AGENDA

ARIZONA JUDICIAL COUNCIL
Arizona State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007

December 12, 2013

Room: 119

9:30 a.m. Welcome ..... Chief Justice Rebecca White Berch

Tab No.

(1) Approval of Minutes ..... Chief Justice Rebecca White Berch

Action Items:

9:35 a.m. (2) Approval of the 2014-2019 Strategic Agenda ..... Vice Chief Justice Scott Bales
..... Mr. Mike Baumstark

9:55 a.m. (3) Arizona Code of Judicial Administration ..... Mr. David Withey
- 1-110: Committee on the Impact of Domestic Violence and the Courts *(Amendment)*
- 5-201: Evidence Based Pretrial Services *(New)*.. Ms. Kathy Waters
- 6-106: Personnel Practices *(Amend.)*..... Ms. Kathy Waters
- 6-112: Use of Force *(Amend.)*..... Ms. Kathy Waters
- 6-113: Firearms Standards *(Amend.)*..... Ms. Kathy Waters

10:45 a.m. (4) Capital Case Oversight Committee ..... Judge Ronald Reinstein
- Approval of 2 Recommendations from the Report

11:00 a.m. (5) Judicial Branch Legislative Package ..... Mr. Jerry Landau
..... Ms. Amy Love

12:00 p.m. Lunch

Study / Update Session: (Possible Adoption/Action of Various Reports)

12:30 p.m. Certified Reporter Task Force Update .... Vice Chief Justice Scott Bales

12:40 p.m. (6) Language Access Update ..... Ms. Carol Mitchell

12:50 p.m. Law for Veteran's Web Site ..... General Greg Richard Maxon

1:05 p.m.	(7)	Report of the Electronic Records Retention and Destruction Advisory Committee	Mr. Marcus Reinkensmeyer
2:00 p.m.		Call to the Public / Adjourn	

Please call Lorraine Smith
Staff to the Arizona Judicial Council
with any questions concerning this Agenda
(602) 452-3301

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	_X_ Formal Action/Request ___ Information Only ___ Other	Approval of Minutes

FROM:

Lorraine Smith, Staff to the Arizona Judicial Council

DISCUSSION:

The minutes from the October 17, 2013, meeting of the Arizona Judicial Council are attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the minutes as written.

ARIZONA JUDICIAL COUNCIL

Arizona Golf Resort
425 S. Power Road
Fairway 5 Meeting Room
Mesa, AZ 85206

October 17, 2013

DRAFT Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch
Jim Bruner
David Byers
Judge Peter Cahill
Judge Rachel Torres Carrillo
Whitney Cunningham, J.D.
Judge Norman Davis
Mike Hellon
Yvonne R. Hunter, J.D.
Michael Jeanes
Judge Diane Johnsen
Emily Johnston
Gary Krcmarik
Judge David Mackey
William J. Mangold, M.D., J.D.
Janet K. Regner
Judge Antonio Riojas, Jr.
Marilyn Seymann, Ph.D.
Judge Sally Simmons
Judge Roxanne Song Ong
George Weisz

Council Members Absent (excused):

Athia Hardt
Judge Joseph Howard
Judge Robert Carter Olson
Judge David Widmaier

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Chad Campbell
Cindy Cook
Jerry Landau
Amy Love
Alicia Moffatt
Heather Murphy
Marcus Reinkensmeyer
Lorraine Smith
Cindy Trimble
Kathy Waters
David Withey

Presenters and Guests Present:

Vice Chief Justice Scott Bales
Justice Robert Brutinel
John Furlong
Marty Herder
John MacDonald
Jodi Rogers

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 9:00 a.m. in the Fairway 5 meeting room at the Arizona Golf Resort, 425 S. Power Road, Mesa, Arizona. The Chair welcomed those in attendance and recognized the newest Council member: Judge Diane Johnsen, Chief Judge, Court of Appeals, Division One.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the June 24, 2013, meeting of the Arizona Judicial Council. There were none.

> **MOTION: To approve the minutes from the June 24, 2013, meeting of the Arizona Judicial Council, as presented.** The motion was seconded and passed. AJC 2013-13.

2014 Meeting Dates

The Chair called attention to the proposed meeting dates for 2014: Thursday, March 20; Monday, June 23; Thursday, October 23; and Thursday, December 11.

The Chair asked members to let staff know if they have meeting date conflicts.

> **MOTION: To approve the proposed 2014 meeting dates, as presented.** The motion was seconded and passed. AJC 2013-14.

2014-2019 Strategic Agenda

Vice Chief Justice Scott Bales spoke on the new strategic agenda. He explained the development process and timeline for completion. Justice Bales expressed his appreciation for the input and assistance received in developing the draft plan.

Mr. Mike Baumstark, Deputy Director of the AOC, explained the process and how the agenda evolved. He recognized Ms. Cindy Trimble, Internal Auditor for the AOC, for her assistance in the development of the draft agenda. He noted the emerging themes that have been identified include courts serving Arizona communities, access to justice, expand the use of evidence-based practices, judicial excellence and workforce development, and infrastructure improvements.

Mr. Baumstark presented the 5 goals of the draft agenda: Goal 1: Promoting Access to Justice; Goal 2: Protecting Children, Families and Communities; Goal 3: Improving Court Processes to Better Serve the Public; Goal 4: Enhancing Professionalism Within Arizona's Courts; and Goal 5: Improving Communications and Community Participation.

Mr. Baumstark reported the final agenda will come to the December 2013 Council meeting for adoption; the agenda design, title, and publishing will be finalized by March 2014; and the plan will be launched in July 2014.

Mr. George Weisz stated the need to stay flexible and fluid and identify and prioritize what can be accomplished, i.e., sub-goals. He also suggested the need to work with other agencies and criminal justice partners.

Steering Committee on Arizona Case Processing Standards

Justice Robert M. Brutinel, Chair of the Committee, provided a brief update on the Committee's process and shared the provisional set of standards that were developed.

Mr. Gary Krcmarik noted that Coconino County has had standards since 1995, and their judges have successfully adopted them. He stated he would support these standards for both accountability and transparency reasons. A motion was moved and seconded to approve the standards. Mr. Mike Hellon raised concern with the time standards and the ability to tighten them over time. Justice Brutinel noted they are provisional standards at this point and subject to change. Mr. Hellon suggested that when monitoring results, someone should look more deeply into anomalies and be able to identify specific defects in our processes that can be fixed.

> **MOTION: To extend the Committee for an additional year and adopt the preliminary standards.** The motion was seconded and passed. AJC 2013-15.

Mr. Jerry Landau, AOC Director of Government Affairs, and Legislative Liaison Amy Love updated the Council on the upcoming session and presented the Judicial Branch legislative package:

2014-01: Probation officers; enforcement of pretrial release conditions

> **MOTION: To support 2014-01: Probation officers; enforcement of pretrial release conditions, as presented.** The motion was seconded and passed. AJC 2013-16.

2014-02: Veterans' court; establishment; eligibility for referral

Discussion: This proposal will do for veterans' courts what has been already done for the homeless courts.

> **MOTION: To support 2014-02: Veterans' court; establishment; eligibility for referral, as presented.** The motion was seconded and passed. AJC 2013-17.

2014-03: Prescription information; probation officers

> **MOTION: To table 2014-03: Prescription information; probation officers and assign to the adult probation division to work with our probation departments and the medical community to find a better way**

of doing this and report back at the December Council meeting. The motion was seconded and passed. AJC 2013-18.

2014-04: Physician assistants; excused jury service

MOTION: To support 2014-04: Physician assistants; excused jury service, as presented. The motion was seconded and passed. AJC 2013-19.

2014-05: Issuance of warrants; authority

Discussion: Mr. Whitney Cunningham raised the issue of subpoenas, and stated that attorneys issuing their own subpoenas will be an important improvement. Judge Davis explained the proposal and noted there is concern over who will issue the warrant -- the clerk or the court. He stated the proposal will allow either the clerk or the court to issue the warrant, will enhance both speed and accuracy, and is only a minor cleanup issue.

Mr. Michael Jeanes stated the clerks are in support of continuously improving the judicial branch of government and increasing efficiencies He noted this proposal was sent to staff and other clerks for their review, and concern was raised that the issue goes beyond warrants, i.e., that it extends to subpoenas and other process, and they have questions as to how this will work. Mr. Jeanes stated the Clerks are in opposition regarding logistical issues and questions that need to be resolved. Mr. Jeanes reported that 14 Clerks have said this is not an issue in their county, and they see no need for a change.

Judge Simmons stated that the change in the statute seems to be more progressive and accurate because judges will view the warrant in the courtroom, and staff will be working together. She moved that the proposal be supported, and the details can be worked out. Judge Simmons stated the proposal is the way of the future, and we need this in order to increase efficiency and accuracy.

Dr. Bill Mangold suggested tabling and allowing staff time to work on a compromise. The Chair noted that Maricopa County is ready to go, and this proposal only affects Maricopa County at this time. She understands that there are issues to be worked out. Judge Mackey stated that his clerk opposes the proposal and wants more time to study and get other changes included. He noted that more work needs to be done on the proposal to ensure we have a united front within our court family, and he opposed supporting. Mr. Byers suggested supporting the proposal, but have the Clerks and Judge Davis work out the issues and details. Judge Davis stated that tabling will stall technology, but he is willing to sit down and talk with the Clerks. Mr. Hellon noted the proposal is permissive not mandatory, and he supports it. Ms. Regner stated the proposal needs more work and is not ready at this stage. She proposed a friendly amendment to the motion to work out logistical details and issues and come back in December. Judge Davis agreed to limiting to warrants and deleting other processes language, but cautioned that would be a mistake. Mr. Byers offered a friendly amendment to move forward and adopt, but give Maricopa County a chance to work out logistical questions and bring the proposal back in December.

The amendment was accepted by the motion maker. Mr. Landau suggested we could open a file without taking action until the December meeting.

> **MOTION: To support 2014-05: Issuance of warrants; authority and have Maricopa County staff work out logistical issues and bring back to the December Council meeting for final approval.** The motion was seconded and passed (2 opposed). AJC 2013-20.

2014-06: Access to background checks; superior court

Judge Mackey moved to support the proposal with the amendment that we add a sentence, "Information shall be provided on submission of the applicant fingerprint card."

> **MOTION: To support 2014-06: Access to background checks; superior court, with the addition of the sentence "Information shall be provided on submission of the applicant fingerprint card."** The motion was seconded and passed. AJC 2013-21.

2014-07: Dependency cases; court programs

Discussion: Judge Davis moved to support in concept, work on clarifying language, and bring back to the December meeting for final approval.

> **MOTION: To support 2014-07: Dependency cases; court programs in concept, work on clarifying language, and bring back to the December Council meeting for final approval.** The motion was seconded and passed. AJC 2013-22.

2014-08: Lengthy jury trial fund

Discussion: Mr. Byers clarified that staff did not notice the sunset clause which resulted in an emergency clause. Ms. Love noted this will be an uphill battle because it will appear to be a new fee even though it is an existing fee.

> **MOTION: To support 2014-08: Lengthy jury trial fund, as presented.** The motion was seconded and passed. AJC 2013-23.

2014-09: EORP contributions; judges *(all elected officials)*

Discussion: There are still some outstanding issues.

> **MOTION: To refer 2014-09: EORP contributions; judges *(all elected officials)* back to the Arizona Judges Association to work out the outstanding issues and report back at the December Council meeting.** The motion was seconded and passed. AJC 2013-24.

2014-10: Court process; conforming changes

Discussion: The three provisions are not worth running a separate bill for, and it is recommended we split up the 3 provisions and tack them onto other bills.

> **MOTION: To split up the 3 provisions of 2014-10: Court process; conforming changes and tack them onto other bills if available.** The motion was seconded and passed. AJC 2013-25.

Mr. Landau and Ms. Love presented bills from other entities including:

2014-D: Peace officers bill of rights; probation officers (Rep. Justin Pierce)

Discussion: There is an issue with a statute that needs to be cleaned up to include juvenile detention officers.

> **MOTION: To support 2014-D: Peace officers bill of rights; probation officers, with the inclusion of juvenile detention officers.** The motion was seconded and passed. AJC 2013-26.

2014-H: Searching of probationers and parolees (Arizona Association of Counties)

> **MOTION: To oppose 2014-H: Searching of probationers and parolees, as presented.** The motion was seconded and passed. AJC 2013-27.

Mr. Byers noted that a representative of the Arizona Association of Counties is welcome to attend the December meeting to provide more information on this proposal.

Arizona Code of Judicial Administration

Mr. Chad Campbell, Director of the Juvenile Justices Services Division of the AOC, presented the following code sections:

6-105.01: Powers and Duties of Officers Evidence-Based Practices (amendment), 6-301.01: Juvenile Standard Probation Evidence-Based Practices (new), and 6-302.01: Juvenile Intensive Probation Evidence-Based Practices (new).

> **MOTION: To approve 6-105.01: Powers and Duties of Officers Evidence-Based Practices (amendment), 6-301.01: Juvenile Standard Probation Evidence-Based Practices (new), and 6-302.01: Juvenile Intensive Probation Evidence-Based Practices (new), as presented.** The motion was seconded and passed. AJC 2013-28.

Ms. Kathy Waters, Director of Adult Probation Services Division of the AOC, presented code section 6-202.01: Adult Intensive Probation Evidence-Based Practices (amendment) which conforms to the juvenile code.

> **MOTION: To approve 6-202.01: Adult Intensive Probation Evidence-Based Practices (amendment), as presented.** The motion was seconded and passed. AJC 2013-29.

Ms. Kathy Waters presented code section 6-106: Personnel Practices

> **MOTION: To approve 6-106: Personnel Practices, as presented.** The motion was seconded and passed. AJC 2013-30.

Mr. David Withey, Chief Legal Counsel for the AOC, presented code section 1-402: Procurement (amendment) and explained the content and changes to the procurement code.

> **MOTION: To approve 1-402: Procurement (amendment), as presented.** The motion was seconded and passed. AJC 2013-31.

Elected Officials' Salary Increase

Mr. Jerry Landau provided an update on elected officials' salaries, which includes judges who are seeking a pay raise. He explained the salary commission process and noted that judges can only receive a salary increase at the beginning of a term, and the beginning of the next term is 2015. Mr. Landau stated that legislation will have to be adopted in 2014 to allow an increase for 2015. He noted if this was not approved, the next opportunity would not take place until 2017. Mr. Landau reported the Arizona Judges Association is working on this proposal, which is an important issue, and more information will be presented in December.

Mental Health Courts

Mr. Marcus Reinkensmeyer, Director of the Court Services Division of the AOC, provided an update on HB2310: Mental Health Court Evaluation. He noted staff would be back next year to present policy issues to the Council. He stated this bill was signed into law last session and the challenge will be defining these courts. He reported that standards will need to be developed for the Council's approval, and the final report will be filed with the Governor and Legislature in December 2014.

The Chair made a call to the public; there was none.

Chief Justice Berch welcomed and introduced Ms. Heather Murphy, the new Communications Director for the Arizona Supreme Court.

Chief Justice Berch announced the formation of a committee to address court reporters and governance and look at the code provisions. She noted that Vice Chief Justice Bales will Chair the Committee. The Committee plans to report back at the December Council meeting.

> **MOTION: To adjourn the meeting.** The motion was seconded and passed. AJC 2013-32.

The meeting adjourned at 11:55 a.m.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	_X_ Formal Action/Request ___ Information Only ___ Other	Approval of FY 2014-2019 Strategic Agenda

FROM:

Mike Baumstark, Deputy Director, Executive Office

DISCUSSION:

The proposed strategic agenda is attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the FY 2014 – 2019 Judicial Branch Strategic Agenda as written.

Strategic Agenda
July 2014 – June 2019
DRAFT
November 27, 2013

Justice for All Arizona: Courts Serving Communities

[Introduction to Agenda]

Goal #1: Promoting Access to Justice

Arizonans look to our courts to protect their rights and to resolve disputes fairly and efficiently. To serve these ends, Arizona's judicial branch must work to ensure that all Arizonans have effective access to justice. This goal is advanced not only by examining legal representation for moderate and low-income persons, but also by helping self-represented litigants and others navigate the judicial process and by using technology to make courts more accessible to all litigants and the public.

1. **Access to Justice**

   Our courts should work with others in government and our communities to assess the legal needs of modest to low-income individuals at all levels of the judicial system and develop strategies to better serve those needs.

   A. Create a "blue-ribbon commission," including members of the public, to study access to justice issues and recommend ways to promote access to justice.

   B. Identify ways to promote participation by lawyers in access to justice initiatives and recognize them for their professional and financial contributions.

   C. Identify ways to enhance and improve funding for the judicial branch to ensure the courts' ongoing ability to provide access to courts and court services for all Arizona citizens.

2. **Services for Self-Represented Litigants**

   Many of our citizens do not have the financial means or choose not to obtain legal representation to help them navigate the judicial system and its many and varied processes. Consequently, the courts must be prepared to assist self-represented individuals in understanding court processes and legal procedures.

   A. Expand access to web-based forms, e-filing, and information on court procedures, court terms, and navigating the court system.

B. Ensure court forms and other information, whether in electronic or paper form, is provided in easy to understand terms.

C. Use evidenced-based research to identify ways to expand self-represented services and identify and experiment with other specialized services and support for litigants without lawyers.

D. Collaborate with legal services agencies and the Arizona Foundation for Legal Services and Education to develop strategies to expand legal and other self-help services for modest to low income litigants.

E. Provide front-end triage and referral services to assist unrepresented litigants in identifying and obtaining appropriate services.

F. Explore availability of programs like JusticeCorps to assist courts in meeting the needs of self-represented litigants by recruiting and training college students to work in legal self-help centers to:
   - Assist with legal workshops,
   - Help complete legal forms, and
   - Provide information and referrals.

G. Explore the potential use of technology-based solutions being developed in other courts.

3. Services for Limited English Proficient Litigants, Defendants, and Other Court Participants

Limited English-language skills should not be a barrier to accessing justice. Arizona's courts have significantly expanded access to interpreter services and translated forms, instructions and court information. Work remains to be done, however, particularly given our evolving and diverse population and changing technology.

A. Develop strategies for increasing availability and quality of court interpreters and interpreter services, including:
   - Expanding remote Video Interpreting Project, and
   - Identifying other opportunities to use technology in the provision of language assistance services to litigants, witnesses, and others requiring such services to access Arizona's courts.

B. Develop strategies for providing alternative language court forms, instructions, and court information both at the courthouse and online.

4. Access to Courts and Court Information Using Technology

Technological change provides ongoing opportunities for the court system to enhance and increase access to courts, court proceedings and court information. Previous strategic agendas have set Arizona courts on a path to increased electronic access for the public and court community alike. This agenda continues those efforts and seeks to further advance the ability for court users to locate the information they need, file documents and receive court notifications electronically, and remotely participate in court proceedings.

A. Increase public access to court information by expanding electronic access to court documents and data while maintaining the balance of security, privacy, and recoverability.

B. Expand e-filing statewide.

C. Establish web-based online payment system for drivers wanting to plead responsible and pay civil traffic tickets and minor misdemeanor charges as allowed by Supreme Court rules.

D. Create electronic noticing system to remind parties, probationers, and other court participants of an upcoming court date.

E. Identify other opportunities for using video/audio conference capability for video hearings and other remote electronic court appearances.

Goal #2: Protecting Children, Families, and Communities

The Arizona Judiciary has long made it a priority to protect our state's most vulnerable populations. We have reformed our juvenile courts to provide timely hearings and due process in child neglect and dependency cases. We have reformed our probate rules and laws to ensure our elderly citizens have adequate protections against exploitation and abuse. Every day, we protect our communities by holding juvenile and adult probationers accountable and providing the treatment and rehabilitative services they need to once again become productive and law-abiding citizens within their community.

Traditional court processes don't always solve today's cases and problems. While continuing our commitment to protecting the young and elderly, we also should expand the use of problem solving courts to better serve individuals who may have specialized needs. Our communities look to courts not only to decide cases, but to solve problems.

Strategic Agenda

July 2014 – June 2019

DRAFT

November 27, 2013

1. **Center for Evidence-Based Practices**

Problem-solving courts must follow evidence-based practices, known as EBP, to succeed. The research on and experimentation with evidence-based problem solving court programs continues all around the nation. It is important that Arizona's courts stay current with this research and, where feasible to do so, lead the way by implementing that which works. The Arizona Center for Evidence Based Practices will provide the focus needed to continue these efforts. The Center will bring together judicial leaders, researchers, and practitioners to design the best programs possible that result in juvenile and adult offender accountability, rehabilitation, crime reduction, and community protection.

In recent years, the Arizona judiciary has successfully incorporated the use of evidence-based practices in its probation supervision programs; these inroads are just the beginning steps to finding ways to ensure individuals involved with court programs receive the services that most match their needs and are founded upon research that is evidence based. Many other opportunities exist to research and implement effective population specific evidence based programs and Arizona's judiciary has the talent and the experience to establish a research center to identify and implement the most effective and promising programs.

A. Improve and expand the use of evidence-based practices to determine pre-trial release conditions for low-risk offenders.

B. Evaluate and, as determined appropriate, implement new or expanded evidence-based programs for Arizona's Adult and Juvenile Probation Services. Programs to evaluate include, but are not limited to:
   - Supervision of the seriously mentally ill, consistent with the most recent research and best practices,
   - Positive adult mentoring of juvenile probationers,
   - Effective practices and programs to reduce the risk of violence, especially gun violence involving probationers,
   - Effective re-entry and transition of adults and youth from secure custody/care back into their communities,
   - "Family Inclusive" probation supervision and services, and
   - Effective programs such as community supervision programs to reduce adult and juvenile recidivism.

C. Encourage and support the use of evidence-based services and interventions for children and families for reunification and permanency in dependency cases.

D. Encourage and support the educational needs of all youth under court supervision as an essential factor in future well-being.

2. **Problem-Solving Courts**

While some courts around the state have implemented problem-solving courts, there is a continuing need to create courts which are designed to serve the unique needs of certain individuals, such as homeless courts, drug courts, veterans' courts and mental health courts.

A. Collaborate with justice partners, treatment providers, and other community services entities to expand problem solving courts including drug, homeless, veterans, mental health, and domestic violence courts.

B. Develop evidence-based practices bench books, training, and other information for judges assigned to problem solving courts.

C. Identify strategies, including statutory changes, allowing multi-court collaboration and use of technology to establish and expand problem solving courts across jurisdictional boundaries.

3. **Regulating the Practice of Law to Protect the Public**

The Supreme Court has unique responsibilities to protect the public through the regulation of the practice of law. This is accomplished by establishing and enforcing standards of competency and ethical conduct for those who are licensed to practice law in this state and by taking disciplinary action against those who violate these standards. Litigants who access the court system with the assistance of legal representation expect and deserve competency and professionalism from their lawyer. The following initiatives are intended to advance these important purposes.

A. Review attorney admission requirements and protocols to determine if changes are needed to promote higher standards of lawyer competency and professionalism to protect the public.

B. Review the current Supreme Court Rules establishing the State Bar to assess how well the current governance structure allows the State Bar to fulfill its mission of protecting the public and improving the profession of law.

C. Review rule changes proposed by the ABA's "Commission on Ethics 20/20" to determine if changes to the ethical rules for Arizona attorneys are desirable.

D. Continue to evaluate the State Bar examination requirements to ensure the exam is evidence-based, tests lawyer competency, protects the public, and improves the profession of law.

E. Develop training for best practices for parents' counsel in juvenile dependency cases.

F. Explore ways to enhance mentoring for new attorneys.

4. **Human Trafficking**

Human trafficking, often referred to as modern-day slavery, is commanding increased attention from courts and communities across the nation. Trafficking threatens some of our most vulnerable citizens, including young people who have been involved in the foster care system or juvenile courts. Human trafficking raises many issues and challenges for state courts. We need to identify better ways to identify human trafficking crimes and victims, develop strategies so our courts can be better prepared to handle such cases, provide assistance to the individuals victimized, and protect those at particular risk from becoming victims.

- Collect and analyze information on the scope and impact of human trafficking-related cases filed in Arizona courts and develop recommendations on the appropriate role of the state court system in addressing this issue.

Goal #3: Improving Court Processes to Better Serve the Public

Providing access to justice for all Arizona citizens requires our courts to continually strive to maintain and improve upon existing processes and systems which ensure effective and efficient case management and use of information and resources. Judges and court staff need the appropriate resources and training to ensure cases of all types are heard in a timely manner and processed efficiently. Also, our justice system partners and the public should be able to access the courts and court information in the most efficient ways possible. Much of the improvements will come from ongoing and planned technology improvements, but we must also find ways to improve existing operational practices, processes and policies to further ensure that public resources are used effectively, efficiently, and accountably.

1. **Judicial System Process Improvement**

With a limited ability to increase staff resources to handle the increase in case filings and the number of people who pass through court doors and interact with the courts on a daily basis, the court system must continue to identify ways to improve judicial system processes. Key to this effort is to ensure judges, clerks, court administrators and staff have the tools needed to timely and efficiently process cases.

A. Improve timeliness and efficiency of civil, criminal, juvenile, family, and probate case processing in Arizona courts by:
   - Adopting case processing time standards,
   - Revitalizing caseflow management efforts statewide, including principles of differentiated case management, early and continuous court control over the pace of litigation, and compliance with rules governing case processing time requirements,
   - Providing case management system enhancements including reporting capabilities needed by judges and court management to process cases timely,
   - Providing judges with e-bench tools to allow them to access and adjudicate cases in a digital environment,
   - Providing judicial workload tools to assist presiding judges when making case assignments, and
   - Implementing relevant performance, customer service, and case management measures.

B. Identify and implement ways to improve the process of jury selection and service.

C. Review select Arizona Rules of Court to restyle, simplify and clarify the rules.

2. **Courthouse Facilities and Security**

Arizona's courts are forums for resolving difficult issues that affect people in vital aspects of their lives, including cases involving domestic relations, parental rights, and individual liberty. Emotions can run high in court proceedings. Our courthouses must be a safe place for litigants, lawyers, jurors, witnesses, court employees, and judicial officers.

A. Conduct a needs assessment for courthouse security infrastructure.

B. Establish minimum courthouse and courtroom security standards.

C. Develop training standards and skill development opportunities for court security officers.

3. **Next Generation Case Management Systems**

Case management systems (CMS) support the work of the courts and probation services. Many of these systems have been in place for more than a decade and require updating or replacement. This effort will take time and considerable investment of human and financial capital.

A. Modernize limited jurisdiction court automation by deploying the AJACS case management system in limited jurisdiction courts.

B. Modernize juvenile courts by completing JOLTSaz implementation.

C. Continue to integrate APETS functionality with AJACS to increase efficiencies in adult probation case management.

D. Enhance or replace appellate case management system.

4. **Court Data Repositories and Justice System Data Exchanges**

Technology has enabled the court system to vastly improve court processes and provide quick access to court information. New technologies and data exchange protocols create new opportunities for data sharing among justice system entities. These initiatives seek to provide criminal justice system participants access to accurate and complete data needed to perform their duties.

A. Implement the Central Case Index (CCI) system to enable the flow of critical court data to and from federal, state and local justice system entities.

B. Collaborate with other justice system entities to develop and implement data collection and exchange strategies that leverage technology, including:
   - Expanding e-warrants project to other justice system entities,
   - Modernizing state's warrant repository system,
   - Making mental health court orders available to appropriate criminal justice and treatment officials,
   - Making condition of release information available to appropriate criminal justice officials, and
   - Improving accuracy and completeness of the state's criminal history repository and National Instant Criminal Background Check System (NICS).

Goal #4: Enhancing Professionalism within Arizona's Courts

Judicial excellence, staff competency and professionalism are critical to maintaining Arizona's national reputation for innovation and leadership within its judiciary. From the judges on the bench, to judicial and executive management leadership, to the many staff in the courts and out in the field, it is essential to continue the level of service excellence and professionalism exhibited each and every day in courts across the state.

Strategic Agenda

July 2014 – June 2019

DRAFT

November 27, 2013

1. **Judicial Excellence**

   A highly respected judiciary is at the core of judicial excellence. The Judicial Branch must continue the professional development of new and veteran judges to ensure they adhere to the highest standards of competence, conduct, integrity, professionalism, and accountability.

   A. Examine the current systems for ensuring new and veteran judges are well-prepared for the courtroom, including but not limited to:
      - Assessing new judge training and orientation,
      - Establishing a skill enhancement program for experienced judges based on mentoring and education services, and
      - Ensuring an efficient and effective judicial oversight process is in place to monitor judges' performance and to address public concerns.

   B. Expand education opportunities for appellate judges.

   C. Collaborate with the State Bar on educational programs of mutual interest to judges and lawyers.

   D. Conduct a judicial education needs assessment to identify new or enhanced training for judges including, but not limited to:
      - Cultural competency and implicit bias,
      - Procedural fairness,
      - Forensic science,
      - Delinquency case processing, and
      - Effective use of technology on the bench, in chambers, and remotely.

   E. Develop web-based training on best judicial practices for protective order procedures and criminal case proceedings involving child victims.

2. **Judicial Branch Leadership**

   Developing effective court leadership is critical to maintaining a high level of professionalism and competency within the Judicial Branch.

   A. Develop judicial leadership and leadership team programs.

   B. Prepare court leadership for next generation case management systems and technology.

C. Provide resources for court executives and presiding judges to engage in effective succession planning for all levels of court management.

3. **Workforce Development**

Judicial branch employees who are not judges must possess the tools and skills needed to properly and timely process cases, maintain the court records accurately, and properly supervise juvenile and adult offenders in the community. Our workforce development plans must include training methods that are convenient and topics that are timely and relevant to the changing technology and population of citizens who encounter our courts.

A. Enhance use of web-based video/audio conference capability to train court employees.

B. Develop guidelines on the use of social media by court employees in the workplace.

C. Continue efforts to recruit and retain a culturally diverse workforce at all levels within the judicial branch.

D. Evaluate the need for wellness initiatives for judicial and other court staff.

Goal #5: Improving Communications and Community Participation

Awareness and understanding of the roles and responsibilities of the Judicial Branch and what courts do on a daily basis is essential to ensuring the public's trust and confidence in a judicial system that is designed to provide fair and impartial access to all Arizona citizens. With so many multimedia and social networking choices available today, there are a multitude of ways for the courts to enhance and improve the level and frequency with which the public is informed about court programs, proceedings, events, decisions, and opportunities for the public to serve as volunteers.

1. **Volunteerism**

Arizona's courts at all levels depend a great deal on volunteers to assist in fulfilling the judiciary's many functions and responsibilities – from judicial selection and performance review, to foster care review boards and CASA volunteers, to providing and increasing community outreach. While each component of the judiciary continually seeks out a talented and diverse volunteer base, the judicial branch as a whole can do more to enhance the importance and reward of serving as a volunteer in court programs.

A. Establish public service recruitment and recognition programs to further engage citizen participation in our judicial system.

B. Identify ways to enlist the help of retired judges and lawyers to provide community outreach and to act as "ambassadors" for the Judiciary.

C. Continue efforts to recruit and use a diverse volunteer base that represents the cultural make-up of the communities they serve.

2. **Communications with the Public and Education Communities**

In a world of oftentimes instantaneous access to information, Arizona courts must position themselves to be proactive in communication with the general public, community and elected officials, stakeholders and other government entities, to ensure the information available is accurate and clear, relevant and meaningful, and timely and accessible.

A. Engage in more proactive communication with the public explaining why courts are important to a free society, the important role courts play in every community of the state, and significant accomplishments towards achieving the goals of this agenda.

B. Continue to promote civic education about the role of courts through our partnership with the education communities across the state and by supporting programs such as "We the People" and Mock Trial, participating in Moot Court competitions, and conducting hearings and oral arguments in local schools and other community locations.

C. Use juror "downtime" to provide prospective jurors with information about the role of courts and public involvement in the justice system.

D. Update "Speaker's Toolkit" for judges and other court leadership to use when making presentations.

E. Increase use of social media to improve communications with the public.

3. **Communications within the Branch and with Other Branches of State and Local Government**

The Judicial Branch comprises many parts throughout the state, and while increased integration and technology have improved communications, Arizona courts should strive to further enhance communications across programs, jurisdictions, and branches of government.

A. Reinstitute the "View from the Bench" program for Superior Court and limited jurisdiction courts and invite local and state policy makers to participate.

B. Publish an electronic newsletter and identify other ways to improve communication within the branch regarding projects and other important events.

C. Identify ways to improve communication among the branches at the county and city levels of government.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	X Formal Action/Request __ Information Only __ Other	ACJA § 1-110: Committee on the Impact of Domestic Violence and the Courts

FROM:

Kay Radwanski, AOC Court Services Division, Staff to the Committee

DISCUSSION:

See attached Proposal Coversheet.

Ms. Radwanski will be available to answer questions about the proposed amendments to this code section.

RECOMMENDED COUNCIL ACTION:

Approve as written.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet
Part 1: Judicial Branch Administration
Chapter 1: Leadership
Section 1-110: Committee on the Impact of Domestic Violence and the Courts

1. **Effect of the proposal:** Amends ACJA § 1-110.

2. **Significant new or changed provisions:** Establishes rules for conducting CIDVC business, such as prescribing the quorum and majority needed to constitute CIDVC actions, setting policy for use of proxies, and instituting procedures for virtual meetings. Makes minor technical changes.

3. **Committee actions and comments:** CIDVC approved the modifications to ACJA § 1-110 at its September 10, 2013, meeting and requested that committee staff move forward with obtaining formal approval.

