Task Force on Fair Justice for All

Meeting Agenda

May 20, 2016 - 10:30 a.m. to 3:30 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 101 ♦ Phoenix, Arizona

Fair Justice for All Task Force Webpage

Chair – Dave Byers Vice-Chair – Tom O'Connell

TIME	AGENDA ITEM	PRESENTER
10:30 a.m.	Welcome and opening remarks Approval of minutes from April 7-8, 2016 ☐ ***Formal Action/Request***	*Dave Byers, Chair* *Tom O'Connell, Vice-chair*
10:40 a.m.	Report on unique problems with municipal court population regarding fines, fees, and bail, and suggestions to alleviate these problems.	*Hon. Lilia Alvarez, Presiding Judge* *Guadalupe Municipal Court*
10:55 a.m.	Report on Rule 11 pilot project in Mesa City Court.	*Paul Thomas,* *Court Administrator* *Mesa Municipal Court*
11:10 a.m.	Multi-voting: Prioritizing recommendations ☐ ***Formal Action/Request***	*All*
12:30 p.m.	LUNCH BREAK	
1:00 p.m.	Break-out sessions Limited Jurisdiction Courts – *Room 330* • Civil traffic/Criminal traffic/Misdemeanor Superior Court – *Room 101* • Felonies	 *Dave Byers* *Tom O'Connell*
3:20 p.m.	Task force members to reconvene in *Room 101* • Discuss challenges and clarify plans for June 9	*Dave Byers* *Tom O'Connell*
3:25 p.m.	Call to the public	
3:30 p.m.	Adjourn	

Next Meeting

Thursday, June 9, 2016

State Courts Building – Conference Room 101

Draft Minutes
April 7, 2016
State Courts Building ◊ 1501 West Washington St. ◊ Conference Room 101
Phoenix, Arizona

Present: Dave Byers, Chair, Tom O'Connell, Vice Chair, Kent Batty, Judge Michael Bluff, Judge Maria Elena Cruz, India Davis, Jeffrey Fine, Ryan Glover, Robert James, Paul Julien, Judge Catherine Kelley, Doug Kooi, Officer Michael Kurtenbach, Judge Dorothy Little, Jeremy Mussman, Tony Penn, Judge Antonio Riojas, Judge Lisa Roberts, Judge Thomas Robinson, Mary Ellen Sheppard, Rebecca Steele, Judge Don Taylor

Presenters/Guests: Chief Justice Scott Bales, Tim Schnacke, Bert Cisneros, Judge John Hudson, Mark Meltzer, Heather Murphy, Dianne Post, Marcus Reinkensmeyer

Staff: Theresa Barrett, Kathy Sekardi, Jennifer Greene, Patrick Scott, Susan Pickard, Susan Hunt, Sabrina Nash, Alicia Moffatt, Administrative Office of the Courts (AOC)

Call to Order
Dave Byers called the first meeting of the Task Force on Fair Justice for All to order at 10:00 a.m. After a brief welcome and housekeeping matters, Mr. Byers introduced Chief Justice Scott Bales.

Opening Remarks
Chief Justice Bales echoed Mr. Byers' welcome, thanking the members for their willingness to serve, and confront one of the most important initiatives of today. Chief Justice Bales noted the importance of the report authored by the Department of Justice, Civil Rights Division, "Investigation of the Ferguson Police Department" in bringing to the forefront the issues of self-defeating statutes, and court rules that can compound the issues of poverty. His Honor discussed the principles enumerated in Administrative Order 2016-16. Chief Justice Bales ended by noting innovations like Phoenix's Customer Assistance Program, Glendale's warrant wipe-out program and the Pima County stakeholder group.

Welcome and Introductions
Task Force members introduced themselves. Each member discussed his or her interest in the Task Force, providing abbreviated background and expertise information, and expressing gratitude for being included in this initiative.

Changing the Bail Culture and Improving Pretrial Release and Detention
Tim Schnacke, Executive Director, Center for Legal and Evidence-Based Practices, presented the history of bail/no bail (release/detention), and its progression from a personal surety release process into a money-based process. Mr. Schnacke discussed case law; the purposes of the bail process, to maximize court appearance and public safety; and the use of validated risk assessment tools.

Violation Review Data-Driven Results
Bert Cisneros, AOC, presented civil traffic, criminal traffic and misdemeanor statistics derived from 800,000 charges filed in fiscal year 2014. Mr. Cisneros discussed the sample data and the life cycle of a case before delving into demographics, disposition and sentencing, defaults, failures to appear and license suspensions, assessments, time payment fees, and the impact of the Fines, Fees and Restitution Enforcement (FARE) program and subsequent violations.

Promising Practices

Compliance Assistance Program, City of Phoenix
Judge Don Taylor discussed the change of course the City of Phoenix has made in regard to defendant financial obligation enforcement.

