the conditions of release. After a hearing, if the court finds that you have not complied with the release conditions, the court may modify the conditions or revoke the release altogether.

If you are released on a felony charge, and the court finds the proof evident or the presumption great that you committed a felony during the period of release, the court must revoke your release. You may also be subject to an additional criminal charge, and upon conviction you could be punished by imprisonment in addition to the punishment which would otherwise be imposable for the crime committed during the period of release. Upon finding that you violated conditions of release, the court may also find you in contempt of court and sentence you to a term of imprison-

ACKNOWLEDGEMENT: I fully understand and will comply with all release conditions indicated above and further understand the consequences should I violate any part of this order.

Current address where you live Apt. No. Address where you receive mail if different from current address

Phone No. _____ Phone No. _____

X Defendant Signature Date X Judicial Officer Date

DISTRIBUTION: WHITE – COURT YELLOW – SIMS OPERATOR PINK – DEFENDANT

APPENDIX E

Proposed Form 7—Appearance Bond Form

FORM 7

COURT _____

County, Arizona

STATE OF ARIZONA Plaintiff

-vs-

Defendant (FIRST, MI, LAST) _____

Booking Number _____

Date of Birth _____

**APPEARANCE
BOND**

TYPE OF APPEARANCE BOND YOU HAVE

UNSECURED APPEARANCE BOND: In accordance with the terms of a release order or warrant issued on _____, 20____, by Judicial Officer of the _____ court, of _____, State of Arizona, the defendant _____ and the defendant's surety _____ (if none, so state) hereby promise to pay the State of Arizona the sum of \$ _____ in the event the defendant fails to appear at _____ at _____ a.m./p.m. on _____, 20____ and at any other hearing during the pendency of the case, unless excused by the judicial officer.

DEPOSIT BOND: The defendant will deposit with the Clerk of the Court _____% of the total sum of \$ _____, with the remainder of \$ _____ as an unsecured appearance bond. The deposited amount of the case appearance bond will be returned to the defendant, if defendant appears at _____ at _____ a.m./p.m. on _____, 20____ and at any other hearing during the pendency of the case to appear and answer the charges or submit to the orders and process of the court having jurisdiction of the case. In the event the defendant fails to appear at the hearing or during the pendency of the case, defendant will forfeit the cash appearance bond to the State of Arizona.

CASH APPEARANCE BOND: The defendant will deposit with the Clerk of the Court the total sum of \$ _____. The total amount of the cash appearance bond will be returned to defendant if defendant appears at _____ at _____ a.m./p.m. on _____, 20____ and at any other hearing during the pendency of the case to appear and answer the charges or submit to the orders and process of the court having jurisdiction of the case. In the event the defendant fails to appear at the hearing or during the pendency of the case, defendant will forfeit the cash appearance bond to the State of Arizona.

SECURED APPEARANCE BOND—without a surety: The defendant hereby deposits with the court cash or property of value in the full amount of this bond, the same to be forfeited in the event the defendant fails to comply with its conditions.

Depositor: _____ Email address: _____

Address: _____ Phone number: _____

SECURED APPEARANCE BOND—with a surety: _____, Surety for the defendant, hereby swears (or affirms) that the surety is not an attorney or person authorized to take bail, and that the surety owns property in this state (or is a resident of this state owning property) worth the amount of this bond, exclusive of property exempt from execution and above and over all liabilities, as detailed in Attachment A.

WARNING: IF YOU DO NOT APPEAR AS REQUIRED, THIS BOND MAY BE FORFEITED AND THE PROCEEDINGS BEGIN WITHOUT YOU. IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.

ACKNOWLEDGEMENTS

Date

Defendant

State of Arizona)
County of _____)ss.

Subscribed and sworn to before me on

My Commission Expires _____

Notary Public

Approved:

Date I

Surety or Authorized Agent

FORM 7 Attachment A

Form 7 Attachment A

[No changes]



Justice for All

Report and Recommendations of the Task Force on Fair Justice for All:
Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies

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August 12, 2016

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COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: August 31, 2016	This agenda item is for: [] Formal Action/Request [X] Information Only [] Other	Subject: Task Force on the Arizona Rules of Criminal Procedure
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Presenter(s): Judge Maria Felix
Judge Eric Jeffery

Discussion:

In December 2015, the Supreme Court entered Administrative Order number 2015-123 and established the Task Force on the Arizona Rules of Criminal Procedure. The Order directed the Task Force to

...review the Arizona Rules of Criminal Procedure to identify possible changes to conform to modern usage and to clarify and simplify language. These changes should promote the just resolution of cases without unnecessary delay or complexity. The Task Force shall seek input from various interested persons and entities with the goal of submitting a rule petition by January 2017 with respect to any proposed rule changes.

Judges Felix and Jeffery will provide a brief overview of the Task Force and its work to-date. There will be a more in-depth presentation at the November LJC meeting.

Recommended Action or Request (if any):

Information only

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: August 31, 2016	This agenda item is for: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: PIMA COUNTY JUDGE PRO TEM ORIENTATION AND TRAINING
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Presenter(s): Judge Maria Felix

Discussion: Judge Felix will discuss the judge pro tem training that is offered by Pima County Consolidated Justice Court.

Recommended Action or Request (if any): None.



Pima County Consolidated Justice Court
 Pro Tem Judge Orientation Training

Monday, October 20, 2014

8:30 a.m. – 4:30 p.m.

33 N. Stone, 10th Floor Conference Room

8:30 a.m. – 8:45 a.m.	Welcome	Maria Felix, Chief Administrative Justice of the Peace
8:45 a.m. – 9:30 a.m.	Civil Procedures	Maria Felix, Chief Administrative Justice of the Peace
9:30 a.m. – 10:15 a.m.	Evictions	Dwight Connely, Attorney at Law, Retired
10:15 a.m. – 10:30 a.m.	Break	
10:30 a.m. – 11:30 a.m.	Case Management	Jack Peyton, Justice of the Peace
11:30 a.m. – 12:00 p.m.	Court Administration and Judicial Administration	Doug Kooi, Court Administrator Micci Tilton and Barbara Daniels, Deputy Court Administrators Irma Molina and Debra Martinez, Judicial Administrative Assistants
12:00 p.m. – 12:45 p.m.	<i>Lunch Provided</i>	
12:45 p.m. – 2:15 p.m.	Ethics <ul style="list-style-type: none"> • Code of Conduct • Judicial Demeanor • Self-represented Litigant 	Presenter George Riemer Staff Director of Arizona Supreme Court’s Judicial Ethics Advisory Committee
2:15 p.m. – 2:30 p.m.	Break	
2:30 p.m. – 3:00 p.m.	Protective Orders	Susan Bacal Justice of the Peace
3:00 p.m. – 3:45 p.m.	Evidentiary Hearings DUI Jury Trials	Keith Bee, Presiding Justice of the Peace
3:45 p.m. – 4:30 p.m.	Pre-trial/In-Custody hearings	Carmen Dolny Justice of the Peace



Pima County Consolidated Justice Court
Pro Tem Judge Training
Wednesday, October 14, 2015
8:30 a.m. – 3:30 p.m.
240 N. Stone, Santa Catalina room, 7th floor

8:30 a.m. – 8:45 a.m.	Welcome	Keith Bee, Presiding Justice of the Peace and Maria Felix, Chief Administrative Justice of the Peace
8:45 a.m. – 9:45 a.m.	Evictions	Adam Watters, Justice of the Peace
9:45 a.m. – 10:15 a.m.	Case Management <ul style="list-style-type: none">• Arraignments (Notice 9.1, etc.)• Restitution/Waiving a Hearing• Signature files/judgments	Carmen Dolny, Justice of the Peace Jane Carter, Civil Unit Supervisor
10:15 a.m. – 10:30 a.m.	Break	
10:30 a.m. – 11:30 a.m.	Misc. Critical Issues	Maria Felix and Jack Peyton, Justices of the Peace
11:30 a.m. – 12:00 p.m.	Administrative Issues	Doug Kooi, Court Administrator Micci Tilton and Barbara Daniels, Deputy Court Administrators Irma Molina & Debra Martinez Judicial Administrative Assistants
12:00 p.m. – 12:45 p.m.	<i>Lunch Provided</i>	
12:45 p.m. – 2:30 p.m.	Specialty Courts	Animal Welfare, Hon. Maria Felix DV, Hon. Jack Peyton Behavioral Health, Hon. Susan Bacal
2:30 p.m. – 2:45 p.m.	Break	
2:30 p.m. – 3:15 p.m.	Criminal Orders of Protection/3 rd Strike	Jack Peyton, Justice of the Peace
3:15 p.m. – 3:30 p.m.	Closing	Maria Felix, Justice of the Peace

COMMITTEE ON LIMITED JURISDICTION COURTS

<p>Date of Meeting:</p> <p>August 31, 2016</p>	<p>This agenda item is for:</p> <p>[X] Formal Action/Request</p> <p>[] Information Only</p> <p>[] Other</p>	<p>Subject:</p> <p>PROPOSAL FROM THE JUDICIAL COLLEGE OF ARIZONA TO CHANGE THE INITIAL TRAINING REQUIREMENTS FOR LIMITED JURISDICTION PART-TIME PRO-TEM JUDGES.</p>
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Presenter(s): Gabe Goltz, Manager, Education Programs Unit of the AOC’s Education Services Division, and staff to the Judicial College of Arizona board.

Discussion: The Arizona Code of Judicial Administration (Ss. 1-302.1.6.b.3.) requires part-time limited jurisdiction pro tem judges (PTLJPTs) to complete “the training approved by the Committee on Judicial Education and Training (COJET) before assuming duties.” Currently, the COJET-approved training is the completion of 8 computer-based trainings covering topics such as evidence, initial appearances, and orders of protection. A member of the Judicial College of Arizona (JCA) board proposed that this requirement be re-examined since PTLJPTs can have the same authority as their full-time counterparts. A workgroup of JCA members was formed and after meeting and reviewing information, including that several limited jurisdiction courts in Arizona already have adopted this requirement locally, the workgroup proposed to JCA that PTLJPTs be held to the same training standards as full-time limited jurisdiction judges and full-time limited jurisdiction pro tems. Namely, the completion of Limited Jurisdiction New Judge Orientation (LNJO) within the first year of assuming duties. JCA unanimously accepted this proposal with the following stipulations: the requirement would be adopted on a moving-forward basis; the requirement would be a single time requirement (i.e. a PTLJPT would not need to complete LNJO for each individual court appointment); and that Board staff would seek input from other stakeholder groups before forwarding the recommendation to COJET.