4. **Controversial issues:** None. The proposed changes to the code section were posted to the ACJA Web Forum, and no comments were received.

5. **Recommendations:**

   - Change the name of the Governor's Office representative. The current code refers to a representative from the "Governor's Office for Domestic Violence Prevention." The Governor's Office has not had an office by that name for many years. Instead, the current representative is the STOP grant administrator who works in the Governor's Office for Children, Youth and Families. It is recommended that this seat be designated for "a representative from the Governor's Office who works on domestic violence issues." A less specific designation will allow for a broader cast of potential candidates from the Governor's Office.

   - Change the requirement for a "Medical Doctor Representative" to "Medical Community Representative." It has been challenging to fill the "Medical Doctor Representative" seat as practicing physicians typically are unavailable for lengthy daytime meetings. Historically, attendance for persons holding this seat has been poor. CIDVC would like to expand the category to include other healthcare professionals such as physicians' assistants, nurse practitioners, and forensic nurses, which could result in a larger pool of applicants.

   - The proposed language regarding proxies, virtual meetings, quorum, and majority are substantially similar to language in ACJA § 1-105: Committee on Superior Court.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 1: Leadership
Section 1-110: Committee on the Impact of Domestic Violence and the Courts

A. General Purpose. The Committee on the Impact of Domestic Violence and the Courts (CIDVC) is established as a standing committee of the Arizona Judicial Council. CIDVC shall assist with the development and implementation of policies which acknowledge the severity of the problem of domestic violence in Arizona, increase awareness of victim resources, provide sanctions for criminal conduct, enhance the follow-through by law enforcement to enforce orders of protection, assess state and local proceedings and services and make recommendations for system changes that will promote enhanced safety for victims and the professionals who interact with them and encourage offender accountability.

B. Membership. CIDVC shall include the following members:

1. Three representatives from the superior court, to include one judge or commissioner, one administrator and one clerk.

2. Six representatives from the limited jurisdiction courts, to include at least two judges from metropolitan areas and two judges from non-metropolitan areas.

3. Four representatives from the law enforcement community, to include at least one representative from the sheriff's office.

4. Four representatives from the attorney community.

5. One representative from an Arizona domestic violence coalition.

6. Five representatives from domestic violence resource services providers, to include one representative from the Governor's Office ~~for Domestic Violence Prevention~~ who works on domestic violence issues, one medical ~~doctor~~ community representative and one representative from a shelter facility.

7. Two representatives from the general public.

8. Other members appointed at the discretion of the chief justice.

C. Terms of Members. The chief justice shall appoint members of CIDVC for terms of varying lengths to encourage continuity of CIDVC and may reappoint members for successive terms.

D. Responsibilities of Members. CIDVC members shall attend and actively participate in CIDVC meetings, assist with the administration of CIDVC affairs and serve on advisory ~~committees~~ subcommittees as necessary. A member may designate a proxy, subject to the requirements of ACJA § 1-104 and ~~CIDVC policies.~~ the following requirements:

1. If a CIDVC member cannot attend a meeting and would like to designate a proxy, the member must obtain prior approval of the chairperson. If approved by the chairperson, that proxy must comply with other guidelines regarding proxy rights; and

2. The use of more than three proxies per term by a CIDVC member is limited to extraordinary circumstances, as determined by the chairperson.

E. Organization. The chief justice shall appoint the chairperson of CIDVC and other leadership as needed to organize committee affairs. The chairperson may appoint advisory ~~committees~~ subcommittees to help CIDVC carry out its responsibilities.

F. Meetings. CIDVC shall meet no less than twice a year. The chairperson may call additional meetings. All meetings shall be noticed and open to the public.

1. Quorum. A simple majority (50% + 1) of the current CIDVC membership shall constitute a quorum.

2. Virtual Attendance (conference call, video conference, web conference, etc.). The CIDVC chairperson may designate a meeting as a virtual attendance meeting. Otherwise CIDVC members may attend a meeting from a remote location with prior approval of the chair. In the instance where the CIDVC chairperson designates a meeting as a virtual attendance meeting, a meeting room and a connection must be available for members of the public who wish to attend.

G. Actions. ~~CIDVC shall adopt rules for conducting CIDVC business. These rules shall prescribe the quorum and majority needed to constitute CIDVC actions.~~ Approval of a majority of those voting shall constitute an action of CIDVC.

H. Funding. CIDVC, with the assistance of the administrative office, may seek grant funding from local, state, and national organizations for the operation expenses, including expert advice and consultations. To the extent that funds are available, CIDVC may also use supreme court funds to partially or fully fund CIDVC expenses.

I. Staff. Under the direction of the chief justice, the administrative office shall provide staff to assist and support CIDVC and may conduct or coordinate management projects and research studies as recommended by CIDVC.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	_X_ Formal Action/Request __ Information Only __ Other	ACJA § 5-201 Evidence Based Pretrial Services

FROM:

Kathy Waters. Director, Adult Probation Services Division

DISCUSSION:

This code section provides the scope, requirements, and procedures for Arizona courts to establish and operate pretrial services consistent with evidence-based practices.

RECOMMENDED COUNCIL ACTION:

Approve code section as written.

Comments and Responses to ACJA Section 5-201: Evidence Based Pretrial Services

PARAGRAPH	COMMENT	RESPONSE
General Comment	Formatting and technical corrections to the document.	Changes incorporated.
General Comment	I have a few specific concerns. The largest concern is that this code section does not appear to take into account the offense for which the person has been charged or the specific facts of the offense when defining "risk" or identifying the information to be used to make recommendations. We should be considering the offense and the facts of the offense	Section E. Program Operations, 2. 2. appears to address this. It states "…pretrial staff shall assist in providing the following for the court's consideration in determining release decisions, pursuant to A.R.S. 13-3967(A):…2. The nature and circumstances of the offense charged." The offense is a consideration in the decision-making process, yet should not be the primary driving factor in determining risk of non-appearance or risk to public safety. The offense has little predictive value to risk. If the offense is especially disturbing, a judge may override the risk score when making a release decision; however, this code section is intended to guide pretrial services staff and not the judicial officers. Release conditions could consider the nature of the offense, i.e. drug testing for a defendant arrested for a drug offense. This code section is supportive of a risk-based system rather than a charge-based system.
Section A. Definitions	"Pretrial staff" should be "Pretrial services staff" throughout document	Change incorporated.

Section A. Definitions	The word "misbehavior" in the definition of "Risk" should be replaced with something like "unlawful behavior"	Change incorporated. The word "misbehavior" is replaced. For consistency throughout the document, the phrase "risk of committing a new crime or failing to appear while on pretrial release" is used when referencing the purpose of risk assessments.
Section B. Purpose	In addition, the purpose section (section B on page 2) does not appear to be a normal purpose statement. It claims to state the purpose of the code section and of pretrial services, but then has many areas in which pretrial services "may" which is more procedural than purpose. We may want to consider amending the second paragraph to clarify, something like: The purpose of pretrial services is to assist the court with pretrial release decisions, as well as pretrial supervision. The functions of pretrial services may vary in the different courts based on available funding for pretrial services. The rest of the information in the paragraph is contained within the code section itself.	Changes incorporated to replace the second paragraph of section B. to now read: "The purpose of pretrial services is to provide information that will assist the court in making pretrial release decisions as well as supervising defendants who are released pursuant to A.R.S. 13-3967(D)(5)."
Section C. Authority	I suggest we consider eliminating section (C)(3) on page 2. The authority is clear in the statute and I do not recall other code sections that re-state our authority on criminal history or direct us to follow the law on criminal history access.	Change incorporated. (Section C.3. deleted.)

Section E. 4. Program Operations	I also have concerns regarding paragraph 4 on page 4. There are significant cost issues with electronic monitoring in subsection a and drug/alcohol testing/treatment in subsection c. We may want to downplay these. We know we can use them when necessary because the statute specifically lists electronic monitoring and is quoted earlier in the code section. We should consider if we want to include house arrest in subsection b. This is hard and time consuming to monitor. Finally, we may want to consider whether the assessment of SMI needs is appropriate. If defendant is SMI, the needs will likely be quickly assessed and handled in the Rule 11 process. We could open ourselves up to having pretrial services records used in the Rule 11 determination if we are doing an SMI needs assessment.	Section E. 4. Changed to now read: "4. Pursuant to local policy, pretrial staff shall provide information and may make recommendations for release conditions consistent with A.R.S. 13-3967(D)-(E) and based on results from a risk assessment, which may also include but are not limited to:…" This will allow for local courts to determine specific parameters surrounding items 4.a. – 4.d.
Section E. 5. Program Operations	The first line of paragraph 5 on page 4 is awkward. We may want to consider revising to something like "When supervising pretrial defendants, pretrial services staff shall…" In addition, I recommend we consider adding "pursuant to local policy" or something similar at the end of subsection b. We may not want to report every technical violation, just as we do not report every technical probation violation. I suggest we omit subsection c. I am not sure how we facilitate this, unless this means request an FTA warrant and provide data to local law enforcement. Similarly in subsection d, the code fails to mention the need for an arrest warrant. This may be covered by "if authorized." However, this should probably be clear.	Section E.5. Changed to now read: "Unless otherwise directed in local policy, pretrial staff supervising defendants released to pretrial supervision shall:…" This will allow for local courts to establish policy surrounding how defendants are notified of their court dates and the type of violations that are reported. (Facilitating the return to court could be as simple as a phone call to a defendant who failed to appear and advising them to contact the court for a new court date or other strategies as defined by local policy.) Section 5.d. will have the words "pursuant to A.R.S. 12-256" added at the end of the sentence. (A.R.S. 12-256 defines the parameters for arrest of pretrial defendants by probation

		officers.)
Section E. 7. Program Operations	I am concerned about having pretrial staff "assist in determining modifications to bond" in subsection 7 on page 5. We do not recommend bond amounts. It's not our role.	Change incorporated by eliminating this section as it appears to be covered in section 5.f.. "Rule 7.4(b)" will be added into section 5.f. to read: "5.f. Provide reports to the court to inform of violations or assist the court in modification or revocation of conditions of release pursuant to Rule 7.4(b) and Rule 7.5(c)."
Section F. General Administration	Finally, we may want to consider revising section F on page 5. The section has the presiding judge adopting policies. However, if pretrial is under probation, which is authorized in this code section, it may be appropriate for the chief probation officer to adopt the policies. I would add some language "or designee".	Change incorporated. "or designee" added to section F.1. and F.2.
Section E.8. Program Operations	(Comments made during COP conference call and e-mails from Chiefs ask for this section to be clarified; however was not entered in the ACJA Forum). Currently reads: Courts shall establish supervision standards for pretrial staff supervising persons under pretrial supervision based on the defendant's risk level and to respond to risk factors identified through the risk assessment tool.	Change incorporated to read: "Courts shall establish supervision requirements which support the goals of minimizing the risk of defendants committing a new crime or failing to appear while on pretrial release."

Code Title	The title of this section is "Evidence Based" Pretrial Services; however, this section does not discuss performance measures, or methods to track these measures. It does not establish standards on how pretrial service agencies should track their effectiveness, which I feel is the foundation of evidence based practices. What it does do is takes pre-existing definitions, rules/laws and a very limited number of new monitoring concepts and fits them together to establish what types of tasks and responsibilities a pretrial agency should have. Having said that, I do think having these definitions in one code is a good idea. But, I think this particular code should have a different title. Evidenced Based Practices in Pretrial Services should be a follow up code that sets performance measures on how often and how agencies should measure their success or the successes of their practices. It probably would be helpful to speak to the State's pretrial folks and see how (if) agencies currently monitor what works and what we view are appropriate measures to guage our success. Establishing some basic guidelines and offering support on how to collect and measure these standards in individual jurisdictions would be crucial to meeting the goals of establishing and maintaining effective pretrial services agencies in the state.	The use of a risk assessment to assist the court in determining pretrial release conditions is one of the first steps toward implementing evidence based pretrial services. This is an initial governing document intended to introduce the use of evidence based practices and risk assessment to courts in Arizona, many of which currently do not have any form of pretrial services. Performance measures are also an important part of evaluating an evidence-based program. Because this code section is intended to establish general operating guidelines, details of that nature are not included. Section F. 2. does require "…data reports to the AOC as requested." and may later be further defined.
B. Purpose	Superior Courts may operate PTS departments, but in other states, PTS agencies are formed outside of the court. Agencies operate through sheriff's departments or as contracted private agencies, for example. Maybe this should be either reworded or addressed slightly differently.	The Arizona Code of Judicial Administration applies to courts throughout Arizona and section D. Applicability. states that this code section applies to all courts or court departments that operate pretrial services.

E. Program Operations (1.)	The first point discusses a risk instrument; however, I think given the current code title, the establishment of a risk instrument tool needs much further definition. What are the standards set for developing the content in a R. I. tool, should it be validated, and how often should it be validated are some of the points that should be addressed.	This section indicates that the risk assessment tool shall be approved by the Arizona Judicial Council. This process will provide the opportunity to evaluate if a tool is validated and evidence based.
D (5.)	"Report regularly" is too vague a criteria. Agencies differ on what constitutes "regularly". I think this is another area where guidelines on how to develop an effective reporting (supervision) schedule would be more appropriate, given the code's current title.	Section E. 3. D. 5. is taken directly from A.R.S. § 13-3967(D)-(E) and is included to provide the statutory requirements related to pretrial services. Sections E. 4. and E. 5. of the code section are modified to add the words "Pursuant to local policy…" to allow for individual courts to define the details of these functions.
D (6.)	If the court feel a person will not flee during daytime hours and is responsible enough to remain out of custody, is there a need for this? Especially since they are not serving a jail sentence (which is the benefit of work release, allowing an individual to remain employed while they serve a mandated sentence). Logistically speaking, also, the Jail in our jurisdiction houses work-release individuals apart from the pretrial population. Evidence Based Practices has an aspect that views individuals' exposure to behaviors, in this case sentenced individuals, and how that exposure can actually lead to failure. Do we want to suggest a practice that mixes pretrial defendants with a sentenced population in certain jurisdictions?	(Same as above).

E (4. c.)	EBP guidelines regarding testing and how much involvement a supervising staff member are probably necessary. Over-testing (the number of times a defendant is tested) can be a very onerous condition of release, given the defendant for defendants to report to a testing office yet maintain employment, meet with their attorney and attend court. Also, they may be asked to also attend counseling sessions or seek treatment. If this an EBP document, the effectiveness of drug testing needs to come with some guidance on how to establish guidelines in individual jurisdictions and how to measure performance success.	Sections E. 4. and E. 5. of the code section are modified to add the words "Pursuant to local policy…" to allow for individual courts to define the details of these functions.
E (5. d.)	Will/could create very fuzzy lines between an assessment agency (theme of this section, risk assessment) and enforcement. The "defendant" if that is the population we are working with is innocent until proven guilty. Any violations of release condition should be presented to a judge before an individual's right to be release is imposed upon. A pretrial staff member should not have the authority to relieve an individual of this right. Recruiting, training, and maintaining staff who utilize nonjudgmental thinking, objective assessments and who are very aware of the defendant's legal standing (non-conviction) could be seriously compromised by granting arrest authority. The following two points in this numbered section 5. (e) and (f) are very appropriate for a PTS agency. These, from my perspective outline exactly how a PTS agency should address noncompliance, by keeping the court informed.	The words "pursuant to A.R.S. 12-256" have been added to this sentence to read: "Make arrests of persons on pretrial release if authorized pursuant to A.R.S. 12-256;" A.R.S. 12-256 defines the arrest powers for probation officers enforcing pretrial release conditions.
E (8.)	Once again, this is an excellent subject, but I think an EBP code should offer more developed guidelines on how agencies can set up their supervision practices.	This is addressed in an earlier comment above. See "Section E.8. Program Operations"

F & G	I think developing suggested guidelines for data reports and training should be a focus of an EBP code. These last two categories are very under utilized in this document, with the view that this is an EBP code. For example, when discussing risk assessment instrument training, does the code mean agency training for those formulating or maintaining the tool? Or does it mean training for line staff who use the tool? Regarding data reports, what types of performance measures or data are we looking to collect, present and analyze? And why? Concluding my thoughts, I feel analyzing how PTS programs operate, helping to encourage the establishment of PTS programs in the State and developing ways for these programs to monitor and improve upon their own success has been overdue and it is exciting to see this pushed to the forefront. This document, I feel, is a starting point, but there can be more depth when discussing evidence based practices or the guidelines on how to monitor and achieve successful practices.	These areas may be further defined and developed in the future.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet
Section 5-201: Evidence Based Pretrial Services

1. **Effect of the proposal:**

   This code section will provide the scope, requirements, and procedures for Arizona courts to establish and operate pretrial services consistent with evidence-based practices.

2. **Significant new or changed provisions:**

   This is a new code section which promotes the use of a risk-based assessment tool for judicial officers to consider when making decisions related to release or detention of defendants at the initial appearance.

3. **Committee actions and comments:**

   Comments made through the ACJA Forum have been addressed in a "comments table" which is provided.

   Committee on Probation provided a variety of comments and voted to approve the code section with the understanding that their concerns would be addressed in the final draft of the code section. These are referenced in the comments table.

   Committee on Superior Court voted to approve the code section with the understanding that the comments provide by the Committee on Probation would be addressed in the final draft.

   Committee on Lower Jurisdiction Courts voted to approve the code section. They asked that it be confirmed that this code section would not apply to judicial officers who ask questions and gather information from defendants during hearings to assist them in making release decisions when a court does not have a formal pretrial service program. It is the intention that this code section would not apply to individual judicial officers who conduct these types of activities.

4. **Controversial issues:**

   Concerns were raised that this code section does not take into account the offense for which the defendant has been charged when defining risk. (Addressed in comments table)

   Concern was raised that this code section does not include more details regarding performance measures and tracking effectiveness of pretrial programs and more specific evidence-based practices. (Addressed in comments table)

   Concern was raised about whose responsibility is it to notify defendant's of their court dates

or provide court date reminders as this could require additional resources. (Research and evidence based practices suggest this is the role of pretrial services and is a cost-effective tool in increasing the rate of defendant's who appear for scheduled court hearings, thereby decreasing the number of failure to appear warrants.)

Concerns were raised that this is an "unfunded mandate".

5. Recommendation:

It is recommended that this code section be adopted as written.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-201: Evidence Based Pretrial Services

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

"Court" or "courts" means superior court or limited jurisdiction court.

"Electronic Monitoring" means various technologies utilized to monitor a defendant's compliance with release conditions, including use of global positioning satellite and radio frequency.

"Evidence based practices" means programs, assessments and supervision policies and practices that scientific research demonstrates reduce instances of a pretrial defendant's failure to appear in court and involvement in criminal activity.

"Offense" (or public offense) means "conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of the state in which it occurred or by any law, regulation or ordinance of a political subdivision of that state and, if the act occurred in a state other than this state, it would be so punishable under the laws, regulations or ordinances of this state or of a political subdivision of this state if the act had occurred in this state" as provided in A.R.S. § 13-105(27).

"Pretrial risk assessment" means a state-approved validated actuarial assessment that predicts a pretrial defendant's risk of committing a new crime or failing to appear while on pretrial release for the purpose of assisting the court in determining release decisions and release conditions and to assist the pretrial services staff with supervision monitoring requirements.

"Pretrial services" means programs that perform functions to assist the court in making prompt, fair, and effective decisions regarding the release, detention or conditions of release of persons arrested.

"Pretrial services staff" means court employees who assist the court in making determinations regarding the release or detention of persons arrested, make recommendations for release conditions, and provide supervision or monitoring of persons released under supervision. Pretrial services staff includes probation officers who perform these duties.

"Pretrial supervision" means monitoring and supervising defendants who are released pursuant to A.R.S. § 13-3967(D)(5) to minimize risks of committing a new crime or failing to appear while on pretrial release.

"Release order" means the court order that contains the conditions and restrictions imposed by the court as well as the next court date and location.

"Risk" means measurable factors that correlate to a pretrial defendant's probability of committing a new crime or failing to appear while on pretrial release that are gathered

through a standardized risk assessment instrument, information from the defendant, victims, interested parties or other sources of information.

B. Purpose.

This code section provides the scope, requirements, and procedures for Arizona courts to establish and operate pretrial services consistent with evidence-based practices. The superior court in each county may operate pretrial services in the probation department, pretrial services department or court administration. Municipal and justice courts may also establish and operate pretrial services.

The purpose of pretrial services is to provide information that will assist the court in making pretrial release decisions, as well as supervising defendants who are released pursuant to A.R.S. § 13-3967(D)(5).

C. Authority.

1. Az. Const. Art. 6, § 3, provides that the supreme court shall have administrative supervision over all the courts of the state. As part of that administrative supervision, this code section establishes requirements for the formation and operation of pretrial service programs consistent with Az. Const. Art. 2 § 22(A),(B) and A.R.S. § 13-3967.

2. In order to assist the court in making determinations regarding release, the imposition of conditions of release or to make determinations regarding violations of conditions of release pursuant to Az. Const. Art. 2 § 22(A),(B), and A.R.S. § 13-3967(C),(D)(5), pretrial services shall have authority to interview and process all persons charged with an offense either before or after first appearance.

D. Applicability.

This code section applies to all courts or court departments that operate pretrial services including interviewing pretrial defendants, administering pretrial risk assessments, providing recommendations regarding release conditions and/or supervising persons released to pretrial supervision.

E. Program Operations.

1. Courts operating pretrial services shall use a pretrial risk assessment tool approved by the Arizona Judicial Council to assist in determining a defendant's likelihood of committing a new crime or failing to appear for court while on pretrial release. The results of the pretrial risk assessment tool shall be provided to the court prior to the initial appearance and, when requested by the court, for use at any hearing in which release decisions are made.

2. To the extent this information is available, pretrial services staff shall assist in providing the following for the court's consideration in determining release decisions, pursuant to A.R.S. § 13-3967(A),(B):

1. The views of the victim.
2. The nature and circumstances of the offense charged.
3. The weight of evidence against the accused.
4. The accused's family ties, employment, financial resources, character and mental condition.
5. The results of any drug test submitted to the court.
6. Whether the accused is using any substance if its possession or use is illegal pursuant to chapter 34 of this title.
7. Whether the accused violated section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.
8. The length of residence in the community.
9. The accused's record of arrests and convictions.
10. The accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.
11. Whether the accused has entered or remained in the United States illegally.
12. Whether the accused's residence is in this state, in another state or outside the United States.

3. A.R.S. § 13-3967(D)-(E) states:

D. After providing notice to the victim pursuant to section 13-4406, a judicial officer may impose any of the following conditions on a person who is released on his own recognizance or on bail:
1. Place the person in the custody of a designated person or organization agreeing to supervise him.
2. Place restrictions on the person's travel, associates or place of abode during the period of release.
3. Require the deposit with the clerk of the court of cash or other security, such deposit to be returned on the performance of the conditions of release.
4. Prohibit the person from possessing any dangerous weapon or engaging in certain described activities or indulging in intoxicating liquors or certain drugs.
5. Require the person to report regularly to and remain under the supervision of an officer of the court.
6. Impose any other conditions deemed reasonably necessary to assure appearance as required including a condition requiring that the person return to custody after specified hours.

E. In addition to any of the conditions a judicial officer may impose pursuant to subsection D of this section, the judicial officer shall impose both of the following conditions on a person who is charged with a felony violation of chapter 14 or 35.1 of this title and who is released on his own recognizance or on bail:
1. Electronic monitoring where available.
2. A condition prohibiting the person from having any contact with the victim.

4. Pretrial services staff shall provide information and may make recommendations to assist the court in setting release conditions consistent with A.R.S. § 13-3967(D)-(E) and local policy. Release conditions recommendations shall be based on results from a risk assessment, and may also include but are not limited to:

    a. Use of electronic monitoring;

    b. Imposing curfews or house arrest;

    c. Drug and alcohol monitoring, testing, evaluation or treatment; and

    d. Assessing needs of seriously mentally ill defendants.

5. Pretrial services staff supervising defendants released to pretrial supervision shall:

    a. Ensure released defendants are informed of their next court date and, when required by local policy, provide released defendants with a reminder of future court dates;

    b. Inform the court of violations of pretrial release conditions pursuant to local policy;

    c. Facilitate the return to court of defendants who fail to appear for their scheduled court dates;

    d. Make arrests of persons on pretrial release if authorized pursuant to A.R.S. § 12-256;

    e. Promptly inform the court of any danger the person poses to other persons or the community, or other significant changes that may impact the person's risk; and

    f. Provide reports to the court to inform of violations or assist the court in modification or revocation of conditions of release pursuant to Rule 7.4(b) or 7.5(c), Rules of Criminal Procedure.

6. When juveniles transferred or charged in adult court are released to pretrial supervision, pretrial services staff shall assist the court as necessary in notifying the appropriate school district, pursuant to A.R.S. § 13-3967(J) which provides:

    > A judicial officer who orders the release of a juvenile who has been transferred to the criminal division of the superior court pursuant to section 8-327 or who has been charged as an adult pursuant to section 13-501 shall notify the appropriate school district on the release of the juvenile from custody.

7. Courts shall establish supervision requirements which support the goals of minimizing the risk of defendants committing a new crime or failing to appear while on pretrial release.

F. General Administration.

1. A presiding judge or designee operating pretrial services or pretrial supervision shall adopt policies and procedures in support of this code that conform with this section and are consistent with the principles of evidence-based practices.

2. A presiding judge or designee operating pretrial services or pretrial supervision shall provide data reports to the AOC as requested.

G. Training Requirements.

1. Courts using a risk assessment instrument shall ensure that pretrial services staff responsible for administration of a pretrial risk assessment instrument complete approved training.

2. Courts that provide supervision of persons released under supervision of a pretrial services agency shall ensure that all pretrial services staff providing supervision have completed approved training.

ljaf RESEARCH SUMMARY

DEVELOPING A NATIONAL MODEL FOR PRETRIAL RISK ASSESSMENT

Every day in America, judges have to answer a critical question again and again: What are the chances that a recently arrested defendant, if released before trial, will commit a new crime, a new violent crime, or fail to appear for court?

This may be the single most important decision made in the criminal justice system because it impacts everything that follows: whether or not a defendant is sentenced to jail or prison, how long he is incarcerated, and most importantly, how likely he is to commit violence or other crimes in the future. Yet most of these decisions are made in a subjective manner, without the benefit of data-driven, objective assessments of the risks individual defendants pose to public safety.

Today, in many jurisdictions, judges do their best to apply their experience and instinct to the information they have about a defendant to make a subjective determination of whether he will commit a new crime or fail to return to court if he is released. In other jurisdictions, judges may follow court guidelines that require that all defendants arrested for a specific crime receive the same conditions of release (such as supervision, bail, or drug testing), regardless of risk. But neither method of deciding whether a defendant should be detained or released – a subjective evaluation, or an offense-specific one-size-fits-all approach – provides a reliable measure of the risk that a defendant poses. And yet this decision – whether to release or detain a defendant – is far too important to be left to chance.

Each year, 12 million people are booked into local jails across the country, the vast majority for nonviolent crimes. More than 60% of inmates in our jails today are awaiting trial, and we spend more than $9 billion annually to incarcerate them. The goal of most criminal justice decisionmakers is to detain defendants who pose a risk to public safety – particularly those who appear likely to commit crimes of violence – and to release those who do not.

Yet data collected by the Laura and John Arnold Foundation (LJAF) during the past two years shows that although this may be our goal, it is far from being a reality. Indeed, our research has shown that defendants who are high-risk and/or violent are often released. In two large jurisdictions that LJAF examined in detail, nearly half of the highest-risk defendants were released pending trial. And, at the

other end of the spectrum, our data shows that low-risk, non-violent defendants are frequently detained. Moreover, soon-to-be-released LJAF research on low-risk defendants shows that when they are detained pretrial, they are more likely to commit new crimes in both the near and long term, more likely to miss their day in court, more likely to be sentenced to jail and prison, and more likely to receive longer sentences. In other words, failing to appropriately determine the level of risk that a defendant poses impacts future crime and violence, and carries enormous costs – both human and financial.

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AN OPPORTUNITY FOR TRANSFORMATIONAL CHANGE

Two years ago, LJAF decided to use data, analytics, and technology to promote transformational change in criminal justice. With the goal of making the system safer, fairer, and less costly, we set out to improve how decisions are made during the earliest part of the criminal justice process, from the time a defendant is arrested until the case is resolved. (Criminal justice professionals refer to this as the "pretrial" period.)

From the beginning, we believed that an easy-to-use, data-driven risk assessment could greatly assist judges in determining whether to release or detain defendants who appear before them. And that this could be transformative. In particular, we believed that switching from a system based solely on instinct and experience to one in which judges have access to scientific, objective risk assessment tools could further our central goals of increasing public safety, reducing crime, and making the most effective, fair, and efficient use of public resources. We understood that judges already consider many of the most critical factors related to a defendant's risk of committing a new crime or failing to return to court; however, we also knew that it is extremely difficult for judges to know how to accurately and objectively weigh these factors, or to know which factors, when combined with one another, increase the risk of failure exponentially. We were also able to see the impact that risk assessments have had in the limited number of U.S. jurisdictions in which they are presently used: although less than 10% of jurisdictions use data-driven pretrial risk assessments, these jurisdictions have been able to spend less on pretrial incarceration, while at the same time enhancing public safety.

We initially looked for an existing pretrial risk assessment that could be used by any judge throughout the country. This sort of universal risk assessment has been used effectively for probation and parole. However, we quickly found that there was nothing equivalent for the pretrial release/detention decision.

Moreover, there appeared to be no risk assessment instrument that could be scaled to provide data-driven risk analysis to courts across America. In large part, this is because existing pretrial risk assessments are often costly and resource-intensive to administer, since they rely on data that can only be gathered through defendant interviews. These interviews are time-consuming and expensive to conduct and cannot be completed when a defendant refuses to cooperate or provides information that cannot be verified. (For these and other reasons, 40% of all defendants in one jurisdiction we studied were not evaluated for risk.) Further, most existing pretrial risk assessments were developed using data from a single jurisdiction, and other states and counties did not believe they could adopt a tool that was based on case records from

somewhere else. In addition, existing tools also present a single risk level for each defendant, combining – and assigning equal weight to – the risk that a defendant will fail to appear and the risk that he will reoffend. And none of the existing tools determine risk of new violent criminal activity, which is perhaps judges' greatest concern.

Our challenge was to figure out how to provide objective, scientific, data-driven risk assessments to the more than 90% of jurisdictions that did not use them. No existing model did what we wanted it to do: separately analyze risk of new crime, new violent crime, and failure to appear; be useable by every judge in the country; be applicable to every defendant; and be highly predictive of the most important risks. In short, what we needed was an instrument that would be accurate, inexpensive to administer, easy to use, and scalable nationally. So we decided to try to create a new, second-generation risk assessment that could be adopted by judges and jurisdictions anywhere in America.

When judges can easily, cheaply, and reliably quantify defendant risk, they will be much better able to identify the high-risk defendants who must be detained and the low-risk defendants who can safely be released.

DEVELOPING THE RISK ASSESSMENT

The first step was a study to assess the feasibility of eliminating the costly and time-consuming defendant interviews from the risk assessment process. LJAF's research team – led by two of the country's top criminal justice researchers, Dr. Marie VanNostrand and Dr. Christopher Lowenkamp – began its work in Kentucky, which was already using an interview-based risk assessment, and has long been a national leader in the pretrial field. An initial study focused on the core question of whether eliminating the interview would decrease the predictive power of the tool. To test this, the research team looked at the existing Kentucky risk assessment, which consisted of 12 total factors: nine that were drawn from the defendant's criminal history and three that were elicited during the interview process. The team created a new tool, relying solely on criminal history factors from the state's original instrument. We then used this non-interview tool to evaluate more than 190,000 Kentucky defendants who had already gone through the existing interview-based assessment. The study compared the risk prediction of the new tool – the one without an interview – to the existing interview-dependent tool, and found that the non-interview risk assessment was just as predictive as the existing one.

That finding led us to the next step: to gather the most comprehensive dataset of pretrial cases ever assembled in the United States with the goal of developing a universal risk assessment. Researchers started with 1.5 million cases drawn from more than 300 U.S. jurisdictions. From the initial dataset, the research team was able to study 746,525 cases, since these defendants had been released at some point in the pretrial process. The researchers had two primary objectives. First, to determine the best predictors across jurisdictions of new criminal activity, failure to appear, and, for the first time, new violent criminal activity. Second, to develop a risk-assessment tool based on these predictors. Although we believed that the interview could likely be eliminated, we considered both interview and non-interview factors in an effort to build the most predictive risk assessment possible.

The study identified and tested hundreds of risk factors, which fell into broad categories, including prior arrests and convictions, prior failures to appear, drug and alcohol use, mental health, family situation, employment, residence, and more. The researchers identified nine factors that

were the most predictive – across jurisdictions – for new crime, new violence, and failure to appear. These factors were drawn from the existing case (e.g., whether or not the current offense is violent) and from the defendant's prior criminal history. The researchers looked at numerous interview-based factors, including employment, drug use, and residence, and found that, when the nine administrative data factors were present, none of the interview-based factors improved the predictive analytics of the risk assessment. In other words, for all three categories – new criminal activity, new violent crime, or failure to appear – the addition of interview-dependent variables did not improve the risk assessment's performance.