Use of Notifications, Pima County
Doug Kooi discussed the success that Pima County has experienced using an Interactive Voice Response (IVR) outbound call system in reducing failure to appear rates. The system is also used to remind defendants about time payments.

Lunch
The Task Force broke for lunch at 12:52. During the break, information continued to be presented to the members. The video presentations included "Last Week Tonight with John Oliver – Bail," a satirical look at the American bail system, and "Joe Got a Ticket," a compelling example of how first offenses and multiple failures to appear can compound into financial impossibilities for the work poor and indigent in Arizona.

Promising Practices (continued)

McArthur Grant Funding, Pima County
Kent Batty discussed the McArthur Foundation invitation regarding grant funding for planning and a possible future significantly larger grant to reduce jail populations and any associated racial and ethnic disparities.

Break-out sessions
At 2:00 p.m. Task Force members separated into limited jurisdiction and general jurisdiction workgroups to discuss and develop recommendations to be brought back to the Task Force for consideration. The Limited Jurisdiction Workgroup convened in Conference Room 330, while the General Jurisdiction Workgroup remained in Conference Room 101.

Plans for April 8
At 4:30 p.m. Task Force members reconvened to clarify plans for the following day. Members

were asked to gather in Conference Room 101, before returning to the workgroup break-out sessions on the 8th.

Draft Minutes
April 8, 2016
State Courts Building ◈ 1501 West Washington St. ◈ Conference Room 101
Phoenix, Arizona

Present: Dave Byers, Chair, Tom O'Connell, Vice Chair, Kent Batty, Judge Michael Bluff, Judge Maria Elena Cruz, India Davis, Jeffrey Fine, Ryan Glover, Robert James, Paul Julien, Judge Catherine Kelley, Doug Kooi, Officer Michael Kurtenbach, Jeremy Mussman, Tony Penn, Judge Antonio Riojas, Judge Lisa Roberts, Judge Thomas Robinson, Mary Ellen Sheppard, Rebecca Steele, Judge Don Taylor

Absent/Excused: Judge Dorothy Little

Presenters/Guests: Tim Schnacke, Judge John Hudson, Mark Meltzer, Dianne Post

Staff: Theresa Barrett, Kathy Sekardi, Jennifer Greene, Susan Pickard, Susan Hunt, Sabrina Nash, Alicia Moffatt, Administrative Office of the Courts (AOC)

Call to Order
Dave Byers called the meeting to order at 8:30 a.m. Members were welcomed back and housekeeping announcements were made.

Break-out sessions
Task Force members separated into limited jurisdiction and general jurisdiction workgroups to continue the discussion and development of recommendations to be brought back to the Task Force for consideration. The Limited Jurisdiction Workgroup convened in Conference Room 330, while the General Jurisdiction Workgroup remained in Conference Room 101.

Task Force Reconvening
With neither workgroup completing the deliberations, each broke for the day separately and did not reconvene to discuss each workgroup's highlights and top priorities.

Call to the Public
The Call to the Public was made by the General Jurisdiction Workgroup on behalf of the Task Force in the meeting room noted on the agenda. Jamaar Williams and Dulce Juarez spoke.

Next Meeting: Friday, May 20, 2016 – State Courts Building – Conference Room 101

Break-out Session Roster
Fair Justice for All Task Force
May 20, 2016

Conference Room 101 – Tom O'Connell Superior Court - Felonies	Conference Room 330 – Dave Byers LJC – Civil/criminal traffic, misdemeanors
Name	Name
Tom O'Connell – Vice Chair	Dave Byers - Chair
Judge Michael Bluff	Judge Dorothy Little
Judge Maria Elena Cruz	Judge Antonio Riojas
Comm. Lisa Roberts	Judge Thomas Robinson
India Davis	Judge Donald Taylor
Kent Batty	Judge John Hudson
Bob James	Doug Kooi
Rebecca Steele	Jeffrey Fine
Jeremy Mussman	Michael Kurtenbach
Dianne Post	Mary Ellen Sheppard
Leonardo Ruiz	Alessandra Soler
Kathy Waters	Tony Penn
Paul Julien	Ryan Glover
Patrick Scott	Paul Julien

Preliminary Recommendations

1. Recommend that the Arnold Foundation conduct further research to determine if the risk assessment tool factors in the predictability of flight risk for those defendants who are in the country illegally. (LJ)

2. Provide data to the judicial officers to show the effectiveness of the 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. (GJ)

3. Expand the use of the public safety assessment to limited jurisdiction courts for use in felony and high level or select misdemeanor cases, i.e., those defendants entitled to counsel with a potential for a jail sentence. (LJ)

4. In high volume jurisdictions, recommend that public defenders and prosecutors be present to resolve cases at initial appearance, which will reduce the need to return to court. (LJ)

5. Recommend shifting Arizona's current bail structure from a cash bail system to a risk-based decision system.

    a. Recommend educating judges to consider the following release conditions: the first option is to release on defendants' own recognizance; second, other non-monetary conditions; and third, unsecured bonds, recognizing that cash bonds should be reserved for the most serious cases. (LJ & GJ)

    b. Amend bail statutes to update terminology to align with risk-based decision system. (GJ)

    c. Amend A.R.S. § 13-3967 (*Release on bailable offenses before trial; definition*) to include the consideration of the results of a validated risk assessment.

    d. Modify Form 6 - *Release Order* and Form 7 – *Appearance Bond* to conform to risk-based decision system.