Recommended Action or Request (if any):

On behalf of the JCA board, Goltz seeks input from the members, individually, of the Committee on Limited Jurisdiction Courts or, at the Committee’s pleasure, a formal recommendation on the proposal.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: August 31, 2016	This agenda item is for: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: LEGISLATIVE UPDATE
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Presenter(s): Jerry Landau, Government Affairs Director

Discussion: Mr. Landau will provide an update regarding bills of interest to limited jurisdiction courts.

Recommended Action or Request (if any): Information only.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: August 31, 2016	This agenda item is for: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: ARIZONA COMMISSION ON ACCESS TO JUSTICE - REPORT ON RULE CHANGE PETITION R-16-0040 STATEWIDE MANDATORY EVICTION FORMS
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Presenter(s): Judge Lawrence Winthrop, Court of Appeals Division 1 and Arizona Commission on Access to Justice (ACAJ) Chair

Discussion: The ACAJ was established by Administrative Order 2014-83 pursuant to the Court’s strategic agenda of “Advancing Justice Together: Courts and Communities.” The order directs the ACAJ to make recommendations on assisting self-represented litigants and revising court rules and practices to facilitate access and the efficient processing of eviction cases. The Supreme Court’s access to justice initiative also sought to ensure that court forms and information, whether in electronic or paper form, are easily understandable. In March 2015, the Arizona Judicial Council approved in concept an ACAJ revision to eviction action forms to make them easier to read and understand. Thereafter, the Self-Represented Litigant in Limited Jurisdiction Courts Workgroup (SRL-LJC WG) of the ACAJ 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-16-0044) was filed on behalf of the ACAJ that would require litigants statewide to use court-approved eviction action forms and authorizes the Administrative Director of the Administrative of the AOC to approve, modify, or delete eviction action forms as may be appropriate. The proposed rule is in the process of being circulated to the appropriate groups for review and comment. The deadline for reply to comments is November 4, 2016. The Supreme Court is anticipated to consider this petition in December

Recommended Action or Request (if any): Move to request that LJC members support the R-16-0040 rule change petition.

Hon. Lawrence Winthrop
1501 W Washington, Suite 410
Phoenix, AZ 85007

IN THE SUPREME COURT STATE OF ARIZONA

PETITION TO AMEND RULES	)	Supreme Court No. R-_____
5(a), 5(b)(6), 5(b)(7) AND ADD	)	(Expedited Adoption
RULES 13(h) AND 20, OF THE	)	Requested)
RULES OF PROCEDURE FOR)	
EVICITION ACTIONS)	

Petitioner is the Arizona Commission on Access to Justice (hereinafter “ACAJ”) through its Chair undersigned. Petitioner requests this Court amend Rules 5(a), 5(b)(6), and 5(b)(7), and add new Rules 13(h) and 20 to the Rules of Procedure for Eviction Actions. Most significantly, the new Rule 20 would require litigants to use court-approved eviction action forms and authorizes the Administrative Director of the Administrative Office of the Courts (AOC) to approve and modify eviction action forms in response to changes in state laws or procedures, to make other necessary amendments or technical corrections, and to add or delete eviction action forms as may be appropriate. The new Rule 20 will apply to the following forms in eviction actions:

- Eviction Action Complaint;
- Eviction Action Summons;

- Eviction Action Judgment;
- 5-Day Notice to Move - Health and Safety Violation;
- 5-Day Notice to Move - Failure to Pay Rent;
- 10-Day Notice to Move - Material Breach;
- 10-Day Notice to Move - Repeat Material or Health and Safety Breach;
and
- Immediate Notice to Move - Material and Irreparable Breach
- Other notices that are later approved by the Administrative Director

Petitioner also proposes changes and additions to Rules 5(a) and (b), and 13 addressing the summons, complaint, and form of judgment to reference the new Rule 20 requirements for mandatory forms.

I. Background and Purpose of the Proposed Rule Amendment

The ACAJ was established by Administrative Order 2014-83 pursuant to the Court’s strategic agenda of “Advancing Justice Together: Courts and Communities.” The order directs the ACAJ to make recommendations on assisting self-represented litigants and revising court rules and practices to facilitate access and the efficient processing of eviction cases. The Supreme Court’s access to justice initiative also sought to ensure that court forms and information, whether in electronic or paper form, are easily understandable. In March 2015, the Arizona Judicial Council

approved in concept an ACAJ revision to eviction action forms to make them easier to read and understand. Thereafter, the Self-Represented Litigant in Limited Jurisdiction Courts Workgroup (SRL-LJC WG) of the ACAJ 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.

The proposed forms are based on the most frequently used forms available in Maricopa County Justice Courts. The workgroup vetted them for feedback and suggestions through, among others, the Arizona Justice of the Peace Association and other Maricopa County Justices of the Peace.

At its May 18, 2016 meeting, ACAJ concluded the forms should be mandated rather than optional to better promote improved readability of and consistency in forms used by attorneys, landlords and judges; and to allow for standardized and timely updating. These benefits are all in keeping with the Supreme Court's access to justice initiative.

The ACAJ unanimously approved the filing of this petition and authorized AOC staff to circulate the petition and forms among the appropriate AJC and State Bar standing committees for further comment. Petitioner is attaching the draft forms proposed for adoption by the Administrative Director as Appendix B to aid in the court's deliberations and allow public comment on the forms as well as the rule amendments. Public comments on the forms will be provided to the

Administrative Director for his consideration.

II. Request for Expedited Adoption

In fiscal year 2015, almost 84,000 eviction actions were filed in Justice Courts in Arizona; almost 64,000 were filed in Maricopa County alone. The overwhelming majority of these actions concern residential leases with most tenants and many landlords appearing without legal representation. This means that every month that passes, approximately 7,000 eviction actions are being filed in Arizona. In light of the Supreme Court's emphasis on increasing fairness and justice in eviction actions, the ACAJ believes use of the proposed mandatory forms is an urgent need that warrants expedited consideration and adoption of the proposed new rules and amendments outside of the annual rule processing cycle, as permitted by Supreme Court Rule 28(G).

Accordingly, Petitioner respectfully requests the Court modify the usual comment schedule as follows:

September 23: Comments to the petition due

November 4: Petitioner's reply to comments due

This proposed schedule will then allow the Court to address the petition, comments, and replies in December 2016. Additionally, Petitioner recognizes the need for and requests a delayed effective date of July 1, 2017 in order to allow courts,

lawyers, and the public sufficient time to transition to using the newly adopted forms.

III. Conclusion

For the reasons stated above, the ACAJ respectfully requests the Supreme Court to adopt the amendments contained in Appendix A as proposed on an expedited basis.

RESPECTFULLY SUBMITTED this ____ day of _____, 20__.

By: _____
Judge Lawrence Winthrop
Chair, Arizona Commission on
Access to Justice

APPENDIX A

Rules of Procedure for Eviction Actions

Rule 5. Summons and Complaint: Issuance, Content and Service of Process

a. Summons. The summons in an eviction action shall be a document separate from the complaint, shall be issued in accordance with applicable statutory provisions, ~~and~~ shall identify the defendants to the action, and shall be in the approved form referenced in Rule 20 of these rules. If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant and any occupants of the property. The court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall also include the following:

- (1) Name of the court and its street address, city, and telephone number;
- (2) Date and time set for the trial of the matter;
- (3) Notice that if the tenant fails to appear, a default judgment will likely be entered against the tenant, granting the relief specifically requested in the complaint, including removing the tenant from the property; and
- (4) A disclosure in substantially the following form: “Requests for reasonable accommodation for persons with disabilities should be made to the court as soon as possible.”
- (5) In residential property actions only, on a separate page served upon the tenant, the information contained in the Residential Eviction Procedures Information Sheet substantially in the form included as Appendix A to these Rules.

b. Complaint. The complaint shall:

- (1) Be brought in the legal name of the party claiming entitlement to possession of the property.
- (2) Include the business name, if any, and address of the property;
- (3) If an attorney represents the plaintiff, state the name, address, telephone number, and Bar number of the attorney in the upper left hand corner;
- (4) If the plaintiff is unrepresented, state the plaintiff's address, name and telephone number in the upper left hand corner;
- (5) State that the property in question is located within the judicial precinct where the complaint is filed;
- (6) ~~State in bold print, capitalized, and underlined at the top center of the first page, below the case caption, “YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY”;~~ Be in the approved form referenced in Rule 20 of these rules;
- (7) State the specific reason for the eviction; that the defendant was served a proper notice to vacate, if applicable; the date the notice was served; and what manner of service was used. A copy of the notice shall be ~~attached as an exhibit to the complaint in the approved form as referenced in Rule 20 of these rules shall be attached as an exhibit to the complaint.~~
- (8) Be verified. This means that the attorney signing the complaint shall verify that the attorney believes the assertions in the complaint to be true on the basis of a reasonably diligent inquiry.

c. – g. [no change]

Rule 13. Entry of Judgment and Relief Granted

a. – g. [no change]

h. The judgment must be in the approved form referenced in Rule 20 of these rules.

Rule 20. Forms.

- a. **Mandated Forms.** Attorneys representing landlords, landlords filing *pro per*, and judges and court staff must use, as appropriate, the eviction forms approved by the Administrative Director of the Administrative Office of the Courts, listed in subsection (b) and made available at www.azcourts.gov. The Administrative Director of the Administrative Office of the Courts is authorized to modify these forms in response to changes in state laws or procedures, to make other necessary administrative amendments or technical corrections, or to add or delete forms as may be appropriate. Upon a showing of good cause and in the interest of justice in a particular case, the court may permit use of a form other than the approved form the court finds to be consistent with law as the approved form.
- b. **Types of Forms.**
- (1) Eviction Action Complaint;
 - (2) Eviction Action Summons;
 - (3) Eviction Action Judgment;
 - (4) 5-Day Notice to Move - Health and Safety Violation;
 - (5) 5-Day Notice to Move - Failure to Pay Rent;
 - (6) 10-Day Notice to Move - Material Breach;
 - (7) 10-Day Notice to Move - Repeat Material or Health and Safety Breach; and
 - (8) Immediate Notice to Move - Material and Irreparable Breach
 - (9) Other notices that are approved by the Administrative Director of the AOC.
- c. **No Charge for Forms.** Courts must provide all eviction action forms without charge.