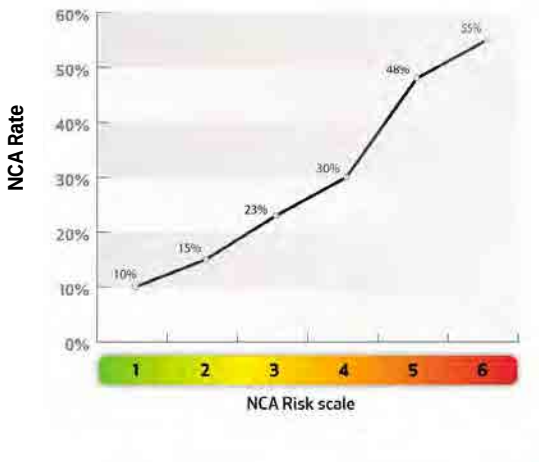
The resulting product is the Public Safety Assessment-Court (PSA-Court), a tool that reliably predicts the risk a given defendant will reoffend, commit violent acts, or fail to come back to court with just nine readily available data points. What this means is that there are no time-consuming interviews, no extra staff, and very minimal expense. And it can be applied to every defendant in every case.

PROMISING RESULTS

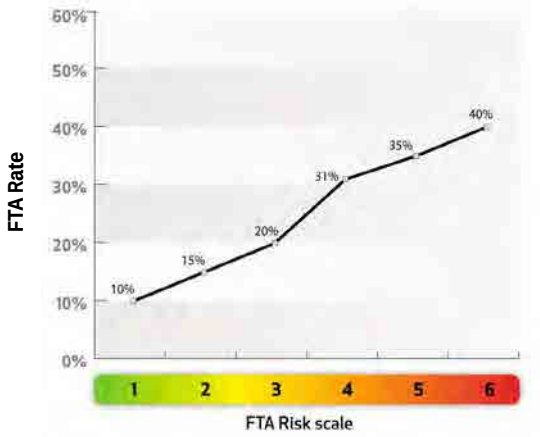
The PSA-Court's three six-point scales – one each for new crime, new violence, and failure to appear – do a remarkable job distinguishing among defendants of different risk levels. As the charts demonstrate, the likelihood of a negative pretrial outcome increases with each successive point on the scale. Each scale begins with the lowest level of risk, identified by the number one, and increases point-by-point until reaching the highest level of risk, identified by the number six.

PSA-Court Failure Rates by Risk Level

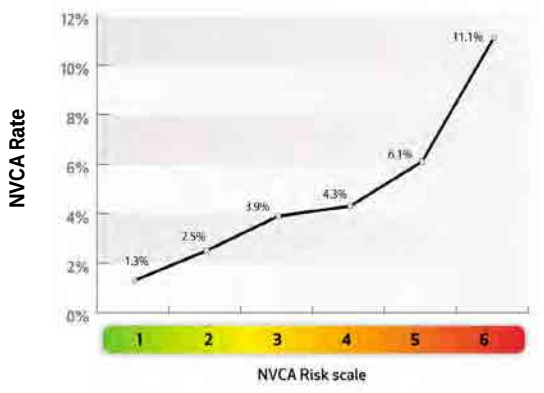
New Criminal Activity



Failure to Appear



New Violent Criminal Activity



The promise of the PSA-Court was further validated using historical data from one state and one major city. Moreover, 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.

All of Kentucky's 120 counties began using the instrument in July of 2013. Preliminary analysis shows that the PSA-Court is, thus far, successfully predicting criminal reoffending and failing to return to court.

LJAF plans to roll out the PSA-Court in additional pilot sites soon and then to make the tool widely available. We will also continue to collect more data, as this will allow us to rigorously evaluate whether we can improve upon the existing universal risk assessment. LJAF also plans to create data-driven risk assessments for police and prosecutors; and to evaluate or create tools that will specifically predict the likelihood of repeat domestic violence and driving under the influence.

LOOKING AHEAD

Under the current system, we make decisions based on gut and intuition instead of using rigorous, scientific, data-driven risk assessments. This has led to a public safety crisis nationally, where too many high-risk defendants go free, and too many low-risk defendants remain locked up for long periods. These systemic failures put the public in danger and place unnecessary strain on budgets, jails, law enforcement, families, and communities. The PSA-Court, and instruments like it, can help recalibrate the equation. When judges can easily, cheaply, and reliably quantify defendant risk, they will be much better able to identify the high-risk defendants who must be detained and the low-risk defendants who can safely be released. They will also be able to better identify what conditions can be imposed on defendants to minimize risk.

Our goal is that every judge in America will use a data-driven, objective risk assessment within the next five years. We believe that this one change can make our communities safer and stronger, our corrections budgets smaller, and our system fairer.

It is critically important to note that tools such as this are not meant to replace the independent discretion of judges; rather, they are meant to be one part of the equation. We expect that judges who use these instruments will look at the facts of a case, and at the risk a defendant poses, and will then make the best decision possible using their judgment and experience.

Our goal is that every judge in America will use a data-driven, objective risk assessment within the next five years. We believe that this one change can make our communities safer and stronger, our corrections budgets smaller, and our system fairer. The Laura and John Arnold Foundation is dedicated to bringing transformational change to criminal justice through advanced data analysis and technology. Getting the PSA-Court in the hands of judges across America is one of our first major steps in that effort.

About Laura and John Arnold Foundation

Laura and John Arnold Foundation is a private foundation that currently focuses its strategic investments on criminal justice, education, public accountability, and research integrity. LJAF has offices in Houston and New York City.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	X Formal Action/Request __ Information Only __ Other	ACJA § 6-106: PERSONNEL PRACTICES

FROM:

Kathy Waters, Director, Adult Probation Services Division and Chad Campbell, Director, Juvenile Justice Services Division

DISCUSSION:

Proposed revisions add human performance requirements to the personnel practices code.

Please note the presented version is different from the posted version for comment, as it incorporates amendments made at the October 17, 2013, AJC in the subsection addressing Continuing Employment Requirements, which were effective October 31, 2013, and required to conform to HB2442.

RECOMMENDED COUNCIL ACTION:

Approve as written.

Comments and Responses to ACJA Section 6-106: Personnel Practices

PARAGRAPH	COMMENT	RESPONSE
Section F. Minimum Qualifications for Officer Applicants	The statement "Departments shall follow job description standards for officer postings as approved by AOC" was added. It does not, however, list those standards. It would also be helpful to see an example of an approved posting.	Changed wording from "postings" to "vacancies." The job description standards will be developed after adoption of these amendments. This code section will have a delayed effective.
Section F. Minimum Qualifications for Officer Applicants	The new addition to this section: "Departments shall follow job description standards for officer postings as approved by AOC." What and where are these "job description standards" that we must follow for postings? Are the "postings" to be approved by the AOC or the "job description standards"? This sentence is not clear. I could assume that the "standards" relate to the minimum qualifications, but that's not necessarily how it is written.	See above.
Section H. Human Performance Evaluation	Since applicants undergo psychological testing, it would make some sense to set medical qualifications as well. The evaluation criteria seem reasonably related to the job. There are a few questions and comments to consider: Where did the Human Performance Evaluation come from? Is another probation department using it? If so, what is their experience? How will AOC be "approving" qualified providers? Who will be funding this expense? It is a concern that over time the medical qualifications for applicants will be confused or mixed in with the opportunity for current staff to request a reasonable accommodation (covered in 6-107 – Safety Training). The Chief should always have the discretion to determine how or if an accommodation will be made for an officer	Comments and questions not related to the content of the code should be raised and addressed separately. Added a clarifying sentence to emphasize that the HPE are minimum requirements.

	who can no longer perform the essential functions of the job.	
Section H. Human Performance Evaluation	I think more information is needed under this section. For instance: In order to pass, must the officer applicant pass all or a percentage? What happens with the HPE documentation? Who maintains the record? How is it maintained? What documentation or information does the department get? I'm also concerned with timeliness of this process; having vacant caseloads sitting for any length of time during a long hiring process is unacceptable.	See above.
Section I. Application and Background Investigation Requirements	1(d) and (e) compared to 3. (c). The applicant is required to disclose "personal references" and "employment references", but under 2c, the department is required to review "professional and personal references." In our last operational review, we were "cited" for not including "professional references" in addition to employment and personal. It seems to me that 3(c) should be consistent with 1(d) and 1(e).	Change incorporated to make language consistent.
Appendix: Human Performance Evaluation	There are 13 sections in the HPE that are scored as pass/fail. It is not clear if applicants are required to pass all 13 sections or if they have to pass a percentage of sections.	See response for Section H comment.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 1: General Administration
Section 6-106: Personnel Practices

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

"Administrative director" means both the administrative director of the Administrative Office of the Courts (AOC) or the director's designee.

"Court" means superior court.

"Department" means both adult and juvenile probation agencies.

"Evaluator" means a licensed or certified psychologist.

"Human Performance Evaluation" means an assessment of an officer applicant's ability to perform the essential physical functions of the job.

"Officer" means both adult and juvenile probation and surveillance officers.

"Presiding judge" means the presiding judge of the superior court or presiding juvenile judge or designee.

"Safety sensitive duties" means duties that involve assigned responsibilities for direct community or custodial supervision of probationers, defendants or juveniles pending adjudication or that involve authorization to carry and to use a firearm in the performance of other assigned responsibilities.

"Safety sensitive positions" means officers, community service coordinators and other employees as designated by the chief probation officer or director of juvenile court services who provide direct supervision or services to adult or juvenile offenders who are subject to the jurisdiction of the court.

B. Applicability. Article VI, Section 3 of the Arizona Constitution and A.R.S. §§ 12-252(A) and 8-203(E) authorize the supreme court to establish personnel practices for adult and juvenile probation personnel, and A.R.S. §§ 12-251(C) and 8-203(C) authorize the supreme court to prescribe minimum qualifications for adult and juvenile probation department personnel with peace officer status.

C. Purpose. To prescribe and establish minimum personnel requirements for adult and juvenile probation departments. This code shall not limit the discretion of the chief probation officer or the director of juvenile court services to adopt local personnel practices not in conflict with this code section.

D. General Administration.

1. A.R.S. § 12-251(A) provides, "The presiding judge of the superior court in each county shall appoint a chief adult probation officer who shall serve at the pleasure of the presiding judge. Such chief adult probation officer, with the approval of the presiding judge of the superior court, shall appoint such deputy adult probation officers and support staff as are necessary to provide presentence investigations and supervision services to the court."

2. A.R.S. § 8-203(A) provides, "The presiding judge of the juvenile court shall appoint a director of juvenile court services who shall serve at the pleasure of the presiding juvenile judge."

3. A.R.S. § 8-203(B) provides, "The director of juvenile court services shall recommend the appointment of deputy probation officers, detention personnel, other personnel and office assistants as the director deems necessary."

E. Personnel System. Pursuant to A.R.S. §§ 12-252(A) and 8-203(E) each chief adult probation officer and director of juvenile court services shall ensure that:

1. The probation department is included in or maintains a personnel system covering all probation department employees that meet the requirements of this code and is consistent with local judicial or county personnel systems.

2. The personnel system includes provisions regarding:

   a. Hiring, promoting, disciplining and terminating probation department employees.

   b. Position titles, minimum qualifications and job responsibilities for each position.

   c. Completion of annual performance reviews.

3. The probation department adopts and integrates the model policy for drug testing into local policies, as set forth in Appendix A of this code section.

4. The probation department's personnel system adheres to all applicable federal and state statutes, the Federal Drug-Free Workplace Act of 1988, local ordinances, the Arizona Code of Judicial Administration (ACJA) and all administrative orders regarding employment and labor practices.

F. Minimum Qualifications for Officer Applicants. Pursuant to A.R.S. §§ 12-251(C) and 8-203(C): "Probation department personnel shall qualify under minimum standards of experience and education established by the ~~S~~supreme ~~C~~court." Departments shall follow job description standards for officer vacancies as approved by AOC. Employees hired before October 27, 2003 may be exempted from the minimum qualifications stated below. All employees seeking promotional opportunities after October 27, 2003 shall meet these minimum requirements.

1. All chief adult probation officers and directors of juvenile court services shall be a United States citizen or have legal resident status and possess the following:

   a. At minimum, a master's degree in business, management, the social sciences or a related field from an accredited college or university; and

   b. Ten years experience in the fields of corrections or probation, or working with offenders or delinquents in some equivalent capacity with at least five years of progressively increasing responsibility in an administrative and supervisory capacity.

2. A presiding judge in a county with a population of fewer than 300,000, and having good cause, may request a waiver of the requirement for a chief adult probation officer and director of juvenile court services from the administrative director.

3. All adult and juvenile probation officers shall be a United States citizen or have legal resident status and possess the following:

   a. At minimum, a bachelor's degree with a preference in the behavioral sciences or a related field from an accredited college or university; and

   b. Minimum age of 21 years.

4. All adult and juvenile surveillance officers shall be a United States citizen or have legal resident status and possess the following:

   a. At minimum, a high school diploma or a GED; and

   b. Minimum age of 21 years.

G. Medical Qualifications for Officer Applicants.

1. Departments shall have each officer applicant certify, on a form approved by the AOC, that they are able to perform the required training and job duties of an officer with or without reasonable accommodations.

2. Departments may require applicants to provide additional medical information and submit to a physical examination.

H. Human Performance Evaluation. Departments shall have officer applicants complete an Human Performance Evaluation ("HPE") administered by a qualified provider that is approved by AOC. The HPE will assess the minimum physical standards required in the performance of officer duties. Applicants who do not meet the HPE standards set by AOC are disqualified for employment as an officer. The HPE is attached and incorporated as Appendix B, "Human Performance Evaluation Adult and Juvenile Probation/Surveillance Officer."

~~H~~I. Application and Background Investigation Requirements.

1. Departments shall mandate that each applicant for employment completes an application that, at minimum, discloses the following information:

   a. Identifying information;

   b. Employment history;

   c. Education history;

   d. Personal references;

   e. ~~Employment references~~ Professional references;

   f. ~~Any Criminal history; and~~ Employment references;

   g. ~~Any illegal drug usage, including, but not limited to:~~ Any criminal history; and

      ~~(1) Cannabis/marijuana; and~~
      ~~(2) Dangerous drugs or narcotics as defined in Title 13 of the Arizona Revised Statutes.~~

   h. Any illegal drug usage, including, but not limited to:

      (1) Cannabis/marijuana; and
      (2) Dangerous drugs or narcotics as defined in Title 13 of the Arizona Revised Statutes.

2. Departments shall complete an employment qualification review and a character and fitness investigation before each new employee begins service.

   a. All results of pre-employment screening results shall be kept confidential.

   b. The character and fitness check of volunteers and interns shall be limited to the requirements of (H)(4)(a-c).

3. The employment qualification review for all applicants shall include, but is not limited to, the following:

    a. Verification of educational requirements for the applied position;

    b. Verification of current and past employment, which includes documented, good faith efforts to contact employers to obtain information or recommendations which may be relevant to the individual's qualification for employment; and

    c. Checking professional, employer, and personal references provided.

4. The character and fitness investigation for all applicants shall include, but is not limited to:

    a. Fingerprinting and a criminal history records check through the Arizona Criminal Justice Information System (ACJIS) and the national criminal information database.

    b. A driving records check through the Motor Vehicle Division (MVD) of the Arizona Department of Transportation.

    c. A driving records check through the MVD of any other previous state of residence.

5. In addition to (H)(4)(a-c), the character and fitness investigation for safety sensitive positions and officers who perform safety sensitive duties shall include, a psychological evaluation which meets standards provided in subsection K of this code.

6. In addition to (H)(4)(a-c) and (H)(5), the character and fitness investigation for safety sensitive positions and officers who perform safety sensitive duties shall include, at minimum, one of the following:

    a. A polygraph examination to verify the responses to the issues addressed in section (H) and to inquire about matters that would reasonably be the basis for not hiring an applicant as a probation officer including, but not limited to, sexual misconduct, use of excessive force and abuse of authority. A polygraph examination may also be used to question particular applicants where the truthfulness or accuracy of information provided in the application or obtained during the background investigation is at issue.

    b. Drug testing for illegal substances pursuant to the model policy contained in Appendix A or local policy into which the provisions have been incorporated.

7. The character and fitness investigation for safety sensitive positions and officers who perform safety sensitive duties may include, but is not limited to:

    a. Interviews with neighbors and former co-workers.

b. A credit check for any current financial distress or pattern of financial mismanagement.

8. Departments shall not hire any applicant who fails to submit and successfully complete all pre-employment screening requirements.

~~I~~J. Disqualifiers for Officer and Safety Sensitive Position Applicants.

1. Departments shall disqualify an applicant for appointment if:

   a. The applicant is awaiting trial for, or has been convicted of a felony offense in this state or a similar offense in another state or jurisdiction whether or not the conviction was sealed or expunged.

   b. An applicant for a juvenile officer position is awaiting trial or has been convicted of or admitted committing any offense listed A.R.S. § 8-203.01 or a similar offense in another state or jurisdiction whether or not the conviction has been sealed or expunged.

   c. The applicant is awaiting trial for, or has been convicted of the following misdemeanor criminal offenses in this state or similar offenses in another state or jurisdiction:

      (1) A violent misdemeanor offense, including an offense that involves domestic violence;
      (2) A DUI within the last 36 months, or more than one DUI; or
      (3) More than one offense while legally intoxicated within 36 months.

   d. The applicant sold, produced, manufactured, cultivated, or transported any illegal substance or drug.

   e. The applicant used any illegal substance including cannabis/marijuana while employed as a probation officer or in a position with peace officer status.

   f. The applicant has been disciplined for more than one incident for use of alcohol during previous employment.

   g. The applicant has been dishonorably discharged from the United States Armed Services.

2. Departments may disqualify an applicant for appointment if the applicant has been adjudicated delinquent for a felony offense in this state or a similar offense in another state or jurisdiction, whether or not the adjudication has been sealed or expunged based upon the circumstance of the offense including, but not limited to (I)(3)(a) through (d).

3. Departments shall consider a disqualified applicant's request for an exception to disqualification under subsection (I)(1)(a) through (h) and (I)(2) for any matter disclosed in the application, based upon the circumstances of the offense, including, but not limited to:

    a. Age of the applicant at the time of conviction, adjudication or occurrence;

    b. The degree of violence and injury or property damage;

    c. The applicant's record since the conviction, adjudication or occurrence; and

    d. The applicant's qualifications for the particular position sought.

4. Departments shall not make exceptions for juvenile officers for offenses listed in A.R.S. § 8-203.01.

~~J~~K.Continuing Employment Requirements.

1. Each department shall, at a minimum:

    a. Provide all probation department employees with access to and training regarding the Code of Conduct for Judicial Employees, the Code of Ethics for Arizona Probation Personnel and the Arizona Code of Judicial Administration.

    b. Have all probation department employees certify that they have received training and shall adhere to the Code of Conduct for Judicial Employees, Code of Ethics for Arizona Probation Personnel and Arizona Code of Judicial Administration provisions concerning probation.

    c. Adopt and integrate policies and procedures for random sampling and reasonable suspicion drug screening for illegal substances which conform with Appendix A, "Model Policy for Drug Testing."

    d. Have a written policy and procedure requiring all employees to immediately disclose to the employee's supervisor if the employee is the subject of any of the following:

        (1) Citation for a misdemeanor or felony offense;
        (2) Arrest;
        (3) Conviction;
        (4) Order of protection; and
        (5) Warrant.

    e. Have a written policy and procedure addressing department action in response to a disclosure or discovery that the employee is the subject of any action identified in (J)(1)(d).

f. Conduct criminal history and MVD records checks of all probation employees every two years, at minimum.

g. Remove any probation department employee from the chain of supervision of relatives or members of the officer's household who are on probation.

2. Each probation department may, for good cause, require an employee to undergo an evaluation to determine the employee's emotional, psychological or physical ability to safely perform the employee's assigned duties.

   a. The department shall choose a licensed or certified professional to complete the evaluation.

   b. The department shall pay for the cost of the evaluation.

   c. Based on the evaluation, the chief probation officer or director of juvenile court services shall review the assignment of an employee to determine whether the employee can perform the assigned job duties consistent with the safety of the employee, other employees and the public.

   d. The chief probation officer or director of juvenile court services may reassign the employee or take other appropriate action when it is determined that an employee can no longer perform the assigned job duties consistent with the safety of the employee, other employees or the public.

   e. For physical examinations, departments shall comply with the additional requirements of A.R.S. § 38-1109.

      (1) Pursuant to A.R.S. § 38-1109(A), a department may order a probation officer to submit to a physical examination:

      > [O]nly if <u>the</u> . . . ~~the~~ probation officer has acted or failed to act in an observable manner that indicates that there is a physical condition materially limiting the . . . probation officer's ability to perform the essential functions of the <u>. . .</u> probation officer's job within the . . . probation officer's job description. The order shall state all of the specific objective facts on which the order for the physical exam is based except that the order may omit the specific names of individuals who reported the . . . probation officer's conduct to the supervisor.

      (2) Each department shall adopt policies and procedures that comply with the substantive and procedural requirements set forth in A.R.S. § 38-1109.

3. All probation department employees shall:

   a. Disclose to the appropriate supervisor, in writing, any of the following:

      (1) The employee is a party or subpoenaed witness in any pending litigation that is not related to the business of probation.
      (2) A relative, member of the household or close friend of the employee becomes a probationer under the supervision of the department.
      (3) Any appearance of impropriety of the relationship with a probationer occurs in the course of supervision.
      (4) The employee is the subject of any of the following:
         (a) Citation for a misdemeanor or felony offense;
         (b) Arrest;
         (c) Conviction;
         (d) Order of protection; and
         (e) Warrant.

   b. Conduct relationships with relatives or members of their household on probation in a manner that does not interfere with professional duties or reflect negatively on the court.

   c. Avoid any intimate or personal business relationship with, a probationer, the probationer's family and friends, or members of the probationer's household for a period of one year following discharge or termination from custody or supervision unless the relationship is approved in writing by the chief probation officer or the director of juvenile court services.

   d. Conduct any approved relationship in a manner that does not interfere with professional duties of the employee.

   e. Be prohibited from engaging in any sexual conduct with a current probationer, including:

      (1) Engaging in sexual contact of any type.
      (2) Cohabitation or marriage, unless the cohabitation or marriage existed prior to employment with the department.

   f. Adhere to:

      (1) Federal, state and local laws and ordinances.
      (2) The Code of Conduct for Judicial Employees;
      (3)The Code of Ethics for Arizona Probation Personnel; and
      (4)The Arizona Code of Judicial Administration (ACJA).

g. Comply with all training requirements specified by:

(1) Administrative orders;
(2) The ACJA;
(3) The AOC;
(4) The Committee on Judicial Education and Training; and
(5) Local departments.

~~K~~L. Psychological evaluation standards.

1. Departments shall conduct a psychological evaluation, prior to employment, for any officer applicant for a safety sensitive position or an officer applicant who performs safety sensitive duties to determine suitability to perform the duties of the position, which may include carrying a firearm.

2. Departments shall conduct a psychological evaluation for all current officers requesting firearms authorization or prior to reassignment to a position designated by the chief probation officer or director of juvenile court services as requiring an armed officer.

3. Departments may conduct a psychological evaluation for good cause to determine the psychological fitness of any current employee.

4. Departments shall only employ or contract with an evaluator that, at minimum, is trained and experienced in:

   a. Psychological test interpretation; and

   b. Law enforcement psychological assessment techniques.

5. Departments shall use a battery of objective, job-related and validated psychological testing instruments and a semi-structured clinical interview in the analysis of a candidate for a safety sensitive position or a candidate for assignment to safety sensitive duties.

   a. The department may proctor the psychological test at the local department pursuant to the directions of the evaluator scoring the test. The psychological testing shall include, at a minimum, testing across the following areas:

      (1) A measure of psychopathology, for example, the MMPI-2, PAI or Millon-3.
      (2) A measure of normal personality functioning, for example, the 16PF, LEADER or Inwald Personality Inventory.

   b. The department shall provide the evaluator with the following prior to the semi-structured clinical interview:

      (1) Information for pre-employment evaluation.
         (a) The employment application;

(b) A questionnaire provided by the evaluator and completed by the applicant; and
(c) Any background information gathered through the employment application process that may be useful in the evaluation of the applicant.

(2) Information for firearm authorization or fitness for duty evaluation. The chief probation officer, director of juvenile court services, or designee shall complete a questionnaire provided by the evaluator that includes:
(a) Information regarding any disciplinary actions or behavior problems;
(b) Job performance evaluation; and
(c) Current issues that may affect job performance or safety.

6. The evaluator shall provide, in writing, the results of the evaluation directly to the chief probation officer, director of juvenile court services, or the designee.

a. The report shall evaluate the suitability of:
(1) The applicant for the position;
(2) An existing employee's request for authorization to carry a firearm; or
(3) An existing employee's fitness for duty.

b. The evaluator's report to the agency shall contain:
(1) A recommendation for employment, firearm authorization or fitness for duty;
(2) Justification for the recommendation; and
(3) Any clinical observations that the psychologist might have regarding the validity or reliability of the results.

c. The chief probation officer, director of juvenile court services or the designee shall keep the results of the evaluation as part of the applicant or employee's confidential records.

~~L~~**M.** **Drug Testing.** The AOC, in conjunction with the Committee on Probation (COP) shall determine methodologies for drug testing. The department shall adopt and integrate policies and procedures for pre-employment, random sampling and reasonable suspicion drug screening for illegal substances which conforms to the model policy established by the AOC. This model policy is attached and incorporated as Appendix A, "Model Policy for Drug Testing.".

1. Departments shall conduct authorized drug tests under the following conditions:

a. Pre-employment drug testing shall be conducted in conjunction with, or in lieu of a pre-employment polygraph examination.

b. Reasonable Suspicion Testing.

(1) Departments may have any employee submit to a drug or alcohol test based upon reasonable suspicion of prohibited or illegal use of drugs or alcohol.
(2) Departments may determine that reasonable suspicion exists that an employee

used alcohol or illegal drugs based upon, but not limited to, the following:

(a) Direct observation of drug or alcohol use or the physical symptoms of being under the influence of drugs or alcohol.
(b) A pattern of abnormal conduct or erratic behavior.
(c) Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation of illegal drug possession, use or trafficking.
(d) Information provided by reliable or credible sources or by admission of the employee.
(e)Evidence that the employee tampered with a previous drug test.

(3) Departments shall have any employee driving a state, county, or personal vehicle within the scope of their employment test for alcohol and drugs after a traffic accident involving any of the following incidents:
   (a) Loss of life or
   (b) Reason to believe that alcohol or drug usage may have contributed to the accident.

(4) The documenting supervisor shall:
   (a) Provide, in writing, a description of the circumstances which form the basis of reasonable suspicion;
   (b) Forward the written documentation to the chief adult probation officer, director of juvenile court services, or a designee to authorize testing.

(5) Departments shall retain the test results in the employee's personnel file and keep the results confidential.

c. Officer Shooting or Discharging a Firearm While On Duty. Any officer who discharges a weapon in the line of duty shall submit to a drug and alcohol test within 24 hours.

d. Random Testing.

(1) Departments shall include all employees who perform safety sensitive duties in random drug testing.

(2) All employees who perform safety sensitive duties shall be included in the statewide pool for random drug testing of a percentage of employees at a frequency determined by the administrative director in consultation with COP. The administrative director shall select persons for testing in a manner validated for randomness.

(3) A chief probation officer or director of juvenile court services may submit a request to the AOC for special authorization to include an additional group or class of employees in the statewide pool for random drug testing.
   (a) Authorization may only be granted if there is:
      (i) Evidence of current or recent illegal drug use among a group or class of employees;
      (ii) Evidence of current or recent illegal drug use within a facility staffed by a group or class of employees; or
      (iii)Evidence of past illegal drug use among a group or class of employees and

random drug testing is included in a loss prevention plan approved by the AOC.

(b) The request for approval shall include, at a minimum:
   (i) The nature and extent of the past or current illegal drug use;
   (ii) Any and all corrective actions taken to date and the results;
   (iii) Documentation of the underlying legal basis for testing the group or class of employees;
   (iv) The recommended testing period.

(c) The administrative director, in consultation with the requesting chief probation officer or director of juvenile court services, and upon review by legal counsel, shall approve or decline the request.

(d) If approved, the AOC shall notify all chief probation officers and directors of juvenile court services of the authorization.

(e) The chief probation officer or director of juvenile court services shall notify the AOC if comparable circumstances exist in their department that warrant random drug testing of similarly situated employees.

e. Departments may require probation student interns or volunteers to submit and pass a drug and alcohol test before assignment of duties or for reasonable suspicion as prescribed in (L)(1)(b).

2. An AOC approved vendor shall conduct employee drug tests for the illegal use of the following drugs, or classes of drugs:

   a. Cannabis;

   b. Cocaine;

   c. Opiates;

   d. Amphetamines/Methamphetamine;

   e. Phencyclidine (PCP);

   f. Alcohol (only for pre-employment and reasonable suspicion testing).

3. Departments shall develop and implement protocols, approved by the AOC, that allow for medical review of positive drug test results when an employee requests an appeal of the results.

~~M~~N. Conditional Employment Offers. The offer of employment shall be conditioned upon verification of criminal history results through fingerprint analysis and successful completion of all applicable training requirements.

Section 6-106: Personnel Practices
APPENDIX A

MODEL POLICY FOR DRUG TESTING

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

"Alcohol" means the intoxicating agent in a beverage, ethyl, or other low molecular weight drink, including methyl and isopropyl, and includes any medication, food, or other products containing intoxicants.

"Alcohol use" means the consumption of any beverage, mixture or preparation, including any medication containing intoxicants.

"Employee Assistance Program" (EAP) means an agency-based counseling program that offers assessment, short-term counseling and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.

"Illegal drugs" means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title and as defined in A.R.S. § 13-3401. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

"On duty" means the time period during which the employee is involved in performing the employee's respective probation duties or functioning at the direction of the department.

"Off duty" means the time period during which the employee is not involved in performing the employee's respective probation duties or functioning at the direction of the department.

"Reasonable suspicion" is a belief based on specific objective facts and logical inferences drawn from those facts.

"Safety sensitive duties" means duties that involve assigned responsibilities for direct community or custodial supervision of probationers, defendants or juveniles pending adjudication or that involve authorization to carry and to use a firearm in the performance of other assigned responsibilities.

"Safety sensitive positions" means officers, community service coordinators and other employees as designated by the chief probation officer or director of juvenile court services who provide direct supervision or services to adult or juvenile offenders who are subject to the jurisdiction of the court.

II. Authority. Arizona Code of Judicial Administration Section 6-106: Personnel Practices, Federal Drug-Free Workplace Act of 1988, and A.R.S. § 13-3401, et seq.

III. Purpose. To establish and maintain a drug-free and alcohol-free workplace in adult and juvenile probation departments.

A. The unlawful manufacture, distribution, dispensation, possession, or use of an illegal drug by any court employee at any time is absolutely prohibited.

B. Reporting to work or while on duty and having any detectable or measurable presence of alcohol or illegal drug is absolutely prohibited.

C. Violations of this policy shall result in appropriate disciplinary action, up to and including termination, and may also result in legal consequences.

IV. Procedure. All employees shall be notified of:

A. The department's intent to maintain a drug and alcohol-free workforce;

B. The availability of substance abuse treatment and employee assistance programs;

C. The penalties that may result from substance abuse violations;

D. The requirement to abide by the terms of this policy as a condition of employment; and

E. Random testing, detailed in subsection V(E), that shall apply to safety sensitive positions or any other employee who requests to be included in random testing.

V. Authorized Testing Conditions.

A. Pre-employment drug testing shall be conducted in conjunction with, or in lieu of a pre-employment polygraph examination.

B. Reasonable Suspicion Testing.

1. All employees shall submit to a drug test based upon reasonable suspicion of prohibited or illegal use of drugs or alcohol.

2. Reasonable suspicion that an employee uses alcohol or illegal drugs may be based upon, but not limited to, the following situations:

a. Direct observation of drug or alcohol use or the physical symptoms of being under the influence of drugs or alcohol; for example, slurred speech or odor of alcohol.

b. A pattern of abnormal conduct or erratic behavior.

c. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation of illegal drug possession, use or trafficking.

d. Information provided by reliable or credible sources or by admission of the employee.

e. Evidence that the employee tampered with a previous drug test.

f. All employees driving a state, county, or personal vehicle within the scope of their employment shall submit to a drug test after a traffic accident involving any of the following incidents:

(1) Loss of life or
(2) Reason to believe that alcohol or drug usage may have contributed to the accident.

3. The supervisor shall document, in writing, a description of the circumstances which form the basis of reasonable suspicion. The supervisor shall forward the documentation to the chief adult probation officer, director of juvenile court services, or a designee to authorize such testing. The results of the testing shall be retained in the employee's personnel file and remain confidential.

C. Officer Shooting or Discharging a Firearm While On Duty. Any officer who discharges a weapon during the line of duty shall submit to a drug and alcohol test within 24 hours.

D. Random Testing.

1. Departments shall include all employees who perform safety sensitive duties in random drug testing.

2. All employees who perform safety sensitive duties shall be included in the statewide pool for random drug testing of a percentage of employees at a frequency determined by the administrative director in consultation with the Committee on Probation (COP). The administrative director shall select persons for testing in a manner validated for randomness.