6. Recommend prohibiting the use of a bond schedule in non-traffic criminal cases. (LJ)

7. Recommend to clarify by rule or best practices that small bonds ($5-$100) are not needed to ensure that the defendant gets credit for time served when defendant is also being held on a second more serious charge. (LJ)

8. Recommend amending Rule 7.4(D) of the Rules of Criminal Procedure that currently provides for a 10-day bail review hearing to a.) 24 hours, or b.) 48 hours. (LJ)

9. Recommend that a defendant be provided an attorney if they haven't posted the financial release condition within 24 hours. (LJ)

10. Recommend, at all court levels, the implementation of an Interactive Voice Response (IVR), email, or text messaging system to remind defendants of court date to reduce failures to appear. (LJ & GJ)

    a. Modify forms to collect cell phone numbers, a secondary phone number, and email addresses. Forms should include a reminder to the defendant to keep contact information up to date with the court.

    b. Train staff to verify and update contact information for the defendant at every opportunity. (LJ & GJ)

    c. Provide information to law enforcement agencies regarding the importance of gathering updated contact information.

11. Recommend notifying defendants that a warrant will be issued unless they come to court within five days after a failure to appear. (GJ)

12. Recommend to modify bond cards, reminder letters, and FARE letters to explain that if the defendant plans on pleading 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. (LJ)

13. Recommend to develop a system that communicates in English and Spanish (such as avatars) to provide explanations of options available to a defendant when a ticket or citation is issued. (LJ)

14. Recommend making it clear on the summons and bond card that the defendant can come to court before the designated court date to resolve the case; and tell the defendant how to reschedule the hearing if the defendant can't appear on the scheduled date. (LJ)

15. Set chronic offenders to appear in early disposition courts or use specialty courts that target populations i.e., the mentally ill or homeless. (GJ)

16. Request a legislative change to allow judges to mitigate mandatory minimum fines, fees, surcharges, and penalties for those defendants for whom imposing a mandatory fine

would cause economic hardship. If it's not possible to amend the statute to provide judicial discretion in all cases, focus the priority on those cases in which just failure to provide proof of insurance is charged. (LJ & GJ)

17. Seek legislation to change the following criminal charges to civil charges:

    - driving on a suspended license
    - littering
    - criminal speeding
    - expired out-of-state registration (LJ)

18. Recommend providing judges with the ability to reduce fines after defendant's successful completion of a program and treatment that helps reduce repetitive criminal activity. (GJ)

19. Recommend providing courts with additional tools to determine a defendant's ability or inability to pay fines.

    a. Make use of public database information

    b. Exclude means-tested benefits (SSI, SNAP) from calculation of the defendant's income.

    c. Waive or reduce fines if defendant qualifies for means assistance programs, much like the fee waiver deferral guidelines.

    d. Provide focused judicial education on ARS 11-584(D) and ARCrP 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 make specific findings on the record about the defendant's ability to pay. (GJ)

20. Update the courts "Q&A" document that outlines required separation of courts from city, executive, and legislative branches. (LJ)

21. Recommend notifying defendants about the opportunity to come back to the court to start a payment plan before issuing a warrant for failure to pay. (GJ)

22. Implement the City of Phoenix Compliance Assistance Program in regard to defendant financial obligation enforcement or similar program statewide. (LJ)

23. Conduct an amnesty pilot program that reduces the fines owed along with reinstatement of a driver license. (LJ)

24. Recommend the court system to explore the following to make it easier for defendants to make time payments:

a. Test the use of pre-addressed, postage paid envelopes given to defendants for use in making time payments to the court to determine if this method increases the ability for defendants to stay on track with a time payment plan. (LJ)

b. Discuss with employers the possibility of allowing, at the employee's request, pay roll deductions to pay fines to the courts. (LJ)

c. Discuss with businesses, like Fry's, to allow individuals to make court payments within their place of business.