() -
Attorney for Plaintiff / Address / Phone / Bar Number

Justice Courts, Arizona

CASE NUMBER: _____

() -
Plaintiff(s) Name / Address / Phone

() -
Defendant(s) Name / Address / Phone

COMPLAINT (Eviction Action)

Immediate Residential Mobile Home Commercial

YOUR LANDLORD IS SUING TO HAVE YOU EVICTED, PLEASE READ CAREFULLY THE ALLEGATIONS AGAINST YOU LISTED BELOW.

1. This court has jurisdiction to hear this case. The rental is within this court's judicial precinct and is located at: _____ . The business name of the property, if any, is _____ .
2. The Plaintiff wants you evicted and wants possession of the rental because of the reasons in section 5.
3. Any required written notice was served on the Defendant on _____ and was served: by hand, or by certified mail.
4. A copy of the notice that was served is attached.
5. The Plaintiff is the owner or is authorized by law to file this case on behalf of the owner.

The Plaintiff claims (check and complete all that apply):

Subsidized Housing. Total rent per month is \$ _____. Tenant's portion of rent per month is \$ _____.

RENT OWED: The Defendant has failed to pay the rent owed. The rent is unpaid since _____. There is a prior unpaid balance of \$ _____. The rental agreement requires rent of \$ _____ to be paid on the _____ day of each month week. The rental agreement provides for late fees calculated in the following manner: _____.

Notice: If you are a residential tenant and the only claim your landlord makes is that you have not paid your rent, you may contact your landlord or your landlord's attorney and offer to pay all of the rent due, plus any reasonable late fees, court costs and attorney's fees. If you pay these amounts before a judgment is entered, then this case will be dismissed and your rental agreement will be reinstated and will continue.

NON-COMPLIANCE: After getting a notice, the Defendant failed to do the following:

_____ on this date: _____, at the following location _____.

IRREPARABLE BREACH: The Defendant has committed a material and irreparable breach.

Specifically, on this date _____, at the following location _____ the Defendant did the following: _____

[] OTHER: State the date, place and reason for eviction:

6. As of the filing date the Defendant owes the following:

Rent (Current and Prior Months) Totaling....	\$ _____
Late Fees: (if any in written agreement).....	\$ _____
Concessions (if any in written agreement)....	\$ _____
Reimbursable Court Costs.....	\$ _____
Attorney's Fees (if allowed).....	\$ _____
Other (as authorized by law).....	\$ _____
Total Amount Requested.....	\$ _____

7. The Plaintiff requests a Judgment for the amounts owed above and for possession of the rental.

8. WRIT OF RESTITUTION: The Plaintiff requests the court issue a Writ of Restitution returning the rental to the Plaintiff's possession 5 calendar days after the date the Judgment. If the eviction is for the material and irreparable breach explained above, return of possession is requested 12 to 24 hours from the time of the Judgment.

9. By signing this complaint, I am agreeing that the allegations written are true and correct to the best of my knowledge.

Date: _____

Plaintiff

Justice Courts, Arizona

CASE NUMBER: _____

() _____ - _____
Plaintiff(s) Name / Address / Phone

() _____ - _____
Defendant(s) Name / Address / Phone

SUMMONS (*Eviction Action*) [] Amended

THE STATE OF ARIZONA TO THE DEFENDANT(S) NAMED ABOVE. YOU ARE HEREBY SUMMONED TO APPEAR.

An **Eviction Case** has been filed against you. A court hearing has been scheduled.

Date: _____ Time: _____
At the (*court name*): _____
Courtroom: _____ Floor: _____
Please arrive early.

REQUESTS FOR REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES SHOULD BE MADE TO THE COURT AS SOON AS POSSIBLE.

If an interpreter is needed, please contact the court listed above as soon as possible.

1. You have a right to come to court.
2. If you do not agree with the claims against you on the attached complaint, you must come to court at the date, time, and location listed above and explain your reasons to the judge.
3. If you do not agree with the claims in the complaint, you also may file a written answer admitting or denying some or all the claims and pay the answer fee. (see number 5)
4. If you want to file a counterclaim, it must be in writing.
5. If you cannot afford the filing fee, you may apply for a deferral or waiver of the filing fee at the court.
6. **IF YOU FAIL TO APPEAR**, a judgment will likely be entered against you, granting the relief specifically requested in the complaint, including removing you from the rental.
7. To learn more see the attached Residential Eviction Information Sheet or contact the court.

The laws about this case are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, eviction actions, and your rights, please visit the Arizona Department of Housing website at <https://Housing.AZ.Gov>, the Maricopa County Justice Courts website at www.JusticeCourts.Maricopa.Gov, or AZLawHelp.org

Date: _____ Justice of the Peace _____

Justice Courts, Arizona

CASE NUMBER: _____

() -
Plaintiff(s) Name / Address / Phone

() -
Defendant(s) Name / Address / Phone

JUDGMENT (Eviction Action) Amended

This matter was heard by the Court on this date: _____

Plaintiff appeared in person by counsel failed to appear

Defendant appeared in person by counsel failed to appear

If required by law, Defendant was was not given proper notice and the opportunity to cure.

Defendant was was not properly served with the Summons and a copy of the complaint at least two (2) days prior to Court date.

If a partial rent payment was accepted, a non-waiver was produced a non-waiver was NOT produced.

Defendant pleads NOT GUILTY/NOT RESPONSIBLE Defendant has filed a counterclaim.
 GUILTY/RESPONSIBLE

Defendant was found GUILTY/RESPONSIBLE NOT GUILTY/NOT RESPONSIBLE of:
 RENT OWED NON-COMPLIANCE IRREPARABLE BREACH
 OTHER

IT IS HEREBY ORDERED granting judgment on the complaint to Plaintiff Defendant

IT IS FURTHER ORDERED granting judgment on the counterclaim to Plaintiff Defendant

IT IS FURTHER ORDERED granting possession of the rental to Plaintiff Defendant

IT IS FURTHER ORDERED granting monetary judgment to:

Plaintiff(s)

1. \$ _____ Rent
 2. \$ _____ Late charges
 3. \$ _____ Court cost
 4. \$ _____ Rental Concessions
 5. \$ _____ Damages
 6. \$ _____ Attorney fees
 7. \$ _____ Other _____
- \$ _____ **TOTAL**

Plaintiff awarded nothing

Defendant(s)

1. \$ _____ Court cost
 2. \$ _____ Damages
 3. \$ _____ Attorney fees
 4. \$ _____ Other: _____
- \$ _____ **TOTAL**

Defendant awarded nothing

With interest at the rate of _____% per annum from the date of judgment until paid in full.

A Writ of Restitution (order to vacate rental) shall be granted upon request of the Plaintiff on:

Date: _____ Time: _____
(No sooner than five (5) calendar days after date of judgment)

The court finds that the defendant has committed a material and irreparable breach, in violation of A.R.S. §33-1368A, and a Writ of Restitution (order to vacate rental) shall be granted on:

Date: _____ Time: _____
(No sooner than 12 - 24 hours from the time of judgment)

WARNING: After service of the Writ of Restitution (order to vacate rental), if you remain on or return unlawfully to the rental, you will have committed criminal trespass in the third degree.

IT IS ORDERED dismissing this case with prejudice without prejudice

Date: _____ Signature: _____
Justice of the Peace

I CERTIFY that I delivered/mailed a copy of this document to:

Plaintiff at the above address Plaintiff's attorney Defendant at the above address

Date: _____ By: _____
Clerk

**Notice of Health and Safety Violation(s)
5 Day Notice to Move**

() _____ - _____
Tenant(s) Name / Address / Phone

() _____ - _____
Landlord(s) or Agent's Name/ Address / Phone

Notice Date: _____

You have violated your rental agreement. The following is what happened, where it happened and when. Attach additional sheet(s) if needed. _____

Your landlord may file an eviction action asking the judge to order you to move unless you do one of the following:

1. Fix the violation(s) within 5 calendar days of receiving* of this notice.
2. Move out of the rental and **return the keys** to the landlord within 5 calendar days of receiving* this notice.
3. Contact the landlord and settle this matter. It is best to get this agreement in writing signed by both you and the landlord.

**If this notice was hand-delivered, you have 5 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 5 calendar days to act from the date you signed the postal service green card or 10 calendar days from the date the envelope was post-marked, whichever comes first.*

If you do not fix the violation(s), move out of the rental and return the keys, or settle this matter (it is best to get this agreement in writing), the landlord may file an eviction action. If an eviction is filed, you have the right to appear in court and dispute the eviction action. After a hearing, the judge will decide if you have to move or can remain in the rental. If a judgment is entered against you, you may remain in the rental property only if the landlord agrees in writing to let you stay.

WARNING: If there is **another or similar violation** during the rest of the rental agreement, your landlord may give you a notice requiring you to move within 10 calendar days. If you do not move, the landlord may file an eviction action.

Date: _____ Signature: _____
[] Landlord [] Agent

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____

**Notice for Failure to Pay Rent
5 Day Notice to Move**

() _____ - _____
Tenant(s) Name / Address / Phone

() _____ - _____
Landlord(s) or Agent's Name/ Address / Phone

Notice Date: _____

You have not paid your rent. You owe the following rent:

Total owed \$ _____ **as of this date:** _____. *If late fees are allowed in the rental agreement, this amount will increase by \$_____ each day the rent is not paid.*

The total includes:

A. Rent \$ _____

1. Current month/week \$ _____
2. Prior month \$ _____
3. Other \$ _____ why _____ . (Must be listed in rental agreement.)

B. Late Fees (if allowed in rental agreement) are \$ _____ **per day for** _____ **days, which is a total of \$** _____ **as of the date of this notice.**

Your landlord may file an eviction action asking the judge to order you to move unless you do one of the following:

1. Pay the total owed within 5 calendar days of receiving* this notice.
2. Move out of the rental and **return the keys** to the landlord within 5 calendar days of receiving* this notice. (You may still be responsible for the total owed.)
3. Contact the landlord and settle this matter. It is best to get this agreement in writing signed by both you and the landlord.

**If this notice was hand-delivered, you have 5 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 5 calendar days to act from the date you signed the postal service green card or 10 calendar days from the date the envelope was post-marked, whichever comes first.*

If you do not pay the amount owed, move out of the rental and return the keys, or settle this matter (it is best to get this agreement in writing), the landlord may file an eviction action. If an eviction is filed, you have the right to appear in court and dispute the eviction action. The judge will decide if you have to move or can remain in the rental. If a judgment is entered against you, you may remain in the rental property only if the landlord agrees in writing to let you stay.