3. A chief probation officer or director of juvenile court services may submit a request to the AOC for special authorization to include an additional group or class of employees in the statewide pool for random drug testing.

a. Authorization may only be granted if there is:

(1) Evidence of current or recent illegal drug use among a group or class of employees;

(2) Evidence of current or recent illegal drug use within a facility staffed by a group or class of employees; or
(3) Evidence of past illegal drug use among a group or class of employees and random drug testing is included in a loss prevention plan approved by the AOC.

b. The request for approval shall include, at a minimum:

(1) The nature and extent of the past or current illegal drug use;
(2) Any and all corrective actions taken to date and the results;
(3) Documentation of the underlying legal basis for testing the group or class of employees; and
(4) The recommended testing period.

c. The administrative director, in consultation with the requesting chief probation officer or director of juvenile court services, and upon review by legal counsel, shall approve or decline the request.

d. If approved, the AOC shall notify all chief probation officers and directors of juvenile court services of the authorization.

e. The chief probation officer or director of juvenile court services shall notify the AOC if comparable circumstances exist in their department that warrant random drug testing of similarly situated employees.

4. Notification.

a. The AOC or designee shall generate a randomly selected employee list for drug testing and notify, via email, each selected employee's chief adult probation officer, director of juvenile court services, or designee.

b. The chief adult probation officer, director of juvenile court services, or designee shall:

(1) Schedule the employee for drug testing at an approved site within two working days of receiving notice.
(2) Schedule employee for drug testing during the employee's regularly scheduled shift.
(3) Authorize overtime or compensatory time when scheduled testing extends an employee's work week beyond forty hours.
(4) Issue a notification form to the selected employee requiring the employee to submit to drug testing at the collection site within two hours.
(5) Ensure the employee signs the notification form.

5. Failure to Report.

   a. If an employee fails to appear after receiving a notification, the employee shall provide the chief adult probation officer, director of juvenile court services, or designee with a written explanation for not reporting by the next business day. The report shall include:

      (1) Reason for not reporting to the collection site;
      (2) Name of supervisor notified; and
      (3) Supervisor's instructions, if any, given to the employee.

   b. Failure of the employee to notify the supervisor of the excused absence circumstance prior to the test may be considered an unexcused absence.

   c. The chief adult probation officer, director of juvenile court services, or designee shall determine if the failure to report was:

      (1) Excused absence, which may include, but is not limited to:
         (a) Inability to leave a work assignment due to a critical incident occurrence;
         (b) A safety or hazardous situation involving the employee or public;
         (c) Required appearance in court; or
         (d) Previously approved annual or other authorized leave.
      (2) Unexcused absence.

   d. If the chief adult probation officer, director of juvenile court services, or designee approves the absence, the reason shall be documented and the employee's name shall be placed into the random selection pool for the next unannounced random selection.

6. Refusal to submit. Any of the following actions performed by a selected employee will be considered a refusal to submit:

   a. Failing to provide an adequate sample to allow appropriate testing;

   b. Refusing to submit to or complete any paperwork relating to the test;

   c. Engaging in conduct that clearly obstructs the testing process;

   d. Failing to remain available for testing when requested;

   e. Leaving the testing site before testing is completed;

   f. Refusing to submit a sample; or

   g. Failing to appear for testing when scheduled.

7. Unexcused absence, failure to report, or failure to provide a sample or refusal to submit as ordered will be considered a refusal and may result in disciplinary action up to, and including, termination.

E. Departments may require probation student interns or volunteers to submit and pass a urine drug and alcohol test before the student intern or volunteer is assigned departmental duties or for reasonable suspicion at any time.

F. Follow up testing. Any employee who is not terminated from employment following a violation of this policy is subject to unannounced follow-up testing for a three-year period after their return to work or completion of a rehabilitation or abatement program, whichever is later, to document that the employee remains drug free.

VI. Notification to Employees Subject to Testing.

A. Notification. The department shall utilize those collection and testing sites which demonstrate a methodology of collecting, identifying, testing, analyzing and preserving samples which ensure appropriate site security, chain of custody, privacy of the individual, confidentiality and accuracy of results, reporting of results and preservation of samples, when appropriate and as necessary. Approved methodology shall meet standards set by the AOC in conjunction with COP.

B. Employees subject to testing by this standard shall be notified of the requirement for testing on the same day by the appointing authority. Prior to any test, the employee shall be given the following information:

1. Whether the drug test is random or due to reasonable suspicion and provide the reason for a reasonable suspicion test.

2. Assurance that quality of testing procedures is tightly controlled, that the test used to confirm use of illegal drugs or alcohol (on reasonable suspicion only) is highly reliable, and that the test results shall be handled with maximum respect for individual privacy and concern with safety and security.

3. Notice of the opportunity and procedures for submitting supplemental medical documentation from a licensed health care professional that supports a legitimate use for a specific drug.

4. Prior to providing a sample, the employee being tested shall have an opportunity to indicate their legitimate use of a specific drug. Employees who test positive for a drug and have demonstrated legitimate use for a drug causing the positive test result shall be notified in writing that their result is considered negative.

5. Prior to providing a sample, the person being tested may request to have a second sample sent to a laboratory of the person's choosing to have an independent drug test performed at the employee's expense. The laboratory choosen by the employee shall

demonstrate the same standards of methodology as provided in section VI (A) of this model policy.

6. The department shall authorize overtime or compensatory time for an employee whose scheduled test extends the employee's work week beyond forty hours.

C. Each employee shall be notified of the location, date and time for the employee to report to the designated test location.

D. Applicants for employment shall be notified by the appointing authority of the testing location, date and time.

VII. Urine Sample Collection.

A. Random Sample Collection. All employees shall adhere to the following random sample collection procedures:

1. The employee shall provide picture identification and signature authorization upon arrival at the collection site.

2. The employee shall fill out a Consent to Test and Chain of Custody form provided at the collection site.

3. The employee may voluntarily list substances taken in the last 30 days which may be detected in the testing process.

4. The employee shall be provided the appropriate sample container and be escorted to the collection area by collection site personnel. The employee shall remove all outer clothing such as jackets, coats, or sweatshirts. No handbags, duffle bags, purses or other personal carrying items will be taken into the collection area. The employee will be instructed to wash hands prior to urination.

5. Unobserved collection. All samples, except those ordered because of reasonable suspicion, will be collected using the unobserved method. The employee will be escorted to a specially prepared room and permitted to urinate in private.

   a. If the collection site person develops any information that the test has been compromised, the chief adult probation officer, director of juvenile court services or designee will be immediately notified.

   b. The employee will be required to submit a second sample while being observed by a same sex employee of the collection site, and both samples will be tested.

6. Insufficient Urine Sample.

    a. If an employee is unable to provide a minimum of 45 milliliters, approximately 1.5 oz., of urine for a sample, collection site personnel shall instruct the employee to remain on site and to drink not more than 24 ounces of fluids and, after a period of up to two hours, the employee shall attempt to provide a sufficient urine sample using a fresh collection container.

    b. If a sufficient urine sample cannot be obtained after the two hours, the insufficient sample shall be discarded and the urine collection process discontinued. The department shall immediately prescribe an approved alternative testing methodology.

7. Once a sample is given, the employee will remain in possession of the sample until custody is transferred to collection site personnel.

8. The sample will be examined by collection site personnel for indications of tampering. If no problem is noted, the sample will be transferred by collection site personnel to the split sample containers and sealed in view of the employee.

9. The employee will verify the seal and initial the seal.

10. The appropriate paperwork to ensure chain of custody will then be completed.

11. The employee will be escorted back to the lobby and will be free to leave.

B. Reasonable Suspicion Urine Sample Collection. An employee required to provide a urine sample as a result of reasonable suspicion shall follow the collection site procedures outlined in section VII(A)(1-11), except that the urine sample collection shall be observed by a same sex employee of the testing site.

VIII. Testing Procedures.

A. Tests shall be conducted by an approved provider for the illegal use of the following drugs, or classes of drugs:

    1. Cannabis;

    2. Cocaine;

    3. Opiates;

    4. Amphetamines/Methamphetamine;

5. Phencyclidine (PCP);

6. Alcohol (only for pre-employment and reasonable suspicion testing).

B. The employee shall be notified prior to the testing for any additional drugs or classes of drugs.

C. Urine samples shall be rendered for testing within three hours of arrival at the laboratory.

IX. Test Results.

A. All testing results and any disciplinary actions resulting from a positive test result shall be confidential.

B. The provider shall send the results of the test to the chief adult probation officer or director of juvenile court services, or designee. The department shall forward a copy of the results to the employee.

C. The chief adult probation officer, director of juvenile court services, or designee shall notify the AOC of positive results and any disciplinary or other action taken.

D. Disciplinary action, up to and including termination, may be taken under any of the following circumstances:

1. Reporting to work or, while on duty, having any detectable or measurable presence of alcohol or illegal drugs.

2. Use of illegal drugs.

3. Refusal to:

a. Submit an adequate sample;

b. Cooperate with the collection procedures set forth in this policy;

c. Sign the consent for release of information; or

d. Enter or successfully complete a rehabilitation program when such program has been required by the employer.

4. Adulteration, substitution or other attempt to falsify the results of a drug test.

5. On-duty use or possession of illegal drugs or consumption of alcohol or alcohol impairment.

6. Off-duty use or possession of illegal drugs or unauthorized use of prescription drugs.

7. A determination that an employee has engaged in illegal drug trafficking including, but not limited to:

    a. Buy;

    b. Sale;

    c. Manufacture;

    d. Grow;

    e. Distribute;

    f. Transport; or

    g. Aiding, abetting or conspiring to commit offenses listed in IX(D)(7)(a - f).

8. Failure to notify the supervisor of an arrest or citation for an offense involving drug or alcohol violation by the next business day.

E. Employee Assistance Program (EAP).

1. In situations where an employee who tests positive for any illegal substance is not terminated from employment, the employee shall be referred to the EAP and be given the opportunity to successfully undertake rehabilitation. The ultimate responsibility to be drug and alcohol-free rests with the employee.

2. An employee needing help in addressing drug or alcohol dependency is encouraged to use and may be directed to use the confidential services of the EAP or the substance abuse treatment program provided within the employee's health insurance coverage.

X. Reporting Requirements.

A. Violations While On Duty.

1. Immediately upon committing or learning that another employee has committed a violation of this policy while on duty, an employee shall report that violation to his or her supervisor or other management personnel.

2. The knowing failure to report an "on duty" violation of this policy is, by itself, a violation of the policy and subjects an employee to disciplinary action, up to and including termination.

3. The supervisor or manager shall document and forward the documentation to the appointing authority for review and authorization of testing, if needed.

B. Violations While Off Duty.

1. Immediately upon committing, or learning that another employee has committed a violation of this policy while off duty, an employee shall report that violation to an immediate supervisor or other management personnel.

2. The knowing failure to report an "off duty" violation of this policy is, by itself, a violation of the policy and subjects an employee to disciplinary action, up to and including termination.

3. All reports received shall be held in confidence to the extent possible to conduct a fair investigation and determine the appropriate action to be taken.

4. The supervisor or manager shall document and forward the documentation to the appointing authority for review and authorization of testing if needed.

C. Violations Resulting in Arrest or Arraignment.

1. Any employee arrested or charged with any criminal charge involving any drug or alcohol violation shall report the matter to their immediate supervisor on the next business day.

2. The supervisor shall forward the report to the appointing authority through the chain of command. The appointing authority shall initiate an administrative investigation and may reassign the employee, place the employee on administrative leave and take disciplinary action, up to and including termination, prior to the final legal disposition of the criminal case.

D. Violations Resulting in Conviction. As mandated by the Drug-Free Workplace Act of 1988, a report to the appointing authority shall be made within five business days following a conviction.

XI. Confidentiality of Test Results.

A. Employees and the drug testing laboratory involved in any aspect of the department's drug testing program shall maintain strict standards of confidentiality of test results and related medical and rehabilitation records. This includes:

1. Maintaining maximum respect for individual privacy consistent with safety and security issues.

2. Handling of test results.

3. All contacts with medical and health personnel, counselors, employee assistance program coordinators and administrators.

B. Records.

1. Records maintained in connection with this program that contain the identity, diagnosis, prognosis, or treatment of any person shall be kept confidential.

2. Records shall be disclosed under limited circumstances and for specific purposes by consent of the employee.

   a. Written consent shall be obtained from the person to be tested to disclose results of tests administered and related medical and rehabilitation records to the chief adult probation officer, director of juvenile court services, or designee.

   b. This consent shall be obtained prior to the test itself.

   c. Refusal to consent to the release of this information shall be considered a refusal to take the test.

3. Drug abuse or alcohol treatment records may be disclosed without the consent of the employee:

   a. To medical personnel, to the extent necessary, to meet a genuine emergency.

   b. To qualified personnel for conducting scientific research, management audits, financial audits, or program evaluations, with all identifying information removed from data.

   c. When authorized by an appropriate court-order granted after application showing good cause.

4. Other disclosure may be made only with the written consent of the employee. Such consensual disclosure may be made for verification of treatment or a general evaluation of treatment progress.

Section 6-106: Personnel Practices
APPENDIX B

	Arizona Supreme Court **Human Performance Evaluation** **Adult and Juvenile** **Probation/Surveillance Officer**
	Client Name:
	SSN:
	Date of Test:

	Walk on treadmill 2.0-2.5 mph (Simulates mobility required to meet with probationers/apprehend probationers and potentially escape from probationer) (Stand up to 4 hours a day)	**10 min.**	**Pass**	**Fail**
Lift #1	**Lift 55# from 30" to 10"** (Simulates changing a flat tire when in a desolate area or when 2 way communication are not operable) (Use box)	**1x**	**Pass**	**Fail**
Lift #2	**Lift 60# 30"-48"** (Simulates lifting/moving furniture, beds, etc when searching a facility) (Use box)	**1x**	**Pass**	**Fail**
Push/Pull	**Pull 165# 10 ft.** (Simulates force required to drag/pull officer or civilian to safety) (Use sled)	**1x**	**Pass**	**Fail**
Climb	**Ascend/descend standard step** (Simulates going up/down stairs required for field work) (Use step stool or standard step)	**30x**	**Pass**	**Fail**
	Deep knee squat (Simulates the ROM/strength required for self defense training such as all prone self defense techniques, all kicks, reverse wristlock and takedown.)	**10x in 1 min.**	**Pass**	**Fail**
	Shoulder press above head with arms fully extended (Simulates movement and minimum strength required for straight arm wrist lock, the shield personal weapon strikes, prone retreat, opening the	**5x in 1 min**	**Pass**	**Fail**

	baton to the sky, and searching and moving material stored overhead in facilities) (Use 2 10# dumbbells)			
	Mountain Climbers-prone in push up position with buttock high. Bring one knee toward chest, then alternate back and forth. (Simulates body range of motion required for lower body personal weapon strikes, i.e. the front snap kick, spring kick, shin kick and prone self defense techniques i.e. bicycle kick, prone retreat, prone recovery)	**10x in 30 sec**	**Pass**	**Fail**
	Sit ups- Knees bent (Simulates the motion and core strength required for weapon retention, all prone self defense techniques and tactical closing of a baton)	**10x in 1 min.**	**Pass**	**Fail**
	Feet Spread • Candidate will place feet approximately 1.25 shoulder width. • Candidate will place ® foot approx. 2 ft. behind the other @ 1.25 shoulder width, then do the same with (L) ft. (Simulates the ability to do the self defense stance, step and drag, directional movement forward, re-directional movement and allow for balance that is a significant requirement for the curriculums basic principles of body mechanics.	**1x for each**	**Pass**	**Fail**
	Balance on 1 foot (Simulates balance required for personal weapons (kicks))	**10 sec 1x each leg**	**Pass**	**Fail**
	Trunk Twist (Stand with feet abducted to shoulder width, shoulders at 90 degrees abduction and elbows in complete extension. Rotate the trunk right then left so arms have rotated 90 degrees to each side: (Simulates the trunk flexibility required to open a baton, perform side thrust rollover, elbow strikes to the rear weapon retention and trunk mobility necessary for curriculums basic principles of body mechanics.	**90◦ to each side 1x**	**Pass**	**Fail**
	Rope Wind- use 5 lb. weight on 4 ft. rope attached to 1 ft. long 1 ¼ inch wood dowel stick. Hold stick forward and wind the 5lb. weight up/down in a controlled manner. (Simulates ability to grip and manipulate safety equipment necessary for impact weapons, OC spray weapons retention, handcuffing, control holds, escape holds and forearms.	**1x**	**Pass**	**Fail**

*** The candidate should be allowed up to 5 minutes to complete each section of the test.

Test Administrator:

Comments:
(To be completed by the candidate after the completion of the evaluation)

Do you feel that you can safely perform these types of activities on a daily basis as part of your regular duty position? _____Yes _____No

Candidates Signature:_____ Date: _____

Evaluator's Comments:

	HPE Test Results
	Client Name:
	SSN:
	Date of Test:

Company Name: Arizona Supreme Court

Job Title: Adult and Juvenile Probation/Surveillance Officer

Evaluation Results (*check one*):

_____ **Able to perform essential job functions**

_____ **Unable to perform essential job functions**

Evaluator's name/title: _____

Evaluator's signature: _____

Testing Location: _____

Testing Location Phone: _____

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	X Formal Action/Request __ Information Only __ Other	ACJA § 6-112: USE OF FORCE

FROM:

Kathy Waters, Director, Adult Probation Services Division and Chad Campbell, Director, Juvenile Justice Services Division

DISCUSSION:

Proposed revisions will add the definition of Conducted Electrical Weapon, delete Continuum of Control, and clean up language and statute citations.

RECOMMENDED COUNCIL ACTION:

Approve as written.

Comments and Responses to ACJA Section 6-112: Use of Force

PARAGRAPH	COMMENT	RESPONSE
Section A. Definitions & Appendix A	Removal of the reference to "continuum of control" This revision is strongly supported (police departments have moved away from the continuum of control).	No response needed.
Section D. 1. Use of Force	I would propose the following verbiage change to section D.1. of this code to read as follows: D.1. Officers shall base use of force decisions upon their perceptions at the time of the incident, and the facts known to them at the time of the incident and whether, under the totality of circumstances, the use and degree of force is reasonable. An officer is not obligated to use force in any situation that the officer determines to be unsafe.	Change not incorporated.
Section F. 2. Notification	I think we should leave the written report requirement to one day instead of 3. We could add "with written reason for any delay" if somebody really needs more time to write. Giving 3 days will extend to five and allow more to be "selectively" remembered. The sooner an event is committed to paper the better the reliability. Amendments can always come later.	Change not incorporated.
Section F. 2. Notification	Submitting a written report for any force that is greater than slight is good and needs to be included in code. However, it the officer is under criminal investigation (which is standard practice) we would not require the officer to prepare an incident report. In this instance we would have the supervisor prepare an incident report. It is suggested an additional line be added as follows: "If an officer is under criminal investigation in relation to the use of force incident the officer's supervisor may be designated to prepare the incident report".	Change incorporated to read as, "If an officer is under criminal investigation in relation to the use of force incident the Chief Probation Officer, Juvenile Court Director, or their designee, shall prepare the incident report."
Section G.	…suggest inserting between existing G.5	Change not incorporated.

Review of Use of Force	and G.6. (which would then become the new G.6. and subsequent sections would then be renumbered sequentially thereafter) the following verbiage for consideration: A new G. 6 G.6. The reasonableness of a use of force will be assessed in conjunction with the officer's perception of the threat at the moment force was used and within the totality of circumstances.	

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 1: General Administration
Section 6-112: Use of Force

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

~~"Continuum of control" means the options available to manage a subject as depicted by the model attached as Appendix 1.~~

"Deadly physical force" means "force ~~which~~ that is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury" as provided in A.R.S. § 13-105(1~~2~~4).

"Deadly weapon" means "anything designed for lethal use, including a firearm" ~~The term includes a firearm"~~ as provided in A.R.S. § 13-105(1~~3~~5).

"Impact weapon" means any object or device used to control a subject's actions, to defend against an attack or to deliver a stunning blow.

"Officers" means both adult and juvenile probation and surveillance officers.

"Serious physical injury" means "includes physical injury ~~which~~ that creates a reasonable risk of death, or ~~which~~ that causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb" as provided in A.R.S. § 13- 105(3~~4~~9).

"Slight force" means reasonable force used to place in restraints, control, or direct the movement of a subject that is cooperative or passively resistant.

B. Applicability. Article 6 Section 3 of the Arizona Constitution and A.R.S. §§ 12-251(C) and 8-203(C) authorize the supreme court to establish rules governing the use of force by probation and surveillance officers.

C. Purpose. To outline and clarify the use of force by probation and surveillance officers.

D. Use of Force.

1. Officers shall base use of force decisions upon the facts known to them at the time of the incident and whether, under the circumstances, the use and degree of force is reasonable. An officer is not obligated to use force in any situation that the officer determines to be unsafe.

2. An officer shall determine that physical force is warranted under the circumstances provided by statute before using physical force in the performance of the officer's duties.

   a. A.R.S. § 13-404(A) provides:

      > ~~... a~~ [A] person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force.

   b. A.R.S. § 13-406 provides:

      > A person is justified in threatening or using physical force or deadly physical force against another to protect a third person if.~~: 1.~~ Under the circumstances as a reasonable person would believe them to be, such person would be justified under section 13-404 or 13-405 in threatening or using physical force or deadly physical force to protect himself against the unlawful physical force or deadly physical force a reasonable person would believe is threatening the third person he seeks to protect.~~; and~~
      >
      > ~~2. A reasonable person would believe that such person's intervention is immediately necessary to protect the third person.~~

   c. A.R.S. § 13-409 provides:

      > A person is justified in threatening or using physical force against another if in making or assisting in making an arrest or detention or in preventing or assisting in preventing the escape after arrest or detention of that other person, such person uses or threatens to use physical force and all of the following exist:
      >
      > 1. A reasonable person would believe that such force is immediately necessary to effect the arrest or detention or ~~to~~ prevent the escape.
      > 2. Such person makes known the purpose of the arrest or detention or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested or detained.
      > 3. A reasonable person would believe the arrest or detention to be lawful.

3. An officer shall determine that deadly force is warranted under the circumstances provided by statute before using deadly force in the performance of the officer's duties.

a. A.R.S. § 13-410(A)(1) provides:

> The threatened use of deadly physical force by a person against another is justified pursuant to ~~§~~ section 13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is:
>
> (1) Actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force.

b. A.R.S. § 13-410(C)(1)(2)(a)(b)(c) provides:

> The use of deadly force by a peace officer against another is justified pursuant to ~~§~~ section 13-409 only when the peace officer reasonably believes that it is necessary:
>
> 1. To defend himself or a third person from what the peace officer reasonably believes to be the use or imminent use of deadly physical force.
>
> 2. To effect an arrest . . . ~~...~~of a person whom the peace officer reasonably believes:
>
> (a) Has committed, attempted to commit, is committing or is attempting to commit a felony involving the use or a threatened use of a deadly weapon.
>
> (b) Is attempting to escape by use of a deadly weapon.
>
> (c) Through past or present conduct of the person which is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.

c. A.R.S. § 13-410(D) provides: Notwithstanding any other provisions of this chapter, a peace officer is justified in threatening to use deadly physical force when and to the extent a reasonable officer believes it necessary to protect himself against another's potential use of physical force or deadly physical force.

4. An officer shall assess the subject's ability and opportunity to do physical harm and determine whether the subject poses an ~~immediate~~ imminent threat of harm to the officer or a third party and shall use reasonable ~~only the amount of~~ force necessary to prevent the harm or stop the threat.

E. Use of Force Options. An officer's use of force shall be reasonable ~~and necessary~~ to control a subject and accomplish lawful objectives. Use of force options include:

1. Clear verbal instructions such as persuasion, warning, or a lawful order ~~a lawful order, advice, a warning or persuasion~~.

2. Empty hand control that includes re-direction, personal defensive tactics, control holds, pressure points, fist strikes, palm strikes, shin kicks, snap kicks, knee strikes and elbow strikes.

3. Oleoresin capsicum (OC) aerosol chemical spray when the officer reasonably believes it is unsafe to approach an aggressive subject and disengagement is not reasonable or practical. After a subject is brought under control by the use of OC, the officer shall whenever practical flush the subject's eyes and other affected tissues with water. Officers shall ensure that immediate medical treatment is sought for subjects who are experiencing breathing difficulty or lingering vision impairment as a result of being sprayed with OC.

4. Impact ~~and deadly~~ weapon~~s,~~ when the officer reasonably believes subject's actions are likely to cause physical harm to the officer or a third party ~~risk of injury to an officer or other person is so significant that the use of lesser options would be ineffective or unsafe~~.

   ~~a. Weapons may only be used by trained and proficient officers.~~

   ~~b. Deadly weapons include:~~

   ~~(1) Firearms for officers authorized in accordance of Arizona Code of Judicial Administration 6-113;~~
   ~~(2) Impact weapon strikes when used to strike vital areas such as the head or neck; and~~
   ~~(3) Less than lethal weapons when used to strike vital areas such as the head or neck.~~

5. Deadly weapons include department issued firearms for officers authorized in accordance of the Arizona Code of Judicial Administration 6-113. The use of a deadly weapon requires that the officer reasonably believes the subject's actions were likely to have caused serious physical injury or death to the officer or a third party.

F. Notification. An officer involved in any use of force that is greater than slight force shall:

1. Immediately notify their supervisor as soon as practical, but not later than the next business day.

2. Submit a written incident report to their supervisor, ~~as soon as possible,~~ no later than the close of the ~~next~~ third business day. If an officer is under criminal investigation in relation to the use of force incident the Chief Probation Officer Juvenile Court Director, or their

designee, shall prepare the incident report. The written incident report shall include at a minimum:

a. A description of the events surrounding the use of force.

b. The name and case number of probationer or probationers involved in the incident.

c. The name of any third party involved in the incident.

d. The name of any known witnesses to the incident.

e. The disposition of the incident.

f. Any medical attention needed for any person in the incident.

g. Other information pertinent to the incident.

3. Upon review of the incident report, the supervisor shall immediately forward it through the departmental chain of command to the chief probation officer.

4. Upon review of the incident report, the chief probation officer shall provide a copy to the AOC probation safety specialist.

5. The chief probation officer or director of juvenile court services may request an exception or extension of this written report from the administrative director of the AOC.

G. Review Of Use Of Force.

1. The chief probation officer or director of juvenile court services or the designee shall review all incident reports pertaining to the use of force within two business days of receipt. Any incident reports that involve the use or display of a firearm shall follow the procedures outlined in ACJA § 6-113, Firearms Standards.

2. The chief probation officer or director of juvenile court services shall appoint a use of force committee within twenty business days of the incident or upon receipt of allegations of excessive force if any one of the following conditions exists:

a. Further investigation is warranted;

b. Deadly force was used;

c. Allegations of excessive force are brought forth;

d. Force greater than slight is used against a member of the public; or

e. An offender, a staff member, or a member of the public is injured significantly or in a manner that requires investigation.

3. The use of force committee shall consist of at least three members who have knowledge of the reasonable use of force ~~the continuum of control~~ and of defensive tactics. The committee shall include one representative from each of the following:

   a. Probation department management other than the chief probation officer or director of juvenile court;

   b. A certified defensive tactics instructor as defined in ACJA § 6-107; and

   c. A non-involved officer chosen by the officer involved in the use of force.

4. The chief probation officer or director of juvenile court services may appoint additional members necessary to perform the duties of the committee in a specific review.

5. The use of force committee shall review the incident reports, interview witnesses and, when necessary, request that the chief probation officer assign an investigator.

6. Upon conclusion of the review, the use of force committee shall issue a written report within ten business days which shall include:

   a. A brief summary of the incident;

   b. The committee's determination of whether the amount of force used violated any departmental policy or the ACJA and was reasonable and justified;

   c. A dissenting opinion, if any; and

   d. The signature of each committee member.

7. The use of force committee shall forward the report to the chief probation officer or the director of juvenile court. The chief probation officer or the director of juvenile court shall have the authority to administer any discipline or remedial measures according to the local judicial merit system.

8. The chief probation officer or the director of juvenile court shall provide a copy of the use of force committee report to the AOC along with of any action taken.

~~Section 6-112: Use of Force~~
~~Appendix 1~~

~~CONTINUUM OF CONTROL~~

~~LEVEL OF CONTROL~~	***~~OFFICER'S ACTION~~***	***~~SUBJECT'S ACTION~~***
~~PRESENCE~~	*~~Identification of authority~~* *~~Interview Stance~~* *~~Defensive Stance~~*	*~~Subject is cooperative~~*
~~VERBAL~~	*~~Advise~~* *~~Questioning & Answering~~* *~~Warning~~*	*~~Subject is cooperative only in response to direction~~*
~~EMPTY HAND CONTROL~~ ***~~Oleoresin Capsicum (OC)~~***	*~~Personal Defensive Tactics~~* *~~Control Holds~~* *~~Pressure Points~~* *~~OC Tactics~~*	*~~Subject's actions are becoming aggressive and may cause physical harm~~*
~~IMPACT WEAPONS~~	*~~Baton~~* *~~Weapons of opportunity~~*	*~~Subject's actions are likely to cause physical harm~~*
~~LETHAL FORCE TECHNIQUES~~	*~~Potential Deadly Force Tactics~~*	*~~Subject's actions may cause serious physical injury or death~~*

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	X Formal Action/Request __ Information Only __ Other	ACJA § 6-113: FIREARMS STANDARDS

FROM:

Kathy Waters, Director, Adult Probation Services Division and Chad Campbell, Director, Juvenile Justice Services Division

DISCUSSION:

Proposed revisions in definitions, overall language clean up, and revisions to be consistent with proposed revisions in ACJA §§ 6-106 and 6-112.

RECOMMENDED COUNCIL ACTION:

Approve as written.

Comments and Responses to ACJA Section 6-113: Firearms Standards

PARAGRAPH	COMMENT	RESPONSE
Section D. 5. General Policy	So if you stop by the office to get a form or check a file what do you do with the firearm you are wearing during field visits? The intent of this is not clear at all.	The content of this sub section is the same, just the language is revised.
Section D. 5. General Policy	I think ARS 12-781, Transportation or storage of firearms; motor vehicles; applicability, "nullifies" this section of the code or at least puts us in direct conflict with the statute.	See exception contained in A.R.S. 12-781(C)(4).
Section D. 5. General Policy	I concur with Judge's Davis position. Additionally: With the recent changes to A.R.S. §12-781, it appears the changes in code could put Departments in potential conflict with the statute.	See exception contained in A.R.S. 12-781(C)(4).
Section E. 2. c. Request for Authorization to Carry Firearm	I think you should leave this in because without it you have no evidence of preclusion.	No change necessary.
Section G. 5. Procedures for Authorization, Denial, Temporary Suspension or Revocation	Either the CFI or LFI needs a record of approvals so that they will know when/if someone shows up carrying who is not authorized and perhaps going postal.	Change not incorporated.
Section G. 6. S. Procedures for Authorization, Denial, Temporary Suspension or Revocation	The Superior Court in Maricopa County is has reviewed the proposed changes to ACJA 6-113 (Firearms Standards) and has a few concerns. The Court requests you consider removing the phrase “other than time in service” from section (G)(6)(s) on page 6. The time in service is a relevant factor to consider when determining whether to arm a probation officer. Given the size of the probation departments in Maricopa County, the chiefs many not deem it appropriate or necessary to arm new probation officers that have not yet completed their probationary period of employment. The probation chiefs should have discretion to consider length of time	Change not incorporated.

	in the department when deciding whether to arm a probation officer.	
Section G. 6. S. Procedures for Authorization, Denial, Temporary Suspension or Revocation	I concur with the comments posted by Lori Ash on behalf of Presiding Judge Norman Davis. Removing a Departments ability to consider time in service in essence removes the ability of the Chief or Director to adequately assess an officer to be fit to be armed. The decision of an officer to carry a firearm weapon is a very personal choice. Many new juvenile officers enter our service without a frame of reference to make an informed decision. This is often evident in the hiring psychological testing. Actual time in the field improves an officers understanding of the field environment and our probationers to make a more informed decision. Lastly, removal of any time consideration could result in officers being armed sooner than the standard time it takes a law enforcement officer to become trained armed and working without a partner.	Change not incorporated.
Section M. 4. Responses to Discharges and Firearms Involved Incidents	strike "and train officers on" - it is already covered under M.5.	Change incorporated.
Section M. 4. e. Responses to Discharges and Firearms Involved Incidents	I concur with Judge's Davis position. Additionally: Regarding notification to county attorney and attorney general. In reality the investigating police agency would be notifying either the county attorney or the city attorney based on the seriousness of the situation. It is recommended this section be removed.	Change not incorporated.
Section M. 4. f. Responses to Discharges and Firearms Involved Incidents	The sentence at M.4.f. should be modified to two sentences.	Change incorporated.