25. Amend ARS § 13-824 *(Community restitution in lieu of fines, fees, assessments or incarceration costs*) to include general jurisdiction fines, or amend ARS § 13-810(E*) (Consequences of nonpayment of fines, fees, restitution or incarceration costs)* to allow probation to convert fines to community restitution. (GJ)

26. Request legislation that would allow courts to close cases and write-off fines and fees after a certain period of time, such as 10 or 15 years. (LJ)

27. Promote the use of restitution courts, status conferences, or probation review hearings to ensure due process and consider the wish of the victim. If restitution courts are used, standards must be established for willful contempt.

28. Implement the creation of a victim restitution fund from Victims of Crime Act (VOCA) monies or other sources that would pay modest restitution amounts to a victim, but require the defendant to pay into the fund over time. (LJ)

29. Recommend that the Conference of Chief Justices and the Conference of State Court Administrators approach congress about federal tax intercept for restitution only with an exception for those who are eligible for the earned income tax credit (EITC). (LJ)

30. Recommend using the suspension of a driver license as a last resort, not a first step. (LJ)

31. Provide limited jurisdiction courts with the ability to provide skip tracing for use prior to issuing a warrant or reminder in cases that have aged. Or, require prosecutors to get an updated address. (LJ)

32. Implement an online payment system. (LJ)

33. Implement the ability to email proof of insurance to the court. (LJ)

34. Amend statute to allow judges to mitigate mandatory fines and fees so the fines and fees are proportional to the defendant's income. (GJ)

35. Request the Committee on Probation through the Adult Probation Services Division review appropriate policies and processes within ACJA 6-201: Standard Probation and ACJA 6-202: Adult Intensive Probation and make specific recommendations for

amending these code sections to allow the court to close cases based on a probationer's ability to pay at the end of their probation term.

Items to Discuss Further

1. Discuss options for adjudicating civil cases when the defendant is a deployed member of the armed services. (LJ) *(See Judge Robinson's complete proposed language on separate sheet in members' meeting materials packet. Abbreviated version below in italics.)*

   a. ***Rule 23. Setting Aside Default Judgment***

      Upon written motion, for good cause or any other reason necessary to prevent a manifest injustice, the court may set aside a judgment entered upon a failure to appear.

      If the court does not find good cause to set aside a judgment entered upon a failure to appear, it may set aside the judgment for the purpose of permitting a defendant to reinstate their driving privilege and make installment payments to satisfy the outstanding civil penalty and fees.

      The court may set aside a judgment entered for failure to pay for the purpose of permitting a defendant to reinstate their driving privilege and make installment payments to satisfy the outstanding civil penalty and fees.

   b. ***A.R.S. § 28-1601****. Failure to pay civil penalty; suspension of privilege to drive; collection procedure*

      H. A court may order the department to rescind the court's order to suspend a person's driver license, permit or privilege to drive pursuant to subsection A of this section and permit the person to make installment payments to satisfy the civil penalty and fees.

2. Discuss duplicating the juvenile statute language (in italics below) located in ARS § 8-344 (*Restitution Payments*) in criminal statutes that allows a judge to order full or partial restitution.

   "If a juvenile is adjudicated delinquent, the court, after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, shall order the juvenile to make full or partial restitution to the

victim of the offense for which the juvenile was adjudicated delinquent or to the estate of the victim if the victim has died." (GJ)

3. Does A.R.S. § 13-901 *(Probation)* allow for money bond or detention? (GJ)

4. Modify current statutes, such as the preventive detention statute (ARS § 13-3961(D) *(Offenses not bailable; purpose; preconviction; exceptions)* to include defendants with high-risk for failure to appear. (GJ)

5. If money bond is no longer part of the bail equation in Arizona, what statutes or sections of the Arizona Constitution, would need to be amended? (GJ)

6. Explore methods to update defendant contact information for court use, i.e. web portal for defendants, defense attorneys and prosecutors. (GJ)

7. Are there other ways (interagency agreements) or places to obtain updated contact information for defendants that is more current, such as benefits agency data, i.e. support payment clearinghouse at DES? (GJ)

8. Explore the development of a statewide Internet portal or public kiosks to provide defendant access to all of his or her court dates and times. (GJ)

9. Implement video conferencing appearances rather than physically transporting defendants to court for low-bail defendants, i.e. $100 or less. (LJ)

10. Explore how the Supreme Court could establish a policy regarding the purpose of the court and the inappropriateness of using the courts to generate revenue unrelated to the criminal justice system. (LJ)

11. Explore how to accomplish a four-year contract for all municipal court judges. (LJ)

12. The court should not enter a criminal restitution order if the defendant has the inability to pay. The victim can still take civil judgment steps. Encourage other judges to do this through education, judicial training and best practices. (GJ)

13. Willful non-payment should result in a status hearing. (GJ)

14. Reduce collections to civil judgments. (GJ)

15. Judges should be trained not to enter criminal restitution orders at the time of sentencing. (GJ)

16. Contact the Motor Vehicle Department liaison to obtain further information regarding reinstatement of a suspended driver license. (GJ)