Date: _____ Signature: _____
[] Landlord [] Agent

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____

() - _____
Tenant(s) name/address/phone

() - _____
Landlord(s) or Agent name/address/phone

Notice Date: _____

You have violated your rental agreement. The following is what happened, where it happened and when.
Attach additional sheet(s) if needed.

Your landlord may file an eviction action asking the judge to order you to move unless you do one of the following:

1. Fix the violation(s) within 10 calendar days of receiving* this notice.
2. Move out of the rental and **return the keys** to the landlord within 10 calendar days of receiving this notice.
3. Contact the landlord and settle this matter. It is best to get this agreement in writing signed by both you and the landlord.

**If this notice was hand-delivered, you have 10 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 10 calendar days to act from the date you signed the postal service green card or 15 calendar days from the date the envelope was post-marked, whichever comes first.*

If you do not fix the violation(s), move out of the rental and return the keys, or settle this matter (it is best to get this agreement in writing), the landlord may file an eviction action. If an eviction is filed, you have the right to appear in court and dispute the eviction action. After a hearing, the judge will decide if you have to move or can remain in the rental. If a judgment is entered against you, you may remain in the rental property only if the landlord agrees in writing to let you stay.

WARNING: If there is **another or similar violation** during the rest of the rental agreement, your landlord may give you a notice requiring you to move within 10 calendar days. If you do not move, the landlord may file an eviction action.

Date: _____ Signature: _____
[] Landlord [] Agent

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt#): _____

() _____ - _____
Tenant(s) name/address/phone

() _____ - _____
Landlord(s) or Agent name/address/phone

Notice Date: _____

You have violated your rental agreement again. **This violation cannot be fixed. Your landlord wants you to move out now and return the keys within 10 calendar days.**

The first violation was on this date _____. Attached is a copy of the first notice. The second same or similar violation was on this date _____.

This is what happened, when it happened and where it happened (Attach additional sheet(s) if needed):

Your landlord is ending your rental agreement and your right to live in the property.

If you do not move out of the rental and return the keys within 10 calendar days of receiving* this notice, your landlord may file an eviction action against you. If an eviction is filed, you have the right to appear in court and dispute the eviction action. After a hearing, the judge will decide if you have to move or if you can remain in the rental. If a judgment is entered against you, you may remain in the rental property only if the landlord agrees in writing to let you stay.

**If this notice was hand-delivered, you have 10 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 10 calendar days to act from the date you signed the postal service green card or 15 calendar days from the date the envelope was post-marked, whichever comes first.*

Date: _____ Signature: _____
[] Landlord [] Agent

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____

() _____ - _____
Tenant(s) name/address/phone

() _____ - _____
Landlord(s) or Agent name/address/phone

Notice Date: _____

You have violated your rental agreement. **The violation(s) cannot be fixed. Your landlord wants you to move out now and return the keys immediately.** The following is what happened, where it happened and when. Attach additional sheet(s) if needed.

_____.

An eviction action may be or has been filed against you. If an eviction action has been filed, you have the right to appear in court to dispute the eviction action. After a hearing, the judge will decide if you have to move or if you can stay in the rental. If a judgment is entered against you, a Writ of Restitution (a court order to have you removed from the rental) may be issued between 12-24 hours from the date a judgment is signed.

Date: _____ Signature: _____

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____

Gerald A. Williams
Arizona Bar No. 018947
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85301

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No. R-16-0040
PETITION TO AMEND)	
RULES 5(a), 5(b)(6), 5(b)(7) and	)	Objection to Proposed Rule
Add Rules 13(h) and 20 of the	)	Changes, to Proposed Mandatory
RULES OF PROCEDURE FOR	)	Summons and Complaint, to
EVICTION ACTIONS	)	Proposed Mandatory Notice
	)	Forms, and Suggested
	)	Alternative Language for Forms

BACKGROUND

The author of this pleading is a justice of the peace in Maricopa County. He has served on three rule writing committees, the State Bar’s Civil Jury Instruction Committee, and knows the level of effort and compromise that goes into producing the type of work product that has been completed; but he has significant and serious concerns about what has been proposed in the petition, especially the proposed mandatory eviction forms. They were not recently circulated among the justices of the peace and he did not see the proposed forms in final form until the week before this petition was filed. Concerns with the proposed forms were muted somewhat based on a belief that they were going to be optional rather than mandatory.

Some of the numerous problems with the forms will be detailed in this pleading. At a minimum, please do not force justice courts to use a two page judgment form, with check off boxes for items that appear in perhaps one out of every five-hundred cases (e.g. counterclaims, non-waiver agreements). In addition, the notice forms should be in the form of a cure notice from a landlord to a tenant. Instead, the proposed forms contain both cure notice language and also third person language, almost as if it was coming from a court order. The proposed notice forms are significantly more wordy than the forms currently on the Maricopa County Justice Courts' web page and the proposed notice forms are also truly confusing. In contrast, some of the proposals in the petition, especially a requirement that the complaint identify whether the case involves government subsidized housing, are genuinely good ideas.

I.

MANDATING SPECIFIC FORMS FOR NOTICES, BUT ESPECIALLY FOR COMPLAINTS, IS UNNECESSARILY RESTRICTIVE AND WILL GENERATE TENUOUS PROCEDURAL DUE PROCESS ARGUMENTS

While a mandatory form for a summons is often appropriate,¹ requiring landlord attorneys to file their complaints only on a court approved

¹ JCRCP 112(b); JCRCP, Appendix I.

form is unnecessarily restrictive and arguably insulting. There is certainly no proposal that attorneys representing tenants be restricted either to a court approved answer form or to a court approved counterclaim form. If the complaint complies with the numerous requirements of the applicable statutes and rules,² then it should be legally sufficient.

It is also somewhat ridiculous to require landlords and attorneys representing landlords to use a complaint form containing language for causes of action that they are not even alleging, only to leave those portions of the complaint form blank. Even so, a larger problem concerns potential remedies if a landlord used a notice form that contains substantially similar but not identical language.

If the required forms, especially in their current form, are made mandatory, then it will provide a basis for tenants to claim that their case should be dismissed simply because the form used in their case does not exactly match the form required by the Administrative Office of the Courts. Doing so is contrary to modern notice pleading requirements and to generally established principles of law. Procedural due process requires simply that a party have a meaningful opportunity to be heard, at a

² RPEA 5(b), 5(c) & 5(d).

meaningful time in the process, and in a meaningful manner.³ If the proposed mandatory notice forms are adopted without any opportunity for flexibility, then it would be possible for a tenant to argue that their case should be dismissed even though the landlord complied with the requirements of the statutes, any case law, and the Rules of Procedure for Eviction Actions (RPEA), and even though the tenant clearly understood what he or she needed to do to cure the alleged breach of the lease.⁴

American courts once followed a code pleading format that drew distinctions between merely alleging that someone is “entitled to possession of specific property” (which was inadequate) and alleging that someone is the owner and is entitled to possession (which was sufficient).⁵ We do not need to return to a system that values format over substance, especially since it is already clear that only a proper plaintiff can prevail in an eviction action⁶ and since it is already clear that only the property owner or his or her attorney can appear in court on behalf of the plaintiff.⁷ In short, proposed

³ *Comeau v. Ariz. St. Bd. of Dental Examiners*, 196 Ariz. 102, 107-108, 993 P.2d 1066, 1071-1072 (Ct. App. 1999)(Investigative interview was adequate).

⁴ Judges may hear similar arguments to the following: “But your honor, clearly the notice was defective because it only advised my client once that he should get any settlement agreement with his landlord in writing and the rules now require that a notice form be used that tells him that twice.”

⁵ Clark, *The Complaint in Code Pleading*, 35 Yale L.J. 259, 262 (1926).

⁶ RPEA 5(b)(1).

⁷ RPEA 11(a)(1).

Rule 20 should be modified to read simply, “When applicable,⁸ landlords should use forms that are substantially similar to the notice forms in the appendix to these rules.”

III.

PROPOSED LANGUAGE IN THE NOTICE FORMS MISLEADS TENANTS AS TO WHAT WILL HAPPEN IN COURT AND AS TO WHETHER THEY CAN REQUEST A COURT ORDER FOR MORE TIME TO CURE ANY ALLEGED BREACH OF THE LEASE

The proposed forms share some of the same common problems. For example, nearly every proposed form instructs the tenant to get any settlement in writing, not just once, but twice. This unnecessary duplication adds little, if any, value. However, there is a problem that goes well beyond elements of style.

Nearly every proposed form contains this problematic sentence: “After a hearing, the judge will decide if you have to move or can remain in the rental.” There are two major errors in that sentence.

Hearing is a term of art that involves some type of litigated procedure where a judicial officer makes either a factual or legal determination (or both) after hearing evidence (usually in the form of witness testimony). In

⁸ The “when applicable” language is designed to avoid a need to create an additional set of official forms for the Arizona Mobile Home Parks Residential Landlord and Tenant Act. A.R.S. §§ 33-1401 - 33-1501. It also avoids needing to create either a set of forms or additional language for month-to-month leases concerning a landlord’s duty to mitigate damages.

contrast, eviction actions are summary proceedings. If the tenant cannot articulate a legal defense to the landlord's allegations, then a judgment will be entered in favor of the landlord.⁹ If the tenant is able to do so, then the case is immediately set for a trial, but no hearing will occur.¹⁰ In addition to misrepresenting the law, the proposed sentence inaccurately describes the judge's role.

If a tenant is in a courtroom because of an eviction action, the judge will not "decide if [the tenant has] to move or can remain in the" residence. In reality, the judge will decide whether the landlord has met his or her burden of proof.

At least weekly if not daily, tenants appear in justice courts in Maricopa County for eviction actions with a false hope that the judge will give them additional time to pay their rent based on a sudden financial hardship. There is no legal authority to do so; but the proposed language at least infers that there is and sets judges up to fail. Tenants who appear with that false hope will leave thinking that the judge, and perhaps the judicial branch as a whole, did not care about them. A judge politely explaining that

⁹ RPEA 11(b)(1).

¹⁰ The only time a hearing is held in connection with eviction actions is if there is an issue concerning the writ of restitution. RPEA 14(b)(2). The North Valley Justice Court has set perhaps two since the rules were adopted in 2009.

the law is different than what is suggested on the mandatory form will appear nonsensical. Any explanation at that point will also be largely irrelevant to the emotions tenants feel as they leave the courtroom.

IV.