Section M. 4. h. Responses to Discharges and Firearms Involved Incidents	The Superior Court in Maricopa County is has reviewed the proposed changes to ACJA 6-113 (Firearms Standards) and has a few concerns. …. In addition, we request the addition of the phrase "if deemed appropriate" to section (M)(4)(h). The new language would read "Procedures to place an officer on administrative leave following a shooting or discharge, if deemed appropriate." Not every firearm discharge requires the officer be placed on administrative leave. This takes the discretion away from the probation chief to manage his/her department.	Change not incorporated. This is existing language (M.4.e.8.).
Section M. 4. h. Responses to Discharges and Firearms Involved Incidents	using the word "procedures" is redundant because the section under M.4. includes "Each department's policies and procedures shall include, but are not limited to, the following:" Recommend that "h" read as follows: "Circumstances under which an officer may be placed on administrative leave, to include, but not limited to, at the discretion of the chief probation officer or director of juvenile court services."	Change not incorporated.
Section M. 4. h. Responses to Discharges and Firearms Involved Incidents	I concur with Judge's Davis position. Additionally: "Procedures to place an officer on administrative leave following a shooting or discharge". The way the current sentence reads suggests an officer involved in a "firearms involved incident", no matter what the circumstances, must be placed on leave. It is suggested adding "if deemed necessary by the Chief probation officer or Juvenile Director" to the end: Procedures to place an officer on administrative leave following a shooting or discharge, if deemed necessary by the Chief Probation Officer or Juvenile Director.	Change not incorporated.
Section M. 5. Responses to Discharges and Firearms Involved Incidents	I concur with Judge's Davis position. Additionally: It does not seem to be necessary to ensure that all officers are trained in policies and procedures regarding firearm discharges or firearm involved incidents. There is value in non-	Change not incorporated.

	armed officers reviewing the firearms policy/code, but it seems that in firearm discharges or firearm involved incidents, an officer's primary objective is to immediately contact their supervisor. It is recommended that M.5 address this issue in very broad terms: Each department is responsible to ensure that staff is familiar with their department's firearms policy, to include discharges and firearm involved incidents.	
Section R. 3. Stolen or Lost Firearm	This section deals with the written report that goes from officer to supervisor to chief or director. There is a chain of command between supervisor and chief that should be included. Recommend that R.3. be changed as follows: "An officer shall provide a written report to the supervisor no later than the close of that business day. The supervisor shall review the report and forward it THROUGH THE CHAIN OF COMMAND to the chief probation officer or director of juvenile court services."	Change not incorporated. This does not preclude the recommendation being in local policies.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 1: General Administration
Section 6-113: Firearms Standards

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

"Certified firearms instructor" means an individual trained in accordance with national law enforcement firearms training standards and approved by the Administrative Office of the Courts (AOC).

"Firearms automated training system" means a system which visually presents situations the officer may encounter in the officer's duties and requires the officer to make use-of-force decisions relating to the use of a firearm.

"Firearms involved incident" means an event in which an officer discharges a duty weapon or is victimized by a firearm.

"Immediate threat" means the subject poses a risk of instant harm or attack with the elements of jeopardy, opportunity and ability.

"Intentional discharge" means a non-training ~~related~~ discharge of a department issued firearm by an officer ~~that~~ who is ~~either~~ on or off duty, where the officer believes the firearm is loaded and consciously performs all of the actions necessary to cause a discharge.

"Life-threatening ~~circumstances~~" means actions, ~~which~~ that may cause serious bodily injury or death.

"Low light condition" means firearms training ~~conducted in situations either natural or simulated,~~ designed to expose officers to situations they may encounter while working at night or in reduced light situations.

"On duty" means the time period during which the officer ~~is involved in~~ performs~~ing~~ ~~the officer's respective~~ probation duties or is functioning at the direction of the ~~officer's respective~~ probation department.

"Off duty" means the time period during which the officer is not ~~involved in~~ performing ~~the officer's respective~~ probation duties or functioning at the direction of the ~~officer's respective~~ probation department.

"Officer" means both adult and juvenile probation and surveillance officers.

"Tactical condition" means ~~a~~ training ~~which involves the officer's appropriate use of a firearm in training~~ involving the use of distance, shielding and movement, and other issues the officer may encounter during the course of duty.

"Unintentional discharge" means the discharge of a department issued firearm by an officer that is either on or off duty, where the firearm discharges by an action of the officer without the officer's intent to cause a discharge or when the officer unconsciously acts to cause the firearm to discharge or when outside forces cause the discharge.

B. Applicability. An officer of ~~the~~ a probation department~~s~~ with the authority of a peace officer pursuant to A.R.S. §§ 12-253, 13-916, 8-205 and Arizona Code of Judicial Administration (ACJA) §§ 6-105 and 6-105.01, may carry and use a firearm~~s~~ while on duty only if authorized by the chief probation officer or director of juvenile court services and under the ~~terms and~~ conditions specified in this section.

C. Purpose. This code ~~To~~ governs the administration and authority of an officer to use a firearm~~s~~ while on duty ~~for defensive purposes only~~.

D. General Policy. An officer may be armed ~~for defensive purposes only~~ pursuant to the following:

1. The chief probation officer or director of juvenile court services may require that certain job assignments are staffed by an armed officer. Examples include, but are not limited to:

   a. Warrant teams; or

   b. Specialized supervised caseloads.

2. The chief probation officer or director of juvenile court services shall determine when an officer authorized to carry a firearm is restricted from carrying in certain job assignments or in the performance of certain duties.

3. The chief probation officer or director of juvenile court services shall not order an ~~staff member~~ officer to be armed.

4. The chief probation officer or director of juvenile court services may require the transfer of an unauthorized ~~unarmed~~ officer to another job assignment if the current assignment requires an armed officer.

5. ~~An o~~Officers shall not carry any firearm on ~~the officer's~~ their person, ~~or have any firearm in the office or~~ at their job location or in their ~~officer's~~ vehicle, while on official business except with prior approval and authorization of the chief probation officer or director of juvenile court services.

E. Request for Authorization to Carry Firearm.

1. An officer ~~wishing~~ seeking authorization to carry a firearm or ~~who desires~~ training on firearms shall submit a written request to the chief probation officer or director of juvenile court services ~~and submit to the following screening and testing requirements~~.

2. The chief probation officer or director of juvenile court services shall confirm and document, prior to granting authorization, that the requesting officer has ~~done the following~~:

   a. Completed psychological testing ~~which~~ meetings minimum standards established by the AOC;

   b. Completed a criminal history records check;

   c. Successfully completed and demonstrated proficiency in all required defensive tactics training;

   d. Completed and certified, on a form approved by the AOC, that they are medically and physically able to perform the job duties of an armed officer;

   ~~c~~e. Successfully completed the Committee on Probation Education (COPE) approved firearms training academy with the firearm intended for use;

   ~~d~~f. Successfully completed a COPE approved competency test and training course on ACJA §§ 6-112 and -113, and legal issues relating to firearms; and

   ~~e. Successfully completed and demonstrated proficiency in all required defensive tactics training;~~

   ~~f. Completed and certified, on a form approved by the AOC, that they are medically and physically able to perform the job duties of an armed officer; and~~

   g. Submitted a form, approved by AOC, attesting that:

      (1) The officer agrees to submit to an AOC approved psychological evaluation;
      (2) The officer has no medical, psychological, or health condition including a physical or mental disability, ~~which~~ substantially impairings their ~~officer's~~ ability to responsibly carry a firearm or interferinges with the safe use of or handling of a firearm;
      (3) The officer is not addicted to alcohol or prescription drugs;
      (4) The officer does not use unlawful narcotics or drugs;
      (5) The officer agrees to submit to random drug tests if authorizeded~~ation~~ to carry a firearm ~~is granted~~;
      (6) The officer agrees to submit to drug testing based on reasonable suspicion pursuant to departmental policy and procedures; and
      (7) The officer shall abide by all ACJA requirements and department policies regarding firearms.

3. The chief probation officer or director of juvenile court services may require that the requesting officer submit to a polygraph examination to inquire about matters that would reasonably be the basis for not authorizing an officer to carry a firearm including, but not

limited to, sexual misconduct, use of excessive force and abuse of authority. A polygraph examination may also be used to question officers where the truthfulness or accuracy of information provided in the request to be armed is at issue.

4. The chief probation officer or director of juvenile court services shall act on the request for initial authorization, within 30 days, by initiating arrangements for the probation officer to undergo the necessary tests, evaluations, checks and training.

F. Required Firearms Training and Qualifications.

1. COPE shall approve a uniform, standardized and statewide firearms training academy and annual re-qualification.

2. The ~~c~~Certified ~~f~~Firearms ~~i~~Instructor (CFI) shall only use curriculum approved by COPE ~~and~~ to provide firearms training that meets the following minimum standards.

   a. Annual training in:

      (1) Daylight conditions and qualification;
      (2) Low light conditions and qualification;
      (3) Tactical conditions;
      (4) Firearms automated training system or a judgmental shooting simulation; and
      (5) Range safety.

   b. Required instruction on the safe and effective use of department firearms.

3. Departments shall provide range equipment including eye and ear protection for use during training and qualifications.

4. An officer shall comply with all directives of the CFI concerning firearms training and safety.

5. An officer's direct supervisor may give written authorization ~~to~~ for the officer to use ~~the~~ a department issued firearm for practice while off duty on a ~~departmentally approved~~ range approved by the department.

6. The CFI shall confiscate and take control of the firearm of any officer who exhibits inappropriate or unsafe behavior while on the range or of any firearm determined to be unsafe.

G. Procedures for Authorization, Denial, Temporary Suspension or Revocation.

1. The chief probation officer or director of juvenile court services shall deny authorization to carry a firearm if an officer:

a. Has been convicted in any court of a qualifying misdemeanor crime of domestic violence under federal law. See 18 U.S.C. § 922 (g)(9).

b. Is subject to a qualifying protection order under federal law. See 18 U.S.C. § 922 (g)(8).

2. The chief probation officer or director of juvenile court services may deny authorization to carry a firearm during any point of the screening and testing process based on the criteria stated in subsection (G)(6).

3. The chief probation officer or director of juvenile court services shall approve or disapprove the request to carry a firearm in writing within 30 days after the officer satisfactorily completes all requirements stated in subsection (E)(2).

4. The chief probation officer or director of juvenile court services shall provide written reasons for denial, temporary suspension, or revocation to the officer and a copy of the approval, denial, temporary suspension, or revocation shall be kept on file.

5. The chief probation officer or director of juvenile court services or designee shall place the original request and the approval or reasons for denial, temporary suspension, or revocation in the officer's personnel file and provide copies to the officer, and to the officer's supervisor. ~~The CFI shall receive a copy of all approvals.~~

6. The chief probation officer or director of juvenile court services shall ~~only~~ deny, revoke, or temporarily suspend authorization to carry a firearm for the following reasons:

   a. Results from the psychological evaluation ~~that~~ indicating~~es~~ unfitness to carry a firearm;

   b. The officer is currently diagnosed with a mental disability or illness by a licensed mental health professional that may impact the officer's ability to safely use a firearm;

   c. The denial or revocation of a permit to carry a concealed weapon by the State of Arizona;

   d. A result from a criminal history record check or a self report indicating any or all of the following:

      (1) The conviction of a felony or an offense, which would be a felony if committed in this state;
      (2) The commission of any offense involving dishonesty, unlawful sexual conduct, physical violence or domestic violence;
      (3) The violation of ~~A.R.S. § 13-3112, concealed weapons permit or~~ statutes governing firearms or lethal and non-lethal weapons; and
      (4) The commission of a misdemeanor involving the carrying or use of a firearm.

e. The violation of departmental policy or this code relating to the carrying or use of firearms;

f. Carrying, exhibiting, or using a firearm in an unsafe or careless manner;

g. Disciplinary charges pending or action taken ~~that~~ relating~~e~~ to the fitness to carry a firearm;

h. Any use of alcoholic beverages on duty or excessive use of alcoholic beverages off duty that affects job performance ~~of job~~;

i. The administrative reassignment of an officer as a result of a documented stress related disorder or post traumatic stress disorder as diagnosed by a licensed mental health professional that may impact the officer's ability to safely use a firearm;

j. A medical, psychological, or health condition including a physical or mental disability, which substantially impairs the officer's ability to responsibly carry a firearm or interferes with the safe use of or handling of a firearm;

k. The addiction to alcohol or prescription drugs that would interfere with the safe use of a firearm and render the officer unfit to carry a firearm;

l. An officer is found to have illegally used dangerous drugs or narcotics for any purpose within the past seven years;

m. An officer is found to have illegally used marijuana for any purpose within the past three years;

n. Transfer or reassignment of an officer to an assignment or unit where carrying a firearm is not authorized pursuant to (D)(2) of this section;

o. The authorization was based solely upon a specific personal risk to the officer and the risk is determined to no longer exist;

p. Arrest for an offense punishable as a felony or for a misdemeanor involving the carrying or use of a firearm;

q. Discharge of a firearm by an officer in violation of any municipal, county or state law, regulation or policy;

r. Drawing a firearm or use of a non-lethal defensive weapon in violation of any municipal, county or state law, regulation or policy;

s. Any ~~other~~ circumstance, temporary or permanent, other than time in service, which leads the chief probation officer or director of juvenile court services to believe that

~~the~~ arming ~~of~~ the officer could place that officer, other staff, probationers or the public in jeopardy; or

t. Failure to successfully complete the annual re-qualification program and participate in required practice sessions.

7. All screening and testing records shall be maintained in the officer's personnel file and ~~be~~ remain confidential as required by law.

8. The presiding judge shall hear all appeals to the denial, temporary suspension, or revocation and the judicial decision is final and not appealable.

9. An officer wishing to have their authorization reinstated after revocation may submit a written request to the chief probation officer or director of juvenile court services after one year. The officer shall clearly state the reasons for reinstatement of the authorization. The presiding judge, presiding juvenile judge or judicial designee shall hear all appeals to the denial of reinstatement.

H. Authorization.

1. An officer granted authorization to carry a firearm shall acknowledge and sign an authorization document indicating the officer understands the terms and conditions contained in the code and any department policy regarding the use of firearms. The authorized officer shall agree to adhere to all state laws regarding the carrying and use of firearms. This includes all laws relating to the use of force.

2. An officer failing to comply with regulations and limitations are subject to disciplinary action and loss of firearm authorization.

3. An officer granted authorization to carry a firearm shall successfully complete the annual re-qualification and participate in all required practice sessions.

4. The chief probation officer or director of juvenile court services may order an authorized officer to submit to an evaluation by a licensed or certified professional when the officer is not performing assigned job functions adequately or who is experiencing problems which could affect job performance or the safety of the public and employees.

I. Restrictions for Carrying Firearms. An officer authorized to carry and use a weapon on duty is prohibited from carrying department issued firearms under the following conditions:

1. While in a condition resulting from the use of alcohol or medication where the officer's motor skills, reflexes, or judgment could be adversely affected or while displaying evidence of mental or emotional instability;

2. While injured or in a physical condition causing inability to use a firearm properly, for example, broken hand or an eye injury causing uncorrected impaired vision. This is not

intended to limit an authorized officer's ability to defend oneself during the incident or others when injuries are incurred in a life-threatening situation;

3. While on disciplinary or investigative suspension;

4. While on leave, short term or extended, with or without pay, or other periods of unpaid absence from the department;

5. When the chief probation officer, director of juvenile court services, or other superior directs the officer not to carry a firearm;

6. When the chief probation officer or director of juvenile court services revokes the authorization to carry; and

7. When engaged in official travel out of state unless written permission is obtained from the chief probation officer or director of juvenile court services.

J. Authority to Unholster, Draw and Display Firearms. An officer shall only draw their duty weapon from its holster, or display it in public, under the following conditions and as authorized in subsection (L) of this section.

1. In compliance with department policy regarding firearm concealment or exposure;

2. The circumstances surrounding the incident create a reasonable belief that it may become necessary to use the firearm in the performance of probation supervision duties;

3. When a law enforcement officer requests assistance from an officer in a life-threatening situation;

4. For maintenance, inspection and training purposes; and

5. When using the weapon in an approved training course, practice session or qualification with the CFI.

K. Required Reporting of Firearm Unholstering, Drawing, or Displaying a Firearm in the Course of Duty.

1. Except for training or to secure a weapon or when requested by a CFI for purposes of maintenance, or inspection, ~~A~~an officer who unholsters, draws or displays, but does not discharge a firearm while on duty, ~~excluding training,~~ shall submit a written ~~an incident~~ report to their supervisor no later than the next business day. ~~except other than to secure the weapon or when requested by the CFI for maintenance, inspection or training purposes.~~

~~2. An officer who witnesses this behavior shall submit an written incident report to their supervisor no later than the next business day.~~

~~3~~2. The supervisor shall immediately send the written ~~incident~~ report through the departmental chain of command to the chief probation officer or director of juvenile court services.

~~4~~3. Failing to comply with reporting requirements may be cause for disciplinary actions, up to and including termination of employment.

L. Authority to Discharge Firearm.

1. An officer shall determine that deadly force is warranted under the circumstances provided by statute before using deadly force in the performance of the officer's duties.

   a. A.R.S. § 13-410(A)(1) provides:

> The threatened use of deadly physical force by a person against another is justified pursuant to § 13-409 only if a reasonable person effecting the arrest ~~...~~ . . . would believe the suspect~~...~~ . . . is:
> (1) Actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force; or~~.~~

   b. A.R.S. § 13-410(C)(1)(2)(a)(b)(c) and (D) provides:

> C. The use of deadly force by a peace officer against another is justified pursuant to ~~§~~ section 13-409 only when the peace officer reasonably believes that it is necessary:
> 1. To defend himself or a third person from what the peace officer reasonably believes to be the use or imminent use of deadly physical force.
> 2. To effect an arrest~~...~~ . . . of a person whom the peace officer reasonably believes:
> (a) Has committed, attempted to commit, is committing or is attempting to commit a felony involving the use or threatened use of a deadly weapon.
> (b) Is attempting to escape by use of a deadly weapon.
> (c) Through past or present conduct of the person which is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.
> ~~...~~ . . . .
> D. Notwithstanding any other provision of this chapter, a peace officer is justified in threatening to use deadly physical force when and to the extent a reasonable officer believes it necessary to protect himself against another's potential use of physical force or deadly physical force.

2. An officer shall not:

   a. Draw or display a weapon unless the situation poses a threat that may warrant the use of the weapon;

   b. Fire warning shots;

   c. Fire in the immediate direction of a crowd;

   d. Fire into buildings or through doors or windows, when the subject is not clearly visible;

   e. Use firearms to protect property;

   f. Discharge firearms to apprehend a fleeing offender;

   g. Fire at a moving vehicle unless it is necessary to protect oneself or others against immediate threat of death or serious physical injury; or

   h. Fire at an animal unless justified in preventing substantial harm to oneself or another.

3. An officer may use firearms on an approved range or during other approved training, practice or qualification when supervised by a CFI or in other department-approved training.

M. Responses to Discharges and Firearms Involved Incidents. ~~Investigation of Discharges and Call-Out Procedures.~~ Departments shall respond to discharges and firearms involved incidents according to the following criteria ~~Any department conducting a firearm's discharge investigation shall classify the discharge in one of the following categories~~:

1. Unintentional discharge without injury. The chief probation officer or director of juvenile court services shall ensure the following:

   a. The department conducts an administrative investigation and shall not be required to conduct a formal shooting inquiry board. This type of discharge does not necessarily require an immediate departmental response.

   b. The chief probation officer or director of juvenile court services shall notify the AOC within 72 hours when an unintentional discharge without injury has occurred.

   c. The chief probation officer or director of juvenile court services shall have the authority to administer any discipline or remedial measures according to the local personnel procedures.

2. Training related unintentional discharge without injury. The chief probation officer or director of juvenile court services may follow the requirements of subsection (M)(1) of this section regarding a training related unintentional discharge without injury.

~~3. Unintentional discharge with injury. The chief probation officer or director of juvenile court services shall ensure that all investigations follow the criteria stated in subsection (M)(4) of this section.~~

~~4~~3. Unintentional discharge with injury or ~~I~~intentional discharge. Departments shall defer the scene and investigation to ~~and~~ the appropriate law enforcement agency. Departments shall conduct an internal administrative investigation of ~~shall investigate~~ any intentional discharge of a firearm or unintentional discharge of a firearm with injury.

a. The improper use of a firearm may result in sanctions, criminal, or civil action.

~~b. In an administrative investigation of a weapons discharge of a firearm, the first non-involved armed responding officer shall:~~

~~(1) Secure and preserve the firearm in a condition as close as possible to the condition when the discharge took place. For example, leaving the firearm with the officer in the holster until it can be surrendered to an investigating officer.~~
~~(2) Take care not to destroy or add fingerprints;~~
~~(3) Protect the weapon for examination and only submit it to the CFI or investigating authority;~~
~~(4) Record exactly what is done with the firearm and report it to the investigating law enforcement agency; and~~
~~(5) Provide all gathered information to the incident investigator from the probation department and law enforcement.~~

~~c. The probation department shall assign a staff member to aid and assist the officer if the discharge of the officer's firearm results in the wounding or death of a person or persons.~~

~~d~~b. The chief probation officer or director of juvenile court services shall ensure that when the officer's weapon is held as part of an investigation, a replacement firearm is issued as soon as is reasonable unless authorization to carry a firearm has been revoked or temporarily suspended.

~~e. Each department shall have policies and procedures for the investigation of all firearm discharges or firearm involved incidents. Each department's policies and procedures shall include, but are not limited to, the following:~~

~~(1) Direction as to who shall be notified;~~
~~(2) Direction as to who shall be called to the scene;~~
~~(3) Notification to AOC and appropriate law enforcement;~~
~~(4) Notification to county and state risk management;~~

~~(5) Notification to county attorney and attorney general;~~
~~(6) Establishment of a critical incident response team;~~
~~(7) Notification of a critical incident response team representative or representatives; and~~
~~(8) Procedures to place an officer on administrative leave following a shooting or discharge.~~

~~f. The chief probation officer or director of juvenile court services or designee shall handle all media and family inquiries.~~

4. Each department shall have policies and procedures for the internal administrative investigation and responses of all firearm discharges or firearm involved incidents. Each department's policies and procedures shall include, but are not limited to, the following:

   a. Direction as to who shall be notified;

   b. Direction as to who shall be called to the scene;

   c. Notification to AOC and appropriate law enforcement;

   d. Notification to county and state risk management;

   e. Notification to county attorney and attorney general;

   f. Establishment of a critical incident response team, to include a member to aid and assist an officer directly following a line of duty shooting or other firearms involved incident. This does not include unintentional discharge without injury;

   g. Notification of a critical incident response team representative or representatives; and

   h. Procedures to place an officer on administrative leave following a shooting or discharge.

5. The chief probation officer or director of juvenile court services shall ensure all officers are trained in policies and procedures regarding firearms discharges or firearms involved incidents.

6. The chief probation officer or director of juvenile court services or designee shall handle all media and family inquiries.

N. Shooting Inquiry Board.

1. The chief probation officer or director of juvenile court services shall appoint a shooting inquiry board within twenty days of any unintentional discharge with injury or intentional discharge of a department issued firearm.

2. The shooting inquiry board shall convene for the purpose of revealing the facts in each instance of a discharge.

3. The shooting inquiry board shall consist of:

    a. Two members of the probation department not involved in the incident, appointed by chief probation officer or director of juvenile court services;

    b. One member of a law enforcement agency, not the investigative officer, appointed by the chief probation officer or director of juvenile court services;

    c. One representative of the officer from the department, not involved in the incident;

    d. One representative not involved in the incident, appointed by the presiding judge, from either inside or outside the probation department; and

    e. An ~~The~~ AOC probation safety specialist.

4. The shooting inquiry board shall review the investigation of the shooting and determine the facts surrounding the incident, interview witnesses, and when necessary, request the chief probation officer or director of juvenile court services to assign investigators.

5. The board shall issue a written report to the chief probation officer or director of juvenile court services at the conclusion of its review containing the following:

    a. A brief summary of the incident, as determined by the facts presented to the board;

    b. The board's opinion of whether the discharge complied with department policy and this code;

    c. Determination if the action of the officer was reasonable~~, safe, and necessary~~;

    d. Any minority opinion of a member, in the event that the board's opinion is not unanimous; and

    e. The signature of each board member.

6. The chief probation officer or director of juvenile court services shall have the authority to administer any discipline or remedial measures according to the local personnel procedures.

7. The chief probation officer or director of juvenile court services shall forward a copy of the shooting inquiry board's report to the AOC probation safety specialist along with the actions taken by the chief probation officer or director of juvenile court services.

O. Authority to Carry and Use Concealable Firearms While Off Duty.

1. An officer authorized to carry and use issued firearms and ammunition on duty may request, in writing, separate authorization from the chief probation officer or director of juvenile court services to carry and use the issued firearm and ammunition off duty. Approval or denial of a request to carry off duty shall be in writing and placed in the officer's personnel file and shall be based on a specific personal risk or need to immediately respond based on assignment.

2. An officer authorized to carry and use a firearm while off duty shall comply with all laws and regulations and ACJA code sections concerning the carrying of firearms.

3. An officer who is carrying off duty without written authorization pursuant to this code section, shall be deemed to be acting outside the course and scope of employment and to be acting completely independently from the county or state.

    a. The county and state assume no responsibility or liability for those actions.

    b. Any liability arising from such possession or use of a firearm shall be the sole, individual liability of the officer.

4. An officer shall not carry department issued firearms while working secondary employment.

5. Any officer found to have carried a department issued firearm while off duty without written consent may lose authorization to be armed and may face other disciplinary actions up to and including termination of employment.

P. Authorized Firearms, Ammunition and Holsters.

1. An officer may only carry and use the firearm and ammunition that are approved by the AOC as their duty weapons.

2. The chief probation officer or director of juvenile court services shall ensure a database of each firearm serial number is maintained with the probation department.

3. The department shall maintain records of all firearms carried by on duty officers.

4. ~~An officer shall only alter the firearm with personalized grips or grip adapters~~. Only probation department approved armorers shall make adjustments to the firearm <u>except for personalized grip or grip adapter that may be added by the officer</u>.

5. All safety devices <u>manufactured into</u> ~~on~~ the firearm ~~provided by the manufacturer~~ shall be intact and functioning at all times.

6. An officer may use another officer's firearm in the case of a life-threatening emergency. An officer may only use another firearm on the range, under the direct supervision of a CFI.

7. The chief probation officer or director of juvenile court services shall approve holsters for the authorized firearms based on guidelines issued by the AOC.

8. An officer shall qualify with the approved holster or holsters prior to initiating use and upon re-qualifying.

9. The CFI shall ensure that only factory ammunition is used. The use of reload ammunition is prohibited.

10. An officer shall only carry the approved and authorized firearm.

11. An officer shall have in their possession their department issued badge, identification card and firearms authorization card whenever carrying a firearm.

12. An officer shall ensure that the firearm is fully loaded when it is carried or worn.

13. The chief probation officer or director of juvenile court services may grant written approval for an officer on official business to carry an issued firearm when traveling out of jurisdiction. The officer shall:

    a. Carry the written approval at all times while traveling;

    b. Follow all federal, state, and local laws and regulations; and

    c. Comply with the carrier's requirements.

Q. Firearms Safety and Storage.

1. An officer authorized to carry a firearm shall observe and practice the following safety regulations:

    a. All firearms shall be handled safely and treated as a loaded firearm until the handler has personally proven otherwise;

    b. An officer shall only dry-fire, clean, exhibit, load or unload in a safe manner and environment;

    c. An officer shall ensure that any unholstered firearm that is brought into a probation department facility is unloaded. This does not include an officer's duty weapon for transfer to safe storage;

d. An officer shall ensure that a firearm equipped with any safety device is carried in a "safe" position; and

e. An officer shall ensure that the weapon is empty of ammunition prior to cleaning or inspection.

2. An officer shall ensure that the ~~holstered~~ firearm and ammunition are stored in a designated safe and locked place that is not accessible to unauthorized persons when not carrying or wearing the firearm.

   a. An officer shall not keep a firearm in the office overnight unless secured in a department approved firearms storage unit.

   b. An officer shall not store a firearm overnight in any vehicle.

   c. An officer shall ensure that a firearm is kept in a secure and safe place where the firearm is not accessible to other individuals, particularly children.

   d. An on-duty armed officer not wanting to carry a firearm into a residence or public building, shall temporarily store the firearm in a locked automobile trunk or glove compartment.

      (1) An officer shall ensure that the automobile is locked if the firearm is stored in a glove compartment or if the trunk is accessible through the passenger area.
      (2) An officer shall exercise care that the placement of the firearm in the glove compartment or trunk is not observed by the public.
      (3) The chief probation officer or director of juvenile court services may approve alternative arrangements, such as secure lock boxes under the seat.

   e. An officer shall follow facility procedures for safekeeping and temporary storage of their firearm, ammunition, and other prohibited items at all correctional and court facilities.

3. An officer shall immediately notify their supervisor of any unauthorized use, handling, or discharge of a department issued firearm. Chief probation officers or directors of juvenile court shall ensure that all discharge investigations follow ~~all~~ criteria provided in subsection M ~~(4)~~ of this code section.

4. An officer failing to comply with the safety and storage regulations may be subject to disciplinary action, which may include the loss of authorization to carry a firearm.

R. Stolen or Lost Firearm.

1. An officer shall immediately file a report with local law enforcement upon discovery that a firearm is missing.

2. An officer shall immediately report a stolen or lost firearm to the supervisor, who will in turn notify the chief probation officer or director of juvenile court services.

3. An officer shall provide a written report to the supervisor no later than the close of that business day. The supervisor shall review the report and forward it to the chief probation officer or director of juvenile court services. Upon review the chief probation officer or director of juvenile court services shall forward the report to an AOC probation safety specialist.

4. The chief probation officer or director of juvenile court services shall discipline an officer who is found negligent in the loss of their department issued weapon. The discipline shall minimally consist of a letter of reprimand and may include the loss of authorization to carry a firearm.

5. An officer shall reimburse the county or state in the event that a probation department firearm and related equipment is lost or damaged through negligence.

S. Firearm Care and Maintenance.

1. An officer shall be responsible for cleaning and inspection of their issued firearm.

2. An officer shall not clean a firearm in the probation department other than in a departmental armory or other designated area.

3. The department shall retain ownership of all firearms and ammunition purchased and provided to an officer.

4. An officer shall return the firearm and ammunition to the department upon request.

5. An officer shall present the firearm to the CFI for inspection upon the instructor's request.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	X Formal Action/Request __ Information Only __ Other	**Report from the Capital Case Oversight Committee**

FROM: Capital Case Oversight Committee

DISCUSSION: Supreme Court Administrative Order 2013-15 extended the term of the Capital Case Oversight Committee to December 31, 2013. This Administrative Order directed the Oversight Committee to report to the Arizona Judicial Council in December 2013.

Hon. Ronald Reinstein, Superior Court in Maricopa County (ret.), will present the Oversight Committee's 2013 report to the Council.

RECOMMENDED COUNCIL ACTION: Judge Reinstein requests the Council's approval of the Oversight Committee's report and its two recommendations:

1. Support an amendment to A.R.S. § 13-4041.

2. Extend the term of the Oversight Committee.

PROGRESS REPORT

OF THE

CAPITAL CASE

OVERSIGHT COMMITTEE

TO THE

ARIZONA JUDICIAL COUNCIL

December 2013

Justice 20|20

Capital Case Oversight Committee

December 2013

Chair: Hon. Ronald Reinstein, Superior Court in Maricopa County (retired)

Mr. James Belanger, Coppersmith, Schermer, and Brockelman, PLC

Hon. Kent Cattani, Court of Appeals, Division One

Ms. Donna Hallam, Staff Attorney, Arizona Supreme Court

Ms. Kellie Johnson, Office of the Pima County Attorney

Mr. Dan Levey, Executive Director, Parents of Murdered Children

Mr. Marty Lieberman, Maricopa County Legal Defender

Mr. James Logan, Director, Maricopa County Office of Public Defense Services

Mr. William Montgomery, Maricopa County Attorney

Mr. Daniel Patterson, Office of the Maricopa County Public Defender

Ms. Sheila Polk, Yavapai County Attorney

Mr. Natman Schaye, Arizona Capital Representation Project

Hon. Joseph Welty, Superior Court in Maricopa County

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I. Executive Summary

This is the fifth report of the Capital Case Oversight Committee ("Oversight Committee") to the Arizona Judicial Council. The Supreme Court established the Oversight Committee's predecessor, the Capital Case Task Force, in February 2007 because of an *"unprecedented number"* of capital cases in Maricopa County. Maricopa County at that time had almost one hundred forty capital cases pending trial. The Court created the Oversight Committee in December 2007 pursuant to a Task Force recommendation that a Supreme Court committee monitor Maricopa County's efforts at reducing its capital caseload.

As noted in the Oversight Committee's 2012 report, Maricopa County's subsequent reduction efforts effectively reduced its capital caseload. The number of pending capital cases in Maricopa County is now approximately half of what it was five years ago.[1]

The Oversight Committee has also monitored the number of capital cases pending in trial courts statewide because those cases may potentially affect the volume of direct appeals to the Arizona Supreme Court. In addition to Maricopa, capital cases are currently pending in five counties. During the past several years, the number of cases in these other counties has remained at about one-fourth of the statewide total. While the number of pending cases in these five counties fluctuates annually, the current number is not too different from what it was in 2008.[2]

At the Supreme Court level, there were nineteen direct capital appeals pending when the Oversight Committee submitted its 2012 report. As of the end of October, 2013, the number is twelve. The Oversight Committee's 2012 report noted that there were seven defendants awaiting the Supreme Court's appointment of counsel for a capital post-conviction proceeding. This year that number is six.

Because of the relative stability of the capital caseload in 2013, the Oversight Committee only convened twice this year. Nevertheless, the Oversight Committee has concerns about the impact of recent United States Supreme Court opinions on Arizona capital cases, as well as potential changes to capital case procedures, as discussed later in this report. The Oversight Committee accordingly recommends that the Arizona Judicial Council support a two-year extension of the Oversight Committee's term.

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[1] Please see Appendices 1, 2, and 3.

[2] Please see Appendices 4 and 5.

II. Capital Cases in the Superior Court and the Supreme Court

In October 2008, the Oversight Committee began collecting a limited amount of Maricopa County capital case data on a monthly basis. The Oversight Committee has now accumulated five years (sixty months) of this data, and the data confirms a substantial reduction of Maricopa County's capital caseload.

Since 2008, the Oversight Committee has also conducted an annual survey of county attorneys statewide concerning the number of their pending capital cases.[3]

Superior Court, Maricopa County

1. Number of notices of intent to seek the death penalty: A first-degree murder case becomes a capital case when the prosecutor files a notice of intent to seek the death penalty pursuant to Rule 15.1(i), Ariz. R. Crim. P. Between 2004 and 2008, the years preceding the "capital case crisis" in Maricopa County, prosecutors filed approximately **thirty to forty** death notices annually.[4] By comparison, for successive twelve-month periods from October 2008 through September 2013, the annual numbers of new filings were **eighteen, thirty-two, twenty-six, twenty-four, and nineteen.** The number of cases where the Maricopa County Attorney filed a notice of intent to seek the death penalty has therefore decreased during the second half of the past decade.

2. Ratio of filings to terminations: In 2009 and 2010, the number of capital case terminations (117 cases) was more than twice the number of new filings (50 cases). Please see Appendices 2 and 3. The high number of terminations was a result of Maricopa County's new approach to managing capital cases, which it implemented in early 2009.[5] However, for the past three years, the ratio of terminations to filings in Maricopa County moved closer to one-to-one, that is, the number of new capital cases and the number of capital case dispositions in Maricopa County are now nearly equal.

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[3] Please see Appendix 4.

[4] A more detailed explanation of these numbers is at page 6 of the 2012 Oversight Committee report. The numbers stated above are "approximate" because Maricopa County furnished two sets of data for the period 2004-2008, and the annual figures in these two sets varied. The Maricopa County Office of Management and Budget, in an August 10, 2007 letter to the Chair of the Capital Case Task Force, indicated that for FY 1997-1998, there were fifty death notices filed in Maricopa County, which appears to be the highest number for a single year.

[5] The new approach included rigorous enforcement of a policy on trial postponements; conducting meaningful and productive pretrial conferences; and assuring that a courtroom and an experienced judge were available on the date set for trial.

3. *Number of pending cases:* Appendix 1 shows the number of pending capital cases in Maricopa County during a five-year period. During 2009 and 2010, the number of pending cases declined every month. During calendar year 2011, however, and continuing until the present time, the number, with only minor exceptions, has stayed between sixty and seventy cases. There has therefore been stability for the past three years in the number of pending capital cases in Maricopa County, but at about half the level it was five years ago.

Superior Court, Statewide

Capital cases are currently pending in five of the other fourteen Arizona counties: Cochise, Pima, Pinal, Yavapai, and Yuma. Appendix 4 contains the number of pending capital cases in all of Arizona's counties, by year, for the past six years. The total statewide number, which is heavily dependent on the number of pending capital cases in Maricopa County, decreased every year between 2008 and 2012. However, in 2013, the statewide number increased by about fourteen percent. Maricopa, Pinal, and Yavapai contributed to the increase, although Cochise, Mohave, and Pima partially offset the increase. The Oversight Committee at this time considers the statewide increase to be a temporary fluctuation. Whether the increase portends a reversal of a five-year trend of decreasing numbers is contingent on future data.

Supreme Court, Direct Appeals

There were seventeen capital cases pending on direct appeal to the Arizona Supreme Court in October 2008. There were twenty-three appeals in October 2009 and twenty-seven in November 2010. The increased number of appeals reflected the number of death sentences then imposed by trial courts statewide: fifteen capital sentences in calendar year 2009, and ten in 2010. Yet in 2011, there were eight death sentences statewide, in 2012 there were four, and for the first ten months of 2013, there were three.

It is also noteworthy that in the thirty-month period between April 2011 and September 2013, the Arizona Supreme Court issued twenty-seven opinions in capital cases. A lower number of death sentences recently imposed by trial courts, combined with a large number of death penalty dispositions in the Supreme Court, have significantly decreased the number of pending death penalty appeals. As of the end of October 2013, there were twelve direct appeals pending in the Arizona Supreme Court. The oldest notice of appeal was filed in March 2011.

Supreme Court, Post-Conviction Proceedings

The Committee's 2009 report noted that the number of capital cases where the Supreme Court Clerk had filed pro forma notices for post-conviction relief, and for which there were no available counsel for appointment, stood at eighteen. However, that number declined to fourteen in 2010, and after a further drop to one, it stood at seven in September 2012. As of October 2013, there were six defendants lacking PCR counsel. These decreases were achieved even though the State Capital Post-Conviction Public Defender, a state office created by the Legislature in 2007 to accept appointments on capital PCRs, ceased to exist in 2012.

However, recent United States Supreme Court opinions may be changing the landscape of post-conviction proceedings.

The Oversight Committee's 2012 report mentioned *Martinez v Ryan,* 132 S. Ct. 1309, 182 L. Ed. 2d 272 (March 20, 2012), a non-capital case from Arizona. This U.S. Supreme Court opinion held that because Arizona required a defendant to raise a claim of ineffective assistance of trial counsel in collateral proceedings, rather than on direct appeal, the ineffectiveness of the defendant's post-conviction counsel in challenging the effectiveness of trial counsel could provide cause for excusing the defendant's failure to raise trial counsel's ineffectiveness in state court. Although the U.S. Supreme Court declined to recognize an explicit constitutional right to the effective assistance of counsel in collateral proceedings, it held that ineffective assistance by PCR counsel might allow a defendant to raise for the first time in a federal habeas petition a claim that his PCR counsel should have raised in state court.

Trevino v Thaler, 133 S. Ct. 1911, 185 L. Ed. 2d 1044 (May 28, 2013), extended the application of *Martinez* to a capital proceeding in Texas. Texas did not require a defendant to raise his ineffective assistance of trial counsel claim in a post-conviction proceeding; however, it imposed substantial obstacles to raising the claim on direct appeal. The Supreme Court concluded that where the design and operation of state procedures made it highly unlikely in a typical case that a defendant would have a meaningful opportunity to raise a claim of ineffective assistance of trial counsel on direct appeal, the holding in *Martinez* would apply.

An illustration of how the complexity of these Supreme Court cases has altered the PCR landscape is *Detrich v Ryan,* (CA 9, No. 08-99001, September 3, 2013). This en banc decision concerning an Arizona capital case includes a four-judge plurality opinion, two concurring opinions, and the dissent of five judges.

III. Recommendations

Recommendation #1: Support an amendment to A.R.S. § 13-4041.

A.R.S. § 13-4041 concerns the fee of counsel appointed on a post-conviction proceeding in a capital case. The statute provides for a one-hundred dollar hourly fee. The Oversight Committee has recommended over the past several years that the hourly rate in A.R.S. § 13-4041 be increased to at least one-hundred twenty-five dollars, and it now reaffirms that recommendation. This proposed increase would match the rate of compensation for PCR counsel with the current rate provided by Maricopa County for attorneys defending a capital case at the trial stage. There is no rationale for compensating PCR counsel less than trial counsel. The Oversight Committee believes that an hourly rate of one-hundred seventy-five dollars, which is comparable to the federal rate in a capital case, would further encourage qualified attorneys to apply for capital PCR appointments.

Recommendation #2: Extend the term of the Oversight Committee.

This recommendation has been included in each of the Oversight Committee's prior reports, and there are several sound reasons for supporting the recommendation again this year.

The apparent stability of capital case data, and in some important areas such as appeals and PCRs, meaningful reductions, could quickly change. A few counties have recently had increases in the number of capital cases pending trial. The Oversight Committee should therefore continue to monitor capital caseloads.

The Oversight Committee's responsibilities include the review of rule petitions concerning capital cases. The Oversight Committee has filed rule petitions as well as comments on rule petitions over the past several years, and this too is an important and ongoing committee function.

The U.S. Supreme Court opinions noted above could culminate in the alteration of post-conviction procedures. Some Arizona stakeholders already are contemplating changes to the sequence of capital appeals and post-conviction proceedings. Senate Bill 1413, introduced during the 2013 Legislative session to implement such changes, failed to pass, but other legislative or rule proposals may be forthcoming. In addition, the United States Attorney General continues to promulgate regulations concerning a Certification Process for State Capital Counsel Systems (also known as the "opt-in" provisions.) These regulations include requirements concerning the competency and compensation of court-appointed counsel for capital defendants.[6]

The Supreme Court opinions and pending federal regulations discussed above highlight the importance of appointing competent and adequately-compensated counsel at every stage of a capital proceeding. This past year the Oversight Committee revised the application for attorney appointments on capital PCR proceedings. However, these Supreme Court opinions and potential federal regulations warrant further diligence in assuring that Arizona's capital defendants have effective counsel. The Oversight Committee serves a useful role in achieving this objective.

The members of the Oversight Committee include judges, prosecutors, public and private defense counsel, a Supreme Court staff attorney and a victims' advocate. Oversight Committee members have indispensible insights and advantageous historical perspectives on capital

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[6] The most recent regulations published by the United States Attorney are the subject of a temporary restraining order issued by a federal district court on October 18, 2013, in Habeas Corpus Resource Center and the Office of the Federal Public Defender for the District of Arizona, Plaintiffs, versus the United States Department of Justice and Eric H. Holder, Defendants (N.D. Cal., C-13-4517-CW). The district court has scheduled a hearing on the TRO for November 14, 2013.

litigation in Arizona, and this group should remain intact. As noted in the 2012 report, as long as there is a death penalty in Arizona, issues will continue to arise.

Therefore, the members respectfully and unanimously recommend an extension of the term of the Oversight Committee for two more years.

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1. Number of capital cases pending trial in the Maricopa County Superior Court: October 2008 through September 2013

2. Maricopa County capital case recap: October 2008 to September 2013

3. Combined Maricopa County data summary for twelve month periods, 2008 to 2013

4. Capital cases pending trial in Arizona by county: 2008 to 2013

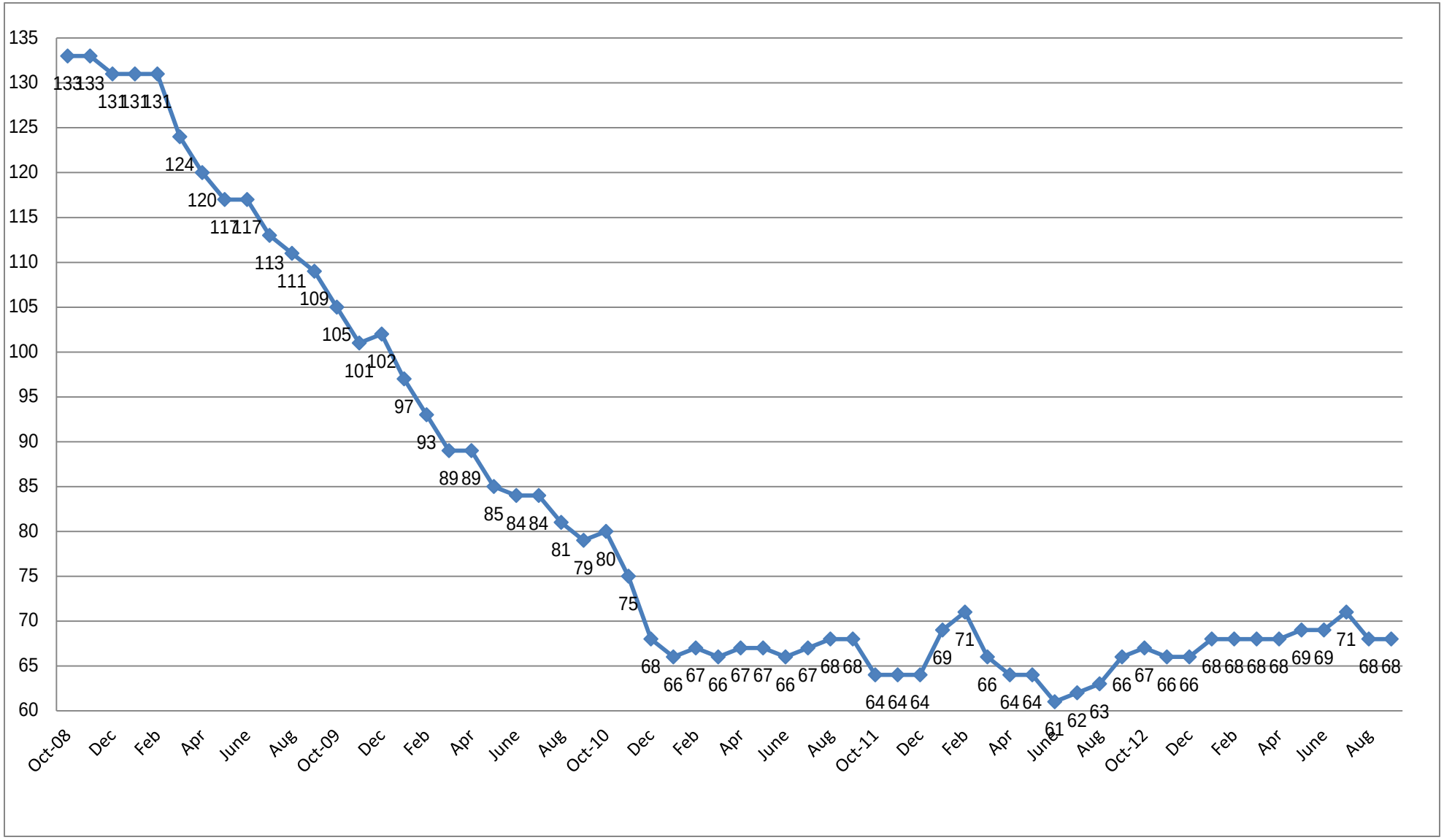
5. Number of capital cases pending trial outside Maricopa County, July 2008 to September 2013

6. Capital cases pending trial statewide, July 2008 to September 2013

7. Number of defendants sentenced to death statewide, 2008 to 2013

8. Executions, 2000 to October 2013

#1: Number of Capital Cases Pending Trial in the Maricopa County Superior Court, by Month: October 2008 through September 2013



Maricopa County
Five-year capital case recap

#2: Maricopa County Capital Case Recap: October 2008 to September 2013 (5 years)

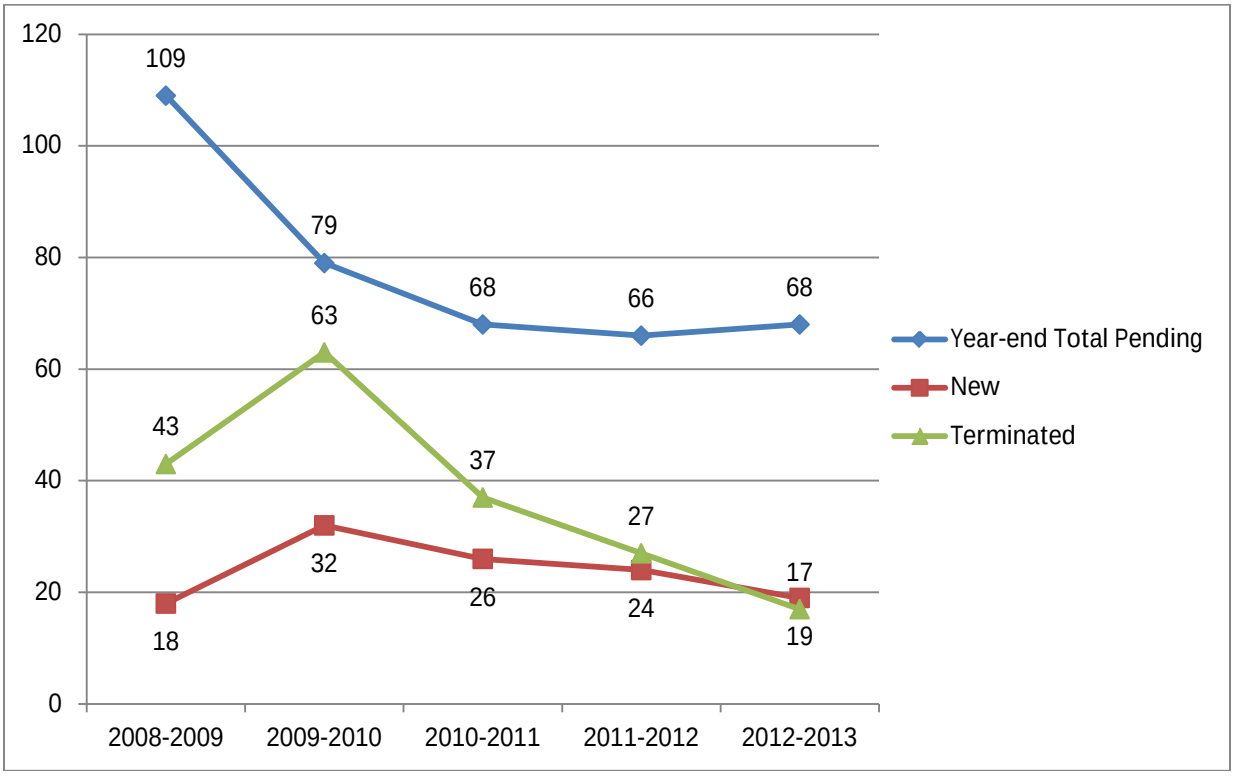
MONTH	# OF NEW CASES	# OF ACTIVE CASES TERMINATED	DEFENDANTS SENTENCED TO DEATH
October 2008	3	1	0
November	2	2	0
December	1	3	0
January 2009	1	2	1: Prince [*Ring*]
February	2	2	0
March	0	7	1: Hausner
April	2	5	1: Lehr [*Ring*]
May	0	4	1: Delahanty
June	0	3	1: Gallardo
July	3	4	1: Grell [*Ring*]
August	3	5	2: Cota, Hardy
September	1	5	1: Manuel
12 month sub-total	**18**	**43**	**9**
October	3	7	0
November	1	5	1: Van Winkle
December	7	6	1: Patterson
CY 2009 sub-total	23	55	11
January 2010	1	6	1: Medina
February	0	5	2: Boyston, Ovante
March	1	5	0
April	2	2	2: Joseph, Martinez
May	2	6	1: Parker
June	5	6	0
July	5	5	0
August	3	6	1: Fitzgerald
September	2	4	0
12 month sub-total	**32**	**63**	**9**
24 month sub-total	**50**	**106**	**18**
October 2010	4	3	2: Gomez, Rose
November	1	6	0
December	1	8	1: Hernandez
CY 2010 sub-total	27	62	10
January 2011	3	5	0
February	3	2	1: Burns
March	2	3	0
April	1	0	0
May	3	3	2: Naranjo, Reeves
June	1	2	0
July	1	0	0
August	4	3	0
September	2	2	1: Miller
12 month sub-total	**26**	**37**	**7**
36 month sub-total	**76**	**143**	**25**

Maricopa County
Five-year capital case recap

Maricopa County Capital Case Recap: Continuation

MONTH	**# OF NEW CASES**	**# ACTIVE CASES TERMINATED**	**DEFENDANTS SENTENCED TO DEATH**
October 2011	2	6	1: Benson
November	2	2	1: Goudeau
December	1	1	0
CY 2011 sub-total	25	29	6
January 2012	6	1	0
February	3	1	0
March	1	6	0
April	0	2	0
May	1	1	0
June	0	3	0
July	2	1	0
August	2	1	1: Lynch
September	4	2	1: Anthony
12 month sub-total	**24**	**27**	**4**
48 month sub-total	**100**	**170**	**29**
October 2012	1	0	0
November	1	2	0
December	1	1	1: Leteve
CY 2012 sub-total	22	21	3
January 2013	3	1	0
February	2	2	1: Escalante-Orozco
March	1	1	0
April	1	1	0
May	4	3	0
June	1	1	0
July	4	2	0
August	0	3	1: Gunches
September	**0**	**0**	**0**
12 month sub-total	**19**	**17**	**3**
60 month total	**119**	**187**	**32**

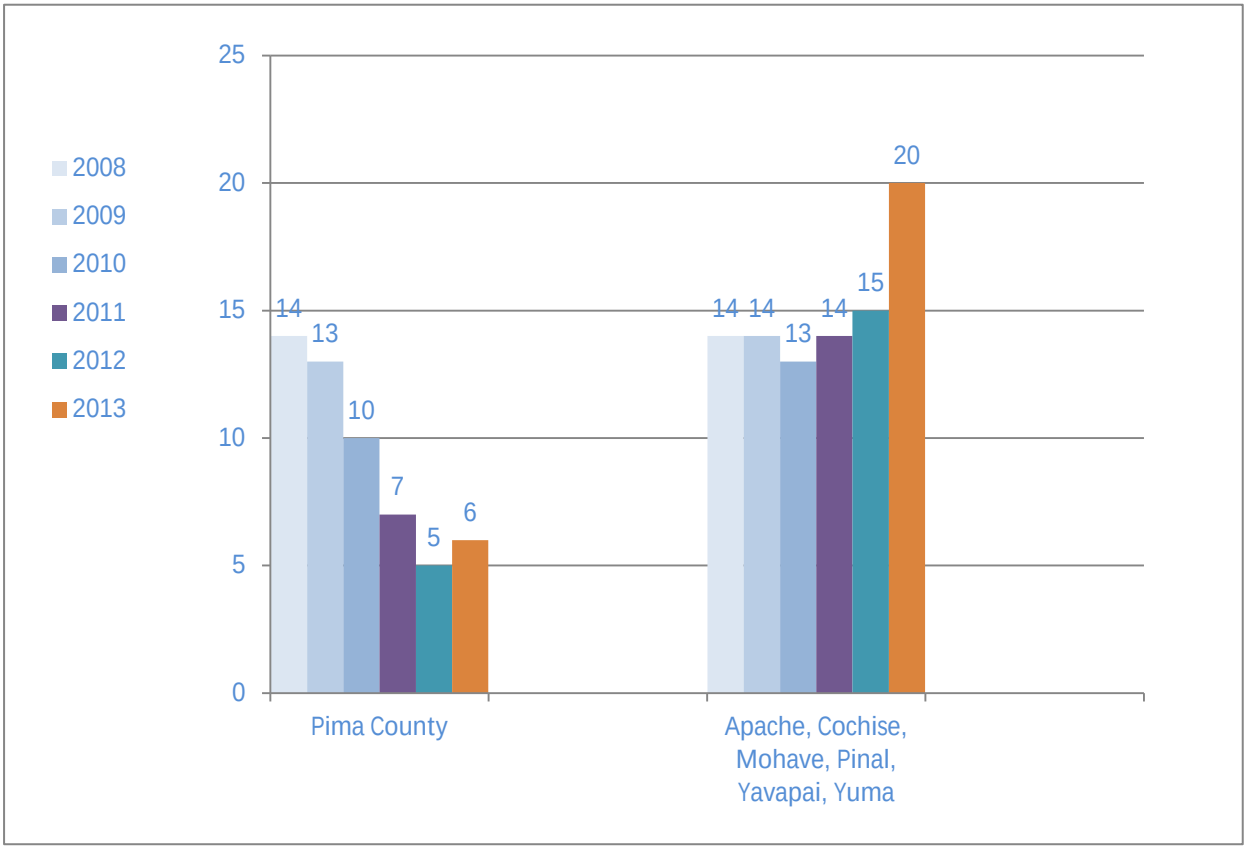
#3: Combined Maricopa data summary for twelve month periods



#4: Capital cases pending trial in Arizona by county: 2008 to 2013

County	July 2008	Sept. 2009	Sept. 2010	Sept. 2011	Sept. 2012	Sept. 2013
Apache	1	1	0	0	0	0
Cochise	0	0	1	3	3	2
Coconino	0	0	0	0	0	0
Gila	0	0	0	0	0	0
Graham	0	0	0	0	0	0
Greenlee	0	0	0	0	0	0
La Paz	0	0	0	0	0	0
Maricopa	127	109	79	68	63	68
Mohave	2	3	2	1	1	0
Navajo	0	0	0	0	0	0
Pima	14	13	10	7	5	6
Pinal	3	4	5	5	5	10
Santa Cruz	0	0	0	0	0	0
Yavapai	3	2	2	2	5	7
Yuma	5	4	3	3	1	1
TOTAL	**155**	**136**	**102**	**89**	**83**	**95**

#5: Number of Capital Cases Pending Trial Outside Maricopa County



#6: Number of Capital Cases Pending Trial Statewide

Date	# of Cases
July 2008	155
Sept 2009	136
Sept 2010	102
Sept 2011	89
Sept 2012	83
Sept 2013	95

#7: Number of Defendants Sentenced to Death Statewide

Year	# of Defts	Source by County
2008	5	Maricopa (5)
2009	15	Maricopa (11), Pima (3), Mohave (1)
2010	10	Maricopa (10)
2011	8	Maricopa (6), Pima (2)
2012	4	Maricopa (3), Pima (1)
2013 (10 mos.)	3	Maricopa (2), Mohave (1)

#8: Number of Executions in Arizona

Year	# of Executions
2001-2006	0
2007	1
2008	0
2009	0
2010	1
2011	4
2012	6
2013 (10 mos.)	2

ARIZONA JUDICIAL COUNCIL

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	_x_ Formal Action/Request	Legislative Proposals
	___ Information Only	
	__ Other	

FROM:

Jerry Landau, Government Affairs Director
Amy Love, Legislative Liaison

DISCUSSION:

2014 Legislative Proposals – Cause/Effect and Implementation

RECOMMENDED COUNCIL ACTION:

Council may vote to include or not include in the Legislature a Judicial Branch proposal or to support, oppose or take no action on proposals from other entities presented to the Council.

Arizona Judicial Council Legislative Proposals
December 12, 2013
Summary of Proposals – 2014 Session

2014-02 (AOC, Court Services) - Amy

Veterans' court establishment; eligibility for referral

Permits the presiding judge of a superior court to establish either or both a veterans' court and a mental health court as well as create eligibility criteria for referral. Allows a justice of the peace or municipal court judge to refer a case to the veterans' or mental health court. Authorizes any judicial officer in the county where the offense occurred to adjudicate a referred case; however, the originating court maintains jurisdiction and is required to notify the prosecutor of the case's referral to the veterans' court.

Sections amended: §§ 22-601, 22-602

2014-05 (Maricopa County Superior Court) - Jerry

Issuance of warrants; authority

Allows court staff to issue warrants, including fiduciary arrest warrants and child support arrest warrants. Currently only the clerk of the court has this authority and would retain exclusive authority to issue writs, processes, and subpoenas.

Sections amended: §§ 12-202, 13-4142, 14-5701, 25-681

2014-07 (Maricopa County Superior Court) - Amy

Dependency cases; court programs

Allows the court to order services be provided by other available resources if the Department of Economic Security is unable to provide them. Permits the court to employ individuals to ensure that services are provided in a timely manner. Requires all parties to provide records to the court appointed individual.

Sections amended: §8-846

2014-A (Arizona Criminal Justice Commission) - Jerry

NICS

The National Instant Criminal Background Check System (NICS) is a national system that checks available records for information on persons who may be disqualified from receiving firearms. Mandated by the Brady Handgun Violence Prevention Act (Brady Act) of 1993, Public Law 103-159, NICS allows federal firearms licensees to contact the Federal Bureau of Investigation for information on whether the transfer of a firearm would be in violation of Section 922 (g) or (n) of Title 18, United States Code, or state law. The bill includes a number of provisions including:

- Upon appointment of a guardian for an incapacitated person the court is required to transmit the person's name, sex, date of birth, the last four digits of the person's social security number, if available, court case number, court originating agency identification number and the date the guardian was appointed to the Department of Public Safety for inclusion in the NICS database. Not applicable to persons for which a guardianship is appointed due solely to physical illness or disability.
- Information regarding persons found to be incapacitated is retained in the Mental Health repository maintained by the Supreme Court. Access must be granted to a law enforcement agency through the Department of Public Safety for purposes of enforcing a court order, assisting in an investigation or returning property.
- Upon request from a law enforcement or prosecuting agency investigating or prosecuting a prohibited possessor as defined in 13-3101, the court must provide certified copies of the finding of incapacitation and appointment of a guardian.
- If a person has been found, as a result of a mental disorder, to constitute a danger to self or others or to be persistently or acutely disabled or gravely disabled and the court enters an order for treatment court must transmit the person's name, sex, date of birth, last four number the person's social security number, if available and the date of the order of treatment to the Department of Public Safety for inclusion in the NICS data base.
- Information regarding persons ordered into treatment must be maintained in the Mental Health Repository maintained by the Supreme Court with access granted to law enforcement through the Department of Public Safety for purposes of enforcing an order, assisting in an investigation or return of property.
- Upon request from a law enforcement or prosecuting agency investigating or prosecuting a prohibited possessor as defined in 13-3101, the court that originally

ordered the person into treatment shall provide certified copies of the commitment order.

- Expands the definition of P*rohibited Possessor* (§13-3101) to include a person who is under indictment or information for a violation of §13-706 (serious, violent or aggravated offense) or is prohibited from possessing a firearm as a condition of release, a person against whom a misdemeanor complaint is filed and is prohibited from possessing a firearm as a condition of release or a person who has been found incompetent pursuant to Rule 11, Arizona, Rules of Criminal Procedure.
- Provides for automatic removal from NICS and the Mental Health Repository if the reason for inclusion is no longer applicable.
- Disqualifies an applicant for a security guard agency license pursuant to Title 32, Chapter 26, Article 2 if the applicant has been found incompetent to stand trial.
- Delayed effective date of January 1, 2015.

Sections amended: §§ 13-925, 13-3101, 14-5303, 14-5304, 14-5307, 32-2612, 36-509, 36-540
Sections enacted: §13-611

2014-D (Rep. Justin Pierce) - Jerry

Peace officers bill of rights; probation officers

Separates "Probation Officers" from "Law Enforcement Officers in what is commonly referred to the "Peace Officers Bill of Rights". The probation officer provisions are placed in a separate article within Title 38, Chapter 8.

Reorganizes both the Probation Officer and Law Enforcement provisions.

Includes juvenile detention officers in all provisions that now cover probation and surveillance officers.

Sections amended: Title 38, Chapter 8 (Legislative Council assigning numbers)

2014-E (Maricopa County Clerk of Court) - Jerry

Criminal restitution orders

Requires the court to order a criminal restitution order for victim restitution at sentencing unless a victim opts out. If a victim chooses to opt out at sentencing, the victim, court, prosecutor, or probation may petition at any time after sentencing to obtain restitution for the victim. As is the current practice, a CRO for monetary obligations (fees, fines, assessments) and any victim restitution not already ordered would be ordered at the completion of the sentence or probation.

Section amended: § 13-805

2014-G (Arizona Association of Counties) - Jerry

Deferring acceptance of bond

Permits the sheriff or keeper of a county or city jail to refuse to accept secured appearance bonds, money orders, cashier's checks or cash during normal business hours of the court of competent jurisdiction that accepts secured appearance bonds, money orders, cashier's checks or cash.

Section amended: § 13-3969

2014-H (Arizona Association of Counties) - Amy

Searching of probationers and parolees

Requires a person who was convicted of a felony offense and is eligible for probation or parole to agree in writing as a condition of the probation or parole to be subject to search or seizure at any time if a peace officer has reasonable suspicion.

Note: This proposal is still in flux and wording has not yet been developed

Section amended: § 13-901

AL 11/25/13

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	__ Formal Action/Request _X_ Information Only __ Other	LANGUAGE ACCESS IN THE COURTS

FROM:

Carol Mitchell
Court Services Division, Administrative Office of the Courts

DISCUSSION:

This presentation will highlight AOC-related activities in the area of language access, including access to services through translated court forms and websites.

RECOMMENDED COUNCIL ACTION:

N/A

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	_X_ Formal Action/Request __ Information Only __ Other	Report of the Electronic Records Retention & Destruction Advisory Committee

---

FROM:
Electronic Records Retention & Destruction Advisory Committee; Marcus Reinkensmeyer, Chair

DISCUSSION:
The Electronic Records Committee was charged with examining and making recommendations on the following questions:

1. Should policies regarding the length of time case documents and data are made available to the public online be consistent across court levels and from court to court within the same level?

2. Given that it is easier to systematically destroy electronic records, are the current records retention time periods adequate?

3. When the minimum retention period has been met under the existing retention schedules, is destruction of electronic case documents and data mandatory or permissive?

4. Once the retention deadline is reached, should originals or copies of documents or data be retained for purposes of government research and analysis and, if so, should those records continue to be publicly available or released only pursuant to court order?

The recommendations of the Committee have been approved by the Committee on Superior Court (COSC) and the Committee on Limited Jurisdiction Courts (LJC Committee) and will be presented to the Commission on Technology (COT) before the December AJC meeting. If substantive revisions are made to the report in response to the ongoing solicitation of comments, the revisions will be reviewed with the Council at its December meeting.

RECOMMENDED COUNCIL ACTION:
The Electronic Records Committee seeks to advise the Arizona Judicial Council of its work and request approval of its recommendations.

M. Hardman
November 25, 2013

Report of the Advisory Committee to Develop Policies for Retention, Destruction, and Access to Electronic Court Records

November 2013

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COMMITTEE MEMBERSHIP

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Director, Court Services Division
Administrative Office of the Courts

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Superior Court in Maricopa County

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Maricopa County Clerk of Superior Court

Janet Johnson
Clerk of the Court
Arizona Supreme Court

Dr. William J. Mangold
Public Member

Hon. Sandra K. Markham
Clerk of Court
Superior Court in Yavapai County

Diane McGinnis
Court Administrator
Superior Court in Santa Cruz County

Hon. John N. Nelson
Presiding Judge
Superior Court in Yuma County

Jeff Raynor
TSD Assistant Director
Department of Public Safety

Jon R. Smith
County Attorney
Yuma County

Dr. Melanie Sturgeon
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Arizona State Library, Archives, & Public Records

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Arizona Court of Appeals, Division 1

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Maricopa County Justice Courts

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Kymberly Lopez
Administrative Assistant
Court Services Division

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Report of the Advisory Committee to Develop Policies for Retention, Destruction, and Access to Electronic Court Records

"The objective is not simply to adopt new technology for its own sake, but to solve business process problems, provide prompt, reliable information to decision makers, and improve service to the public."