THE PROPOSED FIVE-DAY NOTICE FOR NONPAYMENT OF RENT IS IN A CONFUSING FORMAT AND CONTAINS CONFUSING LANGUAGE

Prior to filing an eviction action for nonpayment of rent, the landlord must give the tenant a five-day cure notice. This notice must: (1) state the amount of any unpaid rent and any other amount due; (2) notify the tenant of the landlord's intent to terminate the lease if the amount due is not received within five days after the notice is given to the tenant, and (3) inform the tenant that if the amount due is not paid, that the tenant must then surrender possession of the residence.¹¹ On day six, the landlord can file suit.

The five day notice for nonpayment of rent and the ten day non-compliance notice are by far the most frequent types of notice forms used in residential landlord tenant actions. Suggested alternative forms for both of these documents are attached to this pleading.

¹¹ A.R.S. § 33-1368(B). The sufficiency of the notice is a question of law. If the allegation alleges non-payment of rent for a space in a mobile home park, then the landlord must give the tenant a seven-day notice. *See generally*, Williams, *Representing Residential Tenants in Eviction Actions*, 28 Ariz. Attorney 12 (Nov. 2011).

There are numerous problems with the proposed five day notice. The entire format of the document invites the reader to set it aside and to read it later. It contains random parenthetical commentary (e.g. “Must be listed in rental agreement” or “if allowed in rental agreement”). There is also no information presented stating that the security deposit cannot be used to pay the rent, which is one of the more common misunderstandings frequently expressed by tenants. In addition, the proposed form refers the tenant to five sources of reference material, none of which is the RPEA.

CONCLUSION

Access to justice issues for tenants often have little to do with tenants not understanding why they are facing eviction. Instead, they are more likely to concern either repair and maintenance issues or how to get their security deposit back. (Sample letters and forms for those issues are also on our justice court web page.)¹² For example, they know that they have not paid their rent, but incorrectly believe that they can “rent strike” by withholding rent until their landlord makes the repair.

As a matter of public policy, it is a mistake to use a set of mandatory forms to change the law in an effort to make it more difficult for landlords to

¹² In addition, our bench Best Practices Committee recently requested input on draft sample complaint forms that can be given to tenants who wish to file a cause of action against their landlord under A.R.S. § 33-1367, either for an unlawful ouster or for a failure to supply essential services.

evict tenants. It also harms the target population because if you make it more difficult to evict tenants who are not complying with the terms of their lease, then landlords will be forced to raise the rent on the tenants who are. Phoenix and Tucson currently have reasonably affordable housing when compared to similar cities around the United States.¹³ Perhaps one of the reasons for that is that Arizona has a set of statutes and rules governing residential landlord and tenant matters that provide clear and quick remedies for an obvious breach of a lease. If that system is going to be significantly changed, then those changes should come either in the form of statutory changes or in the form of deliberate substantive changes to the RPEA. The RPEA uses clear and simple language that is understandable to a self represented litigant and its' provisions are unambiguous. There is no need for some type of implied repeal of them or implied amendment to them.

While the objectives behind the proposed forms are noble, the actual language of the forms must be, and can easily be, improved.

¹³ One survey of apartment rent found rent in Phoenix to be less expensive than several major cities (e.g. Austin, Baltimore, Charlotte, Dallas, Denver, Indianapolis, Nashville, Portland, Seattle) and found rent in Tucson to be equally less expensive than other arguably comparable locations (e.g. Albuquerque, Columbus, El Paso, Las Vegas, Louisville, Memphis, Milwaukee, San Antonio). DePietro, *Here's What the Typical One-Bedroom Apartment Costs in 50 U.S. Cities*, Business Insider (Jun. 17, 2016).

I respectfully request that this Court either reject this petition or remand it to a committee where all stakeholders have equal representation and where consensus language will be achieved.

RESPECTFULLY SUBMITTED, this 5th day of August 2016.

/s/ Gerald A. Williams
GERALD A. WILLIAMS
Justice of the Peace
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85374

Copy Mailed To:
Hon. Lawrence Winthrop
Arizona Court of Appeals
1501 West Washington, Suite 401
Phoenix, AZ 85007

**NOTICE OF INTENT TO END LEASE
FOR FAILURE TO PAY RENT
(Five Day Notice)**

[Date]

To: [Tenant's Name and Address]
And Any and All Occupants

You have not paid your rent on time. You owe the following amount:

This Month's Rent: _____
Late Fees: _____
Additional Amount: _____

Total as of the date of this notice: \$ _____

The additional amount is for _____. The late fees are increasing at a rate of \$_____ per day.

Your landlord is seriously considering filing an eviction action against you but would like to give you a chance to solve this problem without the need for anyone to go to court. Please contact us immediately. You will need to make arrangements to pay the money you owe. If you cannot do so, then we demand that you move out, and that you return the keys to the residence, five calendar days from the day you received this notice.

After you move out (either now or at the end of your lease), your landlord may apply some or all of your security deposit toward any unpaid rent, but your security deposit will not be used to pay your rent now.

Even if you move out, you are still responsible for all of the rent that is due until the property can be rented again to a new tenant. You may also be required to refund any discount you received (called a rental concession) and may be required to pay other charges stated in the lease.

If your landlord files an eviction action in court against you, then you may also be required to pay court costs and attorney's fees. If your landlord files an eviction case against you, as part of that case, you will receive a handout that explains your rights and obligations.

*[Landlord or Property Manager's Name]
[Address and Telephone Number]*

Additional Information: The law for these kind of cases can be found in Arizona Revised Statutes sections 33-1368(B) and 12-1171 and in the in the Arizona Rules of Procedure for Eviction Actions. Additional help may be available at [*insert local or state bar web pages or lawyer referral services*].

This notice was served by: <input type="checkbox"/> Hand delivery to by giving it to (name): _____ who is a <input type="checkbox"/> tenant <input type="checkbox"/> occupant <input type="checkbox"/> By certified mail
--

**NOTICE OF INTENT TO END LEASE
(Ten Day Notice)**

[Date]

To: [Tenant's Name and Address]
And Any and All Occupants

You are not following the terms in your lease. If you do not fix the following problems within ten days, then your lease will end. The problems are [*unauthorized pet, unauthorized occupant, too much clutter on balcony*] _____

Your landlord is seriously considering filing an eviction action against you but would like to give you a chance to solve this problem without the need for anyone to go to court. Please contact us immediately.

If this problem, or something similar, happens again, then you will receive a second notice and, at that point, your landlord can legally file an eviction action against you.

If your landlord files an eviction action in court against you, then you may also be required to pay court costs and attorney's fees. If your landlord files an eviction case against you, as part of that case, you will receive a handout that explains your rights and obligations.

*[Landlord or Property Manager's Name]
[Address and Telephone Number]*

Additional Information: The law for these kind of cases can be found in Arizona Revised Statutes sections 33-1368(A) and 12-1171 and in the in the Arizona Rules of Procedure for Eviction Actions. Additional help may be available at [*insert local or state bar web pages or lawyer referral services*].

This notice was served by: <input type="checkbox"/> Hand delivery to by giving it to (<i>name</i>): _____ who is a <input type="checkbox"/> tenant <input type="checkbox"/> occupant <input type="checkbox"/> By certified mail

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: August 31, 2016	This agenda item is for: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: PROPOSED RULE CHANGE PETITION REGARDING STIPULATED JUDGMENTS IN EVICTION ACTIONS
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Presenter(s): Judge Lawrence Winthrop, Court of Appeals Division 1 and Arizona Commission on Access to Justice Chair

Discussion: The potential issues with stipulated judgments in eviction cases were discussed at a previous Commission meeting with Pamela Bridge from CLS. The legal services organizations have since been working on a proposed rule change, which has been discussed with the SRL-Limited Jurisdiction Court Workgroup and further amended by a sub-workgroup.

Recommended Action or Request (if any): To move the Committee on Limited Jurisdiction Courts to support the proposed rule change regarding stipulated judgments in eviction actions.

Proposed Amended Rule

RULES OF PROCEDURE FOR EVICTION ACTIONS

Rule 13. Entry of Judgment and Relief Granted

b. Forms of Judgment.

(4) Stipulated Judgments. The court may accept a stipulated judgment, ~~but~~ only ~~if~~ when the court finds all the following:

- A. Both parties or their attorneys personally appear before the court;
- B. The court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning:

~~Read carefully!~~ **WARNING!** By signing below, you are consenting to the terms of a judgment against you and the landlord will now be able to evict you. ~~You may be evicted as a result of this judgment~~ have your wages garnished, the judgment may appear on your credit report, and you may NOT stay at the rental property, even if the amount of the judgment is paid in full, ~~without your landlord's express consent~~ unless you get the agreement in writing or get a new written rental agreement with your landlord.

- C. The court determines that the parties understand the terms in the document they signed and parties have initialed the warning language in (b).

The amounts awarded in the judgment must be consistent with the amounts sought in the complaint, although the judgment may also include additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint, if appropriate. Notwithstanding Rule 13(c)(2), if all the requirements for a stipulated judgment are met, including if all parties or their attorneys personally appear before the court and the addition is reasonable, the court may award an amount for damages or categories of relief not specifically stated in the complaint. [Note: We did not discuss the last paragraph]

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: August 31, 2016	This agenda item is for: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: INFORMATION ON COURT SECURITY STANDARDS COMMITTEE PROPOSED SECURITY STANDARDS AND SUPPORTING RECOMMENDATIONS.
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Presenter(s): Jennifer Albright for CSSC chair, Marcus Reinkensmeyer

Discussion: Discussion of proposed court security standards and other recommendations of the Court Security Standards Committee which will be presented to the AJC upon completion of the final report of the CSSC.

Recommended Action or Request (if any): A motion to support the concept of court security standards and the additional recommendations to support their implementation and continuous improvement of court security

Additional:

Seek 15 minutes, is LJC agenda allows.
PowerPoint presentation will be provided.