Chief Justice Rebecca White Berch
Justice 2020: A Vision for the Future
of the Arizona Judicial Branch
2010 - 2015

INTRODUCTION

The Arizona Judicial Branch is transitioning from paper-based case records to electronic case records by digitizing existing paper case documents and by accepting e-filed, "born-digital" case documents. The Judicial Branch is also developing a technology system that will allow attorneys, parties, and the public remote access to court documents and data. These efforts help achieve the critical goal of the Judicial Branch strategic agenda: to strengthen the administration of justice by using technology to enhance public access to court services and to improve the efficient management of court information and resources. The Advisory Committee to Develop Policies for Retention, Destruction, and Access to Electronic Court Records (Electronic Records Committee or committee) was established to provide recommendations on policy decisions that are necessary to help reach these important objectives.

The committee's recommendations are limited primarily to retention and destruction of electronic case records, not paper case records, for several reasons. First, paper case records are accepted, processed, and stored quite differently than electronic records, and the principles involved in handling paper records are distinct from those involved for electronic records. Second, the policy direction for handling paper case records has long been established, and the general principles are sound. Third, the local courts' transition from paper case records to electronic case records is in varied stages of evolution, largely impacted by the local resources and storage capacity of the individual courts. Fourth, reliance on paper case records in the courts is quickly vanishing with the courts' digitization of existing paper records; the implementation of statewide e-filing; and the demand for convenient access to electronic records by attorneys, judges, court partners, the public, and the courts themselves. The committee also considered public availability of certain electronic records, the long-term cost of storing electronic records, and best practices in government records management.

While it focused on electronic records, the committee is recommending two changes to the retention schedule for paper records: (1) extending the retention period for DUI, OUI, and domestic violence offense case records from seven to eight years after final adjudication and

satisfaction of sanctions, and (2) establishing a definite retention period of 25 years following the year filed for juvenile delinquency case records.

It is important to note that the work of the Electronic Records Committee was limited by administrative order to developing recommended policy direction for court *case* records. Therefore, the committee did not address policies for court *administrative* records. Case records are the records of a particular court case, whereas administrative records are the records of the court itself and the various functions of the court, including human resources, finance, and building maintenance.

CHARGE OF THE COMMITTEE

The Electronic Records Committee was charged with examining and making recommendations on the following questions:

1. Should policies regarding the length of time case documents and data are made available to the public online be consistent across court levels and from court to court within the same level?

2. Given that it is easier to systematically destroy electronic records, are the current records retention time periods adequate?

3. When the minimum retention period has been met under the existing retention schedules, is destruction of electronic case documents and data mandatory or permissive?

4. Once the retention deadline is reached, should originals or copies of documents or data be retained for purposes of government research and analysis, and, if so, should those records continue to be publicly available or released only pursuant to court order?

The committee is to submit a final report of its recommendations to the Arizona Judicial Council not later than the Council's December 2013 meeting.

SUMMARY OF RECOMMENDATIONS

The Electronic Records Committee members first engaged in informal discussion about electronic records issues plaguing their own courts and concerns of the public. However, the committee moved quickly to address more systemic, statewide Judicial Branch policy and technology considerations. Through these discussions and review of best practices, the committee developed a strong consensus on the following recommendations for electronic records retention, destruction, and access:

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1. The length of time electronic case documents and data are made available online or at a court facility should be consistent within each court level across the state.

2. Although the structure of the current Arizona court records retention and destruction schedules is generally sound, when considering electronic records, the committee concludes that the retention period for some limited jurisdiction court case records is too short, and a clarification is required in the retention period for juvenile delinquency records in general jurisdiction courts. Therefore, the committee is respectfully submitting recommended modifications to the existing records retention schedules as set forth in Appendix B.

   For limited jurisdiction courts, the committee also recommends the establishment of separate schedules for retention of paper case records, records displayed on public access websites maintained by both the Supreme Court and local courts, and electronic case records maintained in case and document management systems. The recommended retention schedules for limited jurisdiction courts are presented in Appendix C.

   Additionally, for limited jurisdiction courts, the committee recommends that local ordinance violations no longer be displayed on the Supreme Court's Public Access website. The design of the Supreme Court's Public Access website is unable to identify, track, and support the display of the wide variety of local ordinances that are continuously created and revised throughout the state. As a result, currently, the Supreme Court displays only the general term "local charge," on its Public Access website, for any local ordinance violation. This sometimes causes harm to the individual identified as responsible for the local ordinance violation, when others misinterpret the local charge to be of a serious nature, or even criminal, when it is not.

3. Destruction of electronic case documents and data should be mandatory and automatic, at a point in time specified in Arizona court policy, as follows:

   a. For general jurisdiction and appellate courts, destruction of records should be mandatory and automatic according to the time periods in the records retention and destruction schedules (ACJA § 3-402 and Administrative Orders 99-79 and 2001-45), with the proposed modifications herein, while taking into account any requirement to transfer these records to the Arizona State Library, Archives and Public Records (ASLAPR). (*See also* Rule 29, Rules of the Supreme Court of Arizona.)

   b. For limited jurisdiction courts and the Administrative Office of the Courts (AOC), case records should be removed from public access websites maintained by both the Supreme Court and local courts, pursuant to the retention periods set forth in the current limited jurisdiction court records retention schedule (ACJA § 4-302), with the proposed modifications herein. Electronic records should be deleted automatically from case and document

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management systems at the end of the newly established retention period for electronic records as set forth in Appendix C.

4. Given the extended time periods recommended for electronic records retention for designated case types, the committee concludes that no special provisions are required for longer maintenance of data for research purposes.

5. A process should be developed for court personnel or the public to request that court records in a specific case be permanently retained pursuant to court order, in each level of court, similar to the current historical records provisions for general jurisdiction courts in ACJA § 3-402(F). Criteria upon which this decision is to be made should also be developed.

6. In light of the automation support required for the proposed electronic records management modifications, the committee recommends the following approach:

    a. An 18-month period should be provided to implement the new policies.

    b. These electronic records policies should be applied to any case that reaches the retention period subsequent to adoption of these recommendations.

    c. A process should be established by which individual courts may apply to the Commission on Technology or its designee for additional time to implement the new requirements, based upon technology resource constraints and funding.

    d. The custodian(s) of records for each court shall institute a plan within 18 months, and provide a copy to the AOC, of how and by when the custodian will destroy electronic records for all cases that have already reached the retention period prior to adoption of these recommendations. Courts that use an AOC-supported CMS can seek the assistance of the AOC in instituting the plan.

    e. Upon adoption of these recommendations, the AOC shall begin removing electronic case records from the Supreme Court's existing Public Access website and the planned e-Access website, regardless of when a case is destroyed by the local court.

The reasoning supporting these recommendations is provided in detail beginning on page 8.

THE COMMITTEE'S WORK PROCESS

The Electronic Records Committee membership includes judges from trial and appellate courts, court clerks from appellate and superior courts, practicing attorneys, court administrators from superior and limited jurisdiction courts, law enforcement, prosecutors, an ASLAPR

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representative, and the public. Once established, the committee moved quickly to complete its assignment, holding seven full-day meetings and two workgroup meetings over an eight-month period.

The committee heard from a local expert who uses court records to carry out employment screenings, data compilation, and criminal case research and ASLAPR representatives who are knowledgeable about the elements of the cost of digital preservation and the records retention schedules of other Arizona government entities. AOC representatives provided information about the history and technology of retaining Arizona court case records; Arizona court records policy; research and statistical requests received from judicial officers, national court organizations, the Arizona legislature, academic research organizations, the public, government agencies, the media, and others; concerns raised about the length of time data is displayed on the Supreme Court's Public Access to court information website; the cost of electronic records storage, and federal court records retention policies.

The committee chair and staff also reported on discussions they had with a consultant and vice president at the National Center for State Courts (NCSC), a member of the Administrative Office of the United States Courts, a member of the National Archives and Records Administration (NARA), a federal court clerk, and others familiar with case records retention policies of courts around the country.

The committee reviewed research material on topics such as privacy concerns with court records, government budget cuts impacting the digitization of records, and the mandatory versus permissive nature of government records retention and destruction schedules. In addition, the committee considered court case record retention and access policies for the federal courts and for the states of Washington, Colorado, Utah, Maryland, California, Georgia, Idaho, Illinois, Oklahoma, Pennsylvania, South Carolina, Vermont, and Wisconsin. Finally, committee staff reviewed and reported on records retention articles and surveys by policy development organizations, including NCSC and NARA.

COMPLETING THE WORK

This report presents recommendations for amendments to the Arizona courts' case records retention and destruction policies. With the approval of the Arizona Judicial Council and the Arizona Supreme Court, these policies will be carried out, including revisions to the existing court records retention schedules. Should an existing court rule or code section need to be revised to effectuate the recommendations of this report or an entirely new court rule or code section be proposed, that court rule or code section will be brought before the Arizona Judicial Council for consideration.

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ELECTRONIC CASE RECORDS: PAST, PRESENT, AND FUTURE

History and Overview of Records Retention and Destruction Law and Policy of the Arizona Judicial Branch

In 1991, Rule 29, Rules of the Supreme Court of Arizona, was adopted. This rule requires the Supreme Court to adopt records retention schedules for Arizona courts, providing:

> (A) The Supreme Court shall adopt . . . retention and disposition schedules identifying the length of time court records must be kept prior to destruction and purge lists identifying documents to be removed from case files before storage or replication.

Rule 29 addresses both case and administrative court records at all levels of court: appellate, superior, justice of the peace, and municipal. The rule further directs that court records *shall* be maintained and *may* be destroyed in accordance with approved retention and disposition schedules, suggesting that the original intent of the rule was for destruction of court records to be permissive, not mandatory, with the local court.

As a direct result of Rule 29, four records retention and destruction schedules were developed. The limited jurisdiction court and general jurisdiction court schedules were adopted in 1991, the Court of Appeals schedule in 1999, and the Supreme Court schedule in 2001. Each of these schedules initially appeared as an administrative order of the Arizona Supreme Court; however, the limited jurisdiction and the general jurisdiction court schedules were subsequently adopted in the Arizona Code of Judicial Administration (ACJA) at §§ 4-302 and 3-402, respectively.

At the time these records retention and destruction schedules were developed, Arizona courts operated largely in a paper-based world. The schedules reflect the natural focus of the courts on paper case records. Now, nearly 25 years after the first records retention and destruction schedules were developed, Arizona courts are rapidly moving toward a largely electronic world. Today, case records are either e-filed as a "born-digital" document or scanned by the clerk after paper submission.

This evolution toward electronic case processing provides benefits to attorneys, the public, and the court. It offers instant access to case records, allows multiple users to access the same case record at the same time in different locations, results in almost no misplaced case documents or files, and requires less physical storage space. However, the change has also given rise to the need to re-examine the existing records retention and destruction schedules from the perspective of the growing volume of electronic case records and the diminishing volume of paper case records.

In addition to Rule 29 and the records retention and destruction schedules, Rule 123, Rules of the Supreme Court of Arizona, governs *access* to the judicial records of the state. Rule 123 is the judicial branch counterpart to the executive branch public records statutes. In 1997, the Supreme Court chose to exercise its constitutionally derived administrative authority over all state court

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records by adopting Rule 123. This rule governs access to case documents and case data, as well as court administrative records, in both paper and electronic format.

One of the more well-known provisions of Rule 123 establishes that public access may be restricted for reasons of privacy, confidentiality, or because it is in the state's best interests (Rule 123(c)(1)). Additionally, Rule 123 delineates the authority of a clerk of court to remove case management system (CMS) data and case documents from online display once the records retention schedule period has been met (Rule 123(g)(5)). Finally, Rule 123 provides that for cases scheduled to be retained more than 25 years, courts or clerks of court may remove CMS data and case records from online display after 25 years, provided the data and records are then retained through an electronically preserved method until the retention schedule period has been met. In place of the records, the court or clerk of court is to display a notice online that directs the viewer to contact the court or clerk for access to the case record.

Future Records Projects Impacted by Electronic Records Retention and Destruction Law and Policy of the Arizona Judicial Branch

Several technology projects are in various stages of development by the Arizona Judicial Branch, requiring electronic records management policy direction. These new projects, which include e-Filing, e-Access, and e-Bench, will help the Judicial Branch strengthen the administration of justice by using technology to enhance public access to court services and improve the efficient management of court resources. E-Filing will permit electronic filing of case documents by attorneys and parties in all courts and all case types across the state. E-Access will provide remote electronic access to certain case documents and case information for attorneys, parties, other government entities, and the public. E-Bench will provide access to case documents and data by judges throughout the Arizona Judicial Branch. Each of these projects is impacted by electronic records retention and destruction policy, making the timely recommendations of this committee of vital importance.

Unintended Consequences of Current Records Retention and Destruction Law and Policy of the Arizona Judicial Branch

The present records retention and destruction policies of the Judicial Branch were developed in a paper records environment. Now, courts, court partners, and the public are rapidly turning away from paper toward electronic case records. Attempting to apply the current paper-based records retention policies to electronic case records has resulted in some unintended consequences, including:

- Harm can be caused to individuals whose case data remains on the Supreme Court and local court public access websites beyond the minimum period prescribed in the current records retention schedules. Data on this website is often used by companies conducting employment background searches, tenant screenings, and other investigations, and the data is sometimes misinterpreted, with detrimental consequences to these individuals.

- Users of the Supreme Court's Public Access website often do not recognize that data on the site is received from most, but not all, courts in Arizona.

- Sometimes case data appears on the Supreme Court's Public Access website but the originating court has properly destroyed the underlying case file. In this situation, alleged errors or discrepancies between the data and the case file cannot be resolved.

- The Supreme Court's Public Access website does not track, compare, describe, or maintain the many offenses established by local jurisdictions. Consequently, all of these charges are identified generically on the Public Access website as "local charge." This situation has caused confusion among some users of the site regarding the type and severity of the local charge.

- When all factors are properly considered, the true cost of retaining electronic case records is significant. The media on which data are stored will eventually become obsolete or fail; data can be lost when digital records migrate to new technology; the growing volume of electronic records being generated is far greater than was ever generated on paper, and with the added ease of producing new electronic elements, such as sound and graphics, the size and number of electronic records is growing exponentially; verification of the chain of custody for electronic records is difficult and costly; hardware purchased for constant, ongoing government use must be of a high quality and have a lower failure rate than hardware purchased for the home, at a greater cost; and access speed, security, and recovery time for electronic data must all be of a high standard, again at a significant cost.

- Courts across the state but within the same court level do not retain case records for the same period of time, in part because of differing resources allocated to destruction of records among the courts. At times, differences in the period of time case records are retained generate complaints from the public.

COMMITTEE RECOMMENDATIONS AND COMMENTS

1. **The length of time electronic case documents and data are made available online or at a court facility should be consistent within each court level across the state.**

   The committee recognizes that consistency of retention periods is expected by those who use court records across the state, including the public, attorneys, justice partners, the media, researchers, and others. The committee, therefore, proposes that consistency be achieved through the recommendations in this report.

   Further, the committee recommends that bulk data requestors and subscribers receive only the same data that appears on the Supreme Court's Public Access website with the proposed retention period modifications herein. Bulk data requestors and subscribers should receive the same data the general public receives on the Supreme Court and local court websites. This recommendation

can be achieved by modifying the provisions of the contracts and data dissemination agreements entered into with these individuals and entities.

2. **Although the structure of the current Arizona court records retention and destruction schedules is generally sound, when considering electronic records, the committee concludes that the retention period for some limited jurisdiction court case records is too short, and a clarification is required in the retention period for juvenile delinquency records in general jurisdiction courts. Therefore, the committee is respectfully submitting recommended modifications to the existing records retention schedules as set forth in Appendix B.**

   Currently, the retention period for DUI, OUI, and domestic violence offense cases in limited jurisdiction courts is seven years after final adjudication and completion of sentence. This retention period was designed around the seven-year look-back period in statute that may result in an increased charge for a repeat offense. The committee recommends lengthening this retention period to eight years to provide a buffer period and enable a prosecutor to obtain a warrant and order records from another court.

   The general jurisdiction court records retention schedule currently establishes a retention period for juvenile delinquency case records that provides "After satisfaction of A.R.S. § 8-349 *or following the juvenile's 30th birthday*." The retention period begins following the year filed. The committee concludes that this retention period criteria is too vague, and, furthermore, the committee recognizes that courts do not store juvenile case files by date of birth. A definite retention period is preferred. Therefore, the committee recommends a definitive retention period for juvenile delinquency case records of "After satisfaction of A.R.S. § 8-349 *or 25 years*. Retention period begins following the year filed."

   The committee is aware that certain state statutes, such as A.R.S. §§ 8-348, 13-907, and 13-912.01, currently provide no time limitation within which a person must apply to set aside a previous conviction or for restoration of civil rights. In light of these statutes, case records should arguably be retained for a lifespan or even indefinitely. However, upon balancing practical considerations with the rights of the individuals who are the subject of these records, the committee determined that it is impractical for courts to retain case records for a lifespan or indefinitely. Statutory revisions would help by establishing a time limit within which such applications must be filed. However, without statutory revisions, the committee believes that, after balancing all factors, courts should continue to eliminate case records according to the existing retention periods, with the modifications proposed herein.

For limited jurisdiction courts, the committee also recommends the establishment of separate schedules for retention of paper case records, records displayed on public access websites maintained by both the Supreme Court and local courts, and electronic case records maintained in case and document

management systems. The recommended retention schedules for limited jurisdiction courts are presented in Appendix C.

Limited jurisdictions courts have jurisdiction over a high volume of relatively low-level offenses, such as civil traffic, misdemeanors and criminal traffic, petty offenses, parking, local ordinances, and others. Information contained in these cases is used by employers, background search companies, the public, the media, and others in a variety of ways and is sometimes harmful to individuals identified in the case, particularly when an error in the information or a misinterpretation occurs. Therefore, the committee determined that a three-tiered level of access, as set forth in Appendix C, should exist for limited jurisdiction court case records.

Generally, the committee determined that the current records retention schedule found in ACJA § 4-302 is sound and recommended extending only the existing retention period for DUI, OUI, and domestic violence offense cases from seven to eight years. However, the committee additionally concluded that information about these cases should be removed from the Supreme Court's Public Access website and from local court websites at the same time as the retention period for paper case documents to avoid unduly burdening the people who are the subject of these case records.

Finally, the committee concluded that a local court should retain case information in its case and document management systems for longer periods of time, in part to assist the court in ruling upon an application for set aside or for restoration of civil rights. Therefore, electronic case information will be retained at the court facility for a longer period of time than the information appears on a court website. The committee acknowledges a difference between publishing information to a court website, thereby permitting the ease of remote electronic access to the information anywhere that a computer and Internet connection exist, and requiring a personal visit when information is available only at a court facility. The proposed retention periods are set out in Appendix C.

Additionally, for limited jurisdiction courts, the committee recommends that local ordinance violations no longer be displayed on the Supreme Court's Public Access website. The design of the Supreme Court's Public Access website is unable to identify, track, and support the display of the wide variety of local ordinances that are continuously created and revised throughout the state. As a result, currently, the Supreme Court displays only the general term "local charge," on its Public Access website, for any local ordinance violation. This sometimes causes harm to the individual identified as responsible for the local ordinance violation, when others misinterpret the local charge to be of a serious nature, or even criminal, when it is not.

Currently, the Supreme Court displays only the term "local charge" on its Public Access website for a local ordinance violation, with no additional information. This general term was created by the Supreme Court for all local ordinance

violations, because the Supreme Court does not have sufficient resources to identify every local charge in every jurisdiction, by ordinance number and name of violation. Furthermore, local ordinances change regularly, requiring constant system revision and maintenance. Therefore, since sufficient resources are not available for the Supreme Court to identify and maintain all local ordinances throughout the state, the committee recommends that local ordinance violations not be displayed on the Supreme Court's Public Access website.

3. **Destruction of electronic case documents and data should be mandatory and automatic, at a point in time specified in Arizona court policy, as follows:**

   a. **For general jurisdiction and appellate courts, destruction of records should be mandatory and automatic according to the time periods in the records retention and destruction schedules (ACJA § 3-402 and Administrative Orders 99-79 and 2001-45), with the proposed modifications herein, while taking into account any requirement to transfer these records to the Arizona State Library, Archives and Public Records (ASLAPR). (*See also* Rule 29, Rules of the Supreme Court of Arizona.)**

      For any electronic data management system (EDMS) and CMS it maintains, the AOC must program the automatic deletion of electronic case documents and data in a local court's EDMS and CMS when the minimum electronic retention period has been met. A local court must do the same for any non-AOC-maintained EDMS or CMS under its control.

      Currently, ASLAPR is unable to accept electronic records from courts and other public agencies, because it does not have the capacity to accept electronic records in multiple formats, maintain these records, and provide the records in a usable format for public research. Therefore, current practice dictates that Arizona courts cannot transfer electronic records to ASLAPR; instead, courts must retain these records in house. However, ASLAPR is pursuing funding to enable it to accept electronic records from courts and other state agencies; once this is achieved, general jurisdiction courts will be able to transfer electronic case records to ASLAPR, pursuant to the records retention schedule.

      Compliance with the case file purge lists found in ACJA § 3-402 may no longer be practical or necessary when working with electronic records. The purge lists were originally established to enable clerks of court to remove certain paper documents from a file, thereby reducing the volume of the paper file for long-term storage. Now that courts operate primarily with electronic case records, compliance with the purge lists may be more cumbersome than simply retaining the entire electronic case file intact.

   b. **For limited jurisdiction courts and the AOC, case records should be removed from public access websites maintained by both the Supreme Court and local courts, pursuant to the retention periods set forth in the current limited**

jurisdiction court records retention schedule (ACJA § 4-302), with the proposed modifications herein. Electronic records should be deleted automatically from case and document management systems at the end of the newly established retention period for electronic records as set forth in Appendix C.

For any EDMS and CMS it maintains, the AOC must program the automatic deletion of electronic case documents and data in a local court's EDMS and CMS when the minimum electronic retention period has been met. A local court must do the same for any non-AOC-maintained EDMS or CMS under its control.

The committee noted that the proposed revisions to the records retention schedule for electronic records are not impacted by ACJA § 1-401: Minimum Accounting Standards (MAS). Although MAS requires each court to undergo an external review of its accounting records, procedures, automated financial management system records, and internal controls at least triennially, the code section does not require the external auditor to begin the triennial review at the point the last review was completed. The code section requires only that the court undergo a review every three years. Therefore, when conducting the review, the external auditor generally reviews court case financial records over a specific period of time, often in the current fiscal year. The language found in ACJA § 1-401 may need to be clarified to express this position more clearly.

4. **Given the extended time periods recommended for electronic records retention for designated case types, the committee concludes that no special provisions are required for longer maintenance of data for research purposes.**

   The AOC regularly receives requests for research and statistics from Arizona courts (such as for the purpose of calculating judicial productivity credits), the Arizona legislature, Arizona probation departments, national court organizations, academic researchers, the media, the public, and others. The AOC must retain sufficient data and be able to collate, aggregate, organize, and extract this data to respond to inquiries. The retention periods for limited jurisdiction case and document management systems proposed in Appendix C provide data for a sufficient period of time to enable the AOC to continue to respond to these requests. By extending the retention period for limited jurisdiction court electronic case records stored in case and document management systems, as proposed in Appendix C herein, the data research needs of the AOC and individual courts will be accommodated.

5. **A process should be developed for court personnel or the public to request that court records in a specific case be permanently retained pursuant to court order, in each level of court, similar to the current historical records provisions for general jurisdiction courts in ACJA § 3-402(F). Criteria upon which this decision is to be made should also be developed.**

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ACJA § 3-402(F), which is limited to general jurisdiction court case records, establishes a procedure by which a case can be designated as historically significant or as a landmark case. The code section further identifies the clerk's responsibilities for processing and archiving such a case at ASLAPR.

Although the code section sets forth the factors a court must consider in deciding whether a case is a landmark case, it does not set forth factors for determining whether a case is historically significant. The committee believes that specific criteria should be developed for applicants and courts to rely upon in requesting and reaching a decision on whether a particular case file should be retained beyond its scheduled retention period, either as a historically significant case or as a landmark case. Furthermore, the committee believes the criteria and procedures should be extended to all levels of court throughout the state, not just the general jurisdiction court.

The committee believes the AOC should work with ASLAPR in establishing these provisions in the records retention schedules for all state courts in Arizona.

6. **In light of the automation support required for the proposed electronic records management modifications, the committee recommends the following approach:**

   a. **An 18-month period should be provided to implement the new policies.**

   b. **These electronic records policies should be applied to any case that reaches the retention period subsequent to adoption of these recommendations.**

   c. **A process should be established by which individual courts may apply to the Commission on Technology or its designee for additional time to implement the new requirements, based upon technology resource constraints and funding.**

   d. **The custodian(s) of records for each court shall institute a plan within 18 months, and provide a copy to the AOC, of how and by when the custodian will destroy electronic records for all cases that have already reached the retention period prior to adoption of these recommendations. Courts that use an AOC-supported CMS can seek the assistance of the AOC in instituting the plan.**

      The committee believes that these cases can and should be deleted in due course and that courts should be given time to institute a plan as to how and when deletion will occur.

   e. **Upon adoption of these recommendations, the AOC shall begin removing electronic case records from the Supreme Court's existing Public Access**

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website and the planned e-Access website, regardless of when a case is destroyed by the local court.

ADDITIONAL COMMITTEE COMMENTS

- Courts are not only a repository of records for their own use, but, as a matter of policy, the Judicial Branch needs to retain records, for a reasonable period of time, for use by others, including the public, other government agencies, and private businesses.

- Imaged case documents and e-filed (born digital) case documents should be treated the same for retention purposes.

- The electronic version of a case document maintained by the local court as an original, whether filed on paper or electronically, is the original document.

- Depending on whether electronic documents and data are located on a local EDMS, in a local CMS, at the AOC, or published to the Internet, the custodian of the documents and data may be the local court, the judge, the elected clerk, or the AOC.

- Before deleting records from a local court, the AOC must first advise the local court of its intent to delete.

- When the local court is to delete electronic records, it must do so following the records retention schedules and may do so without first confirming its intent to delete with the AOC.

- Any EDMS and CMS constructed or procured by any court from this date forward should delete case data and documents from the local court's EDMS and CMS automatically after first giving notice to the local court.

- Any deletion of electronic documents and data by a local court must be accomplished in a manner that successfully triggers a corresponding deletion within the statewide data warehouse, central case index, or the central document repository, as applicable.

- Further study and examination are required to address the requirements for sex offender registration. A.R.S. §§ 13-3821 and 13-907 either *require* a defendant to register as a sex offender upon conviction of a third or additional offense or *permit* a judge to order a defendant to register as a sex offender upon conviction of certain offenses. A time limit for conviction of a subsequent offense is not identified. Arguably, a sex offender case should be retained for a lifespan, or even indefinitely, since proof of a prior conviction is established by a certified copy of the court order of conviction. Sex offender registration requirements must be reconciled with the court case records retention schedules. This could be done by establishing a definition of "completion of sentence" in the records retention schedules, the creation of a flag in the CMS to identify these cases, or by another method.

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- The Supreme Court may wish to consider changing from a permanent retention period for some of its case documents to a fixed number of years.

CONCLUSION

During this time when courts are transitioning from paper-based to electronic case records, it is important to establish guiding principles for the retention and destruction of electronic case records. The principles developed by this committee will help in the development of the e-Filing, e-Access, e-Bench, and other electronic case records projects – projects that will help the Judicial Branch strengthen the administration of justice by using technology to enhance public access to court services and improve the efficient management of court resources.

By obtaining input from all aspects of court management, as well as users of court records, the committee sought to balance the competing interests of access to case records with the privacy rights of the individuals who are the subject of those records. Furthermore, the committee considered the practical and legal requirements and responsibilities of the courts, the users of case records, and the individuals identified in the records in developing these recommendations.

This report presents recommendations for amendments to the Arizona courts' case records retention and destruction policies. With the approval of the Arizona Judicial Council and the Arizona Supreme Court, these policies will be carried out, including revisions to the existing court records retention schedules. Should an existing court rule or code section need to be revised to effectuate the recommendations of this report or an entirely new court rule or code section be proposed, that court rule or code section will be brought before the Arizona Judicial Council for consideration.

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
ESTABLISHING THE ADVISORY	)	Administrative Order
COMMITTEE TO DEVELOP POLICIES	)	No. 2013 - 33
FOR RETENTION, DESTRUCTION,	)	
AND ACCESS TO ELECTRONIC	)	
COURT RECORDS	)	
	)	

The Arizona Judicial Branch is currently digitizing court records by implementing electronic document management systems and a statewide e-filing system, and developing an online system that will allow individuals to remotely access, view, and print court documents and data. These new systems help achieve the important goal of this Court's strategic agenda to strengthen the administration of justice by improving efficiency of case processing and by using technology to enhance public access to court services.

Rule 123, Rules of the Supreme Court, as well as the records retention and destruction schedules in the Arizona Code of Judicial Administration (ACJA), similar Administrative Orders, and various statutes govern the retention and management of case documents and data throughout the judicial branch of Arizona.

Historically court records have been paper based. Additional direction and clarification is needed to manage digital records.

In accordance with ACJA § 1-104, the Chief Justice establishes advisory committees to the Arizona Judicial Council to assist the Council in carrying out its responsibilities. Therefore, pursuant to Article VI, Section 3 of the Arizona Constitution and ACJA § 1-104,

IT IS ORDERED that the Advisory Committee to Develop Policies for Retention, Destruction, and Access to Electronic Court Records is established to examine and make recommendations on the following questions:

1. When the minimum retention period has been met under the existing retention schedules, is destruction of electronic case documents and data mandatory or permissive?

2. Given that it is easier to systematically destroy electronic records, are the current records retention time periods adequate?

3. Should policies regarding the length of time case documents and data are made available

to the public online be consistent across court levels and from court to court within the same level?

4. Once the destruction period is reached, should originals or copies of documents or data be retained for purposes of government research and analysis and, if so, should those records continue to be publicly available or released only pursuant to court order?

The Committee shall report its recommendation to the Arizona Judicial Council not later than at the Council's meeting in December 2013. Additionally, since this Court is aware that court records are used by many different groups, including law enforcement, government entities, members of the public, background search firms, credit reporting services, attorneys and their staff, and researchers, the Committee shall attempt to seek widespread public input in formulating recommendations.

IT IS FURTHER ORDERED that the individuals listed in Appendix A are appointed as members of the Committee beginning upon entry of this Order and ending on December 31, 2013. The Chief Justice may appoint additional members as necessary.

IT IS FURTHER ORDERED that the Committee meetings shall be scheduled at the discretion of the Chair. Pursuant to ACJA § 1-202, all meetings shall comply with the public meeting policy of the Arizona Judicial Branch. The Administrative Office of the Courts (AOC) shall provide staff for the Committee.

Dated this 20th day of March, 2013.

_____
REBECCA WHITE BERCH
Chief Justice

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APPENDIX B

RECOMMENDED MODIFICATIONS TO EXISTING RECORDS RETENTION SCHEDULES

LIMITED JURISDICTION COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	COMMENTS/REASON
A. Civil case records			
- **Civil other than traffic**	1 yr. after final adjudication and satisfaction of judgment	No change recommended	
- **Civil other than traffic – small claims**	5 yrs. after final judgment	No change recommended	
- **Parking violations-statute only**	6 months after satisfaction of sanctions	No change recommended	
- **Civil traffic**	1 yr. after final adjudication and satisfaction of sanctions	5 yrs. after final adjudication and satisfaction of sanctions.	Civil traffic case documents may be used to review the 36-month look-back period when multiple violations of the motor vehicle financial responsibility requirement have occurred (A.R.S. § 28-4135(E)(3) and other purposes. Additionally, civil traffic case records are used by local courts when a claim of false identity arises. Civil traffic case data is also used by local courts and the AOC to analyze trends, prepare budgets, compute judicial productivity credits, respond to legislative inquiries, and for other reasons.
- Local ordinances	6 months after satisfaction of sanctions – 1 yr. after final adjudication and satisfaction of	1 yr. after final adjudication and satisfaction of sanctions	A local charge must be identified as a separate case type to emphasize that the Supreme Court is not to publish any information on its Public Access website on

LIMITED JURISDICTION COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	COMMENTS/REASON
	judgment		a local charge. Since the Supreme Court is unable to provide *specific* information on an ordinance violation, the Supreme Court should not publish *any* information on an ordinance violation.
B. Criminal case records (applies to both adult and juvenile cases)			
- **Misdemeanors and criminal traffic**	5 yrs. after final adjudication and completion of sentence.	No change recommended	
- **DUI, OUI, and domestic violence offenses**	7 yrs. after final adjudication and completion of sentence	8 yrs. after final adjudication and satisfaction of sanctions	A buffer period is needed, beyond the seven-year statutory look-back period, to obtain a warrant and order records from another court.