COURT SECURITY STANDARDS COMMITTEE

Ensuring Secure, Open, Publicly Accessible Courts

Committee Charge: AO 2015-104

- (a) develop and conduct a survey of court security measures in Arizona,
- (b) develop recommendations on standards for courthouse and courtroom security,
- (c) develop recommendations on security officer training, and
- (d) submit a final report summarizing the Committee's work and recommendations by September 30, 2016

Committee Membership & NCSC Services

Membership:

Judges, court administrators, and deputy clerks from
metropolitan and rural courts

limited jurisdiction, superior, and juvenile courts

Sheriffs, court security officers, and security directors and managers

Representative of the State Bar of Arizona

NCSC consultants Timothy Fautsko, Steven Berson, & Kent Kelley

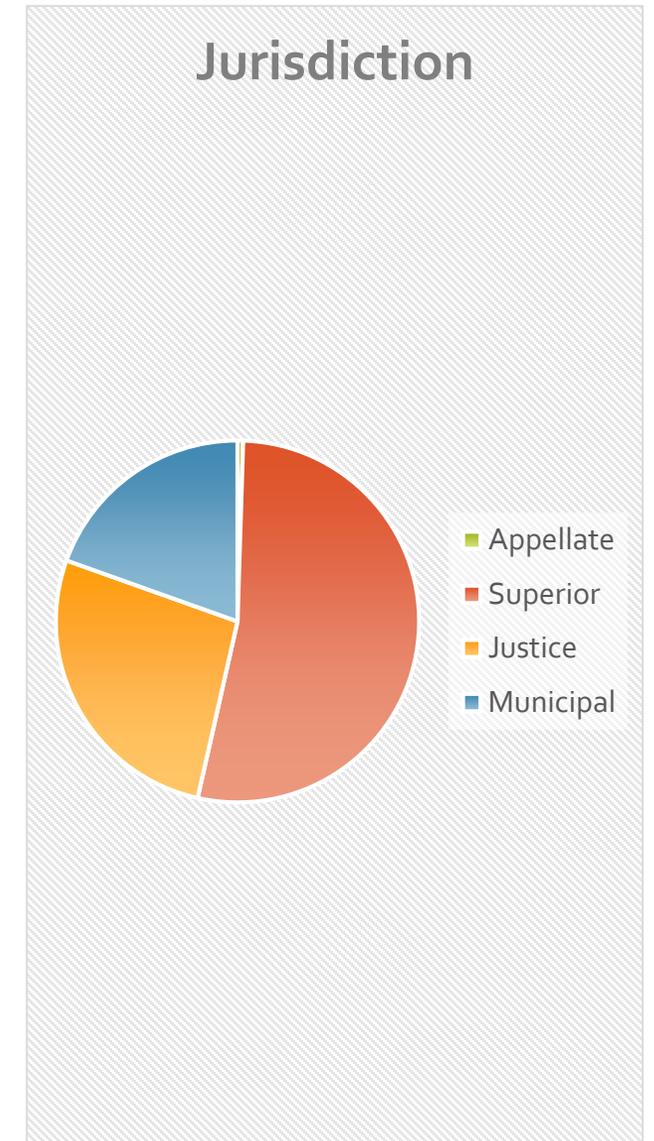
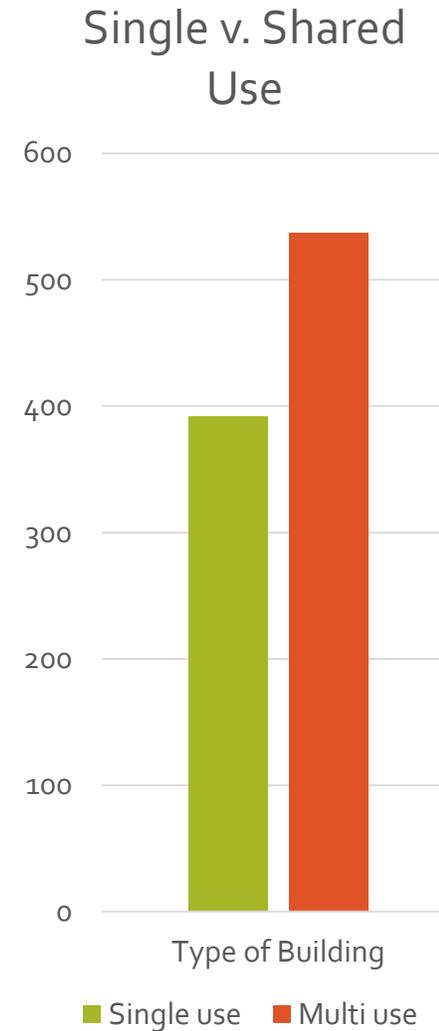
Regular guest from AOC Education Services Division

Court Security Survey

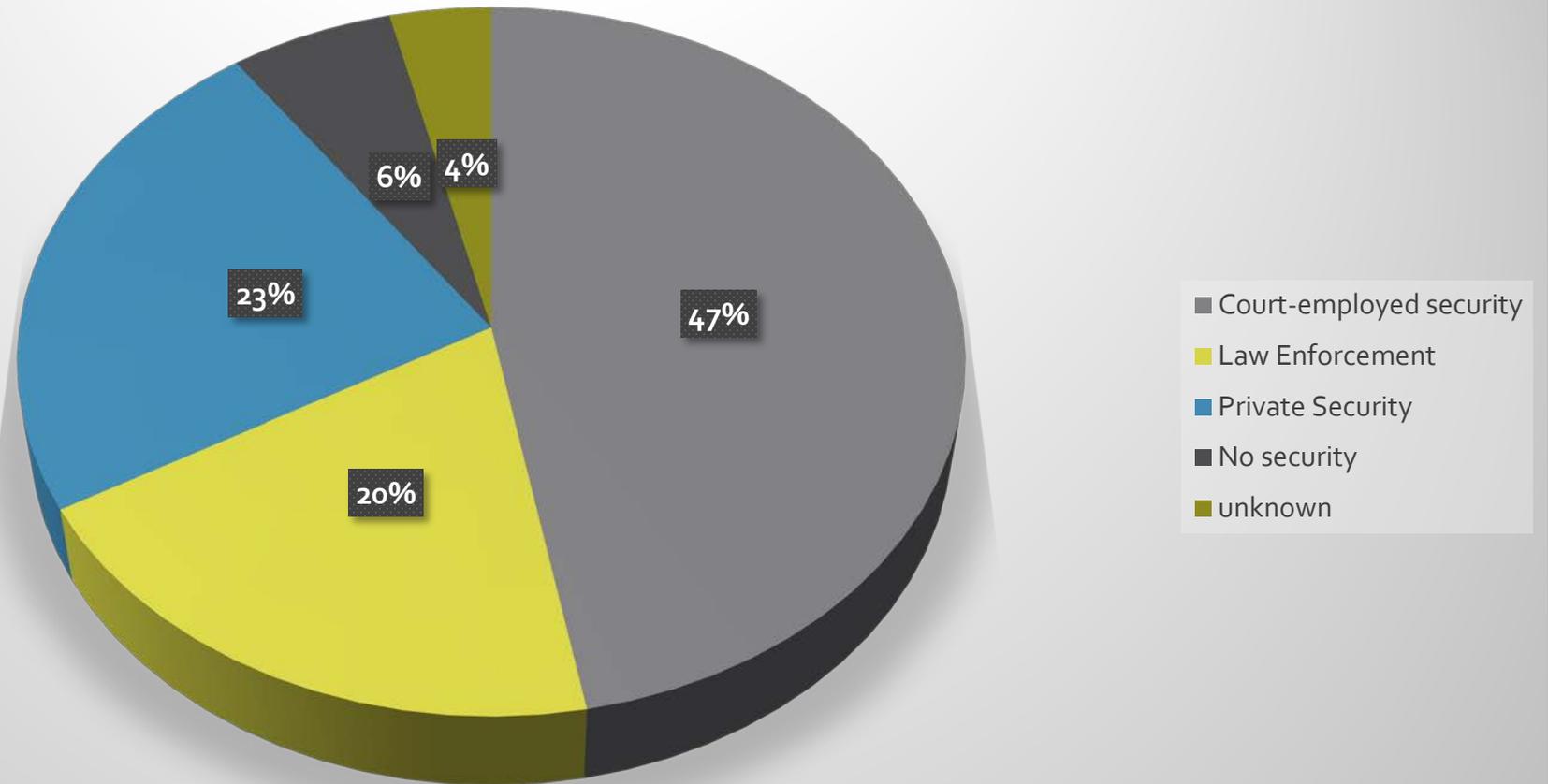
929 partial responses and 830 completed surveys

Judges and other judicial officers, clerks of court and staff, court administrators, chief probation officers

Every county provided sufficient responses for data to be representative

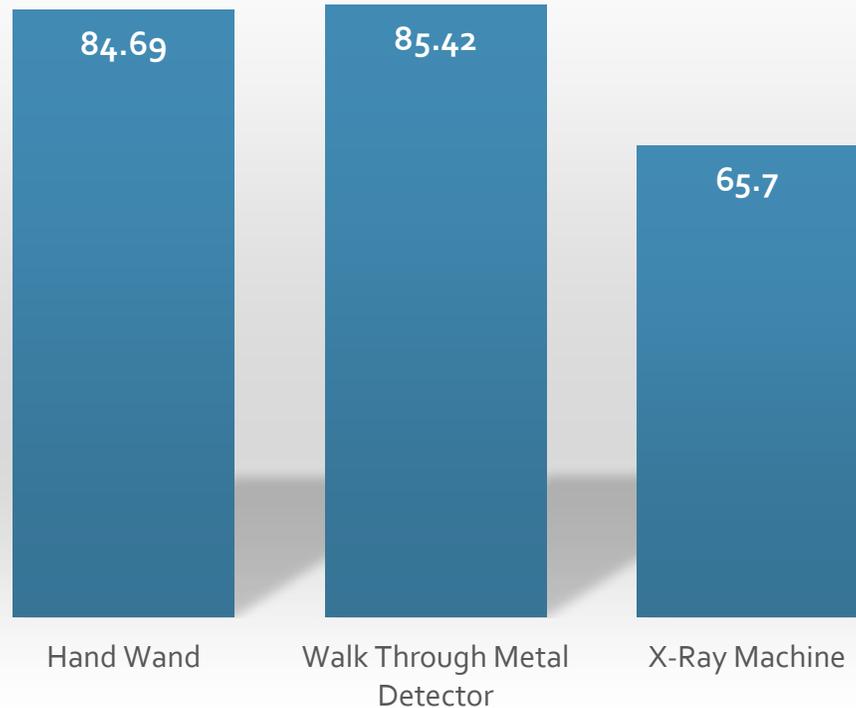


Who Provides Security

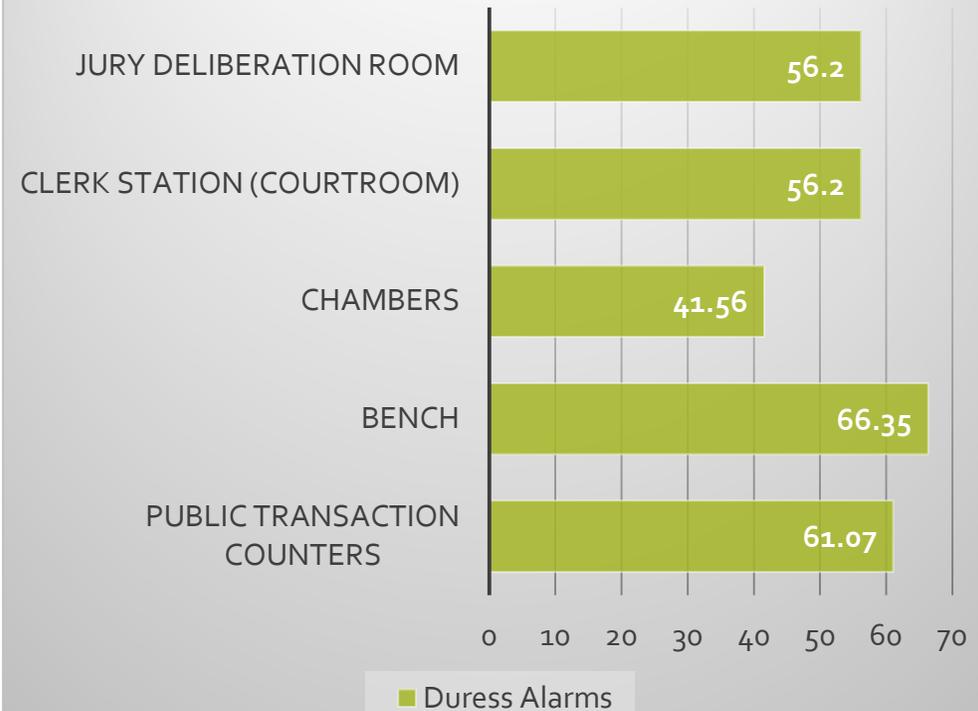


Screening & Duress Alarms

Percentage of Respondents Working in Courts with Screening Devices for Public



Percentage of Respondents Working in Courts with Duress Alarms



The Proposed Security Standards

There are 30 proposed security standards that are grouped into the following categories:

- Governance and Administration
- Entry Screening
- In-custody Defendants
- Facilities, Alarms, and Equipment
- Training

Local & County Security Committees

- Risk assessment
- Policies & Procedures
- Deterrence
- Debriefing of security incidents and threats

Court Operations

Facilities & Equipment

Training & Communication

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Continuous Improvement Process

Governance & Administration

- Court Security and Emergency preparedness Committees
 - County-wide security committee
 - Court building or court complex committee
- Court Security Manuals
- Court Security Self-Assessments
- Responding to Negative Events
- Incident & Threat Reporting
 - Real-time secure sharing of information about major security incidents
 - Annual reporting of incident and threat data



Entry Screening

- One main entrance for public, unless others are fully staff with full screening for prohibited items
- Prohibited item policy, training on what prohibited items are; how to identify
- All visitors screened with at least a metal detector device
- All court buildings post signage that firearms are prohibited
- Random court employee screening
- Written policies on armed personnel for security purposes
 - Also policies on who can be armed for personal security pursuant to statute and Supreme Court and local court administrative orders



In-custody defendants

- ❑ Separate entrance for in-custody defendants

80.60% of survey respondents work in courts that already meet this standard

- ❑ In-custody persons transported and escorted at all times by trained personnel

Protocols for taking individuals into custody



Facilities, Alarms, & Equipment

- Duress alarms: public counters, bench, chambers, courtroom clerk station
 - Training on use; regular testing
- Locking protocols: courtrooms; jury deliberation rooms; data centers
- Courtroom sweeps: regularly conducted; training
- Public counter barriers
- Bullet resistant material in courtrooms
- Secured access to non-public areas
- Security cameras
- Exterior lighting
- Bollards or landscape to protect critical areas
- Window coverings



Training

- ✓ New Hire and Annual Training on Court Security
 - Judges and judicial officers, all other employees
 - Statewide and Location Specific
- ✓ In-Service Court Security Officer Training and Annual Training
 - Robust training program covering basic security principals, incident & threat reporting, use of force, firearms training, equipment training, screening, critical incidents
- ✓ Private Security meet same standards as court-employed security officers
- ✓ Task specific training:
 - duress alarm testing and responses; courtroom sweeps; identification of and managing prohibited items

Related Recommendations

- 3 year implementation period
- Establish statewide court security fund for one-time outlays for security equipment and security system improvements
- State level AOC staff support for coordination of court security standard implementation, assessments, oversight , and compliance
- Standing Committee on Court Security
- Creation of systems for assessing implementation and compliance
- Creation of court security training programs

Proposed Funding Model

State Funding

- Training

For One Time Outlays to Supplement Local Funding

- Security Equipment
- Security System Improvements

Local Funding

- Security Personnel
- Court Operations
- Facilities

Questions & Comments

Please contact

Jennifer R. Albright at jalbright@courts.az.gov

602-452-3453

or

Marcus Reinkensmeyer at mreinkensmeyer@courts.az.gov

602-452-3359

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: August 31, 2016	This agenda item is for: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: COURT INTERPRETERS
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Presenter(s): David Svoboda, AOC

Discussion: Judge Elizabeth Finn asked in an email for information regarding reducing interpretation costs for lesser used languages. Mr. Svoboda will provide an update regarding the Court Interpreter Program Advisory Committee (CIPAC). His goal will be to hear more from LJC so that the issues can be put to CIPAC for recommendations at their September meeting.

Recommended Action or Request (if any): Move to forward LJC concerns about court interpreting to CIPAC for recommendations.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: August 31, 2016	This agenda item is for: [X] Formal Action/Request [] Information Only [] Other	Subject: PROPOSED CHANGES TO ACJA SECTION 1-507
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Presenter(s): Stewart Bruner, COT Staff

Discussion: The Technical Advisory Council (TAC), a standing subcommittee of Commission on Technology (COT) recommends specific standards and technologies to carry out statewide policies and priorities for automation and technology. In that role, TAC members updated language in the code section covering protection of electronic records in paperless court operations to allow storage arrays, virtual servers having failover implemented, and virtual tape technology rather than actual tapes for tertiary copies. While those changes were being discussed, several members recommended that certification requirements for technical resources operating the server and database environments that store the electronic records be made optional and that formal education and/or in-house skills assessments be authorized in lieu of certifications for Windows Server and SQL. Wording changes in both subject areas have been reviewed by COT and recommended to AJC for approval. The revision appears on the code section web forum where comments are being solicited.

Recommended Action or Request (if any): The courts' CIO is aware that certification has shortcomings of but believes it to still be a valid and vital requirement. He is working to make certified, third-party resources available to local courts via statewide contract, as is done for OnBase support. The alternative to certification proposed places the responsibility for determining the technical abilities of information technology specialists on the shoulders of the judge or court administrator. Removing certification is not in keeping with the high value of the court case records that will be lost when an uninformed or incorrect technical decision is made. He asks that the wording changes for storage arrays, virtual servers, and virtual tape technology be approved while the wording changes for removal of mandatory certification be rejected.

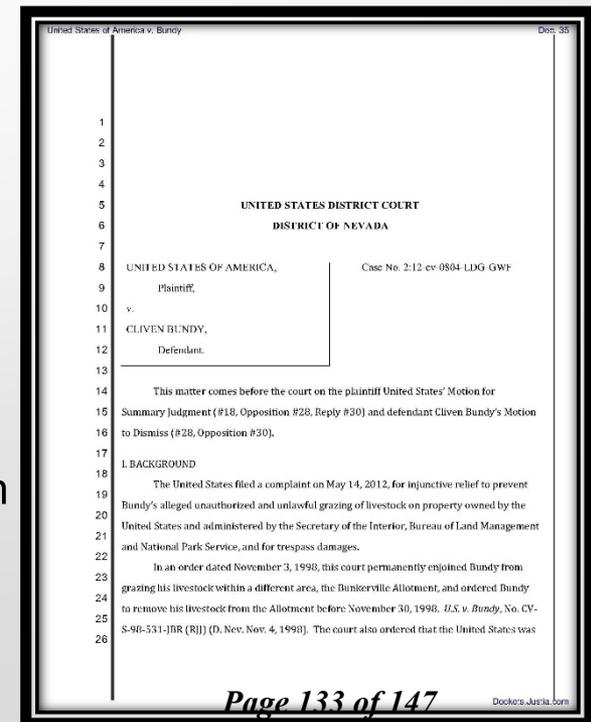


ACJA 1-507 2016 Amendments

Protection of Electronic Records in Paperless Court
Operations (*and e-Filing*)

Paperless Court Operations

- Where electronic record is THE court record
- Originally requirements to enable destruction of paper following scanning
- Now also includes e-filing, by implication
 - No paper safety net exists in either situation



Two Main Areas of Change

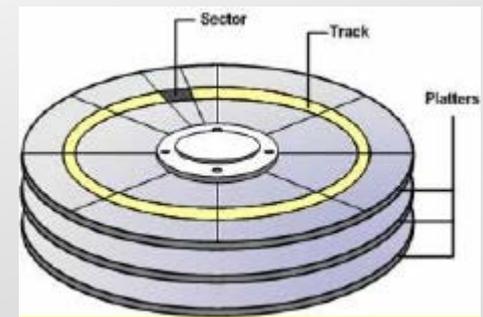


1. Technical requirements update to allow for storage arrays, VMs, and non-tape backups for tertiary copy, including (potentially) cloud storage
2. Reduced certification requirements for system administrators operating courts' digital record-keeping environments
 - "Equivalent measures of capability" substituted for the formal Microsoft certifications required in the current language

Also updated paragraph #s in references (purely editorial)

Primary Storage Change

- Proposed:
 - Two physically separate disk storage arrays configured to assure the failure of a single component of the array will not impact the integrity of the data
 - Storage attached to servers having redundant power supplies, network interface cards, and controller cards or to virtual servers having automatic failover hosts
- Was:
 - Two physically separate, RAID Level 5, disk drives
 - Dedicated physical servers required, not virtual



Tertiary Backups Change



- Proposed:
 - Tertiary copy shall only be accessed through a gateway technology that prevents direct access to the storage media from the system(s) being backed up
- Was:
 - Tertiary copy remains disconnected from the network unless actively creating a backup or restoring a backup using automated backup software



Certification Change

- Was

- Microsoft Certified Systems Administrator (MCSA)
- Microsoft Certified IT Professional (\geq SQL2005) now called “Certified Database Administrator” (MCDBA)