GENERAL JURISDICTION COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	REASON
- **Civil – General** Includes: - Administrative review - Contract - Declaratory judgment - Department of Economic Security (DES) instant judgment - Eminent domain - Foreign judgment - Habeas corpus - Malpractice - Name change - Non-general stream	50 yrs. for cases filed after 1959; Permanent for cases filed prior to 1960	No change recommended	

GENERAL JURISDICTION COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	REASON
adjudication water rights - Quiet title - Restoration of civil rights - Special action appeal - Tax appeal - Tort general (all non-motor vehicle - Transcript of judgment - Other unspecified non-domestic relations civil case categories			
- **Family court cases – with children**	75 yrs. for cases filed after 1959; Permanent for cases filed prior to 1960	No change recommended	
- **Family court cases – without children**	50 yrs. for cases filed after 1959; Permanent for cases filed prior to 1960	No change recommended	
- **Probate** Includes: - Conservatorship - Combination Conservatorship/Guardianship - Guardianship (adult and juvenile) - Adult adoptions - Non-case specific filings	100 yrs. for cases filed after 1959; Permanent for cases filed prior to 1960	No change recommended	
- **Criminal - General**	50 yrs. (for cases filed after 1959); Permanent (for cases filed prior to 1960)	No change recommended	
- **Juvenile dependency**	100 yrs. (for	No change	

GENERAL JURISDICTION COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	REASON
(includes Indian Child Welfare Act Cases. Also includes sealed dependency materials)	cases filed after 1959); Permanent (for cases filed prior to 1960)	recommended	
- **Juvenile delinquencies (includes citations, juvenile orders of protection, injunctions against harassment, incorrigibility and sealed delinquency materials)**	After satisfaction of A.R.S. § 8-349 or following juvenile's 30th birthday, A.R.S. § 13-912. Microfilm and dispose in accordance with court order. The juvenile court may authorize the microfilming or destruction of these cases or orders of protection/injunctions against harassment issued pursuant to A.R.S. § 13-3602.	After satisfaction of A.R.S. § 8-349 or 25 yrs. Retention period begins following the year filed.	Since courts do not store these records according to the age of the juvenile, a time-certain for destruction is needed. The youngest age a juvenile can be charged with delinquency is eight years old; therefore following the statutory requirement for retention found in A.R.S. § 13-912 (of the juvenile's 30th birthday), a retention period of 25 years, being more than the 22 years at which the youngest juvenile charged will reach the age of 30, is adequate and provides a buffer of three years.

COURT OF APPEALS

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	REASON
-			

SUPREME COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	REASON
- **Record on appeal from lower court agency for: *Denied Petition for Review: Civil and Criminal,* except those involving Post-Conviction Relief in death penalty cases.**	Permanent	5 yrs. after date of final adjudication	This time period is in line with other state supreme courts.

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APPENDIX C

NEW LIMITED JURISDICTION COURT ELECTRONIC RECORDS RETENTION SCHEDULE FOR PUBLIC ACCESS WEBSITES AND CASE AND DOCUMENT MANAGEMENT SYSTEMS

LIMITED JURISDICTION COURT

RECORD TYPE	CURRENT/ PROPOSED RECORDS RETENTION SCHEDULE	SUPREME COURT AND LOCAL COURT PUBLIC ACCESS WEBSITES	CASE AND DOCUMENT MANAGEMENT SYSTEMS
A. Civil case records			
- **Civil other than traffic**	1 yr. after final adjudication and satisfaction of judgment	1 yr. after final adjudication and satisfaction of judgment	5 yrs. after final adjudication and satisfaction of judgment
- **Civil other than traffic – small claims**	5 yrs. after final judgment	5 yrs. after final judgment	5 yrs. after final judgment
- **Parking violations – statute only**	6 mos. after satisfaction of sanctions	6 mos. after satisfaction of sanctions	1 yr. after satisfaction of sanctions
- **Civil traffic**	1 yr. after final adjudication and satisfaction of sanctions	1 yr. after final adjudication and satisfaction of sanctions	5 yrs. after final adjudication and satisfaction of sanctions
- **Local ordinances**	1 yr. after final adjudication and satisfaction of sanctions	Not available on the Supreme Court's Public Access website. May be available on a local court website.	5 yrs. after final adjudication and satisfaction of sanctions
B. Criminal case records (applies to both adult and juvenile cases)			
- **Misdemeanors and criminal traffic**	5 yrs. after final adjudication and completion of sentence	5 yrs. after final adjudication and completion of sentence	10 yrs. after final adjudication and completion of sentence
- **DUI, OUI, and domestic violence offenses**	8 yrs. after final adjudication and satisfaction of sanctions	8 yrs. after final adjudication and satisfaction of	10 yrs. after final adjudication and satisfaction of

LIMITED JURISDICTION COURT

RECORD TYPE	CURRENT / PROPOSED RECORDS RETENTION SCHEDULE	SUPREME COURT AND LOCAL COURT PUBLIC ACCESS WEBSITES	CASE AND DOCUMENT MANAGEMENT SYSTEMS
		sanctions	sanctions
- **Petty offenses**	1 yr. after final adjudication and completion of sentence	1 yr. after final adjudication and completion of sentence	1 yr. after final adjudication and completion of sentence

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ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 12, 2013	X Formal Action/Request __ Information Only __ Other	**Report from the Capital Case Oversight Committee**

FROM: Capital Case Oversight Committee

DISCUSSION: Supreme Court Administrative Order 2013-15 extended the term of the Capital Case Oversight Committee to December 31, 2013. This Administrative Order directed the Oversight Committee to report to the Arizona Judicial Council in December 2013.

Hon. Ronald Reinstein, Superior Court in Maricopa County (ret.), will present the Oversight Committee's 2013 report to the Council.

RECOMMENDED COUNCIL ACTION: Judge Reinstein requests the Council's approval of the Oversight Committee's report and its two recommendations:

1. Support an amendment to A.R.S. § 13-4041.

2. Extend the term of the Oversight Committee.

PROGRESS REPORT

OF THE

CAPITAL CASE

OVERSIGHT COMMITTEE

TO THE

ARIZONA JUDICIAL COUNCIL

December 2013

Justice 20|20

Capital Case Oversight Committee

December 2013

Chair: Hon. Ronald Reinstein, Superior Court in Maricopa County (retired)

Mr. James Belanger, Coppersmith, Schermer, and Brockelman, PLC

Hon. Kent Cattani, Court of Appeals, Division One

Ms. Donna Hallam, Staff Attorney, Arizona Supreme Court

Ms. Kellie Johnson, Office of the Pima County Attorney

Mr. Dan Levey, Executive Director, Parents of Murdered Children

Mr. Marty Lieberman, Maricopa County Legal Defender

Mr. James Logan, Director, Maricopa County Office of Public Defense Services

Mr. William Montgomery, Maricopa County Attorney

Mr. Daniel Patterson, Office of the Maricopa County Public Defender

Ms. Sheila Polk, Yavapai County Attorney

Mr. Natman Schaye, Arizona Capital Representation Project

Hon. Joseph Welty, Superior Court in Maricopa County

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I. Executive Summary

This is the fifth report of the Capital Case Oversight Committee ("Oversight Committee") to the Arizona Judicial Council. The Supreme Court established the Oversight Committee's predecessor, the Capital Case Task Force, in February 2007 because of an *"unprecedented number"* of capital cases in Maricopa County. Maricopa County at that time had almost one hundred forty capital cases pending trial. The Court created the Oversight Committee in December 2007 pursuant to a Task Force recommendation that a Supreme Court committee monitor Maricopa County's efforts at reducing its capital caseload.

As noted in the Oversight Committee's 2012 report, Maricopa County's subsequent reduction efforts effectively reduced its capital caseload. The number of pending capital cases in Maricopa County is now approximately half of what it was five years ago.[1]

The Oversight Committee has also monitored the number of capital cases pending in trial courts statewide because those cases may potentially affect the volume of direct appeals to the Arizona Supreme Court. In addition to Maricopa, capital cases are currently pending in five counties. During the past several years, the number of cases in these other counties has remained at about one-fourth of the statewide total. While the number of pending cases in these five counties fluctuates annually, the current number is not too different from what it was in 2008.[2]

At the Supreme Court level, there were nineteen direct capital appeals pending when the Oversight Committee submitted its 2012 report. As of the end of October, 2013, the number is twelve. The Oversight Committee's 2012 report noted that there were seven defendants awaiting the Supreme Court's appointment of counsel for a capital post-conviction proceeding. This year that number is six.

Because of the relative stability of the capital caseload in 2013, the Oversight Committee only convened twice this year. Nevertheless, the Oversight Committee has concerns about the impact of recent United States Supreme Court opinions on Arizona capital cases, as well as potential changes to capital case procedures, as discussed later in this report. The Oversight Committee accordingly recommends that the Arizona Judicial Council support a two-year extension of the Oversight Committee's term.

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[1] Please see Appendices 1, 2, and 3.

[2] Please see Appendices 4 and 5.

II. Capital Cases in the Superior Court and the Supreme Court

In October 2008, the Oversight Committee began collecting a limited amount of Maricopa County capital case data on a monthly basis. The Oversight Committee has now accumulated five years (sixty months) of this data, and the data confirms a substantial reduction of Maricopa County's capital caseload.

Since 2008, the Oversight Committee has also conducted an annual survey of county attorneys statewide concerning the number of their pending capital cases.[3]

Superior Court, Maricopa County

1. Number of notices of intent to seek the death penalty: A first-degree murder case becomes a capital case when the prosecutor files a notice of intent to seek the death penalty pursuant to Rule 15.1(i), Ariz. R. Crim. P. Between 2004 and 2008, the years preceding the "capital case crisis" in Maricopa County, prosecutors filed approximately **thirty to forty** death notices annually.[4] By comparison, for successive twelve-month periods from October 2008 through September 2013, the annual numbers of new filings were **eighteen, thirty-two, twenty-six, twenty-four, and nineteen.** The number of cases where the Maricopa County Attorney filed a notice of intent to seek the death penalty has therefore decreased during the second half of the past decade.

2. Ratio of filings to terminations: In 2009 and 2010, the number of capital case terminations (117 cases) was more than twice the number of new filings (50 cases). Please see Appendices 2 and 3. The high number of terminations was a result of Maricopa County's new approach to managing capital cases, which it implemented in early 2009.[5] However, for the past three years, the ratio of terminations to filings in Maricopa County moved closer to one-to-one, that is, the number of new capital cases and the number of capital case dispositions in Maricopa County are now nearly equal.

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[3] Please see Appendix 4.

[4] A more detailed explanation of these numbers is at page 6 of the 2012 Oversight Committee report. The numbers stated above are "approximate" because Maricopa County furnished two sets of data for the period 2004-2008, and the annual figures in these two sets varied. The Maricopa County Office of Management and Budget, in an August 10, 2007 letter to the Chair of the Capital Case Task Force, indicated that for FY 1997-1998, there were fifty death notices filed in Maricopa County, which appears to be the highest number for a single year.

[5] The new approach included rigorous enforcement of a policy on trial postponements; conducting meaningful and productive pretrial conferences; and assuring that a courtroom and an experienced judge were available on the date set for trial.

3. *Number of pending cases:* Appendix 1 shows the number of pending capital cases in Maricopa County during a five-year period. During 2009 and 2010, the number of pending cases declined every month. During calendar year 2011, however, and continuing until the present time, the number, with only minor exceptions, has stayed between sixty and seventy cases. There has therefore been stability for the past three years in the number of pending capital cases in Maricopa County, but at about half the level it was five years ago.

Superior Court, Statewide

Capital cases are currently pending in five of the other fourteen Arizona counties: Cochise, Pima, Pinal, Yavapai, and Yuma. Appendix 4 contains the number of pending capital cases in all of Arizona's counties, by year, for the past six years. The total statewide number, which is heavily dependent on the number of pending capital cases in Maricopa County, decreased every year between 2008 and 2012. However, in 2013, the statewide number increased by about fourteen percent. Maricopa, Pinal, and Yavapai contributed to the increase, although Cochise, Mohave, and Pima partially offset the increase. The Oversight Committee at this time considers the statewide increase to be a temporary fluctuation. Whether the increase portends a reversal of a five-year trend of decreasing numbers is contingent on future data.

Supreme Court, Direct Appeals

There were seventeen capital cases pending on direct appeal to the Arizona Supreme Court in October 2008. There were twenty-three appeals in October 2009 and twenty-seven in November 2010. The increased number of appeals reflected the number of death sentences then imposed by trial courts statewide: fifteen capital sentences in calendar year 2009, and ten in 2010. Yet in 2011, there were eight death sentences statewide, in 2012 there were four, and for the first ten months of 2013, there were three.

It is also noteworthy that in the thirty-month period between April 2011 and September 2013, the Arizona Supreme Court issued twenty-seven opinions in capital cases. A lower number of death sentences recently imposed by trial courts, combined with a large number of death penalty dispositions in the Supreme Court, have significantly decreased the number of pending death penalty appeals. As of the end of October 2013, there were twelve direct appeals pending in the Arizona Supreme Court. The oldest notice of appeal was filed in March 2011.

Supreme Court, Post-Conviction Proceedings

The Committee's 2009 report noted that the number of capital cases where the Supreme Court Clerk had filed pro forma notices for post-conviction relief, and for which there were no available counsel for appointment, stood at eighteen. However, that number declined to fourteen in 2010, and after a further drop to one, it stood at seven in September 2012. As of October 2013, there were six defendants lacking PCR counsel. These decreases were achieved even though the State Capital Post-Conviction Public Defender, a state office created by the Legislature in 2007 to accept appointments on capital PCRs, ceased to exist in 2012.

However, recent United States Supreme Court opinions may be changing the landscape of post-conviction proceedings.

The Oversight Committee's 2012 report mentioned *Martinez v Ryan,* 132 S. Ct. 1309, 182 L. Ed. 2d 272 (March 20, 2012), a non-capital case from Arizona. This U.S. Supreme Court opinion held that because Arizona required a defendant to raise a claim of ineffective assistance of trial counsel in collateral proceedings, rather than on direct appeal, the ineffectiveness of the defendant's post-conviction counsel in challenging the effectiveness of trial counsel could provide cause for excusing the defendant's failure to raise trial counsel's ineffectiveness in state court. Although the U.S. Supreme Court declined to recognize an explicit constitutional right to the effective assistance of counsel in collateral proceedings, it held that ineffective assistance by PCR counsel might allow a defendant to raise for the first time in a federal habeas petition a claim that his PCR counsel should have raised in state court.

Trevino v Thaler, 133 S. Ct. 1911, 185 L. Ed. 2d 1044 (May 28, 2013), extended the application of *Martinez* to a capital proceeding in Texas. Texas did not require a defendant to raise his ineffective assistance of trial counsel claim in a post-conviction proceeding; however, it imposed substantial obstacles to raising the claim on direct appeal. The Supreme Court concluded that where the design and operation of state procedures made it highly unlikely in a typical case that a defendant would have a meaningful opportunity to raise a claim of ineffective assistance of trial counsel on direct appeal, the holding in *Martinez* would apply.

An illustration of how the complexity of these Supreme Court cases has altered the PCR landscape is *Detrich v Ryan,* (CA 9, No. 08-99001, September 3, 2013). This en banc decision concerning an Arizona capital case includes a four-judge plurality opinion, two concurring opinions, and the dissent of five judges.

III. Recommendations

Recommendation #1: Support an amendment to A.R.S. § 13-4041.

A.R.S. § 13-4041 concerns the fee of counsel appointed on a post-conviction proceeding in a capital case. The statute provides for a one-hundred dollar hourly fee. The Oversight Committee has recommended over the past several years that the hourly rate in A.R.S. § 13-4041 be increased to at least one-hundred twenty-five dollars, and it now reaffirms that recommendation. This proposed increase would match the rate of compensation for PCR counsel with the current rate provided by Maricopa County for attorneys defending a capital case at the trial stage. There is no rationale for compensating PCR counsel less than trial counsel. The Oversight Committee believes that an hourly rate of one-hundred seventy-five dollars, which is comparable to the federal rate in a capital case, would further encourage qualified attorneys to apply for capital PCR appointments.

Recommendation #2: Extend the term of the Oversight Committee.

This recommendation has been included in each of the Oversight Committee's prior reports, and there are several sound reasons for supporting the recommendation again this year.

The apparent stability of capital case data, and in some important areas such as appeals and PCRs, meaningful reductions, could quickly change. A few counties have recently had increases in the number of capital cases pending trial. The Oversight Committee should therefore continue to monitor capital caseloads.

The Oversight Committee's responsibilities include the review of rule petitions concerning capital cases. The Oversight Committee has filed rule petitions as well as comments on rule petitions over the past several years, and this too is an important and ongoing committee function.

The U.S. Supreme Court opinions noted above could culminate in the alteration of post-conviction procedures. Some Arizona stakeholders already are contemplating changes to the sequence of capital appeals and post-conviction proceedings. Senate Bill 1413, introduced during the 2013 Legislative session to implement such changes, failed to pass, but other legislative or rule proposals may be forthcoming. In addition, the United States Attorney General continues to promulgate regulations concerning a Certification Process for State Capital Counsel Systems (also known as the "opt-in" provisions.) These regulations include requirements concerning the competency and compensation of court-appointed counsel for capital defendants.[6]

The Supreme Court opinions and pending federal regulations discussed above highlight the importance of appointing competent and adequately-compensated counsel at every stage of a capital proceeding. This past year the Oversight Committee revised the application for attorney appointments on capital PCR proceedings. However, these Supreme Court opinions and potential federal regulations warrant further diligence in assuring that Arizona's capital defendants have effective counsel. The Oversight Committee serves a useful role in achieving this objective.

The members of the Oversight Committee include judges, prosecutors, public and private defense counsel, a Supreme Court staff attorney and a victims' advocate. Oversight Committee members have indispensible insights and advantageous historical perspectives on capital

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[6] The most recent regulations published by the United States Attorney are the subject of a temporary restraining order issued by a federal district court on October 18, 2013, in Habeas Corpus Resource Center and the Office of the Federal Public Defender for the District of Arizona, Plaintiffs, versus the United States Department of Justice and Eric H. Holder, Defendants (N.D. Cal., C-13-4517-CW). The district court has scheduled a hearing on the TRO for November 14, 2013.

litigation in Arizona, and this group should remain intact. As noted in the 2012 report, as long as there is a death penalty in Arizona, issues will continue to arise.

Therefore, the members respectfully and unanimously recommend an extension of the term of the Oversight Committee for two more years.

Table of Appendices

1. Number of capital cases pending trial in the Maricopa County Superior Court: October 2008 through September 2013

2. Maricopa County capital case recap: October 2008 to September 2013

3. Combined Maricopa County data summary for twelve month periods, 2008 to 2013

4. Capital cases pending trial in Arizona by county: 2008 to 2013

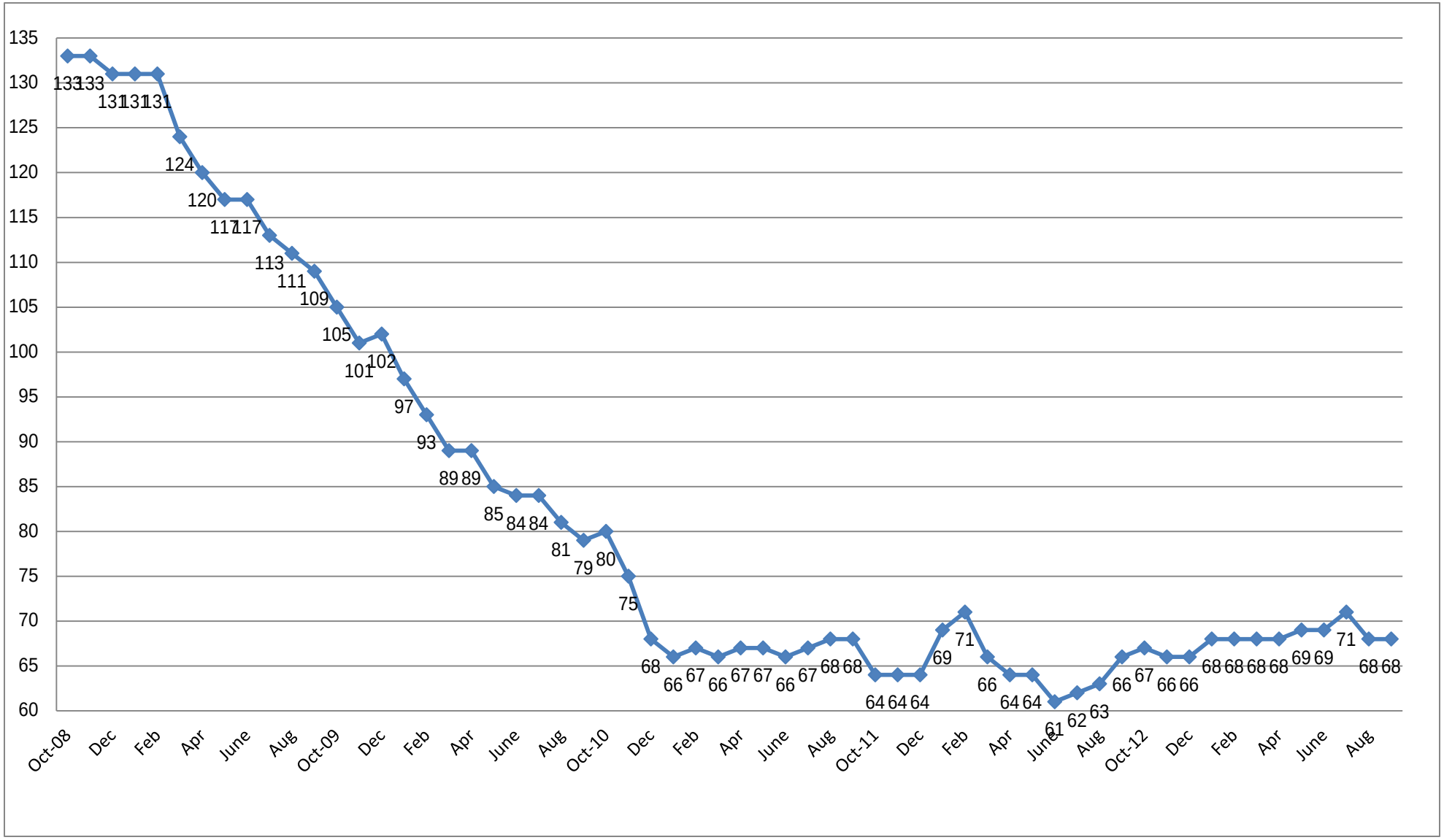
5. Number of capital cases pending trial outside Maricopa County, July 2008 to September 2013

6. Capital cases pending trial statewide, July 2008 to September 2013

7. Number of defendants sentenced to death statewide, 2008 to 2013

8. Executions, 2000 to October 2013

#1: Number of Capital Cases Pending Trial in the Maricopa County Superior Court, by Month: October 2008 through September 2013



Maricopa County
Five-year capital case recap

#2: Maricopa County Capital Case Recap: October 2008 to September 2013 (5 years)

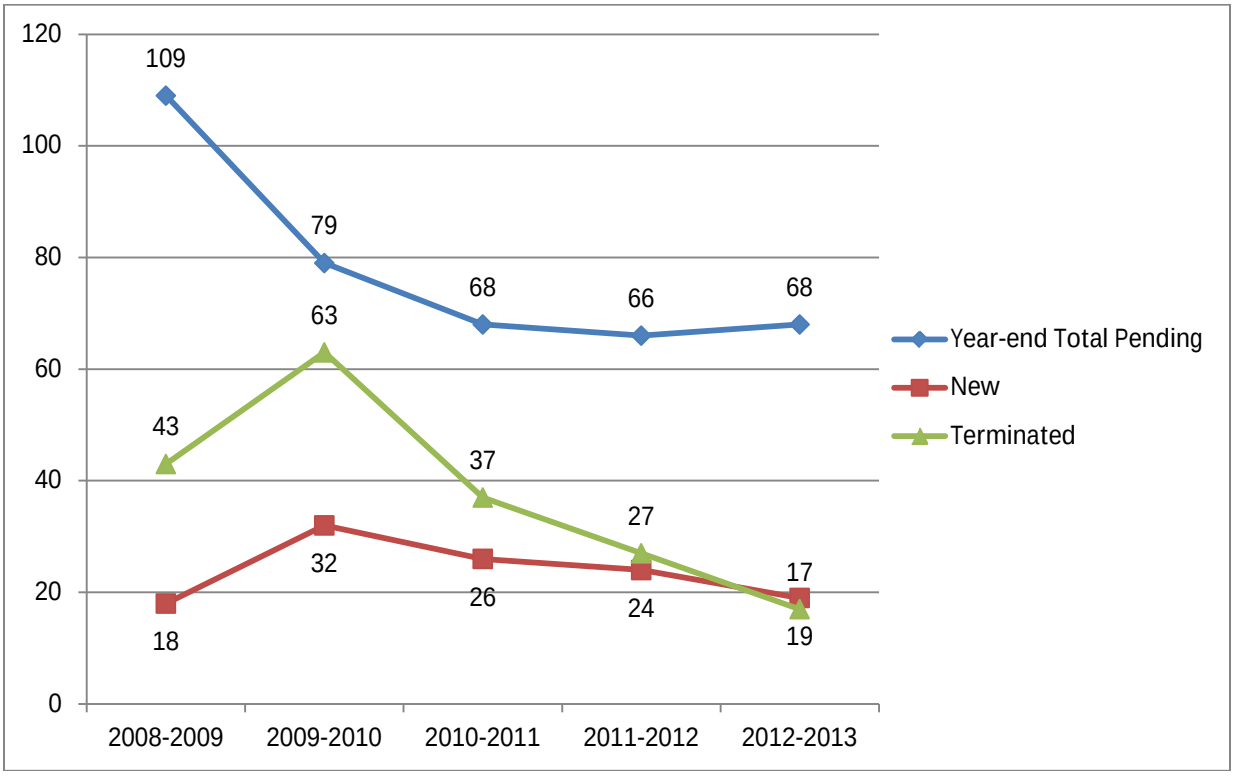
MONTH	# OF NEW CASES	# OF ACTIVE CASES TERMINATED	DEFENDANTS SENTENCED TO DEATH
October 2008	3	1	0
November	2	2	0
December	1	3	0
January 2009	1	2	1: Prince [*Ring*]
February	2	2	0
March	0	7	1: Hausner
April	2	5	1: Lehr [*Ring*]
May	0	4	1: Delahanty
June	0	3	1: Gallardo
July	3	4	1: Grell [*Ring*]
August	3	5	2: Cota, Hardy
September	1	5	1: Manuel
12 month sub-total	**18**	**43**	**9**
October	3	7	0
November	1	5	1: Van Winkle
December	7	6	1: Patterson
CY 2009 sub-total	23	55	11
January 2010	1	6	1: Medina
February	0	5	2: Boyston, Ovante
March	1	5	0
April	2	2	2: Joseph, Martinez
May	2	6	1: Parker
June	5	6	0
July	5	5	0
August	3	6	1: Fitzgerald
September	2	4	0
12 month sub-total	**32**	**63**	**9**
24 month sub-total	**50**	**106**	**18**
October 2010	4	3	2: Gomez, Rose
November	1	6	0
December	1	8	1: Hernandez
CY 2010 sub-total	27	62	10
January 2011	3	5	0
February	3	2	1: Burns
March	2	3	0
April	1	0	0
May	3	3	2: Naranjo, Reeves
June	1	2	0
July	1	0	0
August	4	3	0
September	2	2	1: Miller
12 month sub-total	**26**	**37**	**7**
36 month sub-total	**76**	**143**	**25**

Maricopa County
Five-year capital case recap

Maricopa County Capital Case Recap: Continuation

MONTH	**# OF NEW CASES**	**# ACTIVE CASES TERMINATED**	**DEFENDANTS SENTENCED TO DEATH**
October 2011	2	6	1: Benson
November	2	2	1: Goudeau
December	1	1	0
CY 2011 sub-total	25	29	6
January 2012	6	1	0
February	3	1	0
March	1	6	0
April	0	2	0
May	1	1	0
June	0	3	0
July	2	1	0
August	2	1	1: Lynch
September	4	2	1: Anthony
12 month sub-total	**24**	**27**	**4**
48 month sub-total	**100**	**170**	**29**
October 2012	1	0	0
November	1	2	0
December	1	1	1: Leteve
CY 2012 sub-total	22	21	3
January 2013	3	1	0
February	2	2	1: Escalante-Orozco
March	1	1	0
April	1	1	0
May	4	3	0
June	1	1	0
July	4	2	0
August	0	3	1: Gunches
September	**0**	**0**	**0**
12 month sub-total	**19**	**17**	**3**
60 month total	**119**	**187**	**32**

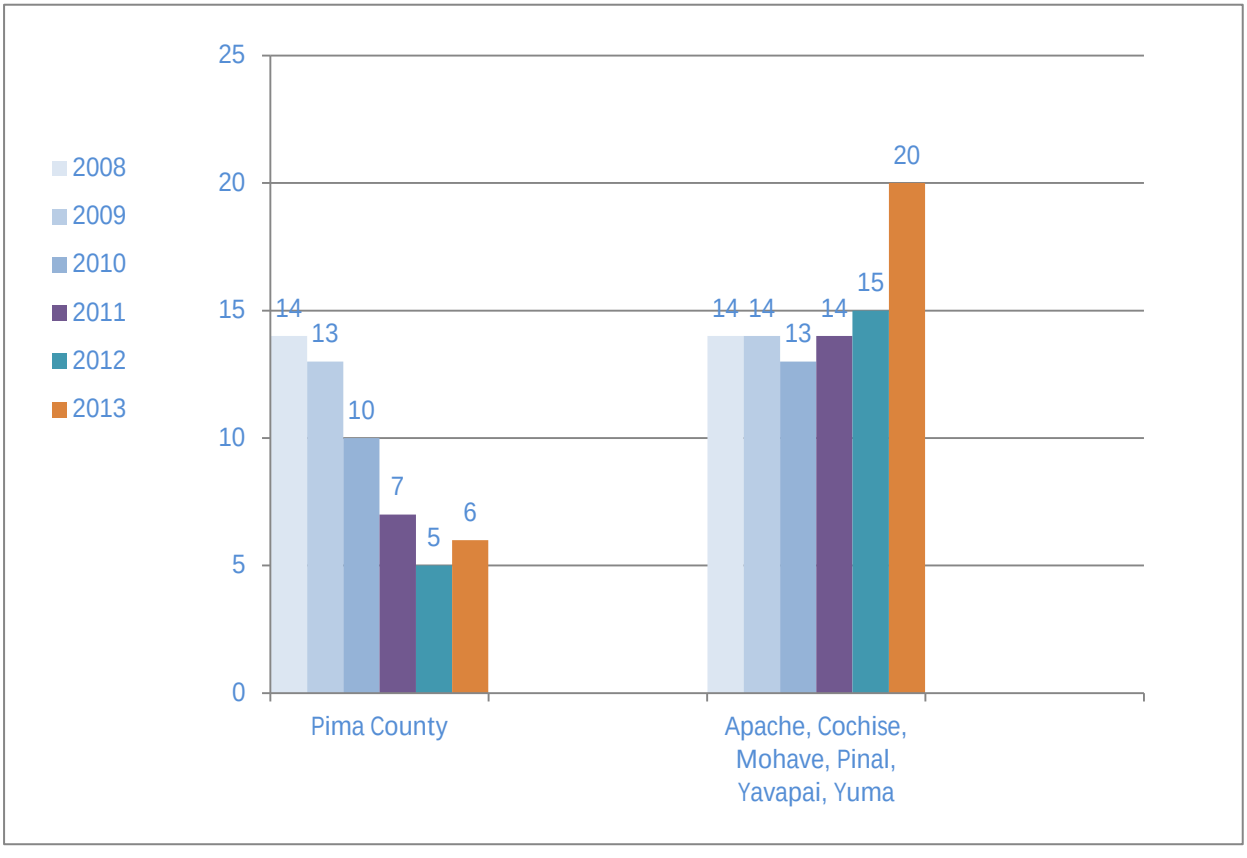
#3: Combined Maricopa data summary for twelve month periods



#4: Capital cases pending trial in Arizona by county: 2008 to 2013

County	July 2008	Sept. 2009	Sept. 2010	Sept. 2011	Sept. 2012	Sept. 2013
Apache	1	1	0	0	0	0
Cochise	0	0	1	3	3	2
Coconino	0	0	0	0	0	0
Gila	0	0	0	0	0	0
Graham	0	0	0	0	0	0
Greenlee	0	0	0	0	0	0
La Paz	0	0	0	0	0	0
Maricopa	127	109	79	68	63	68
Mohave	2	3	2	1	1	0
Navajo	0	0	0	0	0	0
Pima	14	13	10	7	5	6
Pinal	3	4	5	5	5	10
Santa Cruz	0	0	0	0	0	0
Yavapai	3	2	2	2	5	7
Yuma	5	4	3	3	1	1
TOTAL	**155**	**136**	**102**	**89**	**83**	**95**

#5: Number of Capital Cases Pending Trial Outside Maricopa County



#6: Number of Capital Cases Pending Trial Statewide

Date	# of Cases
July 2008	155
Sept 2009	136
Sept 2010	102
Sept 2011	89
Sept 2012	83
Sept 2013	95

#7: Number of Defendants Sentenced to Death Statewide

Year	# of Defts	Source by County
2008	5	Maricopa (5)
2009	15	Maricopa (11), Pima (3), Mohave (1)
2010	10	Maricopa (10)
2011	8	Maricopa (6), Pima (2)
2012	4	Maricopa (3), Pima (1)
2013 (10 mos.)	3	Maricopa (2), Mohave (1)

#8: Number of Executions in Arizona

Year	# of Executions
2001-2006	0
2007	1
2008	0
2009	0
2010	1
2011	4
2012	6
2013 (10 mos.)	2