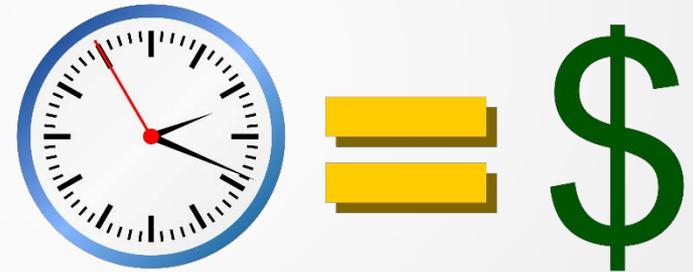


- Proposed

- Courts may elect to administer supplemental, in-house skills assessments in lieu of requiring formal Microsoft certifications
- Courts may allow substitution of professional experience and/or formal education for Microsoft certifications



Certification Details



- MCSA for server admins
 - Self-paced learning -- 3 exams required
 - Usually takes several months since students are employed full time
 - Each exam costs ~\$150, \$450 total

- MCDBA for DBAs
 - Self-paced learning -- 4 exams (3 core, 1 elective)
 - Usually takes 3 to 6 months
 - Each MCDBA exam costs ~\$150, \$600 total



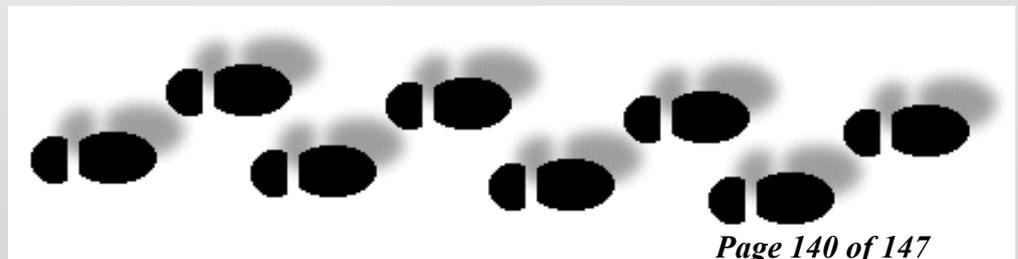
Considerations



- Primary storage and tertiary copy updates make sense
- Removal of formal certification requirement leaves no minimum standards in place
 - Puts business leaders in role of technical certifiers
 - Affects the permanent records of the court
- COT favors certification, but rural representatives deem it “a bridge too far”
 - Certified employees harder to attract and keep
 - Is acceptable to use vendors or consultants on retainer
- State Archivist has concerns for protection levels

Next Steps

- Posted on ACJA Forum @ azcourts.gov/ACJA-Forum
 - Comments collected through August 12, 2016
- Rounding up prominent comments; looking for a motion
- Courts' CIO recommends all technical changes but no certification changes be approved
- Headed to AJC September 27 meeting
- Self-audit checklist wording will be changed, process remains the same



COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: August 31, 2016	This agenda item is for: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: PROPOSED PILOT NEW PROTECTIVE ORDER PETITION FORM
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Presenter(s): Hon. George T. Anagnost, Peoria Municipal Court

Discussion: Peoria will be before Committee on the Impact of Domestic Violence and the Courts (CIDVC) next month to obtain approval of a pilot project to use a revised Protective Order Petition Form. This form uses the existing form and essential wording but makes adjustments to the caption and format that improves the readability and clarity of the petition form.

The use of a pilot in one court, the Peoria Municipal Court, will assist CIDVC and all courts in consideration of an improved petition form statewide.

1. This form is universal and meets margins for both superior court and limited courts.
2. It maintains the current text, but uses a better descriptor for the current "THIS IS NOT AN ORDER" phrase, replacing it with a more understandable phrasing.
3. The caption areas are much larger improving readability and filling out by petitioners by hand, which is still the predominant practice. The court address and contact information is more readable. If completed by word processor, not by hand, nevertheless readability is improved.
4. The proposed form takes advantage of available space and is still a one-page document.
5. The proposed form is fully consistent with the recent initiative of the Arizona Supreme Court to identify and implement best practices for litigants and stakeholders.
6. Some 50,000 protective orders are issued in Arizona, a uniform, readable form is beneficial to petitioners, defendants, judges, law enforcement, and all other users.

Recommended Action or Request (if any): LJC to formally request use of this proposed Protective Order Petition form to CCDVC to be used in a pilot program by Peoria.

COURT NAME AZ Number Court Number Street Address City, Zip (Tel) _____ (Fax) _____	Case No. _____ PETITION FOR PROTECTIVE ORDER
	THIS IS NOT A COURT ORDER. NOTICE TO DEFENDANT AND LAW ENFORCEMENT: This petition contains Plaintiff's allegations and requests. The order or injunction issued by the court, not what is written in this petition, sets forth the actual terms and legal conditions.
Plaintiff Name: _____ Birth Date: _____ <input type="checkbox"/> Check here if workplace injunction Employer Name: _____ (Plaintiff signs as "Agent")	Defendant Name (first, middle initial, last): _____ Defendant Mailing Address: _____ _____ _____ Zip _____ Defendant Daytime Phone: _____

DIRECTIONS: Please PRINT all information. Read the Plaintiff's Guide Sheet before starting this form. The defendant will receive a copy of this petition when the order is served.

1. Party Relationship (Please check the one that most applies):

- Married (past or present)** **Living together (past or present)**
 One of us pregnant by other **Parent of a child in common**
 Romantic or sexual (past or present) **Dating (not romantic or sexual)**
 Related as parent, sister, brother, in-law, grandparent, grandchild
 Other: _____

2. If checked, there is a pending maternity, paternity, annulment, legal separation, dissolution, custody, parenting, or child support case, between plaintiff and defendant, in _____ Superior Court.

3. Have you or Defendant been charged or arrested for domestic violence or requested a protective order?
 Yes **No** **Not sure**
If "Yes" or "Not Sure", explain: _____

4. **Basis for requesting this order. This is what happened and approximately when. (Do not write on back or in the margin. Attach additional papers if necessary.)**

Approx. Date	Description

5. **These additional persons should also be on this protective order. Defendant should stay away from them because Defendant is also a danger to them:**

_____ Birth Date _____
 _____ Birth Date _____

6. **Defendant should be ordered to stay away from these locations at all times, even when Plaintiff or any protected persons are not actually present there:**

Home: _____

Workplace: _____

School / Other: _____

7. **If checked, order Defendant to take domestic violence counseling or other classes. (This can be ordered by the court only after a hearing of which Defendant had notice and an opportunity to participate.)**

8. **If checked, because of risk of increased harm, Defendant should not be allowed to possess firearms or ammunition while this order is in effect.**

9. **Other:** _____

Under penalty of perjury, I swear or affirm that the above statements are true and correct to the best of my knowledge, information, or belief. I ask for a protective order granting relief as allowed by law.

Plaintiff: _____

Attest: _____
Judicial Clerk/Notary

Date: _____

All Courts in Arizona/NCIC#/DPS#	Address	City, Arizona	Zip Code	Telephone Number
Plaintiff / Plaintiff Employer (Work Injunction ONLY) Birth Date: _____	Defendant _____ Address _____ City, State, Zip Code, Phone _____	Case No. _____ <div style="background-color: black; color: white; text-align: center; padding: 5px;">This is <u>not</u> a court order.</div> PETITION for <input type="checkbox"/> Order of Protection <input type="checkbox"/> Injunction Against Harassment <input type="checkbox"/> Workplace Injunction		
Agent's Name (Work Injunction ONLY)				

DIRECTIONS: Please read the Plaintiff's Guide Sheet before filling out this form.

- Defendant/Plaintiff Relationship: Married now or in the past Live together now or lived together in the past
 Child in common One of us pregnant by the other Related (parent, in-law, brother, sister or grandparent)
 Romantic or sexual relationship (current or previous) Dating but not a romantic or sexual relationship
 Other: _____
- If checked, there is a pending action involving maternity, paternity, annulment, legal separation, dissolution, custody, parenting time or support in _____ Superior Court,
 Case #: _____ (COUNTY).
- Have you or the Defendant been charged or arrested for domestic violence OR requested a protective order?
 Yes No Not sure
 If yes or not sure, explain: _____
- I need a court order because: (PRINT both the dates and a brief description of what happened.)

Tell the judge what happened and why you need this order. A copy of this petition is provided to the defendant when the order is served. (Do not write on back or in the margin. Attach additional paper if necessary.)

Dates	

Case No. _____

5. The following persons should also be on this Order. As stated in number 4, the Defendant is a danger to them:

_____	(__/__/__)	_____	(__/__/__)
	Birth Date		Birth Date
_____	(__/__/__)	_____	(__/__/__)
	Birth Date		Birth Date

6. Defendant should be ordered to stay away from these locations, at all times, even when I am not present:
- Home _____
 - Work _____
 - School/Others _____

7. If checked, because of the risk of harm, order the defendant NOT to possess firearms or ammunition.
8. If checked, order the Defendant to participate in domestic violence counseling or other counseling. This can be ordered only after a hearing of which Defendant had notice and an opportunity to participate.

9. Other: _____

Under penalty of perjury, I swear or affirm the above statements are true to the best of my knowledge, and I request an Order / Injunction granting relief as allowed by law.

Plaintiff

Attest: _____
Judicial Officer / Clerk / Notary Date

From: [Rollison, Sherri](#)
To: [Pickard, Susan](#)
Subject: pilot Petition for Protective Order form
Date: Tuesday, August 16, 2016 3:41:03 PM

**To: Susan Picard, Limited Jurisdiction
Committee
August 16, 2016**

The purpose of this email is to express a personal viewpoint on the agenda item regarding a “pilot Petition for Protective Order form” tentatively set for next week. I send this both as a pro tem judge in Peoria Municipal Court and as the Presiding Judge for Wickenburg Town Court. I have had years of experience dealing with protective orders, ex parte and contested hearings, and their enforcement of orders. I have looked over the proposed form as a possible pilot project.

Please accept this email as my support for this proposed Petition form. My observation is that this form is readable and understandable, and as such would be an improvement over the existing petition. Petitioners in Wickenburg fill out the Petition by hand and opening up the caption and the sequential paragraphs would no doubt facilitate the process.

Because the Petition itself still provides the same data and would be used in connection with the same Protective Order, there would be no negative impact on implementation of this proposed Petition.

**Thank you,
Hon. Sherri Rollison,
Wickenburg Town Court**

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: August 31, 2016	This agenda item is for: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: RULE 41, FORMS 2A & 2B RULES OF CRIMINAL PROCEDURE
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Presenter(s): Patrick Scott, Court Services Division, AOC

Discussion: Update on mandatory warrant forms approved by the Arizona Supreme Court

Recommended Action or Request (if any): Information Only